

DECEMBER 10, 2015  
BRISBANE, CALIFORNIA

CONTRACTORS STATE LICENSE BOARD

# Board Meeting







# CONTRACTORS STATE LICENSE BOARD

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Thursday, December 10, 2015  
1:30 p.m. – 6:30 p.m.  
Doubletree by Hilton  
5000 Sierra Point Parkway, Brisbane, CA 94005**

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# AGENDA ITEM A

## Call to Order – Roll Call and Establishment of Quorum

Roll is called by the Board Chair or, in his/her absence, by the Board Vice Chair or, in his/her absence, by a Board member designated by the Board Chair.

Eight members constitute a quorum at a CSLB Board meeting, per Business and Professions Code section 7007.

### Board Member Roster

KEVIN J. ALBANESE

ROBERT LAMB

AGUSTIN BELTRAN

ED LANG

LINDA CLIFFORD

MARLO RICHARDSON

DAVID DE LA TORRE

FRANK SCHETTER

DAVID DIAS

PAUL SCHIFINO

SUSAN GRANZELLA

JOHNNY SIMPSON

JOAN HANCOCK

NANCY SPRINGER

PASTOR HERRERA JR.







## AGENDA ITEM B

### Board Chair's Introduction

The Board Chair will review the scheduled Board actions and make appropriate announcements.

Board members may not discuss or take action on issues not on the agenda.





### **80<sup>th</sup> Anniversary of First CSLB Public Board Meeting**

November 2015 marks an important milestone in this Board's rich history. On November 18, 1935, CSLB held its first public Board meeting.

Established six years earlier, on August 14, 1929, as the Contractors' License Bureau, the Bureau was housed under the then Department of Professional and Vocational Standards, which had full control over the regulation of contractors. The Director of the Department, William G. Bonelli, a political appointee, became the first Registrar of Contractors. He served both as Department Director and Registrar, and held License No. 1.

On September 15, 1935, a new law took effect that established a more independent Board to regulate the state's construction industry. At the same time, in order to determine the representation of Board members, the Legislature defined the three categories of contractors still in use today:

- General Engineering Contractor
- General Building Contractor
- Specialty Contractor

The law called for a seven member board, consisting of one General Engineering Contractor, three General Building Contractors, and three Specialty Contractors.

At its first meeting, the Board appointed Mr. Bonelli as Registrar of Contractors, a formality since he already served in that position for the Contractors' License Bureau. Mr. Bonelli resigned as Registrar three months later. It was the last time someone simultaneously held both the Director and Registrar positions. Board members spent much of the first meeting discussing the preparation of license application forms.

The Board held seven public meetings during its first year of existence, and lay the groundwork for licensing exams, which began in 1939.

1. November 18, 1935 – Sacramento
2. February 25, 1936 - Sacramento
3. April 14, 1936 – Los Angeles
4. July 24, 1936 – San Francisco
5. August 14, 1936 – Long Beach
6. September 25-26, 1936 – Santa Barbara
7. October 30, 1936 – Oakland

The Board salutes its founding members on this important anniversary, and is proud to present on the following pages a copy of the minutes from CSLB's first public meeting.



MINUTES OF THE FIRST MEETING CONDUCTED BY  
CONTRACTORS' STATE LICENSE BOARD  
OF CALIFORNIA

Held at  
Sacramento, California  
November 18, 1935

-----  
In accordance with Subdivision (c) of Section 4 of the  
Contractors' License Law:

The first meeting of the Contractors' State License  
Board of California was called to order by Mr. William G. Bo-  
nelli, Director of the Department of Professional and Vocational  
Standards, at 10:30 A. M., November 18, 1935, in the State Of-  
fice Building, Sacramento, California.

All members of the Board were present as follows:

Warren A. Bechtel, Jr.	(Engineering Contractor)
Ralph E. Homann	(General Building Contractor)
Hugh McNulty	(General Building Contractor)
S. G. Johnson	(General Building Contractor)
Stephen L. Ford	(Plastering Contractor)
William Nies	(Plumbing Contractor)
Roy M. Butcher	(Electrical Contractor)

The following were also present:

William G. Bonelli, Director, Department of Professional  
and Vocational Standards  
 Fred A. Taylor, Assistant Director, Department of Pro-  
fessional and Vocational Standards  
 Glen V. Slater, Assistant Registrar of Contractors  
 Floyd C. Booe, Secretary-Manager, Associated General Con-  
tractors of America, Northern California Chapter.

-----  
The members of the Board discussed informally with Mr.  
Bonelli, Mr. Slater and Mr. Taylor the procedure of the Contractors'



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License Bureau, the various forms used by the Bureau, duties of the Board members, and general routine matters pertaining to the operation of the Bureau.

It was moved by Mr. Howann and seconded by Mr. McHultry that Warren A. Bechtel be nominated for Chairman of the Board. There being no further nominations, Mr. Bechtel was unanimously elected Chairman of the Board.

It was moved by Mr. Ford and seconded by Mr. Nies that Ralph E. Howann be nominated for Vice-Chairman of the Board. There being no further nominations, Mr. Howann was unanimously elected Vice-Chairman of the Board.

At this time Mr. Bechtel took the chair and presided over the meeting, and expressed his thanks and appreciation to the Board.

It was moved by Mr. Johnson and seconded by Mr. Butcher that a special committee be appointed to prepare application forms to be submitted for the approval of the Board at the next meeting of the Board, and that the Registrar of Contractors be directed meanwhile to withhold the issuance of a license to any applicant, unless the requirements of the new Contractors' License Law of California are fulfilled in all particulars. This motion was unanimously carried.

Thereupon, Chairman Bechtel appointed S. G. Johnson a committee of one to prepare said application forms for the approval of the Board at its next meeting.



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It was moved by Mr. Nies and seconded by Mr. McNulty that a recess be taken for luncheon from 12:30 P. M. to 2:00 P. M. This motion was unanimously carried.

-----  
AFTERNOON SESSION - 2:00 P.M.  
-----

The meeting was called to order at 2:00 P. M. by Chairman Bechtel. All members of the Board were present, and Mr. Bonelli, Mr. Taylor, Mr. Slater and Mr. Boos were also in attendance.

-----  
At this time Mr. M. G. Jorgenson, President of the newly appointed Structural Pest Control Board, was introduced to the members of the Board by Mr. Bonelli. Mr. Jorgenson addressed the Board, stating that it was the desire of the Structural Pest Control Board to cooperate with the Contractors' State License Board in any way possible.

-----  
It was moved by Mr. Homann and seconded by Mr. McNulty that the following committees be appointed:

Rules and Procedure Committee: S. G. Johnson, Chairman;  
Hugh McNulty, William Nies.

Finance and Budget Committee: William Nies, Chairman;  
Hugh McNulty, Ralph E. Homann.

Personnel Committee: Ralph E. Homann, Chairman; Stephen L. Ford, Roy M. Butcher.

This motion was unanimously carried, and the above mentioned temporary standing committees were announced by Chairman Bechtel.

-----  
It was moved by Mr. Nies and seconded by Mr. Ford that William G. Bonelli be appointed as Registrar of Contractors to



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function as Executive Secretary of the Board and carry out all of the administrative duties provided for in the act creating the Contractors' License Law, and as delegated to him by the Board. The compensation for said Registrar of Contractors shall be \$400.00 per month. This motion was unanimously carried.

It was moved by Mr. Homann and seconded by Mr. Butcher that the committees appointed be directed to proceed promptly with the work assigned to them, and if possible have their reports ready for the next meeting of the Board, and further that the committees keep the Registrar and the Chairman informed as to their progress. The usual expenses as provided by law shall be allowed the committees while on official business. This motion was unanimously carried.

At this time it became necessary that Chairman Sechtel leave the meeting; therefore, Mr. Homann, Vice-Chairman took the chair.

The Board again discussed informally various routine matters pertaining to the Contractors' License Bureau.

It was moved by Mr. Kies and seconded by Mr. Ford that the meeting be adjourned, to reconvene subject to call of the Chairman. This motion was unanimously carried.

The meeting was adjourned at 5:00 P. M.

Reported by:

Edith Ebeling  
417 State Office Building  
Sacramento, California

## AGENDA ITEM C

# Public Comment Session - Items Not on the Agenda

(Note: Individuals may appear before the CSLB to discuss items not on the agenda; however, the CSLB can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)). Public comments will be taken on agenda items at the time the item is heard and prior to the CSLB taking any action on said items. Total time allocated for public comment may be limited at the discretion of the Board Chair.

### BOARD AND COMMITTEE MEETING PROCEDURES

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

- (1) If, during a Board meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person shall be requested to refrain from making such comments.
- (2) If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action:
  - (a) The Board may designate either its Registrar or a board employee to review whether the proper procedure or protocol was followed and to report back to the Board once the matter is no longer pending; or,
  - (b) If the matter involves complaints against the Registrar, once the matter is final or no longer pending, the Board may proceed to hear the complaint in accordance with the process and procedures set forth in Government Code section 11126(a).
- (3) If a person becomes disruptive at the Board meeting, the Chair will request that the person leave the meeting or be removed if the person refuses to cease the disruptive behavior.







# AGENDA ITEM D

## Executive





## AGENDA ITEM D-1

# Review and Possible Approval of September 3, 2015 Board Meeting Minutes





# CONTRACTORS STATE LICENSE BOARD

## BOARD MEETING MINUTES

### **A. CALL TO ORDER – ESTABLISHMENT OF QUORUM**

Board Chair Ed Lang called the meeting of the Contractors State License Board (CSLB) to order at 10:30 a.m. on Thursday, September 3, 2015, in the Monterey Room at the Embassy Suites Hotel, 601 Pacific Highway, San Diego, CA 92101. A quorum was established. Board Secretary Linda Clifford led the Board in the Pledge of Allegiance.

#### Board Members Present

Ed Lang, Chair	Frank Schetter
Agustin Beltran, Vice Chair	Joan Hancock
Linda Clifford, Secretary	David Dias
Susan Granzella	Marlo Richardson
David De La Torre	Nancy Springer
Kevin J. Albanese	Pastor Herrera Jr.
Bob Lamb	Johnny Simpson

#### Board Members Excused

Paul Schifino

#### CSLB Staff Present

Cindi Christenson, Registrar	David Fogt, Chief of Enforcement
Rick Lopes, Chief of Public Affairs	Ashley Caldwell, Information Officer
Karen Ollinger, Chief of Licensing	Erin Echard, Executive Office
Laura Zuniga, Chief of Legislation	Kristy Schieldge, Legal Counsel
Cindy Kanemoto, Chief Deputy Registrar	

#### Public Visitors

Alex Beltran	Bridget Gramme
Jesus Fernandez	Jody Costello
Ken Grossbart	Eric Crandall
Tana Lepule	Brian and Jen Mahoney
Pamela Galband	Tana Lepule

### **B. CHAIR'S INTRODUCTORY REMARKS**

Board Chair Ed Lang welcomed the Board.

### **C. PUBLIC COMMENT SESSION – ITEMS NOT ON THE AGENDA**

Pamela Galband, a consumer who had an unfortunate experience with a contractor, volunteered to support legislation that would mandate greater public disclosure of complaints.



**D. EXECUTIVE**

**1. Registrar’s Report**

- Registrar Cindi Christenson attended the NASCLA (National Association of State Contractor Licensing Association) Annual Conference and reported that a number of Western states plan to begin partnerships. This collaboration also may include reciprocity for contractor license examinations.
- The first stakeholder meeting regarding SB 465 will be held September 30, 2015, in Sacramento.
- Legal Counsel Kristy Schieldge will lead a Committee Chair training for Board members on Monday October 5, 2015, at the Department of Consumer Affairs.
- The Board will hold a CSLB Overview Training at the December 10, 2015, Board Meeting in the Bay Area.
- CSLB may be welcoming the Arizona Registrar of Contractors (AZ ROC) to the annual joint meeting with the Nevada State Contractors board (NSCB) in June, 2016.

**2. Review and Possible Approval of July 29, 2015 Board Meeting Minutes**

**MOTION:** Approve July 29, 2015 Board Meeting Minutes. Bob Lamb moved; Agustin Beltran seconded. The motion carried unanimously, 14–0.

<b>NAME</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Eddie Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino				X	
Johnny Simpson	X				
Nancy Springer	X				

**3. Administration Update Regarding Personnel and Facilities**

Chief Deputy Registrar Cindy Kanemoto updated the Board on current staff vacancies, which are at the lowest level in recent history. CSLB purchased seven replacement vehicles for offices statewide, which will be delivered sometime in October. The Administrative unit also is in the process of purchasing CSLB's first electric vehicle. Two charging stations are up-and-running at Sacramento headquarters.

**4. Information Technology Update**

Ms. Kanemoto informed the Board about the installation of a new top-of-the-line firewall protection system. The successful E-payment system is now available in Fresno and will soon be available in the San Diego and San Bernardino offices.

**5. Budget Update**

CSLB spent approximately 95 percent of its budget during fiscal year 2014-15.

**6. Strategic Plan 2015-16 Update**

Registrar Cindi Christenson informed the Board that CSLB is on track to meet its current strategic plan objectives and will meet in March 2016 to plan for the next two fiscal years: 2016-17 and 2017-18.

**7. Tentative 2015-16 Board Meeting Schedule**

- December 10, 2015 – Bay Area (with CSLB overview training)
- March 15 and 16, 2016 – San Diego (with strategic planning)
- June 23 and 24, 2016 – Orange County (with NSCB)

**E. PUBLIC AFFAIRS****1. Public Affairs Program Update**

Public Affairs Committee Chair Marlo Richardson informed the Board about the preparation of disaster outreach kits for use by CSLB staff when headed to disaster stricken areas. She also reported that CSLB will host a Saudi Arabian delegation at Sacramento headquarters at the end of September. Representatives from Kenya have also expressed interested in learning about how CSLB regulates the construction industry in California. Public Affairs staff is working to include historical items, such as past board meeting minutes, on the CSLB website.

Public Affairs Chief Rick Lopes updated the Board on media events and the issuance of press releases since the June Board Meeting. A project to post every edition of the *CA Licensed Contractor* newsletter on the website is now complete. Social media statistics continue to grow, and CSLB may also start a LinkedIn account. After successful efforts to curtail web scraping that disrupted the CSLB website, the number of visitors to the site has stabilized. For the first time, CSLB



utilized Periscope, a technology that allows users to broadcast live on the Internet from a cellphone.

**F. LICENSING**

**1. Licensing Program Update**

Chief of Licensing Karen Ollinger provided updates on staffing and licensing units: application workload, limited liability companies, workers’ compensation recertification, criminal background-fingerprinting, licensing information center, experience verification, and judgments.

Public Comment:

Alex Beltran asked the Board to be aware that, often, independent contractors are hired to avoid paying workers compensation.

Jody Costello asked the Board for clarification on penalties for harm done to consumers before licensees proceed through the application process.

**2. Review, Discussion and Possible Action regarding Acceptable Experience Verification Samples per Title 16 California Code of Regulations Section 824**

Applicants for licensure must have a minimum of four (4) years’ work experience within the last 10 years as a journeyman, foreman, supervising employee, or contractor in the classification for which the applicant is applying. All experience must be documented and the Board packet included various samples of acceptable documents for Board Member review.

**MOTION:** Approve Acceptable Experience Verification Samples. Bob Lamb moved; Agustin Beltran seconded. The motion carried, 13–1.

NAME	Aye	Nay	Abstain	Absent	Recusal
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Eddie Lang	X				
Marlo Richardson	X				
Frank Schetter		X			
Paul Schifino				X	



Johnny Simpson	X				
Nancy Springer	X				

**3. Testing Program Update**

Ms. Ollinger provided highlights from both the examination administration and examination development units and reported that the eight test centers administer 46 different exams, all on a five (5) year cycle. The Testing division released two new exams in August 2015: C-6 Cabinet, Millwork and Finish Carpentry and C-51 Structural Steel.

Public Comment:

Pamela Galband asked to receive the Customer Satisfaction Survey after her complaint is closed.

**G. LEGISLATION**

**1. Review, Discussion and Possible Action Regarding SB 119 (Hill)**

SB 119 establishes the California Underground Facilities Safe Excavation Advisory Committee, under the aegis of the Contractors State License Board and composed of excavation industry stakeholders, to coordinate education and outreach efforts, develop standards for best practices, and investigate violations pertaining to the one-call laws.

The Board previously took a “watch” position on SB 119, as the bill was a work-in-progress. Additional amendments are anticipated but will not significantly change the bill. Board members raised concerns regarding the fiscal impact on CSLB. Chief of Legislation Laura Zuniga explained that a special fund, financed through fines normally directed toward the general fund, would support the Safe Excavation Advisory Committee.

**MOTION:** Approve continued “watch” position on SB 119 (Hill). Joan Hancock moved; Kevin J. Albanese seconded. The motion carried unanimously, 14–0.

NAME	Aye	Nay	Abstain	Absent	Recusal
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				





Robert Lamb	X				
Eddie Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino				X	
Johnny Simpson	X				
Nancy Springer	X				

**2. Review, Discussion and Possible Action Regarding SB 467 (Hill)**

SB 467 extends the sunset date for CSLB and the authorization for the appointment of a Registrar from January 1, 2016 to January 1, 2020. It will continue CSLB’s existing structure and allow the implementation of two of CSLB’s suggested statutory changes – eliminating the \$2,500 capital requirement and increasing the required contractor’s bond by \$2,500. CSLB does not verify the existing capital requirement, and believes it offers no additional consumer protection, whereas a corresponding increase in the amount the contractor’s bond will provide an enhanced level of consumer protection.

The Board discussed and requested clarification about the inclusion of the Board of Accountancy in the legislation to extend CSLB’s sunset date and the minimal risk that could result. No action required.

**3. Review, Discussion and Possible Action Regarding SB 560 (Monning)**

This bill will expand the authority of CSLB Enforcement Representatives to issue an unlicensed contractor a written notice to appear in Superior Court for failure to secure workers’ compensation insurance. It will also authorize boards within the Department of Consumer Affairs to share licensee information with the Employment Development Department. The Board approved support of this bill in December 2014, and it is currently on the Senate floor. No action required.

**4. Review, Discussion and Possible Action Regarding SB 561 (Monning)**

The bill would eliminate the requirement that a Home Improvement Salesperson (HIS) separately register to work for each contractor and, instead, allow a properly registered HIS to utilize his/her individual registration with one or more licensed contractors. The Board previously approved support of this bill and it is currently on the Governor’s desk. No action required.

**5. Review and Discussion Regarding Business and Professions Code Section 7031**

Registrar Cindi Christenson reported that Richard Markuson hopes to have the first industry meeting in October 2015.



**H. ENFORCEMENT**

**1. Enforcement Program Update**

Enforcement Committee Chair Kevin J. Albanese commended CSLB staff on their efforts to react quickly to the fire emergencies and to partner with local prosecutors to develop statewide service and repair investigation and prosecution strategies. Chair Albanese also confirmed his support for the CSLB Enforcement Academy training led by Doug Galbraith.

Chief of Enforcement David Fogt presented highlights from the Intake and Mediation Centers, Investigative Centers, Case Management, Statewide Investigative Fraud Team, Public Works Unit, as well as general complaint-handling statistics.

**2. Review, Discussion and Possible Action Regarding a Pilot Program to Encourage Licensure by Reducing Outstanding Unlicensed Activity Civil Penalties**

This pilot program would support CSLB’s efforts to address the underground economy in construction by reaching out to community groups and those who were recently cited for unlicensed contracting and encourage them to attend a workshop to learn about the licensing process and other relevant laws and requirements related to running a legitimate construction business in California.

Legal Counsel Kristy Schiedge clarified that the Registrar must issue a citation when supported by evidence (unless referred to a local prosecutor), and may reduce the resulting civil penalty, but not vacate it entirely.

Public Comment:

Tana Lepule, Executive Director of Empowering Pacific Islander Communities, expressed his enthusiasm for the program and confirmed strong support from community-based organizations.

**MOTION:** Approve Pilot Program to Encourage Licensure by Reducing Outstanding Unlicensed Activity Civil Penalties. Joan Hancock moved; Pastor Herrera Jr. seconded. The motion carried unanimously, 14–0.

NAME	Aye	Nay	Abstain	Absent	Recusal
Kevin J. Albanese	X				
Agustin Beltran	X				
Linda Clifford	X				
David De La Torre	X				
David Dias	X				
Susan Granzella	X				



Joan Hancock	X				
Pastor Herrera Jr.	X				
Robert Lamb	X				
Eddie Lang	X				
Marlo Richardson	X				
Frank Schetter	X				
Paul Schifino				X	
Johnny Simpson	X				
Nancy Springer	X				

**3. Review and Discussion Regarding Strategies to Address Deceptive Solar Practices**

CSLB is addressing the issue of solar industry complaints by educating consumers and contractors, collaborating with industry and government partners, and enforcing existing contracting laws. Solar education and enforcement strategies will be discussed further at the next Enforcement Committee meeting.

Board Member Jonny Simpson offered his expertise to the solar task force.

Public Comment:

Jody Costello, a consumer advocate, asked the Board to be aggressive in its solar outreach efforts.

**I. FUTURE AGENDA ITEMS**

None requested.

**J. ADJOURNMENT**

Board Chair Eddie Lang adjourned the Board meeting at 1:04 p.m.

\_\_\_\_\_  
Eddie Lang, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cindi Christenson, Registrar

\_\_\_\_\_  
Date



## AGENDA ITEM D-2

# Registrar's Report

- a. Update on Stakeholders' Efforts to Seek Legislation to Potentially Amend Business and Professions Code Section 7031
- b. Tentative 2015-2016 Board Meeting Schedule





## AGENDA ITEM D-3

# Strategic Plan 2015-16 Update





# CONTRACTORS STATE LICENSE BOARD

## STRATEGIC PLAN – 2015-16 OBJECTIVES

(E) “Essential”

(I) “Important”

(B) “Beneficial”

ENFORCEMENT OBJECTIVES	TARGET	DESCRIPTION	STATUS
1. Public Works (I)	August 2015	Review and revise memorandum of understanding with the Labor Commissioner’s Office.	A revised MOU has been executed with the Labor Commissioner.
2. Establishment of Government Accounts to Obtain Court Records (I)	October 2015	County criminal records are online, but require establishment of a fee-based account to access them.	In June 2015, DCA approved use of a state credit card to obtain online court records.
3. Refine Proactive Strategies and Objectives (I)	December 2015	Develop a matrix to prioritize proactive response to leads, sweeps, and stings.	A focus group has been convened and a revised matrix has been developed. Proposed prioritization will be reviewed at the December 10, 2015 board meeting.
4. Revision of Enforcement Manual (E)	December 2015	Establish task force to update and improve the existing complaint handling manual.	A task Force has been established and is on track to meet the December 2015 goal.
5. Update Regulation for Assessment of Civil Penalties (I)	December 2015	Revisit penalty guidelines to determine if they have kept up with inflation and consumer protection requirements.	A focus group will be scheduled for December 2015.
6. Solar Industry Schemes (E)	June 2016	Develop outreach, education, and enforcement strategies to address deceptive solar tactics.	Proposed strategies have been developed that included proposed legislation.

LEGISLATIVE OBJECTIVES	TARGET	DESCRIPTION	STATUS
1. Seek Legislation to Authorize Sharing of Licensee Information with the Employment Development Department (E)	July 2015	To address new issue raised by the Department of Consumer Affairs.	Included in SB 560 (Monning, Chapter 389, Statutes of 2015).
2. Prepare Legislative Proposal to Eliminate Capital Requirement for Licensure and Increase Contractor’s Bond by Corresponding Amount (B)	September 2015	To address new issue raised by the Board in the Sunset Review Report; included in SB 467 (Hill).	Included in SB 467 (Hill, Chapter 656, Statutes of 2015).
3. Prepare Draft Proposal to reorganize Contractors State License Law (I)	December 2015	To make the law easier to follow.	First draft completed.
4. Prepare Legislative Proposal to Provide for Comprehensive Rewrite of the Home Improvement Contractor Provisions (B)	December 2015	To address new issue raised by the Board in the Sunset Review Report.	In process.



(E) “Essential”

(I) “Important”

(B) “Beneficial”

5. Seek Amendments to Arbitration Program Statutory Provisions (I)	December 2015	To address the awarding of attorney’s fees as a result of participation in arbitration program.	Postponed – not needed at this time.
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<b>LICENSING &amp; TESTING OBJECTIVES</b>	<b>TARGET</b>	<b>DESCRIPTION</b>	<b>STATUS</b>
1. Research Security Devices for Testing Center and Workshop Conference Room Windows (I)	December 2015	Research and evaluate various security devices that could be installed in test centers and conference rooms.	Completed.
2. Evaluate Testing Centers for Functionality (I)	December 2015	Determine possible improvements to the layout (floor plan, types of cubicles, etc.) of test centers.	Completed
3. Install Surveillance Cameras in Testing Centers (I)	December 2015	The Department of General Services is putting this project out to bid. This will enhance the security at all eight test centers.	The Department of General Services put this project out to bid. DCA is exploring more cost effective options.
4. Develop and apply consistent application experience evaluation criteria (E)	January 2016	Training of all application staff conducted in May 2014 on existing evaluation criteria; task force to be appointed to develop regulation proposal(s) for evaluation criteria.	Experience verification supporting documentation adopted by Board at June 2015 meeting. Currently, fine-tuning criteria and will train application units’ processing staff in December 2015.
5. Develop online smart application package to reduce application rejection rates (I)	January 2016	Currently tied to DCA BreEZe project. Research other options to move forward.	Ongoing work with IT staff.
6. Fully automate bonds and workers’ compensation insurance submission processes (I)	January 2016	Currently tied to DCA BreEZe project. Research other options to move forward.	Ongoing work with IT staff.
7. Implement online licensure tool for credit card payment (B)	January 2016	Currently tied to DCA BreEZe project. Research other options to move forward.	Ongoing work with IT staff.
8. Review Current Reciprocity Agreements (I)	January 2016	Review current agreements with Arizona, Nevada, and Utah; research licensing criteria for other states to determine if reciprocity should/can be expanded.	Ongoing.
9. Determine Feasibility of Tiered General Building “B” Classification (I)	January 2016	Determine if a secondary “B” classification is needed to address contractors who provide home improvement services that do not include structural changes.	Task force researched and developed draft proposal. Licensing Committee discussed C-1 Remodel and Repair classification at October 2015 meeting. Held stakeholder meeting November 2015.

	(E) “Essential”	(I) “Important”	(B) “Beneficial”
10. Research National Contractor Examinations (B)	February 2016	Testing division staff will review and evaluate existing examinations for licensure in the construction field.	Ongoing.
11. Fully Implement SCORE 2.0 (E)	December 2016	The most critical SCORE 2.0 modules will be completed first, with completion date of Fall 2016. SCORE 2.0 will provide enhanced functionality for examination development and administration.	Working on the Proctor and Translator modules.

PUBLIC AFFAIRS OBJECTIVES	TARGET	DESCRIPTION	STATUS
1. Complete Flagship Consumer Publication (E)	July 2015	Continued from 2014-15 Strategic Plan.	Awaiting final approvals of copy.
2. Complete Flagship Contractor Publication (E)	September 2015	Continued from 2014-15 Strategic Plan.	Finalizing copy.
3. Develop Realtor Outreach Program (B)	October 2015	Develop a program to educate realtors, a prime referral source for new homeowners to locate contractors.	Completed. Partnership established with Association of Realtors and the Bureau of Real Estate
4. Determine Feasibility of Building a Full-Service Broadcast Studio (I)	December 2015	Assess feasibility/costs of constructing a broadcast studio in the space currently occupied by Public Affairs Office staff.	Project tied to building lease renewal.
5. Determine Feasibility of Updating Technology in John C. Hall Hearing Room (B)	January 2016	Assess feasibility/cost of updating the hearing room to improve audio/visual services for meeting participants and audiences.	Project tied to building lease renewal.
6. Develop Schedule for Development of an Opt-In, “Find a Contractor” Website Feature (E)	February 2016	Determine a schedule to develop a website feature that will allow consumers to identify licensed contractors.	On hold because of other IT projects, including new HIS registration program.
7. Determine Feasibility of Developing a Mobile Web App (I)	March 2016	Research current technology to determine if there is a need or opportunity to create a mobile application(s).	Ongoing.
8. Develop Features for Use on Contractors/Industry Members’ Websites (I)	April 2016	Utilize Rich Site Summary (RSS) to create content that can be used on licensee or industry group websites.	On target. Need to develop guide to show users how access RSS feed materials.

(E) "Essential"

(I) "Important"

(B) "Beneficial"

9. Develop CSLB Style Guide and Standards Manual (B)	June 2016	Continued from 2014-15 Strategic Plan.	On target.
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INFORMATION TECHNOLOGY OBJECTIVES	TARGET	DESCRIPTION	STATUS
1. Implement ePayment Expansion to field sites (I)	Fall 2015 - Spring 2016	Expand ePayment to cover California's Northern (Sacramento), Central (Fresno) and Southern (Norwalk, San Bernardino and San Diego) regions. Will allow contractors to pay 16 payment types by major credit cards.	Training has been completed. Installation in Norwalk, San Diego, Fresno and Sacramento was completed as of September 2015.  The timeframe for completion in San Bernardino depends on office reconstruction.
2. Implement ePayment Online (I)	Winter 2016	Will allow contractors to pay 16 payment types by major credit cards from anywhere (online).	In planning phase, gathering system requirements and assessing business processes.
3. Implement Home Improvement Salesperson (HIS) Online Application (I)	Spring 2016 Winter 2016	Enables HIS applicants to submit application online as well as give them the ability to renew registration online.	Phased approach for implementation: <ol style="list-style-type: none"> <li>1. CSLB internal acceptance of new HIS applications and association/disassociation is scheduled for implementation by December 31, 2015.</li> <li>2. Online acceptance of HIS applications, renewals, association/disassociation and online payments is in planning phase for possible release in Winter 2016.</li> </ol>
3. Increase Network Bandwidth to Field Sites (E)	Spring 2016	Field sites network bandwidth is currently limited and slow. IT staff will upgrade network circuits to increase the available bandwidth to allow the Board to implement Enterprise IT solutions.	As of November 2015, network bandwidth increase/circuit upgrades were completed for all field sites, with the exception of Berkeley and San Bernardino. These two sites will be completed by early Spring 2016.  We have more than doubled the network speed at all sites.



## AGENDA ITEM D-4

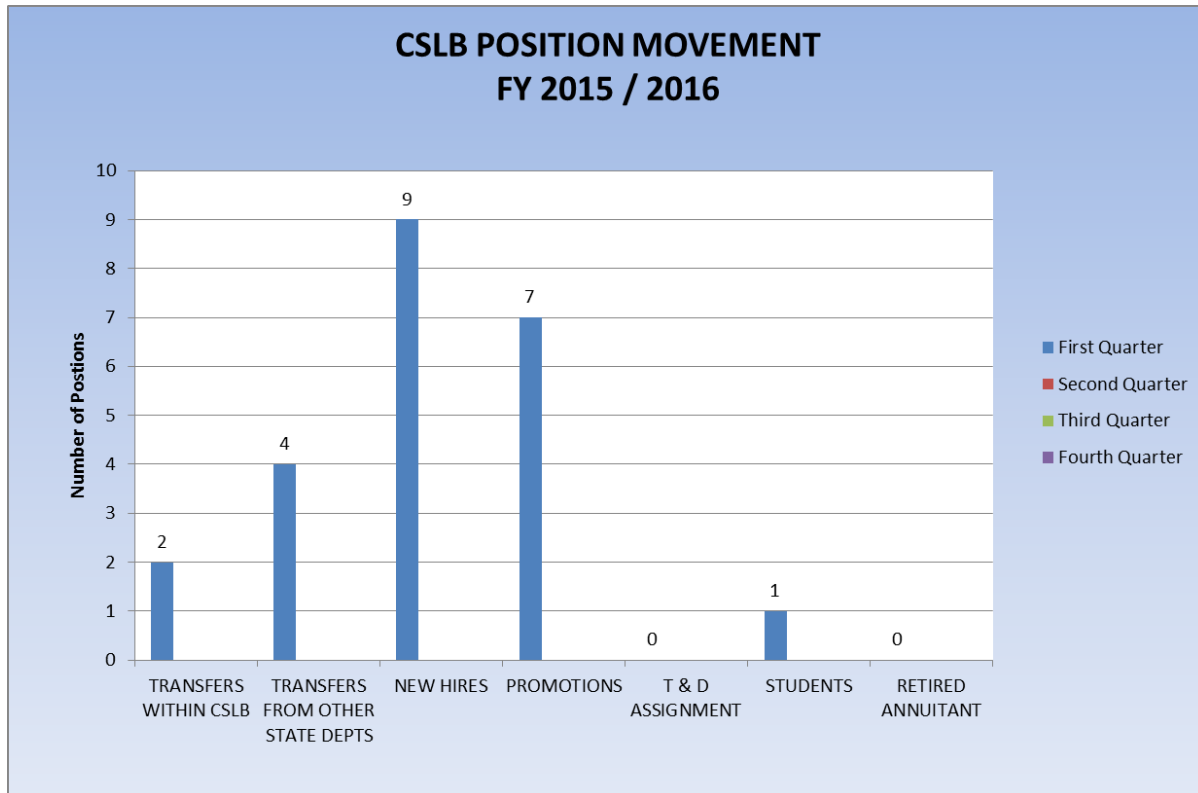
# Administration Update Regarding Personnel and Facilities





### Personnel Update

In the first quarter of fiscal year 2015-16, CSLB added four new employees from other State agencies, nine employees new to State service, and one student assistant. Additionally, two employees transferred units and seven employees were promoted within CSLB.



Also in the first quarter, the final step in development of the Peace Officer's Special Investigations Unit (SIU) was completed with the movement of nine employees into the new unit. The SIU handles the more serious violations of construction related law which includes repeat offenders that frequently prey upon the elderly.

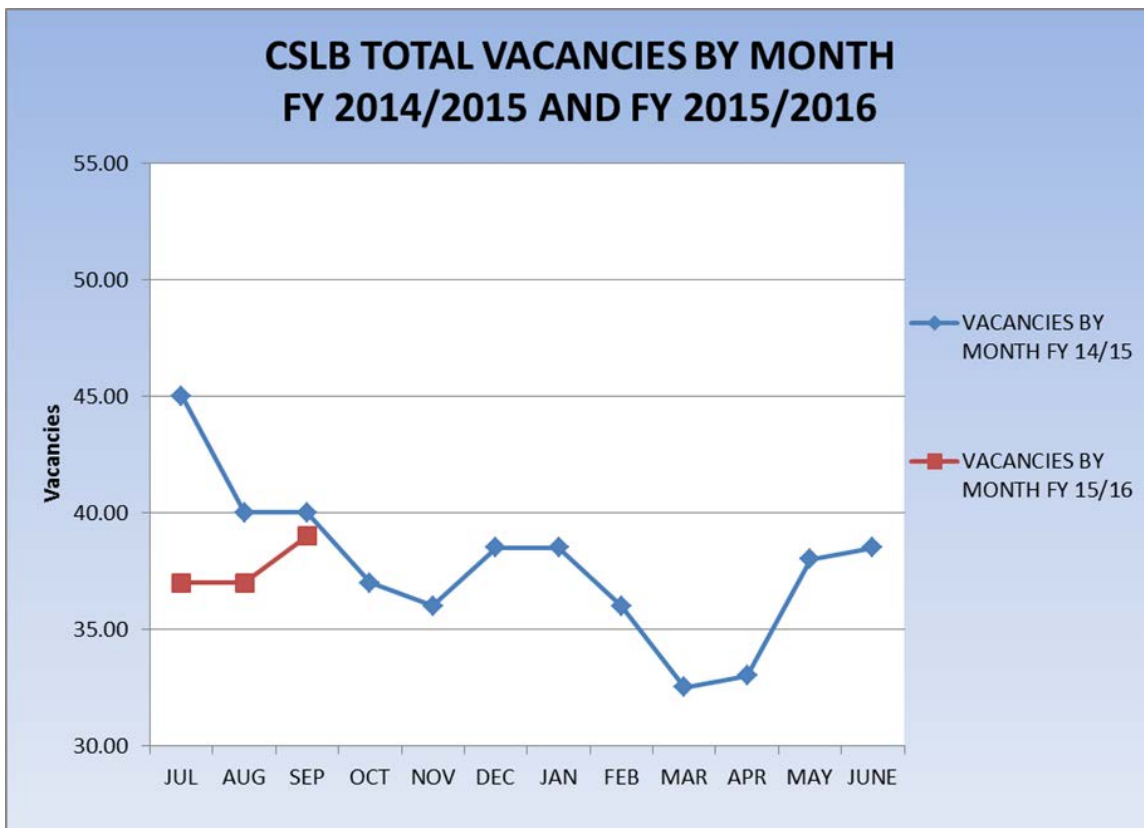
A general salary increase went into effect in July 2015, with staff receiving 2 to 3 percent wage increases. In August, personnel staff attended the second of a two-part Personnel Liaison training conducted by DCA's Office of Human Resources. The training covered best recruitment and hiring practices that ensure a fair and objective selection process based on merit in compliance with State Personnel Board policies.

This is a mandatory Sexual Harassment Prevention (SHP) training year. Personnel staff members are working diligently to provide information and reminders to employees to meet this requirement. In addition, personnel staff assisted dozens of staff members in making benefit changes during CalPERS' annual Open Enrollment period.



In October 2015, the Personnel Unit conducted its second Career Consultation workshop in Southern California for field office staff. Personnel staff developed and presented a comprehensive workshop designed to help CSLB employees advance in their careers. The workshop included information on how to locate exams, find vacant positions, develop resumes and cover letters, and prepare for interviews. Personnel staff also conducted one-on-one sessions with employees to help them identify skillsets and positions that best match their experience, education, and training.

As illustrated below, the number of first-quarter CSLB vacancies was lower than in the previous year.



### Examinations

In addition to CalHR, DCA/CSLB offer several examinations throughout the year; specific examination dates follow:



<b>DIVISION</b>	<b>EXAM (<i>Administered by</i>)</b>	<b>STATUS</b>
<b>Enforcement</b>	Consumer Services Representative, <i>CSLB</i>	Continuous Filing
	Enforcement Representative I <i>CSLB</i>	Continuous Filing; Last Exam Administered in June 2015; Tentative Exam Date – November 2015
	Enforcement Representative II <i>CSLB</i>	Last Exam Administered in March 2015; Tentative Exam Date – November 2015
	Enforcement Supervisor I/II <i>CSLB</i>	Tentative Exam Date–April 2016
<b>Information Technology</b>	Assistant/Associate/Staff Information Systems Analyst <i>CalHR</i>	Continuous Filing
	Systems Software Specialist I/II/III <i>CalHR</i>	Continuous Filing
<b>Licensing Division</b>	Supervising Program Technician III <i>CalHR</i>	Continuous Filing
<b>Testing</b>	Personnel Selection Consultant I/II <i>DCA</i>	Last Exam Administered in February 2015; Tentative Exam Date – November 2015
	Test Validation & Development Specialist I/II, <i>DCA</i>	Continuous Filing; Last Exam Administered in August 2015
<b>All CSLB</b>	Information Officer I (Specialist) <i>CalHR</i>	Continuous Filing
	Management Services Technician <i>DCA</i>	Last Exam Administered in April 2015; Tentative Exam Date – mid-2017
	Office Services Supervisor <i>CalHR</i>	TBD
	Office Technician/Office Assistant <i>CalHR</i>	Last Exam Administered in May 2015; Next Exam Date – November/December 2015
	Program Technician I/II/III <i>CalHR</i>	Last Exam Administered in April 2015; Next Exam Date–TBD
	Associate Governmental Program Analyst/Staff Services Analyst, <i>CalHR</i>	Continuous Filing
	Staff Services Analyst Transfer Exam, <i>DCA</i>	Tentative Exam Dates–February, June, September, December 2016
	Staff Services Manager I/II/III <i>CalHR</i>	Continuous Filing





## **BUSINESS SERVICES**

### **Facilities**

**San Bernardino** – The Department of General Services (DGS) has negotiated the lease renewal, with a term of September 1, 2015 through August 31, 2025. The office space increased by 1,200 square feet to accommodate expansion of the CSLB Enforcement Investigation Unit.

Projected Completion Date: The remodel has begun and is estimated to be completed by July 2016.

**Norwalk** – The DGS leasing officer is currently preparing and negotiating the lease renewal agreement. Prior to the renewal, the DGS space planner will review the office space specifications to identify any needed adjustments. A pre-construction meeting is expected before the end of November.

Projected Completion Date: The estimated completion date is August 2016.

**San Diego** – The glass conference room wall was replaced and five panic buttons installed at the end of September 2015.

**Testing Field Offices** – DGS requested bids for the installation of security cameras in all CSLB Testing Centers. DGS received only one bid and will work with CSLB to determine the best way to proceed with this project.

Projected Completion Date: The estimated completion date is November 2016.

**Sacramento Headquarters** – The DGS space planner is currently preparing and working with CSLB staff to identify the upgrades for inclusion in the lease renewal, which will include the following upgrades: a new employee security card reader system; key replacement throughout the entire building; construction of additional office space within the Administration unit; installation of one door and two side windows in the Information Technology (IT) programming office located within the Testing unit; installation of six ceiling projectors; construction of a media room within the Public Affairs unit; and relocation of the Call Center and Record Certification Units to accommodate the growing enforcement unit .

Projected Completion Date: The estimated completion date is November 2016.



## **Contracts and Procurement**

### **Contracts in Process:**

- Contract to provide Enforcement staff access to the Workers' Compensation Remote Access Rating Bureau Information (estimated completion date: 12/15/15);
- Contract to add an additional security guard in the Norwalk Office (estimated completion date: 12/15/15);
- Contract for Board meeting in San Diego, scheduled for March 14-15, 2016 (estimated completion date: 11/25/15); and
- Contract for Board meeting in Garden Grove scheduled for June 2016 (estimated completion date: 1/31/16).

### **Procurements in Process:**

- Computer table for e-payment station at the San Diego and San Bernardino Investigation Centers (estimated completion date: 1/15/16);
- Modular furniture for the reconfiguration at the Berkeley office (estimated completion date: 1/15/16);
- Ergonomic chairs for Sacramento headquarters and San Diego office (estimated completion date: 12/15/15);
- Three overhead projectors for Sacramento headquarters office (estimated completion date: 11/30/15);
- Table throws, double sided, with custom print logos (two different logos) for PAO (estimated completion date: 1/31/16);
- Polo Shirts for SWIFT ERs, IC ERs, and Supervisors (estimated completion date: 2/15/16); and
- PVC signature cards for Licensing (estimated completion date: 12/31/15).

### **Executed Contracts/Procurement:**

- Contract with the California Highway Patrol to provide Officer services for Enforcement staff when needed;
- Overhead projector for the San Diego Investigation Center;
- Eighteen utility chairs for Sacramento headquarters Testing unit conference room;
- Three overhead projectors for employee use at CSLB headquarters; and
- Meter contract renewal for main mailing machine located within the CSLB headquarters mailroom.

## **Fleet Management**

### **Vehicle Purchases:**

- CSLB purchased seven vehicles for the 2014-15 fiscal year, of which three have been received, including one all-electric vehicle (Nissan Leaf) utilized by CSLB Mailroom staff. The Enforcement division received two vehicles (Ford Fusion Hybrid), one each for Norwalk SWIFT and the Valencia Investigative Center (IC).



- CSLB anticipates receiving the remaining four vehicles before the end of the current fiscal year.
  - (1) Ford Fusion Hybrid – San Francisco (IC)
  - (1) Ford Fusion Hybrid – Fresno (IC)
  - (1) Dodge Ram Truck – Sacramento SWIFT
  - (1) Dodge Caravan – Sacramento Testing division
  
- CSLB submitted the 2015-16 Fiscal Year Fleet Acquisition Plan to DCA, which included a request for twelve replacement vehicles:
  - (4) Ford Fusion Hybrids (1-San Diego IC, 2-Valencia IC, 1-West Covina IC)
  - (6) Chevrolet Impalas (1-Fresno SWIFT, 2-Norwalk SWIFT, 3-Sacramento SWIFT)
  - (2) Dodge Rams (1-Sacramento SWIFT, 1-Sacramento IC North).

### **Enforcement Identification Credentials**

- Non-Sworn Enforcement Supervisors and Enforcement Representatives received new Enforcement Identification Credentials issued by DCA. All identification (ID) credentials include a gold metal emblem bearing the state seal and a uniform ID card that matches all other DCA board/bureau enforcement divisions.



## AGENDA ITEM D-5

# Information Technology Update





### **BreEZe:**

Release One is in production at the Department of Consumer Affairs (DCA).

Release Two clients are currently working on their development efforts as well as their respective organizational change management activities. The expected implementation of Release Two boards is early 2016.

CSLB staff continue to work with programs to document and map current “as is” business processes, conducting meetings with CSLB end-users to verify mapping and completing gap/fit analysis.

The current design, develop, and implement contract (with Accenture) for BreEZe implementation ends after Release Two. However, the vendor will continue to perform the maintenance and operation (M&O) services for Release One and Two boards/committees under the existing M&O contract.

Following the implementation of Release Two, DCA will perform a formal cost/benefit analysis to look at viable options for Release Three boards/bureaus/committees.

### **Interactive Voice Response (IVR) System**

CSLB’s IVR is an interactive, self-directed telephone system that provides valuable information to consumers, contractors, and others. It allows callers to request forms or pamphlets that are faxed to them immediately. Callers can look up a license, and applicants can check the status of their exam application. The IVR provides consumers with information on how to file complaints, as well as how to become a licensed contractor. In addition, the IVR gives callers an option to speak to call center agents in Sacramento or Norwalk. From August 2015 through October 2015, CSLB’s IVR handled a total of 99,698 calls, which is an average of 33,233 calls a month. The system is available 24 hours a day, seven days a week.

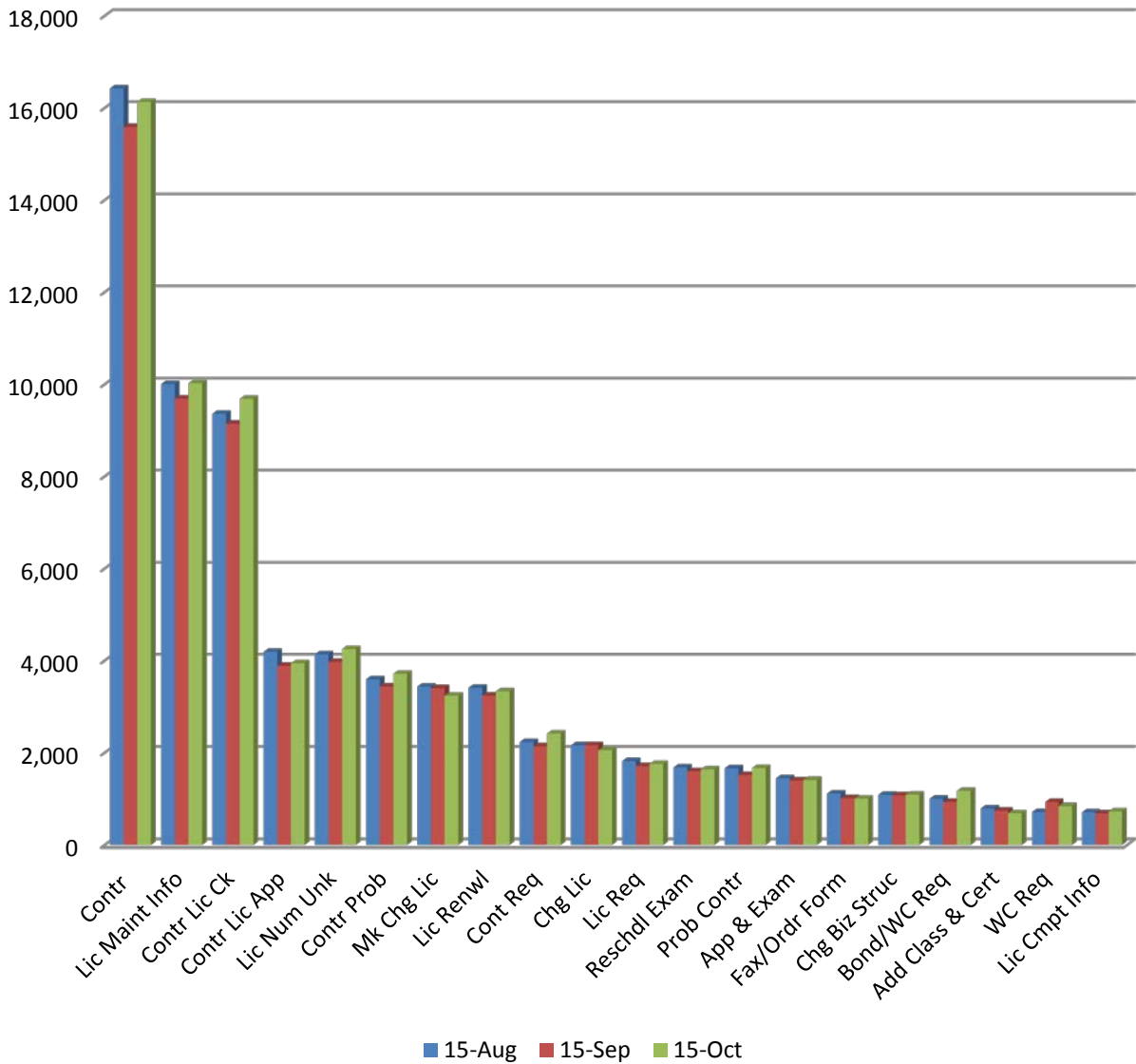
The IVR system offers dozens of possible menu options. Following is a representative sample of the top 20 IVR requests from August 2015 through October 2015.

**Top 20 IVR Requests - Aug '15 - Oct '15**

IVR Statistics		<u>Aug-15</u>	<u>Sept-15</u>	<u>Oct-15</u>	Three Month Totals
IVR Calls Received		34,472	33,516	31,710	99,698
Monthly Average					33,233
Top 20 IVR Requests	Abbreviation	<u>Aug-15</u>	<u>Sept-15</u>	<u>Oct-15</u>	Three Month Totals
Contractor or Want to Become Contractor	Contr	16,422	15,587	16,130	48,139
Info on Maintaining or Changing License	Lic Maint Info	10,002	9,687	10,022	29,711
Contractor's License Check	Contr Lic Ck	9,357	9,141	9,680	28,178
Contractor License Application	Contr Lic App	4,188	3,884	3,937	12,009
License Number Not Known	Lic Num Unk	4,133	3,970	4,248	12,351
Hire or Problem with Contractor	Contr Prob	3,592	3,435	3,711	10,738
About Making Changes to License	Mk Chg Lic	3,432	3,398	3,235	10,065
About License Renewal	Lic Renwl	3,407	3,239	3,329	9,975
About Continuing Requirements	Cont Req	2,229	2,137	2,413	6,779
For Changes to Existing Licenses	Chg Lic	2,158	2,163	2,051	6,372
License Requirements	Lic Req	1,817	1,707	1,753	5,277
Reschedule Exam Date	Reschdl Exam	1,677	1,596	1,637	4,910
Info on Problems with Contractor	Prob Contr	1,660	1,513	1,664	4,837
General Application & Examination Info	App & Exam	1,443	1,395	1,406	4,244
To Fax Forms, or To Order Forms by Mail	Fax/Ordr Form	1,112	1,014	1,003	3,129
For Changing the Business Structure of an Existing	Chg Biz Struc	1,086	1,074	1,089	3,249
Info about Bond or Workers' Comp Requirements	Bond/WC Req	1,001	931	1,171	3,103
For Adding Classifications, Certifications or Change	Add Class & Cert	791	742	686	2,219
Info about Workers' Comp Requirements	WC Req	712	931	840	2,483
License Complaint Information	Lic Cmpt Info	706	682	725	2,113



### Top 20 IVR Requests - Aug'15 - Oct'15







### **Home Improvement Sales Person (HIS) – Implementation of SB 561**

Effective January 1, 2016, a new law (SB 561) authorizes the Contractors State License Board (CSLB) to simplify the current Home Improvement Salesperson (HIS) registration process. SB 561 removes the current requirement that an HIS register separately with CSLB for each contractor for which they work. Instead, through a single registration an HIS can represent multiple employers.

Implementation of this legislation requires significant modifications to CSLB's existing method of registering, tracking, and assigning Home Improvement Salespersons to a licensed home improvement contractor. As part of this process, CSLB is notifying by mail the more than 14,000 currently registered HIS in order to update and convert all HIS registration records. Letters are also being sent to licensees who employ registered salespersons. CSLB encourages all HIS registrants, as well as licensees who employ salespersons, to review and verify HIS details via CSLB's online Instant License Check, and to take steps to immediately correct any inaccurate or outdated information by filling out a form and sending it to CSLB.

In addition to the single registration, the new law requires licensees to notify CSLB in writing prior to employing an already registered HIS, and to notify CSLB in writing when employment of a registered HIS ends. These new forms will be available on the CSLB website beginning January 1, 2016. IT staff is working closely with programming contractors to modify existing programs and to develop new programs/processes to ensure compliance with the new law.

### **Implementation of E-Payment Expansion to Field Sites**

Though contractors throughout the State can pay licensing and application fees by mailing their payments, along with the appropriate documents, to the Sacramento Headquarters office, previously, in-person cash/check/credit card payments could only be made in Sacramento.

The e-Payment expansion covers California's Northern (Sacramento), Central (Fresno), and Southern (Norwalk, San Bernardino, and San Diego) regions.

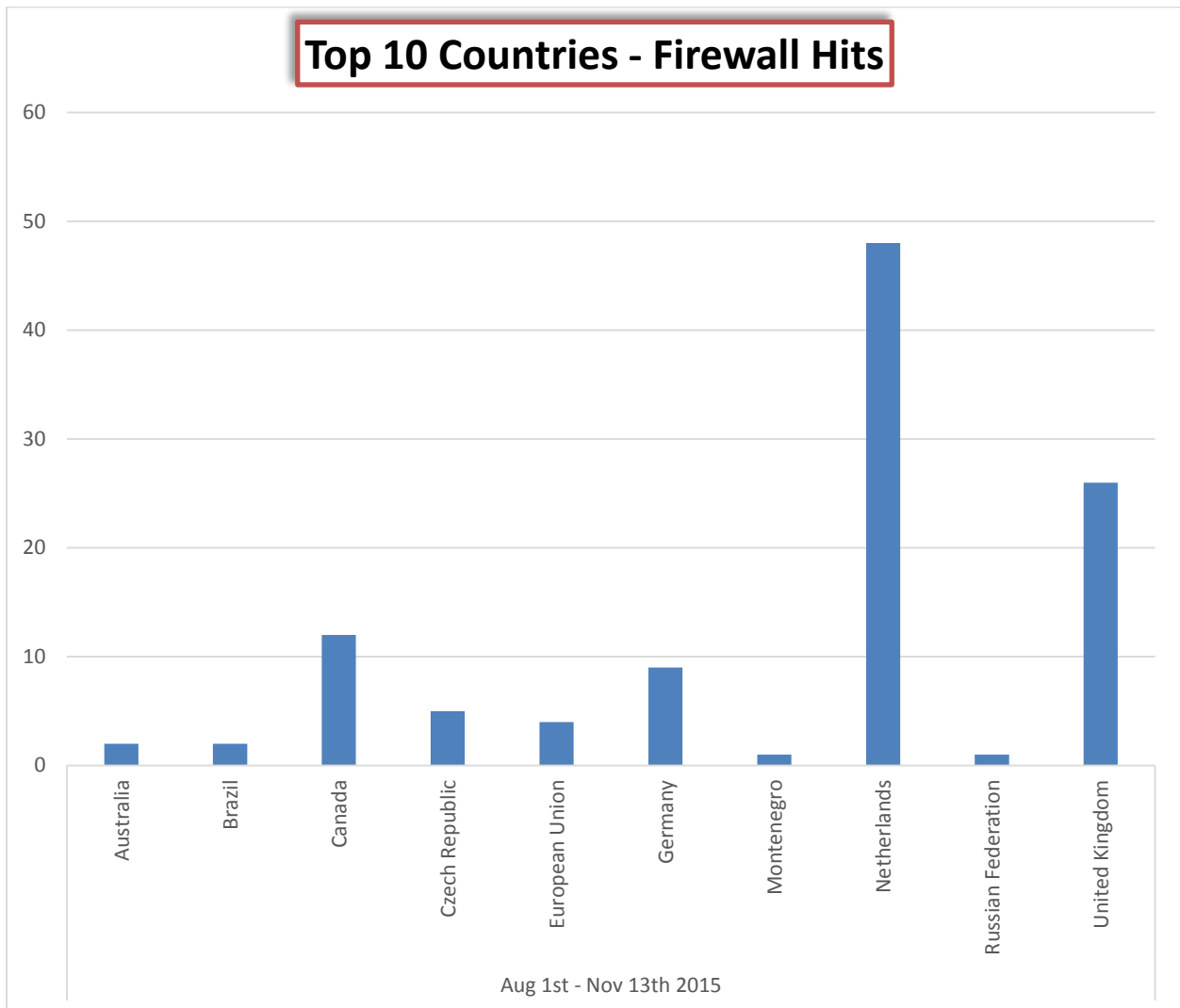
On March 26, 2015, CSLB successfully launched the first phase of its planned in-person e-Payment expansion in Norwalk. Subsequently, the IT division completed e-payment expansion to Fresno and San Diego in mid-September. The timeline for San Bernardino Testing Office depends on the renovation of its office.



### **Enterprise IT Security – Firewall Hits**

CSLB’s IT staff maintains high security on the Board’s information technology networks, systems, and applications. Using a multi-layered defense utilizing various security products (Next Generation Firewall, anti-spam and anti-virus programs, Web filtering, intrusion detection and prevention systems, event management, and correlation tools), CSLB proactively blocks/denies unauthorized attempts to breach its systems from all sources, including those emanating from foreign countries.

The chart below represents the top 10 countries from which users have attempted to access CSLB systems and applications between August 1, 2015 and November 13, 2015, all of which were successfully denied. To date, utilizing best practices, CSLB’s IT security systems have successfully safeguarded CSLB information assets, and no unauthorized attempts to penetrate the system have succeeded.



# AGENDA ITEM D-6

## Budget Update





# CONTRACTORS STATE LICENSE BOARD

## BUDGET UPDATE

### ❖ Fiscal Year (FY) 2015-16 CSLB Budget and Expenditures

Through October 31, 2015 of FY 2015-16, CSLB spent or encumbered \$23.8 million, roughly 37 percent of its fiscal year budget. This chart details the CSLB budget, including expenditures through October 2015:

EXPENDITURE DESCRIPTION	FY 2015-16 APPROVED BUDGET	SEPTEMBER 2015 EXPENSES	BALANCE	% OF BUDGET REMAINING
<b>PERSONNEL SERVICES</b>				
Salary & Wages (Staff)	22,663,274	7,267,244	15,396,030	67.9%
Board Members	15,900	3,100	12,800	80.5%
Temp Help	860,000	136,141	723,859	84.2%
Exam Proctor	41,168	42,581	-1,413	-3.4%
Overtime	146,000	40,885	105,115	72.0%
Staff Benefits	10,519,121	3,495,809	7,023,312	66.8%
<b>TOTALS, PERSONNEL</b>	<b>34,245,463</b>	<b>10,985,760</b>	<b>23,259,703</b>	<b>67.9%</b>
<b>OPERATING EXPENSES AND EQUIPMENT (OE&amp;E)</b>				
Operating Expenses	20,875,124	11,004,529	9,870,595	47.3%
Exams	435,882	58,038	377,844	86.7%
Enforcement	8,546,531	1,949,538	6,596,993	77.2%
<b>TOTALS, OE&amp;E</b>	<b>29,857,537</b>	<b>13,012,105</b>	<b>16,845,432</b>	<b>56.4%</b>
<b>TOTALS</b>	<b>64,103,000</b>	<b>23,997,865</b>	<b>40,105,135</b>	<b>62.6%</b>
Scheduled Reimbursements	-353,000	-70,439	-282,561	
Unscheduled Reimbursements		-86,556	86,556	
<b>TOTALS, NET REIMBURSEMENTS</b>	<b>63,750,000</b>	<b>23,840,870</b>	<b>39,909,130</b>	<b>62.6%</b>

### ❖ Revenue

For FY 2015-16, CSLB received the following revenue amounts through October 31, 2015:

Revenue Category	Through 10/31/2015	Percentage of Revenue	Change from prior year (10/31/2014)*
Duplicate License/Wall Certificate Fees	\$29,734	0.1%	-9.4%
New License and Application Fees	\$3,581,443	16.2%	5.0%
License and Registration Renewal Fees	\$17,053,841	77.0%	1.9%
Delinquent Renewal Fees	\$815,685	3.7%	-12.6%
Interest	\$7,893	0.0%	0.0%
Penalty Assessments	\$633,029	2.9%	3.0%
Misc. Revenue	\$33,107	0.1%	-9.8%
<b>Total</b>	<b>\$57,120,310</b>	<b>100.00%</b>	<b>1.7%</b>

\* License & Registrations Renewals Fees are based on a 2-year cycle (comparative data is from FY 2013-14, a peak renewal year).



❖ **CSLB Fund Condition**

Below is the fund condition for the Contractors' License Fund, which shows the final FY 2014-15 reserve (\$24 million – approximately 4.5 months' reserve), along with the projected reversion amounts for current year (CY) 2015-16 through budget year (BY) 2017-18:

	<b>Final FY 2014-15</b>	<b>Projected CY 2015-16</b>	<b>Projected BY 2016-17</b>	<b>Projected BY+1 2017-18</b>
<b>Beginning Balance</b>	\$26,387	\$23,799	\$16,148	\$9,714
Prior Year Adjustment	\$557	\$0	\$0	\$0
<b>Adjusted Beginning Balance</b>	<b>\$26,944</b>	<b>\$23,799</b>	<b>\$16,148</b>	<b>\$9,714</b>
<b>Revenues and Transfers</b>				
Revenue	\$57,120	\$56,211	\$57,635	\$56,708
<b>Totals, Resources</b>	<b>\$84,064</b>	<b>\$80,010</b>	<b>\$73,783</b>	<b>\$66,422</b>
<b>Expenditures</b>				
Disbursements:				
Program Expenditures (State Operations)	\$60,211	\$63,750	\$64,069	\$64,389
State Controller (State Operations)	\$0			
Financial Info System Charges	\$54	\$112		
<b>Total Expenditures</b>	<b>\$60,265</b>	<b>\$63,862</b>	<b>\$64,069</b>	<b>\$64,389</b>
<b>Fund Balance</b>				
Reserve for economic uncertainties	<b>\$23,799</b>	<b>\$16,148</b>	<b>\$9,714</b>	<b>\$2,033</b>
<b>Months in Reserve</b>	4.5	3.0	1.8	0.4

Notes:

- 1) All dollars in thousands.
- 2) Revenue assumes 1% renewal license fee growth, based on prior 2-year cycle.
- 3) Assumes expenditure growth projected at 0.5% starting in FY 2016-17, and then ongoing.
- 4) Assumes workload and revenue projections are realized for FY 2015-16 and FY 2016-17.



## AGENDA ITEM D-7

# Presentation and Discussion Regarding February 2015 United States Supreme Court Decision:

North Carolina State Board of Dental Examiners v. Federal Trade Commission (FTC), and Related Formal Opinion from the Office of the California Attorney General, FTC Staff Guidance and Legislative Hearings



**MEMORANDUM**

DATE: December 1, 2015

ATTENTION: Board Members, Contractors State License Board

SUBJECT: Presentation and Discussion Regarding February 2015 US Supreme Court Decision: North Carolina State Board of Dental Examiners v. FTC, related opinion from the office of the Attorney General, FTC staff Guidance and Legislative Hearings

FROM: Kristy Schieldge, Attorney III, Legal Affairs Division, DCA

**BACKGROUND:**

On February 25, 2015, the U. S. Supreme Court rendered a decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission that is causing licensing boards across the nation to evaluate their structure and how they make policy decisions effecting market participants (**Attachment 1**). This is an antitrust case about the scope and applicability of the state-action immunity doctrine to professional state boards. Specifically, when is a state board's actions protected from Sherman Act (federal anti-trust or competition law) regulation under the doctrine of state-action anti-trust immunity?

It is important to understand the facts that led to this case being filed by the Federal Trade Commission (FTC). The North Carolina Board of Dental Examiners is comprised of a majority of practicing dentists (6 licensed dentists, 1 dental hygienist, and 1 consumer). The 6 licensed members were elected to this board by other dentists (market participants) and not by the state's legislature or Governor; there was no state mechanism for the removal of board members from office. The dental board pursued non-dentist teeth whiteners by sending them warning letters and cease-and-desist letters claiming that they were engaged in the unauthorized practice of dentistry. As a result, non-dentist teeth whiteners stopped offering these services in North Carolina. However, the North Carolina statutes and regulations did not specifically address whether teeth whitening was the practice of dentistry. The board also did not seek to promulgate a regulation addressing teeth whitening. Additionally, the board did not have statutory authority to issue cease and desist letters to unlicensed persons.

The FTC determined that the dental board's actions violated the federal antitrust law and sued the board. The dental board argued that its actions did not violate the law, because it is a state agency and is therefore immune from antitrust law (also known as the "state action anti-trust immunity doctrine"). The case progressed all the way to the U.S. Supreme Court, which held that a state board on which a "controlling number" of decision makers are active



market participants in the occupation which the board regulates must satisfy “active supervision” requirements to get antitrust state-action immunity.

For boards consisting of a controlling number of market participants, the defensibility of their actions is going to turn on whether the state’s review mechanisms provide “realistic assurance” that the boards’ anticompetitive conduct promotes state policy, rather than merely the market participants’ individual interest. The Court identified a few constant requirements of active supervision: 1) the supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; 2) the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; 3) the mere potential for state supervision is not an adequate substitute for a decision by the state; and, 4) the state supervisor may not itself be an “active market participant”.

The Court further held that inquiry regarding active supervision is flexible and context-dependent; it is not meant to require daily involvement in a board’s operations or micromanagement of its every decision.

### **ATTORNEY GENERAL’S OPINION**

This case prompted California Senator Jerry Hill to request an opinion from the Attorney General (AG) as to what constitutes “active state supervision” of state licensing boards, and how to guard against antitrust liability for board members (**Attachment 2**).

#### **Overview of Conclusions**

In short, the AG’s opinion stated the following:

“Active state supervision” requires a state official to review the substance of a regulatory decision made by a state licensing board, in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated, and must have and exercise the power to approve, modify, or disapprove the decision.

AG Opinion No. 15-402, at p. 1.

The AG's opinion identified some broad areas of operation where board members can act with reasonable confidence of preserving their state action immunity:

1. Promulgation of regulations, in light of the public notice, written justification, DCA Director's review, and review by the Office of Administrative Law pursuant to the Administrative Procedure Act. Please note that market-sensitive regulations will require more active supervision than others.
2. Disciplinary decisions, in light of the due process procedures in place; participation of state actors, such as board executive directors, investigators, prosecutors, and administrative law judges; and the availability of judicial (administrative mandamus) review.
3. Carrying out the actions required by a detailed anticompetitive statutory scheme, because, "detailed legislation leaves nothing for the state to supervise, and thus it may be said that the legislation itself satisfies the supervision requirement."
4. The adoption of safety standards that are based on objective expert judgments, because they have been found by the courts to be pro-competitive, rather than anti-competitive. *Id.*, at pp. 8-9.

### Board Composition

Although identified as an option, the AG advised that changing the composition of the boards to decrease the number of market-participant board members would not necessarily shield board members from antitrust liability. The AG pointed out that the U.S. Supreme Court did not use the term "majority;" it used "controlling number." There are several unresolved questions regarding how changing the board composition would impact antitrust liability. As long as these questions remain unresolved, radical changes to the board make up would likely create new challenges, with no promise of bolstering state-action immunity. *Id.*, at pp. 10-11.

### Increasing Active State Supervision

With regard to options for increasing state supervision of board actions, the AG suggested the powers of the Director of the Department of Consumer Affairs could be expanded to make review of anti-competitive board decisions mandatory, or to make the Director's review available upon the request of a board.

Moreover, statutory changes would need to be considered to prevent the Director's disapproval

from being overridden by the board pursuant to Business and Professions Code section 313.1(e)(3)<sup>1</sup>, because such an override would nullify the “active supervision” and the benefit of state-action immunity gained by the Director’s review. Id., at p. 14.

### Legislation Granting Immunity to Board Members

The AG pointed out that a state cannot grant blanket immunity for anticompetitive activity; there would probably still have to be active state supervision to give effect to the intended immunity. Id., at p. 15.

### Indemnification of Board Members

Board members are generally entitled to have the state provide for the defense of any civil action stemming from an act or omission in the scope of employment. While the state does not have to provide a defense in cases where the board member acted due to actual fraud, corruption, or actual malice, there is no exception to the duty to defend for antitrust violations. Id., at p. 16.

In general, the government is liable for injuries caused by an act within the scope of employment, but is not liable for punitive damages. If an antitrust violation is proven, an award of treble damages is automatic. There is a question as to whether treble damages equates to punitive damages that would not be paid by the state, but by the individual or individuals who were found to have taken the anti-competitive action. The AG opined that treble damages are not the same as punitive damages, and should be paid by the state, if awarded. Id., at pp. 16-17.

The question about the legal status of treble damage awards could be resolved with a legislative change "to specify that treble damage antitrust awards are not punitive damages within the meaning of the Government Claims Act." This change would act as reassurance to board members that if an antitrust violation is proven, the state, and not the individual board members, will pay for the compensatory, general, and treble damages. Id., at p. 17.

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<sup>1</sup> Section 313.1(e)(3) provides: “(3) If the director disapproves a rule or regulation, it shall have no force or effect unless, within 60 days of the notice of disapproval, (A) the disapproval is overridden by a unanimous vote of the members of the board, commission, or committee, and (B) the board, commission, or committee files the final rulemaking record with the Office of Administrative Law in compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.”

### Training

Finally, the AG advised that the potential for board member liability may be significantly reduced by providing training on antitrust concepts so that there is a shared awareness of the sensitivity of certain kinds of actions. Such training will prepare board members to be able to harness the evidence and articulate the reasons for their decisions in market-sensitive areas. Id., at p. 18.

### FTC Guidance

The Federal Trade Commission issued staff guidance to assist states in understanding antitrust issues in the wake of the *North Carolina* case (**Attachment 3**). Like the Attorney General, the FTC has indicated that a lack of immunity does not mean that a board's conduct violates antitrust laws, ministerial acts implementing an anticompetitive statutory scheme do not give rise to antitrust liability, and reasonable restraints on competition do not necessarily violate antitrust laws even if the economic interests of a competitor have been injured.

The FTC staff guidance indicates that active market participants include any person licensed by the board, and that a person who temporarily suspends active participation to serve on a board regulating his or her former profession will be considered an active market participant. The FTC guidance, like the Attorney General's opinion, indicates that the controlling number of active market participants implicates the need for active state supervision, not simply a majority of board members. The FTC guidance states "A decision that is controlled, either as a matter of law, procedure, or fact, by active participants in the regulated market... must be actively supervised to be eligible for the state action defense."

### **REQUESTED ACTION:**

Review the attached United States Supreme Court decision, California Attorney General's Opinion and FTC staff guidance document regarding the U. S. Supreme Court case of North Carolina State Board of Dental Examiners v. Federal Trade Commission, which provides an analysis of what constitutes "active state supervision" of licensing boards to preserve state action immunity, and discusses the measures to consider taking to protect against claims of antitrust conduct for board members. Updates regarding recent or anticipated legislative hearings will be discussed at the Board meeting.

(Slip Opinion)

OCTOBER TERM, 2014

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## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

**NORTH CAROLINA STATE BOARD OF DENTAL  
EXAMINERS v. FEDERAL TRADE COMMISSION****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT**

No. 13–534. Argued October 14, 2014—Decided February 25, 2015

North Carolina’s Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is “the agency of the State for the regulation of the practice of dentistry.” The Board’s principal duty is to create, administer, and enforce a licensing system for dentists; and six of its eight members must be licensed, practicing dentists.

The Act does not specify that teeth whitening is “the practice of dentistry.” Nonetheless, after dentists complained to the Board that nondentists were charging lower prices for such services than dentists did, the Board issued at least 47 official cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Federal Trade Commission (FTC) filed an administrative complaint, alleging that the Board’s concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An Administrative Law Judge (ALJ) denied the Board’s motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. After a hearing on the merits, the ALJ determined that the Board had unreasonably restrained trade in violation of antitrust law. The FTC again sustained the ALJ, and the Fourth Circuit affirmed the FTC in

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all respects.

*Held:* Because a controlling number of the Board’s decisionmakers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met. Pp. 5–18.

(a) Federal antitrust law is a central safeguard for the Nation’s free market structures. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States’ power to regulate. Therefore, beginning with *Parker v. Brown*, 317 U. S. 341, this Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. Pp. 5–6.

(b) The Board’s actions are not cloaked with *Parker* immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if “‘the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,’ and . . . ‘the policy . . . [is] actively supervised by the State.’” *FTC v. Phoebe Putney Health System, Inc.*, 568 U. S. \_\_\_, \_\_\_ (quoting *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105). Here, the Board did not receive active supervision of its anticompetitive conduct. Pp. 6–17.

(1) An entity may not invoke *Parker* immunity unless its actions are an exercise of the State’s sovereign power. See *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374. Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls. Limits on state-action immunity are most essential when a State seeks to delegate its regulatory power to active market participants, for dual allegiances are not always apparent to an actor and prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. Accordingly, *Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State’s own. *Midcal*’s two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State’s considered definition of the public good and engage in private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this

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harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. Pp. 6–10.

(2) There are instances in which an actor can be excused from *Midcal's* active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers, and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement. See *Hallie v. Eau Claire*, 471 U. S. 34, 35. That *Hallie* excused municipalities from *Midcal's* supervision rule for these reasons, however, all but confirms the rule's applicability to actors controlled by active market participants. Further, in light of *Omni's* holding that an otherwise immune entity will not lose immunity based on ad hoc and *ex post* questioning of its motives for making particular decisions, 499 U. S., at 374, it is all the more necessary to ensure the conditions for granting immunity are met in the first place, see *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 633, and *Phoebe Putney, supra*, at \_\_\_\_\_. The clear lesson of precedent is that *Midcal's* active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants. Pp. 10–12.

(3) The Board's argument that entities designated by the States as agencies are exempt from *Midcal's* second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing *Midcal's* supervision requirement was created to address. See *Goldfarb v. Virginia State Bar*, 421 U. S. 773, 791. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there was more like prototypical state agencies, not specialized boards dominated by active market participants. The latter are similar to private trade associations vested by States with regulatory authority, which must satisfy *Midcal's* active supervision standard. 445 U. S., at 105–106. The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie, supra*, at 39. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus,

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the Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* active supervision requirement in order to invoke state-action antitrust immunity. Pp. 12–14.

(4) The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. But this holding is not inconsistent with the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State. Further, this case does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure *Parker* immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity must be rejected, see *Patrick v. Burget*, 486 U. S. 94, 105–106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14–16.

(5) The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis. The Act delegates control over the practice of dentistry to the Board, but says nothing about teeth whitening. In acting to expel the dentists' competitors from the market, the Board relied on cease-and-desist letters threatening criminal liability, instead of other powers at its disposal that would have invoked oversight by a politically accountable official. Whether or not the Board exceeded its powers under North Carolina law, there is no evidence of any decision by the State to initiate or concur with the Board's actions against the nondentists. P. 17.

(c) Here, where there are no specific supervisory systems to be reviewed, it suffices to note that the inquiry regarding active supervision is flexible and context-dependent. The question is whether the State's review mechanisms provide "realistic assurance" that a non-sovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U. S., 100–101. The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see *id.*, at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state



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supervision is not an adequate substitute for a decision by the State,” *Ticor, supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case. Pp. 17–18.

717 F. 3d 359, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

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No. 13–534

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**NORTH CAROLINA STATE BOARD OF DENTAL  
EXAMINERS, PETITIONER *v.* FEDERAL  
TRADE COMMISSION**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE KENNEDY delivered the opinion of the Court.

This case arises from an antitrust challenge to the actions of a state regulatory board. A majority of the board’s members are engaged in the active practice of the profession it regulates. The question is whether the board’s actions are protected from Sherman Act regulation under the doctrine of state-action antitrust immunity, as defined and applied in this Court’s decisions beginning with *Parker v. Brown*, 317 U. S. 341 (1943).

I  
A

In its Dental Practice Act (Act), North Carolina has declared the practice of dentistry to be a matter of public concern requiring regulation. N. C. Gen. Stat. Ann. §90–22(a) (2013). Under the Act, the North Carolina State Board of Dental Examiners (Board) is “the agency of the State for the regulation of the practice of dentistry.” §90–22(b).

The Board’s principal duty is to create, administer, and enforce a licensing system for dentists. See §§90–29 to

90–41. To perform that function it has broad authority over licensees. See §90–41. The Board’s authority with respect to unlicensed persons, however, is more restricted: like “any resident citizen,” the Board may file suit to “perpetually enjoin any person from . . . unlawfully practicing dentistry.” §90–40.1.

The Act provides that six of the Board’s eight members must be licensed dentists engaged in the active practice of dentistry. §90–22. They are elected by other licensed dentists in North Carolina, who cast their ballots in elections conducted by the Board. *Ibid.* The seventh member must be a licensed and practicing dental hygienist, and he or she is elected by other licensed hygienists. *Ibid.* The final member is referred to by the Act as a “consumer” and is appointed by the Governor. *Ibid.* All members serve 3-year terms, and no person may serve more than two consecutive terms. *Ibid.* The Act does not create any mechanism for the removal of an elected member of the Board by a public official. See *ibid.*

Board members swear an oath of office, §138A–22(a), and the Board must comply with the State’s Administrative Procedure Act, §150B–1 *et seq.*, Public Records Act, §132–1 *et seq.*, and open-meetings law, §143–318.9 *et seq.* The Board may promulgate rules and regulations governing the practice of dentistry within the State, provided those mandates are not inconsistent with the Act and are approved by the North Carolina Rules Review Commission, whose members are appointed by the state legislature. See §§90–48, 143B–30.1, 150B–21.9(a).

## B

In the 1990’s, dentists in North Carolina started whitening teeth. Many of those who did so, including 8 of the Board’s 10 members during the period at issue in this case, earned substantial fees for that service. By 2003, nondentists arrived on the scene. They charged lower

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prices for their services than the dentists did. Dentists soon began to complain to the Board about their new competitors. Few complaints warned of possible harm to consumers. Most expressed a principal concern with the low prices charged by nondentists.

Responding to these filings, the Board opened an investigation into nondentist teeth whitening. A dentist member was placed in charge of the inquiry. Neither the Board's hygienist member nor its consumer member participated in this undertaking. The Board's chief operations officer remarked that the Board was "going forth to do battle" with nondentists. App. to Pet. for Cert. 103a. The Board's concern did not result in a formal rule or regulation reviewable by the independent Rules Review Commission, even though the Act does not, by its terms, specify that teeth whitening is "the practice of dentistry."

Starting in 2006, the Board issued at least 47 cease-and-desist letters on its official letterhead to nondentist teeth whitening service providers and product manufacturers. Many of those letters directed the recipient to cease "all activity constituting the practice of dentistry"; warned that the unlicensed practice of dentistry is a crime; and strongly implied (or expressly stated) that teeth whitening constitutes "the practice of dentistry." App. 13, 15. In early 2007, the Board persuaded the North Carolina Board of Cosmetic Art Examiners to warn cosmetologists against providing teeth whitening services. Later that year, the Board sent letters to mall operators, stating that kiosk teeth whiteners were violating the Dental Practice Act and advising that the malls consider expelling violators from their premises.

These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.

## C

In 2010, the Federal Trade Commission (FTC) filed an

administrative complaint charging the Board with violating §5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 15 U. S. C. §45. The FTC alleged that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition. The Board moved to dismiss, alleging state-action immunity. An Administrative Law Judge (ALJ) denied the motion. On appeal, the FTC sustained the ALJ's ruling. It reasoned that, even assuming the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board is a "public/private hybrid" that must be actively supervised by the State to claim immunity. App. to Pet. for Cert. 49a. The FTC further concluded the Board could not make that showing.

Following other proceedings not relevant here, the ALJ conducted a hearing on the merits and determined the Board had unreasonably restrained trade in violation of antitrust law. On appeal, the FTC again sustained the ALJ. The FTC rejected the Board's public safety justification, noting, *inter alia*, "a wealth of evidence . . . suggesting that non-dentist provided teeth whitening is a safe cosmetic procedure." *Id.*, at 123a.

The FTC ordered the Board to stop sending the cease-and-desist letters or other communications that stated nondentists may not offer teeth whitening services and products. It further ordered the Board to issue notices to all earlier recipients of the Board's cease-and-desist orders advising them of the Board's proper sphere of authority and saying, among other options, that the notice recipients had a right to seek declaratory rulings in state court.

On petition for review, the Court of Appeals for the Fourth Circuit affirmed the FTC in all respects. 717 F. 3d 359, 370 (2013). This Court granted certiorari. 571 U. S. \_\_\_ (2014).

## Opinion of the Court

## II

Federal antitrust law is a central safeguard for the Nation’s free market structures. In this regard it is “as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.” *United States v. Topco Associates, Inc.*, 405 U. S. 596, 610 (1972). The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market.

The Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. §1 *et seq.*, serves to promote robust competition, which in turn empowers the States and provides their citizens with opportunities to pursue their own and the public’s welfare. See *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 632 (1992). The States, however, when acting in their respective realm, need not adhere in all contexts to a model of unfettered competition. While “the States regulate their economies in many ways not inconsistent with the antitrust laws,” *id.*, at 635–636, in some spheres they impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives. If every duly enacted state law or policy were required to conform to the mandates of the Sherman Act, thus promoting competition at the expense of other values a State may deem fundamental, federal antitrust law would impose an impermissible burden on the States’ power to regulate. See *Exxon Corp. v. Governor of Maryland*, 437 U. S. 117, 133 (1978); see also Easterbrook, *Antitrust and the Economics of Federalism*, 26 J. Law & Econ. 23, 24 (1983).

For these reasons, the Court in *Parker v. Brown* interpreted the antitrust laws to confer immunity on anticompetitive conduct by the States when acting in their sovereign capacity. See 317 U. S., at 350–351. That ruling

recognized Congress’ purpose to respect the federal balance and to “embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution.” *Community Communications Co. v. Boulder*, 455 U. S. 40, 53 (1982). Since 1943, the Court has reaffirmed the importance of *Parker*’s central holding. See, e.g., *Ticor, supra*, at 632–637; *Hoover v. Ronwin*, 466 U. S. 558, 568 (1984); *Lafayette v. Louisiana Power & Light Co.*, 435 U. S. 389, 394–400 (1978).

### III

In this case the Board argues its members were invested by North Carolina with the power of the State and that, as a result, the Board’s actions are cloaked with *Parker* immunity. This argument fails, however. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if it satisfies two requirements: “first that ‘the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy,’ and second that ‘the policy . . . be actively supervised by the State.’” *FTC v. Phoebe Putney Health System, Inc.*, 568 U. S. \_\_\_, \_\_\_ (2013) (slip op., at 7) (quoting *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105 (1980)). The parties have assumed that the clear articulation requirement is satisfied, and we do the same. While North Carolina prohibits the unauthorized practice of dentistry, however, its Act is silent on whether that broad prohibition covers teeth whitening. Here, the Board did not receive active supervision by the State when it interpreted the Act as addressing teeth whitening and when it enforced that policy by issuing cease-and-desist letters to nondentist teeth whiteners.

### A

Although state-action immunity exists to avoid conflicts

## Opinion of the Court

between state sovereignty and the Nation’s commitment to a policy of robust competition, *Parker* immunity is not unbounded. “[G]iven the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, ‘state action immunity is disfavored, much as are repeals by implication.’” *Phoebé Putney, supra*, at \_\_\_\_ (slip op., at 7) (quoting *Ticor, supra*, at 636).

An entity may not invoke *Parker* immunity unless the actions in question are an exercise of the State’s sovereign power. See *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374 (1991). State legislation and “decision[s] of a state supreme court, acting legislatively rather than judicially,” will satisfy this standard, and “*ipso facto* are exempt from the operation of the antitrust laws” because they are an undoubted exercise of state sovereign authority. *Hoover, supra*, at 567–568.

But while the Sherman Act confers immunity on the States’ own anticompetitive policies out of respect for federalism, it does not always confer immunity where, as here, a State delegates control over a market to a non-sovereign actor. See *Parker, supra*, at 351 (“[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful”). For purposes of *Parker*, a nonsovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. See *Hoover, supra*, at 567–568. State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb v. Virginia State Bar*, 421 U. S. 773, 791 (1975) (“The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members”). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of



*Parker's* rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor*, 504 U. S., at 636.

Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. See *Midcal*, *supra*, at 106 (“The national policy in favor of competition cannot be thwarted by casting [a] gauzy cloak of state involvement over what is essentially a private price-fixing arrangement”). Indeed, prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. See, e.g., *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U. S. 492, 501 (1988); *Hoover*, *supra*, at 584 (Stevens, J., dissenting) (“The risk that private regulation of market entry, prices, or output may be designed to confer monopoly profits on members of an industry at the expense of the consuming public has been the central concern of . . . our antitrust jurisprudence”); see also Elhauge, *The Scope of Antitrust Process*, 104 Harv. L. Rev. 667, 672 (1991). So it follows that, under *Parker* and the Supremacy Clause, the States’ greater power to attain an end does not include the lesser power to negate the congressional judgment embodied in the Sherman Act through unsupervised delegations to active market participants. See Garland, *Antitrust and State Action: Economic Efficiency and the Political Process*, 96 Yale L. J. 486, 500 (1986).

*Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State’s own.

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See *Goldfarb, supra*, at 790; see also 1A P. Areeda & H. Hovencamp, *Antitrust Law* ¶226, p. 180 (4th ed. 2013) (Areeda & Hovencamp). The question is not whether the challenged conduct is efficient, well-functioning, or wise. See *Ticor, supra*, at 634–635. Rather, it is “whether anti-competitive conduct engaged in by [nonsovereign actors] should be deemed state action and thus shielded from the antitrust laws.” *Patrick v. Burget*, 486 U. S. 94, 100 (1988).

To answer this question, the Court applies the two-part test set forth in *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, a case arising from California’s delegation of price-fixing authority to wine merchants. Under *Midcal*, “[a] state law or regulatory scheme cannot be the basis for antitrust immunity unless, first, the State has articulated a clear policy to allow the anticompetitive conduct, and second, the State provides active supervision of [the] anticompetitive conduct.” *Ticor, supra*, at 631 (citing *Midcal, supra*, at 105).

*Midcal*’s clear articulation requirement is satisfied “where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals.” *Phoebe Putney*, 568 U. S., at \_\_\_\_ (slip op., at 11). The active supervision requirement demands, *inter alia*, “that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.” *Patrick, supra*, U. S., at 101.

The two requirements set forth in *Midcal* provide a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for a policy may

satisfy this test yet still be defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated. See *Ticor, supra*, at 636–637. Entities purporting to act under state authority might diverge from the State’s considered definition of the public good. The resulting asymmetry between a state policy and its implementation can invite private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity.

*Midcal*’s supervision rule “stems from the recognition that [w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.” *Patrick, supra*, at 100. Concern about the private incentives of active market participants animates *Midcal*’s supervision mandate, which demands “realistic assurance that a private party’s anticompetitive conduct promotes state policy, rather than merely the party’s individual interests.” *Patrick, supra*, at 101.

## B

In determining whether anticompetitive policies and conduct are indeed the action of a State in its sovereign capacity, there are instances in which an actor can be excused from *Midcal*’s active supervision requirement. In *Hallie v. Eau Claire*, 471 U. S. 34, 45 (1985), the Court held municipalities are subject exclusively to *Midcal*’s “clear articulation” requirement. That rule, the Court observed, is consistent with the objective of ensuring that the policy at issue be one enacted by the State itself. *Hallie* explained that “[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the

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expense of more overriding state goals.” 471 U. S., at 47. *Hallie* further observed that municipalities are electorally accountable and lack the kind of private incentives characteristic of active participants in the market. See *id.*, at 45, n. 9. Critically, the municipality in *Hallie* exercised a wide range of governmental powers across different economic spheres, substantially reducing the risk that it would pursue private interests while regulating any single field. See *ibid.* That *Hallie* excused municipalities from *Midcal*’s supervision rule for these reasons all but confirms the rule’s applicability to actors controlled by active market participants, who ordinarily have none of the features justifying the narrow exception *Hallie* identified. See 471 U. S., at 45.

Following *Goldfarb*, *Midcal*, and *Hallie*, which clarified the conditions under which *Parker* immunity attaches to the conduct of a nonsovereign actor, the Court in *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, addressed whether an otherwise immune entity could lose immunity for conspiring with private parties. In *Omni*, an aspiring billboard merchant argued that the city of Columbia, South Carolina, had violated the Sherman Act—and forfeited its *Parker* immunity—by anticompetitively conspiring with an established local company in passing an ordinance restricting new billboard construction. 499 U. S., at 367–368. The Court disagreed, holding there is no “conspiracy exception” to *Parker*. *Omni, supra*, at 374.

*Omni*, like the cases before it, recognized the importance of drawing a line “relevant to the purposes of the Sherman Act and of *Parker*: prohibiting the restriction of competition for private gain but permitting the restriction of competition in the public interest.” 499 U. S., at 378. In the context of a municipal actor which, as in *Hallie*, exercised substantial governmental powers, *Omni* rejected a conspiracy exception for “corruption” as vague and unworkable, since “virtually all regulation benefits some

segments of the society and harms others” and may in that sense be seen as “‘corrupt.’” 499 U. S., at 377. *Omni* also rejected subjective tests for corruption that would force a “deconstruction of the governmental process and probing of the official ‘intent’ that we have consistently sought to avoid.” *Ibid.* Thus, whereas the cases preceding it addressed the preconditions of *Parker* immunity and engaged in an objective, *ex ante* inquiry into nonsovereign actors’ structure and incentives, *Omni* made clear that recipients of immunity will not lose it on the basis of ad hoc and *ex post* questioning of their motives for making particular decisions.

*Omni*’s holding makes it all the more necessary to ensure the conditions for granting immunity are met in the first place. The Court’s two state-action immunity cases decided after *Omni* reinforce this point. In *Ticor* the Court affirmed that *Midcal*’s limits on delegation must ensure that “[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law, is the precondition for immunity from federal law.” 504 U. S., at 633. And in *Phoebe Putney* the Court observed that *Midcal*’s active supervision requirement, in particular, is an essential condition of state-action immunity when a nonsovereign actor has “an incentive to pursue [its] own self-interest under the guise of implementing state policies.” 568 U. S., at \_\_\_ (slip op., at 8) (quoting *Hallie, supra*, at 46–47). The lesson is clear: *Midcal*’s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants.

### C

The Board argues entities designated by the States as agencies are exempt from *Midcal*’s second requirement. That premise, however, cannot be reconciled with the Court’s repeated conclusion that the need for supervision

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turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade.

State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Areeda & Hovencamp* ¶227, at 226. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. See *Patrick*, 486 U. S., at 100–101.

The Court applied this reasoning to a state agency in *Goldfarb*. There the Court denied immunity to a state agency (the Virginia State Bar) controlled by market participants (lawyers) because the agency had “joined in what is essentially a private anticompetitive activity” for “the benefit of its members.” 421 U. S., at 791, 792. This emphasis on the Bar's private interests explains why *Goldfarb*, though it predates *Midcal*, considered the lack of supervision by the Virginia Supreme Court to be a principal reason for denying immunity. See 421 U. S., at 791; see also *Hoover*, 466 U. S., at 569 (emphasizing lack of active supervision in *Goldfarb*); *Bates v. State Bar of Ariz.*, 433 U. S. 350, 361–362 (1977) (granting the Arizona Bar state-action immunity partly because its “rules are subject to pointed re-examination by the policymaker”).

While *Hallie* stated “it is likely that active state supervision would also not be required” for agencies, 471 U. S., at 46, n. 10, the entity there, as was later the case in *Omni*, was an electorally accountable municipality with general regulatory powers and no private price-fixing agenda. In that and other respects the municipality was more like prototypical state agencies, not specialized boards dominated by active market participants. In important regards, agencies controlled by market partici-

pants are more similar to private trade associations vested by States with regulatory authority than to the agencies *Hallie* considered. And as the Court observed three years after *Hallie*, “[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and that the product standards set by such associations have a serious potential for anticompetitive harm.” *Allied Tube*, 486 U. S., at 500. For that reason, those associations must satisfy *Midcal*’s active supervision standard. See *Midcal*, 445 U. S., at 105–106.

The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39 (rejecting “purely formalistic” analysis). *Parker* immunity does not derive from nomenclature alone. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. See *Areeda & Hovencamp* ¶227, at 226. The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*’s active supervision requirement in order to invoke state-action antitrust immunity.

#### D

The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. If this were so—and, for reasons to be noted, it need not be so—there would be some cause for concern. The States have a sovereign interest in structuring their governments, see *Gregory v. Ashcroft*, 501 U. S. 452, 460 (1991), and may conclude there are substantial benefits to staffing their

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agencies with experts in complex and technical subjects, see *Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U. S. 48, 64 (1985). There is, moreover, a long tradition of citizens esteemed by their professional colleagues devoting time, energy, and talent to enhancing the dignity of their calling.

Adherence to the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State reaches back at least to the Hippocratic Oath. See generally S. Miles, *The Hippocratic Oath and the Ethics of Medicine* (2004). In the United States, there is a strong tradition of professional self-regulation, particularly with respect to the development of ethical rules. See generally R. Rotunda & J. Dzienkowski, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility* (2014); R. Baker, *Before Bioethics: A History of American Medical Ethics From the Colonial Period to the Bioethics Revolution* (2013). Dentists are no exception. The American Dental Association, for example, in an exercise of “the privilege and obligation of self-government,” has “call[ed] upon dentists to follow high ethical standards,” including “honesty, compassion, kindness, integrity, fairness and charity.” American Dental Association, *Principles of Ethics and Code of Professional Conduct* 3–4 (2012). State laws and institutions are sustained by this tradition when they draw upon the expertise and commitment of professionals.

Today's holding is not inconsistent with that idea. The Board argues, however, that the potential for money damages will discourage members of regulated occupations from participating in state government. Cf. *Filarsky v. Delia*, 566 U. S. \_\_\_, \_\_\_ (2012) (slip op., at 12) (warning in the context of civil rights suits that the “the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts”). But this case, which does not



present a claim for money damages, does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. See *Goldfarb*, 421 U. S., at 792, n. 22; see also Brief for Respondent 56. And, of course, the States may provide for the defense and indemnification of agency members in the event of litigation.

States, furthermore, can ensure *Parker* immunity is available to agencies by adopting clear policies to displace competition; and, if agencies controlled by active market participants interpret or enforce those policies, the States may provide active supervision. Precedent confirms this principle. The Court has rejected the argument that it would be unwise to apply the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity:

“[Respondents] contend that effective peer review is essential to the provision of quality medical care and that any threat of antitrust liability will prevent physicians from participating openly and actively in peer-review proceedings. This argument, however, essentially challenges the wisdom of applying the antitrust laws to the sphere of medical care, and as such is properly directed to the legislative branch. To the extent that Congress has declined to exempt medical peer review from the reach of the antitrust laws, peer review is immune from antitrust scrutiny only if the State effectively has made this conduct its own.” *Patrick*, 486 U. S. at 105–106 (footnote omitted).

The reasoning of *Patrick v. Burget* applies to this case with full force, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. See generally Edlin & Haw, *Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny?* 162 U. Pa. L. Rev. 1093 (2014).

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## E

The Board does not contend in this Court that its anti-competitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis.

By statute, North Carolina delegates control over the practice of dentistry to the Board. The Act, however, says nothing about teeth whitening, a practice that did not exist when it was passed. After receiving complaints from other dentists about the nondentists' cheaper services, the Board's dentist members—some of whom offered whitening services—acted to expel the dentists' competitors from the market. In so doing the Board relied upon cease-and-desist letters threatening criminal liability, rather than any of the powers at its disposal that would invoke oversight by a politically accountable official. With no active supervision by the State, North Carolina officials may well have been unaware that the Board had decided teeth whitening constitutes “the practice of dentistry” and sought to prohibit those who competed against dentists from participating in the teeth whitening market. Whether or not the Board exceeded its powers under North Carolina law, cf. *Omni*, 499 U. S., at 371–372, there is no evidence here of any decision by the State to initiate or concur with the Board's actions against the nondentists.

## IV

The Board does not claim that the State exercised active, or indeed any, supervision over its conduct regarding nondentist teeth whiteners; and, as a result, no specific supervisory systems can be reviewed here. It suffices to note that the inquiry regarding active supervision is flexible and context-dependent. Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide “realistic assurance” that a nonsovereign actor's anticom-

petitive conduct “promotes state policy, rather than merely the party’s individual interests.” *Patrick, supra*, at 100–101; see also *Ticor*, 504 U. S., at 639–640.

The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it, see *Patrick*, 486 U. S., at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the “mere potential for state supervision is not an adequate substitute for a decision by the State,” *Ticor, supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case.

\* \* \*

The Sherman Act protects competition while also respecting federalism. It does not authorize the States to abandon markets to the unsupervised control of active market participants, whether trade associations or hybrid agencies. If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity under *Parker* is to be invoked.

The judgment of the Court of Appeals for the Fourth Circuit is affirmed.

*It is so ordered.*

ALITO, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

No. 13–534

**NORTH CAROLINA STATE BOARD OF DENTAL  
EXAMINERS, PETITIONER *v.* FEDERAL  
TRADE COMMISSION**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court’s decision in this case is based on a serious misunderstanding of the doctrine of state-action antitrust immunity that this Court recognized more than 60 years ago in *Parker v. Brown*, 317 U. S. 341 (1943). In *Parker*, the Court held that the Sherman Act does not prevent the States from continuing their age-old practice of enacting measures, such as licensing requirements, that are designed to protect the public health and welfare. *Id.*, at 352. The case now before us involves precisely this type of state regulation—North Carolina’s laws governing the practice of dentistry, which are administered by the North Carolina Board of Dental Examiners (Board).

Today, however, the Court takes the unprecedented step of holding that *Parker* does not apply to the North Carolina Board because the Board is not structured in a way that merits a good-government seal of approval; that is, it is made up of practicing dentists who have a financial incentive to use the licensing laws to further the financial interests of the State’s dentists. There is nothing new about the structure of the North Carolina Board. When the States first created medical and dental boards, well before the Sherman Act was enacted, they began to staff

them in this way.<sup>1</sup> Nor is there anything new about the suspicion that the North Carolina Board—in attempting to prevent persons other than dentists from performing teeth-whitening procedures—was serving the interests of dentists and not the public. Professional and occupational licensing requirements have often been used in such a way.<sup>2</sup> But that is not what *Parker* immunity is about. Indeed, the very state program involved in that case was unquestionably designed to benefit the regulated entities, California raisin growers.

The question before us is not whether such programs serve the public interest. The question, instead, is whether this case is controlled by *Parker*, and the answer to that question is clear. Under *Parker*, the Sherman Act (and the Federal Trade Commission Act, see *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 635 (1992)) do not apply to state agencies; the North Carolina Board of Dental Examiners is a state agency; and that is the end of the matter. By straying from this simple path, the Court has not only distorted *Parker*; it has headed into a morass. Determining whether a state agency is structured in a way that militates against regulatory capture is no easy task, and there is reason to fear that today's decision will spawn confusion. The Court has veered off course, and therefore I cannot go along.

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<sup>1</sup>S. White, *History of Oral and Dental Science in America 197–214* (1876) (detailing earliest American regulations of the practice of dentistry).

<sup>2</sup>See, e.g., R. Shrylock, *Medical Licensing in America 29* (1967) (Shrylock) (detailing the deterioration of licensing regimes in the mid-19th century, in part out of concerns about restraints on trade); Gellhorn, *The Abuse of Occupational Licensing*, 44 *U. Chi. L. Rev.* 6 (1976); Shepard, *Licensing Restrictions and the Cost of Dental Care*, 21 *J. Law & Econ.* 187 (1978).

ALITO, J., dissenting

## I

In order to understand the nature of *Parker* state-action immunity, it is helpful to recall the constitutional landscape in 1890 when the Sherman Act was enacted. At that time, this Court and Congress had an understanding of the scope of federal and state power that is very different from our understanding today. The States were understood to possess the exclusive authority to regulate “their purely internal affairs.” *Leisy v. Hardin*, 135 U. S. 100, 122 (1890). In exercising their police power in this area, the States had long enacted measures, such as price controls and licensing requirements, that had the effect of restraining trade.<sup>3</sup>

The Sherman Act was enacted pursuant to Congress’ power to regulate interstate commerce, and in passing the Act, Congress wanted to exercise that power “to the utmost extent.” *United States v. South-Eastern Underwriters Assn.*, 322 U. S. 533, 558 (1944). But in 1890, the understanding of the commerce power was far more limited than it is today. See, e.g., *Kidd v. Pearson*, 128 U. S. 1, 17–18 (1888). As a result, the Act did not pose a threat to traditional state regulatory activity.

By 1943, when *Parker* was decided, however, the situation had changed dramatically. This Court had held that the commerce power permitted Congress to regulate even local activity if it “exerts a substantial economic effect on interstate commerce.” *Wickard v. Filburn*, 317 U. S. 111, 125 (1942). This meant that Congress could regulate many of the matters that had once been thought to fall exclusively within the jurisdiction of the States. The new interpretation of the commerce power brought about an expansion of the reach of the Sherman Act. See *Hospital*

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<sup>3</sup>See Handler, The Current Attack on the *Parker v. Brown* State Action Doctrine, 76 Colum. L. Rev. 1, 4–6 (1976) (collecting cases).

*Building Co. v. Trustees of Rex Hospital*, 425 U. S. 738, 743, n. 2 (1976) (“[D]ecisions by this Court have permitted the reach of the Sherman Act to expand along with expanding notions of congressional power”). And the expanded reach of the Sherman Act raised an important question. The Sherman Act does not expressly exempt States from its scope. Does that mean that the Act applies to the States and that it potentially outlaws many traditional state regulatory measures? The Court confronted that question in *Parker*.

In *Parker*, a raisin producer challenged the California Agricultural Prorate Act, an agricultural price support program. The California Act authorized the creation of an Agricultural Prorate Advisory Commission (Commission) to establish marketing plans for certain agricultural commodities within the State. 317 U. S., at 346–347. Raisins were among the regulated commodities, and so the Commission established a marketing program that governed many aspects of raisin sales, including the quality and quantity of raisins sold, the timing of sales, and the price at which raisins were sold. *Id.*, at 347–348. The *Parker* Court assumed that this program would have violated “the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons,” and the Court also assumed that Congress could have prohibited a State from creating a program like California’s if it had chosen to do so. *Id.*, at 350. Nevertheless, the Court concluded that the California program did not violate the Sherman Act because the Act did not circumscribe state regulatory power. *Id.*, at 351.

The Court’s holding in *Parker* was not based on either the language of the Sherman Act or anything in the legislative history affirmatively showing that the Act was not meant to apply to the States. Instead, the Court reasoned that “[i]n a dual system of government in which, under the Constitution, the states are sovereign, save only as Con-

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gress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state’s control over its officers and agents is not lightly to be attributed to Congress.” 317 U. S., at 351. For the Congress that enacted the Sherman Act in 1890, it would have been a truly radical and almost certainly futile step to attempt to prevent the States from exercising their traditional regulatory authority, and the *Parker* Court refused to assume that the Act was meant to have such an effect.

When the basis for the *Parker* state-action doctrine is understood, the Court’s error in this case is plain. In 1890, the regulation of the practice of medicine and dentistry was regarded as falling squarely within the States’ sovereign police power. By that time, many States had established medical and dental boards, often staffed by doctors or dentists,<sup>4</sup> and had given those boards the authority to confer and revoke licenses.<sup>5</sup> This was quintessential police power legislation, and although state laws were often challenged during that era under the doctrine of substantive due process, the licensing of medical professionals easily survived such assaults. Just one year before the enactment of the Sherman Act, in *Dent v. West Virginia*, 129 U. S. 114, 128 (1889), this Court rejected such a challenge to a state law requiring all physicians to obtain a certificate from the state board of health attesting to their qualifications. And in *Hawker v. New York*, 170 U. S. 189, 192 (1898), the Court reiterated that a law

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<sup>4</sup>Shrylock 54–55; D. Johnson and H. Chaudry, *Medical Licensing and Discipline in America* 23–24 (2012).

<sup>5</sup>In *Hawker v. New York*, 170 U. S. 189 (1898), the Court cited state laws authorizing such boards to refuse or revoke medical licenses. *Id.*, at 191–193, n. 1. See also *Douglas v. Noble*, 261 U. S. 165, 166 (1923) (“In 1893 the legislature of Washington provided that only licensed persons should practice dentistry” and “vested the authority to license in a board of examiners, consisting of five practicing dentists”).



specifying the qualifications to practice medicine was clearly a proper exercise of the police power. Thus, the North Carolina statutes establishing and specifying the powers of the State Board of Dental Examiners represent precisely the kind of state regulation that the *Parker* exemption was meant to immunize.

## II

As noted above, the only question in this case is whether the North Carolina Board of Dental Examiners is really a state agency, and the answer to that question is clearly yes.

- The North Carolina Legislature determined that the practice of dentistry “affect[s] the public health, safety and welfare” of North Carolina’s citizens and that therefore the profession should be “subject to regulation and control in the public interest” in order to ensure “that only qualified persons be permitted to practice dentistry in the State.” N. C. Gen. Stat. Ann. §90–22(a) (2013).
- To further that end, the legislature created the North Carolina State Board of Dental Examiners “as the agency of the State for the regulation of the practice of dentistry in th[e] State.” §90–22(b).
- The legislature specified the membership of the Board. §90–22(c). It defined the “practice of dentistry,” §90–29(b), and it set out standards for licensing practitioners, §90–30. The legislature also set out standards under which the Board can initiate disciplinary proceedings against licensees who engage in certain improper acts. §90–41(a).
- The legislature empowered the Board to “maintain an action in the name of the State of North Carolina to perpetually enjoin any person from . . . unlawfully practicing dentistry.” §90–40.1(a). It authorized the Board to conduct investigations and to hire legal

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counsel, and the legislature made any “notice or statement of charges against any licensee” a public record under state law. §§ 90–41(d)–(g).

- The legislature empowered the Board “to enact rules and regulations governing the practice of dentistry within the State,” consistent with relevant statutes. §90–48. It has required that any such rules be included in the Board’s annual report, which the Board must file with the North Carolina secretary of state, the state attorney general, and the legislature’s Joint Regulatory Reform Committee. §93B–2. And if the Board fails to file the required report, state law demands that it be automatically suspended until it does so. *Ibid.*

As this regulatory regime demonstrates, North Carolina’s Board of Dental Examiners is unmistakably a state agency created by the state legislature to serve a prescribed regulatory purpose and to do so using the State’s power in cooperation with other arms of state government.

The Board is not a private or “nonsovereign” entity that the State of North Carolina has attempted to immunize from federal antitrust scrutiny. *Parker* made it clear that a State may not “give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful.” *Ante*, at 7 (quoting *Parker*, 317 U. S., at 351). When the *Parker* Court disapproved of any such attempt, it cited *Northern Securities Co. v. United States*, 193 U. S. 197 (1904), to show what it had in mind. In that case, the Court held that a State’s act of chartering a corporation did not shield the corporation’s monopolizing activities from federal antitrust law. *Id.*, at 344–345. Nothing similar is involved here. North Carolina did not authorize a private entity to enter into an anticompetitive arrangement; rather, North Carolina *created a state agency* and gave that agency the power to regulate a particular subject affecting public health and

safety.

Nothing in *Parker* supports the type of inquiry that the Court now prescribes. The Court crafts a test under which state agencies that are “controlled by active market participants,” *ante*, at 12, must demonstrate active state supervision in order to be immune from federal antitrust law. The Court thus treats these state agencies like private entities. But in *Parker*, the Court did not examine the structure of the California program to determine if it had been captured by private interests. If the Court had done so, the case would certainly have come out differently, because California conditioned its regulatory measures on the participation and approval of market actors in the relevant industry.

Establishing a prorate marketing plan under California’s law first required the petition of at least 10 producers of the particular commodity. *Parker*, 317 U. S., at 346. If the Commission then agreed that a marketing plan was warranted, the Commission would “select a program committee *from among nominees chosen by the qualified producers.*” *Ibid.* (emphasis added). That committee would then formulate the proration marketing program, which the Commission could modify or approve. But even after Commission approval, the program became law (and then, automatically) only if it gained the approval of 65 percent of the relevant producers, representing at least 51 percent of the acreage of the regulated crop. *Id.*, at 347. This scheme gave decisive power to market participants. But despite these aspects of the California program, *Parker* held that California was acting as a “sovereign” when it “adopt[ed] and enforc[ed] the prorate program.” *Id.*, at 352. This reasoning is irreconcilable with the Court’s today.

### III

The Court goes astray because it forgets the origin of the

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*Parker* doctrine and is misdirected by subsequent cases that extended that doctrine (in certain circumstances) to private entities. The Court requires the North Carolina Board to satisfy the two-part test set out in *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), but the party claiming *Parker* immunity in that case was not a state agency but a private trade association. Such an entity is entitled to *Parker* immunity, *Midcal* held, only if the anticompetitive conduct at issue was both “clearly articulated” and “actively supervised by the State itself.” 445 U. S., at 105. Those requirements are needed where a State authorizes private parties to engage in anticompetitive conduct. They serve to identify those situations in which conduct *by private parties* can be regarded as the conduct of a State. But when the conduct in question is the conduct of a state agency, no such inquiry is required.

This case falls into the latter category, and therefore *Midcal* is inapposite. The North Carolina Board is not a private trade association. It is a state agency, created and empowered by the State to regulate an industry affecting public health. It would not exist if the State had not created it. And for purposes of *Parker*, its membership is irrelevant; what matters is that it is part of the government of the sovereign State of North Carolina.

Our decision in *Hallie v. Eau Claire*, 471 U. S. 34 (1985), which involved Sherman Act claims against a municipality, not a State agency, is similarly inapplicable. In *Hallie*, the plaintiff argued that the two-pronged *Midcal* test should be applied, but the Court disagreed. The Court acknowledged that municipalities “are not themselves sovereign.” 471 U. S., at 38. But recognizing that a municipality is “an arm of the State,” *id.*, at 45, the Court held that a municipality should be required to satisfy only the first prong of the *Midcal* test (requiring a clearly articulated state policy), 471 U. S., at 46. That municipalities

are not sovereign was critical to our analysis in *Hallie*, and thus that decision has no application in a case, like this one, involving a state agency.

Here, however, the Court not only disregards the North Carolina Board's status as a full-fledged state agency; it treats the Board less favorably than a municipality. This is puzzling. States are sovereign, *Northern Ins. Co. of N. Y. v. Chatham County*, 547 U. S. 189, 193 (2006), and California's sovereignty provided the foundation for the decision in *Parker, supra*, at 352. Municipalities are not sovereign. *Jinks v. Richland County*, 538 U. S. 456, 466 (2003). And for this reason, federal law often treats municipalities differently from States. Compare *Will v. Michigan Dept. of State Police*, 491 U. S. 58, 71 (1989) (“[N]either a State nor its officials acting in their official capacities are ‘persons’ under [42 U. S. C.] §1983”), with *Monell v. City Dept. of Social Servs., New York*, 436 U. S. 658, 694 (1978) (municipalities liable under §1983 where “execution of a government's policy or custom . . . inflicts the injury”).

The Court recognizes that municipalities, although not sovereign, nevertheless benefit from a more lenient standard for state-action immunity than private entities. Yet under the Court's approach, the North Carolina Board of Dental Examiners, a full-fledged state agency, is treated like a private actor and must demonstrate that the State actively supervises its actions.

The Court's analysis seems to be predicated on an assessment of the varying degrees to which a municipality and a state agency like the North Carolina Board are likely to be captured by private interests. But until today, *Parker* immunity was never conditioned on the proper use of state regulatory authority. On the contrary, in *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365 (1991), we refused to recognize an exception to *Parker* for cases in which it was shown that the defendants had

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engaged in a conspiracy or corruption or had acted in a way that was not in the public interest. *Id.*, at 374. The Sherman Act, we said, is not an anticorruption or good-government statute. 499 U. S., at 398. We were unwilling in *Omni* to rewrite *Parker* in order to reach the allegedly abusive behavior of city officials. 499 U. S., at 374–379. But that is essentially what the Court has done here.

### III

Not only is the Court’s decision inconsistent with the underlying theory of *Parker*; it will create practical problems and is likely to have far-reaching effects on the States’ regulation of professions. As previously noted, state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach. It is reasonable for States to decide that the individuals best able to regulate technical professions are practitioners with expertise in those very professions. Staffing the State Board of Dental Examiners with certified public accountants would certainly lessen the risk of actions that place the well-being of dentists over those of the public, but this would also compromise the State’s interest in sensibly regulating a technical profession in which lay people have little expertise.

As a result of today’s decision, States may find it necessary to change the composition of medical, dental, and other boards, but it is not clear what sort of changes are needed to satisfy the test that the Court now adopts. The Court faults the structure of the North Carolina Board because “active market participants” constitute “a controlling number of [the] decisionmakers,” *ante*, at 14, but this test raises many questions.

What is a “controlling number”? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circum-

stances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?

Who is an “active market participant”? If Board members withdraw from practice during a short term of service but typically return to practice when their terms end, does that mean that they are not active market participants during their period of service?

What is the scope of the market in which a member may not participate while serving on the board? Must the market be relevant to the particular regulation being challenged or merely to the jurisdiction of the entire agency? Would the result in the present case be different if a majority of the Board members, though practicing dentists, did not provide teeth whitening services? What if they were orthodontists, periodontists, and the like? And how much participation makes a person “active” in the market?

The answers to these questions are not obvious, but the States must predict the answers in order to make informed choices about how to constitute their agencies.

I suppose that all this will be worked out by the lower courts and the Federal Trade Commission (FTC), but the Court’s approach raises a more fundamental question, and that is why the Court’s inquiry should stop with an examination of the structure of a state licensing board. When the Court asks whether market participants control the North Carolina Board, the Court in essence is asking whether this regulatory body has been captured by the entities that it is supposed to regulate. Regulatory capture can occur in many ways.<sup>6</sup> So why ask only whether

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<sup>6</sup>See, *e.g.*, R. Noll, *Reforming Regulation* 40–43, 46 (1971); J. Wilson, *The Politics of Regulation* 357–394 (1980). Indeed, it has even been

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the members of a board are active market participants? The answer may be that determining when regulatory capture has occurred is no simple task. That answer provides a reason for relieving courts from the obligation to make such determinations at all. It does not explain why it is appropriate for the Court to adopt the rather crude test for capture that constitutes the holding of today's decision.

#### IV

The Court has created a new standard for distinguishing between private and state actors for purposes of federal antitrust immunity. This new standard is not true to the *Parker* doctrine; it diminishes our traditional respect for federalism and state sovereignty; and it will be difficult to apply. I therefore respectfully dissent.

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charged that the FTC, which brought this case, has been captured by entities over which it has jurisdiction. See E. Cox, "The Nader Report" on the Federal Trade Commission vii–xiv (1969); Posner, Federal Trade Commission, *Chi. L. Rev.* 47, 82–84 (1969).



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OFFICE OF THE ATTORNEY GENERAL  
State of California

KAMALA D. HARRIS  
Attorney General

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OPINION	:	No. 15-402
	:	
of	:	September 10, 2015
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KAMALA D. HARRIS	:	
Attorney General	:	
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SUSAN DUNCAN LEE	:	
Deputy Attorney General	:	
	:	

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THE HONORABLE JERRY HILL, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

What constitutes “active state supervision” of a state licensing board for purposes of the state action immunity doctrine in antitrust actions, and what measures might be taken to guard against antitrust liability for board members?

CONCLUSIONS

“Active state supervision” requires a state official to review the substance of a regulatory decision made by a state licensing board, in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated, and must have and exercise the power to approve, modify, or disapprove the decision.

Measures that might be taken to guard against antitrust liability for board members include changing the composition of boards, adding lines of supervision by state officials, and providing board members with legal indemnification and antitrust training.

## ANALYSIS

In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*,<sup>1</sup> the Supreme Court of the United States established a new standard for determining whether a state licensing board is entitled to immunity from antitrust actions.

Immunity is important to state actors not only because it shields them from adverse judgments, but because it shields them from having to go through litigation. When immunity is well established, most people are deterred from filing a suit at all. If a suit is filed, the state can move for summary disposition of the case, often before the discovery process begins. This saves the state a great deal of time and money, and it relieves employees (such as board members) of the stresses and burdens that inevitably go along with being sued. This freedom from suit clears a safe space for government officials and employees to perform their duties and to exercise their discretion without constant fear of litigation. Indeed, allowing government actors freedom to exercise discretion is one of the fundamental justifications underlying immunity doctrines.<sup>2</sup>

Before *North Carolina Dental* was decided, most state licensing boards operated under the assumption that they were protected from antitrust suits under the state action immunity doctrine. In light of the decision, many states—including California—are reassessing the structures and operations of their state licensing boards with a view to determining whether changes should be made to reduce the risk of antitrust claims. This opinion examines the legal requirements for state supervision under the *North Carolina Dental* decision, and identifies a variety of measures that the state Legislature might consider taking in response to the decision.

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<sup>1</sup> *North Carolina State Bd. of Dental Examiners v. F. T. C.* (2015) \_\_\_ U.S. \_\_\_, 135 S. Ct. 1101 (*North Carolina Dental*).

<sup>2</sup> See *Mitchell v. Forsyth* (1985) 472 U.S. 511, 526; *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 819.

## **I. *North Carolina Dental* Established a New Immunity Standard for State Licensing Boards**

### **A. The *North Carolina Dental* Decision**

The North Carolina Board of Dental Examiners was established under North Carolina law and charged with administering a licensing system for dentists. A majority of the members of the board are themselves practicing dentists. North Carolina statutes delegated authority to the dental board to regulate the practice of dentistry, but did not expressly provide that teeth-whitening was within the scope of the practice of dentistry.

Following complaints by dentists that non-dentists were performing teeth-whitening services for low prices, the dental board conducted an investigation. The board subsequently issued cease-and-desist letters to dozens of teeth-whitening outfits, as well as to some owners of shopping malls where teeth-whiteners operated. The effect on the teeth-whitening market in North Carolina was dramatic, and the Federal Trade Commission took action.

In defense to antitrust charges, the dental board argued that, as a state agency, it was immune from liability under the federal antitrust laws. The Supreme Court rejected that argument, holding that a state board on which a controlling number of decision makers are active market participants must show that it is subject to “active supervision” in order to claim immunity.<sup>3</sup>

### **B. State Action Immunity Doctrine Before *North Carolina Dental***

The Sherman Antitrust Act of 1890<sup>4</sup> was enacted to prevent anticompetitive economic practices such as the creation of monopolies or restraints of trade. The terms of the Sherman Act are broad, and do not expressly exempt government entities, but the Supreme Court has long since ruled that federal principles of dual sovereignty imply that federal antitrust laws do not apply to the actions of states, even if those actions are anticompetitive.<sup>5</sup>

This immunity of states from federal antitrust lawsuits is known as the “state action doctrine.”<sup>6</sup> The state action doctrine, which was developed by the Supreme Court

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<sup>3</sup> *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114.

<sup>4</sup> 15 U.S.C. §§ 1, 2.

<sup>5</sup> *Parker v. Brown* (1943) 317 U.S. 341, 350-351.

<sup>6</sup> It is important to note that the phrase “state action” in this context means something

in *Parker v. Brown*,<sup>7</sup> establishes three tiers of decision makers, with different thresholds for immunity in each tier.

In the top tier, with the greatest immunity, is the state itself: the sovereign acts of state governments are absolutely immune from antitrust challenge.<sup>8</sup> Absolute immunity extends, at a minimum, to the state Legislature, the Governor, and the state's Supreme Court.

In the second tier are subordinate state agencies,<sup>9</sup> such as executive departments and administrative agencies with statewide jurisdiction. State agencies are immune from antitrust challenge if their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition.<sup>10</sup> A state policy is sufficiently clear when displacement of competition is the "inherent, logical, or ordinary result" of the authority delegated by the state legislature.<sup>11</sup>

The third tier includes private parties acting on behalf of a state, such as the members of a state-created professional licensing board. Private parties may enjoy state action immunity when two conditions are met: (1) their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition, and (2) their conduct is "actively supervised" by the state.<sup>12</sup> The

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very different from "state action" for purposes of analysis of a civil rights violation under section 1983 of title 42 of the United States Code. Under section 1983, *liability* attaches to "state action," which may cover even the inadvertent or unilateral act of a state official not acting pursuant to state policy. In the antitrust context, a conclusion that a policy or action amounts to "state action" results in *immunity* from suit.

<sup>7</sup> *Parker v. Brown*, *supra*, 317 U.S. 341.

<sup>8</sup> *Hoover v. Ronwin* (1984) 466 U.S. 558, 574, 579-580.

<sup>9</sup> Distinguishing the state itself from subordinate state agencies has sometimes proven difficult. Compare the majority opinion in *Hoover v. Ronwin*, *supra*, 466 U.S. at p. 581 with dissenting opinion of Stevens, J., at pp. 588-589. (See *Costco v. Maleng* (9th Cir. 2008) 522 F.3d 874, 887, *subseq. hrg.* 538 F.3d 1128; *Charley's Taxi Radio Dispatch Corp. v. SIDA of Haw., Inc.* (9th Cir. 1987) 810 F.2d 869, 875.)

<sup>10</sup> See *Town of Hallie v. City of Eau Claire* (1985) 471 U.S. 34, 39.

<sup>11</sup> *F.T.C. v. Phoebe Putney Health Systems, Inc.* (2013) \_\_\_ U.S. \_\_\_, 133 S.Ct. 1003, 1013; see also *Southern Motor Carriers Rate Conference, Inc. v. U.S.* (1985) 471 U.S. 48, 57 (state policy need not compel specific anticompetitive effect).

<sup>12</sup> *Cal. Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.* (1980) 445 U.S. 97, 105 (*Midcal*).

fundamental purpose of the supervision requirement is to shelter only those private anticompetitive acts that the state approves as actually furthering its regulatory policies.<sup>13</sup> To that end, the mere possibility of supervision—such as the existence of a regulatory structure that is not operative, or not resorted to—is not enough. “The active supervision prong . . . requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.”<sup>14</sup>

### C. State Action Immunity Doctrine After *North Carolina Dental*

Until the Supreme Court decided *North Carolina Dental*, it was widely believed that most professional licensing boards would fall within the second tier of state action immunity, requiring a clear and affirmative policy, but not active state supervision of every anticompetitive decision. In California in particular, there were good arguments that professional licensing boards<sup>15</sup> were subordinate agencies of the state: they are formal, ongoing bodies created pursuant to state law; they are housed within the Department of Consumer Affairs and operate under the Consumer Affairs Director’s broad powers of investigation and control; they are subject to periodic sunset review by the Legislature, to rule-making review under the Administrative Procedure Act, and to administrative and judicial review of disciplinary decisions; their members are appointed by state officials, and include increasingly large numbers of public (non-professional) members; their meetings and records are subject to open-government laws and to strong prohibitions on conflicts of interest; and their enabling statutes generally provide well-guided discretion to make decisions affecting the professional markets that the boards regulate.<sup>16</sup>

Those arguments are now foreclosed, however, by *North Carolina Dental*. There, the Court squarely held, for the first time, that “a state board on which a controlling

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<sup>13</sup> *Patrick v. Burget* (1988) 486 U.S. 94, 100-101.

<sup>14</sup> *Ibid.*

<sup>15</sup> California’s Department of Consumer Affairs includes some 25 professional regulatory boards that establish minimum qualifications and levels of competency for licensure in various professions, including accountancy, acupuncture, architecture, medicine, nursing, structural pest control, and veterinary medicine—to name just a few. (See [http://www.dca.gov/about\\_ca/entities.shtml](http://www.dca.gov/about_ca/entities.shtml).)

<sup>16</sup> Cf. 1A Areeda & Hovenkamp, *supra*, ¶ 227, p. 208 (what matters is not what the body is called, but its structure, membership, authority, openness to the public, exposure to ongoing review, etc.).

number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity."<sup>17</sup> The effect of *North Carolina Dental* is to put professional licensing boards "on which a controlling number of decision makers are active market participants" in the third tier of state-action immunity. That is, they are immune from antitrust actions as long as they act pursuant to clearly articulated state policy to replace competition with regulation of the profession, *and* their decisions are actively supervised by the state.

Thus arises the question presented here: What constitutes "active state supervision"?<sup>18</sup>

#### **D. Legal Standards for Active State Supervision**

The active supervision requirement arises from the concern that, when active market participants are involved in regulating their own field, "there is a real danger" that they will act to further their own interests, rather than those of consumers or of the state.<sup>19</sup> The purpose of the requirement is to ensure that state action immunity is afforded to private parties only when their actions actually further the state's policies.<sup>20</sup>

There is no bright-line test for determining what constitutes active supervision of a professional licensing board: the standard is "flexible and context-dependent."<sup>21</sup> Sufficient supervision "need not entail day-to-day involvement" in the board's operations or "micromanagement of its every decision."<sup>22</sup> Instead, the question is whether the review mechanisms that are in place "provide 'realistic assurance'" that the anticompetitive effects of a board's actions promote state policy, rather than the board members' private interests.<sup>23</sup>

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<sup>17</sup> *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114; *Midcal*, *supra*, 445 U.S. at p. 105.

<sup>18</sup> Questions about whether the State's anticompetitive policies are adequately articulated are beyond the scope of this Opinion.

<sup>19</sup> *Patrick v. Burget*, *supra*, 486 U.S. at p. 100, citing *Town of Hallie v. City of Eau Claire*, *supra*, 471 U.S. at p. 47; see *id.* at p. 45 ("A private party . . . may be presumed to be acting primarily on his or its own behalf").

<sup>20</sup> *Patrick v. Burget*, *supra*, 486 U.S. at pp. 100-101.

<sup>21</sup> *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1116.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

The *North Carolina Dental* opinion and pre-existing authorities allow us to identify “a few constant requirements of active supervision”:<sup>24</sup>

- The state supervisor who reviews a decision must have the power to reverse or modify the decision.<sup>25</sup>
- The “mere potential” for supervision is not an adequate substitute for supervision.<sup>26</sup>
- When a state supervisor reviews a decision, he or she must review the substance of the decision, not just the procedures followed to reach it.<sup>27</sup>
- The state supervisor must not be an active market participant.<sup>28</sup>

Keeping these requirements in mind may help readers evaluate whether California law already provides adequate supervision for professional licensing boards, or whether new or stronger measures are desirable.

## **II. Threshold Considerations for Assessing Potential Responses to *North Carolina Dental***

There are a number of different measures that the Legislature might consider in response to the *North Carolina Dental* decision. We will describe a variety of these, along with some of their potential advantages or disadvantages. Before moving on to those options, however, we should put the question of immunity into proper perspective.

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<sup>24</sup> *Id.* at pp. 1116-1117.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Id.* at p. 1116, citing *F.T.C. v. Ticor Title Ins. Co.* (1992) 504 U.S. 621, 638. For example, a passive or negative-option review process, in which an action is considered approved as long as the state supervisor raises no objection to it, may be considered inadequate in some circumstances. (*Ibid.*)

<sup>27</sup> *Ibid.*, citing *Patrick v. Burget*, *supra*, 486 U.S. at pp. 102-103. In most cases, there should be some evidence that the state supervisor considered the particular circumstances of the action before making a decision. Ideally, there should be a factual record and a written decision showing that there has been an assessment of the action’s potential impact on the market, and whether the action furthers state policy. (See *In the Matter of Indiana Household Moves and Warehousemen, Inc.* (2008) 135 F.T.C. 535, 555-557; see also Federal Trade Commission, Report of the State Action Task Force (2003) at p. 54.)

<sup>28</sup> *North Carolina Dental*, *supra*, 135 S.Ct. at pp. 1116-1117.

There are two important things keep in mind: (1) the loss of immunity, if it is lost, does not mean that an antitrust violation has been committed, and (2) even when board members participate in regulating the markets they compete in, many—if not most—of their actions do not implicate the federal antitrust laws.

In the context of regulating professions, “market-sensitive” decisions (that is, the kinds of decisions that are most likely to be open to antitrust scrutiny) are those that create barriers to market participation, such as rules or enforcement actions regulating the scope of unlicensed practice; licensing requirements imposing heavy burdens on applicants; marketing programs; restrictions on advertising; restrictions on competitive bidding; restrictions on commercial dealings with suppliers and other third parties; and price regulation, including restrictions on discounts.

On the other hand, we believe that there are broad areas of operation where board members can act with reasonable confidence—especially once they and their state-official contacts have been taught to recognize actual antitrust issues, and to treat those issues specially. Broadly speaking, promulgation of regulations is a fairly safe area for board members, because of the public notice, written justification, Director review, and review by the Office of Administrative Law as required by the Administrative Procedure Act. Also, broadly speaking, disciplinary decisions are another fairly safe area because of due process procedures; participation of state actors such as board executive officers, investigators, prosecutors, and administrative law judges; and availability of administrative mandamus review.

We are not saying that the procedures that attend these quasi-legislative and quasi-judicial functions make the licensing boards altogether immune from antitrust claims. Nor are we saying that rule-making and disciplinary actions are per se immune from antitrust laws. What we are saying is that, assuming a board identifies its market-sensitive decisions and gets active state supervision for those, then ordinary rule-making and discipline (faithfully carried out under the applicable rules) may be regarded as relatively safe harbors for board members to operate in. It may require some education and experience for board members to understand the difference between market-sensitive and “ordinary” actions, but a few examples may bring in some light.

*North Carolina Dental* presents a perfect example of a market-sensitive action. There, the dental board decided to, and actually succeeded in, driving non-dentist teeth-whitening service providers out of the market, even though nothing in North Carolina’s laws specified that teeth-whitening constituted the illegal practice of dentistry. Counter-examples—instances where no antitrust violation occurs—are far more plentiful. For example, a regulatory board may legitimately make rules or impose discipline to prohibit license-holders from engaging in fraudulent business practices (such as untruthful or



deceptive advertising) without violating antitrust laws.<sup>29</sup> As well, suspending the license of an individual license-holder for violating the standards of the profession is a reasonable restraint and has virtually no effect on a large market, and therefore would not violate antitrust laws.<sup>30</sup>

Another area where board members can feel safe is in carrying out the actions required by a detailed anticompetitive statutory scheme.<sup>31</sup> For example, a state law prohibiting certain kinds of advertising or requiring certain fees may be enforced without need for substantial judgment or deliberation by the board. Such detailed legislation leaves nothing for the state to supervise, and thus it may be said that the legislation itself satisfies the supervision requirement.<sup>32</sup>

Finally, some actions will not be antitrust violations because their effects are, in fact, pro-competitive rather than anti-competitive. For instance, the adoption of safety standards that are based on objective expert judgments have been found to be pro-competitive.<sup>33</sup> Efficiency measures taken for the benefit of consumers, such as making information available to the purchasers of competing products, or spreading development costs to reduce per-unit prices, have been held to be pro-competitive because they are pro-consumer.<sup>34</sup>

### **III. Potential Measures for Preserving State Action Immunity**

#### **A. Changes to the Composition of Boards**

The *North Carolina Dental* decision turns on the principle that a state board is a group of private actors, not a subordinate state agency, when “a controlling number of decisionmakers are active market participants in the occupation the board regulates.”<sup>35</sup>

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<sup>29</sup> See generally *California Dental Assn. v. F.T.C.* (1999) 526 U.S. 756.

<sup>30</sup> See *Oksanen v. Page Memorial Hospital* (4th Cir. 1999) 945 F.2d 696 (*en banc*).

<sup>31</sup> See *324 Liquor Corp. v. Duffy* (1987) 479 U.S. 335, 344, fn. 6.

<sup>32</sup> 1A Areeda & Hovenkamp, *Antitrust Law, supra*, ¶ 221, at p. 66; ¶ 222, at pp. 67, 76.

<sup>33</sup> See *Allied Tube & Conduit Corp. v. Indian Head, Inc.* (1988) 486 U.S. 492, 500-501.

<sup>34</sup> *Broadcom Corp. v. Qualcomm Inc.* (3rd Cir. 2007) 501 F.3d 297, 308-309; see generally Bus. & Prof. Code, § 301.

<sup>35</sup> 135 S.Ct. at p. 1114.

This ruling brings the composition of boards into the spotlight. While many boards in California currently require a majority of public members, it is still the norm for professional members to outnumber public members on boards that regulate healing-arts professions. In addition, delays in identifying suitable public-member candidates and in filling public seats can result in de facto market-participant majorities.

In the wake of *North Carolina Dental*, many observers' first impulse was to assume that reforming the composition of professional boards would be the best resolution, both for state actors and for consumer interests. Upon reflection, however, it is not obvious that sweeping changes to board composition would be the most effective solution.<sup>36</sup>

Even if the Legislature were inclined to decrease the number of market-participant board members, the current state of the law does not allow us to project accurately how many market-participant members is too many. This is a question that was not resolved by the *North Carolina Dental* decision, as the dissenting opinion points out:

What is a “controlling number”? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circumstances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?<sup>37</sup>

Some observers believe it is safe to assume that the *North Carolina Dental* standard would be satisfied if public members constituted a majority of a board. The

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<sup>36</sup> Most observers believe that there are real advantages in staffing boards with professionals in the field. The combination of technical expertise, practiced judgment, and orientation to prevailing ethical norms is probably impossible to replicate on a board composed entirely of public members. Public confidence must also be considered. Many consumers would no doubt share the sentiments expressed by Justice Breyer during oral argument in the *North Carolina Dental* case: “[W]hat the State says is: We would like this group of brain surgeons to decide who can practice brain surgery in this State. I don’t want a group of bureaucrats deciding that. I would like brain surgeons to decide that.” (*North Carolina Dental*, *supra*, transcript of oral argument p. 31, available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/13-534\\_16h1.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/13-534_16h1.pdf) (hereafter, Transcript).)

<sup>37</sup> *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J).

obvious rejoinder to that argument is that the Court pointedly did not use the term “majority;” it used “controlling number.” More cautious observers have suggested that “controlling number” should be taken to mean the majority of a quorum, at least until the courts give more guidance on the matter.

*North Carolina Dental* leaves open other questions about board composition as well. One of these is: Who is an “active market participant”?<sup>38</sup> Would a retired member of the profession no longer be a participant of the market? Would withdrawal from practice during a board member’s term of service suffice? These questions were discussed at oral argument,<sup>39</sup> but were not resolved. Also left open is the scope of the market in which a member may not participate while serving on the board.<sup>40</sup>

Over the past four decades, California has moved decisively to expand public membership on licensing boards.<sup>41</sup> The change is generally agreed to be a salutary one for consumers, and for underserved communities in particular.<sup>42</sup> There are many good reasons to consider continuing the trend to increase public membership on licensing boards—but we believe a desire to ensure immunity for board members should not be the decisive factor. As long as the legal questions raised by *North Carolina Dental* remain unresolved, radical changes to board composition are likely to create a whole new set of policy and practical challenges, with no guarantee of resolving the immunity problem.

## **B. Some Mechanisms for Increasing State Supervision**

Observers have proposed a variety of mechanisms for building more state oversight into licensing boards’ decision-making processes. In considering these alternatives, it may be helpful to bear in mind that licensing boards perform a variety of

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<sup>38</sup> *Ibid.*

<sup>39</sup> Transcript, *supra*, at p. 31.

<sup>40</sup> *North Carolina Dental, supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J). Some observers have suggested that professionals from one practice area might be appointed to serve on the board regulating another practice area, in order to bring their professional expertise to bear in markets where they are not actively competing.

<sup>41</sup> See Center for Public Interest Law, *A Guide to California’s Health Care Licensing Boards* (July 2009) at pp. 1-2; Shimberg, *Occupational Licensing: A Public Perspective* (1982) at pp. 163-165.

<sup>42</sup> See Center for Public Interest Law, *supra*, at pp. 15-17; Shimberg, *supra*, at pp. 175-179.

distinct functions, and that different supervisory structures may be appropriate for different functions.

For example, boards may develop and enforce standards for licensure; receive, track, and assess trends in consumer complaints; perform investigations and support administrative and criminal prosecutions; adjudicate complaints and enforce disciplinary measures; propose regulations and shepherd them through the regulatory process; perform consumer education; and more. Some of these functions are administrative in nature, some are quasi-judicial, and some are quasi-legislative. Boards' quasi-judicial and quasi-legislative functions, in particular, are already well supported by due process safeguards and other forms of state supervision (such as vertical prosecutions, administrative mandamus procedures, and public notice and scrutiny through the Administrative Procedure Act). Further, some functions are less likely to have antitrust implications than others: decisions affecting only a single license or licensee in a large market will rarely have an anticompetitive effect within the meaning of the Sherman Act. For these reasons, it is worth considering whether it is less urgent, or not necessary at all, to impose additional levels of supervision with respect to certain functions.

Ideas for providing state oversight include the concept of a superagency, such as a stand-alone office, or a committee within a larger agency, which has full responsibility for reviewing board actions *de novo*. Under such a system, the boards could be permitted to carry on with their business as usual, except that they would be required to refer each of their decisions (or some subset of decisions) to the superagency for its review. The superagency could review each action file submitted by the board, review the record and decision in light of the state's articulated regulatory policies, and then issue its own decision approving, modifying, or vetoing the board's action.

Another concept is to modify the powers of the boards themselves, so that all of their functions (or some subset of functions) would be advisory only. Under such a system, the boards would not take formal actions, but would produce a record and a recommendation for action, perhaps with proposed findings and conclusions. The recommendation file would then be submitted to a supervising state agency for its further consideration and formal action, if any.

Depending on the particular powers and procedures of each system, either could be tailored to encourage the development of written records to demonstrate executive discretion; access to administrative mandamus procedures for appeal of decisions; and the development of expertise and collaboration among reviewers, as well as between the reviewers and the boards that they review. Under any system, care should be taken to structure review functions so as to avoid unnecessary duplication or conflicts with other agencies and departments, and to minimize the development of super-policies not

adequately tailored to individual professions and markets. To prevent the development of “rubber-stamp” decisions, any acceptable system must be designed and sufficiently staffed to enable plenary review of board actions or recommendations at the individual transactional level.

As it stands, California is in a relatively advantageous position to create these kinds of mechanisms for active supervision of licensing boards. With the boards centrally housed within the Department of Consumer Affairs (an “umbrella agency”), there already exists an organization with good knowledge and experience of board operations, and with working lines of communication and accountability. It is worth exploring whether existing resources and minimal adjustments to procedures and outlooks might be converted to lines of active supervision, at least for the boards’ most market-sensitive actions.

Moreover, the Business and Professions Code already demonstrates an intention that the Department of Consumer Affairs will protect consumer interests as a means of promoting “the fair and efficient functioning of the free enterprise market economy” by educating consumers, suppressing deceptive and fraudulent practices, fostering competition, and representing consumer interests at all levels of government.<sup>43</sup> The free-market and consumer-oriented principles underlying *North Carolina Dental* are nothing new to California, and no bureaucratic paradigms need to be radically shifted as a result.

The Business and Professions Code also gives broad powers to the Director of Consumer Affairs (and his or her designees)<sup>44</sup> to protect the interests of consumers at every level.<sup>45</sup> The Director has power to investigate the work of the boards and to obtain their data and records;<sup>46</sup> to investigate alleged misconduct in licensing examinations and qualifications reviews;<sup>47</sup> to require reports;<sup>48</sup> to receive consumer complaints<sup>49</sup> and to initiate audits and reviews of disciplinary cases and complaints about licensees.<sup>50</sup>

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<sup>43</sup> Bus. & Prof. Code, § 301.

<sup>44</sup> Bus. & Prof. Code, §§ 10, 305.

<sup>45</sup> See Bus. & Prof. Code, § 310.

<sup>46</sup> Bus. & Prof. Code, § 153.

<sup>47</sup> Bus. & Prof. Code, § 109.

<sup>48</sup> Bus. & Prof. Code, § 127.

<sup>49</sup> Bus. & Prof. Code, § 325.

<sup>50</sup> Bus. & Prof. Code, § 116.

In addition, the Director must be provided a full opportunity to review all proposed rules and regulations (except those relating to examinations and licensure qualifications) before they are filed with the Office of Administrative Law, and the Director may disapprove any proposed regulation on the ground that it is injurious to the public.<sup>51</sup> Whenever the Director (or his or her designee) actually exercises one of these powers to reach a substantive conclusion as to whether a board's action furthers an affirmative state policy, then it is safe to say that the active supervision requirement has been met.<sup>52</sup>

It is worth considering whether the Director's powers should be amended to make review of certain board decisions mandatory as a matter of course, or to make the Director's review available upon the request of a board. It is also worth considering whether certain existing limitations on the Director's powers should be removed or modified. For example, the Director may investigate allegations of misconduct in examinations or qualification reviews, but the Director currently does not appear to have power to review board decisions in those areas, or to review proposed rules in those areas.<sup>53</sup> In addition, the Director's power to initiate audits and reviews appears to be limited to disciplinary cases and complaints about licensees.<sup>54</sup> If the Director's initiative is in fact so limited, it is worth considering whether that limitation continues to make sense. Finally, while the Director must be given a full opportunity to review most proposed regulations, the Director's disapproval may be overridden by a unanimous vote of the board.<sup>55</sup> It is worth considering whether the provision for an override maintains its utility, given that such an override would nullify any "active supervision" and concomitant immunity that would have been gained by the Director's review.<sup>56</sup>

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<sup>51</sup> Bus. & Prof. Code, § 313.1.

<sup>52</sup> Although a written statement of decision is not specifically required by existing legal standards, developing a practice of creating an evidentiary record and statement of decision would be valuable for many reasons, not the least of which would be the ability to proffer the documents to a court in support of a motion asserting state action immunity.

<sup>53</sup> Bus. & Prof. Code, §§ 109, 313.1.

<sup>54</sup> Bus. & Prof. Code, § 116.

<sup>55</sup> Bus. & Prof. Code, § 313.1.

<sup>56</sup> Even with an override, proposed regulations are still subject to review by the Office of Administrative Law.

### C. Legislation Granting Immunity

From time to time, states have enacted laws expressly granting immunity from antitrust laws to political subdivisions, usually with respect to a specific market.<sup>57</sup> However, a statute purporting to grant immunity to private persons, such as licensing board members, would be of doubtful validity. Such a statute might be regarded as providing adequate authorization for anticompetitive activity, but active state supervision would probably still be required to give effect to the intended immunity. What is quite clear is that a state cannot grant blanket immunity by fiat. “[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful . . . .”<sup>58</sup>

### IV. Indemnification of Board Members

So far we have focused entirely on the concept of immunity, and how to preserve it. But immunity is not the only way to protect state employees from the costs of suit, or to provide the reassurance necessary to secure their willingness and ability to perform their duties. Indemnification can also go a long way toward providing board members the protection they need to do their jobs. It is important for policy makers to keep this in mind in weighing the costs of creating supervision structures adequate to ensure blanket state action immunity for board members. If the costs of implementing a given supervisory structure are especially high, it makes sense to consider whether immunity is an absolute necessity, or whether indemnification (with or without additional risk-management measures such as training or reporting) is an adequate alternative.

As the law currently stands, the state has a duty to defend and indemnify members of licensing boards against antitrust litigation to the same extent, and subject to the same exceptions, that it defends and indemnifies state officers and employees in general civil litigation. The duty to defend and indemnify is governed by the Government Claims Act.<sup>59</sup> For purposes of the Act, the term “employee” includes officers and uncompensated servants.<sup>60</sup> We have repeatedly determined that members of a board,

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<sup>57</sup> See 1A Areeda & Hovenkamp, *Antitrust Law*, *supra*, 225, at pp. 135-137; e.g. *AI Ambulance Service, Inc. v. County of Monterey* (9th Cir. 1996) 90 F.3d 333, 335 (discussing Health & Saf. Code, § 1797.6).

<sup>58</sup> *Parker v. Brown*, *supra*, 317 U.S. at 351.

<sup>59</sup> Gov. Code, §§ 810-996.6.

<sup>60</sup> See Gov. Code § 810.2.

commission, or similar body established by statute are employees entitled to defense and indemnification.<sup>61</sup>

### **A. Duty to Defend**

Public employees are generally entitled to have their employer provide for the defense of any civil action “on account of an act or omission in the scope” of employment.<sup>62</sup> A public entity may refuse to provide a defense in specified circumstances, including where the employee acted due to “actual fraud, corruption, or actual malice.”<sup>63</sup> The duty to defend contains no exception for antitrust violations.<sup>64</sup> Further, violations of antitrust laws do not inherently entail the sort of egregious behavior that would amount to fraud, corruption, or actual malice under state law. There would therefore be no basis to refuse to defend an employee on the bare allegation that he or she violated antitrust laws.

### **B. Duty to Indemnify**

The Government Claims Act provides that when a public employee properly requests the employer to defend a claim, and reasonably cooperates in the defense, “the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.”<sup>65</sup> In general, the government is liable for an injury proximately caused by an act within the scope of employment,<sup>66</sup> but is not liable for punitive damages.<sup>67</sup>

One of the possible remedies for an antitrust violation is an award of treble damages to a person whose business or property has been injured by the violation.<sup>68</sup> This raises a question whether a treble damages award equates to an award of punitive damages within the meaning of the Government Claims Act. Although the answer is not

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<sup>61</sup> E.g., 81 Ops.Cal.Atty.Gen. 199, 200 (1998); 57 Ops.Cal.Atty.Gen. 358, 361 (1974).

<sup>62</sup> Gov. Code, § 995.

<sup>63</sup> Gov. Code, § 995.2, subd. (a).

<sup>64</sup> Cf. *Mt. Hawley Insurance Co. v. Lopez* (2013) 215 Cal.App.4th 1385 (discussing Ins. Code, § 533.5).

<sup>65</sup> Gov. Code, § 825, subd. (a).

<sup>66</sup> Gov. Code, § 815.2.

<sup>67</sup> Gov. Code, § 818.

<sup>68</sup> 15 U.S.C. § 15(a).



entirely certain, we believe that antitrust treble damages do *not* equate to punitive damages.

The purposes of treble damage awards are to deter anticompetitive behavior and to encourage private enforcement of antitrust laws.<sup>69</sup> And, an award of treble damages is automatic once an antitrust violation is proved.<sup>70</sup> In contrast, punitive damages are “uniquely justified by and proportioned to the actor’s particular reprehensible conduct as well as that person or entity’s net worth . . . in order to adequately make the award ‘sting’ . . . .”<sup>71</sup> Also, punitive damages in California must be premised on a specific finding of malice, fraud, or oppression.<sup>72</sup> In our view, the lack of a malice or fraud element in an antitrust claim, and the immateriality of a defendant’s particular conduct or net worth to the treble damage calculation, puts antitrust treble damages outside the Government Claims Act’s definition of punitive damages.<sup>73</sup>

### **C. Possible Improvements to Indemnification Scheme**

As set out above, state law provides for the defense and indemnification of board members to the same extent as other state employees. This should go a long way toward reassuring board members and potential board members that they will not be exposed to undue risk if they act reasonably and in good faith. This reassurance cannot be complete, however, as long as board members face significant uncertainty about how much litigation they may have to face, or about the status of treble damage awards.

Uncertainty about the legal status of treble damage awards could be reduced significantly by amending state law to specify that treble damage antitrust awards are not punitive damages within the meaning of the Government Claims Act. This would put them on the same footing as general damages awards, and thereby remove any uncertainty as to whether the state would provide indemnification for them.<sup>74</sup>

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<sup>69</sup> *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 783-784 (individual right to treble damages is “incidental and subordinate” to purposes of deterrence and vigorous enforcement).

<sup>70</sup> 15 U.S.C. § 15(a).

<sup>71</sup> *Piscitelli v. Friedenber*g (2001) 87 Cal.App.4th 953, 981-982.

<sup>72</sup> Civ. Code, §§ 818, 3294.

<sup>73</sup> If treble damages awards were construed as constituting punitive damages, the state would still have the option of paying them under Government Code section 825.

<sup>74</sup> Ideally, treble damages should not be available at all against public entities and public officials. Since properly articulated and supervised anticompetitive behavior is

As a complement to indemnification, the potential for board member liability may be greatly reduced by introducing antitrust concepts to the required training and orientation programs that the Department of Consumer Affairs provides to new board members.<sup>75</sup> When board members share an awareness of the sensitivity of certain kinds of actions, they will be in a much better position to seek advice and review (that is, active supervision) from appropriate officials. They will also be far better prepared to assemble evidence and to articulate reasons for the decisions they make in market-sensitive areas. With training and practice, boards can be expected to become as proficient in making and demonstrating sound market decisions, and ensuring proper review of those decisions, as they are now in making and defending sound regulatory and disciplinary decisions.

## V. Conclusions

*North Carolina Dental* has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

Whatever the chosen response may be, the state can be assured that *North Carolina Dental*'s "active state supervision" requirement is satisfied when a non-market-

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permitted to the state and its agents, the deterrent purpose of treble damages does not hold in the public arena. Further, when a state indemnifies board members, treble damages go not against the board members but against public coffers. "It is a grave act to make governmental units potentially liable for massive treble damages when, however 'proprietary' some of their activities may seem, they have fundamental responsibilities to their citizens for the provision of life-sustaining services such as police and fire protection." (*City of Lafayette, La. v. Louisiana Power & Light Co.* (1978) 435 U.S. 389, 442 (dis. opn. of Blackmun, J).)

In response to concerns about the possibility of treble damage awards against municipalities, Congress passed the Local Government Antitrust Act (15 U.S.C. §§ 34-36), which provides that local governments and their officers and employees cannot be held liable for treble damages, compensatory damages, or attorney's fees. (See H.R. Rep. No. 965, 2nd Sess., p. 11 (1984).) For an argument that punitive sanctions should never be levied against public bodies and officers under the Sherman Act, see 1A Areeda & Hovenkamp, *supra*, ¶ 228, at pp. 214-226. Unfortunately, because treble damages are a product of federal statute, this problem is not susceptible of a solution by state legislation.

<sup>75</sup> Bus. & Prof. Code, § 453.

participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies.

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# FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants\*

## I. Introduction

States craft regulatory policy through a variety of actors, including state legislatures, courts, agencies, and regulatory boards. While most regulatory actions taken by state actors will not implicate antitrust concerns, some will. Notably, states have created a large number of regulatory boards with the authority to determine who may engage in an occupation (*e.g.*, by issuing or withholding a license), and also to set the rules and regulations governing that occupation. Licensing, once limited to a few learned professions such as doctors and lawyers, is now required for over 800 occupations including (in some states) locksmiths, beekeepers, auctioneers, interior designers, fortune tellers, tour guides, and shampooers.<sup>1</sup>

In general, a state may avoid all conflict with the federal antitrust laws by creating regulatory boards that serve only in an advisory capacity, or by staffing a regulatory board exclusively with persons who have no financial interest in the occupation that is being regulated. However, across the United States, “licensing boards are largely dominated by active members of their respective industries . . .”<sup>2</sup> That is, doctors commonly regulate doctors, beekeepers commonly regulate beekeepers, and tour guides commonly regulate tour guides.

Earlier this year, the U.S. Supreme Court upheld the Federal Trade Commission’s determination that the North Carolina State Board of Dental Examiners (“NC Board”) violated the federal antitrust laws by preventing non-dentists from providing teeth whitening services in competition with the state’s licensed dentists. *N.C. State Bd. of Dental Exam’rs v. FTC*, 135 S. Ct. 1101 (2015). NC Board is a state agency established under North Carolina law and charged with administering and enforcing a licensing system for dentists. A majority of the members of this state agency are themselves practicing dentists, and thus they have a private incentive to limit

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\* This document sets out the views of the Staff of the Bureau of Competition. The Federal Trade Commission is not bound by this Staff guidance and reserves the right to rescind it at a later date. In addition, FTC Staff reserves the right to reconsider the views expressed herein, and to modify, rescind, or revoke this Staff guidance if such action would be in the public interest.

<sup>1</sup> Aaron Edlin & Rebecca Haw, *Cartels By Another Name: Should Licensed Occupations Face Antitrust Scrutiny*, 162 U. PA. L. REV. 1093, 1096 (2014).

<sup>2</sup> *Id.* at 1095.

competition from non-dentist providers of teeth whitening services. NC Board argued that, because it is a state agency, it is exempt from liability under the federal antitrust laws. That is, the NC Board sought to invoke what is commonly referred to as the “state action exemption” or the “state action defense.” The Supreme Court rejected this contention and affirmed the FTC’s finding of antitrust liability.

In this decision, the Supreme Court clarified the applicability of the antitrust state action defense to state regulatory boards controlled by market participants:

“The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal’s* [*Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980)] active supervision requirement in order to invoke state-action antitrust immunity.” *N.C. Dental*, 135 S. Ct. at 1114.

In the wake of this Supreme Court decision, state officials have requested advice from the Federal Trade Commission regarding antitrust compliance for state boards responsible for regulating occupations. This outline provides FTC Staff guidance on two questions. *First*, when does a state regulatory board require active supervision in order to invoke the state action defense? *Second*, what factors are relevant to determining whether the active supervision requirement is satisfied?

Our answers to these questions come with the following caveats.

- Vigorous competition among sellers in an open marketplace generally provides consumers with important benefits, including lower prices, higher quality services, greater access to services, and increased innovation. For this reason, a state legislature should empower a regulatory board to restrict competition only when necessary to protect against a credible risk of harm, such as health and safety risks to consumers. The Federal Trade Commission and its staff have frequently advocated that states avoid unneeded and burdensome regulation of service providers.<sup>3</sup>
- Federal antitrust law does not require that a state legislature provide for active supervision of any state regulatory board. A state legislature may, and generally should, prefer that a regulatory board be subject to the requirements of the federal antitrust

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<sup>3</sup> See, e.g., Fed. Trade Comm’n Staff Policy Paper, *Policy Perspectives: Competition and the Regulation of Advanced Practice Registered Nurses* (Mar. 2014), <https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf>; Fed. Trade Comm’n & U.S. Dept. of Justice, Comment before the South Carolina Supreme Court Concerning Proposed Guidelines for Residential and Commercial Real Estate Closings (Apr. 2008), <https://www.ftc.gov/news-events/press-releases/2008/04/ftcdoj-submit-letter-supreme-court-south-carolina-proposed>.

laws. If the state legislature determines that a regulatory board should be subject to antitrust oversight, then the state legislature need not provide for active supervision.

- Antitrust analysis – including the applicability of the state action defense – is fact-specific and context-dependent. The purpose of this document is to identify certain overarching legal principles governing when and how a state may provide active supervision for a regulatory board. We are not suggesting a mandatory or one-size-fits-all approach to active supervision. Instead, we urge each state regulatory board to consult with the Office of the Attorney General for its state for customized advice on how best to comply with the antitrust laws.
- This FTC Staff guidance addresses only the active supervision prong of the state action defense. In order successfully to invoke the state action defense, a state regulatory board controlled by market participants must also satisfy the clear articulation prong, as described briefly in Section II. below.
- This document contains guidance developed by the staff of the Federal Trade Commission. Deviation from this guidance does not necessarily mean that the state action defense is inapplicable, or that a violation of the antitrust laws has occurred.

## II. Overview of the Antitrust State Action Defense

“Federal antitrust law is a central safeguard for the Nation’s free market structures . . . . The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market.” *N.C. Dental*, 135 S. Ct. at 1109.

Under principles of federalism, “the States possess a significant measure of sovereignty.” *N.C. Dental*, 135 S. Ct. at 1110 (*quoting Community Communications Co. v. Boulder*, 455 U.S. 40, 53 (1982)). In enacting the antitrust laws, Congress did not intend to prevent the States from limiting competition in order to promote other goals that are valued by their citizens. Thus, the Supreme Court has concluded that the federal antitrust laws do not reach anticompetitive conduct engaged in by a State that is acting in its sovereign capacity. *Parker v. Brown*, 317 U.S. 341, 351-52 (1943). For example, a state legislature may “impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives.” *N.C. Dental*, 135 S. Ct. at 1109.

Are the actions of a state regulatory board, like the actions of a state legislature, exempt from the application of the federal antitrust laws? In *North Carolina State Board of Dental Examiners*, the Supreme Court reaffirmed that a state regulatory board is not the sovereign. Accordingly, a state regulatory board is not necessarily exempt from federal antitrust liability.

More specifically, the Court determined that “a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates” may invoke the state action defense only when two requirements are satisfied: first, the challenged restraint must be clearly articulated and affirmatively expressed as state policy; and second, the policy must be actively supervised by a state official (or state agency) that is not a participant in the market that is being regulated. *N.C. Dental*, 135 S. Ct. at 1114.

- The Supreme Court addressed the clear articulation requirement most recently in *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003 (2013). The clear articulation requirement is satisfied “where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals.” *Id.* at 1013.
- The State’s clear articulation of the intent to displace competition is not alone sufficient to trigger the state action exemption. The state legislature’s clearly-articulated delegation of authority to a state regulatory board to displace competition may be “defined at so high a level of generality as to leave open critical questions about how

and to what extent the market should be regulated.” There is then a danger that this delegated discretion will be used by active market participants to pursue private interests in restraining trade, in lieu of implementing the State’s policy goals. *N.C. Dental*, 135 S. Ct. at 1112.

➤ The active supervision requirement “seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming [antitrust] immunity.” *Id.*

Where the state action defense does not apply, the actions of a state regulatory board controlled by active market participants may be subject to antitrust scrutiny. Antitrust issues may arise where an unsupervised board takes actions that restrict market entry or restrain rivalry. The following are some scenarios that have raised antitrust concerns:

- A regulatory board controlled by dentists excludes non-dentists from competing with dentists in the provision of teeth whitening services. *Cf. N.C. Dental*, 135 S. Ct. 1101.
- A regulatory board controlled by accountants determines that only a small and fixed number of new licenses to practice the profession shall be issued by the state each year. *Cf. Hoover v. Ronwin*, 466 U.S. 558 (1984).
- A regulatory board controlled by attorneys adopts a regulation (or a code of ethics) that prohibits attorney advertising, or that deters attorneys from engaging in price competition. *Cf. Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).



### III. Scope of FTC Staff Guidance

- A. This Staff guidance addresses the applicability of the state action defense under the federal antitrust laws. Concluding that the state action defense is inapplicable does not mean that the conduct of the regulatory board necessarily violates the federal antitrust laws. A regulatory board may assert defenses ordinarily available to an antitrust defendant.

**1. Reasonable restraints on competition do not violate the antitrust laws, even where the economic interests of a competitor have been injured.**

**Example 1:** A regulatory board may prohibit members of the occupation from engaging in fraudulent business practices without raising antitrust concerns. A regulatory board also may prohibit members of the occupation from engaging in untruthful or deceptive advertising. *Cf. Cal. Dental Ass’n v. FTC*, 526 U.S. 756 (1999).

**Example 2:** Suppose a market with several hundred licensed electricians. If a regulatory board suspends the license of one electrician for substandard work, such action likely does not unreasonably harm competition. *Cf. Oksanen v. Page Mem’l Hosp.*, 945 F.2d 696 (4th Cir. 1991) (en banc).

**2. The ministerial (non-discretionary) acts of a regulatory board engaged in good faith implementation of an anticompetitive statutory regime do not give rise to antitrust liability. See 324 Liquor Corp. v. Duffy, 479 U.S. 335, 344 n. 6 (1987).**

**Example 3:** A state statute requires that an applicant for a chauffeur’s license submit to the regulatory board, among other things, a copy of the applicant’s diploma and a certified check for \$500. An applicant fails to submit the required materials. If for this reason the regulatory board declines to issue a chauffeur’s license to the applicant, such action would not be considered an unreasonable restraint. In the circumstances described, the denial of a license is a ministerial or non-discretionary act of the regulatory board.

**3. In general, the initiation and prosecution of a lawsuit by a regulatory board does not give rise to antitrust liability unless it falls within the “sham exception.” Professional Real Estate Investors v. Columbia Pictures Industries, 508 U.S. 49 (1993); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972).**

**Example 4:** A state statute authorizes the state’s dental board to maintain an action in state court to enjoin an unlicensed person from practicing dentistry. The members of the dental board have a basis to believe that a particular individual is practicing dentistry but does not hold a valid license. If the dental board files a lawsuit against that individual, such action would not constitute a violation of the federal antitrust laws.

- B. Below, FTC Staff describes when active supervision of a state regulatory board is required in order successfully to invoke the state action defense, and what factors are relevant to determining whether the active supervision requirement has been satisfied.

**1. When is active state supervision of a state regulatory board required in order to invoke the state action defense?**

**General Standard:** “[A] state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*’s active supervision requirement in order to invoke state-action antitrust immunity.” *N.C. Dental*, 135 S. Ct. at 1114.

**Active Market Participants:** A member of a state regulatory board will be considered to be an active market participant in the occupation the board regulates if such person (i) is licensed by the board or (ii) provides any service that is subject to the regulatory authority of the board.

- If a board member participates in any professional or occupational sub-specialty that is regulated by the board, then that board member is an active market participant for purposes of evaluating the active supervision requirement.
- It is no defense to antitrust scrutiny, therefore, that the board members themselves are not directly or personally affected by the challenged restraint. For example, even if the members of the NC Dental Board were orthodontists who do not perform teeth whitening services (as a matter of law or fact or tradition), their control of the dental board would nevertheless trigger the requirement for active state supervision. This is because these orthodontists are licensed by, and their services regulated by, the NC Dental Board.
- A person who temporarily suspends her active participation in an occupation for the purpose of serving on a state board that regulates her former (and intended future) occupation will be considered to be an active market participant.

**Method of Selection:** The method by which a person is selected to serve on a state regulatory board is not determinative of whether that person is an active market participant in the occupation that the board regulates. For example, a licensed dentist is deemed to be an active market participant regardless of whether the dentist (i) is appointed to the state dental board by the governor or (ii) is elected to the state dental board by the state’s licensed dentists.

***A Controlling Number, Not Necessarily a Majority, of Actual Decisionmakers:***

- Active market participants need not constitute a numerical majority of the members of a state regulatory board in order to trigger the requirement of active supervision. A decision that is controlled, either as a matter of law, procedure, or fact, by active participants in the regulated market (*e.g.*, through veto power, tradition, or practice) must be actively supervised to be eligible for the state action defense.
- Whether a particular restraint has been imposed by a “controlling number of decisionmakers [who] are active market participants” is a fact-bound inquiry that must be made on a case-by-case basis. FTC Staff will evaluate a number of factors, including:
  - ✓ The structure of the regulatory board (including the number of board members who are/are not active market participants) and the rules governing the exercise of the board’s authority.
  - ✓ Whether the board members who are active market participants have veto power over the board’s regulatory decisions.

**Example 5:** The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of five board members. Thus, no regulation may become effective without the assent of at least one electrician member of the board. In this scenario, the active market participants effectively have veto power over the board’s regulatory authority. The active supervision requirement is therefore applicable.

- ✓ The level of participation, engagement, and authority of the non-market participant members in the business of the board – generally and with regard to the particular restraint at issue.
- ✓ Whether the participation, engagement, and authority of the non-market participant board members in the business of the board differs from that of board members who are active market participants – generally and with regard to the particular restraint at issue.
- ✓ Whether the active market participants have in fact exercised, controlled, or usurped the decisionmaking power of the board.

**Example 6:** The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of a majority of board members. When voting on proposed regulations, the non-electrician members routinely defer to the preferences of the electrician members. Minutes of

board meetings show that the non-electrician members generally are not informed or knowledgeable concerning board business – and that they were not well informed concerning the particular restraint at issue. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

**Example 7:** The state board of electricians consists of four non-electrician members and three practicing electricians. Documents show that the electrician members frequently meet and discuss board business separately from the non-electrician members. On one such occasion, the electrician members arranged for the issuance by the board of written orders to six construction contractors, directing such individuals to cease and desist from providing certain services. The non-electrician members of the board were not aware of the issuance of these orders and did not approve the issuance of these orders. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

## 2. What constitutes active supervision?

FTC Staff will be guided by the following principles:

- “[T]he purpose of the active supervision inquiry . . . is to determine whether the State has exercised sufficient independent judgment and control” such that the details of the regulatory scheme “have been established as a product of deliberate state intervention” and not simply by agreement among the members of the state board. “Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy.” The State is not obliged to “[meet] some normative standard, such as efficiency, in its regulatory practices.” *Ticor*, 504 U.S. at 634-35. “The question is not how well state regulation works but whether the anticompetitive scheme is the State’s own.” *Id.* at 635.
- It is necessary “to ensure the States accept political accountability for anticompetitive conduct they permit and control.” *N.C. Dental*, 135 S. Ct. at 1111. *See also Ticor*, 504 U.S. at 636.
- “The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the ‘mere potential for state supervision is not an adequate substitute for a decision by the State.’ Further, the state supervisor may not itself be an active market participant.” *N.C. Dental*, 135 S. Ct. at 1116–17 (citations omitted).

- The active supervision must precede implementation of the allegedly anticompetitive restraint.
- “[T]he inquiry regarding active supervision is flexible and context-dependent.” “[T]he adequacy of supervision . . . will depend on all the circumstances of a case.” *N.C. Dental*, 135 S. Ct. at 1116–17. Accordingly, FTC Staff will evaluate each case in light of its own facts, and will apply the applicable case law and the principles embodied in this guidance reasonably and flexibly.

### **3. What factors are relevant to determining whether the active supervision requirement has been satisfied?**

FTC Staff will consider the presence or absence of the following factors in determining whether the active supervision prong of the state action defense is satisfied.

- The supervisor has obtained the information necessary for a proper evaluation of the action recommended by the regulatory board. As applicable, the supervisor has ascertained relevant facts, collected data, conducted public hearings, invited and received public comments, investigated market conditions, conducted studies, and reviewed documentary evidence.
  - ✓ The information-gathering obligations of the supervisor depend in part upon the scope of inquiry previously conducted by the regulatory board. For example, if the regulatory board has conducted a suitable public hearing and collected the relevant information and data, then it may be unnecessary for the supervisor to repeat these tasks. Instead, the supervisor may utilize the materials assembled by the regulatory board.
- The supervisor has evaluated the substantive merits of the recommended action and assessed whether the recommended action comports with the standards established by the state legislature.
- The supervisor has issued a written decision approving, modifying, or disapproving the recommended action, and explaining the reasons and rationale for such decision.
  - ✓ A written decision serves an evidentiary function, demonstrating that the supervisor has undertaken the required meaningful review of the merits of the state board’s action.
  - ✓ A written decision is also a means by which the State accepts political accountability for the restraint being authorized.

**Scenario 1: Example of satisfactory active supervision of a state board regulation designating teeth whitening as a service that may be provided only by a licensed dentist, where state policy is to protect the health and welfare of citizens and to promote competition.**

- The state legislature designated an executive agency to review regulations recommended by the state regulatory board. Recommended regulations become effective only following the approval of the agency.
- The agency provided notice of (i) the recommended regulation and (ii) an opportunity to be heard, to dentists, to non-dentist providers of teeth whitening, to the public (in a newspaper of general circulation in the affected areas), and to other interested and affected persons, including persons that have previously identified themselves to the agency as interested in, or affected by, dentist scope of practice issues.
- The agency took the steps necessary for a proper evaluation of the recommended regulation. The agency:
  - ✓ Obtained the recommendation of the state regulatory board and supporting materials, including the identity of any interested parties and the full evidentiary record compiled by the regulatory board.
  - ✓ Solicited and accepted written submissions from sources other than the regulatory board.
  - ✓ Obtained published studies addressing (i) the health and safety risks relating to teeth whitening and (ii) the training, skill, knowledge, and equipment reasonably required in order to safely and responsibly provide teeth whitening services (if not contained in submission from the regulatory board).
  - ✓ Obtained information concerning the historic and current cost, price, and availability of teeth whitening services from dentists and non-dentists (if not contained in submission from the regulatory board). Such information was verified (or audited) by the Agency as appropriate.
  - ✓ Held public hearing(s) that included testimony from interested persons (including dentists and non-dentists). The public hearing provided the agency with an opportunity (i) to hear from and to question providers, affected customers, and experts and (ii) to supplement the evidentiary record compiled by the state board. (As noted above, if the state regulatory board has previously conducted a suitable public hearing, then it may be unnecessary for the supervising agency to repeat this procedure.)
- The agency assessed all of the information to determine whether the recommended regulation comports with the State's goal to protect the health and

welfare of citizens and to promote competition.

- The agency issued a written decision accepting, rejecting, or modifying the scope of practice regulation recommended by the state regulatory board, and explaining the rationale for the agency's action.

### **Scenario 2: Example of satisfactory active supervision of a state regulatory board administering a disciplinary process.**

A common function of state regulatory boards is to administer a disciplinary process for members of a regulated occupation. For example, the state regulatory board may adjudicate whether a licensee has violated standards of ethics, competency, conduct, or performance established by the state legislature.

Suppose that, acting in its adjudicatory capacity, a regulatory board controlled by active market participants determines that a licensee has violated a lawful and valid standard of ethics, competency, conduct, or performance, and for this reason, the regulatory board proposes that the licensee's license to practice in the state be revoked or suspended. In order to invoke the state action defense, the regulatory board would need to show both clear articulation and active supervision.

- In this context, active supervision may be provided by the administrator who oversees the regulatory board (*e.g.*, the secretary of health), the state attorney general, or another state official who is not an active market participant. The active supervision requirement of the state action defense will be satisfied if the supervisor: (i) reviews the evidentiary record created by the regulatory board; (ii) supplements this evidentiary record if and as appropriate; (iii) undertakes a *de novo* review of the substantive merits of the proposed disciplinary action, assessing whether the proposed disciplinary action comports with the policies and standards established by the state legislature; and (iv) issues a written decision that approves, modifies, or disapproves the disciplinary action proposed by the regulatory board.

Note that a disciplinary action taken by a regulatory board affecting a single licensee will typically have only a *de minimis* effect on competition. A pattern or program of disciplinary actions by a regulatory board affecting multiple licensees may have a substantial effect on competition.

**The following do not constitute active supervision of a state regulatory board that is controlled by active market participants:**

- The entity responsible for supervising the regulatory board is itself controlled by active market participants in the occupation that the board regulates. *See N.C. Dental*, 135 S. Ct. at 1113-14.
- A state official monitors the actions of the regulatory board and participates in deliberations, but lacks the authority to disapprove anticompetitive acts that fail to accord with state policy. *See Patrick v. Burget*, 486 U.S. 94, 101 (1988).
- A state official (*e.g.*, the secretary of health) serves *ex officio* as a member of the regulatory board with full voting rights. However, this state official is one of several members of the regulatory board and lacks the authority to disapprove anticompetitive acts that fail to accord with state policy.
- The state attorney general or another state official provides advice to the regulatory board on an ongoing basis.
- An independent state agency is staffed, funded, and empowered by law to evaluate, and then to veto or modify, particular recommendations of the regulatory board. However, in practice such recommendations are subject to only cursory review by the independent state agency. The independent state agency perfunctorily approves the recommendations of the regulatory board. *See Ticor*, 504 U.S. at 638.
- An independent state agency reviews the actions of the regulatory board and approves all actions that comply with the procedural requirements of the state administrative procedure act, without undertaking a substantive review of the actions of the regulatory board. *See Patrick*, 486 U.S. at 104-05.



# AGENDA ITEM E

## Licensing





## AGENDA ITEM E-1

# Review and Possible Approval of October 30, 2015 Licensing Committee Meeting Report





# CONTRACTORS STATE LICENSE BOARD

## LICENSING COMMITTEE SUMMARY REPORT

### LICENSING COMMITTEE MEETING

October 30, 2015  
Sacramento, CA

#### **A. CALL TO ORDER**

Licensing Committee Chair Linda Clifford called the meeting of the Contractors State License Board (CSLB) Licensing Committee to order at 10:30 a.m. on Friday, October 30, 2015, in the John C. Hall Hearing Room at CSLB Headquarters, 9821 Business Park Drive, Sacramento, California 95827. A quorum was established.

#### Committee Members Present

Linda Clifford, Chair  
Kevin Albanese  
Susan Granzella  
David De La Torre

#### Committee Members Absent

Frank Schetter  
Johnny Simpson

#### Board Members Present

Joan Hancock  
Ed Lang  
Nancy Springer  
Marlo Richardson

#### CSLB Staff Present

Cindi Christenson, Registrar  
Cindy Kanemoto, Chief Deputy Registrar  
Rick Lopes, Chief of Public Affairs  
David Fogt, Chief of Enforcement  
Laura Zuniga, Chief of Legislation  
Karen Ollinger, Chief of Licensing  
Wendi Balvanz, Chief of Testing  
Kristy Schieldge, Legal Counsel

Betsy Figueria, Licensing Staff  
Rick Villucci, Licensing Staff  
Nicole Newman, Licensing Staff  
Larry Parrott, Administration Staff  
Charlotte Allison, Licensing Staff  
Michael Franklin, Enforcement Counsel  
Heather Young, Enforcement Staff  
Stacey Paul, Executive Staff

#### Public Visitors

Rick Pires, Basic Crafts  
Daniel Cohen, Television Education

#### **CHAIR'S REMARKS**

On behalf of the Licensing Committee, Chair Linda Clifford congratulated Chief Karen Ollinger on her retirement and recognized her achievements.



**B. PUBLIC COMMENT SESSION**

No public comment received.

**C. LICENSING PROGRAM UPDATE**

Retiring Chief Karen Ollinger presented the Licensing division update to Committee members.

**D. TESTING DIVISION UPDATE**

Chief of Testing Wendi Balvanz provided updates on examination development and administration, and commented on the 25<sup>th</sup> anniversary of computerized testing at CSLB. Ms. Balvanz noted that occupational analyses of classification examinations run on a five year cycle and that the division recently completed an analysis of the “B” General Building classification.

**E. REVIEW, DISCUSSION, AND POSSIBLE ACTION TO RECOMMEND INITIATION OF RULEMAKING TO ADD TITLE 16, CALIFORNIA CODE OF REGULATIONS (CCR) SECTION 832.01 (C-1 NON-STRUCTURAL RESIDENTIAL REMODEL CONTRACTOR)**

Chief Ollinger presented information to the Committee about establishing a new classification, the C-1 Non-Structural Remodel/Repair Contractor. Staff recommended that the Licensing Committee support initiation of rulemaking to establish this new classification.

The Licensing Committee asked that the proposed text be referred back to staff to set stakeholder meetings to obtain further feedback before considering whether or not to initiate the rulemaking process.

Motion to Approve Setting Stakeholder Meetings, Present Proposed Regulatory Text, and Obtain Feedback

**MOTION: Committee Member Kevin Albanese moved, and Committee Member David De La Torre seconded, a motion to recommend setting stakeholder meetings to present proposed regulatory text and obtain feedback on initiation of rulemaking to establish a new classification: Non-Structural Remodel/Repair Contractor.**

NAME	Aye	Nay	Abstain	Absent	Recusal
Kevin J. Albanese	X				
David De La Torre	X				
Linda Clifford	X				
Susan Granzella	X				
Frank Schetter				X	
Johnny Simpson				X	



**F. ADJOURNMENT**

Licensing Committee Chair Linda Clifford adjourned the meeting at approximately 10:50 a.m.

## AGENDA ITEM E-2

# Review, Discussion, and Possible Action Regarding Recommendations for Proposed New C-1 Non-Structural Residential Remodel and Repair Contractor Classification





At its October 30, 2015 meeting, the Licensing Committee reviewed and discussed a proposal for a C-1 Non-Structural Remodel and Repair Contractor classification, without a limitation to residential projects. The background information presented at that meeting, which contains draft regulatory language, follows. The Committee unanimously approved a motion to recommend setting stakeholder meetings to present proposed regulatory text and obtain feedback on initiation of rulemaking to establish a new classification: Non-Structural Remodel/Repair Contractor.

At the Licensing Committee's direction, CSLB convened a stakeholder meeting on November 19, 2015 to obtain feedback on the proposed C-1 classification. The draft regulatory language reviewed at the stakeholders meeting, a summary of the comments received at the meeting, and a summary of other states' provisions for similar classifications that was presented at the meeting follows.

The Board is asked to review and discuss the proposed C-1 Non-Structural Remodel and Repair Contractor classification and to consider possible future actions regarding the proposal, such as additional stakeholder meetings and/or further review by the Licensing Committee.





*Licensing Committee Excerpt—October 30, 2015*

## **Background Information for October 30, 2015 Licensing Committee Meeting**

### **Issue**

Should the Contractors State License Board initiate rulemaking to establish a new classification: ***Non-Structural Remodel/ Repair Contractor?***

### **Background**

As part of its 2015-16 strategic plan, the Board directed staff to determine if a secondary "B" classification is needed to address contractors who provide home improvement services that do not include structural changes. Staff established a task force to evaluate the issue.

The task force began by looking at the existing "B" General Building classification. In its current form, the General Building "B" classification includes a vast scope of work that requires expertise in framing/carpentry and two unrelated trades, e.g. plumbing, electrical, concrete, etc. The scope of work described under Business and Professions code section 7057 for the general building "B" contractor disqualifies from licensure many applicants who provide services involving non-structural remodel or repair work because of the requirement that the applicant document four years of "journey level" experience performing framing/carpentry and two unrelated trades. To qualify for licensure, the applicant must show he/she has experience in the building of structures, e.g. homes, or additions to existing structures. Remodel/repair contractors do not have this experience and do not intend to perform such work.

Individuals performing remodel/repair work are often cited in CSLB sting operations for contracting without a license; however, while there is a market demand for remodel/repair contractors, under the current statutory scheme no classification currently exists for which they can obtain licensure to legally perform such work. Excluding these individuals from licensure has left a gap in the marketplace. CSLB lacks a classification for this existing need, thereby fostering an underground economy. By excluding individuals from licensure, who may otherwise qualify for a limited part of the "B" classification, CSLB fails to fulfill its consumer protection mandate by not providing an opportunity for these individuals to operate legally. The proposed C1 – Non-Structural Remodel/Repair classification addresses those individuals who perform trade work in existing structures that does not include changes in the structural integrity of a building. This classification will allow skilled tradesmen to become licensed so they may legally provide these needed services to the public in a way that allows CSLB to regulate their contracting activities.



*Licensing Committee Excerpt—October 30, 2015*

**Recommendation** *(Presented to Licensing Committee at October 30, 2015 Meeting)*

Staff recommends that the Board adopt a regulation establishing a new C-1 Classification - ***Non-Structural Remodel/Repair Contractor***:

***832.01 Non-Structural Remodel/Repair Contractor***

A non-structural remodeling and repair contractor remodels and repairs existing structures of three (3) stories or less, built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind; provided that no load bearing portion of the existing structure is altered, added or moved; this includes footings, foundations, and weight bearing members.

This classification excludes C-16 Fire Protection and C-57 Well Drilling alterations and repairs.



## **CONTRACTORS STATE LICENSE BOARD**

### **DRAFT ORIGINALLY PROPOSED LANGUAGE**

#### **California Code of Regulations, Title 16, Division 8 Article 3. Classification**

Adopt Section 832.01 as follows:

§832.01. Non-Structural Remodel and Repair Contractor.

- (a) A non-structural remodel and repair contractor remodels and repairs existing structures built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring the use of at least two unrelated building trades or crafts, except as excluded in this section.
- (b) This section does not apply to any work or operation on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items is more than \$15,000.
- (c) This classification shall not include the following:
  - (1) Altering, adding, or moving any load-bearing portions of the existing structure, including footings, foundations, and weight-bearing members;
  - (2) Work requiring specialized engineering knowledge and skill as set forth in Business and Professions Code Section 7056; and
  - (3) Work performed pursuant to a C-11 Elevator (Section 832.11), C-16 Fire Protection (Section 832.16), C-21 Building Moving/Demolition (Section 832.21), C-22 Asbestos Abatement (Section 832.22), C-31 Construction Zone Traffic Control (Section 832.31), C-32 Parking and Highway Improvement, C-34 Pipeline (Section 832.34), C-42 Sanitation System (Section 832.42), C-51 Structural Steel (Section 832-51), and C-57 Well Drilling (Section 832.57) classifications.
- (d) An examination waiver for this classification as a closely related classification pursuant to Business and Professions Code Section 7065.3 shall be considered only for licensees who hold the B-General Building classification pursuant to Section 7057 of the Code.
- (e) The C-1 Non-Structural Remodel and Repair classification shall be available upon development of a trade examination.

Note: Authority cited: Section 7008 and 7059, Business and Professions Code.  
Reference: Section 7058 and 7059, Business and Professions Code.



## **Summary of November 19, 2015 Construction Industry Stakeholder Meeting**

### Public Attendees:

Eddie Bernacchi, NECA/ MCA/ United Contractors  
Mary Birch, Contractors State License Service  
Todd Bloomstine, Southern California Contractors Association  
Beverly Carr, Politico Group  
Daniel Cohen  
Joseph Cruz, CA State Council of Laborers  
Maria Garcia, CA Landscape Contractors Association  
Roxanne Hansen, Contractors State License Service  
Jamie Kahn, Associated General Contractors  
Bob Latz, CA Association of Local Building Officials  
Kate Leyden, Valley Contractors Exchange  
Richard Markuson, Pacific Advocacy Group  
Mike Monagan, Carter, Wetch & Associates  
Mark Needham, License Instruction Schools  
Phil Vermulen, Golden State Builders Exchange  
Leo Voronston, Contractors Intelligence School  
Chris Walker, CA Sheet Metal and Air Conditional Contractors Association

Registrar Cindi Christenson gave brief welcoming remarks and summarized the agenda topics.

### **Legislative Proposals**

Chief of Legislation Laura Zuniga presented each legislative proposal.

CSLL Reorganization – Todd Bloomstine, Southern California Contractors Association (SCCA), suggested a delayed implementation if a bill goes forward. Eddie Bernacchi, NECA/ MCA/ United Contractors, mentioned that CSLB would need to ensure that references to CSLL in other code sections are corrected.

Public Works Contracting – Chief of Enforcement David Fogt summarized the need for the proposal, and stated that CSLB's Public Works Unit is very careful when making allegations that work is done out of class. The problem occurs more often when contractors mislead smaller awarding agencies into granting a contract to a contractor in the wrong classification.

Phil Vermulen, Golden State Builders Exchange, stated that the proposal should be the other way around – grant CSLB authority over awarding agencies, and that CSLB can only discipline a licensee when an awarding agency has first come to CSLB for a classification determination. As currently proposed, he views it as a potential for entrapment.



Richard Markuson, Pacific Advocacy Group, stated that the requirement would generate a substantial workload for both CSLB and awarding agencies, and it would affect prevailing wage determinations. Mr. Vermulen also noted the many grey areas related to determining the appropriate classification for a particular project.

Todd Bloomstine, Southern California Contractors Association, said that in his experience agencies require a classification for the contract that the job does not warrant. He sees a disconnect between what CSLB requires and what the awarding agencies require and asked about CSLB's process for determining the classification for a project.

David Fogt noted that CSLB encourage awarding agencies to use the board's publications for classification determinations and for more complex determinations; people can email designated staff at CSLB to get a quick response.

Mr. Bloomstine commented that CSLB also needs to add authority over awarding agencies to require them to follow the board's classifications. Cindi Christenson responded that this would likely be difficult. If, however, awarding agencies see that CSLB has greater sanctioning authority over licensees that work out of class, the contract could be invalidated or work not certified, which should help address the problem.

Eddie Bernacchi, NECA/ MCA/ United Contractors, asked if CSLB sent out an industry bulletin to awarding agencies regarding classification determinations. (He received a draft bulletin in the summer, though it has not yet been publicly distributed.)

Richard Markuson suggested a safe harbor provision – if an awarding agency requests and follows a classification determination they should be immune from challenges to prevailing wage or other challenges.

Eddie Bernacchi stated that contractors know what work they are permitted to do within their classification.

Joe Cruz, CA State Council of Laborers, stated they support the concept, but know that it needs some additional work.

Testing – No comments were received on this specific proposal. Phil Vermulen suggested something he said is similar for replacing a qualifier. Laura Zuniga suggested addressing this separately, as it pertains to a different code section.

Citation Disclosure – No comments were received.

Fees – Laura Zuniga reviewed the four separate portions of the proposal and stated that the expedite fee would still require the applicant to meet criteria to qualify for expedited processing, which will be defined in regulation.



Eddie Bernacchi expressed concern that establishing this expedite process will slow applications that do not pay the expedite fee. He wants to be certain that non-expedited applications are not delayed.

Phil Vermulen stated that he supports the fee increase, but only if that additional money is tied to more staff. He wants to know how the money would be earmarked and opposes it going to the General Fund.

Todd Bloomstine stated that SCCA supports the proposal, as long as there are minimum standards included.

Home Improvement Contract Rewrite – Leo Voronstov, Contractors Intelligence School, suggested that CSLB provide standard forms or a guideline for compliance with the HIC provisions.

### **Discussion of Proposed New C-1 Non-Structural Remodel and Repair Contractor**

Laura Zuniga briefly presented the background of the proposal and Betsy Figueira reviewed the proposed language of the regulation.

Phil Vermulen asked if it would allow a C-1 to install a residential solar system and several people commented on this question. Betsy Figueira indicated that, because the law identifies solar work as comprising two or more related fields, it could fall under this classification.

Eddie Bernacchi stated that the proposal has improved from the prior draft, but that the specialty contractors he represents are concerned that it would allow a C-1 to do two unrelated trades, if one of the trades is a critical classification. He gave an example of Carpenteria doing flooring and painting, but with the C-1 classification they could do everything without having that experience. He suggested exempting all critical classifications and C-4 (Boiler), as well. He stated that while CSLB is developing this proposal because the B can be too hard to qualify for, the proposals quickly encounters the very purpose of the B license – the performance of a broad range of work/skills.

Chris Walker, CA Sheet Metal and Air Conditioning Contractors Association, stated that he shared Eddie Bernacchi's concerns. The HVAC skill set requirement is increasing in response to CA Energy Commission regulations, and CSLB should not be lowering the bar.

Mark Needham, License Instruction Schools, supported the proposal. Applicants cannot get a B license because they do not have framing experience. However, he objected to the provision in the proposed C-1 classification of two or more unrelated trades, as he does not see that as practical for a handyman.



There was discussion about the electrician certification that is required for journeyman electricians, but it was clarified that the certification is only required for employees of C-10 Electrical, not for B licensees or this classification.

Bob Latz, CA Association of Building Officials, requested that the classification be as specific as possible so that building officials are clear about what work can be performed by a C-1. He questioned the definition of “existing structures” in the proposed language and if that included residential and commercial. Ms. Figueira indicated that both are included. Mr. Latz asked if a C-1 could do a balcony or stair repair, in reference to two recent high-profile cases. Ms. Figueira said that if they were remodels or repairs and involved two unrelated trades they would be included under this classification; however, those specific examples would likely involve structural elements, so they would not be allowable under the C-1. Mr. Latz recommended further clarification about what would be allowable under the classification.

Eddie Bernacchi said that he supports the requirement for two or more unrelated trades as an important part of the proposal, without which the C-1 would eliminate the need for multiple specialty classifications. If, he commented, CSLB is trying to achieve something similar to a B license, a B licensee performs multiple trades, and the C-1 proposal goes well beyond a handyman.

Mike Monagan, Carter, Wetch and Associates (Pipe trades and electrical workers), stated that he agreed with Eddie Bernacchi and Chris Walker’s concerns about diluting licensing requirements.

Richard Markuson suggested limiting the C-1 to residential work. He said that it could be a starting point to see how the effect of the new classification. He agreed with Chris Walker’s concerns about the HVAC requirements.

Mark Needham questioned the need to prevent a C-1 from performing commercial work if he/she can do that same work on a residential project.

Daniel Cohen stated that he supported the proposal, and also believes it should include commercial work. He specifically cited hotel maintenance as work that a C-1 could perform. He suggested that the \$15,000 limit may need clarification, as it appears to prevent a C-1 from performing any future work for a customer once one project is completed. He also suggested linking that \$15,000 to the bond limit so that it can be automatically adjusted as the bond limit is increased. He asked if a C-1 could accept work over the \$15,000 if he/she gets an additional bond. Betsy Figueira said that any changes to the bond provisions would require a statutory change. Mr. Cohen thanked CSLB staff for expanding the language beyond that presented at the Licensing Committee Meeting.

CSLB Board Member Nancy Springer said she sent the proposal out to interested parties with whom she works. They agree there is a need for something like the C-1, but



had concerns about the specifics, as proposed. The building officials see the C-1 as possibly leading some contractors to qualifying for the B license. She sees a need for the C-1 to cover more than just a typical handyman and to include residential remodeling, such as adding hand rails, a carport, dry rot repair, door/window replacement, etc. She also noted concerns about including some of the C specialty classifications within the scope of the proposed C-1 classification because many remodels entail only cabinetry and windows or involve minor repairs. Building officials support the idea of the C-1 classification, but agree about the importance of the details included in the regulatory language.

Eddie Bernacchi stated that a B licensee does not typically perform some of the critical classifications in residential or commercial work; they more commonly subcontract the work.

Todd Bloomstine suggested limiting the C-1 to sole proprietorships.

End of comments.





## **Other State Provisions for Classification Similar to Proposed C-1 Classification**

### Issue:

As part of the Board's current strategic plan, the Board directed staff to determine if an additional classification is necessary to address contractors who provide home improvement services that do not include structural changes. Staff established a task force to evaluate the issue.

As part of its review, staff reviewed comparison states to determine how other state's licensing structure accommodates this type of work, as well as reviewed data from the Enforcement and Licensing Divisions to identify the type of work that should be covered by the new proposed classification.

### Comparison States

Arizona, Nevada and Utah each have a classification California could look at for ideas in developing its new B subcategory. South Carolina also has a similar subclassification. Several states limit total dollar amount per contract for their classifications.

This review focused on states that have classifications that do not include structural work.

### **Arizona**

Has General Commercial Contractor and General Small Commercial Contractor.

#### **GENERAL COMMERCIAL CONTRACTOR**

Construction, alteration, and repair in connection with any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind. This scope includes the supervision of all or any part of the above and includes the management, or direct or indirect supervision of any work performed.

#### **GENERAL SMALL COMMERCIAL CONTRACTOR**

Small commercial construction in connection with any new structure or addition built, being built, or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind for which the total amount paid to the licensee does not exceed \$750,000. This scope includes the supervision of all or any part of the above and includes the management or direct or indirect supervision of any work performed.

Has several different residential contractor classifications.

#### **GENERAL RESIDENTIAL CONTRACTOR**

Construction of all or any part of a residential structure or appurtenance. Also included are the scopes of work allowed by the B-3 and CR-2 through CR-80 license classifications. Work related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells must be subcontracted to an appropriately licensed contractor.

**GENERAL REMODELING AND REPAIR CONTRACTOR**

Remodeling or repair of an existing residential structure or appurtenance except for electrical, plumbing, mechanical, boilers, swimming pools or spas and water wells, which must be subcontracted to an appropriately licensed contractor.

*More limited than current CA proposal.*

**GENERAL RESIDENTIAL ENGINEERING CONTRACTOR**

Construction and repair of appurtenances to residential structures. Work related to electrical, plumbing, air conditioning systems, boilers, and water wells must be subcontracted to an appropriately licensed contractor.

**Florida**

Eliminated Florida as a comparison, as all of their relevant classifications include framing.

**Nevada**

Has A, B and C licenses, similar to California. A and B have sub-classifications.

B Sub-classifications:

1. PREMANUFACTURED HOUSING (sub-classification B-1): The fitting, assembling, placement and installing of premanufactured units, modular parts and their appurtenances for the erection of residential buildings which do not extend more than three stories above the ground.
2. RESIDENTIAL AND SMALL COMMERCIAL (sub-classification B-2): The construction and remodeling of houses and other structures which support, shelter or enclose persons or animals or other chattels, and which do not extend more than three stories above the ground and one story below the ground.
3. SPECULATIVE BUILDING (sub-classification B-3): The construction upon property owned by the contractor of structures for sale or speculation.
4. SERVICE STATIONS (sub-classification B-4): The construction of structures and installation of equipment used to perform service upon vehicles.
5. PREFABRICATED STEEL STRUCTURES (sub-classification B-5): The construction with prefabricated steel of structures to be used for the support, shelter or enclosure of persons or animals or other chattels.
6. COMMERCIAL REMODELING: To perform repair and remodel work in high rise buildings. (Regulation workshops and hearings to permanently adopt this regulation will begin in July 2015). Holders of this license will be permitted to perform remodeling and improvement of interior spaces, including structures which exceed more than three stories and buildings with fewer than three stories that are connected to structures which exceed three stories.

*Wouldn't want to limit CA classification to high rise buildings, not sure we need a height restriction.*

**Oregon**

Eliminated Oregon as a comparison, as all of their relevant classifications appear to involve framing.

**South Carolina**

South Carolina has a general contractor-specialty with this sub-classification:

(c) "Interior Renovation," which includes installing, remodeling, renovations, and finishes of acoustical ceiling systems and panels, load-bearing and non-load-bearing drywall partitions, lathing and plastering, flooring (excluding carpet) and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets, and millwork; and which also includes fireproofing, insulation, lining, painting, partitions, sandblasting, interior wall covering, and waterproofing. This sub-classification does not include alterations to load-bearing portions of a structure.

**Utah**

Utah licenses the following main categories (and several additional specialties):

- (a) general engineering contractor (E-100);
- (b) general building contractor (B-100);
- (c) residential and small commercial contractor (R-100);
- (d) non-structural remodeling and repair contractor (R-101)

Every aspect of commercial, residential and public works construction of \$1,000 or more is regulated. Owners performing work on their own residence or contracting with a licensed contractor for that work are exempt.

**General Building Contractor**

"General building contractor" means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical work, mechanical work, work related to the operating integrity of an elevator, and manufactured housing installation, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

**Residential and Small Commercial Contractor**

"Residential and small commercial contractor" means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical work, mechanical work, and manufactured housing installation, for which the residential



and small commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

**Non-Structural Remodeling and Repair Contractor**

Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation, and weight bearing walls; and the entire project is less than \$50,000 in total cost.

## AGENDA ITEM E-3

# Licensing Program Update





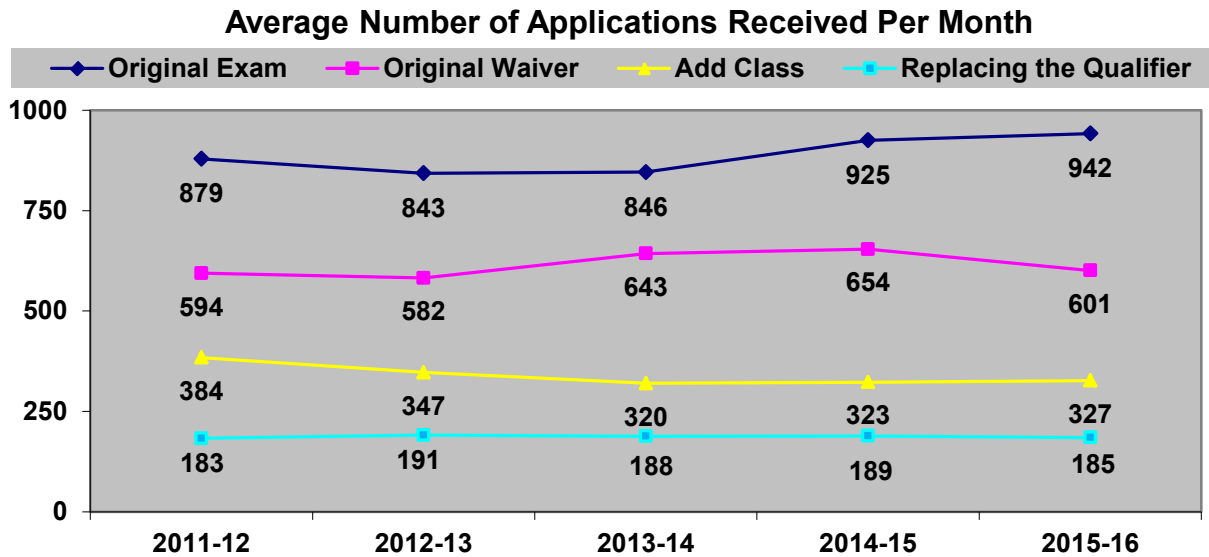
# CONTRACTORS STATE LICENSE BOARD

## LICENSING PROGRAM UPDATE

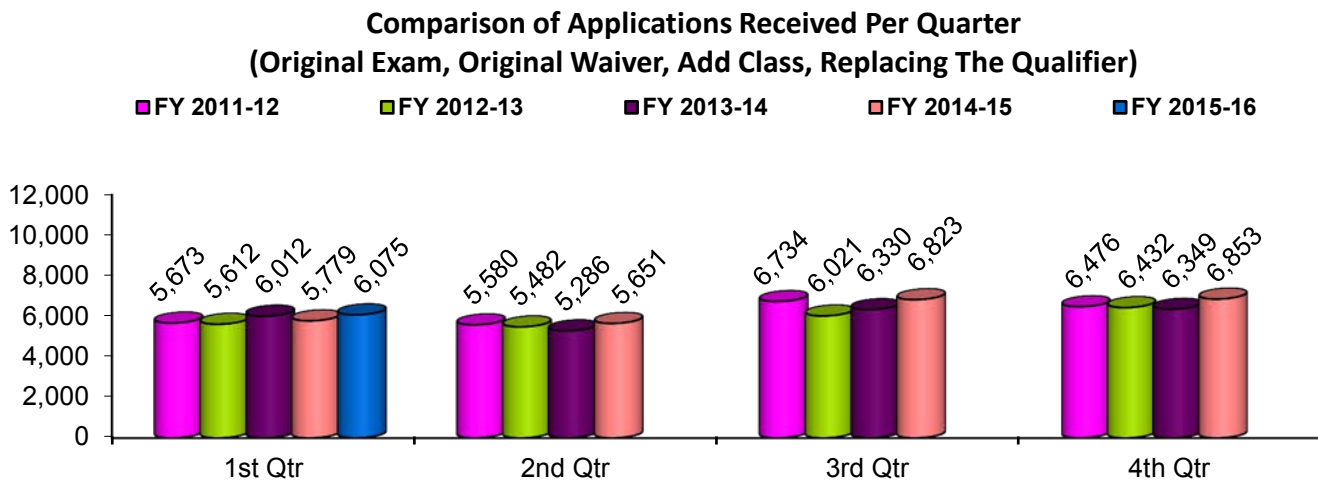
### LICENSE APPLICATION WORKLOAD

Beginning in fiscal year (FY) 2013-14, the number of applications CSLB received trended upward 2 percent from the previous year, reversing the decline in previous years because of the economic recession and housing downturn.

The following chart provides the average number of applications received per month:



The total number of applications received by fiscal year quarter is shown below:

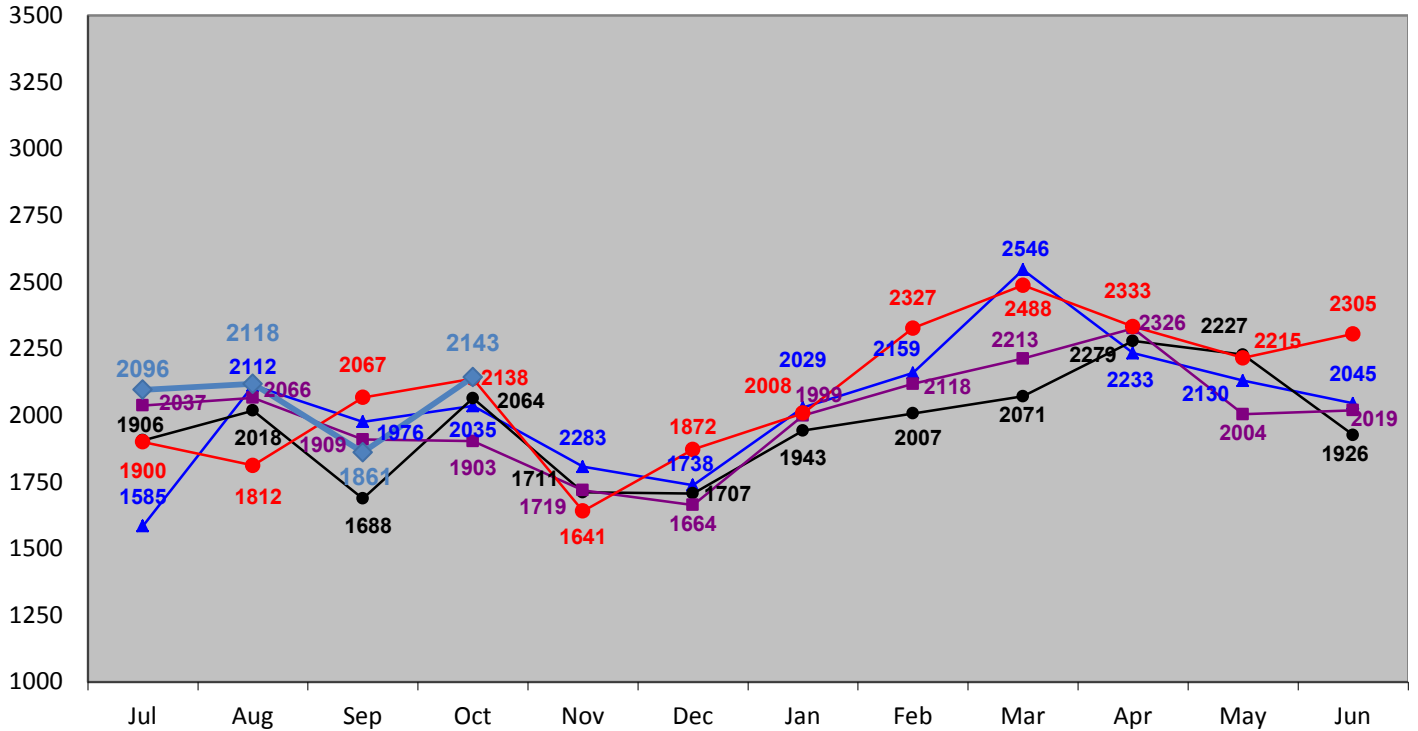


**Increase of 2 percent for total applications received for FY 2014-15  
Compared with FY 2013-14**



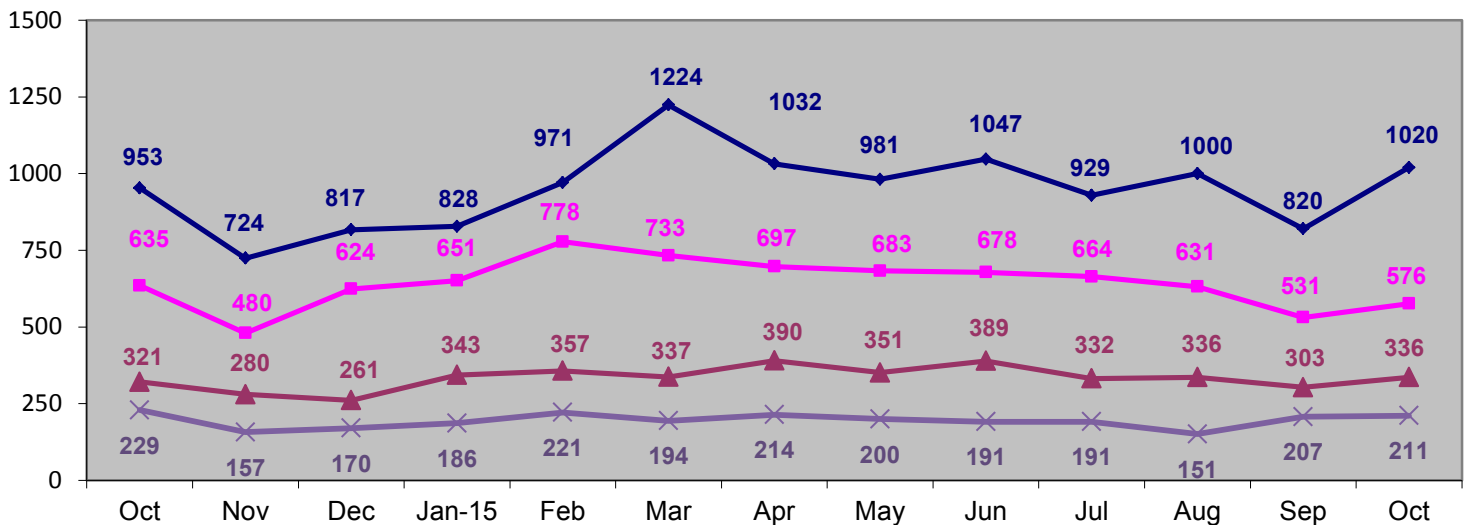
**Total Number of Applications Received Per Month for Fiscal Year  
(Original Exam, Original Waiver, Add Class, Replacing the Qualifier)**

—▲— 2011-12    —●— 2012-13    —■— 2013-14    —●— 2014-15    —◆— 2015-16



**Number of Applications Received**

—◆— Original Exam    —■— Original Waiver    —▲— Add Class    —×— Replacing the Qualifier





**LIMITED LIABILITY COMPANIES (LLCs)**

CSLB has licensed LLCs since January 1, 2012, when a new law (SB 392) gave CSLB the necessary authority.

Of the 2,791 original LLC applications received through November 1, 2015, CSLB issued 1,209 limited liability company contractor licenses. The most common reason for rejection continues to be staff's inability to match the name(s), title(s), and total count of LLC personnel on the application with the Statement of Information (SOI) provided in the records of the Office of the Secretary of State. The SOI information is required to process the LLC application and provides staff with the total number and names of LLC personnel, which is crucial to determine the appropriate liability insurance requirement (between \$1 million and \$5 million) for the LLC.

**Most Common Reasons LLC Applications are Returned for Correction:**

1. The personnel listed on the application does not match the personnel listed on SOS records.
2. LLC/SOS registration number and/or business name is missing or incorrect.
3. Personnel information needs clarification or is missing, i.e., DOB, middle name, title.
4. Questions section (page 3 of application, #10-15) is missing or incomplete.

**WORKERS' COMPENSATION RECERTIFICATION**

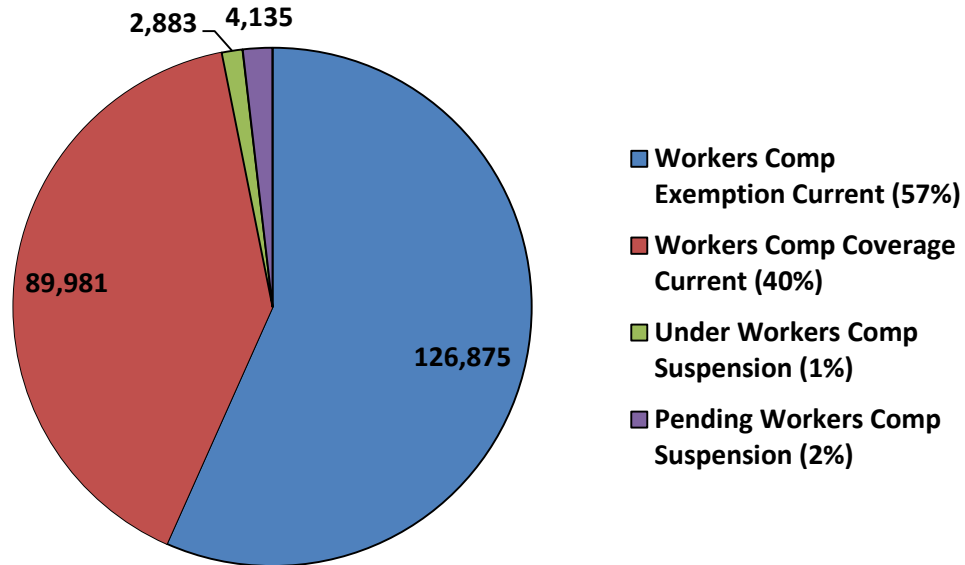
Business and Professions Code §7125.5 (Assembly Bill 397) took effect on January 1, 2012. Licensing implemented the requirements of the new law in January 2013, effective for licenses expiring March 31, 2013. This law requires that, at the time of renewal, an active contractor with an exemption for workers' compensation insurance on file with CSLB either recertify the exemption or provide a current and valid Certificate of Workers' Compensation Insurance or Certificate of Self-Insurance. If, at the time of renewal, the licensee fails to recertify his or her exempt status or to provide a workers' compensation policy, the law allows for the retroactive renewal of the license if the licensee submits the required documentation within 30 days after notification by CSLB of the renewal rejection.





This chart provides a snapshot of workers' compensation coverage for active licenses:

**Workers' Comp Coverage for  
Active Licenses - November 1, 2015**



**Total Number of Active Licenses: 223,874**

*Data obtained from Teale Program ACTLICWC*

The chart shown on the following page provides the current workers' compensation coverage status (policies and exemptions) on file for active licenses by classification and the percentage of exemptions per classification.

**Active License Classifications – Workers’ Comp Status Effective 11-01-2015**

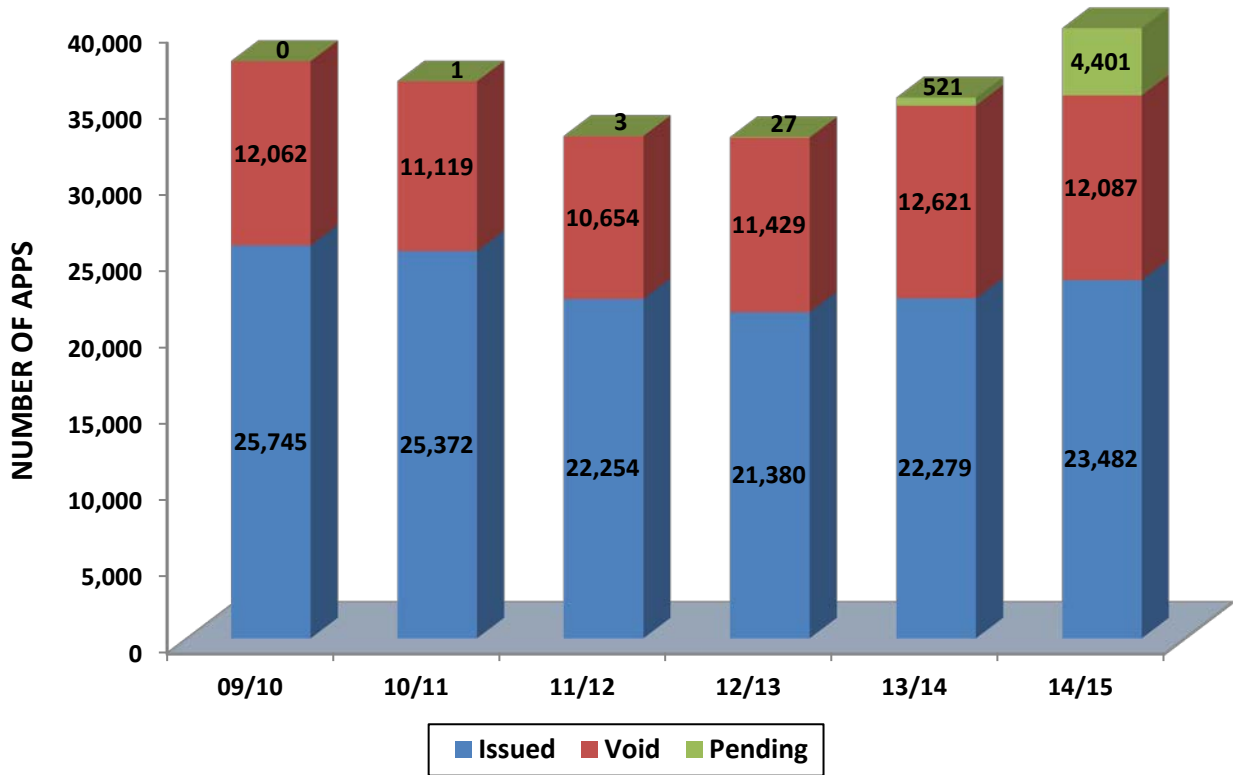
<b>Classification</b>	<b>Total - Policies &amp; Exemptions</b>	<b>Number of WC Policies on File</b>	<b>Number of Exempt on File</b>	<b>Percentage of Total with Exemptions</b>
A General Engineering	14480	8719	5761	40
B General Building	100303	36324	63979	64
C-2 Insulation/Acoustic	1165	870	295	25
C-4 Boiler Hot Water	828	599	229	28
C-5 Framing/Rough Carp	750	277	473	63
C-6 Cabinet-Millwork	4654	1762	2892	62
C-7 Low Voltage	4804	2614	2190	46
C-8 Concrete	5785	3225	2560	44
C-9 Drywall	3007	1686	1321	44
C-10 Electrical	24277	10277	14000	58
C-11 Elevator	202	156	46	23
C-12 Earthwork & Paving	2303	1259	1044	45
C-13 Fencing	1419	757	662	47
C-15 Flooring	7005	3174	3831	55
C-16 Fire Protection	2096	1334	762	36
C-17 Glazing	2720	1617	1103	41
C-20 HVAC	11249	4971	6278	56
C-21 Bldg. Moving Demo	1483	1005	478	32
C-22 Asbestos Abatement	151	151	0	0
C-23 Ornamental Metal	972	540	432	44
C-27 Landscaping	10902	6089	4813	44
C-28 Lock & Security Equip	345	198	147	43
C-29 Masonry	2507	1380	1127	45
C-31 Construction Zone	219	189	30	14
C-32 Parking Highway	495	304	191	39
C-33 Painting	15274	6290	8984	59
C-34 Pipeline	474	309	165	35
C-35 Lath-Plaster	1789	1110	679	38
C-36 Plumbing	14838	6042	8796	59
C-38 Refrigeration	1936	945	991	51
C-39 Roofing	4107	4107	0	0
C-42 Sanitation	957	554	403	42
C-43 Sheet Metal	1509	1026	483	32
C-45 Sign	830	440	390	47
C-46 Solar	1064	644	420	39
C-47 Gen Manufactured Housing	435	199	236	54
C-50 Reinforcing Steel	237	167	70	30
C-51 Structural Steel	1361	938	423	31
C-53 Swimming Pool	2317	1255	1062	46
C-54 Tile	6073	2505	3568	59
C-55 Water Conditioning	307	178	129	42
C-57 Well Drilling	857	500	357	42
C-60 Welding	970	402	568	59
C-61 Limited Specialty	16427	8853	7574	46
Asbestos	1148	792	356	31
Hazard	1923	1310	613	32

*Data obtained from Teale Program WCCLSACT*



### Disposition of Applications by Fiscal Year Teale Report S724: Run Date 11-01-2015

(Includes: Original, Add Class, Replacing the Qualifier, Home Improvement Salesperson, Officer Changes)





**FINGERPRINTING/CRIMINAL BACKGROUND UNIT**

CSLB began fingerprinting applicants in January 2005. The California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) conduct criminal background checks and provide Criminal Offender Record Information (CORI) to CSLB for in-state convictions and for out-of-state and federal convictions, respectively.

Since the fingerprint program began, CSLB has received 340,042 transmittals from DOJ. These include clear records and conviction information.

Of the applicants fingerprinted during that time, Criminal Background Unit (CBU) staff received CORI for 59,374 applicants, an indication that DOJ and/or the FBI had a criminal conviction(s) on record for that individual.

As a result of CORI files received through October 31, 2015, CBU denied 1,251 applications and issued 1,477 probationary licenses; 621 applicants appealed their denials.

DOJ and FBI typically provide responses to CSLB within a day or two of an applicant being fingerprinted, but occasionally the results are delayed in order for the agency to conduct further research based on the applicant’s record. This does not necessarily indicate a conviction, as sometimes the results reveal a clear record. Recently, at any given time, an average of 300 applicants are subject to DOJ/FBI delays. Most delays are resolved within 30 days; however, some continue for 60 or 90 days, or more. Since DOJ and FBI are independent agencies, CSLB has no control over these delays and must wait for the fingerprint results before issuing a license.

Below is a breakdown of CBU statistics by fiscal year.

<b>Criminal Background Unit Statistics</b>								
	<b>FY 04-05 thru FY 09-10</b>	<b>FY 10-11</b>	<b>FY 11-12</b>	<b>FY 12-13</b>	<b>FY 13-14</b>	<b>FY 14-15</b>	<b>FY 15-16</b>	<b>TOTALS</b>
<b>DOJ Records Received</b>	216,177	24,730	18,805	18,270	20,395	28,434	10,316	339,608
<b>CORI RAPP Received</b>	35,407	5,201	3,997	3,663	3,768	4,686	1,959	59,374
<b>Denials</b>	907	108	70	67	37	40	22	1,251
<b>Appeals</b>	435	62	39	36	23	21	5	621
<b>Probationary Licenses Issued</b>	825	243	146	71	76	97	19	1,477

**EXPERIENCE VERIFICATION UNIT**

CSLB is required by law to investigate a minimum of 3 percent of applications received to review applicants' claims of work experience. Until 2005, application experience investigations were performed by the Licensing division. However, in early 2005, when the fingerprinting requirements were implemented, Licensing requested that the application experience investigation workload be transferred to the Enforcement division. This enabled Licensing staff, who had previously conducted application experience investigations, to review criminal histories. But, as of June 1, 2014, Licensing has reassumed the formal application investigation process. Licensing continues to follow the same procedures as Enforcement.

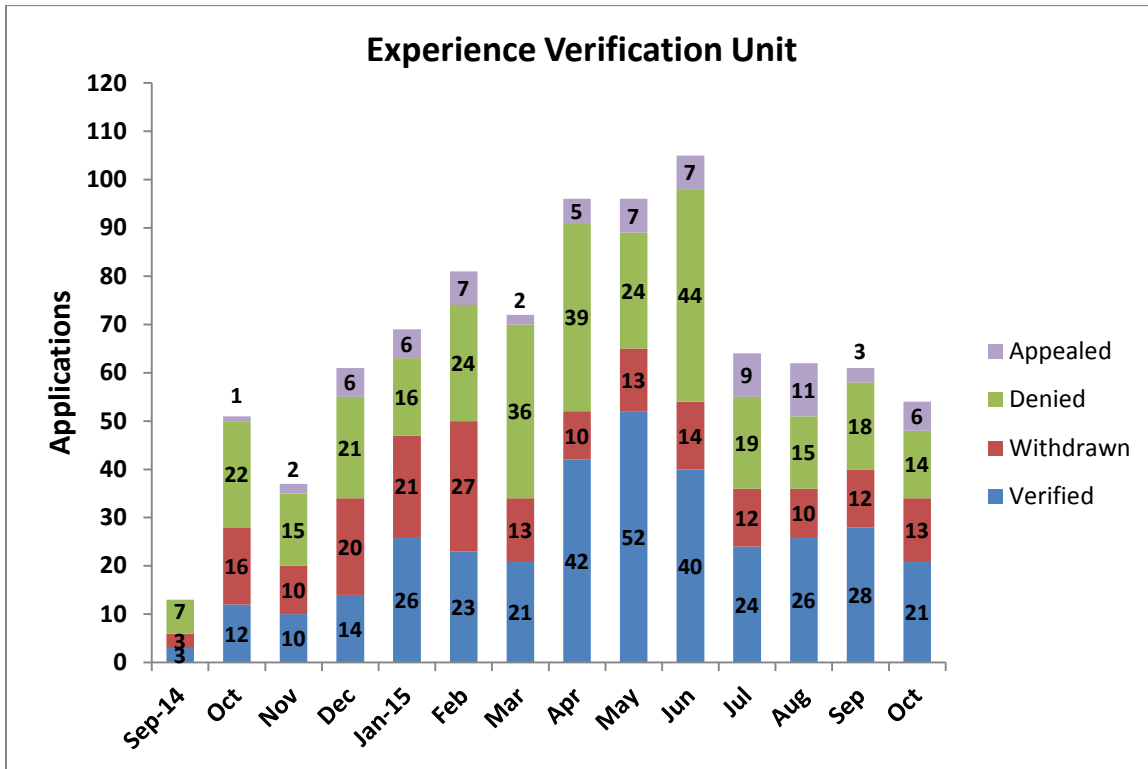
In January 2013, in order to streamline the application process, as well as to reduce the time and expense of formal investigations, Licensing combined the work experience verification process with the standard application review. The goal of the program is to assist qualified applicants in becoming licensed and to ensure that all licensed contractors meet minimum qualifications. While this process is not a formal investigation, it is intended to verify the work experience claimed by the applicant. Applicants are provided with a number of options for verifying their experience. In instances when CSLB cannot confirm the experience, the applicant has three options:

- Identify a new qualifier who possesses the required experience;
- Withdraw the application and reapply when the necessary experience has been gained; or
- Request a formal experience investigation.

In December 2013, CSLB conducted a seminar for contractor schools to review the experience verification process so they could better help clients provide CSLB the necessary verification information to become licensed. In June 2014, application processing staff underwent training on procedures to verify experience. Following the training, about 40 percent fewer applications were referred for formal investigation compared with the previous quarter. The Experience Verification Unit was transferred to the Licensing division on July 1, 2014, and fully staffed by November 20, 2014. Statistical reporting for the unit was in place September 1, 2014.



The following chart provides a monthly breakdown of the action taken for applications referred to the Experience Verification Unit.



Since implementation, the Experience Verification Unit staff has been assigned a total of 921 applications for experience verification. The number of applications referred to the unit each month meets the 3 percent minimum requirement (Business and Professions Code §7068(g) and California Code of Regulations 824).

The Experience Verification Unit denied 314 applications, 72 have been appealed and 342 verified for continued processing. One hundred ninety three applications were withdrawn.

Currently, 115 applications are pending further review or awaiting additional supporting experience documentation from the applicant.



The chart below provides the classification breakdown for appeals, denials, withdrawals, and experience verifications from September 1, 2014 through October 31, 2015.

**Experience Verification By Classification**

<b>Classification</b>	<b>Total Reviewed by Class</b>	<b>Appealed</b>	<b>Withdrawn</b>	<b>Verified</b>	<b>Denied</b>
A General Engineering	77	13	21	18	25
B General Building	547	47	127	173	200
C-2 Insulation/Acoustic	1			1	
C-4 Boiler Hot Water	1			1	
C-5 Framing/Rough Carp	2			1	1
C-6 Cabinet-Millwork	1			1	
C-7 Low Voltage	4			3	1
C-8 Concrete	10		1	4	5
C-9 Drywall	7	1			6
C-10 Electrical	56	1	10	33	12
C-12 Earthwork & Paving	6		1	2	3
C-13 Fencing	1				1
C-15 Flooring	12	1	1	6	4
C-16 Fire Protection	1			1	
C-17 Glazing	4		1	2	1
C-20 HVAC	33	2	4	14	13
C-21 Bldg. Moving Demo	3		1		2
C-22 Asbestos	2		2		
C-23 Ornamental Metal	1			1	
C-27 Landscaping	30	2	6	11	11
C-29 Masonry	2		1	1	
C-31 Construction Zone	1				1
C-32 Parking Highway	1		1		
C-33 Painting	14		1	10	3
C-35 Lath-Plaster	4	1		1	2
C-36 Plumbing	43	1	5	28	9
C-39 Roofing	4		1	1	2
C-42 Sanitation	1		1		
C-43 Sheet Metal	1		1		
C-46 Solar	7	1		3	3
C-47 Manufactured Housing	1			1	
C-51 Structural Steel	1			1	
C-53 Swimming Pool	4	1	1	1	1
C-54 Tile	12		2	8	2
C-57 Well Drilling	9		2	5	2
C-60 Welding	2		1	1	
C-61 Limited Specialty	15	1	1	9	4
<b>Totals By Action</b>	<b>921</b>	<b>72</b>	<b>193</b>	<b>342</b>	<b>314</b>



## **LICENSING INFORMATION CENTER (LIC)**

### **LIC Workload**

LIC (call center) staff has continued to exceed Board goals. To date, for fiscal year 2015-2016, call center agents answer approximately 13,000 calls per month. Call wait times averaged only 4:07, with 98 percent of all incoming calls answered. The average length of each call was 1:13.

These improved statistics can be attributed to improved staffing levels and training. Employees hired in 2014 continue to benefit from comprehensive training and are becoming more seasoned each day.

### **Staffing Update**

LIC is fully staffed, with 15 full-time Program Technician IIs and two Retired Annuitants.

### **Increased Training**

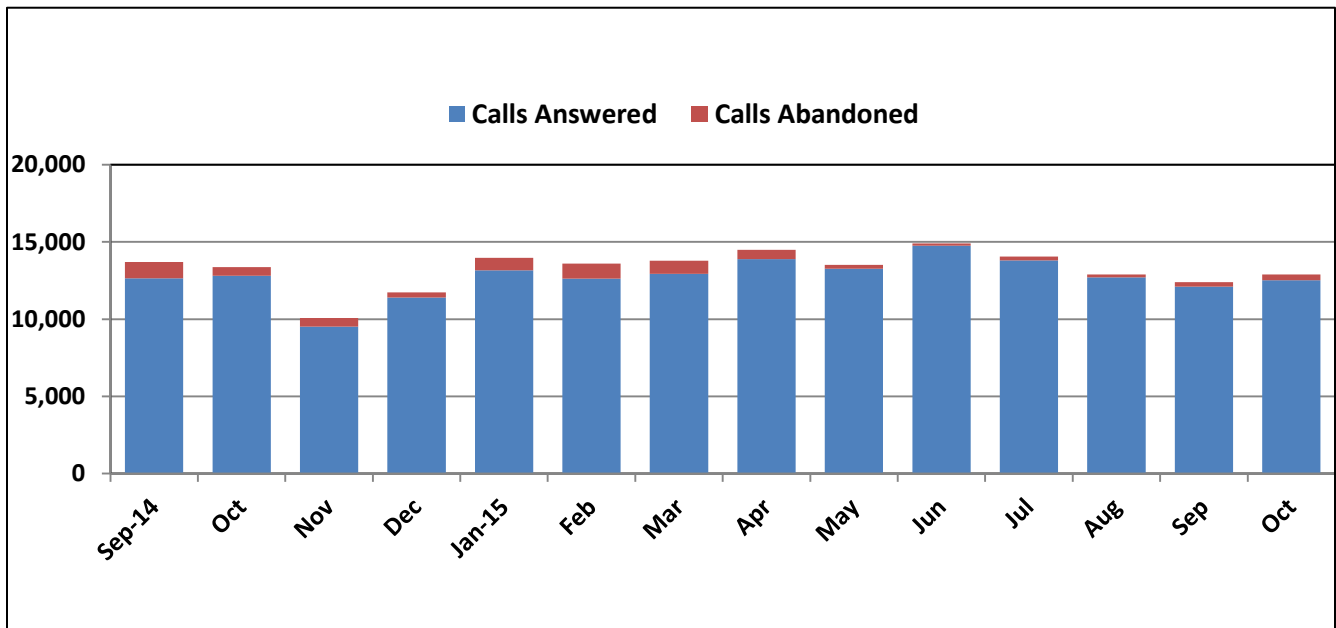
LIC continues to strive to provide timely, efficient, and professional services to its customers. New employees have spent significant time in one-on-one training with seasoned staff and supervisors. LIC meets bi-monthly with the CSLB Classification Deputy for updated classification changes, and keeps in constant contact with all Licensing units to ensure that the public receives the most current information. LIC analyst Ellen Maier provided Board orientation for new employees in the Licensing division August 25-27, 2015, with similar training provided to the Enforcement division in October 2015. The training was webcast via CSLB's Intranet for staff in Southern California offices.





**Licensing Information Center Call Data**

	Sep 2014	Oct	Nov	Dec	Jan 2015	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
<b>Calls Received</b>	13,759	13,397	10,090	11,735	13,984	13,595	13,788	14,490	13,514	14,906	14,060	12,899	12,392	12,889
<b>Calls Answered</b>	12,637	12,809	9,507	11,405	13,156	12,633	12,927	13,889	13,272	14,755	13,810	12,709	12,114	12,527
<b>Calls Abandoned</b>	1,067	567	566	327	823	958	854	599	242	151	250	189	278	357
<b>Longest Wait Time</b>	10:10	7:52	12:05	5:56	10:32	12:59	12:17	11:06	4:51	2:51	4:01	3:55	5:40	4:37
<b>Shortest Wait Time</b>	1:18	0:28	0:19	0:10	0:45	0:44	0:31	0:34	0:22	0:08	0:07	0:12	0:15	0:21
<b>Average Wait Time</b>	4:53	4:48	4:43	4:46	4:39	4:30	4:12	4:32	4:27	4:17	4:13	4:08	4:00	4:02



**JUDGMENT UNIT**

Judgment Unit staff process all outstanding liabilities, judgments, and payment of claims reported to CSLB by licensees, consumers, attorneys, credit recovery firms, bonding companies, CSLB's Enforcement division, and other governmental agencies. In addition, the Judgment Unit processes all documentation and correspondence related to resolving issues such as, satisfactions, payment plans, bankruptcies, accords, motions to vacate, etc.

Outstanding liabilities are reported to CSLB by:

- Employment Development Department
- Department of Industrial Relations
  - Division of Occupational Safety and Health
  - Division of Labor Standards Enforcement
- Franchise Tax Board
- State Board of Equalization
- CSLB Cashiering Unit

Unsatisfied judgments are reported to CSLB by:

- Contractors
- Consumers
- Attorneys

Payments of claims are reported to CSLB by:

- Bonding companies

When CSLB receives timely notification of an outstanding liability, judgment, or payment of claim, the licensee receives an initial letter that explains options and the timeframe to comply, which is 90 days for judgments and payment of claims, and 60 days for outstanding liabilities.

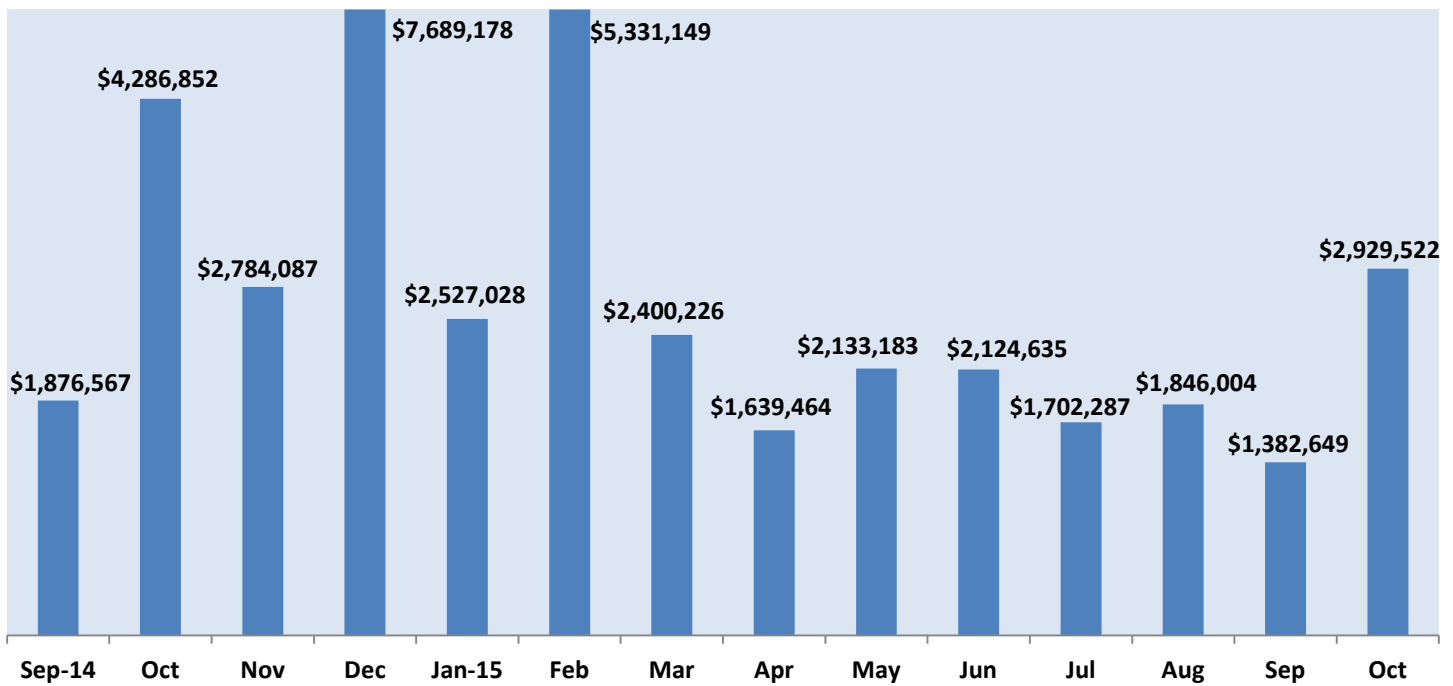
If the licensee fails to comply within the allotted timeframe, the license is suspended and a notice of suspicion is sent to the contractor. Upon compliance, a reinstatement letter is sent to the licensee.



Outstanding Liabilities

	Sep 2014	Oct	Nov	Dec	Jan 2015	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
<b>Initial</b>	86	89	48	54	46	46	38	57	89	102	78	51	51	56
<b>Suspend</b>	72	22	63	88	42	40	42	36	32	51	80	91	64	38
<b>Reinstate</b>	61	83	63	173	63	100	42	43	25	40	41	52	42	44

Savings to the Public

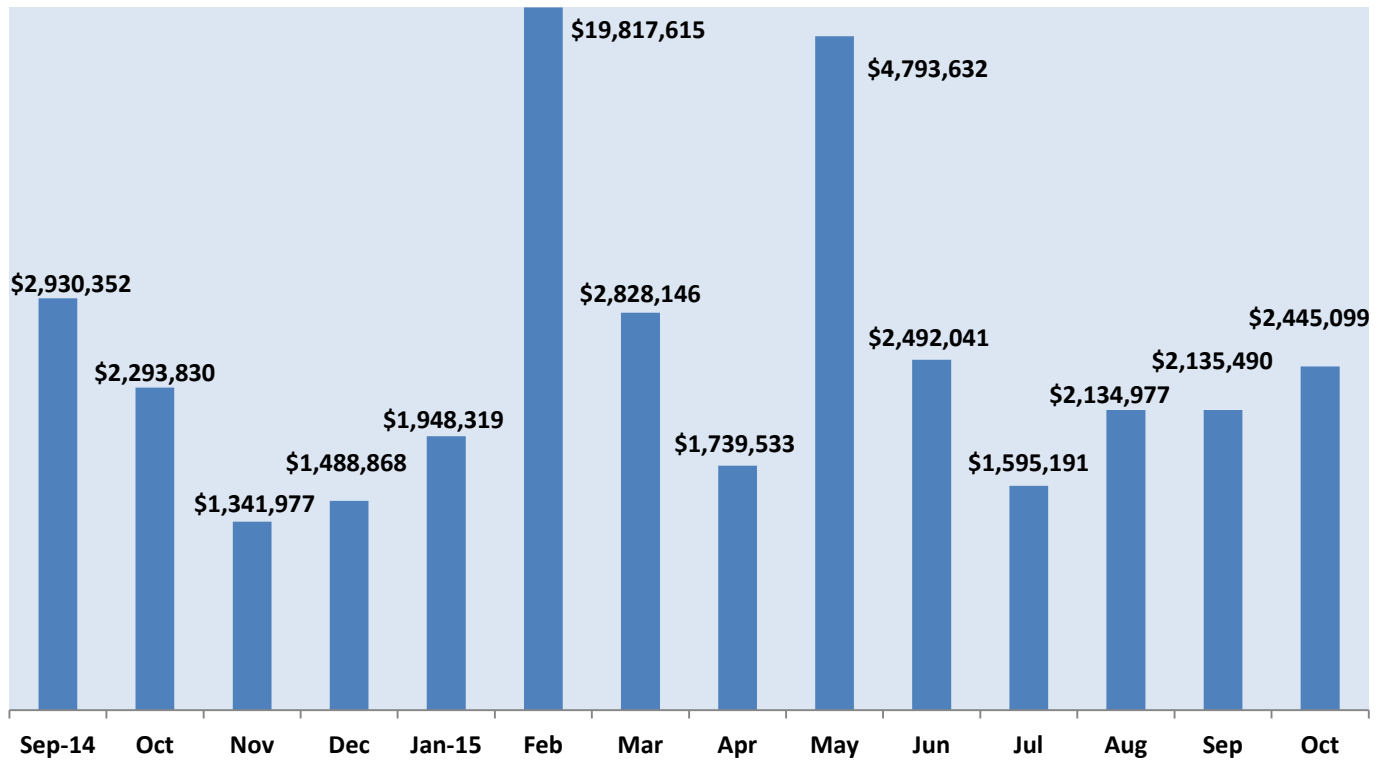




Judgments

	Sep 2014	Oct	Nov	Dec	Jan 2015	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Initial	183	192	137	145	181	112	185	145	148	142	171	144	155	116
Suspend	117	95	100	103	96	53	68	54	48	84	81	67	54	73
Reinstate	123	117	97	116	109	132	134	121	93	117	111	102	111	111

Savings to the Public

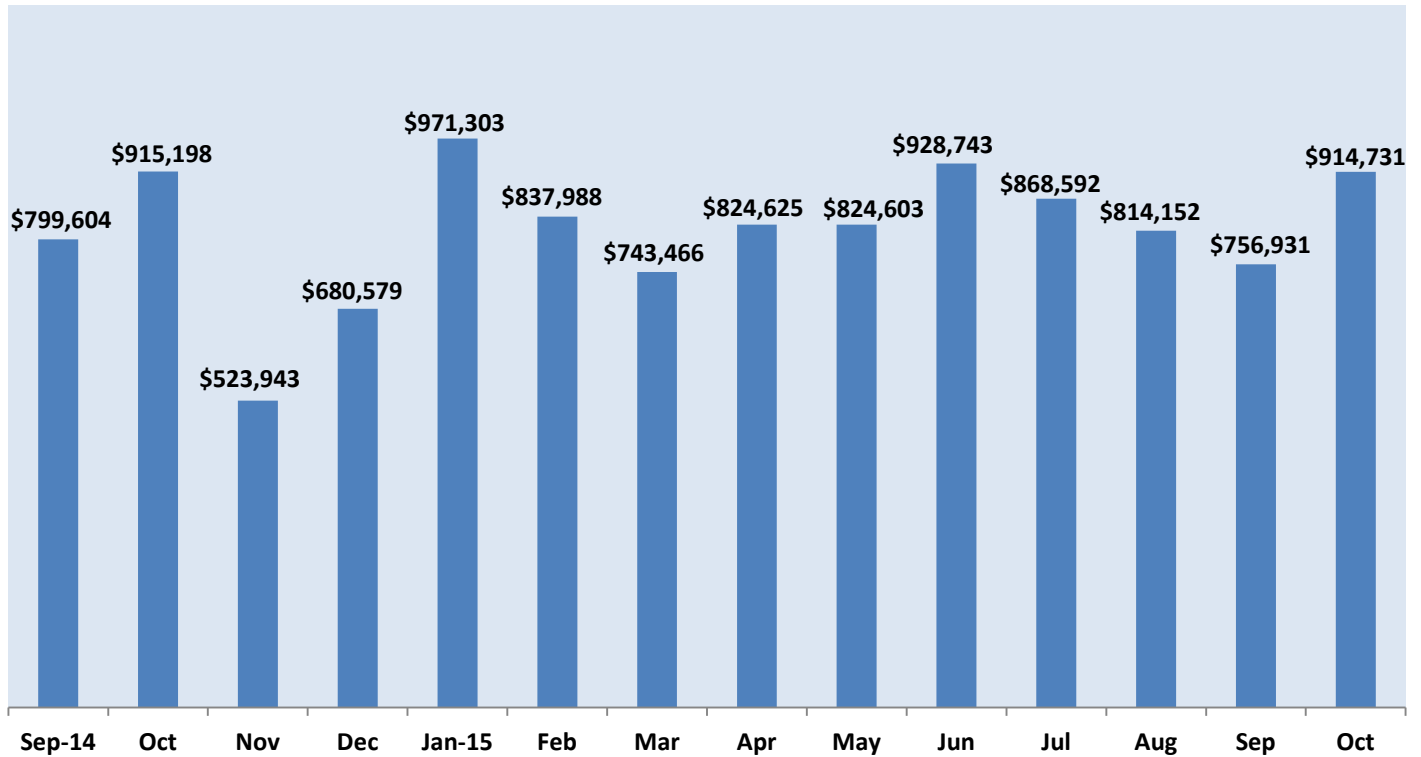




**Bond Payment of Claims**

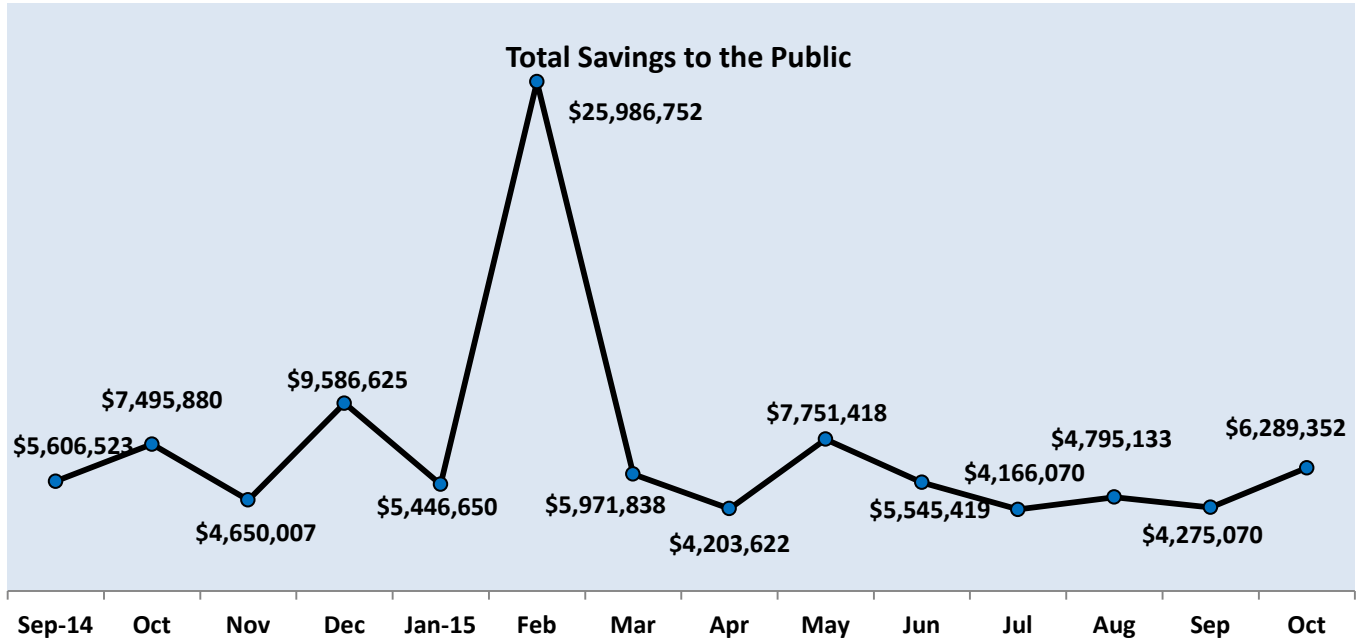
	Sep 2014	Oct	Nov	Dec	Jan 2015	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
<b>Initial</b>	219	271	93	150	253	153	122	207	178	218	166	154	182	167
<b>Suspend</b>	187	86	41	142	126	39	60	114	77	43	127	71	109	72
<b>Reinstate</b>	140	155	103	126	159	148	130	140	142	157	152	147	130	155

**Savings to the Public**





The chart below illustrates the combined total savings to the public by month for outstanding liabilities, judgments, and payments of claim.



CSLB management continues to monitor processing times for the various licensing units on a weekly and monthly basis. The charts on the last four pages of this report track the “weeks to process” for the application and license maintenance/transaction units.

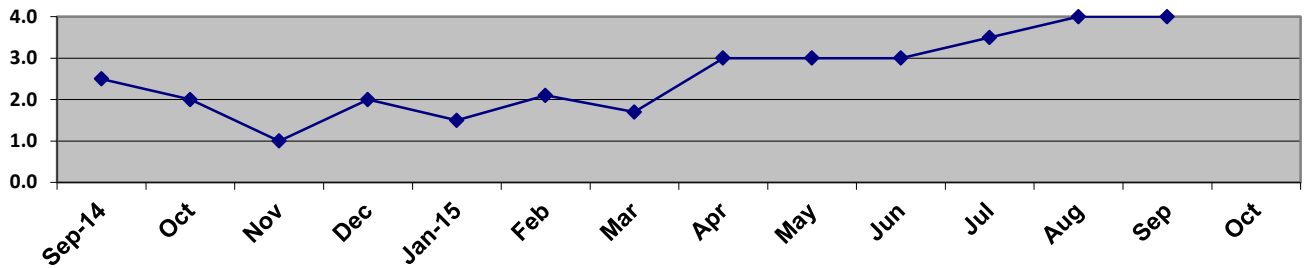
The charts indicate the average number of weeks to process for that particular month. Processing times, or “weeks to process,” refers to the average number of weeks before an application or document is initially pulled for processing by a technician after it arrives at CSLB.

The time-to-process timelines for applications and renewals include an approximate two-day backlog that accounts for the required cashing and image-scanning tasks that must be completed before an application or document can be processed.

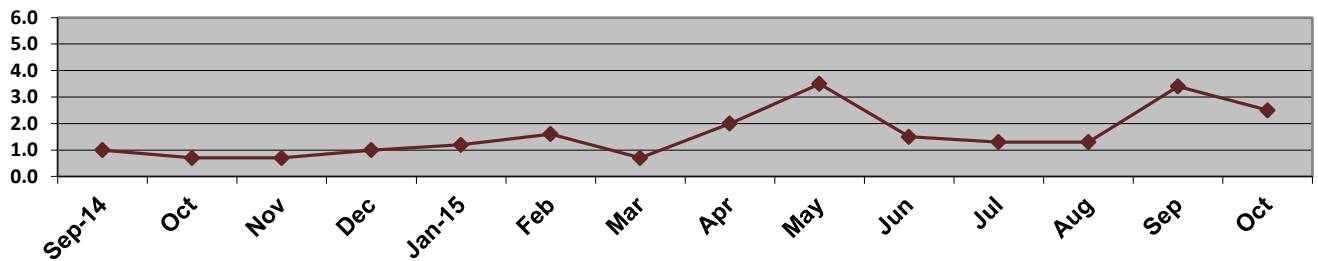


### Number of Weeks before Being Pulled for Processing

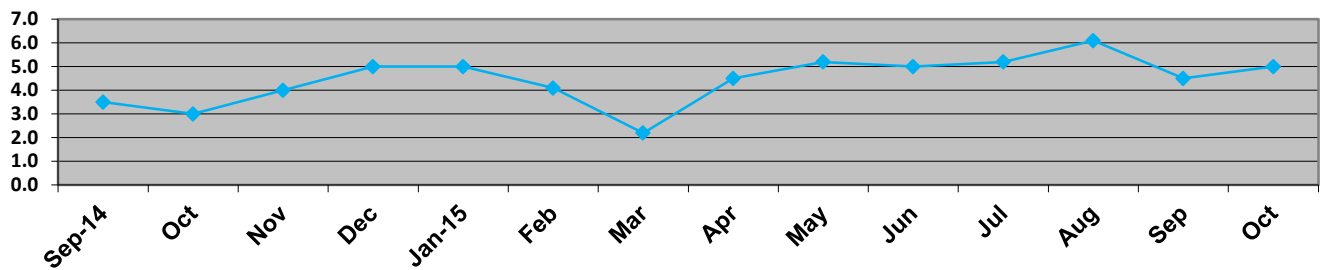
#### Application for Original License - Exam



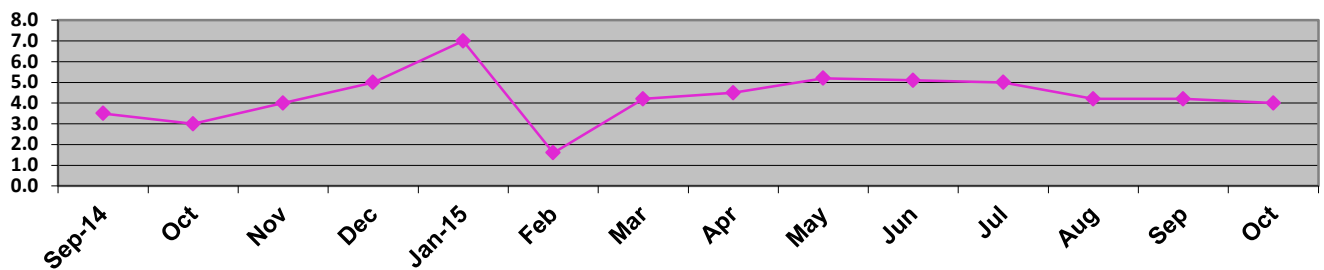
#### Application for Original License - Waiver



#### Application for Additional Classification



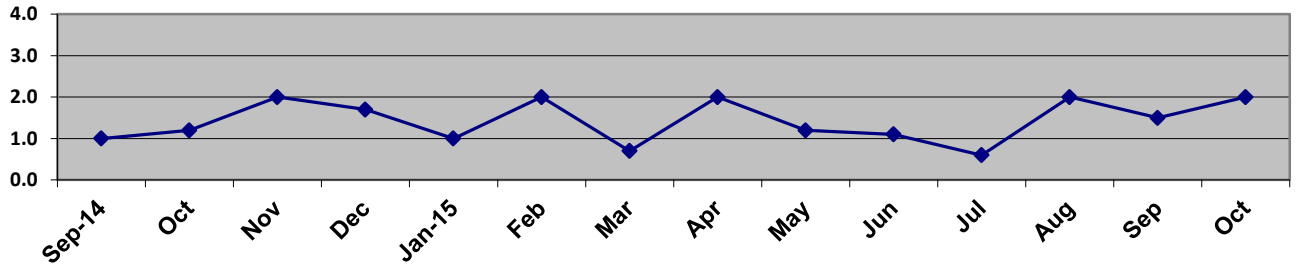
#### Application to Replace the Qualifier



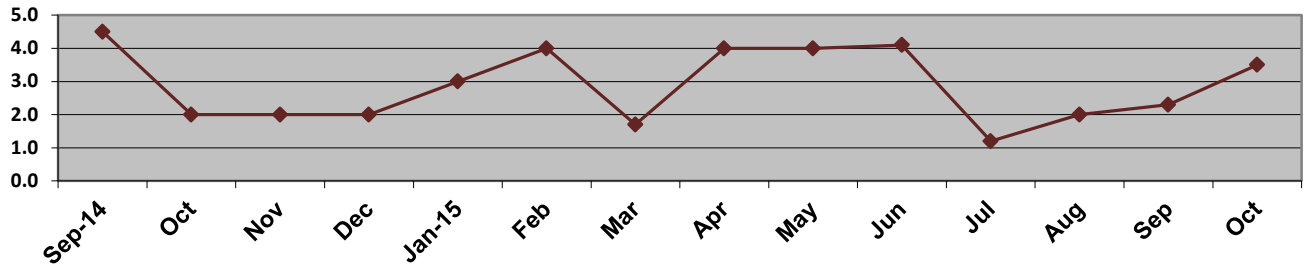


### Number of Weeks before Being Pulled for Processing

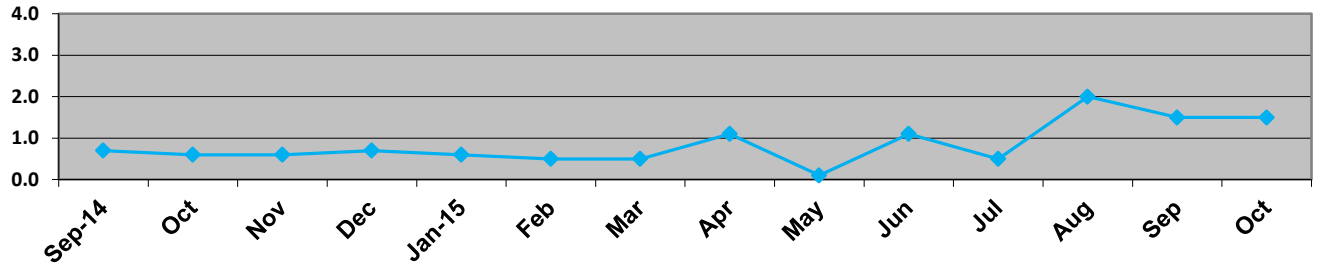
#### Application for Renewal



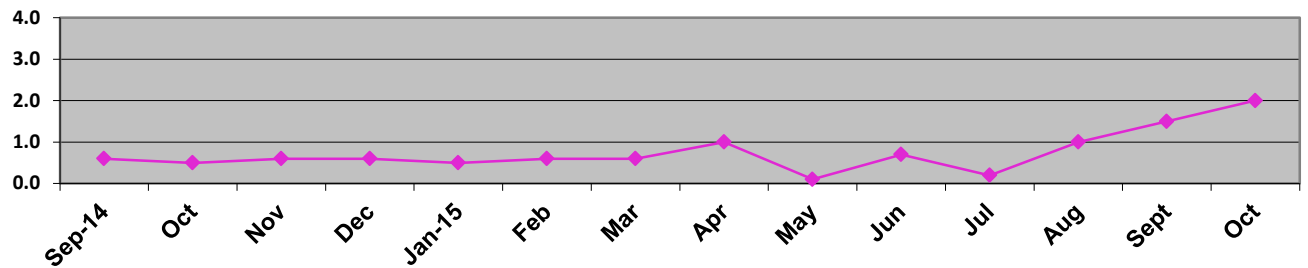
#### Home Improvement Salesperson (HIS) Application



#### Application to Add New Officer



#### Application to Change Business Name or Address

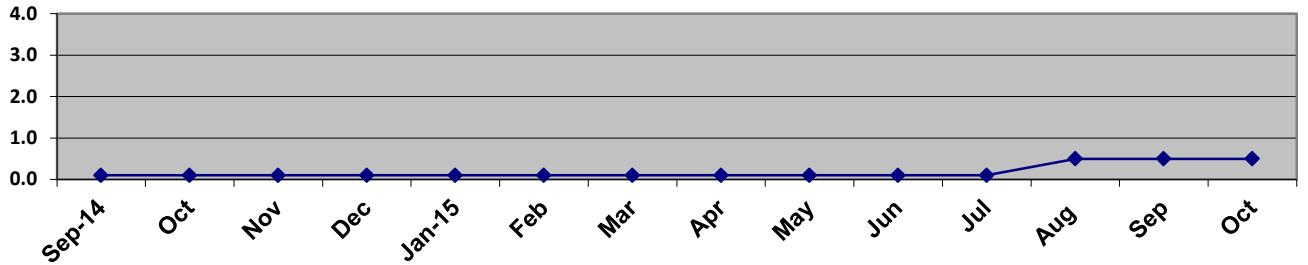




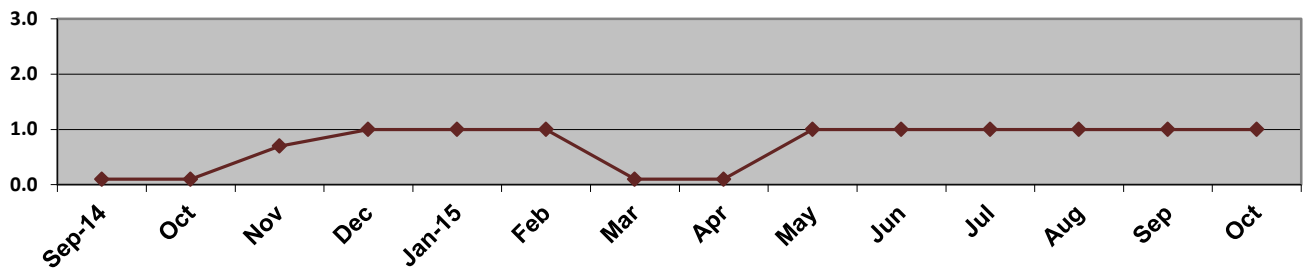


### Number of Weeks before Being Pulled for Processing

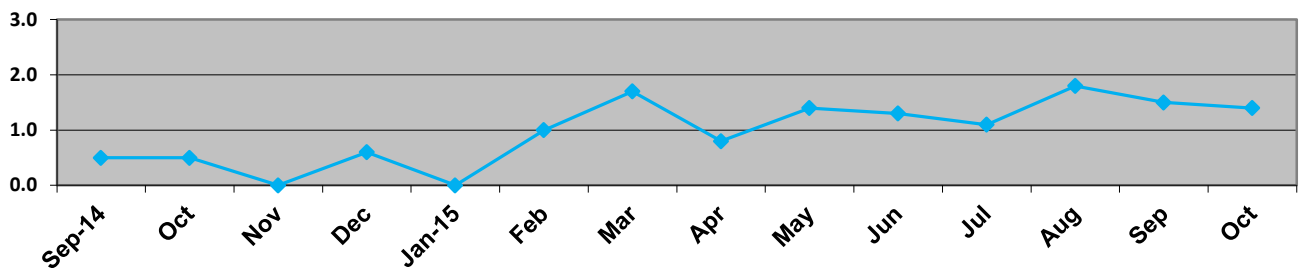
Contractors Bond, Bond of Qualifying Individual, LLC Worker Bond, Disciplinary Bond and Qualifier Exemptions



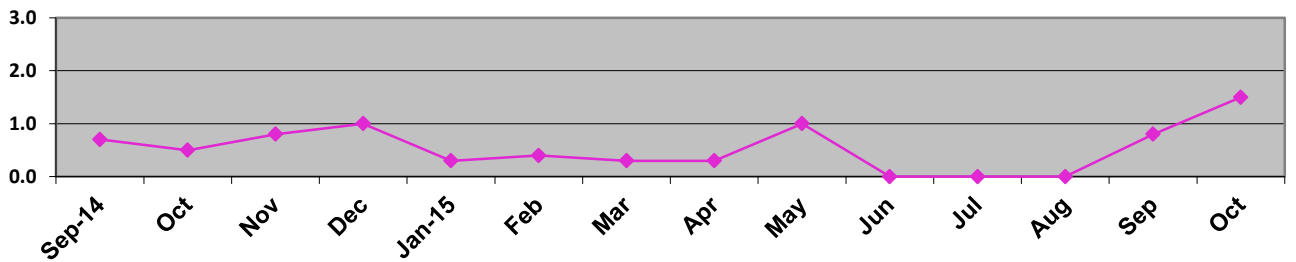
### Workers' Compensation Certificates and Exemptions



### Certified License History



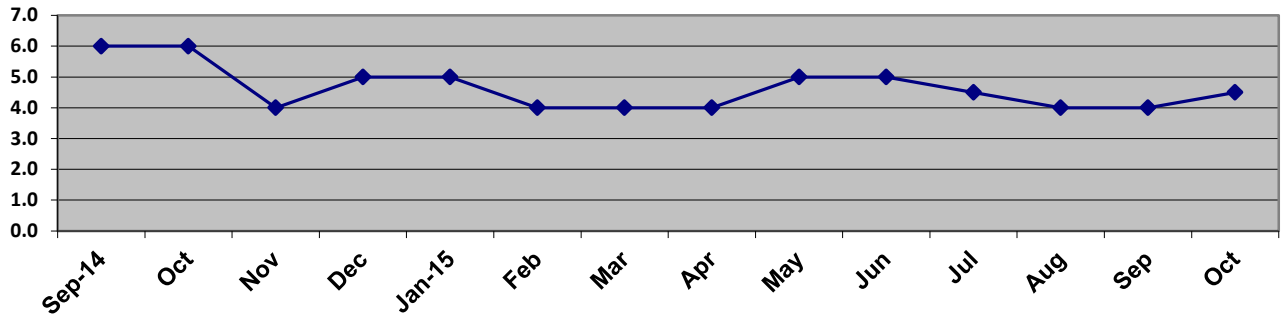
### Request for Copies of Documents





### Number of Weeks before Being Pulled for Processing

#### Criminal Background Unit – CORI Review



## AGENDA ITEM E-4

# Testing Program Update





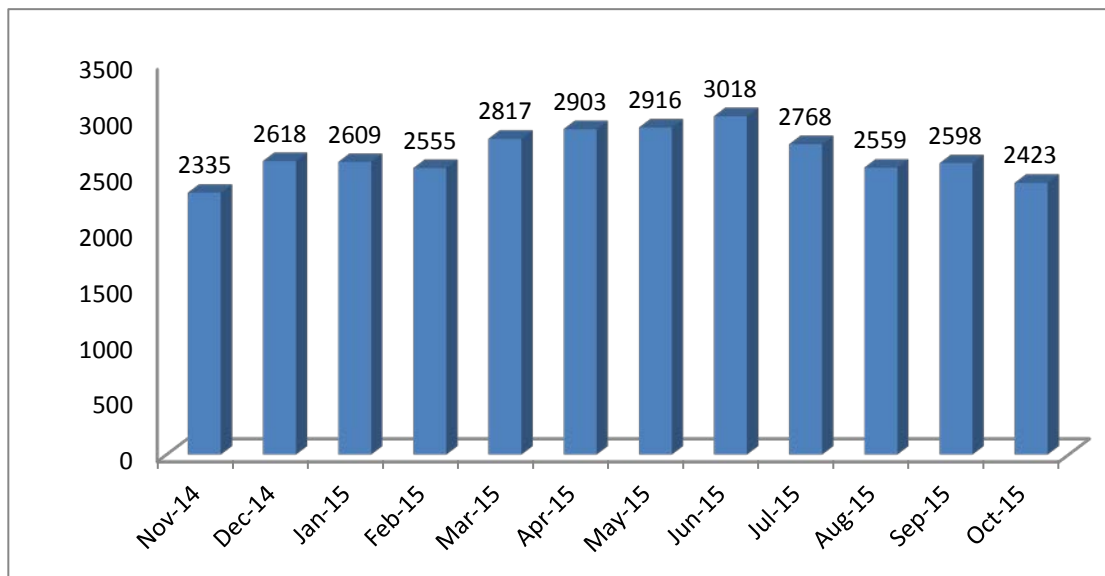
# CONTRACTORS STATE LICENSE BOARD

## TESTING PROGRAM UPDATE

### EXAMINATION ADMINISTRATION UNIT (EAU)

The Testing division's EAU administers CSLB's 46 examinations at eight computer-based test centers. Most test centers are allocated two full-time test monitor positions, with part-time proctors filling in as needed. Test monitors also respond to all interactive voice response (IVR) messages received by CSLB that are related to testing.

**Number of Examinations Scheduled November 2014 – October 2015**



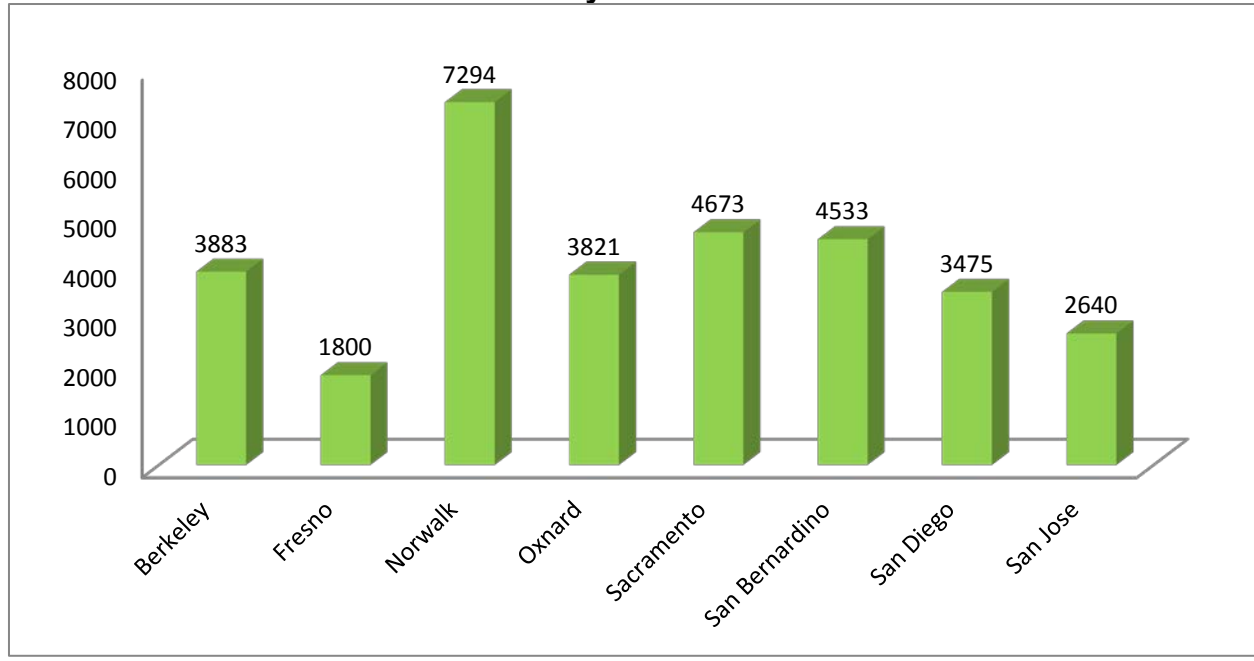
### Test Center Status

CSLB maintains test centers in the following locations:

- Sacramento
- Berkeley
- San Jose
- Fresno
- Oxnard
- Norwalk
- San Bernardino
- San Diego



**Number of Examinations Scheduled by Test Center November 2014 – October 2015**



**Examination Administration Staffing**

EAU has three vacant positions: one half-time, permanent intermittent Office Technician in Sacramento, one full-time Office Technician in Norwalk, and one full-time Office Technician in San Diego.

**Fall Staff Training**

EAU held its biannual staff meeting in Norwalk on October 21-22, 2015.

**EXAMINATION DEVELOPMENT UNIT (EDU)**

The Testing division’s EDU ensures that CSLB’s 46 examinations are written, maintained, and updated in accordance with testing standards, guidelines, and CSLB regulations.

**Occupational Analysis and Examination Development Workload**

Valid licensure examinations involve two ongoing phases: occupational analysis and examination development. This cycle must be completed every five to seven years for each of CSLB’s examinations.

The occupational analysis phase determines what information is relevant to each contractor classification, and in what proportion it should be tested. The cycle starts with interviews of a sample of active California licensees statewide. EDU staff then conducts two workshops with these Subject Matter Experts, along with online surveys about job



tasks and relevant knowledge. The end product is a validation report that includes an examination outline, and which serves as a blueprint for constructing examination versions/forms.

The examination development phase involves numerous workshops to review and revise existing test questions, write and review new test questions, and determine the passing score for examinations from that point forward.

EDU released two new examinations in September 2015: “B” General Building and C-20 Warm-Air Heating, Ventilating and Air Conditioning, and one new examination in November 2015: C-29 Masonry.

<b>Occupational Analyses in Progress</b>	<b>New Examinations in Progress</b>
C-17 Glazing	C-8 Concrete
C-32 Parking and Highway Improvement	C-9 Drywall
C-39 Roofing	C-15 Flooring and Floor Covering
Law and Business	C-27 Landscaping
	C-31 Construction Zone Traffic Control
	C-33 Painting and Decorating
	C-43 Sheet Metal
	ASB Asbestos Certification

**Examination Development Unit Staffing**

EDU has one Test Validation and Development Specialist II vacancy.

**Ongoing Consumer Satisfaction Survey**

EDU conducts an ongoing survey of consumers whose complaint cases have been closed to assess overall satisfaction with the Enforcement division’s handling of complaints related to eight customer service topics. The survey is emailed to all consumers with closed complaints who provide CSLB with their email address during the complaint process. Consumers receive the survey in the first or second month after their complaint is closed. To improve the survey’s response rate, Testing incorporated a reminder email into the process so that non-responsive consumers now receive an email reminder one month after the initial request is sent.

**TESTING DIVISION**

**Civil Service Examinations**

In addition to licensure examinations, EDU develops, and EAU administers, examinations for civil service classifications for use by CSLB. The Testing division offered the Enforcement Representative I examination in November 2015.

# AGENDA ITEM F

## Public Affairs







## AGENDA ITEM F-1

# Review and Possible Approval of October 30, 2015 Public Affairs Committee Meeting Report





### **A. Call to Order, Roll Call, and Establishment of Quorum**

Marlo Richardson, Committee Chair, called the Contractors State License Board (CSLB) Public Affairs Committee meeting to order at 12:10 p.m. on Friday, October 30, 2015, in the John C. Hall Hearing Room at CSLB Headquarters, 9821 Business Park Drive, Sacramento, CA, 95827. A quorum was established.

#### Committee Members Present

Marlo Richardson, Chair  
Joan Hancock  
Pastor Herrera Jr.  
Nancy Springer

#### Committee Members Absent

David Dias

#### CSLB Staff Present

Cindi Christenson, Registrar	Rick Lopes, Chief of Public Affairs
David Fogt, Chief of Enforcement	Amber Foreman, Public Affairs Staff
Cindy Kanemoto, Chief Deputy Registrar	Ashley Cadwell, Public Affairs Staff
Jessie Flores, Deputy Chief of Enforcement	

After welcoming the audience, Ms. Richardson noted items of interest on the meeting agenda. Committee member Nancy Springer, the Board's Building Official representative, provided the committee with a brief synopsis of the County Building Officials of California's annual business meeting, which took place earlier in the week in Fish Camp, CA. Chief of Public Affairs Rick Lopes, who represented CSLB at the meeting, added his thoughts on the proceedings and outlined the two presentations he provided.

The Committee presented a Certificate of Recognition to former Public Affairs Office supervisor Melanie Bedwell. Ms. Bedwell retired at the end of September, after eight years at CSLB. A number of Committee members spoke about Ms. Bedwell's numerous contributions to their work, noted what a pleasure she was to work with, and wished her the best in her retirement.

### **B. Public Comment**

There was no public comment.

### **C. Public Affairs Program Update**

Mr. Lopes outlined a new reporting layout for presenting statistics on CSLB's Website that breaks down the numbers by month, as well as year-to-date. He also explained to Committee Members that, because of well-documented web scraping problems, statistics prior to May 2015 should not be considered reliable. CSLB's Information Technology division successfully alleviated the problems in May 2015, and overall website use since then has stabilized. Monthly website sessions since May 2015 have averaged 666,997, with an average of 22.46 percent of sessions from new users.



Mr. Lopes also shared statistics on the type of devices used to access CSLB's website. He noted that, since May 2015, 76 percent of overall users of the site have used desktop computers; 19 percent mobile devices; and 4 percent tablets. When looking at only new sessions the number change: desktop usage drops to 68 percent; mobile use grows to 25 percent; and tablet usage increases to almost 6 percent.

The Public Affairs Office produced two live webcasts since the September 2015 Board meeting: a Settlement Disclosure Industry Meeting on September 30, 2015, and a password-protected Consumer Protection Law Enforcement Training Session on October 21, 2015.

Mr. Lopes also outlined the steady growth of CSLB's various social media platforms, including a new application called Periscope that allows CSLB to broadcast live on the Internet with a cell phone.

The Public Affairs Office has also been heavily involved in disaster outreach following the devastating Valley Wildfire in Lake, Napa and Sonoma Counties; and the Butte Wildfire in Amador and Calaveras Counties. More than 2,700 structures were destroyed in the two wildfires, which burned almost 147,000 acres of land. Outreach has included posting warning signs in the fire areas, news releases, public service announcements, media interviews, and adapting the Board's 25-minute "Rebuilding After a natural Disaster" video as a radio program. Enforcement division staff have also worked six and seven days a week at Local Assistance and Disaster Recovery Centers in both fire areas.

In addition, Mr. Lopes reported that Enforcement division staff were also working at a Local Assistance Center in the Antelope Valley section of Los Angeles County, where mid-October flash floods damaged homes and businesses.

Mr. Lopes also reported on a October 1, 2015, visit to CSLB by a delegation from Saudi Arabia interested in learning more about CSLB's licensing classifications. They also shared with CSLB Executive staff how they regulate the public works portion of their construction industry.

#### **D. Solar Power Consumer Outreach**

Mr. Lopes presented the Committee background information on the history of solar energy in California. He noted the complexity of the industry and the various state agencies with regulatory responsibilities. He also noted that the California Public Utility Commission oversees the *California Solar Initiative*, which hosts a consumer renewable energy rebate program for existing homes. In addition, the California Energy Commission's New Solar Homes Partnership offers incentives to encourage solar installations in the new residential construction market for investor-owned electric utility service areas.

Mr. Lopes also reviewed CSLB's role in the solar industry, dating back to a spring 1978 edition of the *California Licensed Contractor* newsletter that provided licensees relevant information. He also noted the creation of the C-46 Solar Contractor licensing classification, effective January 1, 1983. As well, he discussed an Industry Bulletin issued on June 30, 2010 that outlined the licensing classifications authorized to perform solar projects.



Lastly, Mr. Lopes reviewed the already existing online resources provided by other state agencies, as well as online resources available through Solar Industry Associations.

Committee members shared their view that CSLB should create a web page that provides consumers with links to the best of the available information, while continuing to identify any opportunities for the creation of new content or a new publication.

## **E. Strategic Plan Update**

Mr. Lopes reviewed the nine Public Affairs-related action items from the 2015-16 Strategic Plan:

- **Item 1- Complete Flagship Consumer Publication**  
Mr. Lopes noted that the publication is currently in design. When completed, it will be distributed for final Board and legal approvals.
- **Item 2 – Complete Flagship Contractor Publication**  
Copy has been developed, and this publication will move ahead once the consumer publication is complete.
- **Item 3 – Develop Realtor Outreach Program**  
Program development is completed, and implementation is moving ahead. Mr. Lopes, at the request of the Bureau of Real Estate, spoke to a group of approximately 200 realtors at the Association of Realtors conference in San Jose. The Association of Realtors also has posted an informational graphic on its website on how to hire a contractor.
- **Item 4 – Determine Feasibility of Building a Full-Service Broadcast Studio**  
Tied to negotiations underway for a new building lease.
- **Item 5 –Determine Feasibility of Updating John C. Hall Hearing Room**  
Tied to negotiations underway for a new building lease.
- **Item 6 – Devise Schedule for Development of an Opt-In, “Find a Contractor” Website Feature**  
Item is delayed while IT staff complete work on new Home Improvement Salesperson standards.
- **Item 7 – Determine Feasibility of Developing a Mobile Web App**  
This is an ongoing item.
- **Item 8 – Develop Features for use on Contractors/Industry Members’ Websites**  
On schedule.
- **Item 9 – Develop CSLB Style Guide and Standards Manual**  
On schedule.

## **F. Adjournment**

Committee Chair Marlo Richardson adjourned the Public Affairs Committee meeting at 12:50 p.m.

## AGENDA ITEM F-2

# Public Affairs Program Update

- a. Staffing Update
- b. Online Highlights
- c. Video/Digital Services
- d. Media Relations Highlights
- e. Industry, Licensee and  
Community Outreach Highlights
- f. Employee Relations





# CONTRACTORS STATE LICENSE BOARD

## PUBLIC AFFAIRS PROGRAM UPDATE

CSLB’s Public Affairs Office (PAO) is responsible for media, industry, licensee, and consumer relations, and outreach. PAO provides a wide range of services, including proactive public relations; response to media inquiries; community outreach, featuring Senior Scam Stopper<sup>SM</sup> and Consumer Scam Stopper<sup>SM</sup> seminars, and speeches to service groups and organizations; publication and newsletter development and distribution; contractor education and outreach; social media outreach to consumers, the construction industry, and other government entities; and website and intranet content.

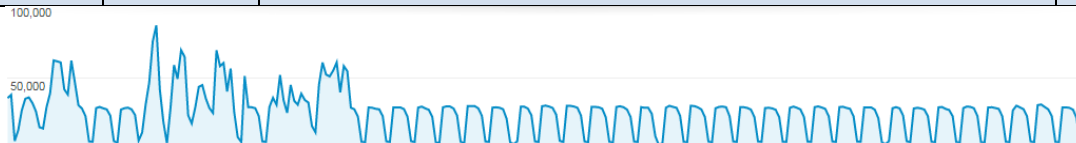
### STAFFING UPDATE

PAO is staffed with six full-time positions and one part-time Student Assistant. The office supervisor position (Information Officer II) is currently vacant.

### ONLINE HIGHLIGHTS

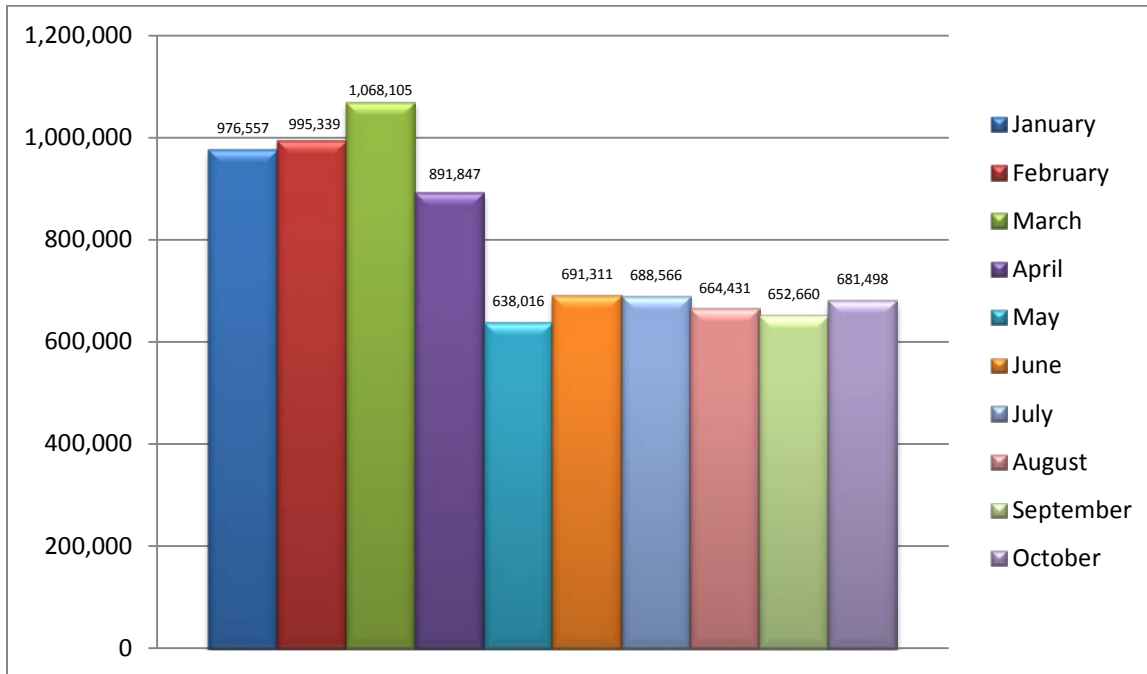
#### CSLB Website

Month	Sessions	Users	Pageviews	Pages / Session	Ave. Session Duration	Bounce Rate	% New Sessions
January	976,557	606,653	5,360,226	5.49	4:08	45.31%	51.34%
February	995,339	630,213	5,321,283	5.35	3:58	32.77%	52.67%
March	1,068,105	615,260	6,106,177	5.72	4:07	16.22%	49.73%
April	891,847	474,715	5,422,117	6.08	4:42	18.44%	41.20%
May	638,016	261,649	4,613,779	7.23	6:01	19.56%	22.14%
June	691,311	273,968	4,952,706	7.16	6:01	19.47%	21.89%
July	688,566	278,065	4,952,624	7.19	6:05	20.09%	22.45%
August	664,431	273,010	4,767,302	7.18	6:05	20.43%	22.84%
September	652,660	269,935	4,634,008	7.10	5:59	20.57%	22.96%
October	681,498	280,255	4,847,312	7.11	6:01	20.54%	23.04%
Jan – April 8	3,439,307	1,971,123	18,544,790	5.39	3:56	29.47%	52.84%
April 8 – Oct	4,509,023	1,252,353	32,432,744	7.19	6:03	19.97%	22.46%
Jan – Oct	7,948,330	3,030,199	50,977,534	6.41	5:08	24.08%	35.61%

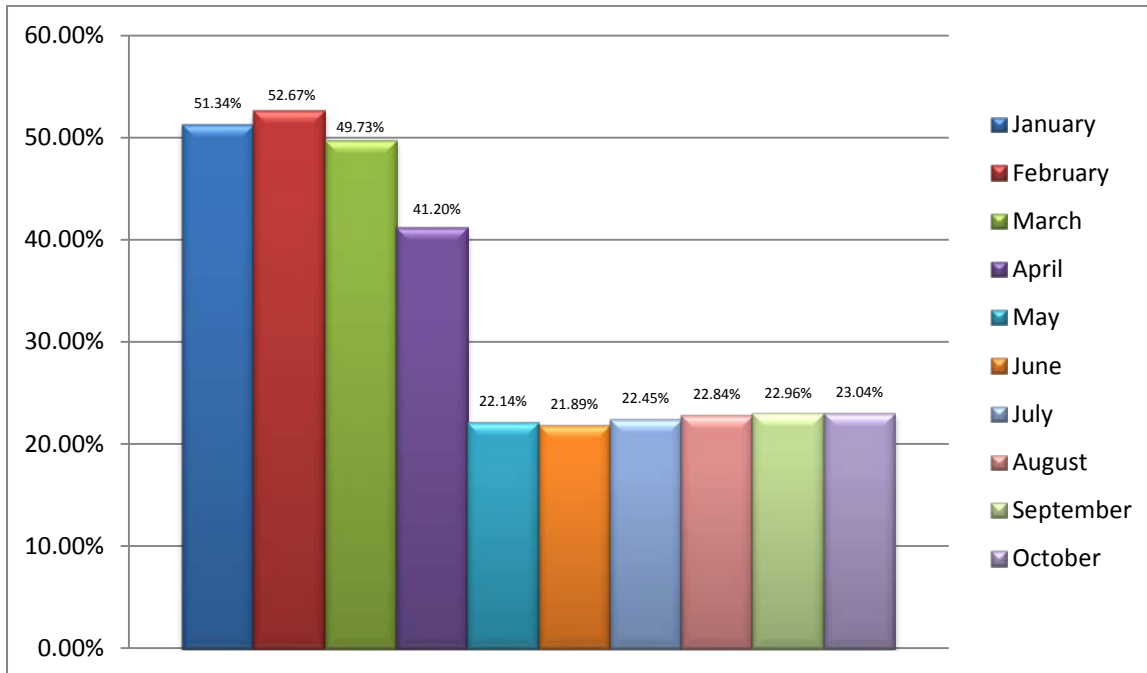


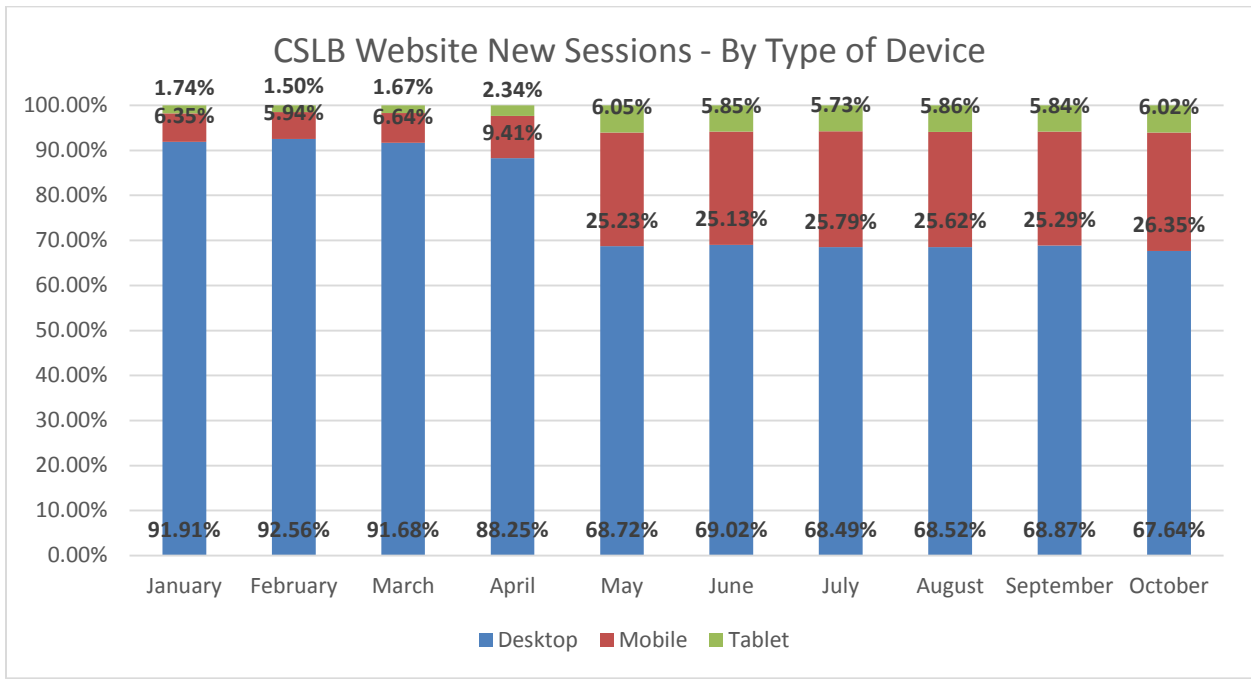
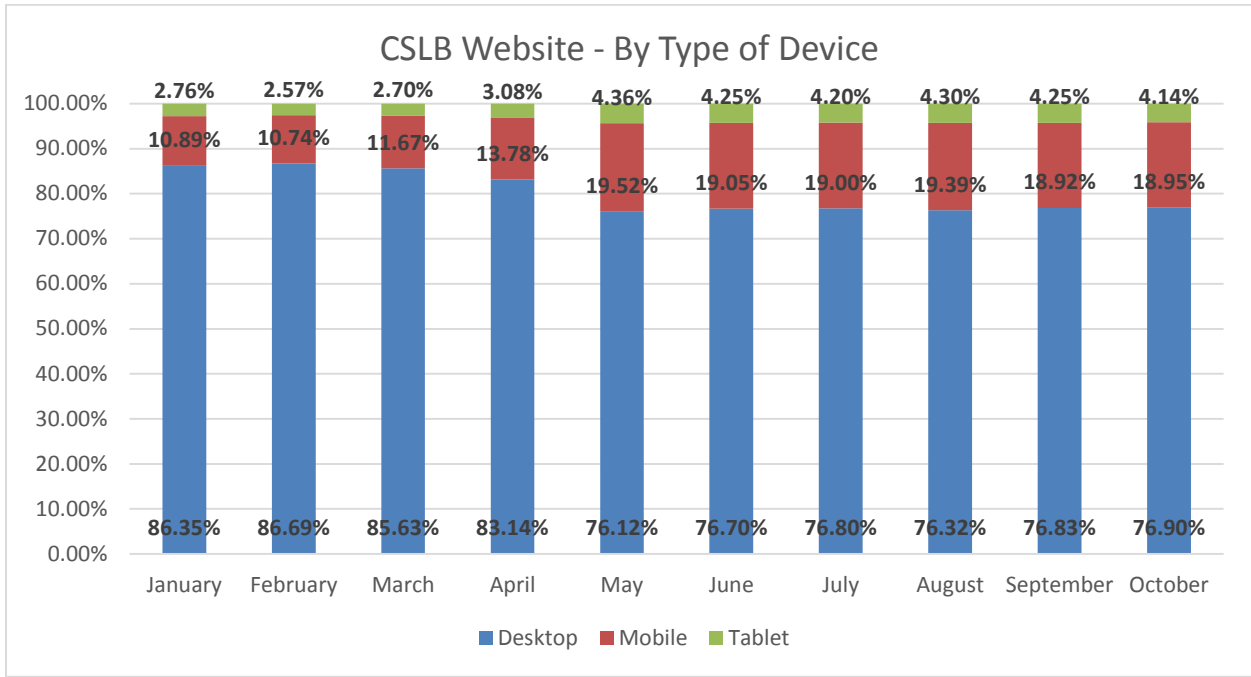


### CSLB Website – Number of Sessions (Monthly)



### CSLB Website – Percentage of New Sessions (Monthly)









The 40 Most Viewed Pages on CSLB Website (Jan-Oct 2015)

(Does Not Include Instant License Check or Online Services Pages)

Table with 3 columns: PAGE TITLE, PAGE VIEWS, LINK. Lists 40 most viewed pages including Home Page, List of Licensing Classifications, Search Results, Forms & Applications, Contractor Home Page, Consumer Home Page, Mechanics Lien Release Forms, Applicants Home Page, Contractors Overview, Apply for a License, Guides & Publications, Filing a Complaint, Consumer Overview, Contact CSLB, Hire a Licensed Contractors, Before Applying for Exam, Maintain & Change Your License, FAQs, Order CSLB Library Documents, CSLB Processing Times, Examination Study Guides, About CSLB, Industry Bulletin - New Mechanics Lien Forms Available, Laws & Regulations, Renew Your License, Before Filing a Complaint Online, CSLB's Most Wanted, FAQ - Journey-Level Experience, Completing License Application Video, Reporting Unlicensed Activity, Tips for Calling CSLB's Licensing Information Center, Applying for a Contractors Examination, How the Complaint Process Works, Step 1: General Renewal Information, Owner-Builder Risks, Licenses Revoked, 2015 Licenses Revoked, Understanding Mechanics Liens, Licenses for Limited Liability Companies (LLC), List of CSLB Fees.



## VIDEO/DIGITAL SERVICES

### Live Webcasts

- *Board Meeting*

On September 3, 2015, PAO provided a live webcast of the Board's quarterly meeting in San Diego.

- *Stakeholder Meeting*

On September 30, 2015, PAO provided a live webcast of the Settlement Disclosure Stakeholders Meeting in Sacramento.

- *Law Enforcement Training*

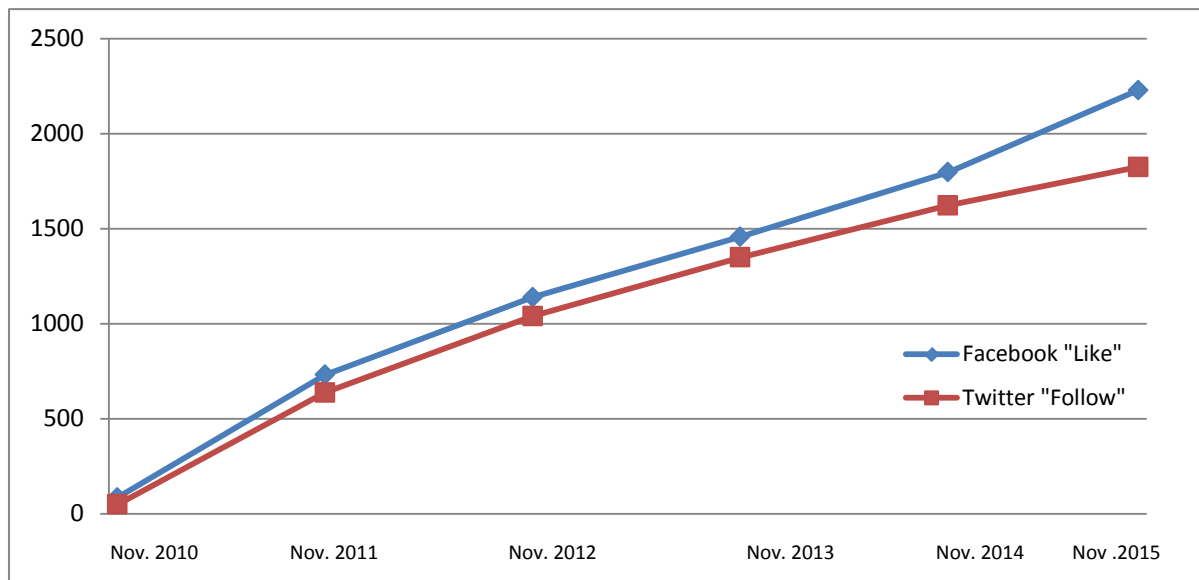
On October 21, 2015, PAO partnered with DCA's Office of Public Affairs to provide a live password-protected webcast of Consumer Protection Law Enforcement education training. The day-long classes were viewed by district attorney offices and other law enforcement staff around the state.

- *Committee Meetings*

On October 30, 2015, PAO provided live webcasts of the Licensing, Enforcement, Public Affairs, and Legislative Committee meetings in Sacramento.

### Social Media

Growth of CSLB's Facebook and Twitter sites since its 2010 launch:





### Facebook Growth

As of November 16, 2015, CSLB has 2,306 “likes” on its Facebook page, an increase of 78 since the October 2015 Public Affairs Committee meeting.

- 69 percent of those who “like” CSLB on Facebook are male, 30 percent are female.
  - **Unchanged since last report**
- 59 percent of CSLB’s Facebook fans are between the ages of 35 and 54.
- On average, photo posts receive 1,977 views per post; links receive 1,101 views per post; videos receive 651views per post; and status updates receive 589 views per post.
- Most viewed posts:
  - #MostWantedWednesday - 1.8k reach

11/04/2015  
12:07 pm



[#MostWantedWednesday: Criminal complaints have been filed again](#)

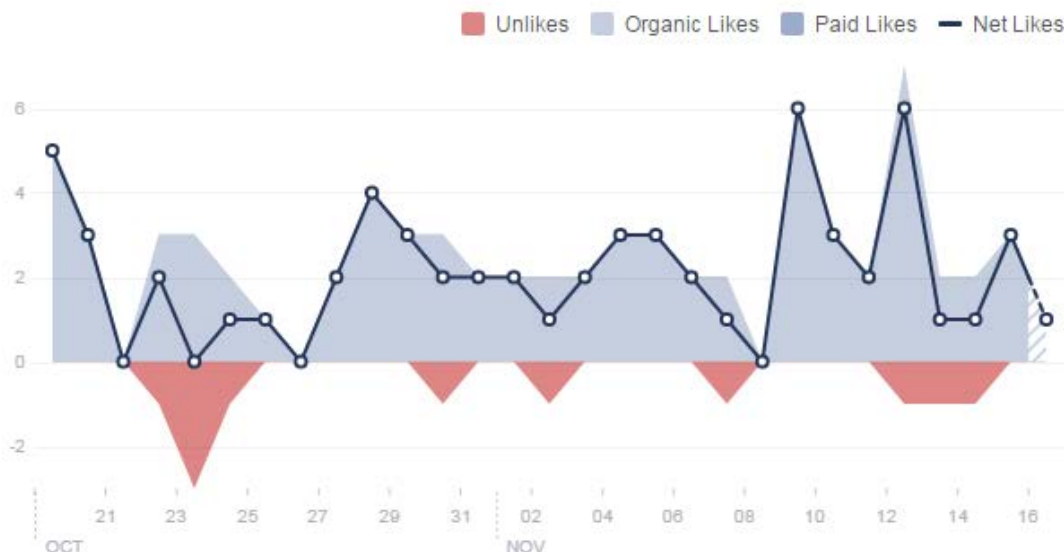
- #ThrowbackThursday - 1.3k reach

11/12/2015  
11:17 am



[#ThrowbackThursday Do you remember this CSLB commercial from](#)

The following chart shows the net growth per day since mid-October 2015 for CSLB’s Facebook page. The blue line represents individuals who have “liked” CSLB, and the red areas represent individuals who have “liked” CSLB at one point, but subsequently “un-liked” CSLB.





### Twitter Growth

Between October 19, 2015 and November 16, 2015, CSLB gained 30 followers on Twitter, growing from 1,825 to 1,855.

- 75 percent of our followers are male, 25 percent are female. The percentage of male followers has decreased by 11 percent since the September 2015 Board meeting.
- Tweets receive an average of 17.4K impressions (views) per month.
- Top tweet:
  - “How to Hire a Contractor” – 1,155 views



**CA Contractors Board @CSLB · Oct 21**  
 Check out this quick reference guide on "How to Hire a Contractor." Courtesy of @CAREALTORS  
[pic.twitter.com/DRgrpW4u1Y](http://pic.twitter.com/DRgrpW4u1Y)

### Periscope Growth

CSLB currently uses Periscope to stream live videos before Board meetings and during outreach events. A link to the live stream can be sent out via social media and is available for viewers for 24 hours. Periscope allows viewers to send “hearts” to the broadcaster by tapping on the mobile screen as a form of appreciation. Viewers can also send comments and questions during the broadcast.

CSLB shared Periscope broadcasts during the California Blitz news conference and during all four October 30, 2015 Committee meetings.



**CA Contractors Board @CSLB · Oct 19**  
 LIVE on #Periscope: CSLB California Blitz News Conference  
[periscope.tv/w/aPUX1TEwMJE2...](http://periscope.tv/w/aPUX1TEwMJE2...)



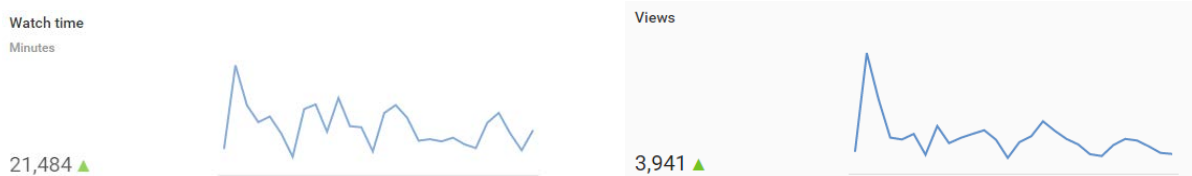
**CA Contractors Board @CSLB · Oct 30**  
 We're getting ready for all 4 Committee meetings today. You don't want to miss our live broadcast on Periscope, NOW! [periscope.tv/cslb](http://periscope.tv/cslb)





### YouTube Growth

CSLB’s YouTube Channel welcomed 3,941 visitors between October 20, 2015 and November 16, 2015, an average of 138 visitors per day. Viewers watched a combined total of 21,484 minutes of video. As of November 16, 2015, CSLB has 410 viewers subscribed to our YouTube channel.



- 83 percent of CSLB YouTube viewers are male, 17 percent are female. The percentage of male followers has decreased by 2 percent since the September 2015 Board meeting.
- 58 percent of viewers find CSLB videos through “suggested videos” on YouTube, 11 percent view from direct links, 10 percent from a YouTube search, and 21 percent use other methods.
- The CSLB Experience Verification Seminar currently has the highest audience retention with 11,063 minutes watched.

On October 19, 2015, CSLB posted a video of the most recent California Blitz (Fall 2015). This video received 1,161 minutes of watch time, with an average view duration of three minutes and 12 seconds.





### Flickr Growth

CSLB is expanding its portfolio of photographs on Flickr, a no-cost, photo-sharing social media website.

Flickr allows PAO staff to upload and post high-resolution photos as individual photographs or in album format. Flickr also permits professional media and industry followers of CSLB to download photographs at the resolution level of their choosing.



As of November 16, 2015, CSLB has 137 photos available for download on Flickr.

### LinkedIn Growth

PAO is exploring the benefits of utilizing LinkedIn, a business-oriented social networking site primarily used for professional networking. LinkedIn can increase exposure and act as an effective recruiting tool to attract quality employees for CSLB job vacancies.

### Email Alert Feature

PAO continues to publicize a website feature launched in May 2010 that allows people to subscribe to their choice of four types of CSLB email alerts:

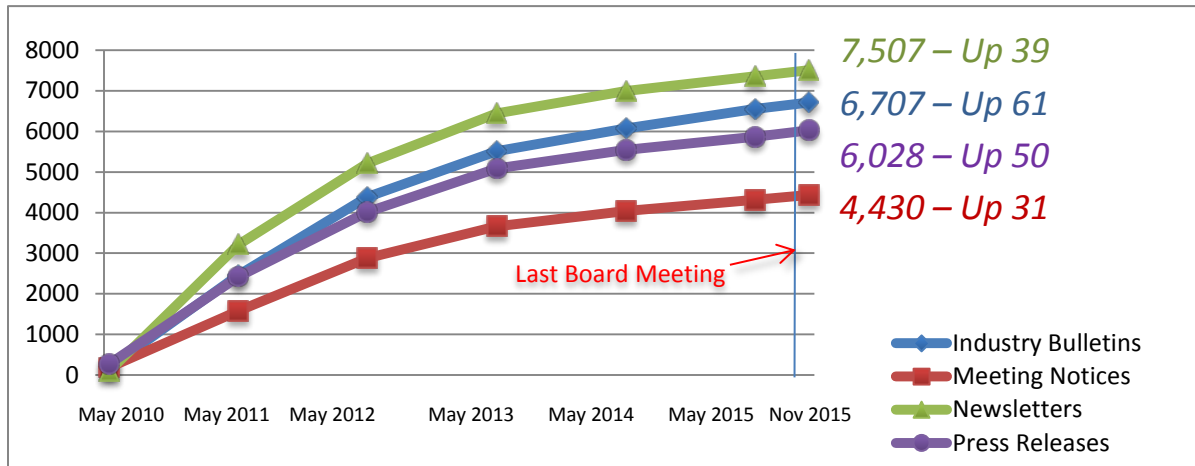
- *California Licensed Contractor* newsletters
- News Releases/Consumer Alerts
- Industry Bulletins
- Public Meeting Notices/Agendas

The total subscriber database currently stands at 24,672, which includes 181 new accounts since the October 30, 2015 Committee meetings.

PAO also utilizes a database consisting of email addresses voluntarily submitted on license applications and renewal forms. This list currently consists of 78,381 active email addresses, which brings the combined email database to 103,053 addresses.



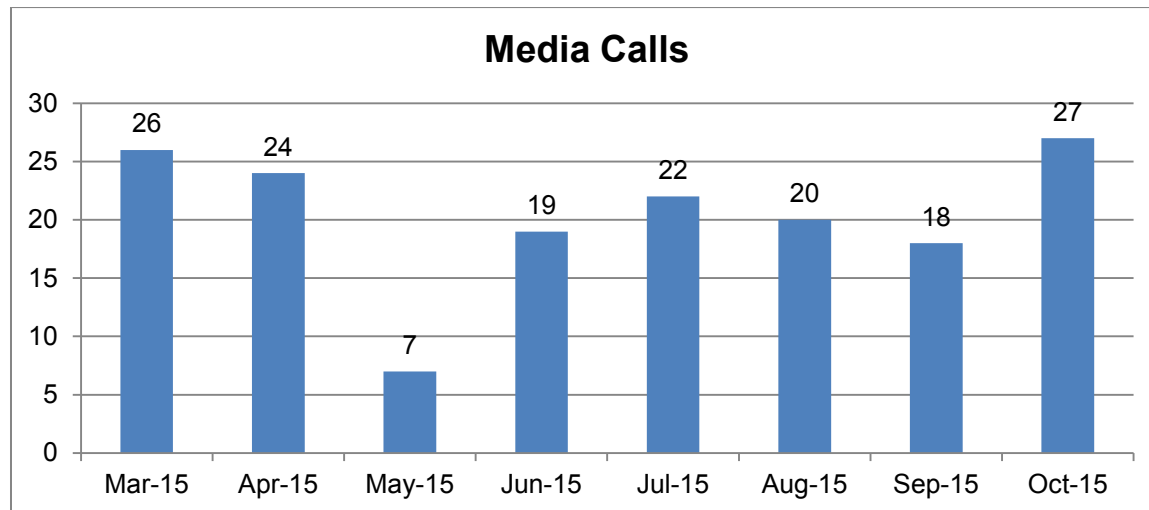
**Email Alert Sign-Up Statistics**



**MEDIA RELATIONS HIGHLIGHTS**

**Media Calls**

Between October 1, 2015 and November 20, 2015, PAO staff responded to 39 media inquiries, including 27 in the month of October. PAO provided interviews to a variety of online, newspaper, radio, magazine, and television outlets. The following chart breaks down the media calls by month:



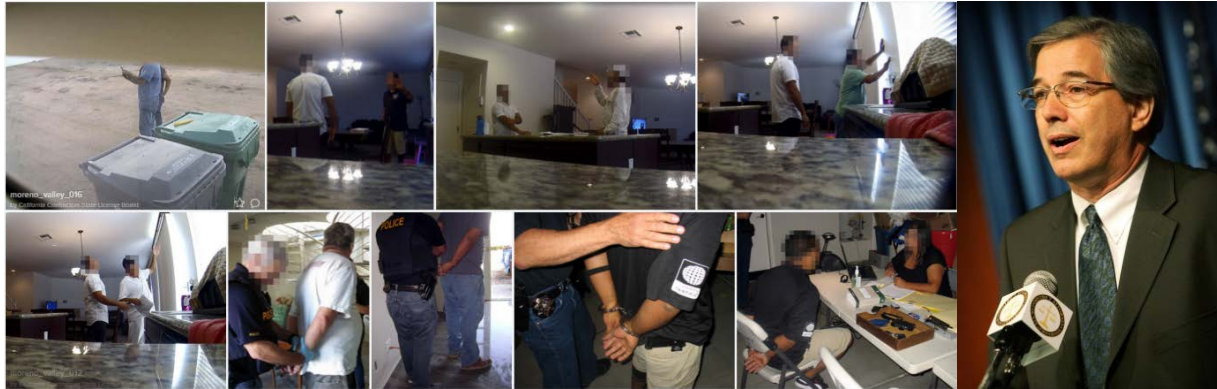
**News Media Events**

**California Blitz**

On October 19, 2015, PAO teamed with the Riverside County District Attorney’s Office to conduct a news conference to announce the results of the annual Fall California Blitz sting operation.



Seventy six suspects were caught in operations that took place in Moreno Valley (Riverside County), Los Angeles (Los Angeles County), San Diego (San Diego County), Fresno (Fresno County), Rio Vista (Solano County), Ukiah (Mendocino County), and Rohnert Park (Sonoma County).



**Disaster Outreach**

On November 19, 2015, PAO shot video and still photos at an enforcement sweep conducted in the Valley Fire area of Lake County. CSLB’s Statewide Investigative Fraud Team, the California Department of Insurance, Lake County District Attorney’s Office, and Lake County Sheriff’s Department jointly conducted the operation.

One suspected unlicensed contractor was caught, and may be charged with a felony for contracting without a license in a declared disaster area. Ironically, in fall 2014, CSLB caught the suspect’s father attempting to contract without a license after the Napa earthquake.



The Licensing Information (Call) Center is also set up to receive calls to CSLB’s Disaster Hotline. From September 14, 2015 through November 24, 2015, the hotline received 43 calls.



**News Releases**

PAO continued its policy of aggressively distributing news releases to the media, especially to publicize enforcement actions and undercover sting operations. Between September 1, 2015 and November 23, 2015, PAO distributed ten news releases.

<b>Release Date</b>	<b>Release Title</b>
September 1, 2015	CSLB Sting Targets Bogus Contractors in Sacramento
September 1, 2015	CSLB Finds More than Unlicensed Contractors in Tehachapi Sting
September 8, 2015	Calaveras: Home of Big Trees, Lots of Unlicensed Contractors
September 16, 2015	Contractors State License Board Offers Resources for Northern California Wildfire Victims
September 16, 2015	Unlicensed Contractors Plentiful in Nevada County
September 28, 2015	CSLB Inland Empire Sting Catches 12 for Illegal Contracting
October 19, 2015	Contractors Board Puts Sting on Unlicensed Contractors in Statewide Undercover Operation
November 18, 2015	Contractors State License Board Investigators Make What May Be Easiest Arrest Ever of Unlicensed Contractor
November 23, 2015	CSLB Sweeps Through Valley Fire Remains, Makes Felony Arrest
November 23, 2015	Out-Of-State Contractors Flout Law in CSLB's Desert Cities Operation



### INDUSTRY/LICENSEE OUTREACH HIGHLIGHTS

#### Industry Bulletins

PAO distributes industry bulletins to alert industry members to important and interesting news. Bulletins are sent via email on an as-needed basis to just over 6,000 individuals and groups, including those who have signed-up to receive the bulletins via CSLB’s Email Alert system. Between September 1, 2015 and November 23, 2015, PAO distributed five industry bulletins.

Release Date	Bulletin Title
September 9, 2015	Governor Brown Signs Bill Changing CSLB’s Home Improvement Salesperson Registration Requirements
September 15, 2015	CSLB Ready to Get Stakeholder Input on Settlement Disclosure
September 28, 2015	CSLB Urges Public Works Contractors to Renew Dept. of Industrial Relations Registration before October 1 or Pay Hefty
November 12, 2015	CSLB Taking Steps to Implement New, Simplified Home Improvement Salespersons Registration Process
November 18, 2015	Contractors State License Board Marks 80th Anniversary of First Public Board Meeting

#### California Licensed Contractor Newsletter

CSLB’s quarterly newsletter, *California Licensed Contractor* (CLC), remains a valuable way for the board to communicate with licensees and the contracting industry.

CLC is produced as an online-only publication three times a year, with a link emailed to more than 85,000 addresses. Once a year, CLC appears as a print edition that is mass-mailed to all licensees. The newsletter also is posted to CSLB’s website, where an archive of past CLCs also is maintained.



#### Visit from Saudi Arabian Delegation

On October 1, 2015, CSLB hosted a delegation from Saudi Arabia’s Ministry of Municipal and Rural Affairs. The country is developing a system for contractor classifications and wanted to learn more



about CSLB’s regulatory and classifications system. The group also provided CSLB with a fascinating look at how their construction industry is regulated.

**PUBLICATION/GRAPHIC DESIGN HIGHLIGHTS**

CSLB publications update (print and online):

**Completed**

- Fall 2015 *California Licensed Contractor* newsletter
- Senior Scam Stopper<sup>SM</sup> redesign of program materials and handouts
- Don’t Get Scammed brochure (English)

**In Production**

- “Surprising Career Opportunities” brochure for employee recruiting
- New 10 Tips for Home Improvement Salesperson (HIS) card
- HIS Guide to Home Improvement Contracts and Sales brochure
- New Consumer Guide
- 2015 Building Official Information Guide
- A Homeowner’s Guide to Preventing Mechanics Liens brochures (English & Spanish)
- What Happens Now brochure (Spanish)
- New Mandatory Settlement Conference Tips card

**In Development**

- New Contractor Guide
- New outreach pull-up banners





**COMMUNITY OUTREACH HIGHLIGHTS**

**Senior Scam Stopper<sup>SM</sup> Seminars**

The following seminars were conducted or are scheduled from mid-September through mid-December 2015:

<b>Date</b>	<b>Location</b>	<b>Legislative/Community Partner(s)</b>
September 18, 2015	Hayward	Asm. Bill Quirk
September 21, 2015	Cupertino	Asm. Evan Low
September 23, 2015	Discovery Bay	Asm. Jim Frazier
September 24, 2015	Lemoore	Asm. Rudy Salas
September 25, 2015	San Jose	Sen. Jim Beall
September 28, 2015	Manteca	No legislator
September 30, 2015	Manteca	Sen. Cathleen Galgiani
October 1, 2015	Wasco	Asm. Rudy Salas
October 6, 2015	Menifee	No legislator
October 8, 2015	San Dimas	Sen. Carol Liu/Asm. Chris Holden
October 9, 2015	Pomona	Asm. Freddie Rodriguez
October 15, 2015	Oceanside	Rep. Issa/Sen. P. Bates/Asm. R. Chavez
October 16, 2015	Mission Viejo	Rep. Walters/Sen. P. Bates
October 19, 2015	Lodi	Asm. Jim Cooper
October 22, 2015	Santa Maria	Sen. Hannah-Beth Jackson
October 23, 2015	Downey	Sen. Tony Mendoza
October 28, 2015	Baldwin Park	Asm. Roger Hernandez
October 30, 2015	Salinas	Asm. Luis Alejo
November 4, 2015	Sacramento	Neil Orchard Sr. Activities Center (no legislator)
November 10, 2015	Temescal Valley	Sen. Jeff Stone/Councilman Kevin Jeffries
November 12, 2015	Malibu	Asm. Richard Bloom
November 13, 2015	Oxnard	Asm. Jacqui Irwin
November 18, 2015	Los Angeles	Asm. Jimmy Gomez
December 7, 2015	Palm Springs	Millenium Housing (no legislator)
December 14, 2015	San Diego	Rep. Scott Peters

**Consumer Scam Stopper<sup>SM</sup> Seminars**

Twelve Consumer Scam Stopper<sup>SM</sup> (CSS) seminars were held in 2015, with an average attendance of 53. Organizations requesting CSS seminars are retiree groups, libraries, churches, and senior centers.



## EMPLOYEE RELATIONS

### Intranet (CSLBin)

CSLBin, the employee-only intranet site launched in November 2013, continues to be a very popular source of news and photos about CSLB and staff, as well as a go-to work resource. PAO has posted hundreds of stories and photos highlighting employee and organizational accomplishments, and maintains an active archive system for easy referrals. In addition to employee news, the site also is kept current with the latest forms, policies, reports, and other information used by CSLB staff around the state.

CSLBin recently received a facelift to make news and work-related documents easier to access. PAO and IT staff are continuing to discuss ways to improve CSLBin's appearance and functions.

Staff reaction to the site has been very positive, with many contributing story ideas and other suggestions.





# AGENDA ITEM G

## Legislation







## AGENDA ITEM G-1

# Review and Possible Approval of October 30, 2015 Legislative Committee Meeting Report





# CONTRACTORS STATE LICENSE BOARD

## LEGISLATIVE COMMITTEE SUMMARY REPORT

### LEGISLATIVE COMMITTEE MEETING

October 30, 2015

Sacramento

#### A. CALL TO ORDER

Legislative Committee Chair Bob Lamb called the Contractors State License Board (CSLB) Legislative Committee to order at approximately 1:00 p.m. on Friday, October 30, 2015, in the John C. Hall Hearing Room at CSLB headquarters, 9821 Business Park Drive Sacramento, CA 95827.

#### Committee Members Present

Bob Lamb  
David De La Torre  
Joan Hancock  
Pastor Herrera Jr.  
Paul Schifino

#### CSLB Staff Present

Cindi Christenson, Registrar  
Cindy Kanemoto, Chief Deputy Registrar  
David Fogt, Chief of Enforcement  
Rick Lopes, Chief of Public Affairs  
Stacey Paul, Budget Analyst  
Ashley Caldwell, Public Affairs  
Kristy Schieldge, Legal Counsel  
Laura Zuniga, Chief of Legislation

#### B. PUBLIC COMMENT SESSION

No public comment received.

#### C. UPDATE ON SETTLEMENT REPORTING STAKEHODLER MEETINGS

Chief of Legislation Laura Zuniga updated the Committee on the September 30, 2015, stakeholder meeting held at CSLB. While the meeting was well attended, no progress was made on resolving outstanding issues. At this time, staff will not schedule a second meeting in Southern California but, instead, wait to see if the office of the bill's author (Sen. Hill) makes any modifications to the bill.

#### D. UPDATE ON 2015 LEGISLATION

Committee Chair Bob Lamb presented the following updates:



**AB 181** (Bonilla) – This bill contained one non-controversial change for CSLB – to resolve a conflict between the Department of Consumer Affairs (DCA) general law and CSLB law as to the timeframe in which a licensee must report a change of address to the Board.

The Governor signed this bill.

**AB 500** (Waldron) – This bill revises the definition of independent contractor for certain participants in a drug and alcohol rehabilitation program.

The Assembly Labor and Employment Committee did not hear this bill, though it may be heard next year.

**AB 750** (Low) – This bill authorizes boards within DCA to establish, by regulation, a retired license category.

This bill was held on the suspense file in the Assembly Appropriations Committee and could be brought up again next year.

**AB 1545** (Irwin) – This bill creates a new State Housing Agency, which would include CSLB.

This bill was introduced late in the year's session and may be brought up next year.

**SB 119** (Hill) – This bill would have created the CA Underground Facilities Safe Excavation Advisory Committee within CSLB.

The Governor vetoed this bill, stating that enhanced enforcement more appropriately belongs under the purview of the Public Utilities Commission.

**SB 465** (Hill) – This bill would require licensees and insurance companies to report settlements of \$50,000 or more to CSLB.

This bill failed passage in the Assembly Business, Professions and Consumer Protection Committee. The author intends to bring it up again early next year.

**SB 467** (Hill) – This bill extends the sunset date of CSLB until January 1, 2020, and eliminates the \$2,500 capital requirement and increases the contractor's bond by a corresponding amount.

The Governor signed this bill.

**SB 560** (Monning) – This bill authorizes CSLB Enforcement Representatives to issue a written notice to appear for failure to comply with workers' compensation



requirements. This bill also authorizes boards within DCA to share licensee data with the Employment Development Department.

The Governor signed this bill.

**SB 561** (Monning) – This bill revises the Home Improvement Salesperson (HIS) registration to allow an HIS via a single registration to work for multiple employers.

The Governor signed this bill.

**E. REVIEW, DISCUSSION AND POSSIBLE ACTION ON 2016 LEGISLATIVE PROPOSALS**

1. Amendment to Business & Professions Code Sections 7000-7199.7

This proposal will implement one of CSLB’s strategic goals, to reorganize the Contractors State License Law for increased clarity and comprehension.

**MOTION: A motion was made by Committee Member Paul Schifino and seconded by Committee Member Pastor Herrera Jr. to support the concept. The motion carried unanimously, 5-0.**

NAME	Aye	Nay	Abstain	Absent	Recusal
Bob Lamb	X				
David De La Torre	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Paul Schifino	X				

2. Amendment to Business & Professions Code Section 7059

This proposal would specify that CSLB can discipline contractors for working out of class on public works projects.

**MOTION: A motion was made by Committee Member David De La Torre and seconded by Committee Member Pastor Herrera Jr. to support the concept. The motion carried unanimously, 5-0.**



NAME	Aye	Nay	Abstain	Absent	Recusal
Bob Lamb	X				
David De La Torre	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Paul Schifino	X				

3. Amendment to Business & Professions Code Section 7071.17

This proposal would hold a qualifier who disassociates from a license prior to a judgment being recorded responsible for that judgment, if he/she served an officer on the license at the time the civil suit was filed.

**This proposal was held over for further review by staff, and will be brought back to a future Legislative Committee meeting for consideration.**

4. Amendment to Business & Professions Code Section 7074

This proposal would eliminate two provisions of law that render an application void because of test scheduling.

**MOTION: A motion was made by Committee Member Pastor Herrera Jr. and seconded by Committee Member Paul Schifino to support the concept. The motion carried unanimously, 5-0.**

NAME	Aye	Nay	Abstain	Absent	Recusal
Bob Lamb	X				
David De La Torre	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				



Paul Schifino	X				
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- 5. Amendment to Business & Professions Code Section 7085.5  
This proposal would provide that a party that participates in CSLB’s arbitration program is not eligible to recover attorney’s fees.

Ms. Zuniga explained that the Board previously sponsored legislation on this topic, which, because of unrelated concerns from Assembly Judiciary Committee staff, did not succeed.

**MOTION: A motion was made by Committee Member David De La Torre and seconded by Committee Member Paul Schifino to support the concept. The motion carried unanimously, 5-0.**

NAME	Aye	Nay	Abstain	Absent	Recusal
Bob Lamb	X				
David De La Torre	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Paul Schifino	X				

- 6. Amendment to Business & Professions Code Section 7124.6  
This proposal would extend public disclosure of a citation to licenses obtained or joined by persons who received a citation on a prior license.

Chief of Enforcement David Fogt, in response to a question about the need for the proposal from Legal Counsel Kristy Schieldge, explained that the Attorney General’s Office believes CSLB needs specific statutory authority to link these types of citations for the purposes of public disclosure.

**MOTION: A motion was made by Committee Member Joan Hancock and seconded by Committee Member David De La Torre to support the concept. The motion carried unanimously, 5-0.**



NAME	Aye	Nay	Abstain	Absent	Recusal
Bob Lamb	X				
David De La Torre	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Paul Schifino	X				

7. Amendment to Business & Professions Code Section 7137

This proposal would make a variety of changes to the existing fee structure, including raising the cap on the license fee and authorizing an expedite fee.

**MOTION: A motion was made by Committee Member Pastor Herrera Jr. and seconded by Committee Member Paul Schifino to support the concept. The motion carried unanimously, 5-0.**

NAME	Aye	Nay	Abstain	Absent	Recusal
Bob Lamb	X				
David De La Torre	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Paul Schifino	X				



8. Amendment to Business & Professions Code Section 7159

This proposal would rewrite the home improvement contract provisions of the Contractors' State License Law.

Laura Zuniga explained that this proposal is intended to implement one of the Board's strategic goals. This proposal will likely be combined with the proposal to include additional requirements in residential solar contracts.

**MOTION: A motion was made by Committee Member Pastor Herrera Jr. and seconded by Committee Member David De La Torre to support the concept. The motion carried unanimously, 5-0.**

NAME	Aye	Nay	Abstain	Absent	Recusal
Bob Lamb	X				
David De La Torre	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Paul Schifino	X				

9. Amendment to add Business & Professions Code Section 7159.15

This proposal would establish additional requirements for residential solar contracts.

Laura Zuniga explained that this proposal came from the Enforcement division. David Fogt elaborated that Enforcement staff had identified areas of particular concern for consumers entering into contracts for solar installation, especially those related to financing and rebates. The proposed legislation intends to require that contracts clearly specify the costs to the consumer and how much energy the system will generate. Pastor Herrera Jr. asked about adding a penalty of perjury provision to the contract. Legal Counsel Kristy Schiedge recommended against this, as other similar contracts are not subject to such a requirement. Joan Hancock expressed her support for extending the three day right to cancel to seven days, but wondered about other ways to protect consumers.





**MOTION: A motion was made by Committee Member Paul Schifino and seconded by Committee Member Pastor Herrera Jr. to support the concept. The motion carried unanimously, 5-0.**

<b>NAME</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
Bob Lamb	X				
David De La Torre	X				
Joan Hancock	X				
Pastor Herrera Jr.	X				
Paul Schifino	X				

**F. ADJOURNMENT**

Committee Chair Bob Lamb adjourned the meeting of the Legislative Committee at 2:01 p.m.



## AGENDA ITEM G-2

Update on 2015 Legislation:  
AB 181 (Bonilla); AB 500 (Waldron);  
AB 750 (Low); AB 1545 (Irwin);  
SB 119 (Hill); SB 467 (Hill);  
SB 560 (Monning); SB 561 (Monning)



## Assembly Bill No. 181

### CHAPTER 430

An act to amend Sections 5055, 5070.1, 5087, 6735, 7083, 7200, 7200.5, 7200.7, 7201, 7202, 7208, 7209, 7209.5, 7210.5, 7211.1, 7211.2, 7215, 7215.5, 7217, 7303, 7303.2, 7313, 7395.1, 7401, 7404, 7407, 7685, 7818, 8508, 8513, 8552, 8611, and 17913 of, to add Sections 7314.3 and 7402.5 to, and to repeal Sections 7304, 7308, and 8516.5 of, the Business and Professions Code, and to amend Section 13995.40 of the Government Code, relating to business and professions.

[Approved by Governor October 2, 2015. Filed with  
Secretary of State October 2, 2015.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 181, Bonilla. Business and professions.

(1) Existing law provides for the practice of accountancy by the California Board of Accountancy. Existing law, until January 1, 2019, authorizes an individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state to engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license subject to specified requirements. Existing law provides that an accountant whose license was canceled by operation of law, after nonrenewal, as specified, may, upon application to the board and meeting specified requirements, have his or her license placed into a retired status.

This bill would authorize an individual practicing public accountancy in this state under a practice privilege to be styled and known as a "certified public accountant" and use the abbreviation "C.P.A." The bill would prohibit the board from restoring that license in retired status to active or inactive status and instead would require the individual to apply for a new license in order to restore his or her license.

Existing law authorizes the board to issue a certified public accountant (CPA) license to an applicant who holds a valid and unrevoked CPA license in another state, under specified conditions.

This bill would require that an out-of-state applicant hold a current, active, and unrestricted CPA license in order to be issued a CPA license under this provision.

(2) The Professional Engineers Act provides for the regulation and licensure of professional engineers by the Board for Professional Engineers, Land Surveyors, and Geologists. A violation of the licensing provisions of the act is a misdemeanor. Existing law requires all civil engineering plans, calculations, specifications, and reports to be prepared by, or under the responsible charge of, a licensed civil engineer, as specified. Existing law

requires all civil engineering plans, calculations, specifications, and reports for the construction of all public school structures to be prepared by, or under the responsible charge of, a licensed architect or a licensed civil engineer who is also licensed as a structural engineer. Existing law requires all civil engineering plans, calculations, specifications, and reports for the construction of all hospitals and other medical facilities having surgery and emergency treatment areas to be prepared by, or under the responsible charge of, a licensed civil engineer who is also licensed as a structural engineer.

This bill would repeal the requirements that all civil engineering plans and other specified documents for construction of public school structures be prepared by, or under the responsible charge of, a licensed architect or a licensed civil engineer who is also licensed as a structural engineer. The bill would also repeal the requirements that all civil engineering plans and other specified documents for construction of specified hospital and medical facilities be prepared by, or under the responsible charge of, a licensed civil engineer who is also licensed as a structural engineer.

(3) Existing law establishes within the Department of Consumer Affairs a State Board of Guide Dogs for the Blind, which consists of 7 members appointed by the Governor. Existing law authorizes the board to issue licenses for guide dog training and instructional services. A violation of these licensing provisions is a misdemeanor.

This bill would also include dogs trained and provided for visually impaired persons within these licensing requirements. The bill would change reporting requirements from a calendar year to a fiscal year period and would make technical changes.

(4) The Barbering and Cosmetology Act provides for the licensure and regulation, including inspection, of barbers and cosmetologists by the State Board of Barbering and Cosmetology in the Department of Consumer Affairs. Existing law requires that the board consist of certain members, and authorizes the board to appoint an executive officer. Under existing law, these provisions are repealed on January 1, 2016.

This bill would extend the operation of the board and the executive officer to January 1, 2020.

Existing law also requires the board to conduct specified reviews and reports by various dates in the past.

This bill would delete those requirements and would require the board, no later than November 1, 2018, to conduct specified reviews regarding training and examinations and report its findings to specified committees of the Legislature. The bill would require the board to establish a protocol for inspecting establishments when an inspector has difficulty understanding or communicating with the owner, manager, or employees of the establishment due to language barriers, and to evaluate the protocol every two years to ensure that it remains current. The bill would require the board to establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board. The bill would also require the board to issue regulations for a personal service permit, as defined, that, among other things, may require

an applicant for a personal service permit to have proof of liability insurance, and would authorize fees for the issuance and renewal of a personal service permit. The bill would require the board to report to the Legislature, on or before July 1, 2017, as specified, regarding the regulatory process and the issuance of personal service permits. The bill would also make technical, nonsubstantive changes to these provisions.

(5) Under the Funeral Directors and Embalmers Law, the Cemetery and Funeral Bureau regulates licensed funeral establishments and requires that they be operated by a licensed funeral director who is required to provide written information regarding funeral goods and services and prices to consumers. Existing law requires a funeral establishment that maintains an Internet Web site to also post that information on its Internet Web site provided by a link from the homepage. A violation of these provisions is a misdemeanor.

This bill would require that the funeral establishment's Internet Web site contain specified key words.

(6) Existing law provides for the licensure and regulation of structural pest control operators and registered companies by the Structural Pest Control Board. The California Constitution provides that laborers of every class who have worked upon or have furnished material for a property have a lien upon that property for the value of the labor done and material furnished. The California Constitution requires the Legislature to provide, by law, for the speedy and efficient enforcement of those liens. Existing law requires specified registered companies to provide notice regarding possible liens, as specified, to the owner of property prior to entering into a contract to provide work on that property. A violation of these provisions is a misdemeanor.

This bill would extend the notice requirements to all registered companies.

Existing law requires a structural pest control operator to provide a report detailing the results of an inspection for wood destroying pests or organisms prior to commencing work on a contract or expressing an opinion regarding the presence or absence of wood destroying pests or organisms, to the Structural Pest Control Board, within the Department of Consumer Affairs, as specified. Existing law requires that the pest control operator deliver a copy of the report to the person requesting inspection, or designated agent, within 10 business days of the inspection. Existing law requires a pest control operator to deliver a copy of that report to the owner or the owner's agent within 10 working days of an inspection.

This bill would remove the requirement that the pest control operator provide the owner of the property or the owner's agent with a copy of the report, unless the owner was the person who requested the inspection.

(7) Existing law creates the California Travel and Tourism Commission and provides for the membership and meetings of the commission.

This bill would specify that all meetings of the commission take place in California and would authorize commissioners to attend meetings of the commission by conference telephone or other technology.

(8) This bill would make various other nonsubstantive changes.

(9) Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 5055 of the Business and Professions Code is amended to read:

5055. Any person who has received from the board a certificate of certified public accountant, or who is authorized to practice public accountancy in this state pursuant to Article 5.1 (commencing with Section 5096), may, subject to Section 5051, be styled and known as a “certified public accountant” and may also use the abbreviation “C.P.A.” No other person, except a firm registered under this chapter, shall assume or use that title, designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a certified public accountant.

SEC. 2. Section 5070.1 of the Business and Professions Code is amended to read:

5070.1. (a) The board may establish, by regulation, a system for the placement of a license into a retired status, upon application, for certified public accountants and public accountants who are not actively engaged in the practice of public accountancy or any activity that requires them to be licensed by the board.

(b) No licensee with a license in a retired status shall engage in any activity for which a permit is required.

(c) The board shall deny an applicant’s application to place a license in a retired status if the permit is subject to an outstanding order of the board, is suspended, revoked, or otherwise punitively restricted by the board, or is subject to disciplinary action under this chapter.

(d) (1) The holder of a license that was canceled pursuant to Section 5070.7 may apply for the placement of that license in a retired status pursuant to subdivision (a).

(2) Upon approval of an application made pursuant to paragraph (1), the board shall reissue that license in a retired status.

(3) The holder of a canceled license that was placed in retired status between January 1, 1994, and January 1, 1999, inclusive, shall not be required to meet the qualifications established pursuant to subdivision (e), but shall be subject to all other requirements of this section.

(e) The board shall establish minimum qualifications to place a license in retired status.

(f) The board may exempt the holder of a license in a retired status from the renewal requirements described in Section 5070.5.

(g) The board shall establish minimum qualifications for the restoration of a license in a retired status to an active status. These minimum qualifications shall include, but are not limited to, continuing education and payment of a fee as provided in subdivision (h) of Section 5134.

(h) The board shall not restore to active or inactive status a license that was canceled by operation of law, pursuant to subdivision (a) of Section 5070.7, and then placed into retired status pursuant to subdivision (d). The individual shall instead apply for a new license, as described in subdivision (c) of Section 5070.7, in order to restore his or her license.

SEC. 3. Section 5087 of the Business and Professions Code is amended to read:

5087. (a) The board may issue a certified public accountant license to any applicant who is a holder of a current, active, and unrestricted certified public accountant license issued under the laws of any state, if the board determines that the standards under which the applicant received the license are substantially equivalent to the standards of education, examination, and experience established under this chapter and the applicant has not committed acts or crimes constituting grounds for denial under Section 480. To be authorized to sign reports on attest engagements, the applicant shall meet the requirements of Section 5095.

(b) The board may in particular cases waive any of the requirements regarding the circumstances in which the various parts of the examination were to be passed for an applicant from another state.

SEC. 4. Section 6735 of the Business and Professions Code is amended to read:

6735. (a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping. If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If civil engineering specifications, calculations, and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(b) Notwithstanding subdivision (a), a licensed civil engineer who signs civil engineering documents shall not be responsible for damage caused by



subsequent changes to or uses of those documents, if the subsequent changes or uses, including changes or uses made by state or local governmental agencies, are not authorized or approved by the licensed civil engineer who originally signed the documents, provided that the engineering service rendered by the civil engineer who signed the documents was not also a proximate cause of the damage.

SEC. 5. Section 7083 of the Business and Professions Code is amended to read:

7083. (a) Notwithstanding any other law, licensees shall notify the registrar, on a form prescribed by the registrar, in writing within 90 days of any change to information recorded under this chapter. This notification requirement shall include, but not be limited to, changes in business address, personnel, business name, qualifying individual bond exemption pursuant to Section 7071.9, or exemption to qualify multiple licenses pursuant to Section 7068.1.

(b) Failure of the licensee to notify the registrar of any change to information within 90 days shall cause the change to be effective the date the written notification is received at the board's headquarters office.

(c) Failure to notify the registrar of the changes within the 90 days is grounds for disciplinary action.

SEC. 6. Section 7200 of the Business and Professions Code is amended to read:

7200. (a) There is in the Department of Consumer Affairs a State Board of Guide Dogs for the Blind in whom enforcement of this chapter is vested. The board shall consist of seven members appointed by the Governor. One member shall be the Director of Rehabilitation or his or her designated representative. The remaining members shall be persons who have shown a particular interest in dealing with the problems of persons who are blind or visually impaired and at least two of them shall be persons who are blind or visually impaired who use guide dogs.

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 7. Section 7200.5 of the Business and Professions Code is amended to read:

7200.5. The board shall have exclusive authority in this state to issue licenses for the instruction of persons who are blind or visually impaired in the use of guide dogs and for the training of guide dogs for use by persons who are blind or visually impaired. It shall also have exclusive authority in this state to issue licenses to operate schools for the training of guide dogs and the instruction of persons who are blind or visually impaired in the use of guide dogs.

SEC. 8. Section 7200.7 of the Business and Professions Code is amended to read:

7200.7. A fee equal to no more than 0.005 of all school expenses incurred in the most recently concluded school fiscal year, as specified in the audit required under Section 7217, shall be paid no later than April 30 of each year for renewal of a school's license pursuant to Section 7200.5. The board shall, by regulation, define the exact amount of the fee. All fees collected pursuant to this section shall be deposited into the Guide Dogs for the Blind Fund, which is hereby created.

SEC. 9. Section 7201 of the Business and Professions Code is amended to read:

7201. No person shall be eligible to membership in the board who is a stockholder in, or an owner of, or financially interested directly or indirectly, in any company, organization, or concern supplying, delivering, or furnishing any guide dogs for use by persons who are blind or visually impaired.

SEC. 10. Section 7202 of the Business and Professions Code is amended to read:

7202. Each of the appointed members of the board shall hold office for a term of four years and until his or her successor is appointed and qualified or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs. No person shall serve as an appointed member of the board for more than two consecutive terms.

SEC. 11. Section 7208 of the Business and Professions Code is amended to read:

7208. Pursuant to the provisions of the Administrative Procedure Act the board may make such rules and regulations as are reasonably necessary to:

- (a) Govern the procedure of the board.
- (b) Govern the admission of applicants for examination for license to instruct persons who are blind or visually impaired in the use of guide dogs or to engage in the business of training, selling, hiring, or being in the business of supplying guide dogs for persons who are blind or visually impaired.
- (c) Govern the operation of schools which furnish guide dogs and train persons who are blind or visually impaired to use guide dogs.
- (d) The reissuance of licenses.
- (e) The reexamination of licensees.

SEC. 12. Section 7209 of the Business and Professions Code is amended to read:

7209. A person to be eligible for examination as an instructor must (a) have a knowledge of the special problems of persons who are blind or visually impaired and how to teach them, (b) be able to demonstrate by actual blindfold test under traffic conditions his or her ability to train guide dogs with whom persons who are blind or visually impaired would be safe, (c) be suited temperamentally and otherwise to instruct persons who are blind or visually impaired in the use of guide dogs, and (d) have had at least three years' actual experience, comprising such number of hours as the board may require, as an instructor, and have handled 22 person-dog units;

or its equivalent, as determined by the board, as an apprentice under a licensed instructor or under an instructor in a school satisfactory to the board.

SEC. 13. Section 7209.5 of the Business and Professions Code is amended to read:

7209.5. Except as the context otherwise requires, as used in this chapter the term “instructor” means a person who instructs persons who are blind or visually impaired in the use of guide dogs or who engages in the business of training, selling, hiring, or supplying guide dogs for persons who are blind or visually impaired.

SEC. 14. Section 7210.5 of the Business and Professions Code is amended to read:

7210.5. It is unlawful to solicit funds for any person purporting to provide guide dogs for persons who are blind or visually impaired in this state unless the person for whose benefit the solicitation is made holds a valid and unimpaired license issued by the State Board of Guide Dogs for the Blind.

As used in this section “person” means an individual, firm, partnership, association, corporation, limited liability company, or cooperative association.

SEC. 15. Section 7211.1 of the Business and Professions Code is amended to read:

7211.1. (a) As a condition of renewal of an instructor’s license, the instructor shall provide proof of completion of not less than 8 hours of continuing education. The board shall determine the form of proof.

(b) Continuing education shall meet the criteria specified in Section 166, and shall be in one or more of the following subject matter areas:

- (1) Blindness and mobility.
- (2) Health issues relating to blindness.
- (3) Instructing persons who are blind or visually impaired.
- (4) Care and training of dogs.

SEC. 16. Section 7211.2 of the Business and Professions Code is amended to read:

7211.2. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 17. Section 7215 of the Business and Professions Code is amended to read:

7215. No person shall sell, give, or furnish any guide dog to a person who is blind or visually impaired unless the following requirements have been met:

- (a) The dog has been immunized against distemper and rabies.

- (b) The dog has been spayed or neutered.
- (c) The dog has been examined by a licensed veterinarian and found to be in good health.

A certificate from a veterinarian certifying to the foregoing shall be delivered to the recipient of the dog at the time the dog is assigned to a client.

SEC. 18. Section 7215.5 of the Business and Professions Code is amended to read:

7215.5. (a) During the first year following the successful training of each person-dog unit, and release from a guide dog training school of the trained person supplied with a guide dog, the school may retain title to the trained dog. During this probationary year, the school may enter into a contractual agreement with the user of the dog describing the conditions under which the user may maintain the status of legal custodian of the dog. During the probationary year, the school, acting in what it deems to be the best interest of the user, the dog, or the public, may temporarily or permanently resume possession of the dog.

(b) Within 15 days after the end of each fiscal year, each licensed school shall report to the board the following:

- (1) The number of dog ownership titles transferred to dog users pursuant to this section during the calendar year.
- (2) The number of title recoveries and repossessions made by the school pursuant to this section during the calendar year.
- (3) The number, type, and amount of charges assessed for followup training, instruction, veterinary, or boarding services, pursuant to this section, which make a distinction between users who have acquired title to their dogs and users who have not acquired title.
- (4) The views of the governing entity of the school as to any problems or concerns relative to compliance with the provisions of this section, along with recommendations for appropriate legislative or administrative changes commensurate with the purposes of this section.

(c) Immediately upon completion of the first year following the successful training referred to above, if the training school and the dog user are mutually satisfied with the operation of the person-dog unit, title to the dog shall be transferred to the user who is blind or visually impaired if the user so desires. Transfer of title shall be evidenced by a transfer of title agreement executed by both parties thereto. The school may retain an option to recover title and possession to the guide dog subject to conditions described in the transfer of title agreement. These conditions may include, but are not limited to, the following:

- (1) If in the school’s opinion, the guide dog is being misused or neglected or mistreated by its user who is blind or visually impaired.
- (2) If the user to whom the dog was furnished has ceased to use the dog as a guide and the dog is not too old to be retrained as a guide for another person who is blind or visually impaired.

(3) If, in the school's opinion, the dog is no longer a safe guide and the user refuses to cease using the dog as a guide after being requested by the school to cease this use.

(d) The guide dog school shall make no distinction as to the quality or extent of followup or supportive services available to its blind graduates based on whether they elect to acquire title to their dogs or allow title to remain with the school after the probationary year. The school may, however, make this distinction when assessing reasonable and appropriate charges for followup training, instruction, veterinary, or boarding services.

(e) No applicant for admission to a guide dog training school, nor any enrolled student, shall be required by the school prior to completion of his or her training to sign any instrument or to announce his or her intention regarding transfer of title of the dog from the school to himself or herself upon completion of the training and probation period.

SEC. 19. Section 7217 of the Business and Professions Code is amended to read:

7217. (a) Within 60 days after the termination of the fiscal year of a school, there shall be furnished to the board the following:

(1) A list of students accepted for training and those who have completed training.

(2) A list of the number of dogs trained.

(b) Within 90 days after the end of a fiscal year, there shall be furnished to the board an independent audit of the school's finances by a certified public accountant licensed by this state.

SEC. 20. Section 7303 of the Business and Professions Code is amended to read:

7303. (a) Notwithstanding Article 8 (commencing with Section 9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, there is in the Department of Consumer Affairs the State Board of Barbering and Cosmetology in which the administration of this chapter is vested.

(b) The board shall consist of nine members. Five members shall be public members, and four members shall represent the professions. The Governor shall appoint three of the public members and the four professional members. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one public member. Members of the board shall be appointed for a term of four years, except that of the members appointed by the Governor, two of the public members and two of the professions members shall be appointed for an initial term of two years. No board member may serve longer than two consecutive terms.

(c) The board may appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the director. In the event that a newly authorized board replaces an existing or previous bureau, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.

(d) The executive officer shall provide examiners, inspectors, and other personnel necessary to carry out the provisions of this chapter.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 21. Section 7303.2 of the Business and Professions Code is amended to read:

7303.2. The board shall conduct the following reviews, and shall report its findings and recommendations to the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development no later than November 1, 2018:

(a) The board, pursuant to Section 139, shall review the 1,600-hour training requirement for cosmetologists, conduct an occupational analysis of the cosmetology profession in California, and conduct a review of the national written examination for cosmetologists and of the practical examination, in order to evaluate whether both examinations assess critical competencies for California cosmetologists and meet professional testing standards.

(b) The board shall review the Spanish language examination if, by January 1, 2016, the pass rate for Spanish speakers did not increase to the average pass rate for all other language examinations during the two-year period prior to January 1, 2016.

SEC. 22. Section 7304 of the Business and Professions Code is repealed.

SEC. 23. Section 7308 of the Business and Professions Code is repealed.

SEC. 24. Section 7313 of the Business and Professions Code is amended to read:

7313. (a) (1) To ensure compliance with the laws and regulations of this chapter, the board's executive officer and authorized representatives shall, except as provided by Section 159.5, have access to, and shall inspect, any establishment or mobile unit during business hours or at any time in which barbering, cosmetology, or electrolysis are being performed. It is the intent of the Legislature that inspections be conducted on Saturdays and Sundays as well as weekdays, if collective bargaining agreements and civil service provisions permit.

(2) The board shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. The board or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement. The board shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.

(b) To ensure compliance with health and safety requirements adopted by the board, the executive officer and authorized representatives shall, except as provided in Section 159.5, have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. Notices of violation shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. Each notice shall specify the section violated and a timespan within which the violation must be corrected. A copy of the notice of violation shall be provided to the Bureau for Private Postsecondary Education.

(c) With prior written authorization from the board or its executive officer, any member of the board may enter and visit, in his or her capacity as a board member, any establishment, during business hours or at any time when barbering, cosmetology, or electrolysis is being performed. The visitation by a board member shall be for the purpose of conducting official board business, but shall not be used as a basis for any licensing disciplinary action by the board.

(d) The board shall adopt a protocol for inspecting establishments when an inspector has difficulty understanding or communicating with the owner, manager, or employees of the establishment due to language barriers. The board shall evaluate the protocol every two years to ensure the protocol remains current.

SEC. 25. Section 7314.3 is added to the Business and Professions Code, to read:

7314.3. The board shall establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board.

SEC. 26. Section 7395.1 of the Business and Professions Code is amended to read:

7395.1. (a) A student who is enrolled in a school of cosmetology approved by the Bureau for Private Postsecondary Education in a course approved by the board may, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, work as an unpaid extern in a cosmetology establishment participating in the educational program of the school of cosmetology.

(b) A person working as an extern shall receive clock hour credit toward graduation, but that credit shall not exceed eight hours per week and shall not exceed 10 percent of the total clock hours required for completion of the course.

(c) The externship program shall be conducted in cosmetology establishments meeting all of the following criteria:

- (1) The establishment is licensed by the board.
- (2) The establishment has a minimum of four licensees working at the establishment, including employees and owners or managers.
- (3) All licensees at the establishment are in good standing with the board.
- (4) Licensees working at the establishment work for salaries or commissions rather than on a space rental basis.

(5) No more than one extern shall work in an establishment for every four licensees working in the establishment. No regularly employed licensee shall be displaced or have his or her work hours reduced or altered to accommodate the placement of an extern in an establishment. Prior to placement of the extern, the establishment shall agree in writing sent to the school and to all affected licensees that no reduction or alteration of any licensee's current work schedule shall occur. This shall not prevent a licensee from voluntarily reducing or altering his or her work schedule.

(6) Externs shall wear conspicuous school identification at all times while working in the establishment, and shall carry a school laminated identification, that includes a picture, in a form approved by the board.

(d) (1) No less than 90 percent of the responsibilities and duties of the extern shall consist of the acts included within the practice of cosmetology as defined in Section 7316.

(2) The establishment shall consult with the assigning school regarding the extern's progress during the unpaid externship. The owner or manager of the establishment shall monitor and report on the student's progress to the school on a regular basis, with assistance from supervising licensees.

(3) A participating school shall assess the extern's learning outcome from the externship program. The school shall maintain accurate records of the extern's educational experience in the externship program and records that indicate how the extern's learning outcome translates into course credit.

(e) Participation in an externship program made available by a school shall be voluntary, may be terminated by the student at any time, and shall not be a prerequisite for graduation.

(f) The cosmetology establishment that chooses to utilize the extern is liable for the extern's general liability insurance, as well as cosmetology malpractice liability insurance, and shall furnish proof to the participating school that the establishment is covered by both forms of liability insurance and that the extern is covered under that insurance.

(g) (1) It is the purpose of the externship program authorized by this section to provide students with skills, knowledge, and attitudes necessary to acquire employment in the field for which they are being trained, and to extend formalized classroom instruction.

(2) Instruction shall be based on skills, knowledge, attitudes, and performance levels in the area of cosmetology for which the instruction is conducted.

(3) An extern may perform only acts listed within the definition of the practice of cosmetology as provided in Section 7316, if a licensee directly supervises those acts, except that an extern may not use or apply chemical treatments unless the extern has received appropriate training in application of those treatments from an approved cosmetology school. An extern may work on a paying client only in an assisting capacity and only with the direct and immediate supervision of a licensee.

(4) The extern shall not perform any work in a manner that would violate law.



SEC. 27. Section 7401 of the Business and Professions Code is amended to read:

7401. (a) An individual licensed pursuant to Section 7396 shall report to the board at the time of license renewal, his or her practice status, designated as one of the following:

- (1) Full-time practice in California.
- (2) Full-time practice outside of California.
- (3) Part-time practice in California.
- (4) Not working in the industry.
- (5) Retired.
- (6) Other practice status, as may be further defined by the board.

(b) An individual licensed pursuant to Section 7396 shall, at the time of license renewal, identify himself or herself on the application as one of the following:

- (1) Employee.
- (2) Independent contractor or booth renter.
- (3) Salon owner.

(c) An individual licensed pursuant to Section 7347 shall report to the board at the time of license renewal, whether either of the following is applicable to him or her:

- (1) He or she has a booth renter operating in the establishment.
- (2) He or she has an independent contractor operating in the establishment.

SEC. 28. Section 7402.5 is added to the Business and Professions Code, to read:

7402.5. (a) For purposes of this section, a “personal service permit” means a permit that authorizes an individual to perform services, for which he or she holds a license pursuant to this chapter, outside of an establishment, as defined in Section 7346, in accordance with the regulations established by the board.

(b) The board may issue a personal service permit to an individual who meets the criteria for a personal service permit set forth in regulation.

(c) The board shall issue regulations regarding a personal service permit. In establishing the regulations, the board shall hold, at a minimum, two stakeholder meetings.

(1) The board shall determine the appropriate licensing categories that may apply for a personal service permit in order to protect consumer safety.

(2) The board shall authorize a personal service permit holder to perform services outside of a licensed establishment.

(3) The board shall not exempt a personal service permit holder from any of the board’s existing regulations or requirements on health and safety.

(4) The board shall not require a personal service permit holder to be employed by an establishment, unless the board determines that it would be necessary in order to maintain consumer safety.

(5) The regulations may require an applicant for a personal service permit to have proof of liability insurance and to pass a criminal background clearance.

(d) A personal service permit shall be valid for two years and shall be renewed prior to expiration. The fee for a personal service permit shall be no greater than fifty dollars (\$50). The fee for the renewal of a personal service permit shall be no greater than fifty dollars (\$50). The delinquency fee shall be 50 percent of the renewal fee in effect on the date of the renewal.

(e) The board shall report on the progress of the regulatory process and issuance of personal service permits to the Legislature on or before July 1, 2017.

(1) The report shall be submitted in compliance with Section 9795 of the Government Code.

(2) The requirement to report to the Legislature under this subdivision is inoperative on July 1, 2021, pursuant to Section 10231.5 of the Government Code.

SEC. 29. Section 7404 of the Business and Professions Code is amended to read:

7404. The grounds for disciplinary action are as follows:

(a) Unprofessional conduct which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence, including failure to comply with generally accepted standards for the practice of barbering, cosmetology, or electrology or disregard for the health and safety of patrons.

(2) Repeated similar negligent acts.

(3) Conviction of any crime substantially related to the qualifications, functions, or duties of the licenseholder, in which case, the records of conviction or a certified copy shall be conclusive evidence thereof.

(4) Advertising by means of knowingly false or deceptive statements.

(b) Failure to comply with the requirements of this chapter.

(c) Failure to comply with the rules governing health and safety adopted by the board and approved by the State Department of Public Health, for the regulation of establishments, or any practice licensed and regulated under this chapter.

(d) Failure to comply with the rules adopted by the board for the regulation of establishments, or any practice licensed and regulated under this chapter.

(e) Continued practice by a person knowingly having an infectious or contagious disease.

(f) Habitual drunkenness, habitual use of or addiction to the use of any controlled substance.

(g) Obtaining or attempting to obtain practice in any occupation licensed and regulated under this chapter, or money, or compensation in any form, by fraudulent misrepresentation.

(h) Failure to display the license or health and safety rules and regulations in a conspicuous place.

(i) Engaging, outside of a licensed establishment and for compensation in any form whatever, in any practice for which a license is required under this chapter, except that when the service is provided because of illness or other physical or mental incapacitation of the recipient of the service and

when performed by a licensee obtained for the purpose from a licensed establishment.

(j) Permitting a license to be used where the holder is not personally, actively, and continuously engaged in business.

(k) The making of any false statement as to a material matter in any oath or affidavit, which is required by the provisions of this chapter.

(l) Refusal to permit or interference with an inspection authorized under this chapter.

(m) Any action or conduct which would have warranted the denial of a license.

(n) Failure to surrender a license that was issued in error or by mistake.

SEC. 30. Section 7407 of the Business and Professions Code is amended to read:

7407. The board shall establish by regulation a schedule of administrative fines for violations of this chapter. All moneys collected under this section shall be deposited in the board's contingent fund.

The schedule shall indicate for each type of violation whether, in the board's discretion, the violation can be corrected. The board shall ensure that it and the Bureau for Private Postsecondary Education do not issue citations for the same violation.

SEC. 31. Section 7685 of the Business and Professions Code is amended to read:

7685. (a) (1) Every funeral director shall provide to any person, upon beginning discussion of prices or of the funeral goods and services offered, a written or printed list containing, but not necessarily limited to, the price for professional services offered, which may include the funeral director's services, the preparation of the body, the use of facilities, and the use of automotive equipment. All services included in this price or prices shall be enumerated. The funeral director shall also provide a statement on that list that gives the price range for all caskets offered for sale.

(2) The list shall also include a statement indicating that the survivor of the deceased who is handling the funeral arrangements, or the responsible party, is entitled to receive, prior to the drafting of any contract, a copy of any preneed agreement that has been signed and paid for, in full or in part, by or on behalf of the deceased, and that is in the possession of the funeral establishment.

(3) The funeral director shall also provide a written statement or list that, at a minimum, specifically identifies a particular casket or caskets by price and by thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements under Part 453 of Title 16 of the Code of Federal Regulations and any subsequent version of this regulation, when a request for specific information on a casket or caskets is made in person by any individual. Prices of caskets and other identifying features such as thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements required to be given over the telephone by Part 453 of Title

16 of the Code of Federal Regulations and any subsequent version of this regulation, shall be provided over the telephone, if requested.

(b) (1) Each licensed funeral establishment that maintains an Internet Web site shall post on its Internet Web site the list of funeral goods and services that are required to be included in the establishment’s general price list, pursuant to federal rule, and a statement that the general price list is available upon request.

(2) Information posted pursuant to paragraph (1) shall be provided by a link from the homepage of the Internet Web site with a word or combination of words, including, but not limited to, “goods,” “merchandise,” “products,” or “services.”

(3) An establishment that posts on its Internet Web site home page the words “price information” or a similar phrase that includes the word “price,” with a link that leads to the establishment’s general price list, need not comply with paragraphs (1) or (2).

(4) Nothing in this subdivision shall be construed to affect an establishment’s obligations under federal or state law effective prior to January 1, 2013.

(5) This subdivision shall become operative on January 1, 2013.

SEC. 32. Section 7818 of the Business and Professions Code is amended to read:

7818. The board, pursuant to the provisions contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, may adopt, amend or repeal rules and regulations to carry out the provisions of this chapter.

SEC. 33. Section 8508 of the Business and Professions Code is amended to read:

8508. “Household” means any structure and its contents that are used for persons and their convenience.

SEC. 34. Section 8513 of the Business and Professions Code is amended to read:

8513. (a) The board shall prescribe a form entitled “Notice to Owner” that shall describe, in nontechnical language and in a clear and coherent manner using words with common and everyday meaning, the pertinent provisions of this state’s mechanics lien laws and the rights and responsibilities of an owner of property and a registered pest control company thereunder. Each company registered under this chapter, prior to entering into a contract with an owner for work for which a company registration is required, shall give a copy of this “Notice to Owner” to the owner, his or her agent, or the payer.

(b) No company that is required to be registered under this chapter shall require or request a waiver of lien rights from any subcontractor, employee, or supplier.

(c) Each company registered under this chapter that acts as a subcontractor for another company registered under this chapter shall, within 20 days of commencement of any work for which a company registration is required, give the preliminary notice in accordance with Chapter 2 (commencing with

Section 8200) of Title 2 of Part 6 of Division 4 of the Civil Code, to the owner, his or her agent, or the payer.

(d) Each company registered under this chapter that acts as a prime contractor for work for which a company registration is required shall, prior to accepting payment for the work, furnish to the owner, his or her agent, or the payer a full and unconditional release from any claim of mechanics lien by any subcontractor entitled to enforce a mechanics lien pursuant to Section 8410 of the Civil Code.

(e) Each company registered under this chapter that subcontracts to another company registered under this chapter work for which a company registration is required shall furnish to the subcontractor the name of the owner, his or her agent, or the payer.

(f) A violation of the provisions of this section is a ground for disciplinary action.

SEC. 35. Section 8516.5 of the Business and Professions Code is repealed.

SEC. 36. Section 8552 of the Business and Professions Code is amended to read:

8552. It is unlawful for any person to advertise or represent in any manner that any pest control work, in whole or in part, has been done upon any structure, unless the work has been performed by a registered company, except as otherwise provided in this chapter.

SEC. 37. Section 8611 of the Business and Professions Code is amended to read:

8611. (a) Each branch office shall have a branch supervisor designated by the registered company to supervise and assist the company’s employees who are located at that branch. The branch supervisor shall be an individual who is licensed by the board as an operator or a field representative in the branch or branches of business being conducted and his or her license shall be prominently displayed in the branch office.

(b) If a branch supervisor ceases for any reason to be connected with a registered company, the company shall notify the registrar in writing within 10 days from that cessation. If this notice is given, the company’s branch office registration shall remain in force for a reasonable length of time to be determined by rules of the board, during which period the company shall submit to the registrar in writing the name of another qualified branch supervisor.

SEC. 38. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

\* \_\_\_\_\_

at \*\* \_\_\_\_\_ :

\*\*\*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This business is conducted by \*\*\*\* \_\_\_\_\_

The registrant commenced to transact business under the fictitious business name or names listed above on

\*\*\*\*\* \_\_\_\_\_

I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).)

Registrant signature \_\_\_\_\_

Statement filed with the County Clerk of \_\_\_\_ County on \_\_\_\_\_

NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) The fictitious business name statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) Where the asterisk (\*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address and under the same ownership may be listed on one fictitious business name statement.

(2) Where the two asterisks (\*\*) appear in the form: If the registrant has a place of business in this state, insert the street address, and county, of his or her principal place of business in this state. If the registrant has no place of business in this state, insert the street address, and county, of his or her principal place of business outside this state.

(3) Where the three asterisks (\*\*\*) appear in the form: If the registrant is an individual, insert his or her full name and residence address. If the registrants are a married couple, insert the full name and residence address

of both parties to the marriage. If the registrant is a general partnership, copartnership, joint venture, or limited liability partnership, insert the full name and residence address of each general partner. If the registrant is a limited partnership, insert the full name and residence address of each general partner. If the registrant is a limited liability company, insert the name and address of the limited liability company, as set out in its articles of organization on file with the California Secretary of State, and the state of organization. If the registrant is a trust, insert the full name and residence address of each trustee. If the registrant is a corporation, insert the name and address of the corporation, as set out in its articles of incorporation on file with the California Secretary of State, and the state of incorporation. If the registrants are state or local registered domestic partners, insert the full name and residence address of each domestic partner. If the registrant is an unincorporated association other than a partnership, insert the name of each person who is interested in the business of the association and whose liability with respect to the association is substantially the same as that of a general partner.

(4) Where the four asterisks (\*\*\*\*) appear in the form, insert whichever of the following best describes the nature of the business: (i) “an individual,” (ii) “a general partnership,” (iii) “a limited partnership,” (iv) “a limited liability company,” (v) “an unincorporated association other than a partnership,” (vi) “a corporation,” (vii) “a trust,” (viii) “copartners,” (ix) “a married couple,” (x) “joint venture,” (xi) “state or local registered domestic partners,” or (xii) “a limited liability partnership.”

(5) Where the five asterisks (\*\*\*\*\* ) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, “Not applicable.”

(c) The registrant shall declare that all of the information in the fictitious business statement is true and correct. A registrant who declares as true any material matter pursuant to this section that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).

(d) (1) At the time of filing of the fictitious business name statement, the registrant filing on behalf of the registrant shall present personal identification in the form of a California driver’s license or other government identification acceptable to the county clerk to adequately determine the identity of the registrant filing on behalf of the registrant as provided in subdivision (e) and the county clerk may require the registrant to complete and sign an affidavit of identity.

(2) In the case of a registrant utilizing an agent for submission of the registrant’s fictitious business name statement for filing, at the time of filing of the fictitious business name statement, the agent filing on behalf of the registrant shall present personal identification in the form of a California driver’s license or other government identification acceptable to the county

clerk to adequately determine the identity of the agent filing on behalf of the registrant as provided in subdivision (e). The county clerk may also require the agent to submit a notarized statement signed by the registrant declaring the registrant has authorized the agent to submit the filing on behalf of the registrant.

(e) If the registrant is a corporation, a limited liability company, a limited partnership, or a limited liability partnership, the county clerk may require documentary evidence issued by the California Secretary of State and deemed acceptable by the county clerk, indicating the current existence and good standing of that business entity to be attached to a completed and notarized affidavit of identity, for purposes of subdivision (d).

(f) The county clerk may require a registrant that mails a fictitious business name statement to a county clerk's office for filing to submit a completed and notarized affidavit of identity. A registrant that is a corporation, limited liability company, limited partnership, or limited liability partnership, if required by the county clerk to submit an affidavit of identity, shall also submit documentary evidence issued by the California Secretary of State indicating the current existence and good standing of that business entity.

(g) A county clerk that chooses to establish procedures pursuant to this section shall prescribe the form of affidavit of identity for filing by a registrant in that county.

SEC. 39. Section 13995.40 of the Government Code is amended to read:

13995.40. (a) Upon approval of the initial referendum, the office shall establish a nonprofit mutual benefit corporation named the California Travel and Tourism Commission. The commission shall be under the direction of a board of commissioners, which shall function as the board of directors for purposes of the Nonprofit Corporation Law.

(b) The board of commissioners shall consist of 37 commissioners comprising the following:

(1) The director, who shall serve as chairperson.

(2) (A) Twelve members, who are professionally active in the tourism industry, and whose primary business, trade, or profession is directly related to the tourism industry, shall be appointed by the Governor. Each appointed commissioner shall represent only one of the 12 tourism regions designated by the office, and the appointed commissioners shall be selected so as to represent, to the greatest extent possible, the diverse elements of the tourism industry. Appointed commissioners are not limited to individuals who are employed by or represent assessed businesses.

(B) If an appointed commissioner ceases to be professionally active in the tourism industry or his or her primary business, trade, or profession ceases to be directly related to the tourism industry, he or she shall automatically cease to be an appointed commissioner 90 days following the date on which he or she ceases to meet both of the eligibility criteria specified in subparagraph (A), unless the commissioner becomes eligible again within that 90-day period.



(3) Twenty-four elected commissioners, including at least one representative of a travel agency or tour operator that is an assessed business.

(c) The commission established pursuant to Section 15364.52 shall be inoperative so long as the commission established pursuant to this section is in existence.

(d) Elected commissioners shall be elected by industry category in a referendum. Regardless of the number of ballots received for a referendum, the nominee for each commissioner slot with the most weighted votes from assessed businesses within that industry category shall be elected commissioner. In the event that an elected commissioner resigns, dies, or is removed from office during his or her term, the commission shall appoint a replacement from the same industry category that the commissioner in question represented, and that commissioner shall fill the remaining term of the commissioner in question. The number of commissioners elected from each industry category shall be determined by the weighted percentage of assessments from that category.

(e) The director may remove any elected commissioner following a hearing at which the commissioner is found guilty of abuse of office or moral turpitude.

(f) (1) The term of each elected commissioner shall commence July 1 of the year next following his or her election, and shall expire on June 30 of the fourth year following his or her election. If an elected commissioner ceases to be employed by or with an assessed business in the category and segment which he or she was representing, his or her term as an elected commissioner shall automatically terminate 90 days following the date on which he or she ceases to be so employed, unless, within that 90-day period, the commissioner again is employed by or with an assessed business in the same category and segment.

(2) Terms of elected commissioners that would otherwise expire effective December 31 of the year during which legislation adding this subdivision is enacted shall automatically be extended until June 30 of the following year.

(g) With the exception of the director, no commissioner shall serve for more than two consecutive terms. For purposes of this subdivision, the phrase “two consecutive terms” shall not include partial terms.

(h) Except for the original commissioners, all commissioners shall serve four-year terms. One-half of the commissioners originally appointed or elected shall serve a two-year term, while the remainder shall serve a four-year term. Every two years thereafter, one-half of the commissioners shall be appointed or elected by referendum.

(i) The selection committee shall determine the initial slate of candidates for elected commissioners. Thereafter the commissioners, by adopted resolution, shall nominate a slate of candidates, and shall include any additional candidates complying with the procedure described in Section 13995.62.

(j) The commissioners shall elect a vice chairperson from the elected commissioners.

- (k) The commission may lease space from the office.
- (l) The commission and the office shall be the official state representatives of California tourism.
- (m) (1) All commission meetings shall be held in California.  
(2) Commissioners may participate in meetings by means of conference telephone and other technology.
- (n) No person shall receive compensation for serving as a commissioner, but each commissioner shall receive reimbursement for reasonable expenses incurred while on authorized commission business.
- (o) Assessed businesses shall vote only for commissioners representing their industry category.
- (p) Commissioners shall comply with the requirements of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)). The Legislature finds and declares that commissioners appointed or elected on the basis of membership in a particular tourism segment are appointed or elected to represent and serve the economic interests of those tourism segments and that the economic interests of these members are the same as those of the public generally.
- (q) Commission meetings shall be subject to the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1).
- (r) The executive director of the commission shall serve as secretary to the commission, a nonvoting position, and shall keep the minutes and records of all commission meetings.

SEC. 40. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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## Senate Bill No. 467

### CHAPTER 656

An act to amend Sections 5000, 5015.6, 7000.5, 7011, and 7071.6 of, to add Sections 312.2, 328, and 5100.5 to, and to repeal Section 7067.5 of, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor October 8, 2015. Filed with  
Secretary of State October 8, 2015.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 467, Hill. Professions and vocations.

Existing law provides for the licensure and regulation of various professions and vocations by boards, bureaus, commissions, divisions, and other agencies within the Department of Consumer Affairs. Existing law requires an agency within the department to investigate a consumer accusation or complaint against a licensee and, where appropriate, the agency is authorized to impose disciplinary action against a licensee. Under existing law, an agency within the department may refer a complaint to the Attorney General or Office of Administrative Hearings for further action.

This bill would require the Attorney General to submit a report to the department, the Governor, and the appropriate policy committees of the Legislature, on or before January 1, 2018, and on or before January 1 of each subsequent year, that includes specified information regarding the actions taken by the Attorney General pertaining to accusation matters relating to consumer complaints against a person whose profession or vocation is licensed by an agency within the department.

Existing law creates the Division of Investigation within the department and requires investigators who have the authority of peace officers to be in the division to investigate the laws administered by the various boards comprising the department or commence directly or indirectly any criminal prosecution arising from any investigation conducted under these laws.

This bill would, in order to implement the Consumer Protection Enforcement Initiative of 2010, require the Director of Consumer Affairs, through the Division of Investigation, to implement "Complaint Prioritization Guidelines" for boards to utilize in prioritizing their complaint and investigative workloads and to determine the referral of complaints to the division and those that are retained by the health care boards for investigation. The bill would exempt the Medical Board of California from required utilization of these guidelines.

Under existing law, the California Board of Accountancy within the department is responsible for the licensure and regulation of accountants and is required to designate an executive officer. Existing law repeals these provisions on January 1, 2016.

This bill would extend the repeal date to January 1, 2020.

Existing law authorizes the California Board of Accountancy, after notice and hearing, to revoke, suspend, or refuse to renew any permit or certificate, as specified, or to censure the holder of that permit or certificate for unprofessional conduct.

This bill would additionally authorize the board, after notice and hearing, to permanently restrict or limit the practice of a licensee or impose a probationary term or condition on a license for unprofessional conduct. This bill would authorize a licensee to petition the board for reduction of a penalty or reinstatement of the privilege, as specified, and would provide that failure to comply with any restriction or limitation imposed by the board is grounds for revocation of the license.

Under existing law, the Contractors' State License Law, the Contractors' State License Board is responsible for the licensure and regulation of contractors and is required to appoint a registrar of contractors. Existing law repeals these provisions establishing the board and requiring it to appoint a registrar on January 1, 2016.

This bill would extend these repeal dates to January 1, 2020.

Existing law requires every applicant for an original contractor's license, the reactivation of an inactive license, or the reissuance or reinstatement of a revoked license to evidence financial solvency, as specified, and requires the registrar to deny the application of any applicant who fails to comply with that requirement. Existing law, as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, requires the applicant or licensee to file or have on file a contractor's bond in the sum of \$12,500.

This bill would repeal that evidence of financial solvency requirement and would instead require that bond to be in the sum of \$15,000.

*The people of the State of California do enact as follows:*

SECTION 1. Section 312.2 is added to the Business and Professions Code, to read:

312.2. (a) The Attorney General shall submit a report to the department, the Governor, and the appropriate policy committees of the Legislature on or before January 1, 2018, and on or before January 1 of each subsequent year that includes, at a minimum, all of the following for the previous fiscal year for each constituent entity within the department represented by the Licensing Section and Health Quality Enforcement Section of the Office of the Attorney General:

- (1) The number of accusation matters referred to the Attorney General.
- (2) The number of accusation matters rejected for filing by the Attorney General.
- (3) The number of accusation matters for which further investigation was requested by the Attorney General.

(4) The number of accusation matters for which further investigation was received by the Attorney General.

(5) The number of accusations filed by each constituent entity.

(6) The number of accusations a constituent entity withdraws.

(7) The number of accusation matters adjudicated by the Attorney General.

(b) The Attorney General shall also report all of the following for accusation matters adjudicated within the previous fiscal year for each constituent entity of the department represented by the Licensing Section and Health Quality Enforcement Section:

(1) The average number of days from the Attorney General receiving an accusation referral to when an accusation is filed by the constituent entity.

(2) The average number of days to prepare an accusation for a case that is rereferred to the Attorney General after further investigation is received by the Attorney General from a constituent entity or the Division of Investigation.

(3) The average number of days from an agency filing an accusation to the Attorney General transmitting a stipulated settlement to the constituent entity.

(4) The average number of days from an agency filing an accusation to the Attorney General transmitting a default decision to the constituent entity.

(5) The average number of days from an agency filing an accusation to the Attorney General requesting a hearing date from the Office of Administrative Hearings.

(6) The average number of days from the Attorney General's receipt of a hearing date from the Office of Administrative Hearings to the commencement of a hearing.

(c) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 2. Section 328 is added to the Business and Professions Code, to read:

328. (a) In order to implement the Consumer Protection Enforcement Initiative of 2010, the director, through the Division of Investigation, shall implement "Complaint Prioritization Guidelines" for boards to utilize in prioritizing their respective complaint and investigative workloads. The guidelines shall be used to determine the referral of complaints to the division and those that are retained by the health care boards for investigation.

(b) The Medical Board of California shall not be required to utilize the guidelines implemented pursuant to subdivision (a).

SEC. 3. Section 5000 of the Business and Professions Code is amended to read:

5000. (a) There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, 7 of whom shall be licensees, and 8 of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

(b) The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint individuals representing a cross section of the accounting profession.

(c) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

(d) Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature. However, the review of the board shall be limited to reports or studies specified in this chapter and those issues identified by the appropriate policy committees of the Legislature and the board regarding the implementation of new licensing requirements.

SEC. 4. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 5. Section 5100.5 is added to the Business and Professions Code, to read:

5100.5. (a) After notice and hearing the board may, for unprofessional conduct, permanently restrict or limit the practice of a licensee or impose a probationary term or condition on a license, which prohibits the licensee from performing or engaging in any of the acts or services described in Section 5051.

(b) A licensee may petition the board pursuant to Section 5115 for reduction of penalty or reinstatement of the privilege to engage in the service or act restricted or limited by the board.

(c) The authority or sanctions provided by this section are in addition to any other civil, criminal, or administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other disciplinary authority, penalties, or sanctions.

(d) Failure to comply with any restriction or limitation imposed by the board pursuant to this section is grounds for revocation of the license.

(e) For purposes of this section, both of the following shall apply:

(1) "Unprofessional conduct" includes, but is not limited to, those grounds for discipline or denial listed in Section 5100.

(2) "Permanently restrict or limit the practice of" includes, but is not limited to, the prohibition on engaging in or performing any attestation engagement, audits, or compilations.

SEC. 6. Section 7000.5 of the Business and Professions Code is amended to read:

7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.

(b) Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

(c) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 7. Section 7011 of the Business and Professions Code is amended to read:

7011. (a) The board, by and with the approval of the director, shall appoint a registrar of contractors and fix his or her compensation.

(b) The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.

(c) For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer, and, subject to Section 159.5, other assistants and subordinates as may be necessary.

(d) Appointments shall be made in accordance with the provisions of civil service laws.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 8. Section 7067.5 of the Business and Professions Code is repealed.

SEC. 9. Section 7071.6 of the Business and Professions Code is amended to read:

7071.6. (a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of fifteen thousand dollars (\$15,000).

(b) Excluding the claims brought by the beneficiaries specified in subdivision (a) of Section 7071.5, the aggregate liability of a surety on claims brought against a bond required by this section shall not exceed the sum of seven thousand five hundred dollars (\$7,500). The bond proceeds in excess of seven thousand five hundred dollars (\$7,500) shall be reserved exclusively for the claims of the beneficiaries specified in subdivision (a) of Section 7071.5. However, nothing in this section shall be construed so as to prevent any beneficiary specified in subdivision (a) of Section 7071.5 from claiming or recovering the full measure of the bond required by this section.

(c) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(d) Notwithstanding any other law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the

amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

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## Senate Bill No. 560

### CHAPTER 389

An act to amend Sections 30, 7011.4, and 7125.4 of the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2015. Filed with Secretary of State September 30, 2015.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 560, Monning. Licensing boards: unemployment insurance.

(1) Existing law provides for the licensure and regulation of various professions and vocations and creates boards, commissions, and bureaus, among other entities, in the Department of Consumer Affairs to this end. The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California. Existing law requires a licensing board, as defined, including the State Bar, to provide specified personal information regarding licensees to the Franchise Tax Board in a prescribed form and at a time the Franchise Tax Board may require. Existing law creates within the Labor and Workforce Development Agency the Employment Development Department, which administers the unemployment compensation program.

This bill would additionally require a licensing board to submit personal information regarding licensees, described above, to the Employment Development Department.

(2) The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State License Board within the Department of Consumer Affairs. The act establishes an enforcement division within the board that is required to enforce prohibitions against all forms of unlicensed activity, as specified.

This bill would authorize the enforcement division to additionally enforce the obligation to secure the payment of valid and current workers' compensation insurance, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) (1) Notwithstanding any other law, any board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall, at the time of issuance of the license, require that the applicant provide its federal employer identification number, if the applicant is a partnership, or the applicant's social security number for all other applicants.

(2) No later than January 1, 2016, in accordance with Section 135.5, a board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall require either the individual taxpayer identification number or social security number if the applicant is an individual for purposes of this subdivision.

(b) A licensee failing to provide the federal employer identification number, or the individual taxpayer identification number or social security number shall be reported by the licensing board to the Franchise Tax Board. If the licensee fails to provide that information after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, the licensee shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board shall not process an application for an initial license unless the applicant provides its federal employer identification number, or individual taxpayer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board or the Employment Development Department, furnish to the board or the department, as applicable, the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means a person or entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Bureau of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board or the Employment Development Department, as applicable.

(g) Licensing boards shall provide to the Franchise Tax Board or the Employment Development Department the information required by this section at a time that the board or the department, as applicable, may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, a federal employer identification number, individual taxpayer identification number, or social security number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) A deputy, agent, clerk, officer, or employee of a licensing board described in subdivision (a), or any former officer or employee or other individual who, in the course of his or her employment or duty, has or has had access to the information required to be furnished under this section, shall not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or the Employment Development Department or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the federal employer identification number, individual taxpayer identification number, or social security number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the individual taxpayer identification number or social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release an individual taxpayer identification number or social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other law, a board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall at the time of issuance of the license require that each licensee provide the individual taxpayer identification number or social security number of each individual listed on the license and any person who qualifies for the license. For the purposes of this subdivision, "licensee" means an entity that is issued a license by any board, as defined in Section 22, the State Bar, the Bureau of Real Estate, and the Department of Motor Vehicles.

SEC. 2. Section 7011.4 of the Business and Professions Code is amended to read:

7011.4. (a) Notwithstanding Section 7011, there is in the Contractors' State License Board, a separate enforcement division that shall rigorously enforce this chapter prohibiting all forms of unlicensed activity and shall enforce the obligation to secure the payment of valid and current workers' compensation insurance in accordance with Section 3700.5 of the Labor Code.

(b) Persons employed as enforcement representatives of the Contractors' State License Board and designated by the Director of Consumer Affairs shall have the authority to issue a written notice to appear in court pursuant to Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. An employee so designated is not a peace officer and is not entitled to safety member retirement benefits as a result of that designation. He or she does not have the power of arrest.

(c) When participating in the activities of the Joint Enforcement Strike Force on the Underground Economy pursuant to Section 329 of the Unemployment Insurance Code, the enforcement division shall have free access to all places of labor.

SEC. 3. Section 7125.4 of the Business and Professions Code is amended to read:

7125.4. (a) The filing of the exemption certificate prescribed by this article that is false, or the employment of a person subject to coverage under the workers' compensation laws after the filing of an exemption certificate without first filing a Certificate of Workers' Compensation Insurance or Certification of Self-Insurance in accordance with the provisions of this article, or the employment of a person subject to coverage under the workers' compensation laws without maintaining coverage for that person, constitutes cause for disciplinary action.

(b) Any qualifier for a license who, under Section 7068.1, is responsible for assuring that a licensee complies with the provisions of this chapter is also guilty of a misdemeanor for committing or failing to prevent the commission of any of the acts that are cause for disciplinary action under this section.

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## Senate Bill No. 561

### CHAPTER 281

An act to amend Sections 7067.6, 7152, 7153, 7153.2, 7153.3, 7154, 7155.5, and 7156 of, and to add Section 7156.6 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 8, 2015. Filed with Secretary of State September 8, 2015.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 561, Monning. Contractors: home improvement salespersons.

Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors, including home improvement contractors, by the Contractors' State License Board within the Department of Consumer Affairs. Existing law also provides for the registration and regulation of home improvement salespersons by the board. Existing law requires the board to appoint a registrar of contractors who is the executive officer and secretary of the board and is responsible for carrying out specified administrative duties.

Under existing law, a home improvement salesperson is a person employed by a licensed home improvement contractor to solicit, sell, negotiate, or execute contracts for home improvements, for the sale, installation, or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs.

This bill would provide that such a salesperson is a person who is registered and engaged in the business of soliciting, selling, negotiating, or executing contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs on behalf of a licensed home improvement contractor. The bill would require a home improvement salesperson to register with the board in order to engage in the business of, or act in the capacity of, a home improvement salesperson.

Existing law makes it a crime for any person to engage in the occupation of home improvement salesperson for one or more home improvement contractors without a registration for each of the home improvement contractors by whom he or she is employed. Existing law makes it a crime for any person to engage in the occupation of salesperson of home improvement goods or services, as defined, without a registration.

This bill would instead make it a crime for any person to engage in the occupation of home improvement salesperson for one or more home improvement contractors without having, at the time of the sales transaction, a current and valid registration. The bill would instead make it a crime for any person to engage in the occupation of salesperson of home improvement

goods or services without having, at the time of the sales transaction, a current and valid registration. By changing the definitions of these crimes, the bill would impose a state-mandated local program.

Under existing law, home improvement salesperson registrations expire subject to board determination, as described.

This bill would provide that these registrations expire 2 years from the last day of the month in which the registration was issued or 2 years from the date on which the renewed registration last expired.

Under existing law, a home improvement contractor who employs a person to sell home improvement contracts while that person is not registered by the registrar as a home improvement salesperson is subject to disciplinary action.

This bill would require a home improvement contractor to notify the registrar in writing about the employment of a registered home improvement salesperson. The bill would also require a home improvement contractor to notify the registrar when a registered home improvement salesperson ceases to be employed by the contractor. The bill would make a home improvement contractor who fails to report this information subject to disciplinary action by the registrar.

Existing law authorizes the board to make rules and regulations as are reasonably necessary to carry out the law and requires the rules and regulations to be adopted in accordance with the provisions of the Administrative Procedure Act.

This bill would authorize the board, by regulation, to implement a system to provide for the electronic transmission of contractor applications for licensure, home improvement salesperson applications for registration, and those aforementioned notices required to be made by a home improvement contractor, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7067.6 of the Business and Professions Code is amended to read:

7067.6. (a) Every application form for an original license, for renewal thereof, for reinstatement or for reissuance, including both active and inactive licenses, shall be signed by both the applicant and by the person qualifying on behalf of an individual or firm as referred to in Section 7068.1.

(b) (1) Notwithstanding any other law, the board may implement a system that provides for the electronic transmission of an application described in subdivision (a) and the acceptance of a digital or electronic signature as part of the filing of those applications.

(2) The board by regulation may specify the form and manner of these transmissions and acceptances, including, but not limited to, the adoption of any protocols necessary to ensure the validity and security of any information, signature, data, or document transmitted electronically or digitally. Upon the effective date of the regulations, the electronic submission of an initial license application or a renewal application, including a digital or electronic signature, shall satisfy the requirements of this article.

SEC. 2. Section 7152 of the Business and Professions Code is amended to read:

7152. (a) “Home improvement salesperson” is a person who is registered under this chapter and engaged in the business of soliciting, selling, negotiating, or executing contracts for home improvements, for the sale, installation or furnishing of home improvement goods or services, or of swimming pools, spas, or hot tubs on behalf of a home improvement contractor licensed under this chapter.

(b) A home improvement salesperson shall register with the board in order to engage in the business of, or act in the capacity of, a home improvement salesperson.

(c) The following shall not be required to be registered as home improvement salespersons:

(1) An officer of record of a corporation licensed pursuant to this chapter, or a manager, member, or officer of record of a limited liability company licensed pursuant to this chapter.

(2) A general partner listed on the license record of a partnership licensed pursuant to this chapter.

(3) A qualifying person, as defined in Section 7025.

(4) A salesperson whose sales are all made pursuant to negotiations between the parties if the negotiations are initiated by the prospective buyer at or with a general merchandise retail establishment that operates from a fixed location where goods or services are offered for sale.

(5) A person who contacts the prospective buyer for the exclusive purpose of scheduling appointments for a registered home improvement salesperson.

(6) A bona fide service repairperson who is in the employ of a licensed contractor and whose repair or service call is limited to the service, repair, or emergency repair initially requested by the buyer of the service.

(d) The exemption to registration provided under paragraphs (1), (2), and (3) of subdivision (c) shall apply only to those individuals who, at the time of the sales transaction, are listed as personnel of record for the licensee responsible for soliciting, negotiating, or contracting for a service or improvement that is subject to regulation under this article.

SEC. 3. Section 7153 of the Business and Professions Code is amended to read:

7153. (a) It is a misdemeanor for any person to engage in the occupation of salesperson for one or more home improvement contractors within this state without having, at the time of the sales transaction, a current and valid home improvement salesperson registration issued by the registrar. If, upon investigation, the registrar has probable cause to believe that a salesperson

is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.

It is a misdemeanor for any person to engage in the occupation of salesperson of home improvement goods or services within this state without having, at the time of the sales transaction, a current and valid home improvement salesperson registration issued by the registrar.

(b) Any security interest taken by a contractor, to secure any payment for the performance of any act or conduct described in Section 7151 that occurs on or after January 1, 1995, is unenforceable if the person soliciting the act or contract was not a duly registered salesperson or was not exempt from registration pursuant to Section 7152 at the time the homeowner signs the home improvement contract solicited by the salesperson.

SEC. 4. Section 7153.2 of the Business and Professions Code is amended to read:

7153.2. All home improvement salesperson registrations issued under the provisions of this article shall expire two years from the last day of the month in which the registration was issued, or two years from the date on which the renewed registration last expired.

SEC. 5. Section 7153.3 of the Business and Professions Code is amended to read:

7153.3. (a) To renew a home improvement salesperson registration, which has not expired, the registrant shall before the time at which the registration would otherwise expire, apply for renewal on a form prescribed by the registrar and pay a renewal fee prescribed by this chapter. Renewal of an unexpired registration shall continue the registration in effect for the two-year period following the expiration date of the registration, when it shall expire if it is not again renewed.

(b) An application for renewal of registration is delinquent if the application is not postmarked or received via electronic transmission as authorized by Section 7156.6 by the date on which the registration would otherwise expire. A registration may, however, still be renewed at any time within three years after its expiration upon the filing of an application for renewal on a form prescribed by the registrar and the payment of the renewal fee prescribed by this chapter and a delinquent renewal penalty in the amount of twenty-five dollars (\$25). If a registration is not renewed within three years, the person shall make a new application for registration pursuant to Section 7153.1.

(c) The registrar may refuse to renew a registration for failure by the registrant to complete the application for renewal of registration. If a registrant fails to return the application rejected for insufficiency or incompleteness within 90 days from the original date of rejection, the application and fee shall be deemed abandoned. Any application abandoned may not be reinstated. However, the person may file a new application for registration pursuant to Section 7153.1.

The registrar may review and accept the petition of a person who disputes the abandonment of his or her renewal application upon a showing of good



cause. This petition shall be received within 90 days of the date the application for renewal is deemed abandoned.

SEC. 6. Section 7154 of the Business and Professions Code is amended to read:

7154. (a) A home improvement contractor licensed under this chapter shall notify the registrar in writing, on a form prescribed by the registrar, about the employment of a registered home improvement salesperson, pursuant to the terms of this article. This notification requirement shall include, but not be limited to, the name and registration number of the home improvement salesperson who is employed by the contractor. The form shall be submitted prior to the home improvement salesperson beginning work for the contractor.

(b) A home improvement contractor shall notify the registrar in writing, on a form prescribed by the registrar, when a registered home improvement salesperson ceases to be employed by the contractor. This notification requirement shall include, but not be limited to, the name and registration number of the home improvement salesperson who had been employed by the contractor. The form shall be submitted within 90 days after the home improvement salesperson ceases to be employed by the contractor.

(c) A home improvement contractor who employs a registered home improvement salesperson to sell home improvement contracts, but who fails to report to the registrar pursuant to subdivision (a) or (b), is subject to disciplinary action by the registrar.

(d) A home improvement contractor who employs a person to sell home improvement contracts while that person is not registered by the registrar as a home improvement salesperson as provided in this article, is subject to disciplinary action by the registrar.

SEC. 7. Section 7155.5 of the Business and Professions Code is amended to read:

7155.5. Violations of any provisions of this chapter by a home improvement salesperson likewise constitute cause for disciplinary action against the contractor by whom he or she was employed at the time the violation occurred, whether or not the contractor had knowledge of or participated in the act or omission constituting violations of this chapter.

SEC. 8. Section 7156 of the Business and Professions Code is amended to read:

7156. It shall be a misdemeanor and a cause for disciplinary action to commit any of the following acts:

(a) For any home improvement salesperson to fail to account for or to remit to his or her employing contractor any payment received in connection with any home improvement transaction or any other transaction involving a work of improvement.

(b) For any person to use a contract form in connection with any home improvement transaction or any other transaction involving a work of improvement if the form fails to disclose the name of the contractor principal by whom he or she is employed.

SEC. 9. Section 7156.6 is added to the Business and Professions Code, to read:

7156.6. (a) Notwithstanding any other law, the board may implement a system that provides for the electronic transmission of an initial application or renewal application for the registration required by this article and the electronic transmission of the notices required by Section 7154.

(b) The board by regulation may specify the form and manner of these transmissions, including the adoption of any protocols necessary to ensure the validity and security of any information, data, or document transmitted electronically. Upon the effective date of the regulations, the electronic submission of an initial registration application, a renewal application, or the electronic transmission of a notice required by Section 7154 shall satisfy the requirements of this article.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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## AGENDA ITEM G-3

# Update on SB 465 (Hill) Settlement Reporting





## AGENDA ITEM G-4

# Update Regarding Legislative Proposal to Amend Business and Professions Code Section 7071.17 – Qualifier Responsibility





## AGENDA ITEM G-5

# Review, Discussion and Possible Action of Legislative Proposals:

- a. Amendment to Business and Professions Code Section 7000-7199.7 – Reorganization of the Contractors State License Law
- b. Amendment to Business and Professions Code Section 7059 – Public Works Contracts
- c. Amendment to Business and Professions Code Section 7074 – When Application Becomes Void: Testing
- d. Amendment to Business and Professions Code Section 7124.6 – Complaint Disclosure
- e. Amendment to Business and Professions Code Section 7137 – Fee Schedule
- f. Amendment to Business and Professions Code Section 7159 – Rewrite of the Home Improvement Contract
- g. Amendment to add Business and Professions Code Section 7159.15 – Home Improvement Solar Contracts



**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE PROPOSAL FORM  
Business and Professions Code Sections 7000-7197.7**

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**SUBJECT:** This proposal would reorganize the Contractors' State License Law to make it easier to follow.

**PROBLEM/SUMMARY:**

This proposal would implement one of the Contractors State License Board's (CSLB) 2015-16 strategic goals. It would not make any substantive changes to the content of the law but would, instead, reorganize the entire law to make it easier for all interested parties to read and find specific provisions.

**PROPOSED CHANGE:**

This proposal would involve a reorganization of the entire law, moving and renumbering virtually all sections.

It would add additional articles and make the most significant changes in the first several articles, in particular, splitting existing sections in order to separate the definitions of terms from the exemptions to these terms. A new article would be drafted for definitions, and the article for the renewal of licenses would directly follow the licensing article.

**STAFF COMMENTS:**

This proposal intends to make the law easier to follow and to enable individuals less familiar with the law to more readily find relevant sections. Most, if not all, sections would be renumbered, which would significantly affect staff and others familiar with the law. Given this, staff would like to spend more time reviewing this proposal with different parties to obtain feedback and suggestions for changes.

Staff proposes that the Board approve this proposal in concept, and then direct staff to work further on the issue over the next several months and return to the Board next year with a fuller proposal. This timeframe will allow for the possible introduction of legislation in 2017, the first year of a two-year session. Introducing this bill in the first year of a two-year session would provide additional time to respond to any potential concerns or opposition that may arise.

**RECOMMENDATION:**

Approve, in concept, this proposal to reorganize the Contractors' State License Law, and direct staff to work with interested parties over the next several months to further develop the proposed changes.



**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE PROPOSAL  
Business & Profession Code §7059**

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**SUBJECT:** Public Works Contracts

**PROBLEM/SUMMARY:**

As written, Business and Professions (B&P) Code section 7059(b) states that the awarding authority “*shall*” determine which license classification is fit to bid and erect, construct, alter, repair, or improve any public structure, building, road, or other public improvement of any kind needed for a public works project. This rule poses a problem for the Contractors State License Board (CSLB) because the word “shall” stresses with certainty that the awarding agency, not CSLB, is responsible for determining which licensed contractor is suitable to perform construction related work on public works projects.

Pursuant to B&P Code, Chapter 9, articles 1 through 9, known as the *Contractors’ State License Law*, CSLB is the State’s regulatory agency appointed to license and regulate all forms of construction activity in the State of California, which includes construction conducted on public works projects. This law includes several references that state that CSLB is the authority that determines which license classification is appropriate to perform construction work: B&P Code sections 7055 through 7059.1 of Article 4, “*Classifications*,” B&P Code section 7065; and, ironically, B&P Code section 7059(a), “*Rules and regulations affecting classifications of contractors*.”

As composed, B&P Code section 7059(b) does not ensure that, when determining which license classification is necessary to bid and perform work on a public works project, awarding agencies make this determination according to the law and regulations related to license classifications. Consequently, when CSLB receives a complaint that a contractor on a public works project is performing work outside of his or her trade, the board cannot enforce B&P Code section 7117.6, “*Acting as contractor in unauthorized classifications*.” Legal counsel from the California Attorney General’s Office has advised CSLB that, as currently written, a violation of B&P Code section 7059(b) cannot be sustained.

**PROPOSED CHANGE:**

CSLB requests an amendment to B&P Code section 7059(b), “*Public Works Contract*,” to specify that the board can discipline contractors working out of class on public works projects.

**STAFF COMMENTS:**

“Public works contract,” as used in this part, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

Under existing law for public works contracts the awarding authority determines the license classification to bid on and perform the project. The law does prohibit awarding a prime contract to a specialty contractor whose classification constitutes less than a majority of the project. But, CSLB cannot take disciplinary action against contractors that work out of class on a public works project.

Existing law does not require awarding agencies, when determining which license classification is necessary to bid and perform work on a public works project, to make that determination according to the laws and regulations related to license classifications.

The Licensing division has provided awarding agencies for public works projects with classification determinations to ensure that they advertise for the appropriate classification and CSLB continues to work with state and local agencies to provide training for contract staff.

Examples of cases from the Enforcement division where the Attorney General's Office (AG) has advised CSLB that a citation alleging a violation of B&P Code section 7117.6 (acting as a contractor in an unauthorized classification) cannot be sustained include:

1. The awarding agency's contract stated either a General A or a C-16 (Fire Protection) licensee could bid on the project. A General Engineering contractor without the necessary C-16 Fire Protection classification won the bid. CSLB issued a citation but later withdrew it after advice from the AG that the awarding agency, pursuant to B&P Code section 7059, could determine that an "A" could perform the contracted fire protection work.
2. A school district solicited a bid for a contract to install ADA pedestrian ramps in a K-8 school. CSLB's classification deputy reviewed the awarding agency's advertisement for the project and recommended a General A to perform the scope of work. The agency ignored the recommendation and advertised for, and awarded the bid to, a General B contractor. The agency experienced problems with the contractor's ability to perform the work, resulting in a financial injury. CSLB filed an accusation and the licensee has stipulated to a revocation of the license because of the large financial injury and other violations.

While CSLB successfully took action against this licensee under current law, the case illustrates the potential harm awarding agencies face when they hire contractors operating outside their classification. The awarding agency disregarded CSLB's recommendation and suffered a significant financial loss because of poor workmanship committed by the unqualified contractor.

3. A contractor won a bid to perform work at the John Wayne Airport. CSLB determined that the contractor was working out of class for the scope of work and issued a citation; the contractor appealed. Because of how the project was advertised and since, per B&P Code section 7059( b), the awarding agency can make the license classification determination, CSLB agreed to withdraw the citation if the contractor obtained the appropriate classification.

Prior Consideration:

The Legislative Committee discussed this proposal in 2014. Ultimately, staff did not bring it forward to the full Board that year to allow more time to develop the proposal and to pursue non-legislative remedies. After spending additional time on the proposal staff believes that it is needed and brought it back this year for consideration.

**PROPOSED LANGUAGE:**

Modify B&P Code section 7059 :

(b) In public works contracts, as defined in Section 1101 of the Public Contract Code, the awarding authority shall determine the license classification necessary to permit a contractor to bid and perform the project in any classification that is permitted under this Chapter and by the Contractors State License Board. In no case shall the awarding authority award a prime contract to a specialty contractor whose classification constitutes less than a majority of the project. When a specialty contractor is authorized to bid a project, all work to be performed outside of his or her license specialty, except work authorized by subdivision (a), shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code). Any contractor acting in the capacity of a contractor in a classification other than that currently held by the licensee constitutes a cause for disciplinary action.

**STAFF RECOMMENDATION:**

Approve this proposal to amend B&P Code section 7059 regarding public works contracting.

**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE PROPOSAL  
Business & Profession Code §7074**

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**SUBJECT:** When Application Becomes Void

**PROBLEM/SUMMARY:**

The Testing division proposes eliminating the provision of existing law that voids an application either after an applicant has failed to reschedule an exam within 90 days of cancellation, or twice failed to appear for an exam.

**PROPOSED CHANGE:**

The current application for licensure states: “If you are required to take an examination, subject to some limitation, you have 18 months after the approval of your application in which to achieve a passing grade on the exam. During that time period, you may take the exam an unlimited number of times. A \$60 fee is required each time you reschedule an exam. (See Business and Professions [B&P] Code Section 7074 for more detailed information on re-examinations.)”

However, B&P Code section 7074 further provides eight conditions upon which an application becomes void, two of which relate to test scheduling. The first, when an applicant does not reschedule within 90 days of failing to appear at a scheduled exam, and second, when an applicant does not reschedule within 90 days of failing an exam.

The Examination Administration Unit (EAU) receives applicant complaints each time CSLB sends out a “Void After 90-days” letter. Staff also receive numerous complaints from applicants who call to reschedule an exam and are informed that they cannot schedule an exam outside of the 90-day window.

Those applicants who cancel an exam usually do so by phone and do not get a letter specifying that they must reschedule within 90 days, though staff does tell them about the 90 day requirement and that they must submit the \$60 fee. Typical scenarios include applicants being told about the 90-day deadline over the phone who then forget or write it down incorrectly, and applicants who lose the paperwork and have trouble remembering when to send the fee. When these things happen, applicants send in the fee to reschedule after the 90-day deadline has elapsed and are surprised when their application is voided. They become frustrated and claim that CSLB is merely trying to charge them additional fees.

In some cases, applicants plan to leave the country for an extended period and wish to schedule a test date 180 days out. Staff informs these applicants that they must pay the \$60 fee to schedule a date 90 days out, cancel that date from out of the country, and then send another \$60 fee to schedule the exam a further 90 days out.

Many applicants argue that the requirement that they begin the application process anew, with an additional \$300 application fee, is unfair, especially in the cases where the application becomes void after cancelling their first exam. Such applicants opt not to test at all.

Applicants also ask why their application is voided in cases when they fail twice to appear for the exam. Many claim that they never received notice of these exam dates and want to know why a failure to appear is treated differently from a cancellation. Applicants would like to have the full 18 months to test, and do not understand the limitations.

Perhaps the original purpose for applications becoming void because of test scheduling no longer exists. Scheduling examinations is fully automated and test centers are not overcrowded. Applicants that fail to appear do not cause extra work for staff or additional expense for CSLB, nor do they make other applicants wait for an open spot. In fact, with the Testing division's walk-in policy, an unexpected empty slot can be filled by a walk-in applicant.

#### **STAFF COMMENTS:**

This proposal originated from CSLB's Testing division. In general, an applicant must successfully complete the required exams no longer than 18 months after approval of his/her application. However, existing law (B&P Code section 7074), provides several conditions under which an application for an original license, or for an additional classification, or for a change of qualifier, is voided. Testing would like to eliminate the two conditions that void an application because of exam scheduling, since computer-based testing makes it unnecessary.

This proposed change will ease the exam scheduling process for applicants without causing a burden for program staff. Existing law provides that an application becomes void if the applicant does not successfully complete the exam within 18 months; this proposal does not change that provision.

#### **PROPOSED LANGUAGE:**

Business & Professions Code Section 7074

7074.(a) Except as otherwise provided by this section, an application for an original license, for an additional classification or for a change of qualifier shall become void when:

~~—(1) The applicant or examinee for the applicant has failed to appear for the scheduled qualifying examination and fails to request and pay the fee for rescheduling within 90 days of notification of failure to appear, or, after being rescheduled, has failed to appear for a second examination.~~

~~—(2) The applicant or the examinee for the applicant has failed to achieve a passing grade in the scheduled qualifying examination, and fails to request and pay the fee for rescheduling within 90 days of notification of failure to pass the examination.~~

(3) The applicant or the examinee for the applicant has failed to achieve a passing grade in the qualifying examination within 18 months after the application has been deemed acceptable by the board.

(4) The applicant for an original license, after having been notified to do so, fails to pay the initial license fee within 90 days from the date of the notice.

(5) The applicant, after having been notified to do so, fails to file within 90 days from the date of the notice any bond or cash deposit or other documents that may be required for issuance or granting pursuant to this chapter.

(6) After filing, the applicant withdraws the application.

(7) The applicant fails to return the application rejected by the board for insufficiency or incompleteness within 90 days from the date of original notice or rejection.

(8) The application is denied after disciplinary proceedings conducted in accordance with the provisions of this code.

(b) The void date on an application may be extended up to 90 days or one examination may be rescheduled without a fee upon documented evidence by the applicant that the failure to complete the application process or to appear for an examination was due to a medical emergency or other circumstance beyond the control of the applicant.

(c) An application voided pursuant to the provisions of this section shall remain in the possession of the registrar for the period as he or she deems necessary and shall not be returned to the applicant. Any reapplication for a license shall be accompanied by the fee fixed by this chapter.

**STAFF RECOMMENDATION:**

Approve this proposal to amend B&P Code section 7074 regarding test scheduling.

**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE PROPOSAL FORM  
Business & Professions Code §7124.6**

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**SUBJECT:** Citation Disclosure

**PROBLEM/SUMMARY:**

In its current form, Business and Professions (B&P) Code section 7124.6 (e)(1) limits disclosure of a citation only to the license subject to a complaint substantiating that citation. Once that citation is disclosed, B&P Code section 7124.6 does not extend that disclosure to licenses later obtained or joined by persons associated with the license subject to the citation.

A contractor that receives a citation from the Contractors State License Board (CSLB) can cancel that license and obtain or join another license not subject to the complaint disclosure affecting the previous license. The result allows those aware of this “loophole” to freely operate under a different entity clear of any disclosure action. This eviscerates the purpose of B&P Code section 7124.6, which is to provide consumer protection by reporting the activities that subjected individual contractors to discipline. Therefore, B&P Code section 7124.6 should be modified to ensure that its original intent is effectuated: notification to the public of any complaints against a license.

**PROPOSED CHANGE:**

Amend B&P Code section 7124.6, at subsection (e), paragraph (1) to include language that establishes, in addition to the citation disclosure currently provided for, a mechanism to flag or mark, for the purpose of consumer awareness, every license issued thereafter that meet the following criteria: (1) the new license includes any culpable personnel of record listed on the license subject to citation; (2) the new license is obtained between the issue date of the citation subject to disclosure and five years hence.

**STAFF COMMENTS:**

This proposal will further the goal of B&P Code §7124.6, which is to disclose information to consumers regarding contractors disciplined by CSLB.

**PROPOSED LANGUAGE:**

B&P Code section 7124.6:

(a) The registrar shall make available to members of the public the date, nature, and status of all complaints on file against a licensee that do either of the following:

(1) Have been referred for accusation.

(2) 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.

(b) The board shall create a disclaimer that shall accompany the disclosure of a complaint that shall state that the complaint is an allegation. The disclaimer may also contain any other information the board determines would be relevant to a person evaluating the complaint.

(c) A complaint resolved in favor of the contractor shall not be subject to disclosure.

(d) Except as described in subdivision (e), the registrar shall make available to members of the public the date, nature, and disposition of all legal actions.

(e) Disclosure of legal actions shall be limited as follows:

(1) (a) Citations shall be disclosed from the date of issuance and for five years after the date of compliance if no additional disciplinary actions have been filed against the licensee during the five-year period. If additional disciplinary actions were filed against the licensee during the five-year period, all disciplinary actions shall be disclosed for as long as the most recent disciplinary action is subject to disclosure under this section. At the end of the specified time period, those citations shall no longer be disclosed.

(b) any disclosure undertaken pursuant this subsection shall appear on the license record of any licensee who meets the following criteria:

(i) whose license was issued, or whose association with an unrelated license began on or after the date of issuance of the subject citation; and

(ii) the licensee is identified as a member of personnel of record, as that term is defined at §7025 of this chapter, of the license subject the underlying citation at the time the citation was issued.

Any action taken pursuant subparagraphs (i) and (ii) of this subsection shall be subject to the five-year period of disclosure in effect against the licensee subject the underlying disclosure.

(2) Accusations that result in suspension, stayed suspension, or stayed revocation of the contractor's license shall be disclosed from the date the accusation is filed and for seven years after the accusation has been settled, including the terms and conditions of probation if no additional disciplinary actions have been filed against the licensee during the seven-year period. If additional disciplinary actions were filed against the licensee during the seven-year period, all disciplinary actions shall be posted for as long as the most recent disciplinary action is subject to disclosure under this section. At the end of the specified time period, those accusations shall no longer be disclosed.

(3) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

#### **RECOMMENDATION:**

Approve this proposal to amend B&P Code section 7124.6, regarding citation disclosure.



**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE PROPOSAL FORM  
Business & Professions Code §7137 & 7153.3**

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**SUBJECT:** Fees

**PROBLEM/SUMMARY:**

The Contractors State License Board (CSLB) needs to make several changes to its existing fee structures, as follows:

1. Application & Renewal Fees: CSLB is currently at its statutory cap for all licensing fees, and proposes increasing that cap. CSLB would then need to promulgate regulations to implement any fee increase, and would not move forward with a regulation until it was fiscally necessary.
2. Officer/Personnel Change Fees: CSLB currently charges no fee to process applications to change personnel on a license and, at this time, has no legal authority to charge such a fee. Additional level of staff involvement in the processing of applications for personnel changes means that CSLB cannot continue to process these applications without charging a fee.

Contractor licenses are issued to sole owners, partnerships, corporations, limited liability companies (LLC), and joint ventures. All of these business entity types, except sole owners and joint ventures, can change officers/personnel on their license. When licensees change their personnel they are required by law, pursuant to Business and Professions (B&P) Code section 7083, to notify CSLB.

In the past, applications for changes in personnel underwent a relatively simple process that involved verifying the completeness of the information on the application and confirming that the new personnel were eligible for licensure. However, in recent years, processing these applications has become significantly more complex.

Since CSLB began to fingerprint applicants for licensure in 2005, processing applications for personnel changes includes fingerprinting and criminal background reviews. This additional licensing requirement adds significant staff time to review and analyze conviction documentation and can lead to the denial of a personnel change application based on a criminal conviction.

In addition, CSLB began licensing LLCs in 2012, which are subject to bond, insurance, and personnel provisions that do not apply to other business entities. When processing an application to replace the qualifier for an LLC, the technician must ensure that these other requirements, which can change based on the personnel on the license, are still adequately met.

3. Additional Classification and Replacing the Qualifier Application Fees: Existing contractor licensees can apply to add classifications to their license or to replace the qualifying individual on their license.

The processing time for an application to add a classification is comparable to that of an application for an original license: verification of the qualifying individual's experience in the particular classification, and he or she must pass the trade examination for that classification. In addition, any related business name changes must be reviewed and deemed acceptable. An original license application carries a \$300 processing fee; however, an additional classification application is currently only \$75.

Similarly, the applications to replace the qualifier and to receive an original license involve comparable processing complexity, but vastly different fees. Again, the original license application fee is \$300, but the application fee to replace the qualifier is just \$75.

Since CSLB began fingerprinting applicants for licensure in 2005, processing applications to replace the qualifier includes fingerprinting and criminal background reviews. This additional licensing requirement adds significant staff time to review and analyze conviction documentation and can lead to the denial of a personnel change application because of a criminal conviction.

In addition, CSLB began licensing LLCs in 2012, which are subject to bond, insurance, and personnel provisions that do not apply to other business entities. When processing an application to replace the qualifier for an LLC, the technician must ensure that these other requirements, which can change based on the personnel on the license, are still adequately met.

4. Application Priority Processing Fee: CSLB currently accepts requests to expedite processing applications for licensure. When these requests are approved, usually to support significant job creation, the applications move to the front of the line for initial review and processing. These applicants, like all others, must fulfill relevant licensure requirements, including testing and criminal background review.

Expedited applications receive priority over others and the processing technicians focus their time on processing them thoroughly and promptly.

In Fiscal Year 2013-14, CSLB received approximately 392 requests to expedite an application, of which 171 were approved. CSLB currently charges no fee to

review requests for expedited service or for priority processing of these applications. Under this proposal, requests for priority processing of applications would not be subject to review for cause but, instead, approved upon submission of a completed request and payment of an adequate fee. Given the workload involved, CSLB has determined that an appropriate cost for priority processing would be no more than \$300.

Under certain circumstances, such as during a declared emergency or for military personnel, CSLB may need to approve expedited processing of applications based on other provisions of law for specific purposes. Such cases would be exempt from these provisions and the related fees.

**PROPOSED CHANGE:**

Amend B&P Code 7137 to raise the statutory limit on various fees, and establish a new expedite fee, and amend B&P Code section 7153.3 to set the fee for a delinquent HIS renewal at 50 percent of the renewal fee.

**STAFF COMMENTS:**

The Licensing division has identified new workload demands resulting from processing applications for personnel changes and from the increased number of applications to add a classification and to replace a qualifier. In addition, while a current process exists for applicants to request expedited application processing, there is no charge to do so. The division is currently reviewing workload and staffing to determine the appropriate fees for each of these activities, after which this proposal will be updated accordingly.

**PROPOSED LANGUAGE:**

**Amend B&P Code section 7137 as follows:**

The board shall set fees by regulation. These fees shall not exceed the following schedule:

(a) The application fee for an original license in a single classification shall not be more than ~~three hundred dollars (\$300)~~. three hundred sixty dollars (\$360).

The application fee for each additional classification applied for in connection with an original license shall not be more than seventy-five dollars (\$75).

The application fee for each additional classification pursuant to Section 7059 shall not be more than ~~seventy-five dollars (\$75)~~. three hundred dollars (\$300).

The application fee to replace a responsible managing officer, responsible managing manager, responsible managing member, or responsible managing employee pursuant to Section 7068.2 ~~seventy-five dollars (\$75)~~. three hundred dollars (\$300).

The application fee to add personnel, other than a qualifying individual, to an existing license shall not be more than one hundred fifty dollars (\$150).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer, responsible managing manager, responsible managing member, or responsible

managing employee, or for an asbestos certification or hazardous substance removal certification, shall not be more than sixty dollars (\$60).

(c) The fee for scheduling or rescheduling an examination for a licensee who is required to take the examination as a condition of probation shall not be more than sixty dollars (\$60).

(d) The initial license fee for an active or inactive license shall not be more than ~~one hundred eighty dollars (\$180)~~ two hundred twenty dollars (\$220).

(e) The renewal fee for an active license shall not be more than ~~three hundred sixty dollars (\$360)~~ four hundred thirty dollars (\$430).

The renewal fee for an inactive license shall not be more than ~~one hundred eighty dollars (\$180)~~ two hundred twenty dollars (\$220)

(f) The delinquency fee is an amount equal to 50 percent of the renewal fee, if the license is renewed after its expiration.

(g) The registration fee for a home improvement salesperson shall not be more than ~~seventy-five dollars (\$75)~~ ninety dollars (\$90).

(h) The renewal fee for a home improvement salesperson registration shall not be more than ~~seventy-five dollars (\$75)~~ ninety dollars (\$90).

(i) The application fee for an asbestos certification examination shall not be more than ~~seventy-five dollars (\$75)~~ ninety dollars (\$90).

(j) The application fee for a hazardous substance removal or remedial action certification examination shall not be more than ~~seventy-five dollars (\$75)~~ Ninety dollars (\$90).

(k) In addition to any other fees charged to C-10 and C-7 contractors, the board may charge a fee not to exceed twenty dollars (\$20), which shall be used by the board to enforce provisions of the Labor Code related to electrician certification.

(l) The application fee for priority processing of applications for licensure shall not be more than three hundred dollars (\$300). Approved expedited processing of applications for licensure, as required by other provisions of law, shall not be subject to this paragraph.

(m) The application fee for priority processing of applications for home improvement salesperson registration shall not be more than ninety dollars (\$90).

### **Amend B&P Code section 7153.3 as follows:**

#### **7153.3.**

(a) To renew a registration, the registrant shall before the time at which the registration would otherwise expire, apply for renewal on a form prescribed by the registrar and pay a renewal fee prescribed by this chapter.

(b) An application for renewal of registration is delinquent if the application is not postmarked by the date on which the registration would otherwise expire. A registration may, however, still be renewed at any time within three years after its expiration upon the filing of an application for renewal on a form prescribed by the registrar and the payment of the renewal fee prescribed by this chapter and a delinquent renewal penalty in the amount of ~~twenty-five dollars (\$25)~~ equal to 50 percent of the renewal fee. If a registration is not renewed within three years, the person shall make application for registration pursuant to Section 7153.1.

(c) The registrar may refuse to renew a registration for failure by the registrant to complete the application for renewal of registration. If a registrant fails to return the application rejected for insufficiency or incompleteness within 90 days from the original date of rejection, the application and fee shall be deemed abandoned. Any application abandoned may not be reinstated. However, the person may file a new application for registration pursuant to Section 7153.1.

The registrar may review and accept the petition of a person who disputes the abandonment of his or her renewal application upon a showing of good cause. This petition shall be received within 90 days of the date the application for renewal is deemed abandoned.

**STAFF RECOMMENDATION:**

Approve this proposal to amend B&P Code sections 7137 & 7153.3, related to fees.

**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE PROPOSAL FORM  
Business and Professions Code §7159**

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**SUBJECT:** This proposal would rewrite the home improvement contract provisions of the Contractors' State License Law.

**IDENTIFICATION OF PROBLEM/SUMMARY:**

This proposal addresses one of the Contractors State License Board's (CSLB) 2015-16 strategic goals. CSLB also raised this issue in its 2014 sunset review report.

CSLB's Enforcement Monitor, in his third report issued in 2003, recommended three broad changes to home improvement contract (HIC) law:

1. Review and simplify the contract's elements;
2. Amend Business and Professions Code section 7159 to clarify the law governing HICs and to ensure proper disclosure of the most important consumer information; and
3. Resolve the current practical problems of service and repair contracts.

While in 2004 legislation was enacted intended to address these concerns, they remain largely unresolved. The HIC law contains so many lengthy consumer disclosures that it can be overwhelming, which does not help consumers.

**PROPOSED CHANGE (Include the Related Sections of Law):**

This proposal would attempt to streamline the HIC law to maintain its important consumer protections and disclosures, while also making it easier for both consumers and contractors to understand. It is not intended to eliminate or weaken any of the important consumer protections currently provided by the law but, rather, to help achieve one of SB 30's goals, namely promoting clear and effective HICs in order to help prevent consumer complaints and disputes.

**RECOMMENDATION:**

Approve, in concept, this proposal to reorganize the home improvement contract provisions of the Contractors' State License Law, and direct staff to work with interested parties over the next several months to further develop the proposed changes.

**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE PROPOSAL FORM  
Business & Professions Code §7159.15**

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**SUBJECT:** Residential Solar Contracts: Disclosure

**PROBLEM/SUMMARY:**

The increasing popularity of Solar Panel Energy Systems (also known as PV Systems) marks a growing trend in California's construction industry. The lack of common knowledge about these systems and limited disclosure from the industry make it difficult for consumers to reasonably understand the terms of the contracts they enter into, as well as the basis from which the contractor determines the size of the apparatus being installed. In addition, CSLB has received reports of predatory sales tactics that accompany unscrupulous financing relationships.

**PROPOSED CHANGE:**

Add a new Business & Professions (B&P) Code section, 7159.15, to increase requirements for home improvement solar contracts, in order to better inform consumers of their obligations under these contracts.

**STAFF COMMENTS:**

This proposal was submitted by the Enforcement division, which has found that the lack of common knowledge about solar systems and limited disclosure from the industry makes it difficult for consumers to reasonably understand the terms of the contracts they enter into, as well as the basis from which the contractor determines the size of the apparatus being installed. In addition, CSLB has received numerous reports of predatory sales tactics that accompany unscrupulous financing relationships.

**PROPOSED LANGUAGE:**

**Add B&P Code section 7159.15 as follows:**

- (a) Notwithstanding any other provision of law, a buyer has seven days to cancel a contract for a home improvement solar system. The text of the notice shall be at least 12-point bold face type.
- (b) In addition to the disclosure required by Section 7159, contracts for home improvement solar contracts (need to define) shall provide a notice to the consumer containing all of the following information:
  - (1) How much and from whom the financing is obtained.
  - (2) The calculations used by the home improvement salesperson to determine how many panels the homeowner needs to install.
  - (3) The calculations used by the home improvement salesperson to determine how much energy the panels will generate.

- (4) A disclosure of any additional monthly fee's the homeowner's electric company may bill, any turn-on charges, and any fees added for the use of an internet monitoring system of the panels or inverters.
- (5) The terms and conditions of any guaranteed rebate.
- (6) Disclosure of the final contract price, without the inclusion of possible rebates.

**RECOMMENDATION:**

Approve this proposal to add B&P Code section 7159.15, regarding residential solar contracts.



# AGENDA ITEM H

## Enforcement





## AGENDA ITEM H-1

# Review and Possible Approval of October 30, 2015 Enforcement Committee Meeting Summary Report





# CONTRACTORS STATE LICENSE BOARD

## ENFORCEMENT COMMITTEE SUMMARY REPORT

### ENFORCEMENT COMMITTEE MEETING

October 30, 2015  
Sacramento, CA

#### **A. CALL TO ORDER**

Enforcement Committee Chair Kevin Albanese called the meeting of the Contractors State License Board (CSLB) Enforcement Committee to order at 11:10 a.m. in the John C. Hall Hearing Room at CSLB Headquarters, 9821 Business Park Drive, Sacramento, California 95827. A quorum was established.

#### Committee Members Present

Kevin Albanese, Chair  
Bob Lamb  
Marlo Richardson  
Nancy Springer

#### Committee Members Absent

Johnny Simpson  
Frank Schetter  
Dave Dias

#### Board Members Present

Joan Hancock  
Susan Granzella  
Pastor Herrera Jr

#### CSLB Staff Present

Cindi Christenson, Registrar  
David Fogt, Chief of Enforcement  
Rick Lopes, Chief of Public Affairs  
Laura Zuniga, Chief of Legislation  
Karen Ollinger, Chief of Licensing  
Jeff Miller, Enforcement Staff  
Cindy Kanemoto, Chief Deputy Registrar

Dawn Willis, Enforcement Staff  
Michael Jamnetski, Enforcement Staff  
Candis Cohen, Enforcement Staff  
Doug Galbraith, Enforcement Staff  
Michael Franklin, Enforcement Counsel  
Kristy Schieldge, Legal Counsel  
Heather Young, Enforcement Staff

#### **CHAIR'S REMARKS**

Committee Chair Kevin Albanese recognized Enforcement staff that volunteered at Local Assistance Centers established in the aftermath of the Valley and Butte fires. More than 20 CSLB staff members volunteered to assist disaster victims in addition to their daily duties, many working 10 hours a day or more.

Mr. Albanese updated the Committee on the October 21, 2015, Consumer Protection Law Enforcement training sponsored by the Enforcement division. Instructors included



Orange County Deputy District Attorney James Young, Riverside County Deputy District Attorney Lauren Dossey, and Yolo County Deputy District Attorney David Irey. Attendees learned strategies for effectively prosecuting unlicensed operators; achieving felony convictions for financial crimes; using the unfair business practice statutes to remove financial incentives from businesses that violate the law; and achieving injunctive relief as a means to prevent future harm.

Mr. Albanese congratulated Jessie Flores on his recent appointment as CSLB's Deputy Chief of Enforcement. In that capacity he will be second in command of the Enforcement division, assisting Chief of Enforcement David Fogt. Mr. Flores has extensive CSLB experience, having supervised the Board's largest investigation center and, most recently, serving as the Program Manager for the Southern Investigative Centers; his diplomatic skills are evident from the relationships he has established through years of representing CSLB at trade association meetings and his appearances on major television networks throughout southern California. His background in finance, CSLB operations, and investigations will be instrumental in this critical role, in which he is responsible for administering statewide enforcement policy and procedures on behalf of the Chief of Enforcement.

## **B. PUBLIC COMMENT SESSION**

There was no public comment.

## **C. ENFORCEMENT PROGRAM UPDATE**

Chief Fogt and Deputy Chief Flores presented the Enforcement Program Update and provided highlights from the Intake and Mediation Centers, Investigative Centers, and Statewide Investigative Fraud Team.

Chief Fogt reported that staff are meeting or exceeding Board expectations for complaint-handling production and cycle-time goals. Helping to resolve construction-related complaints remains a high priority for staff.

## **D. REVIEW AND DISCUSSION REGARDING STRATEGIES TO ADDRESS DECEPTIVE SOLAR PRACTICES**

Chief Fogt updated the Committee on Enforcement efforts to address deceptive practices in the solar industry, such as a general lack of specificity in solar contracts; the exploitation of consumer confidence about energy savings when systems perform below expectations; and complex or, often, unlawful finance agreements.

Committee Members Bob Lamb and Nancy Springer noted the importance of CSLB addressing problems within the solar industry and the importance of industry compliance with contracting and permit laws.



**E. REVIEW, DISCUSSION, AND POSSIBLE RECOMMENDATION REGARDING PRIORITIZING UNDERCOVER STINGS**

Chief Fogt conveyed to the Committee the importance of undercover stings, which allow CSLB to effectively identify and support the prosecution of unlicensed individuals who act in the capacity of a contractor and commit other significant violations of Contractors' License Law, including advertising without a license, misrepresenting repair work, and employing workers without carrying workers' compensation insurance.

Staff recommended that the Enforcement Committee support prioritizing undercover sting operations over responding to leads and conducting sweeps by setting a goal of 12 sting days per Enforcement Representative in 2016.

Motion to Approve Proposed Prioritization of Sting Operations

**MOTION: Committee Member Bob Lamb moved, and Committee Member Nancy Springer seconded, a motion to recommend for full Board consideration approval of the prioritization of stings at the December 10, 2105 meeting. The motion carried unanimously, 4-0.**

NAME	Aye	Nay	Abstain	Absent	Recusal
Kevin J. Albanese	X				
Bob Lamb	X				
Marlo Richardson	X				
Nancy Springer	X				

**G. REVIEW, DISCUSSION, AND POSSIBLE ACTION REGARDING STRATEGIES TO REDUCE THE NUMBER OF LICENSEES FILLING A FALSE EXEMPTION FROM WORKERS' COMPENSATION REQUIREMENTS**

Chief Fogt reminded the Committee about the discussion at the September 30, 2015 Board meeting in San Diego regarding a chart presented by the Licensing division showing that more than 50 percent of CSLB licensees have a workers' compensation (WC) exemption on file.

The Enforcement Committee was asked to present the following recommendations to the full Board for approval:

1. Perform an analysis and conduct outreach regarding public works contractors registered with the Department of Industrial Relations (DIR);
2. Prioritize consumer complaints involving workers' compensation insurance compliance;
3. Verify WC insurance for those specific classifications most likely to need WC;



- 4. Research Construction Monitor Database for permit activities on large projects; and,
- 5. Pursue State Agency Partnering.

Motion to Approve Proposed Five Workers' Compensation Compliance Strategies:

**MOTION: Committee Member Bob Lamb moved, and Committee Member Nancy Springer seconded, a motion to recommend to the full Board approval of five strategies to address workers' compensation compliance at the December 10, 2015 meeting. The motion carried unanimously, 4-0.**

<b>NAME</b>	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
Kevin J. Albanese	X				
Bob Lamb	X				
Marlo Richardson	X				
Nancy Springer	X				

**E. RECOGNITION OF EXEPTIONAL SERVICE BY CSLB STAFF AND LEGAL COUNSEL**

**F. ADJOURNMENT**

Enforcement Committee Chair Kevin Albanese adjourned the meeting at approximately 12:01 p.m.





## AGENDA ITEM H-2

# Review, Discussion, and Possible Action Regarding Recommendations for Prioritizing Undercover Stings





The Enforcement Committee met on October 30, 2015, and voted unanimously to recommend that the full Board review, discuss, and consider approving the prioritization of undercover sting operations for the Statewide Investigative Fraud Team (SWIFT) over both responding to leads and conducting sweeps by setting a goal of 12 sting days per year, per Enforcement Representative in 2016.

### **Statewide Investigative Fraud Team**

Formed with the support of industry in 1989, SWIFT undertakes proactive investigations, per Business and Professions Code section 7011.4(b). Initially, SWIFT centered on combatting only unlicensed activity; today, however, its primary focus is ensuring that contractors are licensed and provide workers' compensation insurance for their employees. SWIFT has three offices statewide and is comprised of 28 investigators, assigned to either the Labor Enforcement Task Force (LETF) or the Joint Enforcement Strike Force (JESF). In addition, SWIFT's non-sworn Enforcement Representatives (ERs) have a unique authority to issue Notices to Appear (NTAs) for unlicensed activity. On September 30, 2015, the Governor signed SB 560 (Monning), which will allow SWIFT ERs, beginning January 1, 2016, to include workers' compensation violations (Business and Professions Code section 7011.4(a)) on an NTA.

SWIFT performs proactive enforcement three ways: 1) organizing and participating in undercover sting operations; 2) responding to leads, which are generally provided by industry; and 3) conducting sweeps, often with partnering state agencies.

### **STINGS**

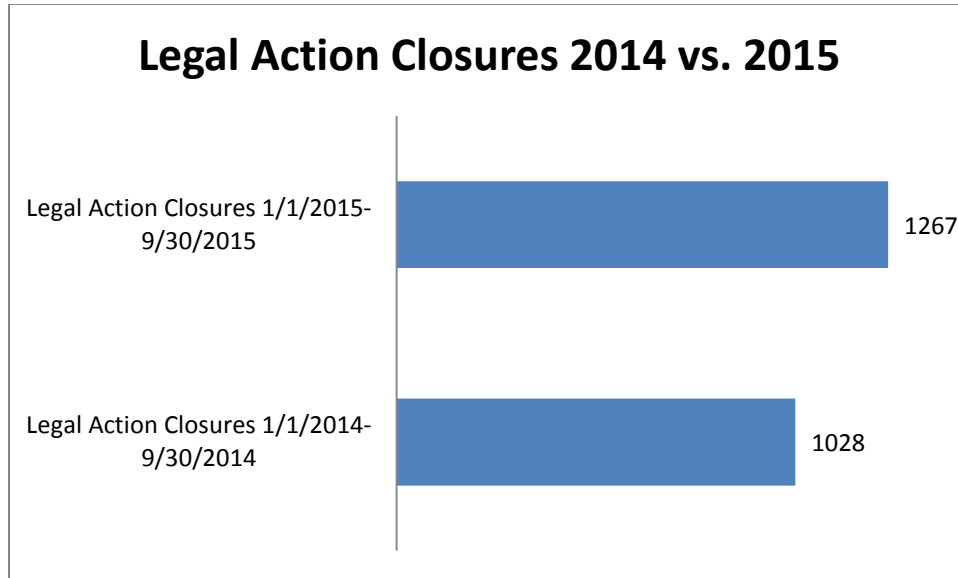
Undercover stings allow CSLB to effectively identify and support the prosecution of unlicensed individuals who act in the capacity of a contractor and commit other significant violations of Contractors' License Law, including advertising without a license, misrepresenting repair work, and employing workers without carrying workers' compensation insurance. Investigators partner with local law enforcement and other state agencies, such as the Employment Development Department (EDD), then pose as homeowners seeking bids for home or commercial property improvements (for example, roofing, HVAC, painting, landscaping, swimming pool construction, flooring, etc.).

### **Sting Production**

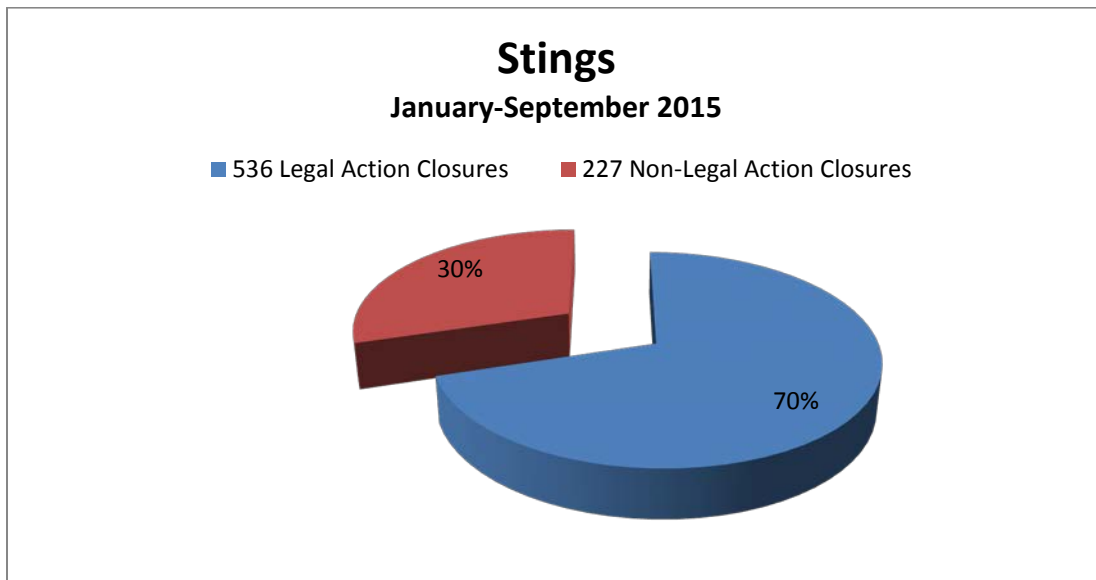
Currently, SWIFT ERs average eight stings per year. In 2014, SWIFT conducted 74 sting days. As of January 1, 2015, SWIFT raised the sting day goal, and through September 30, 2015, had already conducted 71 sting days. SWIFT is on target to



conduct 91 sting days by the end of 2015, representing a 23 percent increase from 2014. As a result, the number of legal action closures has increased 10 percent from 2014 to 2015.



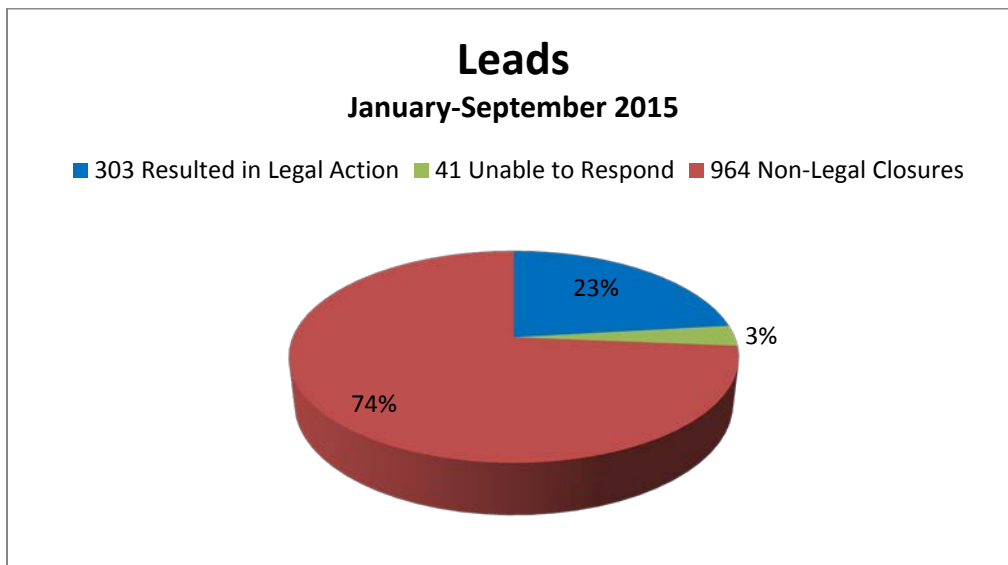
SWIFT staff identified most sting targets through illegal advertisements. Since January 1, 2015, seventy percent of the investigations from these efforts have resulted in a legal action.





## LEADS

CSLB regularly receives tips about active, ongoing, unlicensed or illegal activity from confidential or other sources, which may lead SWIFT to perform a construction site inspection. Most leads come from either labor compliance investigators or licensees who lost a contract to an unlicensed operator. As of September 30, 2015, twenty-three percent (23%) of the 1,308 investigations opened because of a lead resulted in a legal action.



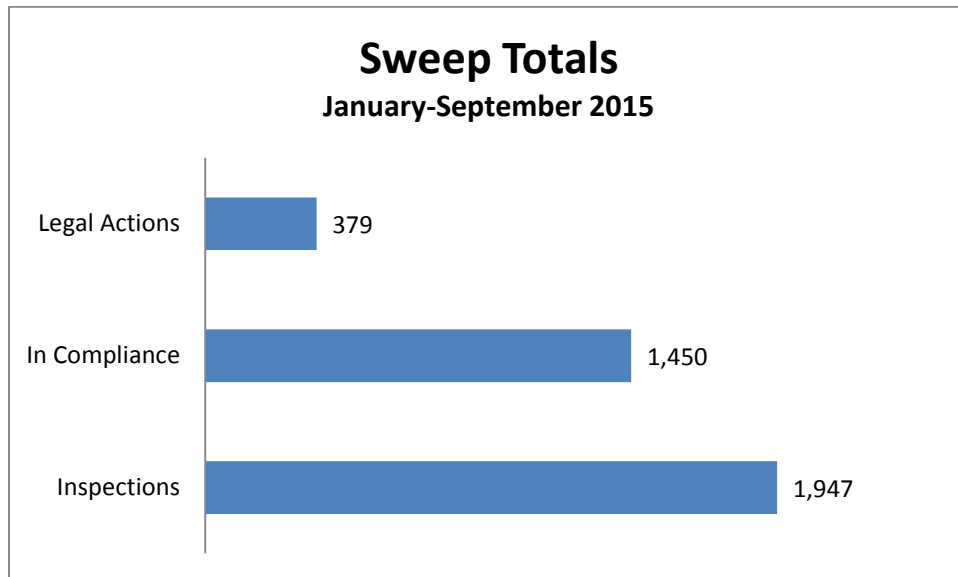
## SWEEPS

As mentioned previously, SWIFT routinely partners with other state and local agencies through LETF and JESF. LETF primarily conducts sweeps with partner state agencies at active job sites to verify employee wages and to ensure compliance with licensing, workers' compensation insurance, tax, and job safety requirements. Partners include the Department of Industrial Relations' Division of Safety and Health, Division of Labor Standards Enforcement, EDD, and Franchise Tax Board.

JESF primarily investigates complaints by conducting criminal tax audits and performing undercover sting operations. CSLB's JESF partners include EDD, the Division of Labor Standards Enforcement, and district attorney investigators. CSLB investigators assigned to JESF primarily pursue criminal charges against contractors who violate license, tax withholding, and/or workers' compensation insurance laws.



Between January 1, 2015 and September 30, 2015, out of 1,947 inspections, 379 contractors – or 19 percent – were found to have violated California Contractors’ License Law.





**PROACTIVE COMPLAINT MATRIX**

SWIFT receives a variety of tips and leads through many different sources. In determining which leads to pursue and how best to pursue them, SWIFT focuses on obtaining optimal results and apprehending egregious offenders who pose a threat to consumers, employees, businesses, and legitimate licensed contractors.

Below is an updated and revised Proactive Complaint Matrix that further prioritizes consumer complaints.

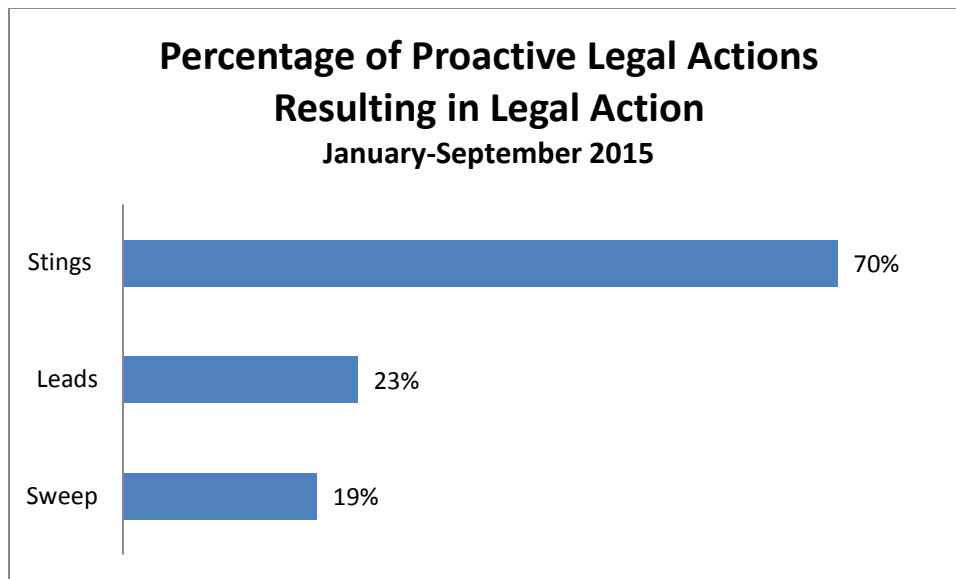
	<i>Disaster Response</i>	<i>Elder Abuse</i>	<i>Unlicensed</i>	<i>No Workers Compensation</i>	<i>Suspended/Expired</i>	<i>Out of Class</i>	<i>No Permit</i>	<i>Unlicensed Advertising</i>	<i>Outreach</i>
Elected Officials									
District Attorneys									
Consumers									
Board Members			High Priority						
Compliance Organizations									
Contractors									
Building Officials									
Industry Associations									
Media Referrals					Low Priority				
Anonymous Tips									



### PROACTIVE ENFORCEMENT SUMMARY

SWIFT primarily aims to identify and take enforcement action against contractors that violate contractors' license law before a consumer complaint is filed and without disrupting law abiding contractors.

The chart below summarizes the percentage of time that a contractor is found to be in violation of contractors' license law at a sting, in response to a lead, or when performing a sweep. The chart entries generally confirm the greater productivity of sting activities as compared to other SWIFT actions.



### CONCLUSION

Sweeps, leads, and stings all comprise essential components of SWIFT operations. However, as shown above, sting activities are significantly more effective than sweeps or leads.

### STAFF RECOMMENDATION

Staff recommends that the Board prioritize undercover sting operations over responding to leads and conducting sweeps by setting a goal of 12 sting days per year, per Enforcement Representative in 2016. This represents an approximate increase of four sting days per Enforcement Representative.





## AGENDA ITEM H-3

# Review, Discussion, and Possible Action Regarding Strategies to Reduce the Number of Licensees Filing a False Exemption from Workers' Compensation Insurance Requirements





The Enforcement Committee met on October 30, 2015, and voted unanimously to have the full Board review, discuss, and consider approving the five workers' compensation (WC) insurance compliance strategies as set forth below.

At the September 3, 2015 Board Meeting, license statistics were discussed that confirm more than 50 percent of contractors' licenses have an exemption from workers' compensation insurance on file with the Contractors State License Board (CSLB).

CSLB requires WC for issuance of an active license, the reactivation of an inactive license, and to renew an active license, unless the licensee does not employ anyone in a manner subject to California workers' compensation laws (Business and Professions Code section 7125). Licensees must either submit proof of workers' compensation insurance coverage or file an exemption from WC with CSLB. It is commonly known in the construction field that most contractors do employ workers, which raises concerns about the high rate of WC exemptions.

At the September meeting, the Board recommended that the Enforcement Committee assume a lead role in establishing a policy to reduce the number of licensees with a fraudulent exemption from WC.

Enforcement staff has identified the following opportunities for Board consideration to gain greater compliance with WC requirements:

### **1. Public Works Contractors Registered with the Department of Industrial Relations (DIR)**

- A list of 17,800 contractors has been obtained from DIR;
- Staff will perform a random check of the registered contractors to confirm WC compliance;
- CSLB will send a letter to contractors with an exemption on file reminding them about the need to provide CSLB with proof of a WC policy if employing workers; and
- Contractors that receive a letter but do not submit a WC policy and that work in a classification identified as most likely to require employees (detailed on the following page) will be subject to further investigation.

### **2. Consumer Filed Complaints**

- Consumer Services Representatives (CSR) will prioritize a review of all incoming complaints for WC compliance;



- The two Intake and Mediation Center Enforcement Representatives (ER) dedicated to WC investigations and related license suspension will provide training to Investigative Center ERs.

**3. Specific Classification WC Verification**

- The following license classifications are most likely to need employee labor to perform contracting work and are, therefore, most likely to require WC:

Classification	Total - Policies & Exemptions	Number of WC Policies on File	Number of Exempt on File	Percentage of Total with Exemptions
A General Engineering	14,540	8,789	5,751	39%
C-8 Concrete	5,842	3,274	2,568	44%
C-10 Electrical	24,438	10,358	14,080	58%
C-20 HVAC	11,285	4,986	6,299	56%
C-36 Plumbing	14,887	6,074	8,813	59%
C-46 Solar	1,053	637	416	39%

- Staff will randomly check licensees with a WC exemption on file to determine if they advertise online, have received a consumer complaint, or appear on on-line permit records.

**4. Research Construction Monitor Database**

- Enforcement staff will conduct a random check of permit activity in partnering counties to confirm that contractors obtaining permits for large projects have WC insurance;
- CSLB will send an educational letter to contractors performing large projects with a WC exemption, and consider an enforcement action if the contractor does not provide a WC policy.

**5. State Agency Partnering**

- Staff will coordinate a meeting with the California Department of Insurance and the Division of Labor Standards Enforcement to explore new strategies.

**STAFF RECOMMENDATION**

Staff recommends that the full Board approve the five enforcement strategies summarized below:

1. Perform an analysis and conduct outreach regarding public works contractors registered with the Department of Industrial Relations;
2. Prioritize consumer complaints involving workers' compensation Insurance compliance;
3. Verify WC insurance for those licensed in specific classifications most likely to need WC;
4. Research Construction Monitor Database for permit activities on large projects; and,
5. Pursue state agency partnerships regarding WC compliance.

## AGENDA ITEM H-4

# Enforcement Program Update

- a. Undercover Operations and Contractors License Compliance at Active Job Sites
- b. General Complaint Handling Statistics



**INTAKE AND MEDIATION CENTERS (IMCs) UPDATE****Uninsured Contractor Caught With Employees**

A subcontractor filed a complaint against a general contractor for failure to pay him for drywall work he had completed. A Sacramento Consumer Services Representative (CSR) contacted the homeowner to determine if the general contractor had received payment for the subcontractor's work. In so doing, she discovered that the general contractor's employees worked on the job, despite having a workers' compensation exemption on file with CSLB, and that the general contractor was still on the job with his employees. The CSR coordinated a visit to the jobsite by a SWIFT investigator, who promptly issued a stop order and a citation for using employee labor without a valid workers' compensation policy. The CSR settled the complaint by getting the general contractor to pay the subcontractor, and also ensured the removal of the uninsured workers from the property in order to protect the homeowner.

**Former Non-Licensee Provides \$9,000 Refund**

A homeowner hired a non-licensee to replace his drain lines for \$9,000. After replacement, the drain lines did not function as promised, so the homeowner paid another contractor to correct the work and filed a complaint with the Norwalk IMC. A CSR contacted the now-licensed contractor who did the initial work, who stated that he thought he could legally contract while his application was processed and was sorry for the problems the homeowner had experienced. The contractor immediately refunded the entire \$9,000 to the homeowner.

**INVESTIGATIVE CENTERS (ICs) UPDATE****Unlicensed Duo Uses Elderly Homeowner as an ATM**

An 87-year old Santa Barbara resident paid two unlicensed persons \$8,000 to install a trenchless "liner pipe" on her property. At some point, the city learned that the work had been performed without a permit. Six months later, the pair returned to the home, demanding an additional \$1,869 in "permit fees." The homeowner paid in full, feeling obligated after the pair "blamed" her for alerting the city to the permit problem. Just over a week later, one of the suspects appeared again at the home, demanding another \$776 for "late charges" from the city, which the homeowner paid. A licensed plumber later evaluated the work and confirmed that the suspects had not performed any of the work expected from the original \$8,000 contract. The Valencia Investigation Center received the case and later discovered that none of the homeowner's subsequent payments were used for permits or "late fees." In total, the pair extracted \$10,645 from the homeowner. CSLB forwarded the investigation to the District Attorney for violations, including grand theft, diversion of funds, theft from an elder/dependent adult, and unlicensed contracting and advertising.



**Mutually Duped by an Unlicensed Contractor, Homeowner and Licensee “Pool” their Resources**

In June 2014, non-licensee Gilbert Nunez asked a legitimate San Bernardino County pool contractor for a job. Nunez did not get the job, but he did get the licensee’s business card. He then used the card, along with the licensee’s business name and license number, to dupe an Apple Valley homeowner into a \$10,000 pool remodel. A significant job, the pool facelift included a re-plaster, new lights, new drains and pumps, and surrounding landscaping interlaced with stones, boulders, waterslides, and waterfalls, for which Nunez took an illegal 33 percent down payment. Work was underway when the homeowner casually asked Nunez about his pool company. Assuming he was caught, Nunez promptly grabbed his workers and left the site. The homeowner called the number on the business card and quickly realized, along with the licensee, that both had been victims.

An investigator with the CSLB San Bernardino Investigation Center (SBIC) received the case and learned that in 2002 CSLB had issued Nunez an administrative citation for unlicensed contracting. Nunez also had felony convictions for burglary and auto theft, and has likely been contracting without a license for years. The SBIC referred the investigation to the San Bernardino County District Attorney’s office, and on October 20, 2015, Nunez pled guilty to misdemeanor contracting without a license. He will face jail time, fines, and three years’ probation, as well as a restitution hearing in November 2015. In the meantime, the homeowner paid the licensee to finish the pool remodel that was illegally begun under his name.

**Norwalk Investigator Compels Licensee to Refund \$180,000 to Elderly Consumer for Subpar Project**



A Norwalk Enforcement Representative fought against the ticking clock of an impending home sale to ensure restitution for

an 89-year old Los Angeles homeowner. The complainant initially entered into a written home improvement contract with a licensee for a \$25,365 bathroom remodel. Over time the scope of the project expanded and eventually reached a \$178,430 contract. Although the contractor completed the work, the complainant had concerns about the workmanship and filed a complaint with CSLB. The investigator learned, after first contact with the homeowner, that the home was for sale and that potential evidence could be forever lost. The investigator secured an industry expert evaluation of the site within only a few days, and brought photos of the workmanship directly to the Responsible Managing Officer (RMO) of the licensee responsible for the project. The RMO was reportedly so disappointed by the work documented in the photos that he



agreed to immediately refund the homeowner \$180,000. The home sold a few days later.

**Warning to Homeowners Contracting for “Labor Only” Work on their Homes**

In December 2013, an unlicensed contractor entered into a verbal agreement to perform home repair and remodeling work at a San Francisco residence on a “labor only” basis. After paying the contractor \$4,825, the homeowner terminated him for billing discrepancies and poor workmanship, which, according to a licensee, would cost nearly \$16,000 to correct. Immediately following his termination, the contractor filed a wage claim with the Labor Commissioner seeking \$13,525 in unpaid wages from the homeowner. In May 2015, the Commissioner issued an award in the contractor’s favor for \$24,790.73, based upon Labor Code provisions for wages, damages, interest, and penalties.

The homeowner sought help from the San Francisco Investigation Center (SFIC). An SFIC Enforcement Representative immediately opened a complaint and, following an investigation, the SFIC issued the contractor a citation for advertising and contracting without a license, and for failing to carry workers’ compensation insurance for his employees. The homeowner appealed the Commissioner’s decision, and the ER received a subpoena to appear at an October 2015 superior court hearing on the matter. However, the opposing sides reached a settlement in advance of the hearing, which included an agreement that the homeowner was not responsible for any payment to the contractor. CSLB learned that at the end of October the contractor paid in full the civil penalty for contracting without a license.

**Non-Licensee with Extensive History Caught By CSLB Sacramento (South) Investigation Center**

As a result of 12 complaints jointly investigated by two Enforcement Representatives that were referred to the Sacramento County District Attorney, suspect Robert Lee Griffith currently faces 19 felony charges, including theft, burglary, and diversion of funds, as well as 10 misdemeanors and violation of the terms of his probation from previous convictions. Griffith has an extensive history as an unlicensed cabinet manufacturer. His pattern involves including the installation of cabinets in his contracts, accepting down payments of 50 percent and more, and never delivering any products or performing any work. Griffith has taken well over \$95,000 from consumers in Sacramento County and the surrounding area. An ER obtained an agreement from the Sacramento County District Attorney handling the case to accept complaints from other local jurisdictions.

**“On behalf of myself and the trustees, I want to express our deep appreciation for all the hard work and diligence you put into...a successful outcome”**

A representative of the Labor Management Compliance Committee from the masonry industry in the Bay Area shared these sentiments with a CSLB Quality Assurance Enforcement Representative for her work on a public works case. During a related investigation, the ER discovered a San Mateo County licensed tile contractor evading prevailing wage requirements on a job in San Jose and opened an investigation. The licensee issued fraudulent and duplicate checks to his employees to circumvent the public works obligations. The ER procured adequate documentation from one of the





employees on the job that claimed he received two payroll checks: one in the amount of the prevailing wage and another for a lesser amount. He was instructed to cash the second check, which was then reconciled with the licensee’s bank account. Although the offending tile contractor reimbursed the general contractor, the provisions of B&P Code section 7090.5 places responsibility with the general contractor, who paid liquidated damages of \$115,692 to the City of San Jose, which will return the money to the underpaid workers. The tile contractor received four years’ probation with terms that include massive fines, retaking exams, and debarment from public works jobs for the length of the probation.

### STATEWIDE INVESTIGATIVE FRAUD TEAM (SWIFT)

#### The Statewide Investigative Fraud Team Fall “Blitz”



Between October 13 and 15, 2015, sixteen Enforcement Representatives, representing the SWIFT units from field offices statewide, participated in seven immensely successful sting operations in as many counties. The thrice-annual SWIFT “blitz” is an often two or three-day sting operation implemented simultaneously by all three SWIFT field offices in California in the spring, summer, and fall each year. SWIFT unleashed this year’s “Fall Blitz” in the following counties: Sonoma, Solano, Fresno,

Mendocino, Riverside, Los Angeles, and San Diego. Notably, Mendocino and Solano counties have not hosted a SWIFT sting in three years, and this fall’s operation represents the ongoing SWIFT effort to increase local agency partnerships and representation statewide.



The results of the 2015 fall blitz were impressive: SWIFT issued 76 Notices to Appear (NTAs), and 23 non-licensee citations and criminal follow-up investigations are pending. An additional nine licensee administrative citations and criminal follow-ups are pending. Totaling 108

legal actions, these numbers reflect an average of 6.75 legal actions per Enforcement Representative (ER) over all three days, statewide. Considering an ER will “set” an average of 10 suspects to bid a single sting, this represents a nearly 70 percent success rate across the state.

Highlights of the fall blitz include: two NTA suspects arrested and booked into county jail; two referrals of unlicensed contractors from consumer complaints originating in



CSLB Investigative Centers that resulted in two NTAs to those suspects; one NTA suspect with an outstanding \$75,000 felony warrant; one NTA suspect in possession of methamphetamine and drug paraphernalia; and one suspect with a \$5,000 warrant. One suspect taunted law enforcement officers on site and then fled the scene prior to NTA issuance. A diligent SWIFT ER later identified this suspect by placing a phone call and a citation was opened against the suspect.

### **SWIFT Enforcement Representative Runs around Small Town to Get His Answers and His Man**

On November 12, 2015, two SWIFT Enforcement Representatives (ERs) traveled to Calaveras County to follow-up on a lead about unlicensed activity at a residence in Murphys. As they arrived, seven workers were leaving, apparently on their way to lunch. The investigators waited for three hours but, ultimately, returned to CSLB headquarters without engaging the workers. The next day, SWIFT received another tip about activity on the site. One of the ERs returned alone and observed all workers on site. In an undercover capacity, the ER identified the individual in charge and obtained a business card from the suspect who claimed to be an employee of the business listed on the card, which included a CSLB license number.

The license number was registered at a Southern California address, but the business address of record was down the street from the jobsite. The ER reported to the local address and found a restaurant. After speaking to a hostess and making a series of phone calls, the ER concluded that the business card was a fake, that the number on the card belonged to a legitimate licensee in another county, and that the individual on site was not the licensee's employee. The ER then returned to the site, identified himself, and obtained admissions from the suspect that the license was being used without permission, that all individuals worked for the suspect, and that he had no workers' compensation policy.

An unlicensed contractor, the suspect had received an administrative citation from SWIFT in July 2015. CSLB will, therefore, refer the case to the Calaveras County District Attorney's Office for charges of contracting and advertising without a license, fraudulent use of a license number, and failure to provide workers' compensation for six employees.

### **Effective Multi-Agency Communication Results in \$14,500 in Fines to Store Owner and Employee**

CSLB participates in both the Labor Enforcement Task Force (LETF) and the Joint Enforcement Strike Force (JESF). In September 2015, a Statewide Investigative Fraud Team (SWIFT) Enforcement Representative (ER) received a lead from her LETF partners alleging that the owner of a Mariposa County water tank and equipment supply store, operating without a contractor's license, used a store employee to install the tanks it sells. As this work requires a contractor's license, the ER visited the store and solicited an undercover offer for materials and the installation of tanks by the store employee. The facts supported treating the installer as an independent contractor, and not a store employee. However, after the ER left the scene she contacted her JESF partners at the Division of Labor Standards Enforcement (DLSE) and the Employment Development Department (EDD). A multi-agency JESF inspection followed a few days



later. Upon arrival, the ER issued a stop work order and a citation for unlicensed contracting. Norwalk Case Management reports that the business owner paid the CSLB citations shortly after the inspection. The operators still face an EDD audit for not registering as an employer, and \$13,000 in DLSE citations for failure to carry workers' compensation insurance, and for cash pay without deductions.

### **Extremely Successful Late October Northern California Sweep**

On October 29, 2015, three SWIFT Enforcement Representatives conducted a sweep in Placer and Sacramento Counties. They conducted 12 site visits, checked 18 entities, and found six contractors in violation. SWIFT issued four stop orders because of a lack of workers' compensation, and each of these licenses will receive a citation for the workers' compensation violations. ER's also issued two non-licensee citations for unlicensed contracting. One of the unlicensed contractors arrived on the jobsite and left after he discovered the presence of CSLB. The team decided to return to the jobsite later that afternoon, where they caught the unlicensed contractor off-guard. He will be issued a citation for contracting without a license. A licensed contractor onsite doing concrete work with employees did not have a valid workers' compensation policy and will also receive a citation, in addition to the stop order issued at the time. After investigators left the jobsite, the homeowner called one of the ERs and claimed that he employed the workers. Once the ER informed the homeowner what it meant to be the employer of record he decided to "stick to the first story."

### **Statewide Investigative Fraud Team: Two Weeks in Review**

Over the weeks of November 2 and 9, 2015, the three statewide SWIFT offices conducted compliance sweeps in the counties of Riverside, Los Angeles, Fresno, Santa Clara, Placer, Kern, and Sacramento. Partnering agencies for these operations included the Department of Labor Standards and Enforcement (DLSE), the Division of Occupational Safety and Health (DOSH), the Employment Development Department (EDD), and the Riverside County District Attorney's office. Highlights from the two weeks include 19 CSLB legal actions, comprised of seven non-licensee citations, six licensee citations for various violations, and six stop orders for workers' compensation violations. The partnering agencies had excellent results over the two weeks: EDD will conduct eight audits, DOSH found 22 violations, and DLSE issued citations to employers for labor violations totaling \$328,820.29 in fines.



**GENERAL COMPLAINT-HANDLING STATISTICS (CY Jan-Oct 2015)**

It has been determined that a manageable level of pending complaints for all current CSLB Enforcement staff is 3,157. As of October 2015, the pending case load was 4,101.

To ensure timely mediation and screening of complaints, the optimal case load for Consumer Service Representatives (CSR) is 1,250. As of October 2015, 1,833 complaints were assigned to CSRs. High CSR caseloads are attributed to a large number of vacancies in the Intake Mediation Centers.

To ensure timely handling of complaints that warrant formal investigation, the optimal working caseload for Enforcement Representatives (ER) assigned to the Board’s eight investigative centers (IC) is 35 cases per ER. CSLB has 54 IC ERs; therefore, the eight ICs have an optimal capacity for 1,907 open complaints. As of October 2015, 2,268 cases were assigned to ERs.

The following chart outlines how CSLB determines manageable caseloads:

<b>Job Classification</b>	<b>Current Number of Staff</b>	<b>Closure Goal per Month</b>	<b>Preferred Cycle Time (months)</b>	<b>Maximum Case load per ER/CSR</b>	<b>Maximum Number of Cases per Classification</b>
<b>ERs</b>	54	10	4	<b>35</b>	1,907
<b>CSRs</b>	25	20	2	<b>50</b>	1,250
<b>TOTAL</b>					<b>3,157</b>

Recognizing that a licensed contractor may have made a mistake or that a good faith dispute exists regarding the contracting activity, the Board provides training to CSRs and ERs to assist them in resolving construction-related disputes. For CY 2015 (January- October 2015), Enforcement staff’s settlement efforts have resulted in more than \$12 million in restitution to financially injured parties, as depicted in the following chart:

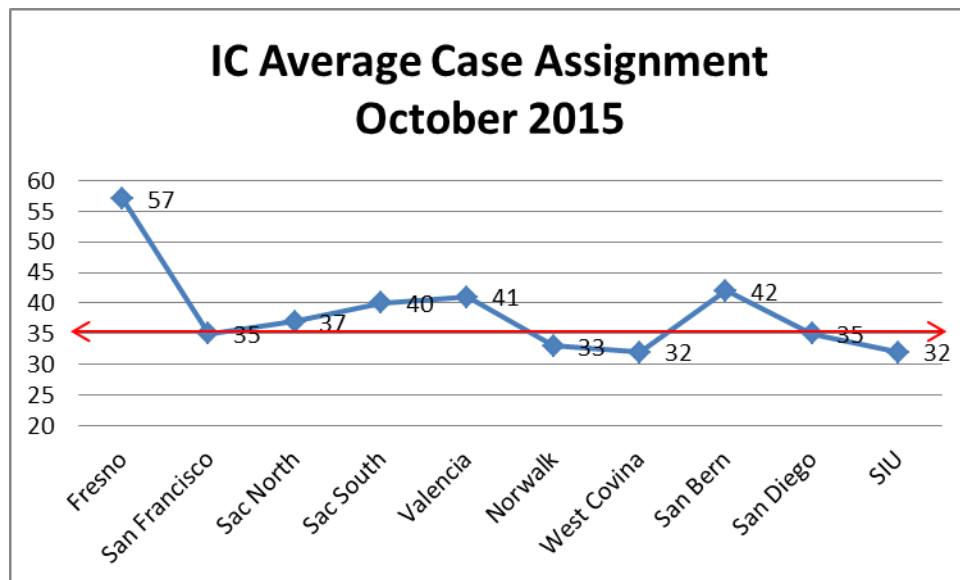
IC Financial Settlement Amount (CY 2015)	• \$3,194,463.15
IMC Financial Settlement Amount (CY 2015)	• \$9,607,574.41



### Investigation of Consumer Complaints

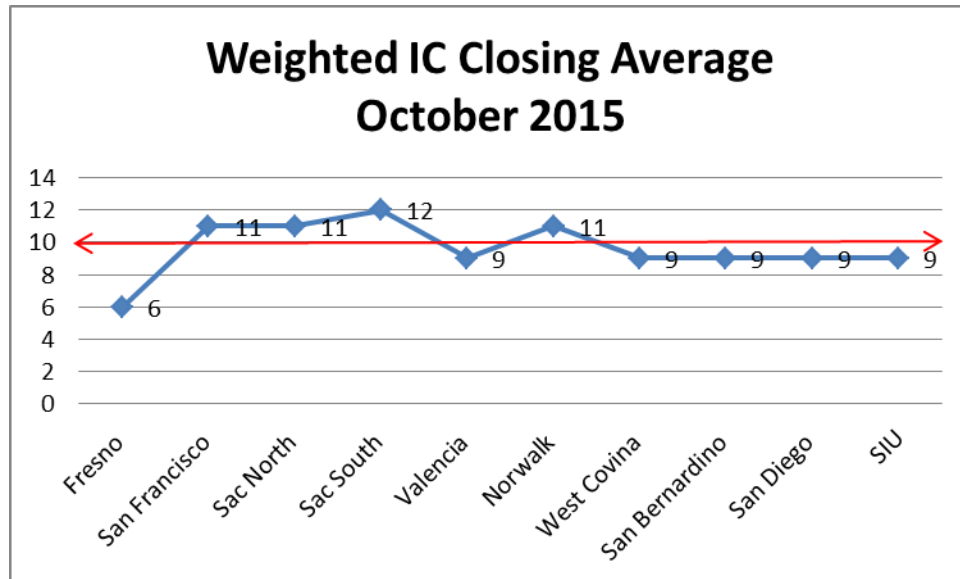
To ensure effective investigation of consumer complaints, the Enforcement division monitors Enforcement Representative (ER) production, pending case loads, and investigation-closing disposition. To date for CY 2015-16 (January through October 2015), Investigative Center (IC) ERs have consistently achieved the Board's goal of 10 complaint closures per month, and effective case distribution among the eight investigative centers has resulted in a manageable, ongoing case load of approximately 35 cases per ER. Of the 1,663 legal actions during this time, 28 percent were referred to local prosecutors.

The following chart tracks open IC investigations. The goal is for each IC ER to carry between 30 and 40 pending cases. At the end of October 2015, the statewide average was 36 cases.

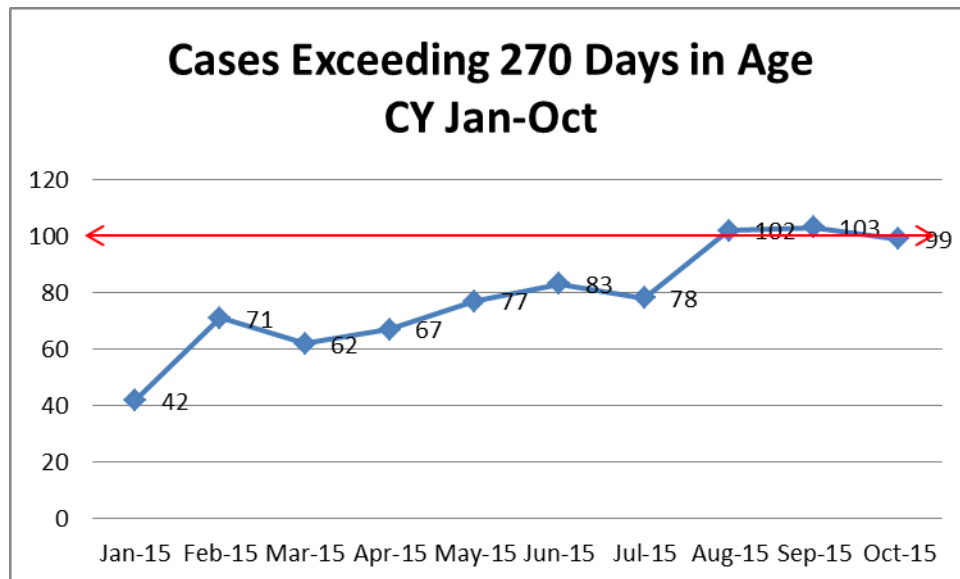




The following chart tracks the Board’s target of each IC ER maintaining a weighted monthly closing average of 10 cases.



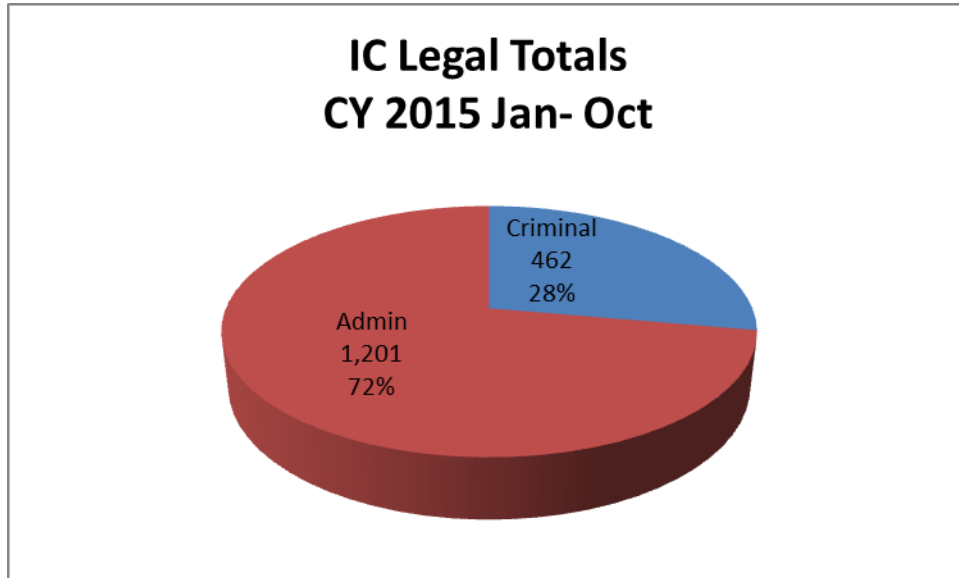
Historically, Enforcement division has more than 3,000 consumer complaints under investigation at any given time. The Board’s goal is to appropriately disposition all but 100 within 270 days of receipt. Staff’s effective management of pending complaints has resulted in consistently meeting this goal. At the beginning of October 2015, there were 99 cases exceeding 270 days in age.





The following chart depicts the number of completed investigations that resulted in an administrative or criminal legal action.

For calendar year 2015 to date, the Enforcement division has referred 28 percent, or 462 investigations, to District Attorneys for criminal prosecution.



**CSLB PARTNERSHIPS WITH OTHER STATE AGENCIES AND PROACTIVE ENFORCEMENT**

CSLB's Statewide Investigative Fraud Team (SWIFT) is comprised of 28 Enforcement Representatives who work together with partnering agencies to fight the underground economy by conducting sweeps, stings, and responding to leads from consumers, licensed contractors, and other agencies. In conjunction with proactive enforcement, SWIFT is part of the following two task forces:

**Joint Enforcement Strike Force (JESF)****Background**

In 1995, the Legislature created the Joint Enforcement Strike Force (JESF) to tackle the underground economy. Administered by the Employment Development Department (EDD), the task force's primary objective is to take criminal action against entities that violate tax, license, and workers' compensation requirements. This coalition of agencies includes CSLB, EDD, the Department of Insurance, the Franchise Tax Board, the Board of Equalization, and the Department of Justice. JESF aims to:

- Protect consumers by ensuring that all businesses are properly licensed and adhere to California's consumer protection regulations;
- Eliminate unfair business competition; and
- Help ensure that workers are protected and receive all benefits to which they are entitled by law that relate to wages and hours, health and safety, and income replacement.

All SWIFT Enforcement Representatives (ERs) are part of the Joint Enforcement Strike Force.

**Labor Enforcement Task Force (LETF)****Background**

Established in January 2012, the Labor Enforcement Task Force (LETF) combats the underground economy in California to create an environment where legitimate businesses can thrive. The task force is administered by the Department of Industrial Relations (DIR) and primarily takes administrative action against entities found during sweeps and inspections to violate labor, license, and workplace safety laws. CSLB's joint efforts with DIR's Division of Labor Standards and Enforcement and Division of Occupational Health and Safety, and the Employment Development Department, aim to:

- Ensure that workers receive proper payment of wages and are provided a safe work environment;
- Ensure that California receives all employment taxes, fees, and penalties due





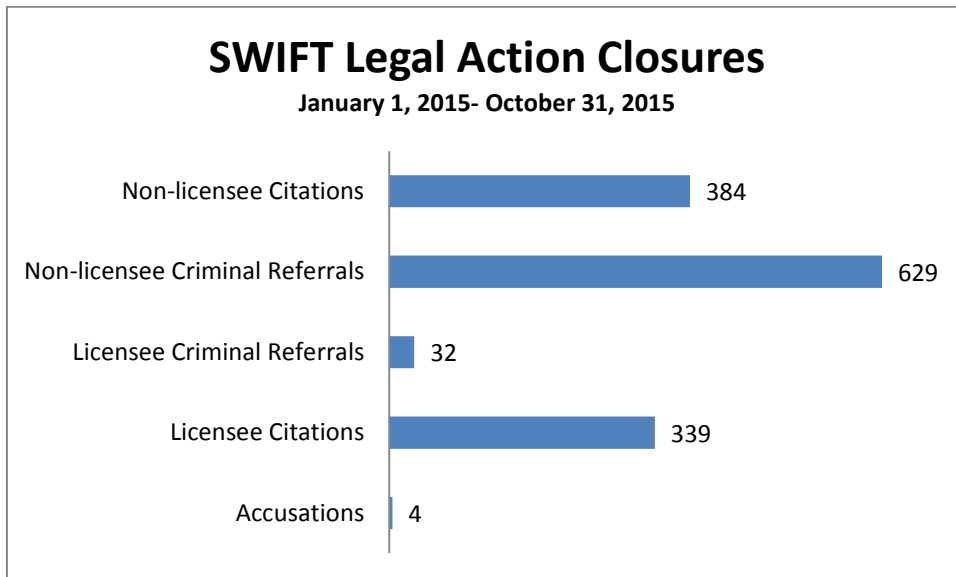
from employers;

- Eliminate unfair business competition by leveling the playing field; and
- Make efficient use of state and federal resources in carrying out the mission of LETF.

CSLB has assigned 10 Enforcement Representatives to participate in LETF activities. Through combined robust education and enforcement efforts they work diligently to fight the underground economy in California.

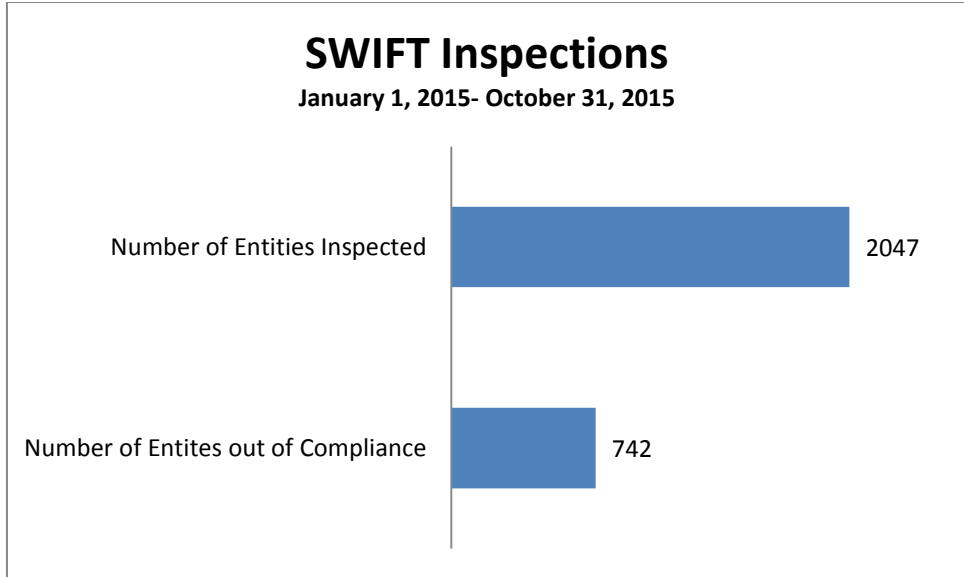
**RESULTS**

From January 1, 2015 through October 31, 2015, SWIFT closed 1,388 legal action cases and issued \$697,571.00 in CSLB citation penalties and assessments.



**Sweeps**

From January 1, 2015 through October 31, 2015, including partnership efforts with JESF and LETF, CSLB inspected 2,047 licensed and unlicensed entities. These inspections found 742 businesses out of compliance and that prompted legal action.



**Stings**

Undercover stings continue to be an effective proactive method to identify and prosecute persons acting in the capacity of a contractor without a license and committing other significant violations of Contractors License Law. CSLB partners with local law enforcement to pose as homeowners seeking bids for home or commercial property improvements. From January 1, 2015 through October 31, 2015, SWIFT conducted 83 sting days, resulting in the issuance of Notices to Appear in superior court to 541 individuals on misdemeanor violations.

<b>Sting Totals</b>	
January 1, 2015- October 31, 2015	
Sting Days	83
Notice to Appear (NTA) Issued	541

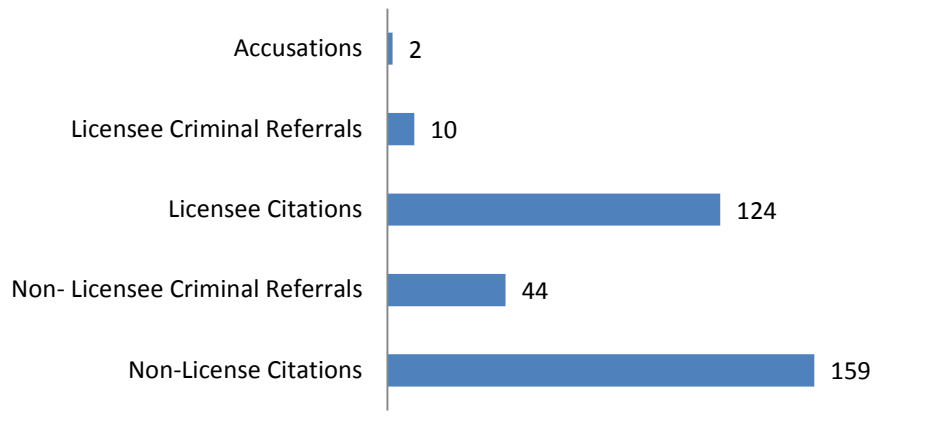
**Leads**

CSLB regularly receives tips about active, unlicensed, or illegal activity from consumers, licensed contractors or other agencies that may lead SWIFT to perform a construction site inspection. From January 1, 2015 through October 31, 2015 SWIFT has received, responded to, and investigated 1,637 leads, which have resulted in 339 legal action closures.



### Leads- Legal Action Closures

January 1, 2015- October 31, 2015



### LABOR ENFORCEMENT TASK FORCE (LETF) RESULTS

From January 1, 2015 through October 31, 2015, LETF has inspected 437 active construction sites, of which 349 businesses, or 80 percent, were found out of compliance with labor, tax, health and safety, and/or construction-related laws and regulations. These inspections resulted in \$1,371,424 in initial citation penalties.

**CASE MANAGEMENT CY 2015 (Jan-Oct)**

<b>CITATIONS ISSUED</b>		
	<b>Licensee</b>	<b>Non-Licensee</b>
<b>Citations Issued</b>	1,332	727
<b>Citations Appealed</b>	536	311
<b>Citation Compliance</b>	859	363
<b>MANDATORY SETTLEMENT CONFERENCES</b>		
<b>Scheduled</b>	286	
<b>Settled</b>	159	
<b>Civil Penalties Collected</b>	\$1,355,255	
<b>Legal Fee Savings</b>	\$2,269,437	
<b>ARBITRATION</b>		
<b>Arbitration Cases Initiated</b>	369	
<b>Arbitration Decisions Received</b>	287	
<b>Licenses Revoked for Non-Compliance</b>	24	
<b>Arbitration Savings to the Public – Restitution</b>	\$1,237,600	
<b>ACCUSATIONS/STATEMENT OF ISSUES</b>		
<b>Revocations by Accusation</b>	280	
<b>Accusation Restitution Paid to Injured Persons</b>	\$213,151	
<b>Statement of Issues (Applicants Formally Denied)</b>	47	
<b>Cost Recovery Received</b>	\$255,889	
<b>Number of Cases Opened</b>	318	
<b>Number of Accusations/Statement of Issues Filed</b>	236	
<b>Number of Proposed Decisions Received</b>	61	
<b>Number of Stipulations Received</b>	73	
<b>Number of Defaults Received</b>	110	
<b>Number of Decisions Mailed</b>	298	

# AGENDA ITEM I

## Future Agenda Items





## AGENDA ITEM J

# Overview of CSLB Operations

1. CSLB History
2. Overview of Licensing Division and Examination Unit's Functions
3. Overview of Enforcement Division's Resources and Processes
4. Public Affairs Services to CSLB through Education and Outreach







# AGENDA ITEM K

Adjournment

