

CONTRACTORS STATE LICENSE BOARD

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 2002 SUNSET REVIEW REPORT

*Background Paper for the 2001 Public Hearing, and Final Recommendations of
the Joint Committee and the Department of Consumer Affairs*

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1.

BACKGROUND PAPER FOR 2001 PUBLIC HEARING

PREVIOUS SUNSET REVIEW, BOARD ACTIONS SINCE LAST REVIEW, FINDINGS AND RECOMMENDATIONS OF THE ENFORCEMENT MONITOR, SUMMARY OF REQUIRED REPORTS, AND CURRENT REVIEW

PRIOR SUNSET REVIEW

The Contractors' State License Board (CSLB or Board) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) two years ago (1999-2000). The JLSRC and the Department of Consumer Affairs (DCA) identified a number of issues and problem areas concerning this Board. There was general dissatisfaction with the lack of efforts by CSLB to address major issues as identified during its last review, and concern about whether this Board will adequately protect consumers in the future. Some of the more specific problems found with this Board included: 1) a lack of response to consumer complaints which involve licensed contractors; 2) excessive delay in investigations and inconsistent procedures and policies regarding investigations, especially if a civil action is pursued by a homeowner against a contractor; 3) an inability of the CSLB to identify inadequacies in existing law and offer recommendations for dealing with home equity lending scams by contractors and salespersons, and whether problems exist with current mechanics lien law; 4) rejection by the CSLB of any changes necessary to improve restitution provided to homeowners when they suffer financial injury as a result of a contractor; 5) concern about the direction the CSLB is taking in closing down field offices, and reorganizing its operation, and whether these changes would improve complaint handling and investigation of cases, and what impact this would have on consumer access to Board staff; 6) lack of response by the CSLB to updating their contractor examinations and reviewing their waiver process; 7) hesitancy on the part of the CSLB to change the substantial relationship criteria used to determine if a crime might be related to the qualifications, and duties of the contractor; 8) misleading the public about the status and background of a contractor because of inadequate public disclosure requirements; and 9) although directed by the Governor, the DCA and JLSRC in 1997, to review and consolidate or eliminate specialty license contractor classifications that pose no consumer risk (of which there were 42 existing classifications), the CSLB was only able to merge 3 specialty license classifications. Additionally, the JLSRC found that the composition of the Board did not provide a sufficient number of public members.

Because of these findings, the JLSRC recommended continuing the Contractors' State License Board for only two years. In addition to extending the existence of the CSLB, SB 2029 (Figueroa), Chapter 1005, Statutes of 2000, added two additional public members to the composition of the CSLB, required all home improvement contracts and estimates for home improvement work to include whether or not a contractor carries general liability insurance, and required CSLB to adopt a checklist of items that a homeowner contracting for home improvement should consider. Additionally, SB 2029 required the appointment of a CSLB Enforcement Program Monitor and the CSLB was required to perform several comprehensive studies and reviews and report to DCA and the Legislature. The studies include:

- 1) A study of issues surrounding home equity lending fraud and scams, and recommendations to deal with the problem;
- 2) A study of its reorganization plan;
- 3) A study of recovery fund programs, and whether such a program could be used to compensate consumers harmed by contractors;
- 4) A review of its current disclosure policy with recommended changes; and
- 5) A study of the current surety bond requirement and possible alternatives to that bond including a general liability insurance requirement.

BOARD ACTIONS SINCE PRIOR SUNSET REVIEW

As a result of the Joint Committee's recommendations, the Contractors State License Board has made significant changes to the way it does business. The Board, with its new public member appointments:

- Installed a new Executive Team to provide new direction.
- Successfully sponsored legislation implementing a comprehensive disclosure policy.
- Passed regulations implementing the Joint Committee's legislation, SB 2029, which created three new consumer protection requirements – a provision mandating home improvement contractors to disclose whether they carry commercial general liability insurance and two notices to be developed by the Board, one dealing with the value of commercial general liability insurance and the other creating a checklist of the main points of homeowners need to know when contracting for home improvement.
- Took steps to rebuild its Enforcement Program in response to the Reengineering Study mandated by the JLSRC.
- Established a priority list and schedule for updating the occupational analyses for each of its 46 examinations. As required by SB 2029, the occupational analyses needed for the remaining nine examinations will be completed July 1, 2002.

- As described more fully below, in October of this year, the Contractors' State License Board submitted its required four reports and studies to the JLSRC, each of which addressed a significant policy issue.
- Worked very closely with Enforcement Monitor to identify problems and improvements to the Board's enforcement programs. The Board supported the Monitor's recommendations and began to plan their implementation.

THE CSLB ENFORCEMENT MONITOR

THE MONITOR'S INITIAL REPORT:

The Director of DCA appointed Thomas Papageorge as the Contractors' State License Board Enforcement Program Monitor (Monitor), and the Monitor project began in April of 2001. The Enforcement Monitor is charged with monitoring and evaluating the CSLB discipline system and procedures, making his 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. This monitoring duty also includes improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and includes the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, and the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

As required by statute, the Monitor submitted an initial written report of his findings and conclusions to the CSLB, DCA, and the Legislature. A summary of concerns is tied to the CSLB Enforcement System's: 1) work quantity; 2) cost-efficiency; 3) work consistency; and 4) work quality.

These findings and recommendations relate to CSLB's management structure and information system, inadequate resources, licensing system, complaint handling, investigations, prosecutions, public disclosure and outreach, and consumer remedies.

The Monitor has made 33 recommendations in total. Some of these include:

- Revising the CSLB statutory mandate
- Increasing license fees
- Filling enforcement management positions and rebuilding the enforcement organizational structure
- Reallocating field resources
- Reporting annual statistics consistently

- Requiring fingerprinting and criminal history verification
- Improving and fully computerizing the internal alert system
- Expanding early resolution and mediation efforts
- Increasing peace officer staff and enforcement representative staff
- Restoring sufficient office facilities for investigators
- Updating workload standards for investigators
- Improving prosecution of key aspects of contractor fraud and abuse
- Conducting a study of the present pattern of disciplinary bonds and initiating necessary action
- Improving public disclosure of complaints against contractors
- Simplifying the CSLB website
- Increasing the contractor's license bond amount and revising bonding and/or payment requirements for home improvement projects
- Promoting consumer enforcement of legal limits on excess down payments

The CSLB, by unanimous vote, supported the Monitor's recommendations and created a plan to address and/or implement these recommendations (see CURRENT REVIEW).

Additionally, the CSLB has compiled a written response to each of the Recommendations of the Enforcement Monitor. This document is provided in the Members' binders.

The term of the Enforcement Monitor will continue through January 2003. The initial report includes many recommendations, but the Monitor will continue to review the CSLB's enforcement program and provide both additional recommendation as well as refinements of the present recommendations. Some of the items subject to review are listed below:

- Consumer remedies: recovery fund proposals, bond requirement alternatives and mechanic's lien issues, general liability insurance and workers compensation insurance issues, and service and repair contracts
- Home improvement contractor certification program, contractor education, and proposals for continuing education or training requirements
- Registration program for home improvement salespersons
- Various aspects of CSLB investigations, arbitration, and prosecutions

STUDIES CONDUCTED BY **THE CSLB PURSUANT TO SB 2029**

HOME EQUITY FRAUD:

At the last review, the JLSRC found that home equity lending fraud presents a serious consumer protection challenge in the home improvement industry. It is a growing problem for consumers who are among the most vulnerable. Fraudulent practices by lenders and home improvement contractors that result in lien-contracts secured by homes are particularly harmful to the elderly

and the poor. Often, these contracts, which allow contractors to take a security interest in a home, are jointly executed by financial institutions that use non-judicial foreclosure methods to take possession of a home or to leverage consumers into loans with high interest rates, fees, and unmanageable payments.

During the last review, the Board indicated that it did not know the extent to which consumers are harmed by contractors or salespersons that use retail installment home improvement contracts that create a security interest on property. Further, the Board indicated that it is difficult to track because of the number of agencies that have jurisdiction in this area. As stated by the Department, however, despite the number of agencies involved, home equity lending fraud is still a serious consumer protection issue. Those who have been involved in this problem, and who pursue civil litigation for homeowners assert that registered salespersons need to be regulated by the Board more aggressively, since they are so closely connected to the contractor who is involved in the home improvement business. The Board needs to provide better training to its investigators in dealing with fraudulent practices by contractors and their salespersons.

SB 2029 required the Board to conduct a comprehensive study of the issues surrounding home improvement contracts that involve home equity lending fraud and scams, and provide recommendations to deal with this problem.

“Home Equity Fraud and the Role of the Contractors State License Board” produced by the CSLB provides background information on home equity scams and predatory lending and recommendations for addressing problems surrounding this issue. According to the Board, a majority of the 27,000 consumer complaints filed with CSLB every year are attributable to home improvement construction projects – the most egregious of these complaints involve scams which involve the financing of repairs through a home-equity based loan. The Board report describes the numerous public and consumer agencies and organizations that are involved in aspects of home equity fraud and lists the laws that govern such activity. These fraudulent activities are typically defined as fiscal issues because of the threat to the mortgage and the loss of money involved.

CSLB describes its role in home equity fraud:

Many home equity fraud schemes involve loans used to fund home improvements services. But not all of these schemes involve the CSLB. Complaints to the CSLB are normally triggered by problems with the home improvement itself, usually poor workmanship, delay and abandonment. Unless there is a problem with the work itself, the CSLB does not usually become involved...the way the consumers pay for the work is not necessarily relevant to the CSLB. However, when investigating a complaint, the CSLB may find evidence of home equity fraud scams and will take disciplinary or criminal action. And although CSLB does not have jurisdiction over unconscionable loan provisions, the CSLB can assist in the prosecution of mortgage brokers and lenders when charges involve a pattern of doing business.

The Board reports that it is aggressively reaching out to the public through contacts with organizations such as AARP and issuing press releases regarding current scams in progress and

about dealing with contractors and contract rights. Teaming up with local law enforcement and AARP, the CSLB has held Senior Scam Stopper Seminars throughout the state to discuss home improvement scams. A Consumer Advisory Council was also formed by the CSLB to advise on ways to bring important information like this to communities.

Recommendations from the Board include:

- 1) Identify and document home equity fraud incidents in the course of CSLB field investigations.
- 2) Promote interagency communication: The Board urges the Governor and Legislature to convene a task force on the subject and name a lead agency to explore the issues.
- 3) Fund CSLB forensic auditors: CSLB is in need of forensic auditors to thoroughly investigate cases of complex illegal construction and to provide court-ready fiscal documentation of contractor fraud in all forms.
- 4) Check home improvement salespersons for criminal backgrounds.
- 5) Increase public information and outreach on the subject of home equity fraud.

ENFORCEMENT REENGINEERING PROJECT ASSESSMENT:

In 1998, the Board undertook an extensive plan to centralize its operations, called “re-engineering. During the last review, the Joint Committee was concerned with the Board’s reengineering proposal which included closing many field offices throughout the state, relocating staff, and redesigning workflow to facilitate this centralization. It was unclear whether this project would actually improve the quality and consistency of complaint handling and investigation of cases, reduce time frames for each. Additionally, the JLSRC questioned what impact this would have on consumer and industry access to Board staff.

SB 2029 required a comprehensive review of the CSLB Enforcement Program reorganization (“reengineering”) plan to restructure intake, mediation, and investigation services, and evaluate the impact this effort has had on consumer and industry access to board staff, its ability to reduce timeframes for complaint processing and investigations, increasing mediations, investigations, and legal actions, productivity of staff, and overall costs to the board.

The CSLB contracted with New Point Group to conduct an assessment of their Enforcement Program Organizational Restructuring and Reengineering Project (Project). The report, “Reengineering Project Assessment: Toward Rebuilding the Enforcement Program,” documents findings and conclusions regarding the impacts that the Project had on: consumer and industry access to Board staff, productivity of staff, number of mediations, investigations, and legal actions, timeframes for complaint processing and investigations, costs to the board, levels of customer satisfaction with the CSLB complaint handling services, levels of consistency, standardization, and quality in complaint processing and investigation, internal communications,

technology infrastructure, turnover of staff and staff morale. Overall, the assessment shows that the Reengineering Project had significant adverse impacts on the Enforcement Program's organizational and operational capabilities and significantly reduced the level of consumer satisfaction with the Board's complaint handling services. The changes did not ultimately improve the quality and consistency of complaint handling and investigation of cases or reduce time frames for each, as intended.

The study found that a number of problems arose due to the Project:

- Staff attrition accelerated sharply and the Enforcement Program's vacancy rate tripled;
- Board staff availability and access to both consumers and contractors diminished considerably;
- Overall production capability decreased;
- The number of complaints closed decreased;
- Complaint backlog increased as did the amount of time needed for processing and handling complaints;
- Excessive and unrealistic workload demands were made of Enforcement Program staff; and
- Staff morale was adversely impacted.

The New Point Group proposed recommendations and strategies for rebuilding the Enforcement Program. These included:

- rebuilding of the Enforcement Program's upper management,
- re-opening of investigation centers,
- addition of supervisory positions in specified areas.

The Board unanimously voted to support all of the consultant's recommendations and began taking steps to implement them. Thus, CSLB management is actively addressing the most critical problems it experienced as a result of implementation of the Re-engineering Project – see CURRENT REVIEW below. Please also see the recommendations of the Enforcement Monitor.

STATE RECOVERY FUNDS:

The JLSRC found that current forms of restitution provided to consumers for financial injury, suffered as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts, are inadequate.

SB 2029 required that a comprehensive study and review be conducted of recovery fund programs in California and other states which provide compensation to consumers for financial injury caused by a licensed professional. The study should evaluate the effectiveness of these programs and whether such a recovery fund could benefit consumers who are harmed as a result of contractor fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts.

The CSLB studied and analyzed various recovery funds in California as well as contractor recovery fund programs in other states. Each of the funds studied displayed some form of difficulty. According to the Board, the effectiveness of any recovery fund must be evaluated from two often opposing perspectives, that of the fund and that of the consumer. The fund's challenge is to stay solvent and the consumer's challenge is to receive appropriate financial compensation for damages.

When a recovery fund is established, it naturally increases consumers' expectations of State protection and decreases consumers' incentive for diligence. Therefore, a non-functioning or insolvent recovery fund would give consumers the illusion of protection and may actually be more harmful than no fund at all. The conclusion reached by the CSLB was that consumers would not be better off with a contractor recovery fund based on any of the studied programs. However, the concept for establishing a contractor recovery fund is planned for further review by Enforcement Monitor (see CONTINUED ROLE OF THE MONITOR).

SURETY BONDS:

The JLSRC found the \$7,500 bond is inadequate and often unavailable to consumers. Additionally, because the existing mechanic's lien law system allows subcontractors, materials suppliers, and laborers who have not been paid by a general contractor to file a claim against the property upon which they have worked, an individual homeowner may end up paying for the illegal actions or poor business practices of a general contractor. Consequently, a homeowner who may have fulfilled his/her obligation by paying a general contractor for work done still may be liable for claims by subcontractors, suppliers, and laborers if the general contractor fails to pay them. Thus, existing law essentially makes the homeowner the guarantor for the general contractor. Clearly, the existing system, which was intended to protect the interests of subcontractors, inappropriately transfers liability from a general contractor to a homeowner.

SB 2029 required that a comprehensive study be conducted in consultation with the Department of Insurance, on the use of surety bonds to compensate homeowners for financial injury sustained as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts. This study was to include consideration of the payout criteria of bonds, increasing the bond amount; a "step-

bonding" approach based on the amount of the prime contract, and the requirement of performance or payment bonds. This study was to additionally consider whether to require contractors to carry general liability insurance and whether to establish a guarantee program in order to provide the appropriate insurance and bond coverage in connection with a homeowner's employment of a contractor.

“Using Surety Bonds and Insurance to Protect Consumers” produced by the CSLB explores many of the issues surrounding bonds, including surety bonds, performance and payment bonds, payment bonds, blanket bonds, joint control accounts, contractors license bonds, and general liability insurance.

It must be noted that for the past few months, the California Law Revision Commission (CLRC) had plans to recommend a sweeping new mandatory payment bond approach to lien prevention. Because such a proposal would significantly affect the overall bond market, the CSLB indicated that would await the outcome of the CLRC study before recommending any comprehensive bond reform or solutions. As of November 30, 2001, the CLRC is proposing mechanics’ lien solution that does not rely on bonds. The Board plans to take up bond reform and solutions next year. The CSLB has convened a Task Force to further review and study these issues and prioritized each. The CSLB is to work with the Enforcement Monitor, the insurance industry, and the construction industry to develop specific recommendations.

COMPLAINT DISCLOSURE:

The JLSRC recommended that the Board re-examine its disclosure policy because 1) the increase in the use of technology now available to provide instant access to information, and 2) consumers complain that they are misled by information provided by the Board concerning the status of a contractor's license. The Joint Committee was particularly concerned that CSLB's statement on its websites and through its telephone systems that a contractor’s licensee is in “good standing” is no guarantee that there are not a number of outstanding complaints against the contractor, or that the contractor is not under investigation or that the contractor does not have past civil judgments or criminal actions against the licensee. Without such information, consumers are unable to make informed decisions about hiring a contractor.

SB 2029 required the CSLB to review its current disclosure policy and provide recommended changes.

In response to the JLSRC direction, the CSLB convened a Complaint Disclosure Task Force and reviewed the current complaint disclosure system and its weaknesses, focusing on the two main policy issues that underlie the Board's present complaint disclosure system. First, the Board's inability to disclose complaints until they are referred for legal action. Second, once legal action has been taken, the length of time complaint information is made available to the public. The Task Force recommended action in both areas.

The CSLB crafted language after many meetings with industry representatives and consumers and sponsored SB 135 (Figueroa) in an attempt to address the lack of consumer protection in their complaint disclosure policy.

SB 135 (Figueroa, Chapter 494, Statutes of 2001), requires the CSLB to disclose to the public the date, nature, and status of complaints on file against a licensee that do either of the following: a) have been referred for accusation; or b) have been referred for investigation after a determination by board enforcement staff that a probable violation has occurred, and have been reviewed by a supervisor, and regard allegations that, if proven, would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution.

The bill also specifies that disclosure of legal actions against a contractor will be limited to the following: a) citations from the date of issuance and for five years after compliance; b) accusations resulting in license suspension or revocation for seven years after settlement and commencing on the filing date of the accusation; and c) revocations that are not stayed will be disclosed indefinitely.

The Governor signed the bill on October 4th of this year. The CSLB plans to have the new disclosure policy substantially implemented by July 1, 2002.

CURRENT REVIEW & LOOKING TOWARDS THE FUTURE

The CSLB has updated its strategic plan and continues to address several issues identified during its last review. Additional steps taken by the Board include the:

- Appointment of a new Registrar and creation of a new management team.
- Establishment of a Consumer Advisory Council
- Adoption a functional organizational structure for the Enforcement Program and movement towards rebuilding that structure
- Filling of key enforcement staff positions, including a new Chief of Enforcement
- Request for resources to re-open field offices that had been closed, increase enforcement supervisor positions, and address the Enforcement Program's structural funding deficiencies
- Formation of units to address organizational needs for improved training and more proactive enforcement
- Improvements in meeting licensing time frame guidelines
- New occupational analyses and testing material
- Increased efforts at sweep and sting operations
- Creating beneficial public education materials
- Updating the CSLB website

As indicated previously, the CSLB supports the Monitor's recommendations and has a plan to address and implement these recommendations. Out of the 33 recommendations made by the Monitor, 19 can be implemented without additional funding. Others require a budget change proposal (BCP) along with a necessary fee increase.

Through strategic planning sessions, the CSLB has mapped out a course of action for addressing issues this year and in the years to come. CSLB has set specific goals, objectives, and target dates for enforcement, licensing, remedies and regulations, communication and education of consumers and contractors, and organizational development.

The CSLB has indicated a number of changes it wants to make this year through legislation. These include: the fingerprinting of new applicants, a change in CSLB's mandate, a consistent statistical reporting requirement, and a 10% fee increase to fund necessary changes to the enforcement program.

OBSTACLES TO OVERCOME

The JLSRC has asked that the Board address the following items and the impact each has on CSLB strategic plan:

- 1) Critical Resource Needs – Filling key enforcement management positions, rebuilding the Enforcement organizational structure and reallocating resources to better reflect the pattern of demand for consumer services.
- 2) Fund condition – The Board has indicated that is spending \$3 million dollars less than its prior year's expenditure patterns. Reserves are under six-month level right now and are forecasted to continue to steadily decrease. Without additional funding the CSLB will not be able to implement legislative mandates.
- 3) Hiring freeze – The CSLB is submitting exemptions to the hiring freeze. Without such approvals, the Board will be unable to fill positions that are critical to the forward movement and rebuilding of the Board, and will be unable to implement the Enforcement Monitor's recommendations.

CONCLUSION

As outlined by the Enforcement Monitor, the Contractors State License Board has been studied for over 30 years and all of these studies have shown consistent findings and indicate similar concerns. It is the position of the JLSRC, the Monitor, and the CSLB that now is the time to act. The groundwork has been laid; a path to improvement has been mapped; substantial change has occurred, is occurring, and will continue to do so, with the continued support of the Board, the Legislature, the Department of Consumer Affairs, and the Administration.

2.

FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

The Following Recommendations were Adopted by the Joint Legislative Sunset Review Committee on May 1, 2002 by a Vote of 6 to 0:

ISSUE #1. (CONTINUE THE CONTRACTORS' STATE LICENSE BOARD?) Should the profession be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: *The Joint Committee recommends the continuation of the Contractors' State License Board for four years.*

Comments: The CSLB was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) two years ago (1999-2000). The JLSRC and the DCA identified a number of issues and problem areas concerning this Board. There was general dissatisfaction with the lack of efforts by CSLB to address major issues as identified during its previous review, and concern about whether this Board will adequately protect consumers in the future.

Because of these concerns, the JLSRC recommended continuing the Contractors' State License Board for only two years. In addition to extending the existence of the CSLB, SB 2029 (Figueroa), Chapter 1005, Statutes of 2000, added two additional public members to the composition of the CSLB, required all home improvement contracts and estimates for home improvement work to include whether or not a contractor carries general liability insurance, and required CSLB to adopt a checklist of items that a homeowner contracting for home improvement should consider. Additionally, SB 2029 required the appointment of a CSLB Enforcement Program Monitor and the CSLB was required to perform several comprehensive studies and reviews and report to DCA and the Legislature.

As a result of the Joint Committee's recommendations, the Contractors' State License Board has made significant changes to the way it does business. The CSLB should be commended for the great strides it has made since its last review.

ISSUE #2. (AMEND THE CONTRACTORS' STATE LICENSE BOARD MANDATE?) Should the CSLB statutory mandate be amended to reflect that consumer protection is paramount?

Recommendation #2: *The Joint Committee recommends that Business and Professions Code Section 7000 be amended to state clearly that consumer protection is the first priority of CSLB.*

Comments: Consumer protection is the essential purpose of all California's occupational licensure boards and bureaus. However, CSLB's statutory scheme does not establish clearly that protecting consumers is the agency's primary mission. The absence of a clear statutory mandate can lead to inconsistencies in agency policy over time and may also contribute to inaccurate judicial interpretations of CSLB's statutes.

The Medical Board (Business and Professions Code section 2229(a) and (c)) has a similar mandate.

ISSUE #3. (REQUIRE CONSISTENT ANNUAL STATISTICAL REPORTING BY THE CSLB ENFORCEMENT PROGRAM?) Should a new statutory mandate for consistent annual reporting by CSLB be implemented?

Recommendation #3: *The Joint Committee recommends the required annually reporting of various performance indicators reflecting CSLB's complaint handling, arbitration and mediation, investigations, and prosecutions of all kinds.*

Comments: The Enforcement Monitor reports that the greatest single difficulty for the project and the Legislature in evaluating CSLB's enforcement program is the absence of a consistent set of annual performance statistics. Much data is accumulated by CSLB, and much has been reported in the sunset review process and elsewhere, but reliable and consistent statistics on even basic work outputs (such as license revocations or accusations filed) are often unavailable, or unavailable without extraordinary effort. Substantial variations in the definitions and categories used for the enforcement program data accumulated over the years make meaningful comparisons over time very difficult.

Once a baseline of performance data is established, and consistent annual reports are generated using the same reporting parameters, the Legislature and the Department will have the ability to perform meaningful evaluations of CSLB's enforcement program.

ISSUE #4. (AUGMENT LICENSING FEES?) Should the Board's licensing scheme be modified to protect the public through the enhancement of the enforcement program?

Recommendation #4: *The Joint Committee recommends an augmentation in licensing fees to improve the Board's enforcement program.*

Comments: An outdated license fee structure means CSLB resources are inadequate to meet the Legislature's and public's demand for service improvement. CSLB is funded almost exclusively by contractor license fees, and those fees were last adjusted effective January 1, 1994. Service and work requirements associated with regulating each licensee have remained relatively constant since 1994, while the number of licensees and citizens using construction services has increased significantly. Under these circumstances, CSLB has experienced a substantial reduction in *inflation-adjusted* per licensee funding, roughly equal to the 21.2% increase in the California Consumer Price Index in the past eight years. If \$300 was an appropriate license renewal fee in 1994, it is roughly 21% less appropriate today.

Even without this apparent reduction in inflation-adjusted resources, the California Legislature and public now demand from CSLB increased levels of service speed and service quality. The Legislature has established a statutory goal of six months for the full investigation and handling of most CSLB complaints, and one year for the most complex fraud matters. CSLB has never consistently met such a stringent service standard at its current resource level, and the agency cannot do so today.

Unless a fee increase is enacted in 2002 (to become effective on January 1, 2003), CSLB's 2002-03 reserve fund will dip to 2.9 months of operating expenses, and its 2003-04 reserve fund level will decline to only 1.5 months of operating expenses.

The Monitor has proposed an approximate 20% increase in CSLB license fees to restore CSLB budget and enforcement resources to 1994 per capita levels and to ensure a sufficient reserve fund.

ISSUE #5. (MODIFY THE THREE-MONTH FUND RESERVE LIMIT?) Should the current requirement that the Board maintain a reserve balance equal to only three months of estimated annual authorized expenditure be increased to at least six months?

Recommendation #5: *The Joint Committee recommends that the Board should be authorized to maintain up to a six-month reserve to ensure an adequate reserve fund.*

Comments: The CSLB believes it needs some flexibility in its reserve fund total. The Board is currently required to maintain a reserve fund of no more than three months' worth of operating expenses; a higher reserve fund theoretically triggers a required fee reduction or rebate. The CSLB seeks to raise its reserve fund level to approximately six months' worth of operating expenses. This would provide stability in fee levels and prevent the Board from repeatedly having to adjust its fees through the time-consuming rulemaking process due to circumstances beyond its control. For example, the state recently borrowed \$5 million from CSLB's reserve fund to assist it in addressing the general fund deficit. If that \$5 million is repaid in one lump sum, it is likely to bump the reserve fund over the existing three-month level, thus requiring a refund or fee reduction. CSLB's proposal to increase the three-month threshold to six months is identical to a provision in SB 133 (Figueroa) (Chapter 718, Statutes of 2001) which adjusted the Board of Accountancy's reserve fund from three to six months.

ISSUE #6. (ALLOW FINGERPRINTING, CRIMINAL BACKGROUND CHECKS, AND EXPERIENCE VERIFICATION?) Should the Board be authorized to require fingerprinting and verify experience prior to issuing new licenses?

Recommendation #6: *The Joint Committee recommends the CSLB should require fingerprinting and criminal history and experience verification prior to issuing new licenses.*

Comments on Criminal History Verification: For many years, CSLB has been authorized to deny and to discipline a licensee for conviction of a crime that is substantially related to the qualifications, functions, or duties of a contractor. For just as many years, CSLB’s application form has requested information on prior criminal convictions. When applicants report prior convictions, a substantial body of existing law guides CSLB in determining the appropriate course of action. Section 868, Title 16 of the California Code of Regulations (CCR), sets forth an illustrative list of crimes the conviction of which is deemed to be “substantially related” to the qualifications, functions, and duties of a contractor. Even if a contractor has committed one of the crimes enumerated in section 868, section 869 defines numerous criteria which — if satisfied — may demonstrate that a person with a criminal conviction has rehabilitated him/herself and is presently eligible for a license. And section 870 sets forth the earliest date(s) at which a contractor whose license has been revoked (including revocation for a substantially related criminal conviction) may reapply for licensure.

Over the past many years in which this regulatory scheme has existed to guide CSLB discretion regarding the use of criminal conviction information, many applicants have truthfully reported prior convictions on their application forms. CSLB staff report that very few applications have been denied due to the convictions reported.

Unfortunately, other applicants have lied about their prior criminal history, and CSLB currently has no way of detecting these lies because it lacks the authority to require fingerprints of its license applicants. Some of these applicants have gone on to become licensees who have perpetrated massive frauds against the public. In his Initial Report, the Monitor discussed the Crown Builders matter in San Diego — the latest in what prosecutors say is a long line of cases in which a CSLB licensure applicant lied on his application about his criminal history, was given a contractor’s license by an unsuspecting CSLB, defrauded numerous families of substantial amounts of money, and disappeared.

As a consumer protection agency charged with protecting the public, CSLB 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.

A fingerprinting requirement will 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 and finally enable CSLB to detect the liars.* And it may deter individuals who would pose

a substantial threat to the public from applying for a license. Such a 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.

Comments on 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. Although CSLB has no education requirement, completion of certain types of education can substitute for experience in certain circumstances. 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.

The Monitor suggests that CSLB improve its system of experience investigation and verification for license applications. At its January 24, 2002 meeting, the Board approved a proposal to sponsor legislation that will assist its experience verification process. The proposal would amend Unemployment Insurance Code section 1095 to allow CSLB to access the records of the Employment Development Department (EDD) to verify the experience claimed for licensure. Existing section 1095 includes a long list of governmental agencies that may already access EDD’s records, including various local, county, state welfare programs, child support enforcement agencies, pension administrators, agencies seeking those who have defaulted on student loans, public employee retirement entities, and law enforcement agencies. A proposed change to section 1095 would add CSLB to the list of agencies authorized to access EDD employment information, enabling it to more efficiently and effectively investigate and verify experience claimed on licensure applications.