

The CALIFORNIA LICENSED CONTRACTOR



November, 1941

"Your License Fee"

By DWIGHT W. STEPHENSON, Director
Department of Professional and Vocational Standards

Taxes, license fees and service charges are an integral part of our economic structure. Our citizens are today more tax conscious than ever before. A greater proportion of our population now pay more taxes or fees than they ever paid before for the support of the various arms of government, local, State and Federal; and when a requirement to pay for the services of government reaches our pocketbook—we ask "why?"

Of the many agencies of government, regulating our daily lives, one is the Contractors' License Board, created in 1929. Those of the construction fraternity may properly ask "why regulate us?" That is equally true of all the other professions, vocations and businesses. We find that at each succeeding session of the Legislature, bills are introduced not only creating additional agencies, but measures designed to strengthen and broaden the scope of existing law and eliminate loopholes found in the progress of administering the law.

Regulatory measures such as this have rightfully received recognition from our law-making body for two purposes: (1) To protect the public from the unscrupulous operators and (2) to afford a maximum of protection to the ethical, legitimate operator against bad or ruinous practices of his competitors. It might be added that a third purpose would have as its goal the elevation of the industry of which each is a part.

Hence, we note that in the construction industry, only two groups are affected—the building public and the contractors. If a person rents property, he is not concerned with the industry, and if he is not a contractor, he is not so concerned. But let Mr. Citizen decide to build a home and he calls

in a person whom he believes honest and capable. Consequently contractor and citizen are then parties to a transaction of mutual interest.

Since we have this type of agency, it becomes necessary to finance its activities without placing undue burden upon the general taxpayer. Special in nature, its operation and support must come from the source concerned—the contractor.

That is why the Contractors' State License Board is self-supporting. It does not cost the general taxpayer one cent to maintain, and I hazard the guess that construction costs would not be one penny less if a license were not required.

It is my purpose in this article to graphically illustrate the financial side of the operation of this board, in order that you may better understand why some things are done, and why others are not done which the industry may consider necessary or essential.

All moneys collected under the act are received by the Department of Professional and Vocational Standards and deposited in the State Treasury to the credit of the Contractors' License Fund. For the year July 1, 1940, to June 30, 1941, the amount collected was \$227,120.87. Prior to each session of the Legislature, this department is required to prepare our estimate of expense and income (budget) for the ensuing period commencing July 1 and ending June 30, two years later. With rapidly changing times, it is almost impossible, and certainly highly improbable that the estimates can be much better than a guess.

But we submit our estimates to the Department of Finance which in turn submits them

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THE CALIFORNIA LICENSED CONTRACTOR

Department of Professional and Vocational Standards

CULBERT L. OLSON.....Governor
 DWIGHT W. STEPHENSON.....Director
 FRED A. TAYLOR.....Assistant Director

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 LOUIS F. EARL.....San Francisco
 WILLARD A. EVISON.....Los Angeles
 NICHOLAS J. MORRISSEY.....Sacramento

Main Office
 503 Business and Professions Building, Sacramento
 Branch Office
 906 California State Building, Los Angeles
 Branch Office
 207 California Building, 515 Van Ness Avenue, San Francisco

"Your License Fee"

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to the Legislature. Further consideration follows in the legislative committees, at which time we must justify each item of expense proposed by us.

Although we have ample moneys in the fund, the Legislature reserves the right to determine how much, for what purpose, and the extent to which we may spend this money. It never authorizes more than we request, and generally reduces it. (Example—we have \$300,000 in the bank, but authority to spend only \$200,000. Therefore, \$100,000 remains in the bank, and serves no purpose.) Even with an intimate knowledge of our requirements, and all the appeal possible, we are helpless, unless the Legislature heeds our request.

To be more specific, I shall give you the exact picture of the program presented to the last Legislature. Our expenditure request to the Department of Finance for the two-year period was \$490,616. That department reduced our request by \$15,680. The Legislature made a further reduction of \$29,918 or a total reduction of \$45,598. Of this cut, the sum of \$23,010 was subsequently restored leaving a net reduction of \$22,588, or an appropriation of \$467,606 for the same period. We were further limited in our expenditures to three classifications, i.e., Salaries and Wages, Operating Expense, and

Equipment. This was an entirely new budget program, and one which hampers and restricts a good business administration of the agency.

With the appropriation of \$467,606 for the period July 1, 1941, to June 30, 1943, we have available for each year, one-half of that sum or \$233,803. We then presented a working budget to the Department of Finance of \$231,698, the difference being \$2,105 allowed for salary adjustments. This sum can not be augmented in any manner except through the granting of a deficiency by the State Board of Control, and approval of the Governor. (See chart.) Such authorization is only considered in the light of work or program which could not be anticipated at the time the budget was presented.

Now what does the budget contemplate, and how will the money be spent? It provides for the expenses of seven board members; salaries and expense of the Registrar and Assistant Registrar of Contractors, four deputies, an examiner, 35 inspectors, and 20 office employees, a total of 62 on the staff. We have the usual operating expenses such as rent, postage, travel, telephone and telegraph, fiscal expense, printing and equipment. Twelve branch offices located throughout the State are available as a service to the industry and the building public. All of this costs money, and it is my conviction that the fees paid by the industry for this service should be used for those purposes, and not be allowed to accumulate in the State Treasury to be of no use to anyone.

The Contractors' Law provides that the Director of the Department of Professional and Vocational Standards shall designate a sum not to exceed 10 per cent of the total income of the Contractors' Board for each fiscal year to be transferred to the department fund as the Board's share of the cost of administration of the department. For the fiscal year 1940-1941 the assessment so levied was only 3.7 per cent of the Board's income. This procedure obviates the necessity of each board comprising the department maintaining a staff of clerical help to handle the finances of each board, and is a real economy in government.

Since this agency is not dependent upon general taxes for support, the money collected by it is used for but one purpose—that of protecting the public and ethical industry. The type of service demanded is one thing. Our ability to render that service is dependent entirely upon the availability of funds.

We can only cover the large State of California as effectively as finances will per-

mit, for after all the entire subject relates to manpower.

Statistically, we have one inspector in the field for each 1,000 of licensed contractors. This does not allow for special investigations of complaints or other matters which constantly arise. In other words, we need more field service, but it can not be given because of restriction of funds.

How do we get this financial support? The answer—only from the contractors. Every person applying for a license submits to an examination for which he pays a fee. If he passes the examination and is otherwise qualified he may operate so long as he renews the license. All receipts are properly accounted for, and expended only as authorized by law.

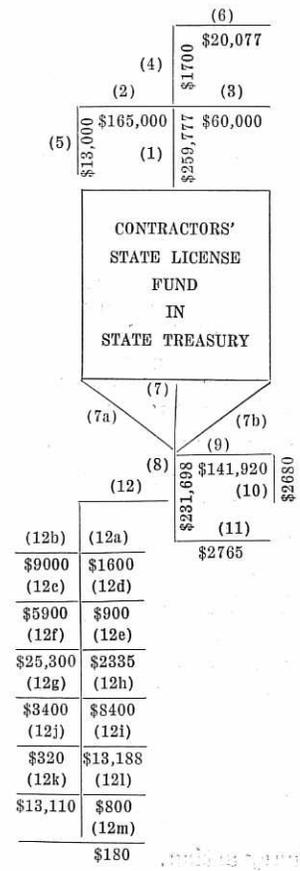
Our estimate of income for the present fiscal year is \$259,777, yet we are permitted to spend only \$231,698. Hence, we shall collect this fiscal year \$28,000 more than we spend. This latter sum can only be added to surplus. We can not reduce the fees except through legislative procedure, and such a reduction as would be possible would be insignificant in the individual case.

At the end of this article appears a chart which will picture the fiscal arrangement. It tells a story much shorter than this one.

The work of the Contractors' Board, which consists of policing of the law and disciplining its license holders for certain acts or omissions, can best be told by a check of the record which is monthly submitted to me for presentation to Governor Olson.

For the past fiscal year (1940-1941) 719 formal actions came before the Registrar of Contractors, acting for the Board, in which \$1,076,299.53 were involved. Informal complaint actions numbered 1,843, the amount involved in these totaling \$1,303,067.54. This latter type of complaint is one not having the semijudicial hearing for the suspension or revocation of the offender's license, but principally involving a dispute, often-times a misunderstanding between the parties to a building contract, and the Board's representative is in most cases able to satisfactorily adjudicate the matter in the field. For the same period, 246 successful prosecutions were conducted before the courts of the State.

To say that the law has accomplished only that specifically represented by the foregoing figures is incorrect, because the mere fact that the law is upon the statute books is, in my opinion, its principal value as a deterrent to would-be offenders, and of course this latter is immeasurable.



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| (1) TOTAL INCOME (ESTIMATED) July 1, 1941-42----- | \$259,777 |
| (2) Renewal fees—July 1, 1941-June 30, 1942----- | \$165,000 |
| (3) Examination fees—July 1, 1941-June 30, 1942----- | 60,000 |
| (4) Miscellaneous income----- | 1,700 |
| (5) Penalties for failure to renew license by June 30th----- | 13,000 |
| (6) Rental income from Business and Professions Building----- | 20,077 |
| (7) Expenditures | |
| (7a) Legislative appropriation | (The only two ways by which moneys in the fund are made available for expenditure.) |
| (7b) Deficiency authorization | |
| (8) BUDGET----- | \$231,698 |
| (9) Salaries and wages----- | \$141,920 |
| (10) Salary increases----- | 2,680 |
| (11) Equipment----- | 2,765 |
| (12) Operating expenses | |
| (a) Office supplies----- | 1,600 |
| (b) Printing----- | 9,000 |
| (c) Auto expense----- | 5,900 |
| (d) Office service----- | 900 |
| (e) Auto repairs----- | 2,335 |
| (f) Travel expense----- | 25,300 |
| (g) Telephone and telegraph----- | 3,400 |
| (h) Postage----- | 3,400 |
| (i) Rent----- | 13,188 |
| (j) Freight, cartage, express----- | 320 |
| (k) Retirement, fiscal, personnel, Attorney General's service----- | 13,110 |
| (l) Compensation insurance----- | 800 |
| (m) Miscellaneous----- | 180 |

Item (1), Total income—\$259,777 minus Item (8), Budget—\$231,698 equals \$28,079 which is added to surplus.

All licensees must report to the Registrar all changes of personnel, name style or addresses within Thirty Days after the changes are made.

Why Licenses Are Suspended or Revoked

Editor's Note: This is the eighth of a series of fifteen articles to be run in a like number of issues of the California Licensed Contractor. Each will be preceded by a brief statement of all of the sections of the Business and Professions Code that constitute cause for action against a contractor's license. In each of the articles one of the sections will be featured by an explanation and by examples taken from our files.

The sections are Nos. 7106 to 7120, inclusive, and are grouped in Article 7 of Chapter 9 of Division III of the Business and Professions Code of California.

Power of suspension for violation of these sections is given the Registrar in Section 7090 of the same article, which states, "The registrar may upon his own motion and shall upon the verified complaint in writing of any person, investigate the actions of any contractor within the State and may temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action."

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|-----------------------------|--|--|--|
| Consolidation | 7106. The suspension or revocation of license as in this chapter provided may also be embraced in any action otherwise proper in any court involving the licensee's performance of his legal obligation as a contractor. | Misrepresentation | 7112. Misrepresentation of a material fact by an applicant in obtaining a license constitutes a cause for disciplinary action. |
| Abandonment | 7107. Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action. | Violation of contracts | 7113. Failure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action. |
| Misuse of funds | 7108. Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose constitutes a cause for disciplinary action. | Unlicensed persons | 7114. Aiding or abetting an unlicensed person to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter constitutes a cause for disciplinary action. |
| Disregard of specifications | 7109. Wilful departure from or disregard of, plans or specifications in any material respect, and prejudicial to another without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications constitutes a cause for disciplinary action. | Violation of this law | 7115. Failure in any material respect to comply with the provisions of this chapter constitutes a cause for disciplinary action. |
| Violation of laws | 7110. Wilful or deliberate disregard and violation of the building laws of the State, or of any political subdivision thereof or of the safety laws or labor laws or compensation insurance laws of the State constitutes a cause for disciplinary action. | Fraud | 7116. The doing of any wilful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured constitutes a cause for disciplinary action. |
| Preservation of records | 7111. Failure to make and keep records showing all contracts, documents, records, receipts and disbursements by a licensee of all of his transactions as a contractor and open to inspection by the registrar for a period of not less than three years after completion of any construction project or operation to which the records refer constitutes a cause for disciplinary action. | Personnel variance | 7117. Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action. |
| | | Contracting with unlicensed contractor | 7118. Knowingly entering into a contract with a contractor while such contractor is not licensed as provided in this chapter constitutes a cause for disciplinary action. |

Lack of
reasonable
diligence

7119. Wilful failure or refusal without legal excuse on the part of a licensee as a contractor to prosecute a construction project or operation with reasonable diligence causing material injury to another constitutes a cause for disciplinary action.

Withholding
money

7120. Wilful or deliberate failure by any licensee or agent or officer thereof, to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

SECTION 7113

The important words in this section, and the ones which most clearly point out the gist of it are “* * * for the price stated in the contract.” The section deals with the “failure” on the part of the contractor to complete the project for the contract price. This section is directed toward the contractor or subcontractor who through his own failure forces his employer to pay more than is proper in order that the contract may be completed and the property cleared of valid claims of lien.

While failure to complete a project because of a physical abandonment which is in violation of Section 7107 often occurs when the same contractor is also guilty of a failure to complete for the contract price, the two are separate causes of action under the Business and Professions Code.

Failure to complete for the contract price—the matter dealt with under Section 7113—does not occur merely because a contractor does not pay all obligations arising out of a particular job. Nor does it occur even when a contractor has been paid in full and there are unpaid claims outstanding. It only occurs when through operation of the lien law or by some other compulsive force the owner or general contractor is forced to assume an obligation and pay out sums which the con-

tractor should have paid; providing, of course, these additional forced payments added to what has been directly paid under the contract exceed the amount which the contractor was entitled to receive.

Failure to complete for the contract price is a charge which can arise out of the injury caused a general contractor by his subcontractor. Charges may be filed, also, by an owner who has been injured by the failure on the part of his general contractor.

Before a contractor may be found guilty of failure to complete for the contract price, the Registrar is required to, and even if not required, would consider all evidence in favor of the defendant contractor, such as increase in the contract price because of extras ordered by the owner or employer. Therefore, before arriving at a conclusion as to the proper costs to which an employer should be subjected, the Registrar will first consider adjustments for changes and extras, whether in favor of the defendant or owner.

Claims for nonexistent extras or padded extras charges will be eliminated. Attempts to establish offsets by improper extra charges will certainly not improve the position of the contractor, if the case is finally determined against him.

In further explanation of the meaning of this section and in order to cite figures to show how it operates, let us assume that a contractor has undertaken to build a residence for the sum of \$5,000.00. After construction has started, the owner has ordered an additional room to be added on to the house. There is no written agreement as to the cost of the additional room but the reasonable total cost of the materials, labor, overhead and profit is \$800.00. The job is completed as far as plans and specifications are concerned and there is no further work to be done. The contractor is entitled to receive \$5,800.00, of which the sum of \$4,000.00 has been paid. There is a balance due of \$1,800.00. Unpaid bills for material and labor against the job, however, totaled \$2,500.00. Payment of the final \$1,800.00 may be retained until the contractor has proved that all bills are paid.

This contractor is unable to pay the \$2,500.00 and the liens are filed totaling that amount. The liens are proper claims against the property and the owner in order to protect his title is forced to assume them. He pays out the \$1,800.00, the balance due under the contract, to reduce the liens. There are then remaining claims totaling \$700.00. This \$700.00, since it represents claims enforceable against the owner's property, is a definite

loss to the owner and this loss is an excess over the contract price. The contractor is guilty of a violation of Section 7113 because he has failed in the amount of \$700.00 to complete the contract for the contract price. The Contractors' Act, in order to protect licensees from minor complaints which should be settled in the Small Claims Court, requires that the failure of the contractor to complete for a contract price must be a "material" failure. Certainly, in the above instance a failure in the amount of \$700.00 is a material failure.

Now, let us consider the application of this section when an owner is not only required to pay bills which the contractor agreed to pay, but is also wrongfully forced to complete the construction of the building. In order to ascertain the proper cost to the owner of the project, we first take the amounts which he has paid to the contractor. We then add the costs which have been assumed by the owner in the employment of others to complete the job. To these two sums we now add any unpaid but enforceable claims against the job which were incurred by the contractor. If there have been extras or changes, the total is either increased or decreased to represent the reasonable value or the agreed price of such changes. The figure which we now have is the exact sum which the owner is obligated to pay for the project which he now owns and can utilize. If this total is in excess of the original contract price, after adjustments for changes or extras, the excess of the one over the other becomes a cost which has been forced upon the owner, but which should have been paid by the contractor, we have a case of failure to complete for the contract price coupled with abandonment of contract.

As a matter of fact, in almost every case when a contractor has actually and without good excuse abandoned a construction job, the final cost to the owner or general contractor of completion of the job and payment of enforceable claims shows that the contractor has, in addition to the abandonment, failed to complete the job for the contract price.

It is not strange that there have been an increasing number of cases involving both abandonment of contract and failure to complete for the contract price in recent months. Prices for supplies have been unpredictable, and conditions have been aggravated by a shortage of skilled labor in some localities. Many contractors have been unable to protect themselves as to costs of materials and to complete their contracts with sufficient

speed to avoid general raises. As has been previously pointed out in the pages of the California Licensed Contractor, instances of this sort of difficulty are bound to occur under present conditions.

There is no doubt but that many licensees will in the next few months find themselves faced with action against their licenses indirectly caused by unsettled conditions.

Many contractors no longer submit bids except in writing and the bid form contains a prominently displayed statement limiting the time of acceptance. Some other contractors, in order to emphasize a time limit, have purchased large rubber stamps which they imprint across the face of their form. These stamps state that the bidder reserves the right to withdraw the bid or to refuse the contract unless the bid is accepted within a certain number of days or under certain conditions stated.

A few subcontractors have recently adopted a subcontractors bid form to be used in submitting bids to general contractors. This form states that the figure is only binding until a certain number of hours after the general contract is awarded. Many general contractors are wisely limiting their own liabilities by submitting bids upon which they require that the owner give acceptance and remove all contingencies (such as arrangement for financing) within a certain number of days, if the general contractor is to be bound by the bid.

The practice of placing stringent limits upon times of acceptance of bids may seem to be an indication of lack of interest in securing a contract, or a lack of confidence. It is a rather cold and impersonal way of doing business between general contractors and subcontractors who are currently enjoying satisfactory business relations, but the use of protective limitations in this particular time becomes a matter of such great importance that a contractor receiving a bid with such a limitation should credit the bidder with good business judgment. He should accept the bid as bearing an indication that the bidder is in better shape to protect his own commitments and thus fulfill his own contracts because of his desire for protection. Others who might be assuming obligations which can not later be discharged, which will pyramid rapidly, may be forced to default upon a number of jobs. This latter class becomes a poor risk, to use the insurance term. After all, no contractor believes that price alone should be considered. Ability to "deliver" at this particular time is almost as important as price.

Contractors in United States Armed Forces

Of interest to State licensed contractors who are now, or expect to be, a part of the armed forces of the United States, is Section 114 of the Business and Professions Code, a new section passed by the 1941 Legislature and subsequently approved and signed by Governor Olson. Section 114 provides under certain conditions that a licensed contractor who served in the armed forces of the United States shall, upon application, be privileged to renew his license without examination and without the payment of fees for delinquency. The following memorandum, received from the Director of the Department of Professional and Vocational Standards, Mr. Dwight W. Stephenson, is printed for the information and guidance of those concerned:

*To the Contractors' State License Board,
and Mr. Allen Miller, Registrar*

GENTLEMEN: The 1941 Legislature added a new section to the Business and Professions Code, being Section 114, reading as follows:

"Any board or commission in the department which licenses any professional or vocational occupation, shall, upon the application for renewal of a license by a person who has within the 60-day period immediately prior to his application served in the armed forces of the United States, renew the license of such person without examination and without the payment of fees for delinquency."

An opinion has been obtained from the Attorney General relative to the interpretation and application of said section. For your information and guidance, his opinion holds substantially as follows:

1. That Section 114 of the Business and Professions Code prevails over any enactments of the 1941 Legislature as amendments to the law governing specific boards.
2. That a person holding a valid renewable license from any of the boards in this department (of which the Contractors' State License Board is a division), at the time of his entry into the armed forces of the United States, may, within 60 days after his discharge from such armed forces, renew his license without examination, on payment only of the renewal fee for the year in which he makes such application.
3. That we should require of such applicant proof of the date he entered the armed forces in order to ascertain

whether or not he was the possessor of a valid renewable license at that time, and proof of the date of his discharge from the armed forces. This proof to be in such form as we may require, which I suggest should be by affidavit.

Yours very truly,

(Signed) DWIGHT W. STEPHENSON,
Director.

Craft Examinations in Effect

Under the rules recently adopted by the Board, made possible by the signing by Governor Culbert L. Olson of a bill amending the Contractors' State License Law, separate prequalifying examinations for contractor applicants seeking licenses in the electrical, plumbing, and painting and decorating classifications were put into effect September 15, 1941.

Hereafter no license will be issued to any applicant applying for a license to contract in the electrical, plumbing, or painting and decorating fields unless he successfully passes the examinations now required.

The Board and its staff are now working on examinations for other crafts and classifications. It is expected that separate prequalifying examinations for the General Speculative Building and General Alteration Contractor classifications (the latter a new general classification recently created by the board) will be in effect by January 1, 1942.

In the next issue of the California Licensed Contractor the new rules upon the subject of classification prequalification, which were not complete at the time this issue went to press, will be given at length and discussed.

President and California Contractor

When the President of the United States said "I do believe—I know—that in all truth we are in the midst of a National Emergency," the farsighted California contractor who heard or read the President's statement began to realize that possibly the days of "business as usual" were on the skids and that in these days of National peril the people's nondefense needs must yield to the necessities of defense. So he hustled out and secured unto himself a low priority number and has been bidding happily ever since.

Do You Know That—

By GLEN V. SLATER, Assistant Registrar

(In each edition of the "California Licensed Contractor" I will attempt to give in this column excerpts from the various laws that directly affect your contracting business. For this edition I have chosen the Workmen's Compensation Laws of the State.)

—The Workmen's Compensation Laws require every contractor to insure every employee engaged in connection with his business.

—Part time employees are not exempt and must be insured in every case.

—Relatives employed by a contractor are *not* excepted and must be covered with insurance.

—Contractors are not required to cover with compensation insurance those who do work for them as independent contractors.

—An independent contractor is any person who renders service for a specified recompense for a specified result under the control of his principal as to the result of his work only, and not as to the means by which such result is accomplished.

—Insurance protection may be provided in two ways. Either a standard approved policy of workmen's compensation insurance must be secured or the contractor must secure a permit from the Industrial Accident Commission allowing him to become a self-insurer by supplying surety of not less than \$30,000.

—Failure of a contractor to insure his employees may be punished by a \$500 fine and imprisonment for six months.

—Upon proof of continued failure by a contractor to secure payment of compensation for 30 days the court *must* impose a fine of not less than \$300.

—A contractor subjects his license to suspension or revocation for violation of the Compensation Insurance Laws.

—If a contractor fails to provide compensation insurance on an employee and an injury occurs, the amount of compensation which the employee would be entitled to must be paid by the contractor and in addition, a penalty will be added amounting to 10 per cent of the award (the penalty is limited to \$1,000).

—If a contractor carries compensation insurance, the compensation insurance company assumes the obligation of the contractor under the Workmen's Compensation Act.

—An employer must promptly notify his insurance company of any injury to his employee.

—In the case of disability because of an injury, the injured is entitled to 65 per cent of his average weekly wages, starting on the eighth day after the date of injury.

—If an injury causes death, burial expenses must be paid and dependents are entitled to death benefits. Death benefits are limited to a maximum of \$6,000.

—If an injury is caused by serious and wilful misconduct of a contractor, then any indemnity paid is increased 50 per cent and this increase must be paid by the employer. The insurance company is not liable for the increase.

Contractor-employers should read their compensation insurance policies, together with any indorsements or riders attached and made a part thereof. Many employers are under the impression that their policies of insurance automatically cover all classifi-

cations and all operations, as well as all persons employed, wherever they are employed. This, in many instances, is not a fact, and study of his policy may show the contractor-employer that any of his employees engaged in any work other than that directly in connection with the operations specifically described in the policy schedule are not covered.

The Workmen's Compensation Law (Section 3710 of the Labor Code), provides that "failure to secure the payment of full compensation benefits to all employees is a misdemeanor." In this connection it should be noted that the standard compensation insurance policy contains, written in the policy itself, an additional proviso definitely *excluding* relatives unless such relatives are named in the declarations in the policy or in a special rider or indorsement attached to it and executed by the compensation insurance company. The legal effect of failure to have a relative, who is an employee, named in the declarations or in a rider or indorsement, is that the employer is not insured against liability for industrial injury or death suffered by such relative, and is personally liable to pay compensation, as well as being subject to fine and imprisonment for failure to cover.

The responsibility of covering all of his employees in the various classifications in which they labor is that of the contractor-employer. If an employee should be injured while performing labor outside the classification of operations designated in the policy, or if the contractor-employer had failed for some other reason to have properly covered the injured employee, the amount that could be awarded the employee, plus a possible penalty up to \$1,000—and which he would have to pay—would meet a lot of pay roll premiums and possibly save a contractor from bankruptcy or otherwise going out of business.

But what of the contractor-employer who fails to carry compensation insurance? And what of his employee who suffers injury or death? The employee or his dependents secure an award, possibly carrying an added penalty, and the contractor has not sufficient money to pay off and continue in business. The answer may be that the injured employee and his family suffer physically, mentally and financially. The contractor-employer suffers mentally and financially, and the Registrar suspends or revokes the contractor-employer's license for the violation of Section 7110 of the Contractors' State License Law.

The legal department of the Industrial Accident Commission is now—and for months past has been—engaged in a campaign to enforce the compensation insurance laws and compel all employers to protect all employees by proper compensation insurance. It is my information that as many as 40 citations have been issued in one day to enforce the compulsory insurance features of the compensation insurance laws.

So, for the protection of yourself, your business associates and dependents, check your compensation insurance policy. It may save you money and trouble.

Revision of Board Rules

The Board at its meeting of October 31st revised the existing rules in their entirety as a result of a law passed at the last session of the Legislature requiring bodies such as the Contractors' Board to file with the Secretary of State all such rules and regulations before March 13, 1942.

Complying with this law presented an opportunity to bring up to date the rules in a concise manner making for facility of amendment and revision.

Safety Pays Dividends

L. K. REINHARDT, Supervising Engineer,
Industrial Accident Commission

The amazing evolution in construction, design, materials and methods which has taken place in the construction industry has made it necessary to introduce highly mechanized equipment for rapid and economical erection. All these changes have brought about greater hazards to workmen as well as to property.

Has safety in construction kept pace with this progress? Apparently not, and in failing to do so, construction men may be charged with negligence, lack of humanness and with economic waste. The cost of construction accidents is a tremendous burden. Even in 1938, a year considerably below normal in construction activity, the cost was close to \$100,000,000 in losses for injuries—and this figure takes no account of the losses to the injured in time not covered by compensation or of medical expenses or damage to equipment and property.

The Bureau of Accident Prevention of the Industrial Accident Commission revised the Construction Safety Orders effective October 1, 1940, and a number of important changes were made in the revision of these orders. A partial list of these changes are as follows:

1. *Order 1104. Sinking Wells or Shafts*

This is a new order and provides that all wells or shafts over five feet in depth shall be retained with logging, spiling or casing.

2. *Order 1108. Construction Elevators for Hoisting Men*

This order has been extended requiring directly connected mechanism (no clutch or friction gears are permitted) and the machine shall have automatic brakes and control levers and in addition to the automatic brake, a hand operated or foot brake shall be provided.

3. *Order 1114. Floor Openings to Be Guarded*

This order has been elaborated upon to the extent that the floor opening shall be guarded as soon as the hole is framed and "as soon as the hole is framed" means when the header beams are nailed to the joist and before the sheathing is laid.

4. *Order 1118. General Requirements for the Construction of Scaffolds*

All lumber used in the construction of scaffolds shall be Douglas fir not less than No. 1 common. The minimum size of planks and maximum distance

between supports for respective plank sizes shall be as given in the following table:

| Size of Planks | Span Allowed in Feet |
|----------------|----------------------|
| 2 x 8 | 8 |
| 2 x 10 | 10 |
| 2 x 12 | 12 |
| 2 x 14 | 14 |
| 2 x 16 | 16 |
| 2 x 20 | 20 |

No nail smaller than eight penny shall be used. The following are types of scaffolds prohibited:

- a. Lean-to or jack scaffolds over 8' high.
- b. Shores scaffolds.
- c. Barrels, boxes, loose tile, and other unstable objects.

5. *Order 1120. Pole Scaffolds (Light Trades)*

All scaffolds over 10 feet above the ground shall be provided with a guard rail. The uprights shall not be spaced over 10 feet centers and shall not be less than 2 x 4's. The ledgers shall be two 1 x 6's or one 1 x 8. The platform shall be at least two planks wide and the planks shall be not less than 2 x 10's.

6. *Order 1121. Bricklayers' Scaffold*

The uprights shall be at least 4 x 4's spaced not over 7 feet 6 inch center. The platform shall be 4 feet wide. The ledgers shall be one 2 x 6 or two 1 x 6's. Railings and toeboards must be provided on all bricklayers' scaffold.

7. *Order 1125. Bracket Scaffolds*

Bracket scaffolds will be permitted only when through bolted, welded to steel tanks or hooked over a supporting member.

8. *Order 1131. Ladder Jack Scaffold*

Ladder jack scaffolds shall not be used when the platform is over 18 feet above the ground. Not more than two workmen shall be allowed on any such scaffold. The ladder shall not be spaced over 16 feet centers and when 1½ x 14 inch planks are used, the span shall not exceed 12 feet.

9. *Order 1134. Life Lines and Safety Belts*

Whenever it becomes necessary for workmen to crawl out in thrustouts and such other places where no other protection is afforded them, life lines

and safety belts shall be provided by the employer.

10. *Order 1146. Demolishing Buildings*
No workman shall be required or permitted to stand or work on the top of any wall more than 15 feet high on either side.
11. *Order 1166. Power Shovels and Cranes*
 - a. Operating cranes and shovels when it is possible to bring any part of the equipment within 6 feet of high tension wires is prohibited.
 - b. Crane type booms shall have a device to prevent the boom from falling over backwards.
12. *Order 1167. Trucks*
All trucks hauling dirt or rock on concrete shall be equipped with a horn or whistle on both the front and rear ends. Warnings shall be sounded before backing up the truck.

It is important that contractors abide by the safety orders of the Industrial Accident Commission. If a workman is injured because of the violation of a safety order of the Commission, this injured employee has the right to file for 50 per cent additional compensation. The normal compensation insurance does not protect the policyholder from this 50 per cent additional compensation; in fact, the contractor can not insure against this award.

Accident prevention must start at the top. If the head of the organization is watchful and makes it known to all employees that "Safety First" is no catch phrase, but a solemn order to be constantly observed, much can be accomplished in accident prevention and saving of life.

Inspectors Conference

The annual conference of the Inspectors of the Board was held in Santa Barbara on October 9th, 10th and 11th.

The policy of the Board pertaining to the constantly arising problems confronting the inspectors was clearly established particularly as to the prequalification of applicants for license and the classification undertaking. A thorough explanation of and procedure regarding the amendments to the license law which were adopted at the last session of the Legislature was also definitely established.

These conferences are the most essential factors in making for a statewide uniformity of enforcement of the law.

Public Works Bidding Procedure

In the August issue of "The California Licensed Contractor" there appeared a warning to contractors urging them to insert protective clauses in their bids in the event of delays due to nondelivery of materials, etc.

We now find that under the bidding procedure used by the Division of Highways any modification such as that suggested by the insertions of conditional clauses would invalidate the bid. For your information, we have also noted that in recent specifications issued by the Division of Highways provision has been inserted that upon satisfactory proof that due to the National Defense Emergency shortage of labor or materials causes delays, extension of time will be granted.

Under the circumstances, of course, contractors can not insert any such clauses as were suggested in our previous issue when bidding on California highway contracts. As other public awarding bodies may have similar regulations, contractors should make sure that any additions or conditions inserted in their bid conform to the bidding regulations of the awarding body.

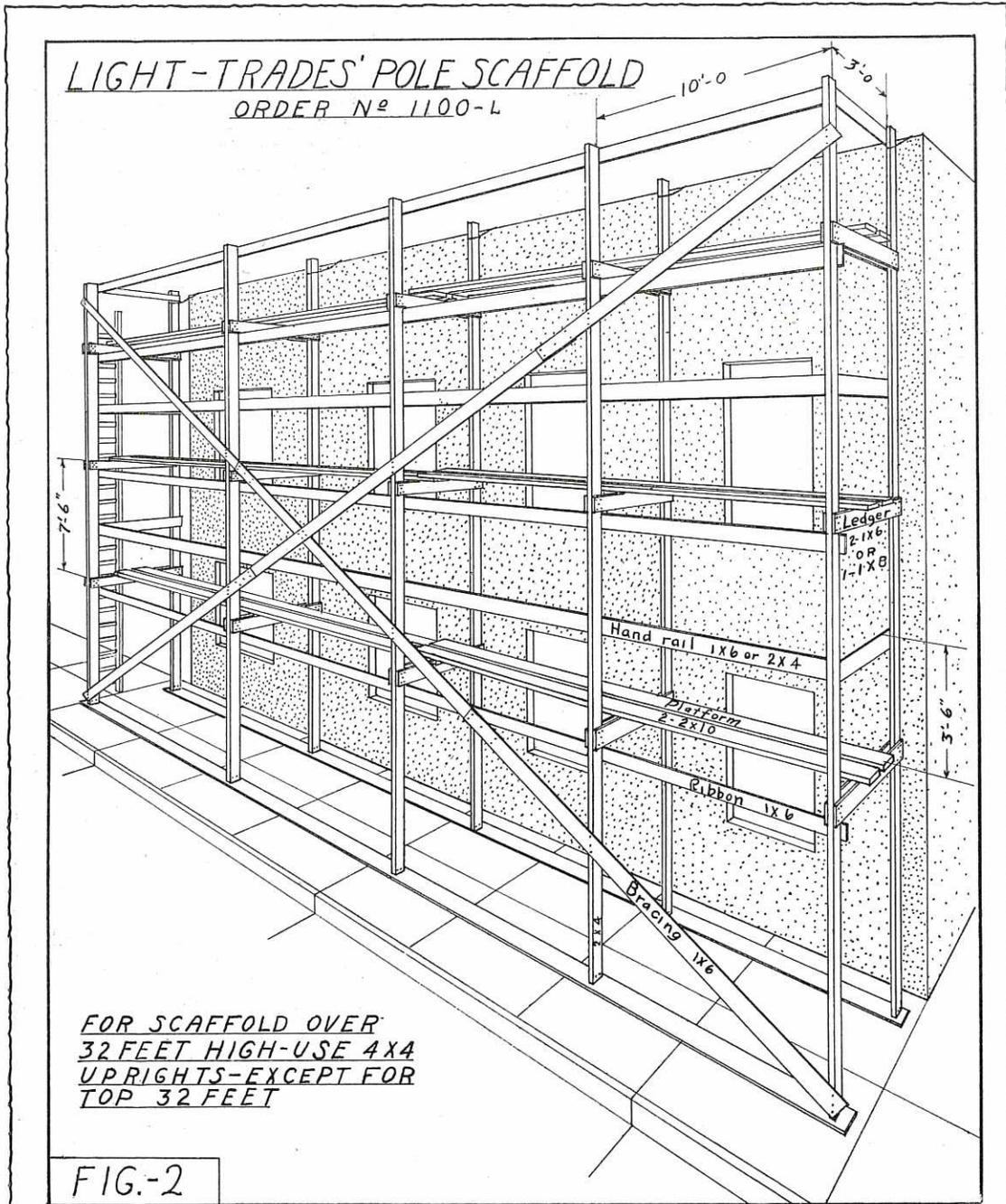
ROY S. HAYDEN

TAKES FINAL ASSIGNMENT

The Board and its staff regret to announce the loss of Roy S. Hayden who has served as an inspector since 1929. Hayden, due to his particular ability as a conciliator, was headquartered in many difficult locations over the State, having worked in San Diego, San Bernardino, Huntington Park and Los Angeles, where he made many friends in the construction industry.

Hayden, a World War Veteran, died August 30, 1941, at the Veterans' Hospital, Sawtelle, California. He was buried with military honors at Fort Rosecrans National Cemetery, San Diego, California.

Hayden will be missed by his many friends and his fellow State employees, as well as by the surviving members of his family, to whom expressions of sympathy have been sent.



CONSTRUCTION SAFETY ORDER 1100-L

“Light-trades scaffold” means a scaffold used by plasterers, carpenters, sheet metal workers, or trades not using heavy tools or storing heavy material on the scaffold.

Control of "Joint Control"

It is a fact that the operation known as "joint control" of disbursement of funds to contractors is widely used in California. Whether or not the system provides a benefit to the public or to the industry or whether it serves no good, or whether it constitutes an evil is beside the point. The fact is that "joint control" is required upon a number of jobs. It, therefore, is advisable to study joint control procedure to see whether or not it is properly used so that the general benefits from it are as great as possible and to see whether or not abuses which arise in connection with joint control can be eliminated.

The principal purpose for which joint controls are established is to see that funds which are made available for the payment of a contract are used by that contractor to discharge obligations upon the job for which the funds are issued so that there will be no liens. The joint control officer without regard to the exact duties to which he is bound is looked upon by all parties interested in the transaction as being a representative of all such parties. The subcontractors who work upon the job expect him to see that the funds are paid out to them when their work is finished. The lending institutions expect him to see that the funds are paid into the particular job only and that if trouble appears imminent they will be notified by him. The owner looks to him to see that the job is completed for the contract price clear of lien claims.

Concerns which have been organized for the sole or principal purpose of operating construction joint control have adopted procedure which is very businesslike and in general has been satisfactory to those who have used their services.

Many concerns, however, operate as joint control agents when their control work is merely incidental to their regular business and such concerns in many cases omit from their procedure certain steps that if taken would be very beneficial.

The principal step which is most frequently omitted is the requirement that the contractors prior to the acceptance of joint control authority give to the control agent a breakdown of the job costs showing that he will be able to complete the job for the sum available and that there is a fair margin of profit to serve as a safeguard.

A joint control officer should, of course, be able to tell either by his own examination

or by the services of someone else in his organization that the breakdown of costs is reasonable and represents the ordinary going prices for the various services and materials utilized. Assuming that the control officer checks the breakdown of costs and believes that the contractor can do the job and come out in the clear, he then accepts the joint control and upon issuing payment checks each payment is checked to see whether or not it is well within the limits set for the cost of the work or service performed by the particular claimant.

By the use of a breakdown to check disbursements the control officer can usually weed out claims that are not actually incurred in prosecution of a particular job. In his first investigation of the breakdown he will know whether or not some particular item is out of reason and indicate that the contractor is going to attempt to pay some old obligation to some party who will also do some work on the new job.

If during the disbursements on the job claims come in which are not covered by the breakdown the control officer can quickly check the facts and see whether or not there is an irregularity being attempted by the contractor.

In a number of instances there has been a lack of understanding on the part of control officers as to what costs are actually chargeable to the funds under his control. In general, all of the parties who have agreed to the control expect the funds to be used for the primary purpose of seeing that the job is completed free of liens. Therefore, payment of any obligations which could not be supported by a lien should not be paid by the control officer unless every other claim which does have the right of lien has been paid and there is no question of the contractor's solvency in respect to this particular job.

For instance, a contractor should not be issued funds for the payment of a deposit upon compensation insurance. It would be proper to allow him the compensation insurance premium for the actual pay roll upon the particular job, if his pay roll audits were due before the control was closed. But to give him funds to invest in his policy which covers all of his business would be an improper step. Nevertheless, we have often seen control agents issuing amounts up to \$150.00 or \$175.00 in payment of a compensation policy and these payments were made at the very commencement of the job before it

would be possible to tell what the outcome would be.

Neither the owner nor the creditors of the contractor care whether or not his office stenographer is paid her salary because if she is not paid she can not file a lien against the job nor file a claim which will supersede the lien of the subcontractor. Certainly payments from joint control should not be issued for pay roll purposes except for men who have actually worked upon the particular job as mechanics.

When a general contractor has a superintendent of construction whose duties are to watch a large number of jobs, it becomes a close question as to whether or not his salary or any part of it should be paid from control funds deposited to protect a particular job. Certainly it is safe to say that if any funds were issued in payment of his salary, it should be on a pro rata basis and not for the full payment of his salary.

Another step which the control officer should watch very carefully is checking to see that payments to various claimants upon a job are made at the proper time and that no particular claimant is paid in advance of the time when his bill is due. One of the major objections to the handling of joint control by concerns which are engaged in other lines of business has been that these concerns were themselves claimants against the joint control. It has so happened that by their control of the funds, these agents were able to pay their own claims first and force whatever losses might occur—and in some instances there were losses—to be assumed by all others.

The joint control officer enjoys a position of trust whether or not he legally can be held as a trustee. Even in the absence of any legally enforceable obligation on his part to see that funds are disbursed in proper order, the mere fact that he has been chosen to disburse the funds shows that he has been placed in a position of responsibility. It is his duty to see that the financial transactions in connection with the particular job are handled without favor to any particular party and for the general benefit of all concerned. If he makes a preferred claimant out of his own concern even in the slightest respect, all others who have knowledge of that fact consider that he has breached his trust. No amount of legal argument to the contrary will affect their views.

With the exception of the owner all parties who are directly or indirectly interested in the control of a contractor's funds are in business from the profit motive. They have experience in the performance of construction

work and in the handling of construction business and in the issuance and collection of construction funds. The owner, however, generally has no such experience. When the owner assigns the funds due to the contractor to a joint control agency, experience has shown that in practically every instance the owner felt that his job was as good as bonded. From lack of experience, he assumes a fact that usually does not exist.

Naturally, then, when an owner's job has turned out in such a way that there were excess costs that particular owner has been left with the feeling that someone broke a trust. Contractors, subcontractors and material men become suspects in his mind. It is not good for the construction industry that such a feeling should be directed to any member of it either directly or indirectly engaged in the contracting business. It, therefore, behooves the entire industry to carefully consider procedure by which joint control of funds is handled, and to use whatever means may be available to see that all such controls are handled in the most businesslike manner possible, and that whatever steps are available shall be taken to make abuses of control of funds impossible.

Directory Service Information

By ALLEN MILLER, Registrar

The Contractors' License Board had planned to publish this year both an alphabetical and geographical edition of the Directory of Licensed Contractors, but due to budgetary limitations on our printing fund and higher printing costs we find that it is impossible to publish both directories. The geographic edition—the publication of which many contractors and organizations vociferously insisted upon—was published first this year because the addressograph plates were arranged in that order, thus making a considerable saving in both time of publication and of the personnel in compiling it. The issue was released almost two months prior to the corresponding release date of issues in former years, of which fact we are exceedingly proud.

Monthly supplements to the directory are being issued and will continue to the end of the fiscal year. Next year the Board will publish an alphabetical edition as early as possible.

We trust the construction industry will understand that our failure to publish the alphabetical edition this year was entirely beyond our control and is as disappointing to the Board and its staff as it probably is to the industry.

Tallow Brush Coats

Where the plans and specifications call for the covering of masonry or concrete surfaces "in a good and workmanlike manner," if a brush coat containing tallow is used the Registrar of Contractors will assume that the specifications have not been followed, *unless* they specifically permit the addition of tallow.

Where the contractor or subcontractor intends to use a tallow coat he should advise the owner of the result of the use of tallow in a brush coat, both as to longevity of the job and as to cost of repainting. He should secure the written approval of the owner, showing that the owner is aware of the peculiarities of brush coats containing tallow.

Under the name of W. G. Bingham, District Director for the FHA, Southern California, George B. Riddle, Chief Architect, on August 27, 1940, wrote to Los Angeles Paint, Varnish and Lacquer Association upon the subject of the use of tallow brush coats upon FHA jobs and made the following statement:

"Much difficulty has been experienced wherein job-mix paints containing a large percentage of tallow are being applied. Surfaces so treated do not permit of refinishing without undue expense in preparation before repainting. Furthermore, such treatments have a short period of effective protection, and therefore are not acceptable.

"Any effort your organization can make to assist us in eliminating the unsatisfactory practice will be sincerely appreciated."

Cooperating with the organization of paint dealers, the various Better Business Bureaus throughout California have been widely publicizing the effects of the use of tallow brush coats. The time has come when the contractor using these products must accept full responsibility for later difficulties unless he is relieved by the owner after each type of paint has been fairly explained to him.

Many contractors who have brush-coated a job that was previously treated with tallow, but where the presence of tallow was not apparent, have found themselves involved in a disagreeable situation. It is natural for the owner to blame the last contractor for an unsatisfactory condition and it may be assumed that any contractor whose job breaks down immediately because of a previous tallow coat will first be blamed by the owner.

Without regard to the additional responsibility of the contractor, it is certainly good business to insure against argument whenever possible. Therefore the contractor brush-coating a job where tallow may have been previously used, should either have a laboratory test made or should advise the owner of the

results that will follow if tallow has been previously applied. Probably the contractor should even go further and in the event he can not definitely ascertain that tallow is absent, secure a written release of liability from the owner in case his proposed work does not satisfactorily adhere to the job due to the presence of tallow.

Whether or not the contractor has a legal obligation to the owner to determine whether or not the job has had a tallow coat is a matter for the courts to decide and it is more than likely that an owner, if such a case has not already been tried, will some day sue a contractor for negligence in failing to determine whether or not tallow was present by claiming that the contractor's responsibility covers all technical matters of such a sort, which are not ordinarily known to the owner to exist.

This department earnestly suggests that contractors undertaking brush-coat work, where it can not be definitely ascertained that tallow has not been previously used, protect themselves by making a test of the previous coat before submitting a bid.

Applicant for Building Permit Required to Possess Compensation Insurance

The State Legislature at its recent session added a new section to the Labor Code which became effective on September 13, 1941, and as a result applicants for building permits are required to establish proof of compensation insurance before such permits shall issue to them.

The section follows:

"3800. Every county or city which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition or repair of any building or structure shall require that each applicant for such permit have on file or file

"(1) A certificate of consent to self-insure issued by the Industrial Accident Commission, or

"(2) A certificate of workmen's compensation insurance issued by an admitted insurer, or

"(3) An exact copy or duplicate thereof certified by the commission or the insurer.

"The certificate of insurance shall state that there is in existence a valid policy of workmen's compensation insurance in a form approved by the Insurance Commissioner. The certificate shall show the expiration date of the policy. No insurer shall issue such certificate unless the full deposit premium on the policy has been paid, and the insurer shall give the county or city at least 10 days advance notice of the cancellation of the policy."

Enforcement of the compensation insurance law is greatly aided as a result of the adoption of this law as would-be violators will be apprehended at the outset of their operations.

Vocational and Business Trade Courses for Contractors

The Contractors' State License Board believes that a thorough knowledge of all the fields or divisions which comprise contracting, as defined by the California Contractors' License Law, is necessary for the man who desires to become a contractor. In accord with the Contractors' Board, Dr. Walter Dexter, Superintendent of Instruction for the State Department of Education, said, "We are in line with the policy of offering practical and beneficial trade training to the end that educational facilities provided will be used and the consequent knowledge gained will work to the benefit of the individual student and the building public. Extension of trade and vocational courses to school districts throughout the State would be of material and practical assistance to the student, the contractor, and the building public."

There are a number of school districts in the State now giving vocational trade courses. Outstanding in this work is the Fremont Evening High School of Los Angeles, California. Mr. B. L. Fitzgerald, the principal, reports that the courses are especially adapted for either the large or small operator in the building field. The study of building contracting, salesmanship, law, business administration, plans, specifications, estimating and insurance are some of the main topics offered. In addition to the fundamental and theoretical study given to contracting, actual practice in estimating building costs will be provided. This will include take-offs for materials used and the labor necessary, etc.

The outline of courses in fundamentals of building contracting are as follows:

1. Different Methods of Contracting
2. General Discussion of Estimating
3. Basic Estimate Forms
4. Estimate Heading
5. Calculating Areas
6. Contract Documents
 - a. Plans
 - b. Specifications
 - c. Contract
7. Superintendence

8. Insurance
 - a. Workmen's Compensation
 - b. Public Liability
 - c. Property Damage
 - d. Protective Public Liability
 1. Owners'
 2. Contractors'
 - e. Fire
 - f. Federal Old Age & Survivors Program
 - g. Federal Unemployment Compensation Program
 - h. California Unemployment Insurance Act
9. Accounting
10. Surveys
11. Permits and Plan Check Fees
12. Clean Site
13. Fences, Canopies and etc.
14. Temporary Water and Power
15. General Excavation
16. Concrete, Hard Excavation and Flatwork
17. Waterproofing
18. Wood Preservative
19. Rough Lumber
20. Exterior Trim
21. Carpentry Labor
22. Rough Hardware
23. Equipment
24. Allowances
25. Unforeseen Contingencies
26. Bids
27. Mechanics Lien Laws
28. Industrial Accident Commission Law
29. California State Contractors' Law

Other courses are offered in the building field, and after completing the course in Building Contracting, students are privileged to join classes in Architectural Drawing, Blueprint Reading, or Roof Framing. It is believed additional courses may be added if the demand warrants.

In addition to those who attend classes with the idea in mind of qualifying by examination for a Contractors' State License, many licensees attend and brush-up on their knowledge to keep abreast of present day requirements.