
THIRD REPORT

CONTRACTORS STATE LICENSE BOARD ENFORCEMENT PROGRAM MONITOR

Third Report on the Enforcement Program of the
Contractors State License Board
Pursuant to Senate Bill 2029 (Figueroa)
Including Issues Regarding Consumer Contracts

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During its third six-month reporting period, the CSLB Enforcement Program Monitor's project continued as a team effort by a large and diverse group of contributors. The authors of this report wish once again to thank the consultants and researchers of the Monitor's project itself, the Board members and the managers and staff of CSLB, Director Kathleen Hamilton and her Department of Consumer Affairs staff, Senator Liz Figueroa, the Joint Legislative Sunset Review Committee and its staff, and the many public and private sector experts who have generously given time and insights to help advance this cause.

A principal focus of the Monitor's work during this third period has been the effort to draft and secure the passage of legislation to implement key Monitor recommendations. Senate Bill 1953 (Figueroa) and Senate Bill 1919 (Figueroa) are now law and, as described within, they hold out the promise of fundamental improvements in CSLB's enforcement program. These new laws are examples of the power of teamwork and consensus, and they became law only because of the contributions of numerous leaders and contributors, including: first and foremost, Senator Figueroa, the author of these bills, and her superb legislative staffers Robin Hartley and Bill Gage; State and Consumer Services Agency Secretary Aileen Adams, DCA Director Hamilton, and their colleagues in the Davis administration; CSLB Chair Larry Booth and the many Board members who tirelessly advocated for these improvements; and CSLB executive staff including Registrar Stephen Sands, Chief Deputy Registrar Linda Brooks, Enforcement Chief David Fogt, and other senior managers who helped conceive and push for these changes. A special vote of thanks is owed to construction industry representatives Don Burns, Steve Lehtonen, and Phil Vermeulen. In the best traditions of industry leadership, these representatives were unflagging in their public support for better enforcement and were critical in securing passage of these bills.

In beginning our assessment of the complex challenge of improving consumer contracts, we have again drawn on the expertise of numerous CSLB and industry experts, including many of those listed above, and in particular CSLB counsel Ellen Gallagher and senior manager Bob Porter.

As with all the reports from the Monitor's project, the views in this report are those of the Monitor and his colleagues only, and not necessarily those of any other public or private sector contributor.

Thomas A. Papageorge
Julianne D'Angelo Fellmeth

EXECUTIVE SUMMARY

INTRODUCTION

This Executive Summary provides an overview of the developments and recommendations presented in the Third Report of the Contractors State License Board Enforcement Monitor.

The Contractors State License Board (CSLB) Enforcement Program Monitor (Monitor) was established by SB 2029 (Figueroa), legislation resulting from the 1999–2000 sunset review of CSLB undertaken by the Joint Legislative Sunset Review Committee.

This Executive Summary presents the essential findings of the Third Report using the following organizational scheme:

- **Introduction**
- **Contractors State License Board Developments**
 - **Previous Reports of the CSLB Enforcement Program Monitor**
 - **CSLB/Industry Response to Monitor Recommendations**
 - **Successful Legislation Bringing Fundamental Changes to CSLB**
 - **The Continuing Impacts of the State’s October 2001 Hiring Freeze and Proposed Budget Reductions**
 - **Update on Selected Issues of Concern from Prior Reports**
- **Issues and Preliminary Recommendations Regarding Consumer Contracts**
- **Conclusion**

CSLB DEVELOPMENTS

A. Previous Reports of the CSLB Enforcement Program Monitor

On October 1, 2001 and April 1, 2002, the CSLB Enforcement Program Monitor released the first and second reports, respectively, required by Business and Professions Code section

7092(d). These reports contain numerous findings and 37 specific recommendations that may be briefly summarized under the following nine headings: mission and mandate, resources, management structure and information systems, contractor screening, complaint handling, investigations, prosecutions, public disclosure and outreach, and consumer remedies.

B. CSLB/Industry Response to Monitor Recommendations

From the start of this project, CSLB response to the Monitor's recommendations has been consistently and decidedly supportive. The Board unanimously endorsed both SB 1953 (Figueroa) and SB 1919 (Figueroa), two pieces of legislation (described below) that implement many of the Monitor's recommendations, and several Board members were active and instrumental in securing industry support for these important measures. Board staff have been equally cooperative and in fact aggressive in their efforts to reduce case backlogs, decrease case processing cycle times, and improve the Board's enforcement system despite significant staffing challenges. Finally, we would be remiss if we did not recognize the important support of the many contractor trade associations, labor organizations, and surety companies whose leaders expressed written and oral testimony in support of these bills.

C. Successful Legislation Bringing Fundamental Changes to CSLB

During this reporting period, the Monitor has focused on legislation to implement long-term structural and procedural changes to CSLB's enforcement program:

SB 1953 (Figueroa) is CSLB's sunset bill and incorporates essentially *verbatim* the five most important of the Monitor's recommendations contained in the Initial Report. SB 1953 clarifies that CSLB's highest priority is public protection; permits CSLB to establish its license fees in regulation and authorizes the Board to increase its existing fees by approximately 20% to rebuild and improve its enforcement program; requires CSLB to annually submit detailed and consistent enforcement statistics to the Legislature; requires applicants for licensure and registration to submit fingerprints to enable criminal history verification; enables the Board to verify the experience claimed by license applicants by giving CSLB access to the records of the Employment Development Department; and extends the Board's sunset date to July 1, 2007 and the Monitor's term to April 1, 2003. SB 1953 (Figueroa) was signed by the Governor on September 20 (Chapter 744, Statutes of 2002).

SB 1919 (Figueroa) increases the required bond amount for all CSLB licensees to \$10,000 effective January 1, 2004, and to \$12,500 by January 1, 2007. For the first time, SB 1919 also reserves a portion of each surety bond (\$2,500 as of January 1, 2004; \$5,000 as of January 1, 2007) exclusively for homeowner victims. SB 1919 (Figueroa) was signed by the Governor on September 29 (Chapter 1123, Statutes of 2002).

D. The Continuing Impacts of the State's October 2001 Hiring Freeze and Proposed Budget Restrictions

The Board's efforts to implement many of the Monitor's recommendations remain hampered by the statewide hiring freeze ordered by Governor Davis on October 23, 2001. Despite repeated requests by CSLB, none of its many vacant investigator positions have been exempted from the freeze. As such, CSLB's enforcement program now suffers a 14% vacancy rate overall and a 20% vacancy rate in its investigative positions.

Compounding the problem is control language included in the 2002–03 budget bill requiring the Department of Finance to abolish at least 6,000 state positions that were vacant on June 30, 2002. Effective June 30, 2002, CSLB had 64 vacant positions (with an associated budget of \$3 million) due to the hiring freeze. The Board will lose 42 positions, including 22 enforcement positions. The loss of 22 enforcement positions will prevent the Board's enforcement program from addressing its current problems, and will inevitably lead to the elimination of some services currently offered to the public and to licensees.

With this grim picture on the horizon, CSLB upper management has been working diligently to devise contingency plans aimed at retaining existing staff and reducing the number of complaints referred for investigation in the event of the permanent loss of its investigative positions.

E. Update on Selected Issues of Concern from Previous Reports

CSLB mission and mandate. New Business and Professions Code section 7000.6, added by SB 1953 (Figueroa), clarifies that public protection is CSLB's highest priority.

CSLB resources. SB 1953 (Figueroa) authorizes the Board to establish its fees in regulation through the Administrative Procedure Act rulemaking process, and authorizes CSLB to increase its license fees by approximately 20%. SB 1953 is critically important in ensuring CSLB fiscal

solvency and enforcement program improvement on a long-term basis. However, in the short term during the ongoing budget crisis, increased revenue is meaningless unless the Board is authorized to spend it. As described above, the 2002–03 budget requires the permanent abolition of at least 6,000 state positions; CSLB has lost 42 positions and the authority to spend the money associated with those positions. The loss of that authority will severely impact CSLB’s ability to manage and sustain its infrastructure, and may lead to the elimination of some services for the foreseeable future.

Management structure and information system. CSLB has rebuilt its management structure by filling its Enforcement Chief and other high-level enforcement program positions, reassigned several upper management staff to new responsibilities, and restructured the management hierarchy at its Investigation Centers (ICs) to address excessive span of control problems for IC supervisors. CSLB staff are also in the process of determining precisely how the agency will comply with Business and Professions Code section 7017.3, the provision added by SB 1953 (Figueroa) which requires the Board to annually submit to the Legislature specific categories of detailed enforcement data. Upper management is in the process of designing a system to capture the required data so the agency can timely comply with the statute effective October 1, 2003.

Licensing system and requirements. Licensing practices control the screening and exclusion of fraudulent and/or incompetent contractors from the marketplace, and thus have a vitally important impact on the enforcement system. SB 1953 (Figueroa) affects two CSLB licensing requirements. First, the bill requires applicants for new CSLB licenses and registrations to submit fingerprints to enable accurate criminal history verification, and requires CSLB to participate in the Department of Justice’s subsequent arrest notification program. Second, the bill authorizes CSLB to access employment information from the Employment Development Department, enabling CSLB to more effectively verify experience claimed on licensure applications. Additionally, CSLB’s bonding requirements have been enhanced in SB 1919 (Figueroa) (discussed below under “Consumer Remedies”).

The Monitor urges CSLB to study ways to obtain (for use in licensing and enforcement decisions) and disclose public information relevant to their licensees’ professional performance of contractor services — including civil judgments, settlements, and arbitration awards, criminal convictions, bankruptcy filings, and debarments by government agencies.

Complaint handling. Agencywide, CSLB received a total of 23,173 complaints during 2002–01 — up from 22,601 during 2000–01. The Board closed a total of 24,644 complaints during 2001–02 — a 14% improvement over 2000–01. Thus, for the first time in three years, CSLB closed

more complaints than it received — it kept pace with an increasing caseload and slightly cut into its existing backlog.

The Intake/Mediation Centers (IMCs), staffed by Consumer Services Representatives (CSRs) and Program Technicians (PTs), are the first line of attack on CSLB's massive caseload, and they collectively closed 10,064 complaints in 2001–02, compared with 8,280 complaints closed during 2000–01 (a 22% increase). The IMCs also reduced the percentage of “non-positive closures” (*e.g.*, those due to insufficient evidence, no violation, no jurisdiction) from 49% in 1998–99 to 44.3% in 2000–01 to 42% in 2001–02; reduced the average timeframe for complaint closures from 90 days in 2000–01 to 87 days in 2001–02; and reduced the number of backlogged complaints from almost 1,800 to about 1,000. The increased number of IMC case closures, improved cycle time, and backlog reduction may be attributed to the increasing experience of the CSRs, and to the many efficiency measures implemented by upper management during the summer of 2001.

Investigations. CSLB's 20% vacancy rate in its investigative positions continue to impede the agency from ameliorating excessive investigator caseloads, unsatisfactory cycle times, and large case backlogs. Statewide vacancies in the crucial field-level Enforcement Representative I (ER I) investigator positions have more than doubled since April 2001 — from 11 to 24 of the 125 positions authorized for CSLB's two main investigative units. The vacancy rate remains especially critical in the Bay Area, where only nine out of sixteen ER I and ER II positions are filled. In most law enforcement agencies, a vacancy rate of 5% is considered serious — CSLB faces a problem *four times greater* with regard to its vital investigators.

With one out of five investigators missing, the problems of high caseloads, long cycle times, and backlogs at the Investigation Centers continue unabated. Caseloads, which should be in the range of 30–40 cases per investigator, instead average 53 cases per ER statewide, and soar to unacceptable levels of 98.75 and 95 cases, respectively, for the Oakland and San Francisco ICs. Average case cycle times increased from 221 days to 245 days — or eight months — at the understaffed ICs. The recent agencywide progress on reducing complaint backlogs cannot be maintained or extended with these vacancies.

In an attempt to deal constructively with this dilemma, CSLB management has developed new business strategies which may reduce the number of cases for full-scale investigation while preserving the overall quality of outcomes for the public. These strategies include the implementation of a novel early settlement program (the “On-Site Negotiation” program), the restructuring of the Statewide Investigative Fraud Teams (SWIFT) to better focus its investigative resources, and related resource reallocations.

Notwithstanding the ongoing budget challenges, CSLB management has moved forward in conjunction with the Monitor to implement prior recommendations concerning improved investigator training and law enforcement coordination. Enforcement Chief David Fogt and the supervisors from CSLB ICs recently attended and participated in joint training with representatives of more than 40 state and local prosecutors' offices at the California District Attorneys Association's (CDAA) Consumer Protection Prosecution Conference. IC supervisors and staff also now regularly attend the bi-monthly meetings of the CDAA Consumer Protection Council in both southern and northern California. Reports from prosecutors in both sections of the state indicate that working relationships with CSLB investigators have improved markedly.

Arbitration. CSLB administers both a Mandatory Arbitration Program (MARB) for disputes worth less than \$5,000 and a Voluntary Arbitration Program (VARB) for disputes over amounts between \$5,000 and \$50,000. Beginning in July 2002, CSLB arbitrations are being handled by administrative law judges from the Office of Administrative Hearings rather than by a private vendor. Effective January 1, 2003, AB 728 (Correa) expands the MARB program to disputes less than \$7,500 and makes related changes.

Prosecutions. CSLB continues to work with the Attorney General's office to develop ways to improve the Board's utilization of AG services in administrative proceedings; additionally, CSLB and the AG's Office have developed a protocol for increased AG appearances in criminal proceedings (where contractor's licenses may be revoked without an administrative proceeding). As noted above, CSLB investigators are attending CDAA meetings and conferences in an attempt to establish better working relationships with local prosecutors. Due to this interaction, prosecutors note a marked increase in CSLB case referrals and in utilization of joint investigations and early case interventions in contractor fraud matters. This improvement is reflected in CSLB data, which show 996 case referrals to prosecutors in 2001–02, as compared to 764 in 2000–01.

Public disclosure and outreach. CSLB has implemented SB 135 (Figueroa), a 2001 Board-sponsored bill that — effective July 1, 2002 — permits disclosure of serious complaints that have been referred for investigation after a determination by Board enforcement staff that a probable violation has occurred; the disclosure must be accompanied by a disclaimer indicating that the complaint is still an allegation. CSLB is in the process of implementing AB 2544 (Campbell), a 2002 bill requiring CSLB to post weekly data on the processing times for home improvement salesperson registration applications. The Board's Public Affairs Office has recently launched a major statewide campaign to educate consumers about their rights and responsibilities when hiring

and managing home improvement contractors. The campaign materials include a new easy-to-read CSLB publication, *Home Improvement Bill of Rights*, along with other informative CSLB brochures (all of which are available on the Board's Web site).

Consumer remedies. As noted above, SB 1919 (Figueroa) provides for a two-step increase in the amount of the required contractor's bond to \$10,000 on January 1, 2004, and to \$12,500 on January 1, 2007. This represents a net 66% increase in the amount of bond funds available for recompense for victims of violations of the Contractors License Law. Of even greater significance for consumer victims, SB 1919 sets aside a portion of each contractor's bond exclusively for homeowners. The amount set aside for consumers in each bond will be \$2,500 effective January 1, 2004, and \$5,000 effective January 1, 2007. As a majority of consumer complaints to CSLB are for amounts less than \$7,500, this new bond set-aside reserved for consumers should greatly increase the percentage of cases where consumers actually get compensation.

Two other Monitor recommendations were not enacted in 2002. Consistent with Recommendation #35, the Monitor supported AB 568 (Dutra), which would have established a good faith payment defense to mechanic's liens in home improvement contracts of \$25,000 or less. The Monitor urges the Legislature, industry, and public groups to continue the search for an adequate means of addressing this problem while protecting the legitimate interests of both consumers and honest industry members in this regard.

Additionally, the Monitor will seek an appropriate opportunity to revisit Recommendation #37, which would provide for automatic expungement of invalid and unjustified mechanic's liens from county property records. This provision was included in an early version of SB 1919 (Figueroa), but was deleted in an attempt to streamline that bill for successful passage. We believe this proposal remains worthy of consideration.

Summary of concerns. In the Initial Report and the Second Report, the Monitor summarized fourteen previous studies of CSLB, his own independent review of CSLB's current enforcement program, and recent consumer surveys — all of which reveal substantial grounds for dissatisfaction with the Board's overall enforcement program performance. Problems of long cycle times for complaint handling and investigations (including an *average* investigative time of 221–245 days), excessive caseloads and backlogs for CSRs and investigators, inconsistencies in enforcement practices, and declining customer satisfaction (at the 54% level by 2001) have clouded CSLB's record of service. In addition, overall CSLB enforcement output has plummeted since 1996–97.

By the time of the Second Report in April 2002, the Monitor was pleased to record very positive developments arising from the commitment of the Board members, CSLB executive management led by Registrar Stephen Sands, and CSLB staff to comprehensive improvements in the enforcement program. Organizational structure was restored; complaint handling and investigation practices were streamlined and modernized; morale improved in most units of the agency; communication and cooperation with other enforcement agencies blossomed. CSLB management and staff worked aggressively to reduce case backlogs and to implement process improvements, with the result that key indicators of case outputs — including total number of cases closed — are up, despite an enormous staffing challenge. Overall CSLB enforcement output numbers finally reflect an upward trend in most categories in 2001–02; further, the data show measurable improvement in agencywide complaint handling efficiency during the last half of fiscal year 2001–02.

Although the enactment of SB 1953 (Figueroa) and SB 1919 (Figueroa) are of critical importance in ensuring long-term improvement in CSLB enforcement performance, the Board continues to struggle in the short term due to events largely beyond its control. In order to preserve the Board's strong new momentum toward improvement in the enforcement program, the Monitor urges that: (1) CSLB receive all possible relief from the current hiring freeze and from proposed staff reductions; (2) in due course CSLB be permitted to use the new SB 1953 revenues (which derive exclusively from license fees and not from the general fund) for their stated purpose of enhancing the enforcement program; and (3) a long-range commitment be made by state government to staffing and equipping CSLB to protect the public and enforce the License Law promptly and effectively.

ISSUES AND PRELIMINARY RECOMMENDATIONS ON CONSUMER CONTRACTS

A. Introduction

A comprehensive public dialogue is needed among all industry stakeholders on ways to improve the clarity and effectiveness of consumer contracts for the benefit of consumers, contractors, regulators, and law enforcement.

The Monitor has found widespread dissatisfaction among all industry stakeholders regarding home improvement contracts and similar contracts. Consumers complain that home improvement contracts are complex, unreadable, and of little help. Contractors find the required disclosures in

such contracts redundant and burdensome, and the legal liabilities unclear. Regulators and attorneys cite uncertainties and inconsistencies in the statutes, and problems arising which better consumer contracts might prevent. There is a consensus that it is time for a systematic evaluation of the laws and practices governing consumer contracts.

The law of home improvement contracts in California has evolved over the past three decades in a piecemeal and inconsistent fashion, despite the best of intentions. We need a unified set of standards — and a fairly simple form or forms — to help promote better relationships between contractors and consumers and to prevent disputes. The Monitor's goal is to facilitate a full public dialogue on these issues and to help in the formation of a consensus which will support legislative proposals and other means of improving consumer contracts in California.

B. Issues of Concern Regarding Home Improvement Contracts

1. The Relationship Between Consumer Contracts and Enforcement

Contemporary law enforcement philosophy stresses the importance of crime prevention as a key part of the enforcement process for reasons including the high costs of consumer harm from white collar crime are staggering (an estimated minimum of \$60 to \$100 million per year in California from alleged contractor misconduct) and the high costs of complaint handling, investigations, and prosecutions (about 50% of CSLB's annual budget, or more than \$22.8 million per year). Any victim of consumer fraud or business misconduct will confirm that an after-the-fact remedy is always less desirable than preventing the harm in the first place.

Consumer contracts that are well-understood and effective should be the front line of defense in the enforcement process. A clear understanding of the rights and obligations of the consumer and the businessperson is vital to establishing a sound business relationship and to preventing and resolving disputes. The written contract is also the most important opportunity to provide consumers — who are often unfamiliar with this process — with valuable information about their rights, obligations, and remedies for problems.

Improving consumer contracts will help prevent consumer problems and complaints, and this in turn will materially assist CSLB in handling its enforcement caseload and better serving the public.

2. Problems in Home Improvement Contracts Today

Goals for consumer contracts. Under contemporary consumer principles, rights to choice, information, and education are fundamental in the consumer's selection and use of a contractor for costly improvements to his or her most valuable possession. We should evaluate present practices and our proposals for improvement against these standards of consumer knowledge, contract clarity, and completeness.

Problems with today's consumer contracts, generally. Unfortunately, home improvement contracts presently in use in California, and the statutes governing them, on the whole do not meet these standards of clarity and effectiveness. These shortcomings are especially troubling where, as here, the transaction at issue is generally an expensive one involving the consumer's most valuable possession — the family home.

Contract problems from the consumer's perspective. From the consumer perspective, the most glaring deficiency in present home improvement contracts is that they are difficult to read and, in fact, beyond the comprehension of many Californians. A significant percentage of homeowners is unable to fully understand some of the most important provisions governing consumer rights and remedies, including many disclosures mandated by state law.

The significance of "consumer contracts" which are unreadable by consumers is difficult to overstate. Millions of California homeowners cannot understand their home improvement contracts, or find the contracts so badly worded and formatted that they simply choose not to try to decipher them.

Readability and plain language standards. Readability tests and "plain language" standards have been widely used in recent years in the consumer protection context. The Federal Trade Commission since the late 1970s, and at least seven states — including New York, Pennsylvania, Connecticut, Florida, Minnesota, Illinois, and Texas — require that important consumer disclosures meet specified requirements for "plain language" or ease of readability. Although California has not yet implemented a generalized plain language requirement, California public policy also acknowledges the importance of consumer readability in Administrative Procedure Act and Insurance Code plain language provisions.

Using the Flesch Reading Ease Scale and other widely-applied standards of readability, we can evaluate state-mandated disclosures and typically recurring contract provisions from California

home improvement contracts. The Monitor project analyzed a number of commonplace home improvement contract provisions and their readability and suitability scores under the Flesch Reading Ease Scale (readability) and the Flesch-Kincaid Grade Level scale (suitability for particular audiences at specified minimum grade levels). Our testing demonstrates many California consumers don't understand what they are signing, or don't even try to understand before they sign.

For example, *only about one-quarter of California adults can readily understand the required disclosure* concerning the contractor licensure requirement and access to CSLB required by the Business and Professions Code. And this disclosure simply cannot be read by the least educated quarter of our population — about 4.9 million Californians — many of whom are homeowners. Many other commonplace contract provisions fare no better in terms of readability, including the state-mandated arbitration notice and mechanic's lien notices.

In one typical contract, almost half of the provisions are only readily comprehensible to the one-quarter of adults who have graduated from college. *Only about the top quarter of our state's adults can readily understand these home improvement contract provisions. For the bottom quarter of our populace (in educational attainment) — nearly 5 million consumers — these documents are probably both unreadable and unread.*

Many home improvement contracts also use unacceptably small type and outdated or unclear formatting. And for the one Californian in five who lacks mastery of English, current home improvement contracts in English with terms requiring high school or college-level English skills are of little use.

Other indicators of consumer problems with contracts.

- The most recent CSLB customer satisfaction survey shows that 34% of respondents failed to check with CSLB on the licensure and background of their contractor, despite the section 7030 notice encouraging that practice.

- Many consumers pay excessive deposits or overpay during the process of home improvement, in violation of law, even though a clear, properly written, and understandable contract would forestall such practices.

- Many consumers each year have problems with mechanic's liens, double payments, or demands for double payment, despite the "Notice to Owner" required in section 7018.5 and the "preliminary 20-day notice" required by Civil Code section 3097.

- Many consumers find the existing disclosures and lengthy contracts unwieldy and burdensome, even when they have an adequate grasp of the key issues.
- Articulate consumers have come forward with explicit complaints about the complexity and minimal usefulness of existing contracts.

Contract problems from the contractor’s perspective. California contractors and attorneys complain of redundant and burdensome requirements. Contractors object that certain disclosures must be provided twice to the same consumer within a short time, and that other required disclosures are so long and complex that contractors must choose between efficient contracts and full compliance with the law.

Conscientious contractors also note there are substantial compliance expenses associated with keeping up with the complex requirements. Burdensome contract requirements and compliance expenses may contribute to unlicensed activity, as some contractors choose to operate on a bootleg basis with “handshake deals” instead of sound contracts. And some contractors and attorneys note the burdens of responding to unjustified consumer complaints or disciplinary proceedings before CSLB, which may be based on consumer misunderstandings of the law and the obligations of the parties.

Contract problems from the perspective of CSLB and the regulatory system. Management and staff of CSLB have long expressed an interest in revisiting the statutes governing consumer contracts to address uncertainties in the law and to improve the ways in which consumers are served by these contracts.

CSLB staff note the confusing and unclear construction of Business and Professions Code section 7159 itself, which combines in an awkward way many disparate elements, including requirements for consumer contracts, specific practice prohibitions, criminal sanctions, and other components, but does not include key consumer information which in fact does belong in these contracts. Regulators have also identified multiple uncertainties in the statutes as presently written, including issues regarding criminal vs. disciplinary sanctions, appropriate application of the general principles to related contexts such as service and repair contracts, and unclear definitions of key terms and concepts in the various statutes.

CSLB and the justice system have a large stake in improving consumer contracts and preventing consumer/contractor disputes, as they are today faced with more than 24,000 complaints

each year at a time of enormous resource shortages. Recent successful experiences with face-to-face mediation efforts and with the On-Site Negotiation pilot program suggest that a meaningful portion of consumer/contractor conflicts may arise from misunderstandings or minor problems that might be minimized with clearer, better contracts.

C. Preliminary Recommendations and Discussion Issues Concerning Consumer Contracts

Presented here is a series of discussion issues regarding consumer contracts, organized for convenience around three preliminary recommendations. These are not concrete proposals, but rather they are only useful categories of ideas raised in our discussions with various stakeholders to date. The Monitor is in fact endorsing no specific change until the full range of issues can be considered. We welcome additions to this list, and the active participation of all stakeholders.

Recommendation #38: Promote clear and effective home improvement contracts by revising and simplifying the elements of those contracts, including the state-mandated disclosures, through legislative change and promulgation of model contract forms, as appropriate.

Discussion issues:

- 1. What contract elements should be required by state law, or sound practices?*
- 2. What are the realistic and legitimate goals of state-mandated disclosures? Which required disclosures should be retained?*
- 3. Should state-mandated disclosures be streamlined and simplified?*
- 4. Should redundant or repeated disclosures be eliminated or modified?*
- 5. Should the language and format(s) used in home improvement contracts be simplified and clarified for ease of comprehension and use?*
- 6. Should CSLB and/or trade associations promulgate "model" contract forms to promote simplicity, ease of use, and standardization?*

7. Should CSLB have administrative authority to revise requirements for contract elements and/or disclosures?

Recommendation #39: Revise Business and Professions Code section 7159 to clarify the law governing home improvement contracts and disclosures, and to ensure all important consumer information is required in the contracts themselves.

Discussion issues:

1. Should Business and Professions Code section 7159 be revised to improve the organization and clarity of its legal requirements for home improvement contracts? Are related statutes in need of similar revision?

2. Should section 7159 be redrafted and rearranged to separate the statute into distinct elements which are related and more manageable?

3. Should section 7159 be revised to separate criminal and disciplinary provisions?

4. Should additional consumer information be required to appear in the home improvement contract itself?

5. Should the definition of “home improvement contract” in section 7151.2 be revised and clarified?

6. Should existing lien prevention disclosures be revised and/or made a part of the contract itself?

7. Should the statute of limitations period for section 7159 criminal violations be adjusted?

Recommendation #40: Improve consumer protection and contractor compliance by resolving the current practical problems of service and repair contracts, including, as appropriate, separately defining and regulating service and repair work as distinct from home improvement contracting.

Discussion issues:

- 1. Should service and repair work be separated and regulated apart from the general home improvement contract requirements?*
- 2. Should a statutory definition of “service and repair” be adopted?*
- 3. What monetary threshold should be applied to service and repair work?*
- 4. What standards should be applied to service and repair work? Which requirements applicable to general home improvement contracts should apply to service and repair work, and which should not?*
- 5. Which, if any, disclosures presently required for general home improvement contracts are unnecessary for service and repair contracts?*
- 6. Should elements of the three-day right to rescission in Civil Code section 1689.5 et seq. be modified with regard to service and repair contracts?*
- 7. What steps can be taken to ensure higher rates of industry compliance with service and repair contracting requirements, consistent with continued consumer protection?*

Proposed process for addressing consumer contract issues. The Monitor is committed to helping facilitate a comprehensive public dialogue on these issues. This Report extends an invitation to all stakeholders to join in the search for consensus issues and ideas to improve consumer contracts.

CONCLUSION

Under a public-spirited Board and the leadership team of Registrar Stephen Sands, CSLB’s enforcement program is headed in the right direction. But it cannot truly improve — and may not even be able to sustain current progress — unless it receives the necessary resources.

After the successes of SB 1953 (Figueroa) and SB 1919 (Figueroa), the long-term prospects for CSLB are excellent. This agency can now anticipate a 20% resource enhancement for enforcement; the implementation of more effective criminal history and experience screening of

licensees; improved management data; time and staff to implement numerous process improvements; better consumer remedies; and the lasting effects of quality leadership on the Board and in the executive offices — all of which point to a much brighter future for CSLB and its enforcement program. This period of shortages and contingency plans will eventually give way to lasting improvements, if CSLB can manage to stay afloat and maintain its present course during an exceedingly difficult time.

Even during this time of challenge, the opportunity exists to continue to build toward better regulation of the vital California construction industry. The Monitor gratefully acknowledges the public-sector and private-sector members of the coalition which helped bring about the new laws, and urges all those colleagues to join him again during the final reporting period in support of further improvements in CSLB's enforcement program and changes in consumer contract practices.

Chapter I

INTRODUCTION

This is the third report of the Contractors State License Board Enforcement Program Monitor, as mandated by Senate Bill 2029 (Figueroa). This report, and all the Monitor's efforts, are completed under the direction of Department of Consumer Affairs Director Kathleen Hamilton.

Like the efforts of the Monitor during this third reporting period, this report is largely focused on the impact on CSLB of the continuing state budget crisis, and on the successful effort at passage of legislation bringing important improvements to CSLB's enforcement program. However, in order to continue the collective search for ways to better protect the public, we have also included a discussion of the important issues concerning consumer contracts in the construction process.

This report is organized to reflect these priorities, and thus includes:

(1) in Chapter III, an update and analysis of developments at CSLB since the Monitor's first two reports and their 37 recommendations for improvement to the enforcement program, with special emphasis on budget issues and important new legislation; and

(2) in Chapter IV, an analysis of the current problem of unclear and ineffective consumer contracts for home improvement and related projects, which analysis is intended to help begin a comprehensive public dialogue among all industry stakeholders on ways to improve these important documents for the benefit of all concerned parties.

As reflected in the success of the consensus-based legislative effort this year, all Californians benefit when government, industry, and the public work together to improve the CSLB enforcement program. In Chapter IV, the Monitor once again calls upon all stakeholders in this industry to join in a cooperative effort to further improve contractor practices and advance the cause of enlightened regulation of this important industry.

Chapter II

STATUTORY MANDATE OF THE CSLB ENFORCEMENT PROGRAM MONITOR

The Contractors State License Board Enforcement Program Monitor (the Monitor) was established by Senate Bill 2029 (Figueroa),¹ legislation resulting from the 1999–2000 sunset review of the Contractors State License Board (CSLB) undertaken by the Joint Legislative Sunset Review Committee.

CSLB licenses contractors in the state of California and is charged with the responsibility of protecting the public by enforcing state laws governing contractor conduct. SB 2029, authored by Senate Business and Professions Committee Chair Liz Figueroa, required the Board to establish as a goal the improvement of its disciplinary system, which has been the subject of extensive legislative debate and substantial critical commentary in recent years.²

¹ Cal. Stats. 2000, ch. 1005, approved by Governor Davis September 29, 2000.

² See Arthur Andersen & Co., *Report on Management Review of Operations and Personnel Requirements* (1973); Department of Finance, *A Review of the Investigatory Function and Measurement of Productivity of the Contractors State License Board* (1975); Office of the Auditor General, *Contractors State License Board: Need for Improved Administration of the Complaint Processing Program* (1979); Department of Finance, *Report on the Joint Department of Finance/ Contractors State License Board Field Operations Task Force on Complaint Handling* (1980); Department of Finance, *Zero-Based Budget Study* (1982); Price Waterhouse, *Management Review of the Contractors State License Board* (1984); Price Waterhouse, *Report on Interim Workload and Staffing Standards for the Contractors State License Board* (1985); Arthur Young, *Contractors State License Board: Final Report on Field Office Operations, Workload Standards, and Staffing Requirements* (1989); Assembly Consumer Protection Committee Report (1993) (CSLB “critically deficient in protecting consumers from unscrupulous or unqualified contractors”); Joint Legislative Sunset Review Committee, *Contractors’ State License Board: Board Overview, Issues, Findings and Recommendations* (1997); Price Waterhouse, *Transition Review of the California Contractors State License Board* (1998); Joint Legislative Sunset Review Committee, *Contractors’ State License Board: Joint Legislative Sunset Review Committee 2000 Sunset Review Report* (2000); Bureau of State Audits, *Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection* (2000); NewPoint Group, *Contractors State License Board: Reengineering Project Assessment* (2001).

Effective January 1, 2001, SB 2029 provided for:

- Extension of CSLB’s sunset date to January 1, 2004;
- Expansion of the Board’s membership from 13 to 15, and a concomitant increase in the Board’s quorum from seven to eight;
- A series of four studies to be conducted by the Board (including studies of home equity lending fraud, the impacts of its recent “reengineering” plan, recovery fund programs, and surety bonds) plus a review of its complaint disclosure policy; and
- The appointment of the CSLB Enforcement Program Monitor for a two-year term, then scheduled to end January 31, 2003.

In Business and Professions Code section 7092, SB 2029 provided for the appointment and authority of the Monitor, and established the Monitor’s duty to “monitor and evaluate the Contractors’ State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board’s enforcement program and operations, and the improvement of the overall efficiency of the board’s disciplinary system.”³

The Monitor is specifically instructed to direct his efforts to:

- Improving the quality and consistency of complaint processing and investigation, and reducing the time frames for each;
- Reducing any complaint backlog;
- Assuring consistency in the application of sanctions or discipline imposed on licensees; and
- Further addressing: the accurate implementation of disciplinary standards, staff concerns regarding discipline, utilization of licensed professionals to investigate complaints, and the board’s cooperation with other law enforcement agencies.⁴

³ Bus. & Prof. Code § 7092(c)(1).

⁴ *Id.* at § 7092(c)(2).

The Monitor is required to submit a series of four reports of his findings and conclusions, including an initial report on October 1, 2001, and three subsequent reports at six-month intervals. The reports are to be submitted to the Board, the Department of Consumer Affairs, and the Legislature, and are to be made available to the public and the media.⁵

Department of Consumer Affairs Director Kathleen Hamilton appointed the Monitor on April 5, 2001. The Monitor selected Julianne D'Angelo Fellmeth as principal consultant, and work began immediately on the Monitor project.

On October 1, 2001, the Monitor published the first of the four required reports, entitled *Initial Report of the CSLB Enforcement Program Monitor*, presenting numerous findings grouped into nine analytical categories and proposing 33 initial recommendations for improvement to the enforcement program.⁶ On April 1, 2002, the Monitor published the second required report, analyzing enforcement developments at CSLB and proposing improved consumer remedies in the form of four additional recommendations.⁷

On September 20, 2002, Governor Davis approved Senate Bill 1953, authored by Senator Liz Figueroa, addressing many of the recommendations made by the Monitor in the Initial Report. SB 1953 also amended Business and Professions Code section 7092 to extend the Enforcement Program Monitor project until April 1, 2003, to permit the Monitor to serve a full two-year term and to enable the Monitor project staff to complete all four specified reports.

⁵ *Id.* at § 7092(d).

⁶ Papageorge and Fellmeth, *Initial Report of the CSLB Enforcement Program Monitor* (Oct. 1, 2001) (available at www.cpil.org).

⁷ Papageorge and Fellmeth, *Second Report of the CSLB Enforcement Program Monitor* (April 1, 2002) (available at www.cpil.org).

Chapter III

CONTRACTORS STATE LICENSE BOARD DEVELOPMENTS

The most significant developments at CSLB during this reporting period concern the impact on the agency of the continuing state budget crisis, and the passage of legislation bringing fundamental changes to the resources and procedures of CSLB. These two developments were the focus of most of the efforts of CSLB, its executive staff, and the Monitor during this period. A review of these developments, and the efforts to address other enforcement program concerns, follows here.

A. Previous Reports of the CSLB Enforcement Program Monitor

On October 1, 2001 and April 1, 2002, the CSLB Enforcement Program Monitor released the first⁸ and second⁹ reports, respectively, required by Business and Professions Code section 7092(d). These reports contain numerous findings and 37 specific recommendations that may be briefly summarized under the following nine headings:

— **CSLB mission and mandate:** The Monitor recommended that the Contractors State License Law be amended to state clearly that consumer protection is the highest priority of CSLB.

— **CSLB resources:** The Monitor proposed an increase in CSLB licensing and renewal fees (which have remained unchanged since 1994) by approximately 20% to restore CSLB's budget and enforcement resources to 1994 per capita levels and to ensure a sufficient reserve fund.

⁸ Papageorge and Fellmeth, *Initial Report of the CSLB Enforcement Program Monitor* (Oct. 1, 2001) (hereinafter "*Initial Report*").

⁹ Papageorge and Fellmeth, *Second Report of the CSLB Enforcement Program Monitor* (April 1, 2002) (hereinafter "*Second Report*").

— **CSLB management structure and information system:** The Monitor suggested that CSLB fill key vacant enforcement management positions; rebuild the enforcement program's organizational structure to correct the problems caused by the reengineering project of 1999–2000; and ensure consistent annual statistical reporting by the CSLB enforcement program by sponsoring legislation to establish a new statutory mandate for such reporting.

— **Contractor screening:** To ensure adequate criminal history verification of licensure applicants, the Monitor recommended that CSLB sponsor legislation requiring applicant fingerprinting; to ensure that only qualified applicants are licensed, the Monitor suggested that the Board improve its system of verifying construction experience claimed by license applicants.

— **Complaint handling:** The Monitor suggested that CSLB increase its Consumer Services Representative (CSR) staff to reduce caseloads to manageable levels and enable CSRs to perform more actual case mediation; institute comprehensive CSR training; improve and fully computerize the internal alert system to ensure a rapid and coordinated response to major and repeat offender cases; and greatly expand early resolution/mediation efforts made during the first 30 days of complaint processing.

— **Investigations:** Recognizing an extraordinary 19% vacancy rate in CSLB's investigator positions, the Monitor recommended that CSLB fill all vacant Enforcement Representative (ER) positions and further increase its ER staff so as to reduce heavy investigative caseloads and lengthy investigation cycle times. The Monitor further suggested that CSLB improve and regularize investigator training, with greatly increased emphasis on criminal and civil enforcement investigation techniques; and ensure early investigation coordination with state and local prosecutors in appropriate cases.

— **Prosecutions:** The Monitor suggested that CSLB work closely with the Attorney General's Office to encourage the timely filing of accusations and other legal actions and to improve prosecution of key aspects of contractor fraud and abuse; and to promote increased use of judicial revocation of contractor licenses by educating judges and prosecutors regarding the authority provided by Business and Professions Code section 7106 and Penal Code section 23.

— **Public disclosure and public outreach:** The Monitor expressed support for SB 135 (Figueroa), which has since been signed and implemented to improve CSLB's public disclosure of complaints and disciplinary actions against contractors. The Monitor also recommended that CSLB simplify and clarify its Web site by explaining technical terminology and providing more user-friendly access to complaint information.

— **Consumer remedies:** Primarily in the Second Report, the Monitor recommended that CSLB support legislation to increase its existing contractor's bond amount (\$7,500 for most contractors; \$10,000 for swimming pool contractors) and reserve some portion of that bond exclusively for homeowners; provide homeowners with a good faith payment defense against mechanic's liens in home improvement contracts of \$25,000 or less; and establish a lien expungement provision to assist consumers who are the subject of unjustified and void liens.

B. CSLB and Industry Response to Monitor Recommendations

From the start of this project, CSLB response to the Monitor's recommendations has been consistently and decidedly supportive. The Board, led by 2001–02 Chair Minnie Lopez-Baffo and 2002–03 Chair Larry Booth, unanimously endorsed SB 1953 (Figueroa) and SB 1919 (Figueroa), two pieces of legislation (described below) that implement many of the Monitor's recommendations and have recently been signed by Governor Gray Davis. Other Board members were active and instrumental in securing industry support for these important measures.

Led by Registrar Steve Sands, Chief Deputy Registrar Linda Brooks, and Enforcement Chief David Fogt, CSLB staff have been equally cooperative and in fact aggressive in their efforts to reduce case backlogs, decrease case processing cycle times, and improve the Board's enforcement system despite significant staffing challenges (also described below). Within the difficult constraints of the ongoing state hiring freeze — which hit this agency like no other because CSLB went into the freeze with a 19% vacancy rate in its investigator positions, upper management has reorganized and rebuilt the Board's business processes, redesignated existing staff to areas in need, and developed innovative contingency plans to meet the uncertain future.

The construction and surety insurance industries have also been highly cooperative and supportive of the Monitor's efforts and legislation. We would be remiss if we did not recognize the important support of the many contractor trade associations, labor organizations, and surety companies whose leaders expressed written and oral testimony in support of these bills. In fact, no opposition whatsoever to either SB 1953 or SB 1919 was registered by any industry member or organization. We are grateful to these organizations and their leadership for their thoughtful input and valuable support.

C. Successful Legislation Bringing Fundamental Changes to CSLB

During this reporting period, the Monitor has focused on legislation to implement long-term structural and procedural changes to CSLB's enforcement program. The Monitor project staff has devoted a majority of its energies over the past six months to the effort to draft this legislation, generate support for these changes among all construction industry stakeholders, and advocate passage of the two bills — Senate Bill 1953 (Figueroa) and Senate Bill 1919 (Figueroa) — which embodied the most important recommendations for improvements to the enforcement program made in prior Monitor reports.

Under the leadership of Senator Liz Figueroa and her staff, and unanimously supported by the Board, staff, and industry, both SB 1953 and SB 1919 have been approved by the Governor and will become effective January 1, 2003. The structural and procedural changes brought about by this legislation will shape the future of CSLB and its enforcement program in important ways.

SB 1953 (Figueroa), carried by Joint Legislative Sunset Review Committee Chair Liz Figueroa, is CSLB's sunset bill and was the centerpiece of the Monitor's efforts, incorporating essentially *verbatim* the five most important of the Monitor's recommendations contained in the Initial Report. Supported by over 35 consumer and industry groups, the bill was signed by the Governor on September 20, 2002 (Chapter 744). SB 1953 implements the following changes:

— **Mission and mandate:** In conjunction with AB 269 (Correa) (Chapter 107, Statutes of 2002), SB 1953 adds new section 7000.6 to the Business and Professions Code. Section 7000.6 provides: "Protection of the public shall be the highest priority for the Contractors State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." This clarification of CSLB's mandate is important both as a visible symbol of the agency's commitment to consumers, and as an aid to courts in interpreting the balance of the Contractors State License Law (Monitor Recommendation #1).

— **Resources:** Previous law established CSLB licensing fees in statute. SB 1953 requires CSLB to establish its licensing and renewal fees in regulation under Administrative Procedure Act rulemaking procedures; authorizes the Board to increase fees by approximately 20% over prior levels; and authorizes CSLB to set fees sufficient to maintain a six-month reserve fund. CSLB license and renewal fees have not been adjusted since 1994, resulting in an approximate 21% decrease in CSLB resources based on the Consumer Price Index alone. This important fee increase

authorization is intended to enable CSLB to rebuild its enforcement program and ensure a sufficient reserve fund (Monitor Recommendation #2).

— **Consistent statistical reporting:** SB 1953 adds section 7017.3 to the Business and Professions Code, which requires the Board — on October 1 of each year — to submit detailed enforcement statistics to the Legislature. The new statute sets forth specific categories of enforcement data which must be reported consistently from year to year, enabling the Legislature and the public to more accurately evaluate the Board's enforcement performance (Monitor Recommendation #6).

— **Criminal history verification:** After January 1, 2004, SB 1953 requires applicants for licensure as a contractor or registration as a home improvement salesperson to submit fingerprints to the Board so it can verify the identity and criminal history of the applicant through the Department of Justice. The bill additionally requires CSLB to participate in DOJ's subsequent arrest notification program (such that CSLB will receive information on subsequent arrests of its licensees throughout their tenure as licensees) (Monitor Recommendation #7).

— **Experience verification:** SB 1953 amends Unemployment Insurance Code section 1095 to assist CSLB in ensuring that applicants for licensure actually have the experience they claim on their applications. The bill authorizes CSLB to access the records of the Employment Development Department to verify the experience claimed for licensure (Monitor Recommendation #9).

— **Board and Monitor extension:** SB 1953 also extends the life of the Board by moving its sunset date to July 1, 2007. Additionally, the bill extends the Monitor project (previously scheduled to end on January 31, 2003) to April 1, 2003, enabling the Monitor to function for two full years, as originally envisioned in SB 2029, and to publish a final report on April 1, 2003.

SB 1919 (Figueroa), sponsored by the CSLB Enforcement Monitor, is a product of the Monitor's Second Report, its extensive study of the existing remedies available to consumers who are victimized by contractor misconduct or fraud, and lengthy negotiations with the surety bond industry. SB 1919, signed by Governor Davis on September 29, 2002 (Chapter 1123), makes the following changes:

— **Increase in required surety bond amount:** SB 1919 focuses on the required contractor's bond, currently set at \$7,500 for most contractors (\$10,000 for swimming pool contractors). The bill increases the required bond amount for all licensees to \$10,000 effective January 1, 2004; and

further increases the required bond amount to \$12,500 effective January 1, 2007 (Monitor Recommendation #34).

—**Reservation of portion of bond for homeowners:** Further, SB 1919 — for the first time — reserves a portion of the required contractor’s bond (\$2,500 as of January 1, 2004; \$5,000 as of January 1, 2007) exclusively for homeowners damaged as a result of a violation of the Contractors State License Law (Monitor Recommendation #34).

SB 1919 is intended to enhance consumer access to the contractor’s bond by increasing the required amount and by setting aside a portion of the bond for consumers, who are often “beaten to the bond” by more sophisticated claimants (including subcontractors and material suppliers) before less knowledgeable consumers are able to perfect their claims.

D. The Continuing Impact of the State’s October 2001 Hiring Freeze and Proposed Budget Reductions

Although SB 1953 (Figueroa) and SB 1919 (Figueroa) are of critical importance in ensuring long-term improvement in CSLB enforcement performance, the Board continues to struggle in the short term due to events largely beyond its control.

On October 1, 2001, the Monitor’s Initial Report recognized a 13.8% vacancy rate in CSLB enforcement positions overall and a 19% vacancy rate in its line investigator positions,¹⁰ and recommended that all enforcement positions be filled immediately. However, on October 23, 2001, Governor Davis issued Executive Order D-48-01, which ordered an immediate statewide hiring freeze to stem a glaring general fund deficit. The Governor ordered that “[a]ll State agencies and departments, regardless of funding source, are prohibited from filling vacancies that would constitute a new hire to State Government.” Thus, although CSLB is a special-fund agency whose salary savings due to the freeze would not assist the general fund deficit whatsoever, it was required to cease its efforts to fill its many investigator and other critical enforcement program vacancies. Throughout late 2001 and 2002, CSLB filed numerous requests for exemptions to the hiring freeze for its enforcement positions; the Monitor submitted a letter in strong support of the exemption requests in December 2001. Although exemptions have been granted to other special-fund agencies, and despite repeated requests by CSLB (which were supported by State and Consumer Services

¹⁰CSLB’s excessive vacancy rate was due to the effects of a “reengineering” project implemented by a prior registrar with the blessing of a prior board. *Initial Report, supra* note 8, at 42–56.

Agency Secretary Aileen Adams and Department of Consumer Affairs Director Kathleen Hamilton), all of CSLB's requests but one (involving just two clerical positions) have been denied.¹¹

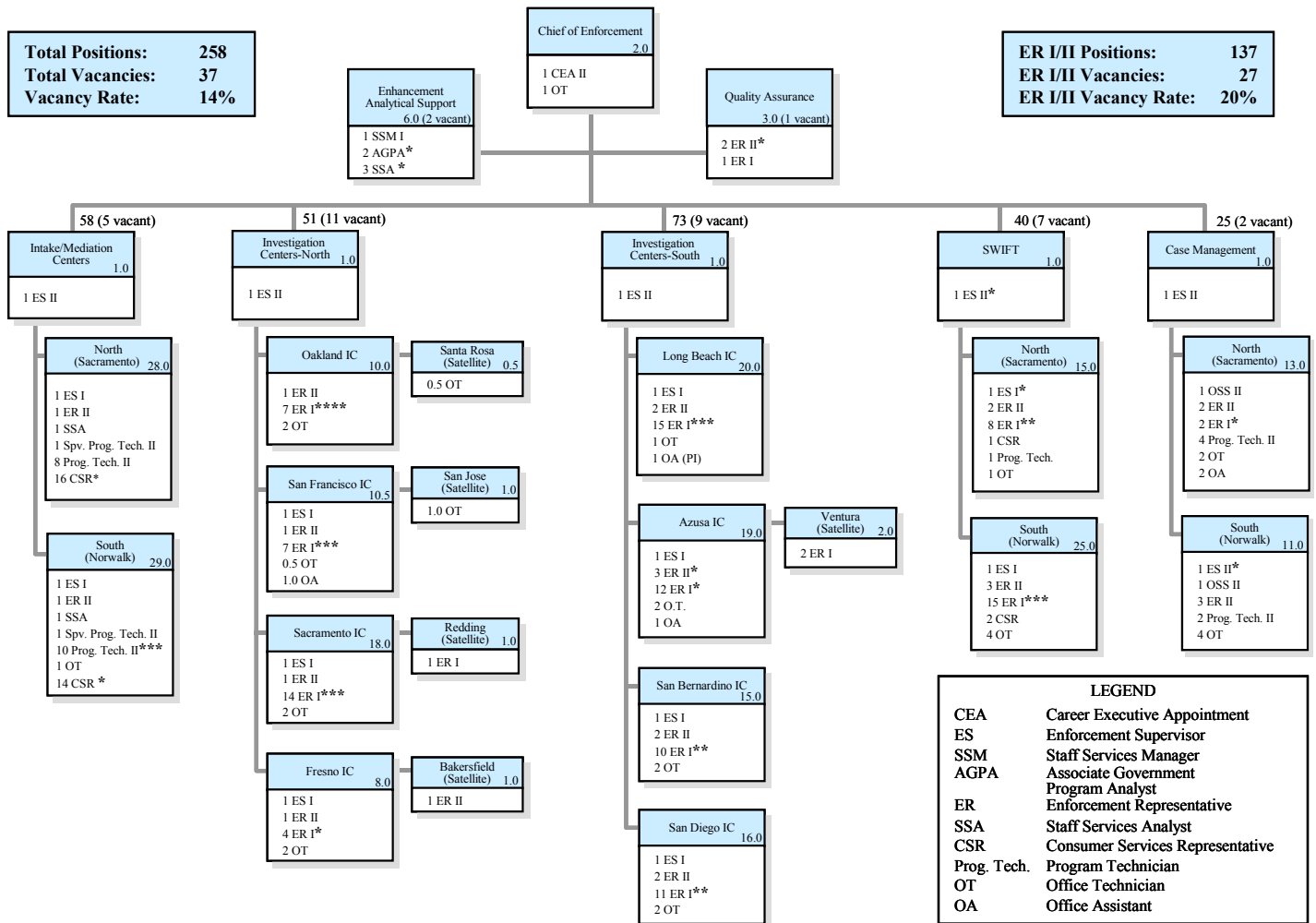
As a result of the freeze and subsequent vacancies due to resignations and retirements, CSLB's enforcement program now suffers a 14% vacancy rate overall and a 20% vacancy rate in its investigative positions. Exhibit III-A below reflects the enforcement program's organizational chart — including authorized positions and vacancies — as of July 1, 2002. As described in more detail below, this vacancy rate is three to four times the usual vacancy rate at a public agency, and has crippled CSLB's efforts to ameliorate the unsatisfactory delays, long cycle times, and backlogs in its complaint handling, investigation, and prosecution processes that were identified in the previous reports of the Monitor.

Compounding the problem is budget control language included in AB 425 (Oropeza), the 2002–03 budget bill signed by Governor Davis on September 5, 2002.¹² Control section 31.60 requires the Department of Finance to abolish at least 6,000 permanent vacant positions “from departments including all boards, commissions, departments, agencies, or other employment authorities of the state, as determined by the Director of Finance. The Director shall select the positions to be eliminated from all the positions that were vacant on June 30, 2002.” Department of Finance Budget Letter 02-13 (July 1, 2002) instructs agencies such as CSLB to identify existing vacancies and prioritize them for abolition selection by the Finance Director. On top of this requirement, AB 593 (Oropeza) (Chapter 1023, Statutes of 2002), signed by the Governor on September 29, 2002, requires the Director to abolish an additional 1,000 state positions by June 30, 2004.

Effective June 30, 2002, CSLB had 64 vacant positions (with an associated budget of \$3 million) due to the hiring freeze. The Board has been notified that it will lose 42 positions, including 22 in enforcement. Needless to say, the loss of these positions will prevent the Board's enforcement program from addressing its current problems, and will inevitably lead to the elimination of some services currently offered to the public and to licensees.

¹¹ On March 28, 2002, the Department of Finance notified CSLB that it would exempt two office technician positions in the Board's Oakland Investigative Center from the freeze. Those vacancies had required CSLB to close the Oakland IC to the public in December 2001. The exempted positions were filled in early June, and the Oakland IC was reopened to the public at the end of July.

¹² Cal. Stats. 2002, ch. 379, § 31.60.



Source: NewPoint Group (Sept. 10, 2002)

* Denotes number of vacant positions.

Ex. III-A. July 2002 Enforcement Program Organizational Chart

With this grim picture on the horizon, CSLB upper management has been working diligently to devise contingency plans that are aimed at retaining existing staff and reducing the number of complaints referred for investigation in the event of the permanent loss of its investigative positions. With the assistance of enforcement supervisors, Enforcement Chief David Fogt has already implemented several process improvements and cost-savings measures that will allow staff to identify and focus on the most egregious cases (for example, cases involving health and safety issues, repeat offenders, and elder abuse), including the following:

- (1) CSLB is now closing cases in which the consumer has chosen to go to civil court or arbitration, and the hearing date is within six months. CSLB is advising consumers to forward to it any judgment or award rendered, as failure to resolve the financial injury on the part of the contractor will result in automatic suspension of the license.
- (2) CSLB is also closing complaints in which the consumer has already obtained a judgment or private arbitration award against the contractor.
- (3) The Board is eliminating or reducing the investigation of new complaints against contractors who are already the subject of pending administrative actions.
- (4) CSLB has initiated an “On-Site Negotiation” pilot program in its Azusa Investigation Center (IC). Described in more detail below,¹³ this program has yielded a remarkable settlement rate, which reduces cycle times and investigative burden.
- (5) To reduce excessive spans of control for investigative supervisors,¹⁴ CSLB has prepared and submitted hiring packages to fill several Enforcement Supervisor I (ES I) positions.¹⁵
- (6) Because 50% of the investigator positions in CSLB’s San Francisco and Oakland ICs are vacant and the remaining investigators in those offices have caseloads of nearly 100, complaints originating in the Bay Area have been diverted to other ICs for investigation, and investigators from CSLB’s Statewide Investigative Fraud Teams (SWIFT) have been redirected to handle Bay Area complaints;

In addition, CSLB management has developed a list of other possible strategies to address the problems created by staff vacancies and the potential permanent loss of the vacant positions. Staff presented the list to CSLB’s Enforcement Committee at its September 12, 2002 meeting, and the Committee recommended that these strategies be forwarded to the full Board for consideration at its meeting on October 4, 2002. These measures — which have yet to be approved by the Board — include the closure of some investigative and testing centers; the reduction of proactive

¹³ See *infra* Ch. III.E.6 (“Investigations”).

¹⁴ *Initial Report*, *supra* note 8, at 72–73 and 104–06.

¹⁵ Department of Finance Budget Letter 02-12, issued on June 20, 2002, eliminates the need to obtain hiring freeze exemptions for promotions that do not result in a new hire from outside the Board. The Department of Finance has approved two additional ES I positions for the Oakland and Sacramento ICs. Recruitment efforts are currently under way.

underground economy activities currently undertaken by SWIFT; fewer investigations of applicants for licensure; fewer consumer education programs; and a delay in scheduling occupational analyses for purposes of validating the Board's many licensing exams.

Finally, because the enforcement program consumes most of the Board's resources and staffing, the Enforcement Committee approved a slate of other potentially necessary cost-cutting measures that will directly affect all units of CSLB's enforcement program:

- (1) Intake/Mediation Centers: (a) non-serious complaints concerning contracts containing private arbitration clauses should be referred to the applicable private arbitration program; (b) consumers with non-serious complaints involving contract amounts under \$5,000 should be encouraged to use small claims court (and refer any judgment obtained to CSLB for tracking); and (c) disputes between suppliers/subcontractors and prime contractors will no longer be handled by CSLB; the parties will be encouraged to seek civil remedies.
- (2) Investigation Centers: (a) the Azusa On-Site Negotiation pilot program should be expanded statewide for investigations against licensees; (b) investigations of non-licensee complaints should be consolidated by geographical location through in-house meetings with complainants (eliminating the need for field visits); (c) the Long Beach IC should be relocated to Norwalk; and (d) the part-time public access at the Oxnard branch office should be eliminated.
- (3) SWIFT: (a) the purpose and focus of SWIFT should be redefined (which will include a reduction in "sweeps" and "stings"); (b) SWIFT should be restructured into separate units (an "underground economy" unit aimed primarily at unlicensed contracting, and a special investigations unit); (c) a number of SWIFT staff should be redirected to the ICs; and (d) CSLB's interaction with other governmental agencies (including the Department of Industrial Relations) should be increased to improve communication exchange and ensure that CSLB is informed of licensee misconduct detected by other agencies.
- (4) Attorney General's Office: (a) numerous improvements should be implemented to reduce the workload of the Attorney General's Office, including the increased use of citations (instead of accusations) in cases meeting citation criteria, the increased use of a citation (instead of an accusation) when a default is anticipated (because the license will be automatically suspended for failure to comply with the citation), increased mandatory

settlement conferences, and increased use of the AG's Office to obtain license revocation in criminal proceedings (where a license may be revoked by the court) instead of via accusation); and (b) CSLB's Case Management Unit should implement efficiency improvements by monitoring AG time and progress on CSLB cases, and by developing guidelines to be used by the AG for more efficient handling of CSLB cases.

Many of these proposals, which are scheduled for discussion at the Board's October 4, 2002 meeting in Monterey, are described in more detail below.

E. Update on Selected Issues of Concern From Previous Reports

1. Mission and Mandate

As noted above, SB 1953 (Figueroa) and AB 269 (Correa), both signed by the Governor in 2002, clarify that the Board's primary mandate is consumer protection. This clarification of CSLB's mandate is important both as a visible symbol of the agency's commitment to consumers, and as an aid to courts in interpreting other provisions of the Contractors State License Law.

2. CSLB Resources

As noted above, SB 1953 (Figueroa) permits the Board to establish its license fees in regulation, and authorizes the Board to increase most of its fees by approximately 20% through the rulemaking process (which involves public notice, an opportunity for comment, and review and approval by the Office of Administrative Law). Because CSLB's statutory authority to establish license fees expires on December 31, 2002, the Board is expected to adopt an emergency regulation establishing its existing fees in regulation at its October 4, 2002 meeting.

SB 1953 is critically important in ensuring CSLB fiscal solvency and enforcement program improvement on a long-term basis. However, in the short term during the ongoing budget crisis, increased revenue is meaningless unless the Board is authorized to spend it. As described above, the 2002–03 budget requires the permanent abolition of 7,000 state positions by July 1, 2004. CSLB has lost 42 positions and the authority to spend the money associated with those positions. The loss of that authority will severely impact CSLB's ability to manage and sustain its infrastructure, and may lead to the elimination of the services described above — and potentially others — for the foreseeable future.

3. Management Structure and Information System

As described in the Second Report, CSLB has rebuilt its management structure by filling its Enforcement Chief and other high-level enforcement program positions, reassigned several upper management staff to new responsibilities, and restructured the management hierarchy at its Investigation Centers to address excessive span of control problems for IC supervisors. As noted above, the Board is currently in the process of adding and filling Enforcement Supervisor I positions at its Oakland and Sacramento ICs, to further alleviate span of control problems.

CSLB staff are also in the process of determining precisely how the agency will comply with Business and Professions Code section 7017.3, the provision added by SB 1953 (Figueroa) which requires the Board to annually submit to the Legislature specific categories of detailed enforcement data. Although the first report is not required until October 1, 2003, CSLB must design a system that will begin to identify and capture all of the data required by the statute. Upper management is in the process of designing that system and determining which staff member will be responsible for producing the required data, and hopes that monthly reports will be available by the end of 2002.

4. Licensing System and Requirements

In his Initial Report, the Monitor noted that licensing practices (which ostensibly control the screening and exclusion of fraudulent and/or incompetent contractors from the marketplace) greatly impact enforcement burden, and identified a number of concerns about CSLB's licensing structure and its examination, criminal history verification, experience verification, bonding, and capitalization requirements.¹⁶ In the past six months, the Legislature — with the full support of the Monitor, CSLB staff and Board members, and industry — has changed three of these requirements: criminal history verification, experience verification, and bonding. Discussed immediately below are the changes to criminal history and experience verification; a discussion of the new bonding requirements is included in Chapter III.E.10 below.

Criminal history verification. Supported unanimously by the Board and industry, SB 1953 (Figueroa) at long last adds CSLB to the list of California occupational licensing agencies that require fingerprints from licensure and registration applicants. Effective January 1, 2004, applicant fingerprints will be routed to and processed by the California Department of Justice and the U.S. Federal Bureau of Investigation to verify the representations made by licensure/registration applicants regarding criminal history on CSLB application forms. The bill also requires CSLB to

¹⁶ *Initial Report*, *supra* note 8, at 74–78.

participate in DOJ's subsequent arrest notification program, which will notify the Board of the arrest of a licensee at point of arrest for appropriate tracking.

As noted in the Second Report, CSLB is a consumer protection agency charged with protecting the public, and it must be able to verify the identity of an applicant to whom it is giving a state occupational license and the accuracy of criminal history information asserted on its application form. Fully 23 other DCA regulatory agencies (and many other non-DCA occupational licensing agencies) already use fingerprinting in connection with their licensing and/or enforcement activities. Further, a fingerprinting requirement alone does not change the substantial body of existing law governing CSLB's use of criminal convictions in licensing and enforcement decisionmaking, and it will not affect the vast majority of legitimate applicants who truthfully complete their applications. It will simply enable CSLB to detect the liars. Finally, this requirement will protect the public without unduly burdening licensure applicants. New "LiveScan" technology permits applicants to be electronically fingerprinted in many locations in every county in California at a cost of only \$56–\$68, and with turnaround notification to CSLB within approximately 72 hours.

The Monitor believes that the new fingerprinting requirement — in addition to enabling CSLB to detect liars — will deter individuals who would pose a substantial threat to the public from even applying for a license. This deterrent effect alone will significantly protect the public. The Monitor fully recognizes CSLB's fiscal challenges, but urges the Board to invest in this important new authority and to timely implement it by January 1, 2004. It is essential that control agencies, including the Department of Finance, approve resources for this critical consumer protection program.

Experience verification. Under Business and Professions Code section 7068 and section 825, Title 16 of the California Code of Regulations (CCR), a first-time applicant for a contractor's license must demonstrate completion of at least four full years of experience as a journeyman, foreman, supervising employee, contractor, or owner-builder. However, CSLB historically checks only 3–6% of licensure applications to investigate any representation made therein. Further, it lacks an adequate system for verifying the experience claimed. This system is obviously inadequate to ensure that applicants meet statutory requirements for licensure.

As noted above, SB 1953 (Figueroa) improves CSLB's experience verification process by amending section 1095 of the Unemployment Insurance Code to add CSLB to a long list of governmental agencies that may access the records of the Employment Development Department to verify the experience claimed for licensure. Utilization of this new authority will enable CSLB to more efficiently and effectively investigate and verify experience claimed on licensure applications. It should be noted that the position cuts suffered by CSLB may impact the Board's ability to fully implement this provision.

Better use of public information on contractor misconduct. In Recommendation #8, the Monitor suggested that CSLB sponsor legislation enacting a statutory scheme requiring reporting to the Board of the following information which is relevant to contractor performance and solvency: civil judgments, settlements, and arbitration awards in cases related to contractor performance or honesty; criminal arrests and convictions; bankruptcy filings; and debarments by government agencies.¹⁷

Although the Board has taken a “support in concept” position on Recommendation #8 and agreed to study both the value of collecting this information and the budget implications associated with this proposal, CSLB has not yet actively studied this issue. However, the Monitor intends to pursue this important issue further during 2003. Over a dozen other DCA occupational licensing agencies have extensive mandatory reporting statutes which provide them with information — much of which is public information — on licensee misconduct that is directly relevant to their licensees’ professional performance of services for which licensure is a prerequisite. This information could and should be used by CSLB in making more informed licensing and enforcement decisions, and should be disclosed to the public on CSLB’s Web site. We urge CSLB to initiate a study of these reporting schemes and prepare recommendations on those which would best protect the public.

5. Complaint Handling

As described in the Monitor’s Initial Report, CSLB’s complaint handling function is now centered at two large Intake/Mediation Centers (IMCs) — one in Sacramento and one in Norwalk. Program Technicians (PTs) receive completed complaint forms, assign each case a complaint number and input certain information on CSLB’s computer system, prepare a case file and forward it to a Consumer Services Representative (CSR). CSRs determine whether the Board has jurisdiction and whether the case qualifies for one of two Board arbitration programs (see section E.7 below); further, CSRs contact both parties to the dispute and attempt to discern whether the matter is amenable to mediation. If so, the CSR attempts to smooth out relations between the consumer and the contractor, and persuade the consumer to permit the contractor to return to repair unfinished or defective work. If the parties reach an agreement and the work is completed, the CSR closes the case. If no agreement is reached, the CSR requests documents relevant to the dispute, compiles a case file, and forwards the matter to the field for investigation.

The Monitor’s Initial Report documented a number of problems with CSLB’s complaint handling function, some of which resulted from the Board’s “reengineering” project instituted by a prior registrar. The reengineering project essentially caused almost all of the Board’s experienced CSRs to leave the agency between 1998 and 2000, leaving behind inexperienced and untrained

¹⁷ *Initial Report, supra* note 8, at 77–78 and 110–12.

replacements to handle mounting case backlogs. The Sacramento and Norwalk IMCs handled these massive backlogs differently: Norwalk distributed all incoming cases to CSRs (causing staggering caseloads of 120–140 per CSR), while Sacramento limited CSR caseloads to 60 cases per employee and created a “holding file” where the rest waited in line — not entered into CSLB’s computer system and not assigned to staff — and grew very old.

2001–02 complaint intake and closures. According to data gathered by the NewPoint Group, CSLB received a total of 23,173 complaints during 2002–01 (including SWIFT-originated non-licensee complaints) — up from 22,601 during 2000–01.¹⁸ Including SWIFT closures, the Board closed a total of 24,644 complaints during 2001–02 — a 14% improvement over 2000–01.¹⁹ In other words, for the first time in three years, CSLB closed more complaints than it received — meaning that it kept pace with an increasing caseload and slightly cut into its existing backlog.

The Intake/Mediation Centers are the first line of attack on CSLB’s massive caseload, and they collectively closed 10,064 complaints in 2001–02, compared with 8,280 complaints closed during 2000–01 (a 22% increase).²⁰ The IMCs also reduced the percentage of “non-positive closures” (*e.g.*, those due to insufficient evidence, no violation, no jurisdiction) from 49% in 1998–99 to 44.3% in 2000–01 to 42% in 2001–02.²¹ Finally, the IMCs reduced the average timeframe for complaint closures from 90 days in 2000–01 to 87 days in 2001–02.²² The IMCs accomplished this with two vacancies in its 30-member CSR staff, and three vacancies in its 19-member PT staff (as of July 1, 2002).²³ The increased number of CSR case closures and improved cycle time may be attributed to the increasing experience of the no-longer-new CSRs, and to the many “quick-fix” efficiency measures implemented by upper management in the summer of 2001.²⁴

Complaint handling backlog. According to the NewPoint report, the IMCs began fiscal year 2001–02 with 3,619 pending complaints; they ended the year with 2,874 pending complaints.²⁵

¹⁸ NewPoint Group, *Report to the Enforcement Monitor* (Sept. 10, 2002) at 5 (hereinafter “*NewPoint Group*”).

¹⁹ *Id.* at 6.

²⁰ *Id.* at 7.

²¹ *Id.* at 8.

²² *Id.* at 13.

²³ *See supra* Ex. III-A.

²⁴ *See Second Report, supra* note 9, at 38.

²⁵ *NewPoint Group, supra* note 18, at 9.

Normal work-in-progress at current CSR/PT staffing levels for the IMCs is about 1,850 complaints — thus, about 1,000 of the 2,874 complaints are considered “backlogged.” Assuming no increase in the number of complaints received (and no further staff attrition), NewPoint and CSLB expect the remaining backlog at the IMCs to be eliminated by the end of the 2002–03 fiscal year.²⁶

It should also be noted that the Sacramento IMC eliminated its “holding file” of incoming complaints during 2001–02 and has assigned out all pending cases to CSRs. To prevent recurrence of a holding file at intake, CSLB has instituted a strict policy that all received complaints are to be entered into its complaint tracking system within one business day of their receipt.²⁷

6. Investigations

Investigator vacancies, caseloads and backlogs. The Monitor’s two previous reports documented the continuing crisis of vacancies in CSLB investigator positions (titled Enforcement Representative I (ER I) and Enforcement Representative II (ER II)). These vacancies have been a principal cause of excessive investigator caseloads, unsatisfactory cycle times, and large case backlogs.²⁸ The Monitor urged the Board and the Davis administration to make filling these vacant positions a first priority for CSLB. The Board, its executive staff, the Department of Consumer Affairs, and the State and Consumer Services Agency have all endorsed that priority. In the short run, the solution will require selected exemptions from the state hiring freeze of October 23, 2001. In the longer run, fee increases are needed to support adequate staffing of these vital ER I and II positions.

The longer term prospects have been improved by the passage of SB 1953 with its authorization for up to 20% fee increases to support enforcement work. However, as illustrated in Exhibit III-B, notwithstanding the efforts of CSLB and DCA, the present investigator staffing situation is at a crisis level and the near-term prospects are grim.

The continuing state budget quandary has measurably worsened the problem of investigator staffing since the publication of the first two reports on October 1, 2001, and April 1, 2002. Statewide vacancies in the crucial field-level ER I investigator positions have more than doubled since April 2001 — from 11 to 24 of the 125 positions authorized for the two main investigative

²⁶ *Id.*

²⁷ *Id.* at 11.

²⁸ See *Initial Report*, *supra* note 8, at 83–85; *Second Report*, *supra* note 9, at 39–41.

units (the ICs and SWIFT). Today in these front-line casework units, about one out of five chairs is vacant. In most law enforcement agencies, a vacancy rate of 5% is considered serious — CSLB faces a problem *four times greater* with regard to its vital investigators.

The investigator vacancy rate remains especially critical in the San Francisco Bay Area, where salary differentials and cost-of-living issues have created a situation where only nine out of sixteen ER I and ER II positions are filled.²⁹ Bay Area consumers are served by a CSLB investigative team about one-half the size necessary to do the job.

With one out of five investigators missing, the problems of high caseloads, long cycle times, and backlogs at the Investigation Centers continue unabated. Caseloads, which should be in the range of 30–40 cases per investigator,³⁰ instead average 53 cases per ER statewide, and soar to unacceptable levels of 98.75 and 95 cases, respectively, for the Oakland and San Francisco ICs.³¹

²⁹ See *supra* Ex. III-B.

³⁰ See *Initial Report*, *supra* note 8, at 117–18. By contrast, typical caseloads for district attorney investigators working complex fraud matters in California are generally in the range of 15–30 cases. Caseloads three or four times this level are indefensible, and can only result in *de facto* prioritization, where some matters are relegated to the back of the file cabinet and delayed unacceptably.

³¹ See *supra* Ex. III-B.

Investigation Center	Filled Investigator Positions (ER-I and ER-II)	Vacant Investigator Positions	Total Cases	Average Cases per Investigator	Cases Over 180 Days Old	Percent of Cases Over 180 Days Old
Sacramento	13	3	615	47.31	313	51%
Oakland	4	4	395	98.75	308	78%
San Francisco	5	3	475	95.00	343	72%
Fresno	5	1	236	47.20	118	50%
Long Beach	14	3	478	34.14	91	19%
Azusa	15	2	825	55.00	439	53%
San Bernardino	10	2	597	59.70	302	51%
San Diego	11	2	460	41.82	126	27%
TOTAL	77	20	4,081	53.00	2,040	50%

STATEWIDE INVESTIGATIVE FRAUD TEAM

No. SWIFT	8	2	310	38.75	152	49%
So. SWIFT	15	3	321	21.40	121	38%
TOTAL	23	5	631	27.43	273	43%

Source: CSLB Staff

Ex. III-B. Investigator Staffing and Caseloads As of June 30, 2002

Regarding cycle times, the proportion of all cases closed by the Investigation Centers which exceeded 180 days (or *twice* the CSLB internal standard of 90 days) remained essentially constant (50% vs. 52% a year ago). And average case cycle times increased from 221 days to 245 days — or eight months — at the understaffed ICs. Even these numbers reflect a heroic effort by the remaining personnel at offices such as San Francisco and Oakland (where half the team is absent) and offices such as Long Beach, Fresno, and Sacramento (where overflow Bay Area cases have been directed).

The current agencywide progress on reducing complaint backlogs cannot be maintained or extended with these vacancies. As documented in the recent NewPoint Group report, the large and growing vacancy rate for investigators “virtually guarantees that additional complaint backlogs will accumulate at the [Investigative Centers] during the current fiscal year.”³²

³² NewPoint Group, *supra* note 18, at 15.

These persistent investigator shortages confront the CSLB enforcement program with a Hobson's choice: accept increased backlogs and greater delays, or enforce mandatory reductions in complaints processed and thus reduce overall service to consumers. Because CSLB has lost authorization for 22 enforcement program positions vacant as of June 30, 2002, the present dire scenario of investigator shortages will likely grow steadily worse, as work demands escalate and morale declines.

In an attempt to deal constructively with this dilemma, CSLB management has developed new business strategies which may reduce the numbers of cases for full-scale investigation while preserving the overall quality of outcomes for the public. These strategies include the implementation of a novel early settlement program (the "On-Site Negotiation" program), the restructuring of SWIFT to better focus its investigative resources, and related resource reallocations.

These new programs, detailed below, hold promise for better efficiency in CSLB investigations, and appear to have independent merit. However, innovative complaint resolution tactics cannot alone meet the demands of the Legislature and the public for improved service. CSLB needs its full authorized complement of 125 IC and SWIFT investigators — and then an appropriate increase in that number — before statutory and internal goals of prompt and effective service can possibly be met.³³

On-Site Negotiation program. The On-Site Negotiation (OSN) program is a new procedure intended by enforcement program management to help bring early resolution to matters substantial enough for referral to ICs but susceptible of an early-intervention strategy. In the OSN program, all parties to a matter — the consumer complainant, the respondent, the industry expert (from CSLB's Industry Expert Program), and the CSLB investigator — meet at the job site to seek a prompt and mutually acceptable resolution to the complaint. The OSN program was launched on a pilot basis in the Azusa IC and, within its first several months of experimental operation, achieved acceptable agreements in almost 100% of test cases. CSLB management is now in the process of expanding this program statewide.

The Monitor strongly supports the OSN program as a promising vehicle for achieving multiple objectives for CSLB. Monitor Recommendation #13 proposed that CSLB "greatly expand early resolution and mediation efforts during the first 30 days of complaint processing," based on the Monitor's assessment of the experimental "face-to-face mediation program" tested successfully

³³ See *Initial Report*, *supra* note 8, at 70–71, 83–85, 117–18.

in 2001 in the Norwalk IMC.³⁴ It is an axiom of efficient complaint handling in many areas of consumer protection that cases are much more likely to settle amicably if they are addressed before they “age” and the parties become angry and entrenched in their positions. The act of physically bringing the disputants together with objective third-party “mediators” is surprisingly effective, as many disputes arise from emotions and lack of communication rather than fundamentally opposed positions.

The OSN strategy has real potential both as a means of achieving the always-desirable prompt resolution for the complainant, and also as a means of conserving investigator resources which would otherwise be spent on a comprehensive investigation and enforcement proceeding. Full implementation of this strategy should be a high priority for the enforcement program.

Related restructuring of IC resources. Enforcement program management has also provisionally proposed several means of reallocating enforcement resources, as contingency planning for the continuing budget crisis. As described above, these may include consolidating investigations of certain non-licensee complaints by geographical location through the use of in-house meetings with complainants (as a means of reducing field visits); relocating the Long Beach IC by consolidating it in the Norwalk office; and eliminating the part-time public access at the Oxnard branch office.

Restructuring of SWIFT. Enforcement program management has proposed restructuring the Statewide Investigative Fraud Teams (presently organized in northern and southern units) by reallocating investigator resources and dividing SWIFT along programmatic lines into separate units — one addressing special complex investigations, and the other focusing on unlicensed activity and related aspects of the underground economy.

Before May 1999, the two CSLB regions of California each had an investigator unit targeting unlicensed activity, labor law violations, and related matters (called an “Underground Economy Enforcement Unit” or UEEU) and another unit handling sensitive and/or high profile cases (known as a “Special Investigations Unit” or “SIU”). A 1999 reorganization combined each pair of units into a northern and a southern “Statewide Investigative Fraud Team” (SWIFT).

Taken together, the northern and southern SWIFT teams today consist of two ES I positions (one vacant), five ER II positions, and 23 ER I positions (five vacant).³⁵ This represents about one-quarter of all the investigative resources of CSLB.

³⁴ See *Initial Report*, *supra* note 8, at 115.

³⁵ See *supra* Ex. III-A.

For a number of reasons, the Monitor endorses the proposal to reorganize SWIFT into two statewide units with specialized functions. First, the experience since 1999 with combined special investigations/underground economy units has been unsatisfactory. Combining these two considerably different missions within single business units has caused problems of span of control (especially with southern SWIFT) and also lessened focus and effectiveness within each mission. Proactive enforcement — which should be the hallmark of the underground economy effort in particular — diminished as the resources and energy needed to seek out matters were necessarily directed to responding to reactive complaints.

Second, case outputs and work efficiency have suffered as a result of the SWIFT unification decision, as demonstrated by the work output statistics before and after the 1999 reorganization of these units.

	SIU/UEEU	
Fiscal Year	Legal Actions/ Month	Total Closures/ Month
1997/98	6.68	26.95
1998/99	7.29	19.84
	SWIFT	
2001/02	5.0	14.7

Source: CSLB enforcement data

Exhibit III-C. Casework Output Per Investigator Before and After SWIFT Creation

As shown, legal actions per month declined from a high of 7.29 to 5 actions per month, and total closures per month declined from 26.95 in 1997–98 to a dramatically lower 14.7 cases per month under SWIFT in 2001–02.

These results might have been predicted based on the experiences of economic crime law enforcement agencies throughout California. District attorney's offices and city attorney's offices have consistently found that combining specialized missions (such as civil unfair competition enforcement with criminal fraud enforcement) tends to result in the more exigent matters (*e.g.*, upcoming criminal trial dates) crowding less pressing but equally important matters off the docket. A close organizational analogy is found in the California Attorney General's Office, a statewide agency with a law enforcement mandate analogous to that of the CSLB enforcement program. The Attorney General's Office organizes its economic crime enforcement units strictly by mission, including units devoted exclusively to consumer protection, antitrust, and environmental

enforcement. Each such unit has staff in four or more offices throughout the state, but each enforcement unit is devoted to only *one* mission and has only *one* statewide chief.

In part, the organizational decisions of these other agencies reflect the principle that accountability at staff and supervisorial levels is undermined when an enforcement unit has a mixed agenda. To put it in CSLB terms, if only one manager supervises the underground economy unit, then both senior management and the supervisor know who is responsible for the success of that mission.

Staff specialization and single-task focus make much better sense in handling missions as diverse as proactive underground economy enforcement and reactive major case enforcement. This proposal is consistent with the spirit of Recommendations #17 and #18 of our Initial Report, which in part sought to promote specialization and the development of one or more units entirely dedicated to serving as major fraud task forces.³⁶ The return to a dedicated unit for each of these two important missions may also improve industry and public understanding of and support for these efforts.

We note that the proposed reorganization of SWIFT is of course partly motivated by the impending necessity of transferring at least some of the desperately needed ER I and ER II resources to the understaffed Investigation Centers. Given the budget circumstances, this reallocation of resources appears necessary to preserve the IC system. But at least some of the loss of overall resources allocated to these two important missions may be offset by likely gains in productivity (see Exhibit III-C) and by the improved effectiveness that will flow from units tightly focused on the success of their respective missions.

Investigator training and law enforcement coordination. Notwithstanding the ongoing budget challenges, CSLB management has moved forward in conjunction with the Monitor to implement prior recommendations concerning improved investigator training and law enforcement coordination.³⁷ At the invitation of the Monitor, Chief of Enforcement David Fogt and the supervisors from CSLB ICs attended and participated in joint training with representatives of more than 40 state and local prosecutors' offices at the California District Attorneys Association's (CDAA) annual three-day Consumer Protection Prosecution Conference on May 29–31, 2002 in San Francisco.

³⁶ See *Initial Report*, *supra* note 8, at 117–19.

³⁷ See Recommendation #18 (improve and regularize investigator training) and Recommendation #19 (ensure coordination with state and local prosecutors) in *Initial Report*, *supra* note 8, at 118–20.

Investigation Center supervisors and staff also now regularly attend the bi-monthly meetings of the CDAA Consumer Protection Council in both southern and northern California, at which meetings CSLB staff are participating with district attorneys, city attorneys, and deputy attorneys general in case roundtable discussions, which include the exchange of experiences and case selection criteria and the formation of investigative partnerships to pursue construction fraud matters. Reports from prosecutors in both sections of the state indicate that working relationships with CSLB investigators have improved markedly.

7. Arbitration

Pursuant to Business and Professions Code section 7085 *et seq.*, CSLB administers two arbitration programs to encourage the settlement of consumer-contractor and contractor-contractor disputes without disciplinary action. Under section 7085(b), disputes over contracts worth less than \$5,000 *shall* be referred to CSLB's Mandatory Arbitration Program (MARB); under section 7085(a), disputes over contracts worth more than \$5,000 but less than \$50,000 *may* be referred to CSLB's Voluntary Arbitration Program (VARB) with the concurrence of both the complainant and the contractor. The statute specifies that complaints referred to MARB/VARB must meet several criteria, including the following: (1) the complained-of licensee "does not have a history of repeated or similar violations"; (2) the licensee was in good standing at the time of the alleged violation and is in good standing at the time of referral to arbitration; (3) the licensee has no outstanding disciplinary actions filed against him/her; and (4) the parties have not previously agreed to private arbitration in the underlying contract or otherwise. Touted as "fair, fast, and free," CSLB arbitrations are binding — meaning the parties have only a limited ability to challenge the arbitrator's decision in court. CSLB's arbitration decisions are also confidential — meaning they are not disclosed on CSLB's Web site or elsewhere unless a contractor against whom a monetary judgment is entered fails to pay the judgment (at which time CSLB suspends the contractor's license and that action is posted on the Board's Web site).

During this reporting period, CSLB's arbitration program has undergone several changes. Previously, CSLB contracted exclusively with a private vendor which provided arbitrators for CSLB arbitrations (at Board expense). As reported in the Second Report, effective July 1, 2001, parties to CSLB arbitration proceedings were given a choice of a private arbitrator or an administrative law judge (ALJ) from the Office of Administrative Hearings (OAH), a centralized panel of ALJs. During the spring of 2002, OAH announced that it would handle all CSLB arbitrations. Under such conditions where a state agency can provide needed services, the Board was advised by legal counsel from the Department of General Services that it is not permitted to contract with an outside vendor. Effective July 1, 2002, OAH ALJs began handling all CSLB arbitrations. However, CSLB

recently learned that because of the state hiring freeze and budget cuts, OAH will be forced to reduce its participation. Consequently, CSLB anticipates a future program where OAH and a private vendor will share the responsibility for CSLB arbitrations.

Additionally, AB 728 (Correa) (Chapter 312, Statutes of 2002) expands CSLB's mandatory arbitration program. Effective January 1, 2003, the bill amends Business and Professions Code section 7085(b) to require disputes over contracts worth less than \$7,500 to be referred to MARB. Raising the limit to \$7,500 will allow more cases to move into arbitration, which can be less expensive and faster than the disciplinary system. The bill additionally deletes the requirement that the contractor's license must be in good standing at the time of referral to arbitration; requires that referral to the arbitration program be subject to the same statute of limitations as accusations and citations; and provides that the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been referred to arbitration shall not relieve such person from the responsibility of complying with the award rendered as a result of an arbitration referral.

8. Prosecutions

Improved coordination between CSLB enforcement staff and prosecutors. Monitor Recommendations #22 (consistent statewide referral criteria) and #23 (improved cooperation in prosecutions) in the Initial Report, as well as several related recommendations, are aspects of a general goal of improved communications and coordination between CSLB staff and state and local prosecutors.³⁸ Several efforts were under way to advance these objectives during this reporting period.

As documented in the Initial Report, prosecution efficiency and effectiveness require better and more consistent communication on case priorities and case leads between CSLB investigators and prosecutors, and more commitment to joint casework and cooperation. Unlike many street crime prosecutions, economic crime cases require early coordination and continuing joint efforts throughout the entire process of investigation and prosecution. A fraud case is already mishandled if the first communication between investigator and prosecutor consists of an impersonal case "hand-off" via written summary left on the prosecutor's desk as the investigator moves to the next matter.

Improved coordination between CSLB and prosecutors begins with routine meetings and communication between them. As described immediately above, during the past year Enforcement

³⁸ *Initial Report*, *supra* note 8, at 121–26; *see also* Recommendations #24–26.

Chief Fogt and the Monitor have led an effort to bring CSLB investigators and state and local prosecutors together consistently in training programs and case roundtable meetings. During this reporting period, the May 2002 statewide CDAA Consumer Protection Prosecution Conference (featuring, among others, training sessions conducted by Chief Fogt and by the Monitor) brought these colleagues together for three days of intensive training in white collar crime enforcement tactics. Supervisors of most of CSLB's Investigation Centers attended, participated and interacted with almost 200 other prosecutors and investigators from more than 40 prosecutorial agencies. In addition, CSLB investigators and supervisors now regularly attend the bi-monthly meetings of the northern and southern sections of CDAA's Consumer Protection Council and, as described above, material improvements in coordinated efforts and joint prosecutions have resulted.

These training and roundtable meetings have also been used to advance the cause of improved mutual training regarding prosecution priorities and underutilized legal tools.³⁹ Training at the CDAA consumer conference included discussion of improved use of Business and Professions Code section 7106 and Penal Code section 23 to promote judicial revocation of contractor licenses, and training on the significance of the "early warning signs" including violations of Business and Professions Code sections 7159, 7121 and 7121.5. And early in 2002 CSLB and Attorney General staff arrived at an understanding regarding a protocol for greater Attorney General use of appearances in civil and criminal proceedings against contractors.

The Monitor has also proposed and obtained CDAA approval of access to the CDAA Consumer Protection Information Network (CPIN) for selected CSLB staff. A related proposal for direct computerized access to the CDAA/AG Consumer Fraud Index is now under consideration by the CDAA Consumer Protection Committee.

The Monitor has received reports from prosecutors in both southern and northern California of a marked increase in CSLB case referrals and in utilization of joint investigations and early case interventions in contractor fraud matters. This improvement is reflected in CSLB data, which show 996 case referrals to prosecutors in 2001–02, as compared to 764 in 2000–01.⁴⁰

Attorney General utilization issue. In part as a response to impending budget cuts, CSLB executive management is reviewing a variety of options to improve the efficiency of CSLB's utilization of Attorney General services in administrative proceedings against contractors. Developments in improving this important cooperative relationship will be the subject of further analysis by the Monitor in the April 2003 report.

³⁹ See *id.* (Recommendations # 21, #25, #26).

⁴⁰ See *infra* Ex. III-D.

9. Public Disclosure and Outreach

CSLB disclosure of complaints against licensees. On October 4, 2001, Governor Davis signed SB 135 (Figueroa) (Chapter 494, Statutes of 2001), a CSLB-sponsored bill that (among other things) adds section 7124.6 to the Business and Professions Code. Effective July 1, 2002, section 7124.6 requires CSLB to disclose to the public the date, nature, and status of all serious complaints on file against a licensee that have been referred for investigation after a determination by Board enforcement staff that a probable violation has occurred. The bill further requires CSLB to adopt a disclaimer that will inform a consumer to whom complaint information is given that the complaint is still an allegation.

SB 135 permits broader disclosure of complaints than occurs at most DCA agencies, and can directly protect consumers from choosing an irresponsible contractor who is a poor businessperson, the subject of numerous complaints, and known to CSLB. Yet it is also fair to contractors. Under SB 135, not every pending complaint is disclosed. Complaints that are resolved or referred for arbitration are not disclosed, thus preserving the ability of legitimate contractors to resolve disputes without disclosure. Only those complaints containing allegations that, if true, “would present a risk of harm” justifying suspension, revocation, or criminal prosecution are disclosed; minor complaints remain confidential unless referred for legal action. Further, prior to disclosure, those complaints must be investigated, reviewed by a CSLB supervisor, and referred for further investigation because the supervisor is persuaded that evidence of a “probable violation” exists. Finally, the required disclaimer informs consumers that the complaint is still in the allegation stage.

As noted, the complaint disclosure provision of SB 135 became effective on July 1, 2002. Prior to that date, CSLB’s Enforcement Analytical Support & Training (EAST) unit developed new section 14 of CSLB’s Complaint Handling Procedures Manual to assist staff in identifying disclosable complaints under SB 135, and trained staff in the new procedures during June 2002. Additionally, CSLB added a new fact sheet to its “Facts to Build On” Web site series educating consumers and licensees about the new law and the information that will now be disclosed, and has reformatted the “licensee look-up” function on its Web site to disclose SB 135 complaint information.

Between July 1 and August 30, 2002, a total of 647 complaints against 345 licensees were disclosed (including 5 against home improvement salespersons). Of the 647 complaints, 155 would not have been subject to disclosure prior to SB 135. The 155 complaints include 118 cases in which investigations are completed, legal action is recommended, but the paperwork is not yet processed; 33 open investigations in which probable violations have been determined; and 4 “probable violation” cases that have been referred for criminal prosecution.

Another component of SB 135 requires CSLB to disclose formal disciplinary actions for a minimum of seven years; citations must be disclosed for five years after date of compliance with the citation. This provision becomes effective on January 1, 2003, and CSLB has begun the process of identifying and purging old actions so that it can timely implement this provision of SB 135.

AB 2544 (Campbell). On September 5, 2002, Governor Davis signed AB 2544 (Campbell) (Chapter 372, Statutes of 2002), which adds section 7017.5 to the Business and Professions Code. Effective January 1, 2003, section 7017.5 requires CSLB to post on its Web site, by the close of the first business day of each week, the following information on home improvement salesperson (HIS) registration applications: (a) the earliest enrolled date of unprocessed HIS applications on file at the close of the prior business day; and (b) the earliest date of an HIS application for which a registration number has been issued at the time of the posting required by this statute. The HIS registration process ordinarily takes approximately one week; however, CSLB's processing time for HIS applications has fluctuated from one to eight weeks because of staff vacancies. Although CSLB has cleared away the backlog of HIS applications through the use of staff overtime, Assemblymember Campbell believes the regular posting of HIS application processing information will enable applicants and the public to monitor CSLB's processing times and encourage the Board to stay current.

Public outreach. In August, CSLB's Public Affairs Office (PAO) launched a major statewide campaign to educate consumers about their rights and responsibilities when hiring and managing home improvement contractors. The campaign materials include a new easy-to-read CSLB publication, *Home Improvement Bill of Rights*, along with other informative CSLB brochures (all of which are available on the Board's Web site). The statewide news release launching the campaign generated numerous news stories calling attention to the issue and to CSLB's role in regulating contractors.

The Public Affairs Office is also developing a series of fact sheets to be distributed early in the complaint handling process explaining industry standards. CSLB hopes these fact sheets will help consumers recognize whether they have an actionable complaint. PAO is also developing a consumer guide describing alternatives for complaint resolution (which may become increasingly necessary as CSLB's budget and staffing shrink), and a fall media outreach campaign on various aspects of CSLB's regulatory programs.

Web site revisions. CSLB's Web site contains a vast array of information for consumers, licensees, and licensure/registration applicants. The Web site also provides instant information about licensees (by name and by license number) and an online complaint form that can be completed and returned to CSLB online.

In his initial report, the Monitor identified a number of problems with the Web site — primarily with the “licensee look-up” feature. The Monitor noted that the site fails to explain terms of art which may have meaning to CSLB but which have no meaning whatsoever to consumers (*e.g.*, “V/S,” “RMO,” “P/S/T”) — a “glossary of terms” with understandable definitions of these acronyms would cure this problem. The Web site also uses undefined legal jargon and several incorrectly defined legal terms.⁴¹ Further, the Web site fails to provide the dates of any accusation filed and/or legal action taken — an important omission. In Recommendation #28, the Monitor suggested that CSLB undertake a full review — perhaps with the assistance of a consumer focus group — of the information provided on its Web site and revise it accordingly. In Recommendation #30, the Monitor also suggested that CSLB add links to Better Business Bureau (BBB) affiliate organizations in California. BBB has its own consumer-friendly Web sites which convey a great deal of useful information to consumers regarding the reputations of contractors and other businesses in their communities.

In December 2001, CSLB revamped the format of its Web site to conform to the state’s standard protocol. However, the hiring freeze has prevented the Board from accomplishing much else in the way of Web site overhaul. As its site is a primary vehicle of consumer communication, this is an important issue that merits attention as soon as funds and positions are available. CSLB’s Web site already offers a great deal of valuable information, and could be even more helpful to consumers if improved in several critical areas.

10. Consumer Remedies

The Monitor’s Second Report addressed the continuing inadequacy of remedies for consumers victimized by contractor fraud and misconduct.⁴² That report analyzed the scope and extent of the remedies problem, and offered the Monitor’s initial recommendations for improvement in those remedies. Included were recommendations that CSLB support legislation to increase its existing contractor’s bond amount (\$7,500 for most contractors; \$10,000 for swimming pool contractors) and reserve some portion of that bond exclusively for homeowners; provide homeowners with a good faith payment defense against mechanic’s liens in home improvement contracts of \$25,000 or less; clarify the legal standard for bond payouts; and establish a lien expungement provision to assist consumers with unjustified and void liens.

⁴¹ For example, an “accusation” is not a “disciplinary action that has been referred to the Attorney General”; it is a statement of written charges filed by the Attorney General after a completed Board investigation. While the term “legal action” sounds to a consumer like an “action taken,” CSLB uses that term to mean a completed investigation that has been “referred for legal action.”

⁴² *Second Report, supra* note 9, at 49–82.

With the full support of CSLB, all four remedial proposals appeared in essentially the form recommended by the Monitor in bills introduced during the 2002 legislative session. The good faith payment defense proposal was included at the request of Assemblymember Dutra in his AB 568, in deference to his participation in the California Law Revision Commission's process which helped generate the proposal. The other remedy proposals appeared in SB 1919 authored by Senator Figueroa and sponsored by the Monitor. Ultimately, SB 1919 (Figueroa) was focused on the issues of increasing the contractor's license bond amount and reserving a portion exclusively for consumers, and this version of SB 1919 was approved by Governor Davis on September 29, 2002.

SB 1919 (Figueroa): contractor's license bond increase and consumer set-aside. As documented in the Second Report, the contractor's bond required in Business and Professions Code section 7071.5 *et seq.* for all licensees — presently \$7,500 for most contractors, and \$10,000 for swimming pool contractors — is the primary means of compensation or redress for consumers who suffer losses as the result of contractor misconduct.⁴³ Newly enacted SB 1919 (Figueroa) will materially increase the total amount of the contractor's bond and set aside a portion of that bond for exclusive access by homeowners.

SB 1919 provides for a two-step increase in the amount of the required contractor's bond to \$10,000 on January 1, 2004, and to \$12,500 on January 1, 2007. This represents a net 66% increase in the amount of bond funds available for recompense for victims of violations of the Contractors License Law. And, as documented in the Second Report, the benefits of this increase in the bond's face value extend beyond total payouts available. A higher bond amount provides substantial additional incentives for surety company efforts at informal settlement and dispute resolution, which efforts yield consumer relief presently estimated by Surety Company of the Pacific at \$10 million per year.⁴⁴

Of even greater significance for consumer victims, SB 1919 includes a unique provision setting aside a portion of each contractor's bond "which shall be reserved exclusively for the claims of" any homeowner contracting for home improvement on his or her personal family residence damaged as a result of a violation of the License Law.⁴⁵ The amount set aside for consumers in each

⁴³ *Second Report, supra* note 9, at 54–58. Other means of repair or redress include arbitration or mediation, compromise or redress after CSLB or surety company intervention, civil actions, and small claims court cases. *See id.* at 49–61.

⁴⁴ *Id.* at 56–57.

⁴⁵ Bus. & Prof. Code § 7071.6, Cal. Stats. 2002, ch. 1123, § 2.

bond will be \$2,500 effective January 1, 2004, and \$5,000 effective January 1, 2007. Unprecedented in California contractor bonding history, this provision addresses one of the most acute remedial problems described in the Second Report — the troubling competition between consumers and more sophisticated claimants (including subcontractors, suppliers, and others) for the limited bond payouts. This “race to the courthouse,” generally won today by industry claimants because of their superior system knowledge, will be eliminated entirely with regard to the \$5,000 set-aside.

When fully in effect, the new contractor’s bond will increase by two-thirds the available restitution funds and will guarantee that a part of each will be available exclusively for consumer victims. And since a majority of consumer complaints to CSLB are for amounts less than \$7,500,⁴⁶ this new bond set-aside reserved for consumers should greatly increase the percentage of cases where consumers actually get compensation.

Remaining remedial issues. Assemblymember John Dutra helped focus attention on the problem of double liability for homeowners and played a leading role in the development of the proposal for a good faith payment defense to mechanic’s liens in smaller consumer contracts.⁴⁷ AB 568, Assemblymember Dutra’s version of the good faith payment defense for home improvement contracts of \$25,000 or less, was fundamentally similar to Monitor Recommendation #35 and was supported by the Monitor. AB 568 passed the Assembly but failed to move out of the Senate Judiciary Committee during 2002. The Monitor staff continues to view the double liability problem as substantial: double payments for home improvement work (or unfair demands for multiple payments) occur frequently and can result in real hardships for California consumers.⁴⁸ The Monitor urges the Legislature, industry, and public groups to continue the search for an adequate means of addressing this problem while protecting the legitimate interests of both consumers and honest industry members in this regard.

In order to streamline SB 1919 (Figueroa) as a vehicle for improvements to the contractor’s bond, the two additional remedy recommendations — clarification of the bond payment standard and automatic expungement of void liens — were deleted from Senator Figueroa’s bill. Both consumer remedy proposals, detailed in the Second Report,⁴⁹ remain worthy of consideration by the

⁴⁶ Contractors State License Board, *Using Surety Bonds and Insurance to Compensate Homeowners for Losses Caused by Licensed Contractors* (Oct. 1, 2001), at 31.

⁴⁷ See *Second Report*, *supra* note 9, at 66–70 (Recommendation #35).

⁴⁸ *Id.* at 51–54 and sources cited therein.

⁴⁹ *Id.* at 70–75.

Legislature. In particular, the proposal to amend Civil Code section 3144 to provide for automatic expungement of invalid and unjustified liens is modest in scope and unlikely to engender opposition. The Monitor will seek an appropriate opportunity to revisit these issues in 2003.

11. Summary of Concerns

In the Initial Report and the Second Report, the Monitor summarized fourteen previous studies of CSLB, his own independent review of CSLB's current enforcement program, and recent consumer surveys — all of which reveal substantial grounds for dissatisfaction with the Board's overall enforcement program performance.⁵⁰ Problems of long cycle times for complaint handling and investigations (including an *average* investigative time of 221–245 days), excessive caseloads and backlogs for CSRs and investigators, inconsistencies in enforcement practices, and declining customer satisfaction (at the 54% level by 2001) have clouded CSLB's record of service. In addition, and as reflected in Exhibit III-D below, overall CSLB enforcement output has plummeted since 1996–97.

⁵⁰ *Initial Report*, *supra* note 8, at 98–100; *Second Report*, *supra* note 9, at 47–48.

	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02
Accusations Filed*	306	242	192	224	264	263
Formal Disciplinary Actions Taken Via Accusation	261	208	170	192	228	278
Automatic Revocation/Suspension for Failure to Pay Arbitration Award	324	249	226	207	179	207
Automatic Revocation/Suspension for Failure to Comply with Citation	1,674	1,616	1,171	883	628	787
Licensee Citations	2,344	1,369	1,023	846	833	1,117
Non-Licensee Citations	2,301	1,545	1,657	1,600	1,008	1,136
Referrals to Prosecutor for Filing of Criminal Action	664	1,034	1,083	841	764	996
Cost Recovery Ordered	\$342,586	\$275,829	\$170,166	\$474,052	\$887,912	\$571,471
Cost Recovery Collected	\$62,878	\$99,369	\$88,707	\$85,209	\$170,875	\$182,973

* Multiple cases against the same contractor are frequently combined into one accusation.

Source: CSLB enforcement data

Ex. III-D. CSLB Enforcement Program Output

By the time of the Second Report in April 2002, the Monitor was pleased to record very positive developments arising from the commitment of the Board members, CSLB executive management led by Registrar Stephen Sands, and CSLB staff to comprehensive improvements in

the enforcement program. The entire CSLB team responded with full support for the Monitor's 33 recommendations and brought impressive management skill and innovation to bear on the long-standing enforcement concerns.

The immediate results of this renewed commitment to excellence at CSLB were gratifying: Organizational structure was restored; complaint handling and investigation practices were streamlined and modernized; morale improved in most units of the agency; communication and cooperation with other enforcement agencies blossomed. CSLB management and staff worked aggressively to reduce case backlogs and to implement process improvements, with the result that key indicators of case outputs — including total number of cases closed — were up, despite an enormous staffing challenge. Exhibit III-D above finally reflects an upward trend in most output categories in 2001–02, and Exhibit III-E below shows measurable improvement in agencywide complaint handling efficiency during the last half of fiscal year 2001–02.

Month / Year	Licensee Complaints	Non-Licensee Complaints	Total
FY 1998/99	111	58	95
FY 1999/00	129	52	102
FY 2000/01	147	66	123
July 2001	165	85	144
August 2001	156	80	137
September 2001	167	80	145
October 2001	171	81	145
November 2001	162	94	144
December 2001	159	86	144
January 2002	158	97	143
February 2002	158	92	142
March 2002	156	99	143
April 2002	147	79	129
May 2002	151	91	134
June 2002	146	88	130
FY 2001/02	158	88	140

Source: NewPoint Group (Sept. 10, 2002)

**Ex. III-E. Average Number of Days to Close Complaints by Type of Complaint –
FY 1998–99 through FY 2001–02**

The Monitor concluded his Second Report with a call for the Legislature and the administration to reward this renewed commitment by providing CSLB the necessary resources and statutory tools to complete the transformation of the enforcement program. While new statutes now in place provide long-term resources and needed enforcement tools, the short-term situation has been dramatically altered by the budgetary crisis affecting every aspect of California government.

Budgetary constraints have exacerbated already serious staff shortages, especially in CSLB's investigator positions, frustrating further progress in key aspects of the enforcement program. As the NewPoint Group report and our own data indicate, cycle times and backlogs will stagnate or increase if replacement hiring is not imminent. And many of the most ambitious and promising of structural and process improvements have been or will soon be put on hold while emergency contingency plans are implemented to maintain minimum service levels during these severe staffing shortages.

In order to preserve this strong new momentum toward improvement in the enforcement program, the Monitor urges that: (1) CSLB receive all possible relief from the current hiring freeze and from proposed staff reductions; (2) in due course CSLB be permitted to use the new SB 1953 revenues (which derive exclusively from license fees and not from the general fund) for their stated purpose of enhancing the enforcement program; and (3) a long-range commitment be made by state government to staffing and equipping CSLB to protect the public and enforce the License Law promptly and effectively.

Chapter IV

ISSUES AND PRELIMINARY RECOMMENDATIONS ON CONSUMER CONTRACTS

A. Introduction

The purpose of this chapter is to begin a comprehensive public dialogue among all industry stakeholders on ways to improve the clarity and effectiveness of consumer contracts for the benefit of consumers, contractors, regulators, and law enforcement. The primary discussion will focus on home improvement contracts, as defined in Business and Professions Code section 7151.2,⁵¹ but the additional issue of consumer contracts involving service and repair and related matters is also a part of this discussion.

In more than 90 interviews conducted by Monitor staff — including meetings with regulators, consumers, contractors, and attorneys representing a variety of interests — a consistent theme of dissatisfaction emerged among all groups whenever the issue of consumer contracts arose. The most frequent comment was: “Can’t we do something about home improvement contracts?” Consumers complain that home improvement contracts are complex, unreadable, and of little help to them in dealing with problems that arise with their projects. Contractors find the required disclosures in such contracts redundant and burdensome, and the legal liabilities unclear. Regulators and attorneys cite uncertainties and inconsistencies in the statutes governing home improvement contracts (principally Business and Professions Code section 7159) and in the laws to enforce them, and see problems arising which better consumer contracts might prevent.

⁵¹ Bus. & Prof. Code § 7151.2 defines “home improvement contract” as “an agreement . . . between a contractor and an owner . . . for the performance of a home improvement as defined in Section 7151. . . .” Bus. & Prof. Code § 7151 defines “home improvement” essentially as “the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property”

Although the critiques and proposals vary, there is a clear consensus on this issue: It is time for a systematic evaluation of the laws and practices governing consumer contracts in the construction industry.

The law of home improvement contracts in California has evolved over the past three decades in a piecemeal and inconsistent fashion, despite the best of intentions. Business and Professions Code section 7159, the principal statute governing home improvement contracts in California, has been amended fifteen times since 1969.⁵² Many of these changes have been pro-consumer and beneficial, but none have occurred as part of a comprehensive analysis of the entire issue, and so the results have been uneven. The end product of fifteen amendments in thirty years is a patchwork quilt of regulations and requirements which satisfies none of the industry's stakeholders. What is needed is a global approach aimed at developing a unified set of standards — and a fairly simple form or forms — to help promote better communication and more productive relationships between contractors and consumers and to help minimize disputes.

The issues introduced in this chapter are complex and challenging. The interests of every segment of industry and the public must be balanced in order to reach a sound result here. For this reason, this chapter is presented solely with the intention of identifying issues of concern for all parties to this process, with the intention of helping begin a full public dialogue as a prelude to comprehensive action for change. Each of the recommendations in this chapter is preliminary and is intended essentially as a topical heading to focus attention on a number of discussion issues, listed separately within each recommendation.

The Monitor's inquiry into these difficult issues is just beginning. In the fall of 2002, we will seek all viewpoints and provide opportunities for detailed consideration and discussion of these and other issues relating to consumer contracts. The Monitor's goal is to help in the formation of a consensus — involving all industry stakeholders — which will support legislative proposals and other means of improving consumer contracts in California.

⁵² Bus. & Prof. Code § 7159 added by Cal. Stats.1969, ch. 1583, §15. Amended by Cal. Stats.1975, ch. 511, § 1; Cal. Stats.1976, ch. 1271, §1; Cal. Stats.1977, ch. 868, § 1.5; Cal. Stats.1979, ch. 1000, § 2; Cal. Stats.1979, ch. 1013, § 29.4; Cal. Stats.1980, ch. 138, § 5; Cal. Stats.1991, ch. 1160, §45; Cal. Stats.1993, ch. 589, § 12; Cal. Stats.1994, ch. 175, § 3; Cal. Stats.1994, ch. 362, § 3; Cal. Stats.1995, ch. 91, § 4; Cal. Stats.1996, ch. 985, § 1; Cal. Stats.1997, ch. 812, § 8; Cal. Stats. 1997, ch. 813, § 6; Cal. Stats.1999, ch. 982, §4.

B. Issues of Concern Regarding Home Improvement Contracts

1. The Relationship Between Consumer Contracts and Enforcement

Contemporary law enforcement philosophy stresses the importance of crime prevention as a key part of the enforcement process for several reasons.⁵³ First, the costs of consumer harm from white collar crime are staggering, including an estimated minimum of \$60 to \$100 million per year in California from alleged contractor misconduct.⁵⁴ Second, the costs of complaint handling, investigations, and prosecutions are themselves enormous. About 50% of CSLB's annual budget, or more than \$ 22.8 million per year, is devoted to enforcement matters, and this figure is only a small part of the total societal cost (including criminal prosecutions, private lawsuits, lost time and productivity, and other costs) associated with addressing alleged violations of the Contractors State License Law. Finally, any victim of consumer fraud or business misconduct will confirm that an after-the-fact remedy is always less desirable than preventing the harm in the first place.

Consumer contracts that are well-understood and effective should be the front line of defense in the enforcement process. The adage “good fences make good neighbors” applies with special meaning to the relationships between consumers and service providers. For any complicated or important consumer transaction, a clear understanding of the rights and obligations of the consumer and the businessperson — a clear knowledge of where the fences are — is vital to establishing a sound business relationship between the parties and to preventing and resolving disputes.

The written contract between the parties to a construction agreement is also perhaps the single most important opportunity to provide consumers — who are often unfamiliar with this process — with valuable information about their rights, obligations, and remedies for problems. In home improvement contracting, where few consumers have extensive experience, the challenge is to develop contract forms which will help create good and fair working agreements despite the inequality of system knowledge and experience.

The Monitor believes enlightened law enforcement today begins with a significant effort at *prevention* of practices and problems which might require enforcement action. Always important, efforts to prevent consumer harm and consumer/contractor disputes are even more crucial during

⁵³ For example, the Los Angeles District Attorney's Office, the nation's largest local prosecutor's office, maintains a substantial Bureau of Crime Prevention and Youth Services working alongside its prosecution units.

⁵⁴ *Initial Report*, *supra* note 8, at 96.

an era of severe resource constraints. Improving consumer contracts will help prevent consumer problems and complaints, and this in turn will materially assist CSLB in handling its enforcement caseload and better serving the public.

2. Problems in Home Improvement Contracts Today

Goals for consumer contracts. In 1962, President John F. Kennedy delivered a message to Congress outlining the “Consumer Bill of Rights,” including the rights to choice, information, safety in the marketplace, and a fair hearing. In 1975, President Gerald Ford added to these the right to consumer education.⁵⁵ Rights to choice, information, and education are fundamental in the consumer’s selection and use of a contractor for costly improvements to his or her most valuable possession.

In a similar vein, CSLB has echoed many of these same considerations in its newly published *Home Improvement Bill of Rights* for California consumers. This recent publication is a useful and user-friendly compendium of legal rights and sound consumer advice relating to the hiring of home improvement contractors.⁵⁶ In the *Bill of Rights*, CSLB advises consumers of their rights to “a clear contract that includes a written payment schedule and completion date,” as well as “one project price.” In particular, CSLB stresses that “you have the right to review the contract and only sign it when you understand the terms.”

Few would disagree with these laudable goals for consumer contracts. We should evaluate present practices and our proposals for improvement against these standards of consumer knowledge, contract clarity, and completeness. And we should begin by measuring the effectiveness of today’s consumer contracts in permitting California homeowners to exercise informed choice, and by asking whether today’s contracts and practices help or hinder the effort to inform and educate the average consumer as to his or her rights, obligations, and remedies.

Problems with today’s consumer contracts, generally. Unfortunately, home improvement contracts presently in use in California, and the statutes governing them, on the whole do not meet these standards of clarity and effectiveness. These shortcomings are especially troubling where, as here, the transaction at issue is generally an expensive one involving the consumer’s most valuable possession — the family home.

⁵⁵ See 30 Weekly Comp. Pres. Doc. 2149.

⁵⁶ Contractors State License Board, *Home Improvement Bill of Rights* (2002), available at www.cslb.ca.gov.

For many California consumers, most home improvement contracts in use today are unclear, highly technical, confusing, and of little help in preventing or resolving disputes with contractors. For many California contractors, these contracts are often burdensome, redundant, and even a disincentive to following the law. For California regulators, the current statutes governing consumer contracts are inconsistent, unclear, and inadequate in the key mission of helping prevent consumer harm.

There is substantial evidence of the unsatisfactory state of home improvement contracts and the laws governing them in California today, from the perspective of nearly all participants in this industry. A summary of those problems follows:

Contract problems from the consumer’s perspective. From the consumer perspective, the most glaring deficiency in present home improvement contracts is that they are difficult to read and, in fact, beyond the comprehension of many Californians. A significant percentage of homeowners is unable to fully understand some of the most important provisions governing consumer rights and remedies, including many disclosures mandated by state law. Readability is the first requirement of a document that is to inform and educate. And California home improvement contracts are largely unreadable to many of the consumers who sign them.

The significance of “consumer contracts” which are unreadable by consumers is difficult to overstate. Readability and clarity are essential to comprehension. Well-intentioned consumer disclosures accomplish little if the average consumer cannot understand what is being disclosed. All of us with a role in these policy matters are guilty in some degree of ignoring the “elephant in the parlor” here: Millions of California homeowners cannot understand their home improvement contracts, or find the contracts so badly worded and formatted that they simply choose not to try to decipher them. Every consumer protection investigator in the state has heard consumer victims say: “Well, the contract was long and technical, so I just signed it and hoped for the best.” And, as discussed below, for the many Californians with limited English language skills, there is even less chance that these complex forms will be read and understood.

There are obvious and serious consequences if California consumers cannot understand, or are not reading, their home improvement contracts. Home improvement projects vary in scope and importance, but most have a material impact on the average consumer’s most important and costly possession. A problem with TV repair, or even car repair, may be inconvenient — a problem with the family home may leave the family without adequate shelter, as recent victims of the Crown Builders matter in the San Diego area can attest.⁵⁷

⁵⁷ See *Initial Report*, *supra* note 8, at 75–76, 109.

A significant home improvement project often involves a complicated multi-task job, using the services of a number of contractors, subcontractors, suppliers, and laborers. This is a complex consumer transaction with a great deal of important information to convey, including technical information regarding the construction work and equally technical, but different, information about the legal rights, obligations, and remedies of the parties. Much of the information today comes in the form of state-mandated disclosures, which are by definition important but often are difficult to convey simply.

How can we fairly evaluate the readability and effectiveness of typical home improvement contracts in use in California? There are numerous indicators of the success — or lack of success — of these contracts in doing their job of informing, and these are discussed further below.

Readability and plain language standards. Our inquiry should begin with the general issue of readability and the need for plain language in consumer contracts of this kind. Readability tests and “plain language” standards have been widely used in recent years in the consumer protection context. The Federal Trade Commission since the late 1970s, and at least seven states — including New York, Pennsylvania, Connecticut, Florida, Minnesota, Illinois, and Texas — require that important consumer disclosures meet specified requirements for “plain language” or ease of readability.⁵⁸ Pennsylvania’s statute is typical: “All consumer contracts . . . shall be written, organized and designed so that they are easy to read and understand.”⁵⁹

Although California has not yet implemented a generalized plain language requirement, California public policy also acknowledges the importance of consumer readability. California’s statute establishing and empowering the Office of Administrative Law (OAL) begins with a statement of the Legislature’s findings that the state should attempt to improve on regulatory language “which is frequently unclear and unnecessarily complex” and “is often confusing to the persons who must comply with the regulations.”⁶⁰ Thus, OAL requires that each agency draft proposed regulations “in plain, straightforward language, avoiding technical terms as much as

⁵⁸ See, e.g., New York Plain English Law, N.Y. Gen.Oblig. § 5-702 (requirements for use of plain language in consumer transactions); Connecticut Plain Language Law, Conn. Gen. Stat. § 42-152 (“every consumer contract. . . shall be written in plain language”); Pennsylvania Plain Language Consumer Contract Act, Pa. Stat. Ann. tit. 73, § 2201 (“all consumer contracts . . . shall be written, organized and designed so that they are easy to read and understand”); Florida Readable Language in Insurance Policies Law, Florida Stats. Ann. § 627.4145 (requiring a minimum score of 45 on the Flesch reading ease test). See also Federal Trade Commission, “How to Write Readable Credit Forms,” and “Writing Readable Warranties,” available at www.ftc.gov/bcp/online/buspubs.

⁵⁹ Pennsylvania Plain Language Consumer Contract Act, Pa. Stat. Ann. tit. 73, at § 2205.

⁶⁰ Cal. Gov’t Code § 11340.

possible, and using a coherent and easily readable style.”⁶¹ And in a similar manner, the California Insurance Code requires the Insurance Commissioner to take action to “[a]ssure that the language of all insurance policies can be readily understood and interpreted” and prohibit policies from containing any provision which is “unintelligible, uncertain, ambiguous, or abstruse. . . .”⁶²

Many of these federal and state plain language requirements for consumer contracts draw from an extensive body of scholarship on readability. Beginning in the 1920s, linguistic and education scholars developed systems and formulae to assist in evaluating the readability of written materials.⁶³ Mathematical formulae measuring readability by evaluating semantic (word use) and syntactic (sentence structure) elements have been in use in education and industry for more than fifty years.

Each readability test has strengths and weaknesses, and no test replaces sound judgment and good editing. However, the most widely used formula outside of educational circles is the Flesch Reading Ease Scale, developed by readability pioneer Dr. Rudolph F. Flesch, and widely used by industry and consumer protection agencies including state governments and the Federal Trade Commission.⁶⁴ The Flesch Reading Ease Scale measures readability on a scale of 0 (very difficult to read) to 100 (easy to read). The Flesch scale identifies material scoring 0–30 as suitable only for college graduates; 50–60 as suitable for high school graduates; and 90–100 as suitable for fourth graders. Dr. Flesch, and most who use his standard, defines “plain English” as a score of 65 or greater. Other similar readability scales are in use, including the Flesch-Kincaid Reading Grade Level scale, which suggests the minimum grade level suitability of the writing; the Fog Index, which expresses readability in terms of minimum years of education needed; and the Cloze test, which measures readability using meaning derived from selected words in the text.⁶⁵

Contemporary word processing systems, including Microsoft Word, often include software sub-programs such as Grammatik IV which automatically perform analyses of the readability of text.

⁶¹ Cal. Gov’t Code § 11346.2.

⁶² Cal. Ins. Code § 10291.5.

⁶³ See Zakaluk and Samuels, *Readability: Its Past, Present & Future*, Newark: International Reading Association (1988); Flesch, *The Art of Readable Writing*, New York: McMillan Publishing (1949); Flesch, *How to Write Plain English*, New York: Harper Collins (1979).

⁶⁴ See, e.g., Florida Readable Language in Insurance Policies Law, Florida Stats. Ann. § 627.4145 (requiring a minimum score of 45 on the Flesch reading ease test); see *supra* sources cited in note 63; see also “Everything You Ever Wanted to Know About Readability Tests,” at 3, available at www.gopdg.com/plainlanguage/readability.

⁶⁵ See *supra* sources in notes 63 and 64.

Using these widely-applied standards of readability and the available software technology, it is possible to evaluate both state-mandated disclosures and typically recurring contract provisions from California home improvement contracts. We have analyzed a number of commonplace home improvement contract provisions and their readability and suitability scores under the Flesch Reading Ease Scale (readability) and the Flesch-Kincaid Grade Level scale (suitability for particular audiences at specified minimum grade levels). As indicated in Appendix A (which illustrates our results using state-mandated disclosures), our testing of these provisions demonstrates clearly that many California consumers don't understand what they are signing, or don't even try to understand before they sign.

For example, the statements concerning the contractor licensure requirement and access to CSLB, required on all prime contractor contracts by Business and Professions Code section 7030, together test at a readability score of 35.4 and a minimum grade level of 12 (the highest level of the Flesch-Kincaid Grade Level scale). Given that materials testing at 30 and below are suitable only for college graduates, and those at 50–60 scores are appropriate for high school graduates, this vital disclosure is readily understood only by those with a college degree (or close to it), and is rated at the highest minimum grade level (12).

In California, only 26.6% of the entire adult population 25 years and over has a college degree, and fully 23.2% of the adult population lacks a complete high school education.⁶⁶ Thus, for perhaps the most important state-mandated contractor notices, *only about one-quarter of California adults can readily understand the disclosure*. And this disclosure simply cannot be read by the least educated quarter of our population — about 4.9 million Californians, many of whom are homeowners.⁶⁷

Many other commonplace contract provisions fare no better in terms of readability, and some are worse: The state-mandated arbitration notice required by Business and Professions Code section 7191 tested at 25.1 in readability (well into the range comprehensible only for college graduates) and with the maximum grade level score of 12.⁶⁸ And the “Notice to Owner” regarding mechanic’s liens required by Business and Professions Code section 7018.5 tested at readability of 46.9 (slightly more difficult than that readily comprehended by high school graduates) and the maximum grade score of 12.⁶⁹

⁶⁶ U.S. Census Bureau, DP-2 Profile of Selected Social Characteristics, Census 2000 Summary File 3 (SF 3).

⁶⁷ *Id.* at “Educational Attainment.”

⁶⁸ See Appendix A, at paragraph 16.

⁶⁹ See *id.*

Of the eighteen paragraphs we tested from a widely-distributed and typical contract, eight provisions — or almost half — tested below the critical 30 score for readability, meaning that eight of these eighteen provisions are only readily comprehensible to the one-quarter of adults who have graduated from college. And taking all the provisions together, the overall score of 36.4 on readability and grade level of 12 supports this general conclusion: *Only about the top quarter of our state's adults can readily understand these home improvement contract provisions. For the bottom quarter of our populace (in educational attainment) — nearly 5 million consumers — these documents are probably both unreadable and unread.*

Unfortunately, word use and sentence structure are not the only problems of readability in many contractor forms today. Formats and typefaces used in many contracts often show no effort at clarity or ease of reading. Many such contracts use a small typeface of eight points or less, which California courts have found to be inherently inadequate.⁷⁰ And outdated or ineffective formatting, such as excessive use of all capital letters (even required by some state-mandated disclosures) are now well understood to harm ease of reading and rapid comprehension.

Readability and comprehension are also profoundly affected by level of language familiarity and skill — an issue of paramount importance to a culturally diverse community such as California. As of 2000, 6.3 million Californians over age 5 spoke English less than “very well,”⁷¹ a figure that equates to about 20% of the state's population over that age. For the one Californian in five who lacks this mastery of English, contemporary home improvement contracts in English, especially those requiring high school or college-level English skills, will be of little or no use whatsoever.⁷²

Other indicators of consumer problems with contracts. There are many other indicators of the inadequacy of current home improvement contracts in serving the interests of consumers:

- The most recent CSLB customer satisfaction survey shows that 34% of respondents failed to check with CSLB on the licensure and background of their contractor, despite the section 7030 notice encouraging that practice.⁷³ This failure to do basic homework on a vital matter would

⁷⁰ See *In re Conservatorship of Link* (1984) 158 Cal.App.3d 138, 141; see also *Ponder v. Blue Cross of Southern California* (1983) 145 Cal.App.3d 709, 719.

⁷¹ U.S. Census Bureau, DP-2 Profile of Selected Social Characteristics, Census 2000 Summary File 3 (SF 3).

⁷² For agreements meeting the definition of home solicitation contracts covered by the provisions of Civil Code section 1689.5 *et seq.*, a contract written in the language of the presentation should be offered, but these circumstances (presentation in the foreign language and other requirements of section 1689.5 *et seq.*) do not always apply and are not always followed if they do apply.

⁷³ CSLB *Consumer Satisfaction Survey: 2001 Complaint Closures*, at 2 (June 2002).

happen much less than about one-third of the time if consumers understood the CSLB advice in the required notice.

- CSLB enforcement experience and our Monitor project interviews indicate that many consumers pay excessive deposits (in violation of section 7159(d)) and/or overpay during the process of home improvement (*i.e.*, allow payments to get ahead of completed work in violation of section 7159(e)), notwithstanding that a clear, properly written, and understandable contract would forestall such practices.

- As documented in the Second Report, large numbers of consumers each year experience problems with mechanic's liens, double payments, or demands for double payment, despite the "Notice to Owner" required in section 7018.5 and the "preliminary 20-day notice" required by Civil Code section 3097.⁷⁴

- Many consumers find the existing disclosures and lengthy contracts unwieldy and burdensome, even when they have an adequate grasp of the key issues. One daunted consumer, on being confronted with a complex contract for a modest job, complained: "All I want you to do is put in a new water heater. I don't want to buy your business."⁷⁵

- Articulate consumers have come forward with explicit complaints about the complexity and minimal usefulness of existing contracts, providing compelling direct testimony that consumers do not feel well served by the current homeowner contracts.⁷⁶

Contract problems from the contractor's perspective. Many contractors also find home improvement contracts under existing law to be largely unsatisfactory.

California contractors, and the attorneys and advocates who represent them, complain of redundant and burdensome requirements. Contractors object that certain disclosures (such as the

⁷⁴ See *Second Report*, *supra* note 9, at 51–54. This "preliminary 20-day notice" is itself a misleading term because it permits subcontractors and suppliers a full twenty days *after* they have started a job to serve the "preliminary" notice.

⁷⁵ Letter to Hon. Liz Figueroa from Sam K. Abdulaziz, Esq. (Aug. 13, 2001) at 2.

⁷⁶ For example, homeowner DeAnn Weimer, during the public comment session CSLB's meeting of June 6, 2002, in Riverside, California, urged the Board to adopt a standardized contract. Ms. Weimer reported that she had dealt with approximately ten landscape contractors recently and "the variety in their contracts is amazing. There is no detail regarding the job, yet excessive detail regarding when they want to get paid." See also *Initial Report*, *supra* note 8, *passim*.

Checklist for Homeowners⁷⁷ and the Information about Commercial General Liability Insurance⁷⁸) must be provided twice to the same consumer within a short time frame. Other required disclosures are sufficiently lengthy and complex that including them in contracts is unwieldy and burdensome, forcing the contractors to choose between short, efficient contracts and full compliance with the law.

Conscientious contractors also note there are substantial compliance expenses associated with keeping up with the complex requirements, and with revising forms to meet all standards. Although no reliable statistics exist, it has been suggested that the combination of burdensome contract requirements and compliance expenses may contribute to the continuing problem of unlicensed activity, as newer or fringe competitors choose instead to operate on a bootleg basis with “handshake deals” instead of sound and legally sufficient contracts which help protect the public.

Some contractors also refer to the burdens of responding to unjustified consumer complaints or disciplinary proceedings before CSLB, which complaints and proceedings the contractors view as sometimes based on consumer misunderstandings of the law and the obligations of the parties.

Contract problems from the perspective of CSLB and the regulatory system. Management and staff of CSLB have long expressed an interest in revisiting the statutes governing consumer contracts to address uncertainties in the law and to improve the ways in which consumers are served by these contracts. CSLB staff, including staff counsel Ellen Gallagher and senior manager Bob Porter, have identified shortcomings in this regulatory system and have already begun the public dialogue on appropriate changes.

CSLB staff point to the confusing and unclear construction of section 7159 itself, which today combines in a complex manner numerous elements, including requirements for consumer contracts, specific practice prohibitions, criminal sanctions, and other components, but does not include key consumer information which in fact does belong in these contracts.

Regulators have also identified multiple uncertainties in the statutes as presently written, including issues regarding criminal vs. disciplinary sanctions, appropriate application of the general principles to related contexts such as service and repair contracts, and unclear definitions of key terms and concepts in the various statutes.

And in the larger sense addressed above, CSLB and the justice system have a considerable stake in improving consumer contracts and preventing consumer/contractor disputes. Faced with

⁷⁷ Bus. & Prof. Code § 7159.3(a)(3).

⁷⁸ Bus. & Prof. Code § 7159.3(a)(2).

more than 24,000 complaints each year at a time of enormous resource shortages, CSLB must consider every means of forestalling and rapidly resolving consumer problems. The imminent loss of 22 enforcement positions, and the funds associated with them, in fiscal year 2002–03 only underscores the need for proactive solutions to head off consumer complaints.

As detailed in Chapter III above, recent successful experiences with face-to-face mediation efforts and with the On-Site Negotiation pilot program suggest that a meaningful portion of consumer/contractor conflicts may arise from misunderstandings or minor problems that might be minimized with clearer, better contracts.

C. Preliminary Recommendations and Discussion Issues Concerning Consumer Contracts

This section presents a series of discussion issues regarding consumer contracts, organized for convenience around three preliminary recommendations. If we accept the premise that a comprehensive public dialogue is in order, then a first step is to help structure the discussion to ensure a global approach and to maximize the active participation of all industry stakeholders.

It is our intention here to begin this process by identifying broad issues and important questions. For the sake of consistency with the previous Reports, we have grouped these broad issues under preliminary “recommendations,” but we stress that these are not concrete proposals; they are in fact only useful categories of ideas which have recurred in our discussions with various stakeholders to date. These are more in the nature of “debate resolutions,” based on the theory that an affirmative statement of a proposition will often help focus a discussion.

However, to be entirely clear, the Monitor is in fact endorsing no specific change until the full range of issues, and a unified approach to this entire question, can be considered. Part of the historical problem of reform to section 7159 and home improvement contract law has been the well-intended but piecemeal process of change. We hope instead to facilitate a global look at these matters by presenting broad issues and discussion questions. We welcome additions to this list, and the active participation of all stakeholders.

Recommendation #38: Promote clear and effective home improvement contracts by revising and simplifying the elements of those contracts, including the state-mandated disclosures, through legislative change and promulgation of model contract forms, as appropriate.

Discussion issues:*1. What contract elements should be required by state law, or sound practices?*

One commentator lists potential elements to be required in home improvement contracts to include: information about CSLB; information about the contractor; a description of the work to be done; the total contract amount; the approximate dates work will begin and end; the progress payment plan (if applicable); mechanic's lien prevention information; and three-day right to cancel information. Other commentators would add or subtract from this list, or vary it with the type of contract. What elements belong as a function of a state mandate? What elements belong but should be left to "model" contracts or left as a matter of sound business practices?

2. What are the realistic and legitimate goals of state-mandated disclosures? Which required disclosures should be retained?

What is the proper balance in required disclosures between full legal detail and simplicity and ease of comprehension? Business and Professions Code sections 7159, 7159.3, 7070, 7018.5, and 7191, among others, all require disclosures to consumers. Which disclosures are the highest priorities? Should all be retained? Which disclosures, if any, should be added?

3. Should state-mandated disclosures be streamlined and simplified?

Assuming many disclosures will continue to be required, can they be shortened and simplified to improve readability and reach more consumers more effectively?

4. Should redundant or repeated disclosures be eliminated or modified?

As described above, some commentators see redundancy in disclosures such as those presently mandated in sections 7159.3(a)(2) and (3). Some required disclosures — including those describing CSLB and its role — arguably overlap in content. Can consolidated and simplified versions of such disclosures be developed?

5. Should the language and format(s) used in home improvement contracts be simplified and clarified for ease of comprehension and use?

In addition to the substantive content of contracts, the nature of the language used and the formatting of the document can be important. What can be done to improve consumer contracts in

such dimensions as simplified terminology, improved type size and style, use of bolding or highlighting, use of checklists, boxes, or outline formats, and the like?

6. Should CSLB and/or trade associations promulgate "model" contract forms to promote simplicity, ease of use, and standardization?

Some commentators have urged that CSLB and/or trade groups or contract experts should develop model or sample contract forms to help promote clarity and effectiveness. Standardization is also said by some to be a beneficial goal, as a means of improving industrywide practices and encouraging consistent interpretations of the law. Is such a concept beneficial? If so, what role should CSLB play in such an effort? What roles should private individuals or groups play?

Of course, home improvement contracts are not unique to California, and the issues of clear and effective contracts have been addressed by a number of other states. Attached as Appendix B are two examples of "form" or model consumer contracts, originating in New York and Massachusetts, in which the challenge of simplicity and clarity has produced affirmative proposals to help guide sound industry and consumer practices. Are these approaches helpful? Are there other approaches that might be superior?

7. Should CSLB have administrative authority to revise requirements for contract elements and/or disclosures?

It has been suggested that CSLB could play a more prominent role in making or revising requirements for contract elements or disclosures. Should CSLB have authority to promulgate any or all such standards by administrative rulemaking or other means? Could a private industry standards-setting process serve such a role? Are there other alternatives?

Recommendation #39: Revise Business and Professions Code section 7159 to clarify the law governing home improvement contracts and disclosures, and to ensure all important consumer information is required in the contracts themselves.

Discussion issues:

1. Should Business and Professions Code section 7159 be revised to improve the organization and clarity of its legal requirements for home improvement contracts? Are related statutes in need of similar revision?

Many critics suggest that section 7159 governing home improvement contracts is, at best, a complex collection of differing types of statutory requirements arranged in an awkward fashion. Few believe the statute cannot be improved. Does section 7159 need to be revised and clarified? Or is there substantial benefit in preserving time-tested formulations? Are other statutes governing these issues in need of overhaul? Should some or all of these provisions be brought closer together or otherwise arranged in a more closely related and logical fashion?

2. Should section 7159 be redrafted and rearranged to separate the statute into distinct elements which are related and more manageable?

A common suggestion is that section 7159 could be rearranged and redrafted for better clarity by breaking the statute into a series of more manageable and more closely related subsections (or adjacent statutes). Does this idea have merit? If so, what goals should be served by such a revision? What are the different possible schematics for such a reorganization? And in undertaking such a revision, are there any provisions of section 7159 which are vestigial or archaic and thus no longer necessary for the statute (as some have characterized the “without lawful excuse” language)?

3. Should section 7159 be revised to separate criminal and disciplinary provisions?

Some commentators cite a lack of clarity in section 7159 regarding which provisions do or should have criminal consequences, and which do or should have only disciplinary consequences. Is this critique valid? If so, what should be the substantive elements of any such change? And what should be the organizing principle for rearranging these provisions?

4. Should additional consumer information be required to appear in the home improvement contract itself?

Section 7159 dictates some contract content and a number of consumer disclosures. Is this substantive content sufficient? Is it too little, or too much? Are there significant types of consumer information which section 7159 should mandate but does not mandate today? Can this be reconciled with goals of greater clarity and simplicity? Need this be so reconciled?

5. Should the definition of “home improvement contract” in section 7151.2 be revised and clarified?

Considerable debate and controversy has arisen over the extent to which the current broad definition of “home improvement contract” sweeps too broadly, or not broadly enough. In particular,

many in the industry have described as burdensome and unnecessary the application of full home improvement contract requirements and disclosures to the service and repair context. Should service and repair contracts be defined separately and treated accordingly? (See discussion questions under Recommendation #40.) Should other aspects of the 7151.2 definition be clarified, regarding such issues as application to condominium work?

6. Should existing lien prevention disclosures be revised and/or made a part of the contract itself?

Is lien prevention a high, medium, or low priority? Should lien prevention information be required as a part of the contract document itself? If so, how can it be presented in a user-friendly and helpful way? Are there simple formats or checklists that can help?

7. Should the statute of limitations period for section 7159 criminal violations be adjusted?

Some commentators view the present one year statute of limitations period as unrealistically short. These sources argue that complex matters involving criminal violations may not be discovered promptly and may require considerable case investigation and preparation time. Should the statute of limitations be increased beyond one year? Or is the current balance of interests here the correct one?

Recommendation #40: Improve consumer protection and contractor compliance by resolving the current practical problems of service and repair contracts, including, as appropriate, separately defining and regulating service and repair work as distinct from home improvement contracting.

Discussion issues:

1. Should service and repair work be separated and regulated apart from the general home improvement contract requirements?

Today, most service and repair calls meet the \$100 threshold for Home Solicitation Contract Law standards,⁷⁹ including the three-day right of rescission, and many such calls easily reach the \$500 range and thus must comply with the contract and disclosure requirements of home improvement contracting. Many commentators of differing backgrounds have questioned the

⁷⁹ See Cal. Civil Code § 1689.5.

wisdom of treating both smaller service matters and significant home improvements and remodeling under a single regulatory umbrella. Should service and repair work have its own statutory standards distinct, in at least some dimensions, from full-scale home improvement standards?

2. Should a statutory definition of “service and repair” be adopted?

Is a separate definition of service and repair a sound idea? If so, what content should be in such a definition? Commentators have suggested such a definition might include some or all of the following: a transaction initiated by the homeowner; for service/repair of structures or appliances already affixed to real property; cash on delivery is the only permissible payment system; and the transaction is not secured by any security interest on the real property. In a similar vein, others propose to define “time and material” contracts and/or permit such an alternative to existing contract requirements, with an appropriate dollar threshold. Is there merit in such separate definitions and separate regulatory requirements for these other forms of consumer contracts?

3. What monetary threshold should be applied to service and repair work?

If a separate set of regulatory requirements should be applied to service and repair contracts, at what monetary threshold should such requirements begin and end? At what point does a sizeable service and repair transaction justify full home improvement contract requirements and disclosures?

4. What standards should be applied to service and repair work? Which requirements applicable to general home improvement contracts should apply to service and repair work, and which should not?

If a separate set of regulatory requirements should be applied to service and repair work, what requirements and standards should apply? What consumer protection content should be included?

5. Which, if any, disclosures presently required for general home improvement contracts are unnecessary for service and repair contracts?

See discussion question #4 immediately above. What rationale is there for differing standards of disclosure in these differing forms of consumer contracts? How can the regulatory requirements be matched appropriately to the situation?

6. Should elements of the three-day right to rescission in Civil Code section 1689.5 et seq. be modified with regard to service and repair contracts?

What circumstances, if any, justify a different set of rescission rights and practices? Is present law inadequate to make this differentiation? If so, how can we balance legitimate competing interests in prompt repair service and in preventing consumer fraud or abuse?

7. What steps can be taken to ensure higher rates of industry compliance with service and repair contracting requirements, consistent with continued consumer protection?

A principal argument in favor of modifying the regulatory framework here is that many honest service providers often skirt some or all of the law's requirements. Does this phenomenon occur as has been suggested? What are its causes? What can be done to improve compliance with the law, while maintaining essential consumer protections?

Proposed process for addressing consumer contract issues. The Monitor is committed to helping facilitate a comprehensive public dialogue on these issues. This Report extends our invitation to all stakeholders to join in this search for consensus issues and ideas to advance the cause of improved consumer contracts.

Using this Report's list as a starting point, the Monitor will work in consultation with CSLB staff and industry and consumer representatives to make sure a balanced and comprehensive list of discussion issues is in hand. During the fall of 2002, one or more stakeholder meetings will be organized to include representatives of CSLB, the Department of Consumer Affairs, the Legislature, the construction industry, consumer groups, law enforcement, and others. Verbal and written input of all kinds will be welcomed. Drafts of proposals will be circulated as ideas are developed, with the goal of identifying consensus concepts for appropriate legislation or other public or industry action.

Chapter V

CONCLUSION

The primary conclusion of our Second Report in April 2002 was proven sound during the third reporting period of the Monitor project: Under a public-spirited Board and the leadership team of Registrar Stephen Sands, CSLB's enforcement program is headed in the right direction. But it cannot truly improve — and may not even be able to sustain current progress — unless it receives the necessary resources.

After the successes of SB 1953 (Figueroa) and SB 1919 (Figueroa), the long-term prospects for CSLB are excellent. This agency can now anticipate a 20% resource enhancement for enforcement; the implementation of more effective criminal history and experience screening of licensees; improved management data; time and staff to implement numerous process improvements; better consumer remedies; and the lasting effects of quality leadership on the Board and in the executive offices — all of which point to a much brighter future for CSLB and its enforcement program. This period of shortages and contingency plans will eventually give way to lasting improvements, if CSLB can manage to stay afloat and maintain its present course during an exceedingly difficult time.

Even during this time of great challenge, the opportunity exists to continue to build toward truly enlightened regulation of the vital California construction industry. The Monitor gratefully acknowledges the public-sector and private-sector members of the coalition which helped bring about the new laws. He urges all of those colleagues to join us once again during the final reporting period of this project in support of improvements in CSLB's enforcement program and changes in consumer contract practices to help this industry continue on its present path to greater professionalism and public service.

APPENDICES

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APPENDIX A

Selected Readability Tests of State-Mandated Disclosures

Arbitration Notice (Based on Bus. & Prof. Code § 7191)

Any controversy or claim arising out of or relating to this proposal/contract, or the breach thereof, shall be settled by arbitration in accordance with the applicable construction industry arbitration rules of the American Arbitration Association, which are in effect at the time the demand for arbitration is filed. A judgment upon the award rendered by the administrator(s) may be entered in any court having jurisdiction thereof. Any arbitration award shall be subject to correction and/or vacation for the reasons stated in the Code of Civil Procedure. The arbitrator shall award reasonable attorneys fees and expenses to the prevailing party. After being given due notice, should any party fail to appear or participate in the arbitration proceedings, the arbitrator shall make an award based upon the evidence presented by the party(ies) who do (does) appear and participate. Notwithstanding Contractor's right to arbitrate Contractor does not waive any of its lien rights.

NOTICE: By initialing in the space below you are agreeing to have any dispute arising out of the matters included in the "arbitration of disputes" provision decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in the "arbitration of disputes" provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Business and Professions Code or other applicable laws. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the "arbitration of disputes" provision to neutral arbitration.

Passive Sentences: 27%. Readability: 25.1. Flesch-Kincaid Grade Level: 12.0.

Mechanic's Lien Notice (Source: Bus. & Prof. Code § 7018.5)**NOTICE TO OWNER.**

Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

(1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.

(2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish

voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.

(3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a mechanics' lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property.

Passive Sentences: 18%. Readability: 46.9. Flesch-Kincaid Grade Level: 12.0.

CSLB Notice (Source: Bus. & Prof. Code § 7030)

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

State law requires anyone who contracts to do construction work to be licensed by the contractors' state license board in the license category in which the contractor is going to be working—if the total price of the job is \$500 or more (including labor and materials). Licensed contractors are regulated by laws designed to protect the public. If you contract with someone who does not have a license, the contractors' state license board may be unable to assist you with a complaint. Your only remedy against an unlicensed contractor may be in civil court, and you may be liable for damages arising out of any injuries to the contractor or his or her employees. You may contact the Contractors' State License Board to find out if this contractor has a valid license. The Board has complete information on the history of licensed contractors, including any possible suspensions, revocations, judgments, and citations. The Board has offices throughout California. Please check the government pages of the white pages for the office nearest you or call 1-800-321-CSLB for more information.

Passive Sentences: 18%. Readability: 35.4. Flesch-Kincaid Grade Level: 12.0.

APPENDIX B

Sample Forms

Home Improvement Contract Albany County				
Proposal submitted to	Phone	Date		
Street	Job Name			
City, State, Zip Code	Job Location			
<hr/>				
Proposal submitted by	Phone			
Street	Job Start			
City, State, Zip Code	Job Completion	Definite date is essential []		
<hr/>				
<p>We hereby propose to furnish materials and labor necessary for the completion of:</p> <p>_____</p> <p>_____</p> <p>_____</p>				
<p><small>*Any contractor, subcontractor, or materialman who provides home improvement goods or services pursuant to your home improvement contract and who is not paid may have a valid legal claim against your property known as a mechanic's lien. Any mechanic's lien filed against your property may be discharged. Payment of the agreed-upon price under the home improvement contract prior to filing of mechanics lien may invalidate such lien. The owner may contact an attorney to determine his rights to discharge a mechanic's lien."</small></p>				
<p>WE PROPOSE hereby to furnish materials and labor-complete in accordance with above specifications, for the sum of:</p> <p>dollars (\$ _____)</p> <p>Payment to made as follows:</p> <p>All money paid in advance to be held in escrow until job completion.</p> <p>Account number: _____ (Name of Financial Institution): _____</p>				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px; vertical-align: top;"> <p>All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation insurance.</p> </td> <td style="width: 50%; padding: 5px; vertical-align: top;"> <p>Authorized Signature: _____</p> <p>The Note: customer may cancel this order, without penalty, within 3 business days after signing. It may be withdrawn by us if not accepted within _____ days.</p> </td> </tr> </table>			<p>All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation insurance.</p>	<p>Authorized Signature: _____</p> <p>The Note: customer may cancel this order, without penalty, within 3 business days after signing. It may be withdrawn by us if not accepted within _____ days.</p>
<p>All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation insurance.</p>	<p>Authorized Signature: _____</p> <p>The Note: customer may cancel this order, without penalty, within 3 business days after signing. It may be withdrawn by us if not accepted within _____ days.</p>			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px; vertical-align: top;"> <p>ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.</p> </td> <td style="width: 50%; padding: 5px; vertical-align: top;"> <p>Signature: _____</p> <p>Signature: _____</p> <p>Date: _____</p> </td> </tr> </table>			<p>ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.</p>	<p>Signature: _____</p> <p>Signature: _____</p> <p>Date: _____</p>
<p>ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.</p>	<p>Signature: _____</p> <p>Signature: _____</p> <p>Date: _____</p>			

MASSACHUSETTS HOME IMPROVEMENT SAMPLE CONTRACT

This CONTRACT satisfies all basic requirements of the state's Home Improvement Contractor Law (MGL c. 142A), but does not include standard language to protect homeowners. Seek legal advice if necessary. Before agreeing to any home improvement work on your residence you should obtain a free copy "A Consumer Guide to Home Improvement Contractor Law" by calling the Office of Consumer Affairs and Business Regulation's Information Hotline at 617-973-8787.

Don't forget to include names of any salespersons involved and Contractor's Registration Number (on the first page of the contract)!

Homeowner Information

Name
Street Address (Not Post Office Box)
City/Town State Zip Code
Daytime Phone Evening Phone
Mailing Address (If Different From Above)

Contractor Information

Company Name
Contractor/Owner Name
Business Street Address
City/Town State Zip Code
Business Phone Federal Employer ID

Full names, federal I.D. # (if applicable), and addresses (not PO boxes), of the parties must appear on the contract!

Salesperson(s): _____ Contractor Registration #: _____ Exp. Date: _____

WORK TO BE PERFORMED AND MATERIALS TO BE USED

Contractor Agrees To Do The Following Work For Homeowner:

Describe in DETAIL the work to be completed.

Materials Expected To Be Used:

Provide a DETAILED description of materials to be used, specifying the type, brand, and grade of those materials.

Every contract must include total amount agreed to be paid, a time schedule of payments and dollar amount of those payments - including finance charges.

Contracts must include details of work to be performed and materials to be used!

The following schedule will be adhered to unless circumstances beyond the contractor's control arise:

Work Scheduled To Begin: ___/___/___ Expected Date Of Completion: ___/___/___

Always include the dates work is to begin and end!

TOTAL CONTRACT PRICE AND PAYMENT SCHEDULE

The Contractor agrees to perform the work, furnish the material and labor specified above for the SUM of: \$ _____ (*Include all finance charges in this amount*)

Payments will be made according to the following SCHEDULE:

\$ _____ upon signing contract (*Not to exceed 1/3 of the total contract price OR the cost of special order items, whichever is greater*).
\$ _____ by ___/___/___ or upon completion of _____
\$ _____ by ___/___/___ or upon completion of _____
\$ _____ upon completion of the contract (*Law forbids demanding full payment until contract is completed to both parties' satisfaction*)

In order to meet the completion schedule, the following material/equipment must be special ordered before the contracted work begins (*Law requires that any deposit or down-payment required by the contractor before work begins may not exceed the greater of (a) one-third of the total contract price or (b) the actual cost of any special equipment or custom made material which must be special ordered in advance to meet the completion schedule*):

\$ _____ to be paid for _____
\$ _____ to be paid for _____

The date of execution must be on the contract.

ALL CONTRACTS OVER \$1000 MUST BE IN WRITING!

Remember to abide by this important law!

Make sure to do the Math... It's the law!

By law, this statement must appear on the front page of the contract in immediate proximity to the space provided for buyer's signature and must be in at least ten point bold type.

DO NOT SIGN THIS CONTRACT IF THERE ARE ANY BLANK SPACES

Identical copies of the contract should go to the homeowner and the contractor.

Homeowner's Signature _____

Contractor's Signature _____

Date _____

Date _____

You may cancel this agreement if it has been signed by a party thereto at a place other than address of the seller, which may be his main office or branch thereof, provided you notify the seller in writing at his main office or branch by ordinary mail posted, by telegram sent or by delivery, not later than midnight of the third business day following the signing of the agreement.

See attached notice of cancellation for an explanation of this right.

This warning must appear directly above the space provided for signatures, in at least 10 point bold type.

The date of execution must appear on the contract and ALL parties must SIGN and receive a duplicate copy of the contract.

No work shall begin until both parties sign the contract and the owner has a copy of the contract.

REQUIRED PERMITS
The following building permits are required. It is the obligation of the contractor to secure such permits as the homeowner's agent: List any and all necessary construction-related permits.
NOTE: Owners who secure their own permits or deal with unregistered contractors are excluded from the Guaranty Fund provisions of MGL c. 142A.

Is an EXPRESS WARRANTY being provided by the contractor? NO YES
All terms of the warranty must be attached to the contract

NOTE: All home improvement contractors and subcontractors shall be registered and any inquiries about a contractor or subcontractor relating to a registration should be directed to:
Director, Home Improvement Contractor Registration
One Ashburton Place, Room 1301
Boston, MA 02108
617-727-8598

Unless otherwise noted within this document, the contract shall not imply that any lien or other security interest has been placed on the residence.

ARBITRATION
The contractor and the homeowner hereby mutually agree in advance that in the event the contractor has a dispute concerning this contract, the contractor may submit such dispute to a private arbitration service which has been approved by the Secretary of the Executive Office of Consumer Affairs and Business Regulations and the consumer shall be required to submit to such arbitration as provided in M.G.L. c.142A.
Contractor: _____ Homeowner: _____
Date: _____ Date: _____

NOTICE: THE SIGNATURES OF THE PARTIES ABOVE APPLY ONLY TO THE AGREEMENT OF THE PARTIES TO ALTERNATIVE DISPUTE SETTLEMENT INITIATED BY THE CONTRACTOR. THE OWNER MAY INITIATE ALTERNATIVE DISPUTE RESOLUTION EVEN WHERE THIS SECTION IS NOT SEPARATELY SIGNED BY THE PARTIES.

ACCELERATION OF PAYMENT
Homeowner's Financial Insecurity - A Contractor may not demand payments in advance of the dates specified on the payment schedule in cases where the homeowner deems him/herself to be financially insecure.
Contractor's Financial Insecurity - In instances where a contractor deems him/herself to be financially insecure, the contractor may require that the balance of funds not yet due be placed in a joint escrow account as a prerequisite to continuing the contracted work. Withdrawal from said account would require the signatures of both parties.

THE CONTRACT MUST ALSO CONTAIN:
1) A Complete Description of any other documents which are part of the agreement;
2) A List and Description of other matters upon which the contractor and homeowner lawfully agree;
3) Any Other Provisions otherwise required by applicable laws of the Commonwealth.
Remember, the Contract must be the *Complete Agreement* between the contractor and the homeowner.

If you have general questions or need additional information about **The Home Improvement Contractor Law**, contact:
Consumer Information Hotline
Commonwealth of Massachusetts
Office of Consumer Affairs and Business Regulation
10 Park Plaza, Room 5170
Boston, MA 02116
617-973-8787
If you have questions about **Contractor Registration**, contact:
Director of Home Improvement Contractor Registration
Board of Building Regulations and Standards
One Ashburton Place, Room 1301
Boston, MA 02108
617-727-3200, x25205

Every contract must contain a clause informing the owner of their rights related to permits and the Guaranty Fund

Every contract must contain a clear and conspicuous notice of where inquiries about registered contractors and subcontractors should be directed.

Consumers may initiate arbitration under the Home Improvement Contractor Law whether or not this clause is included in the contract.

The law requires these Acceleration of Payment rules be followed!

Don't forget to include this additional information!

The law requires clear and conspicuous notice of all warranties on the owner's rights.

Every contract must state whether there is a lien or security interest on the residence as a result of the contract.

Contractors may initiate arbitration under the Home Improvement Contractor Law only if:
*This optional clause appears in the contract and it is signed and dated separately from any other part of the contract; or
*The consumer agrees to arbitration initiated by the Contractor.