

APRIL 16, 2014  
SACRAMENTO, CALIFORNIA

CONTRACTORS STATE LICENSE BOARD

Legislative  
Committee Meeting





## CONTRACTORS STATE LICENSE BOARD

9821 Business Park Drive, Sacramento, California 95827  
Mailing Address: P.O. Box 26000, Sacramento, CA 95826  
800.321.CSLB (2752) | [www.cslb.ca.gov](http://www.cslb.ca.gov) | [CheckTheLicenseFirst.com](http://CheckTheLicenseFirst.com)

STATE OF CALIFORNIA

Governor Edmund G. Brown Jr.

### NOTICE OF LEGISLATIVE COMMITTEE MEETING

The Contractors State License Board (CSLB) will hold a Legislative Committee meeting at 9:00 a.m. on Wednesday, April 16, 2014, in the following locations:

#### **CSLB Headquarters**

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

#### **Teleconference Location:**

265 Hegenberger Rd., Suite 200  
Oakland, CA 94621

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

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

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

### **LEGISLATIVE COMMITTEE AGENDA**

Wednesday, April 16, 2014, 9:00 a.m.

#### **Legislative Committee Members**

Paul Schifino, Chair / Agustin Beltran/ Linda Clifford / Pastor Herrera Jr. / Nancy Springer

- A. Call to Order – Chair's Remarks
- B. Public Comment Session
- C. Legislative Update
  1. Review of AB 1702, AB 2165, AB 2396, SB 1467
- D. Overview of Legislative and Regulatory Proposal Development Process
- E. Discussion of Strategic Plan Objective to Review and Recommend Changes to Simplify and Update Contractors State License Law
  1. Business and Professions Code Section 7031 – Substantial Compliance
- F. Review of CSLB's Bonding Requirement
- G. Adjournment

# AGENDA ITEM A

## Call to Order – Chair’s Remarks

Roll is called by the Committee Chair.

LEGISLATIVE COMMITTEE MEMBERS:

PAUL SCHIFINO, CHAIR

AGUSTIN BELTRAN

LINDA CLIFFORD

PASTOR HERRERA JR.

NANCY SPRINGER

Committee Chair Paul Schifino will review the scheduled Board actions and make appropriate announcements.



## AGENDA ITEM B

# Public Comment Session

Members of the public may address the committee at this time.  
The Committee Chair may allow public participation  
during other agenda items.



# AGENDA ITEM C

## Legislative Update



## AGENDA ITEM C-1

Review of AB 1702, AB 2165,  
AB 2396, SB 1467



## CONTRACTORS STATE LICENSE BOARD LEGISLATIVE ANALYSIS

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**Bill Number:** AB 1702 (Maienschein)  
**Status/Location:** Introduced (2/13/14) – Assembly Committee on Business, Professions and Consumer Protection  
**Sponsor:** AFSCME  
**Subject:** Professions and Vocations: Incarceration  
**Code Section:** Business and Professions Section 480.5

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### **Summary:**

Existing law establishes criteria to qualify for a license and authorizes denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the profession.

### This bill:

1. Provides that an applicant who satisfied the requirements to obtain a license while incarcerated, and that applies upon release, that is otherwise eligible for a license, shall not be subject to a delay in his or her application or a denial solely based on the prior incarceration.
2. Specifies that this change does not apply to substantially related convictions.
3. Does not apply to a petition for reinstatement of a license.

### **Background:**

According to the author's office, recidivism is a major problem in California, where the recidivism rate has hovered near two-thirds. Unfortunately, current law penalizes inmates who seek to make better lives for themselves. Those who have learned vocational skills such as cosmetology and auto repair while behind bars are often required to wait extended periods of time before being allowed to apply for a license in their new profession. This is because the law gives licensing boards the power to impose additional restrictions on those who have been convicted of a crime. Assembly Bill 1702 would ensure that offenders who have completed all necessary requirements to obtain a professional license are able to do so without being penalized for their prior crimes. This bill does not remove current provisions restricting individuals from receiving a license in a profession that is substantially related to the crime for which they were convicted.

### **Comments:**

The impact this bill would have on CSLB's licensing process is unclear. CSLB does not deny a license because an applicant was incarcerated, as referred to in this bill's provisions. CSLB would deny an application if the conviction that resulted in incarceration was substantially related to the qualifications, functions, or duties of a licensee and if the conviction evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the licensee in a manner consistent with the public health, safety and welfare. (CSLB regulations, Section 866).

CSLB regulations (Section 869) further provide the criteria for evaluating whether or not an applicant has been rehabilitated.

CSLB began fingerprinting applicants in January 2005. The percentage of all fingerprinted applicants who have a conviction of any kind is approximately 17.7%. Of those, only approximately 2.3% are actually denied, which is 0.4% of the total applicant population.

Prior Legislation:

AB 2423 (Bass, Chapter 675, Statutes of 2008) authorizes specified boards and bureaus (not CSLB) under the Department of Consumer Affairs when considering the issuance of a probationary license or registration to request an applicant with a prior criminal history to provide proof of dismissal. The bill requires boards to develop standard terms of probation, authorizes these boards to revoke, suspend, or deny at any time any required license or registration, and requires these boards to provide a specified statement of reasons for the denial and, if applicable, a copy of the applicant's criminal history record.

AB 1025 (Bass, 2007) would have provided that an applicant for a license with a board of the Department of Consumer Affairs may not be denied licensure, or may not have their license suspended or revoked, solely on the basis that he or she has been convicted of a felony or misdemeanor if they have obtained a certificate of rehabilitation, as specified, and if the felony or misdemeanor conviction has been dismissed, it shall be presumed that the applicant or licensee has been rehabilitated unless the board proves otherwise. The Governor vetoed this bill, stating:

This bill could jeopardize the public health, safety, and welfare in a well-intentioned but flawed attempt to permit individuals convicted of crimes to work in a regulated profession. I am concerned that this bill goes too far in taking away a licensing entity's discretion to deny a license or take other licensing actions, even if it is in the best interest of the state's consumers. The State of California licenses various professions in order to protect consumers from unqualified, dangerous, or unscrupulous individuals. All statutes establishing licensing programs mandate that the protection of the public is the highest priority and that "whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

AB 1025 creates a presumption of rehabilitation based on an expungement of a conviction. This is problematic for two reasons. First, expungement is not intended to be indicative of rehabilitation. Second, this provision places the burden of proof on state licensing bodies to show that an individual is not rehabilitated, which would result in increased litigation and extensive investigations.

**Fiscal Impact for CSLB:**

Pending.



**Staff Recommendation and Comments:**

**WATCH.** Staff recommends CSLB watch this bill, to see if it is amended to have a more significant impact on CSLB.

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**Date:** April 2, 2014

## CONTRACTORS STATE LICENSE BOARD LEGISLATIVE ANALYSIS

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**Bill Number:** AB 2165 (Patterson)  
**Status/Location:** Introduced (2/20/14) – Assembly Committee on Business, Professions and Consumer Protection  
**Sponsor:** Author  
**Subject:** Professions and Vocations: Licenses  
**Code Section:** Business and Professions Section 101.8

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### **Summary:**

Existing law requires boards within the Department of Consumer Affairs (DCA) to establish eligibility and application requirements, including examinations, to license, certify, or register each applicant who successfully satisfies applicable requirements.

This bill requires every board to:

1. Complete the application review process within 45 days and issue the applicant a license if he/she has satisfied all of the applicable licensing requirements; and
2. Offer a required licensing exam at least six times per year.

### **Comments:**

Contractors State License Board (CSLB) regulations (Section 827) detail the timeframe for processing applications. CSLB is required to notify an applicant within 60 days of receipt of an application whether or not it is complete and has been referred for exam, or if it is deficient and what additional information is required. CSLB is required to decide within 115 days after an application that has been referred for exam, whether an applicant meets the requirements for licensure. This 115-day period will be extended by 60 days if the application must be investigated.

CSLB offers licensing exams daily at eight test centers throughout the state; therefore, would not be impacted by the second requirement.

### **Background:**

According to the author, professional and vocational applicants are currently experiencing extraordinary delays with application processing times. AB 2165 does not alter any of the qualifications established by each board under DCA's jurisdiction. It does require that each board process and issue licenses or certificates within a much more reasonable time period—45 days from the date the complete application was filed, if the individual has met all the requirements of the application and testing within that 45-day period.

### **Comments:**

CSLB's Licensing division believes that the board is able to comply with this bill in most cases. CSLB currently reviews applications prior to 45 days and if all requirements are met, i.e., correct application, passing the exam, fingerprint clearance, bond, workers' compensation insurance, license fee, etc., the board can issue the license shortly

thereafter. However, many applications are rejected for a variety of reasons: many applicants have to take the exam more than once; CSLB may experience delays related to fingerprinting; or the board may have to conduct an experience verification/investigation required to verify the claimed experience. In those circumstances, CSLB completes the initial application review process, but the application cannot yet be accepted.

Also, when CSLB transitions to BreEZe, there likely will be a significant learning curve for staff at the beginning, which could result in significant delays early in the transition.

For Fiscal Year 2012-13:

AVERAGE PROCESSING TIME RECEIVED DATE TO ISSUANCE*	
APP TYPE	AVERAGE DAYS TO PROCESS
Original Exam	156
Original Waiver	74
Original – Exam & Waiver Combined	117
Add Class	93
Qualifier Replacer	63
Add Class & Replacer Combined	78
HIS	64
Officer Change	49

\*Average processing times include review for acceptability; rejection of application for any necessary correction(s); after posting - required DOJ/FBI criminal background clearance; allowable 18-month time period to pass exam(s); and submittal of all issuance requirements.

**Fiscal Impact for CSLB:  
Pending.**

**Staff Recommendation and Comments:**

**OPPOSE.** There is not a problem identified with CSLB applications that this bill would solve. CSLB does not believe the bill would provide any additional benefit.

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**Date:** March 28, 2014

## CONTRACTORS STATE LICENSE BOARD LEGISLATIVE ANALYSIS

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**Bill Number:** AB 2396 (Bonta)  
**Status/Location:** Amended (3/28/14) – Assembly Committee on Business, Professions and Consumer Protection  
**Sponsor:** Alameda County  
**Subject:** Convictions: Expungement: Licenses  
**Code Section:** Business and Professions Code Section 480

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### **Summary:**

#### Existing Law:

1. Authorizes a board within the Department of Consumer Affairs (DCA) to deny, suspend, or revoke a license on various grounds, including, but not limited to, conviction of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or professions for which the licensed was issued.
2. Permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief.

This bill would provide that a person may not be denied licensure based solely on a criminal conviction that has been dismissed pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.41. (These sections of law set forth conditions under which certain convictions may be expunged or otherwise set aside by the court, as described above).

#### Background:

According to the author, boards within DCA may deny a professional license based on an applicant's criminal conviction, even if the conviction has been dismissed. When applying for employment with a private company, applicants are not required to disclose a dismissed record as part of the hiring process. Boards under DCA should similarly reward rehabilitation and reduce recidivism by precluding consideration of dismissed records.

Dismissal of a conviction is only available to those who have successfully completed probation and paid all restitution and fines. It is not available to those who have been sentenced to prison or to those who have committed certain crimes, including most sex offenses.

### Prior Legislation:

AB 1025 (Bass, 2007) would have provided that an applicant for a license with a board of the Department of Consumer Affairs may not be denied licensure, or may not have their license suspended or revoked solely on the basis that he or she has been convicted of a felony or misdemeanor, if they have obtained a certificate of rehabilitation, as specified. , and the felony or misdemeanor conviction has been dismissed, it shall be presumed that the applicant or licensee has been rehabilitated unless the board proves otherwise. The Governor vetoed this bill, stating:

This bill could jeopardize the public health, safety, and welfare in a well-intentioned but flawed attempt to permit individuals convicted of crimes to work in a regulated profession. I am concerned that this bill goes too far in taking away a licensing entity's discretion to deny a license or take other licensing actions, even if it is in the best interest of the state's consumers. The State of California licenses various professions in order to protect consumers from unqualified, dangerous, or unscrupulous individuals. All statutes establishing licensing programs mandate that the protection of the public is the highest priority and that "whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

AB 1025 creates a presumption of rehabilitation based on an expungement of a conviction. This is problematic for two reasons. First, expungement is not intended to be indicative of rehabilitation. Second, this provision places the burden of proof on state licensing bodies to show that an individual is not rehabilitated, which would result in increased litigation and extensive investigations.

The Contractors State License Board (CSLB) opposed this bill, stating, "Although there may be instances where a denial of licensure under existing law represents an unfair barrier to earning a living as an employee, the all-inclusive approach of AB 1025 fails to consider those instances wherein licensure grants the right to manage the operations of an independent business, which creates a fiduciary relationship between the licensee and the consumer. For CSLB in particular, this is a most relevant and significant issue."

### **Fiscal Impact for CSLB:**

Pending.

### **Staff Recommendation and Comments:**

**OPPOSE.** This bill could result in a risk to consumers by prohibiting the denial of licensure based on convictions that have been expunged/dismissed under the Penal Code. For such cases, evidence of rehabilitation should still be considered as a condition that is prerequisite to the granting of a contractor license. This is especially true given the fiduciary relationship that is inherent between CSLB's licensees and consumers, not to mention the level of trust that consumers attribute to a contractor based upon a state-sanctioned licensing process.

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**Date:** April 1, 2014

## CONTRACTORS STATE LICENSE BOARD LEGISLATIVE ANALYSIS

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**Bill Number:** SB 1467 (Business, Professions and Economic Development Committee)  
**Status/Location:** Introduced (3/25/14)  
**Sponsor:** Author  
**Subject:** Notice to Appear Authority  
**Code Section:** Business and Professions Code Section 7011.4

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### **Summary:**

As it pertains to the Contractors State License Board (CSLB), this bill further revises Business and Professions Code section (BPC) 7011.4, to clearly provide that all CSLB enforcement representatives may issue a written notice to appear (NTA).

### Comments:

CSLB sponsored legislation in 2012 (AB 2554, Berryhill, Chapter 85, Statutes of 2012) which provided all enforcement representatives (ERs) this authority. Prior to AB 2554, only ERs in CSLB's Statewide Investigative Fraud Team had the authority to issue an NTA. However, after the bill's enactment, it appeared that CSLB would need to revise its organizational structure by placing all ERs from the different enforcement units into a separate division. That would have been unwieldy; therefore, CSLB is proposing additional legislation to implement AB 2554 without having to modify its organizational structure.

The language in SB 1467 has been agreed to by the Department of Consumer Affairs.

### **Fiscal Impact for CSLB:**

There will be no significant impact to CSLB.

### **Staff Recommendation and Comments:**

**SUPPORT.** This legislation will allow CSLB to implement the expanded NTA authority without the need to modify its organizational structure, and will benefit consumers and licensees by providing an opportunity to refer more criminal complaints to prosecutors through NTAs.

This will enhance CSLB's enforcement efforts by allowing investigators in CSLB Investigative Centers to issue NTAs and Stop Orders so that they can partner with the California Department of Insurance and the Premium Insurance Fraud Task Force to combat unlicensed and uninsured practice.

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**Date:** March 28, 2014

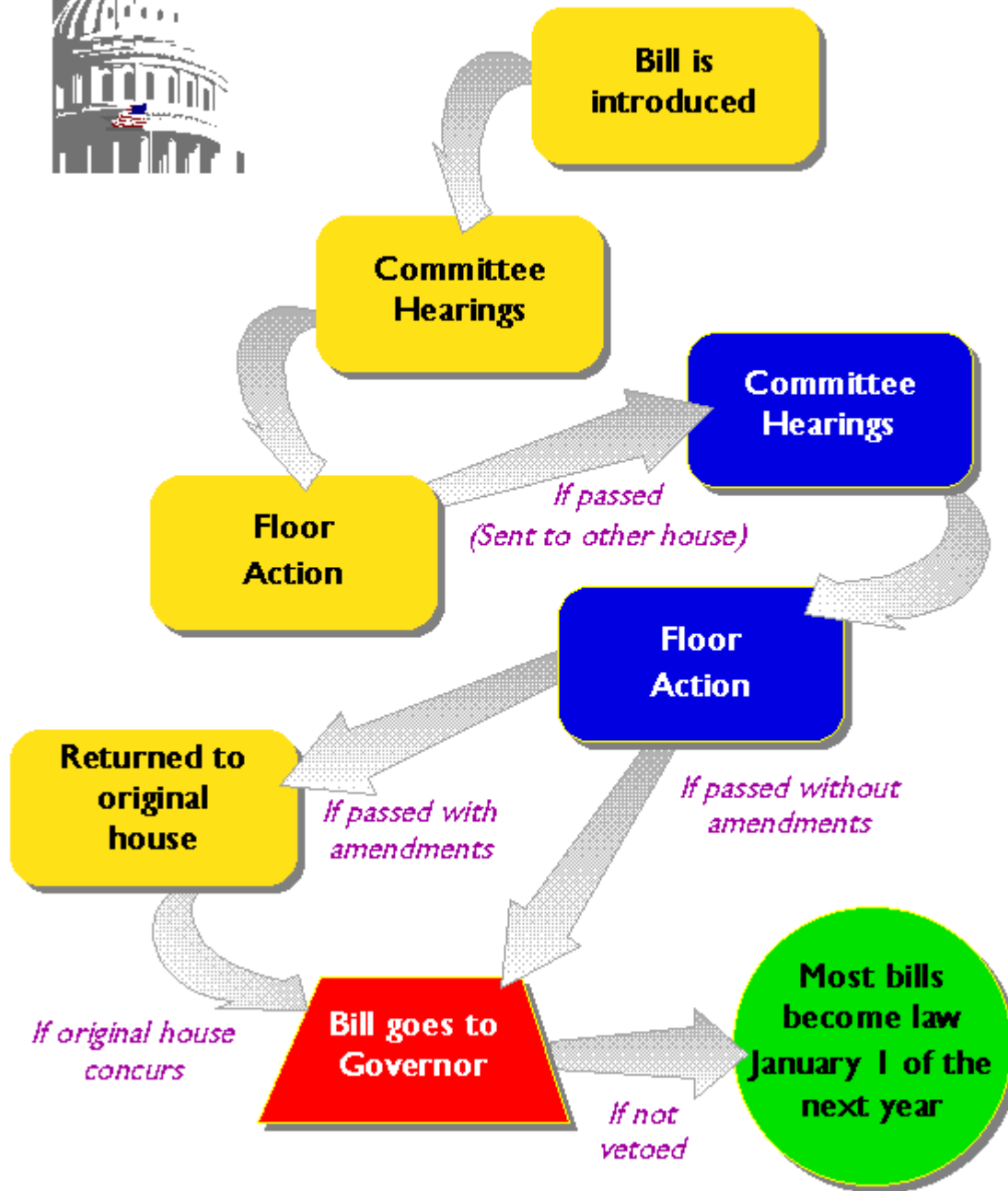
## AGENDA ITEM D

# Overview of Legislative and Regulatory Proposal Development Process





## How a Bill Becomes a Law







### LEGISLATIVE PROCESS

#### THE LEGISLATURE

The California State Legislature is a bicameral (two-house) body composed of an Assembly, whose 80 members are elected to two-year terms, and a Senate, whose 40 members are elected for staggered four-year terms. The Legislature meets for two-year sessions between elections, and each house conducts business in its own chamber within the Capitol, often referred to as the Senate and Assembly “floors.”

The rules of each house of the Legislature establish a number of standing committees with differing purviews. Members of these committees review legislation and recommends amendments to the entire body. When a legislative measure is sent to a committee for review, it is said to be “referred” to that committee. The committee then reviews the legislation and can either make recommendations to the floor for amendments or hold the measure in committee.

A bill is “held” in committee by making no recommendation to the floor to pass or amend it. This can happen without a hearing. Technically, only the house floors can (by a majority vote) amend a piece of legislation. However, the committees’ recommendations are nearly always carried out by the floors.

There are two general types of committees: policy committees and fiscal committees. The majority of measures are sent to a policy committee for review of the proposed programmatic or public policy change. Measures that could have a fiscal impact on the State are also sent to a fiscal committee for review of the measure’s financial implications. In the Senate, there are two fiscal committees: the Budget and Fiscal Review Committee and the Appropriations Committee. The Budget and Fiscal Review Committee deals primarily with the Budget Bill but will also conduct hearings on legislation that would directly amend or otherwise significantly affect the Budget Act or the budget process. The Appropriations Committee hears all legislation outside of the Budget Bill, as well as budget trailer bills that would have a fiscal impact.

The Assembly has two fiscal committees, the Budget Committee and the Appropriations Committee, whose functions correspond to those of their Senate counterparts. The rules committees in each house are neither policy nor fiscal committees. They focus on “housekeeping” and other matters internal to their respective houses. These committees also assign bills to the standing committees.

Joint committees are comprised of members from both houses. They include the Joint Legislative Budget Committee, whose duties include oversight of the operations of the Legislative Analyst’s Office, the Joint Rules Committee, which develops rules that govern the two houses in addition to the individual houses’ rules, and the Joint Legislative Audit Committee, which oversees the Bureau of State Audits.



Each house may establish special and select committees. These committees generally are established to conduct research into or provide oversight on narrow subject areas. They generally do not hear bills and meet infrequently.

A complete listing of all committees and their memberships can be found in each "Daily File" or on the Internet (<http://www.leginfo.ca.gov/dayfile.html>).

### **LEGISLATIVE CALENDAR**

The Legislature meets in two-year sessions. The sessions roughly coincide with the biennial elections at which all of the Assembly seats and half of the Senate seats are up for election. Each two-year session is considered a regular session. The California Constitution (Article IV, Section 3) prescribes that the regular session shall begin on the first Monday in December in each even-numbered year (i.e., following the election the preceding November) and end November 30 two years later (i.e., after the next election). The sessions are referred to by the two calendar years which they almost encompass (e.g., the session after the election in 2010 is the 2011-12 regular session, and —it begins in December 2010 and ends in November 2012).

Within the constitutionally prescribed dates of convening and adjourning the session, the Legislature has freedom to set its own calendar of meetings and recesses. Generally, the Legislature begins meeting in January each year and concludes its work for the year in September. During the year, the Legislature traditionally schedules two recesses: a one-week spring recess (which is generally the week before Easter) and a summer recess that typically lasts four weeks.

In addition to the regular session, the Governor may, by proclamation, require the Legislature to meet in special session. A special session may run concurrently with the Legislature's normally scheduled meeting time and/or during its recesses. During the special session, the Legislature may act only on subjects specified in the proclamation.

To handle both the regular session and a special session at the same time, the Legislature may temporarily recess its work in the regular session, convene in the special session, and then reconvene the regular session after temporarily recessing the special session. This recessing and reconvening may happen more than once on the same day. Aside from the fact that a special session is limited to the subject matter for which it was called, there are no significant differences in process between a regular and special session. However, the effective dates for bills enacted during a special session are somewhat different than those for a regular session. (See Article IV, Section 8 for more details.)

Under Article IV, Section 10 (f), the Governor is authorized to issue a proclamation declaring a fiscal emergency. If such an emergency is declared, the Legislature is automatically called into special session for this purpose. This type of special session is often referred to as a Proposition 58 Special Session. The proclamation must identify the nature of the fiscal emergency and must be accompanied by proposed legislation to address the fiscal emergency.



If the Legislature fails to pass and send to the Governor a bill or set of bills to address the fiscal emergency by the 45<sup>th</sup> day following the proclamation's issuance, the Legislature is prohibited from acting on any other bill, nor can it adjourn for a joint recess, until that bill or those bills have been passed and sent to the Governor.

## **LEGISLATION**

Measures considered by the Legislature fall into six classes. These are bills, constitutional amendments, joint resolutions, concurrent resolutions, house resolutions, and Rules Committee resolutions. There are differences among these classes in their requirements for passage and the weight of authority they carry.

Each measure is designated as originating either in the Assembly or the Senate and is assigned a number. The first of any given type of measure to be introduced in a session is numbered "1" and the numbering continues sequentially throughout the two-year session. At the beginning of a new session, the numbering starts over. For example, the tenth Senate bill introduced in a session is labeled SB 10, and the third Assembly Constitutional Amendment is ACA 3.

## **BILLS (AB/SB)**

In California, most laws are enacted, repealed, or amended through bills, which are proposals to add new laws or change or repealed existing laws.

To become law, a bill must be passed in both houses by at least a simple majority. The Budget Bill and spending bills related to the budget require a simple majority. Other bills that contain a General Fund appropriation require a two-thirds vote, unless the appropriation is for education, in which case a simple majority is required. In addition, any bill which contains an urgency clause (i.e., a provision that makes the bill effective immediately following signature by the Governor, rather than on January 1, as is normally the case) requires a two-thirds vote. Bills that increase taxes require a two-thirds vote.

After passage by both houses of the Legislature, the bill is sent to the Governor, who may either sign or veto the bill within a specified period of time (either 12 days or 30 days depending on what time of the year it is sent to him/her). If the Governor fails to act on a bill sent to him/her within the prescribed period, the measure becomes law without his/her signature. (For more specifics regarding deadlines for gubernatorial actions on bills, refer to Section 10 of Article IV of the State Constitution.)

## **CONSTITUTIONAL AMENDMENTS (ACA/SCA)**

A constitutional amendment can be initiated by the Legislature if it passes both houses by a two-thirds vote. A proposed constitutional amendment is not sent to the Governor for signature, but becomes part of the constitution only if the electorate approves it in a general election. The Governor may call a special election to consider a proposed constitutional amendment sooner.

When the Legislature adopts a proposed constitutional amendment, it may also adopt a companion bill, which would take effect only if the constitutional amendment is passed by



the people. These companion measures generally contain detailed statutory provisions to implement the constitutional amendment.

The constitution can also be amended through the initiative process. The signatures of the requisite number of voters on a petition cause the Secretary of State to place the petition on the ballot. No action by the Legislature is needed in this process, and the Legislature cannot prevent it from occurring.

### **JOINT RESOLUTIONS (AJR/SJR)**

Joint resolutions are initiated when the Legislature wants to comment to Congress and/or the President on a federal matter of concern to the State. These resolutions require a majority vote in both houses. Joint resolutions neither need the signature of the Governor nor have the force of law. They take effect upon their being filed with the Secretary of State.

### **CONCURRENT RESOLUTIONS (ACR/SCR)**

Concurrent Resolutions address state matters that are of concern to both houses. They are often used to adopt the joint rules, create joint committees, request studies, express legislative intent and express the Legislature's congratulations to organizations, persons, or other states. Concurrent Resolutions need a majority in each house to pass. These measures are not sent to the Governor for approval and take effect upon their being filed with the Secretary of State.

### **HOUSE AND SENATE RESOLUTIONS (HR/SR)**

“House” (i.e., Assembly) and Senate resolutions are acted on in one house only. These resolutions are usually congratulatory, but they are also used to adopt and amend the house rules and create house interim committees. These measures are not sent to the Governor for approval.

### **RULES COMMITTEE RESOLUTIONS**

The Rules Committee in each house also takes action by way of the resolution. A majority vote of the committee is required to pass these measures, which usually deal with internal operations.

### **THE LEGISLATIVE PROCESS**

When a legislator wants to propose a measure, he/she must go to the Legislative Counsel to have the specific language of the proposal put in proper bill form. The Legislative Counsel's staff, who provides legal services to both houses in support of the legislative process, will draft the language of the code section amendments to accomplish the author's purpose.

The staff attorney will also write the Legislative Counsel's Digest for the bill, which includes a summary of the current law and what the proposed changes will do. At the end of the digest, Counsel will indicate the vote required for passage of the bill (usually “majority” or “two-thirds”), whether the bill must be referred to the fiscal committees, and whether the bill contains a State-mandated local program.



When the bill is written, it is returned to the author, who will then introduce it in the house of which he/she is a member. From there, the bill proceeds through the legislative process.

The outline below presents the steps a bill typically goes through to become law.

## **BILL FLOW IN THE CALIFORNIA LEGISLATURE**

### **I. Introduction (first reading)**

- A. Author puts a legislative measure “across the desk” of the floor of the member's house.
- B. Measure is given a number (e.g., AB 456, SB 612, ACA 3, SJR 1).
- C. Title of measure is read on the floor of the house of origin. (The state constitution prohibits any bill from being enacted unless it is “read” on three separate days in each house, or unless two-thirds of the members of a house vote to dispense with the reading of a bill. Reading aloud the title of a bill at this point constitutes the first of the three readings.)
- D. Measure is assigned (“referred”) to a standing policy committee by the Rules Committee of the house of origin. The committee of assignment is based generally on the subject matter of the bill.

### **II. Consideration by Policy Committee**

- A. Committee holds public hearing.
  1. Date set by committee and published in advance in the Daily File of the house of origin.
  2. Hearing may be scheduled any time beginning 30 days after introduction of the bill unless it is an urgency measure, in which case the 30-day provisions can be waived by a three-fourths vote of the house.
  3. On the day of the hearing, the author presents the bill to the committee and explains why the committee should approve it. The policy committee is concerned primarily with the policy or programmatic features of the bill, not its fiscal consequences. Proponents and opponents also present their views on the measure. In addition, the committee may invite experts on the issue under consideration to testify.
- B. Committee recommendations to the floor, which generally require a majority vote of the committee, are customarily in one of the following forms:
  1. **Do pass:** If the committee wants the bill to become law.
  2. **Amend and do pass as amended:** If the committee has rejected the original form of the bill, but has approved it with certain specified changes or amendments.
  3. **Amend and re-refer:** If the committee wants the bill to be considered by a committee again after it is reprinted as amended. “Amend and re-refer” may bring the amended bill back to the same committee or it may specify another committee (usually a fiscal committee) that can properly consider the measure.
  4. **Do pass and re-refer:** If the committee recommends the bill favorably without amendments but sends it to another committee. If the bill has a



fiscal impact ("Fiscal committee: yes" at end of Legislative Counsel Digest), it will be re-referred to the fiscal committee.

5. **Do not pass:** If committee opposes the bill, but prefers to let the house decide.
  6. **To the house without recommendation:** If the committee is divided or uncertain and wants the house to decide the bill on its merits.
  7. **Refer to Interim:** If the committee believes the subject is of sufficient importance to need further in-depth study by a legislative committee before adequate legislation can be written, then this recommendation suggests that the bill receive detailed analysis and hearings during the Legislature's recess (interim) period.
- C. Instead of reporting its recommendation, the committee may effectively kill the bill by voting to "lay it on the table" or by taking no action (i.e., "holding" the bill in committee).

### III. Consideration by Fiscal Committee

Essentially the same procedural requirements apply to the fiscal committees as do to the policy committees. However, the focus of the fiscal committees, and the testimony they hear, is primarily (though not necessarily exclusively) on the fiscal ramifications of legislation, not the program or policy issues involved.

### IV. Second Reading in House of Origin

- A. The measure is listed in second reading file of the floor of the house of origin, but consideration usually involves no more than reading the bill number to satisfy procedural requirements.
- B. If the committee recommended amendments, such amendments are printed as part of the bill and may be discussed and adopted.
- C. A bill can be on the Second Reading File and read for the "second time" more than once. Every time a bill is amended, it is back on second reading.

### V. Third Reading in House of Origin

- A. The measure listed on third reading file is taken up for final passage when the author is ready to present it.
  1. The author of a bill makes the case for approving the bill, and floor debate may take place.
  2. Members of the House may ask questions of the author and make statements of support or opposition to the measure.
  3. Vote on final passage of bill is by roll call.
- B. According to the California Constitution, "Any bill introduced during the first (odd) year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the second (even) calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September 1 of an even numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor."



## VI. Procedure After Bill Passes House of Origin

- A. Sent to the other house, where the same general procedure is followed.
- B. If passed in second house, bill is returned to house of origin with a transmittal message stating either:
  1. Bill passed second house and may be enrolled and sent to the Governor, or
  2. Bill passed second house with amendments, and concurrence in amendments by house of origin is requested so that bill may be enrolled and sent to Governor.

An exception to the above is specified in the Constitution: "Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature."

- C. If amendments are not satisfactory to the house of origin, it appoints members of its house to a Committee on Conference and notifies the other house to appoint its Committee on Conference members (Each house appoints three members to a conference committee.).
  1. The conference committee considers the bill and seeks agreement on its final form.
    - a. If conferees cannot agree, a new Committee on Conference is appointed.
    - b. If no agreement is reached on the third conference try, the bill is dead.
  2. The conference committee reports its recommendations to both houses, each of which must adopt the conference report at a roll-call vote (majority or two-thirds, depending upon the nature of the bill) before the bill can be sent to the Governor.

## VII. Action by Governor

- A. **Sign or Veto:** Article IV, Section 10 of the California Constitution provides: "Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if he signs it. He may veto it by returning it with his objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by roll-call vote entered in the journal, two-thirds of the membership concurring, it becomes a statute." This latter action of the Legislature to approve by a two-thirds vote a bill vetoed by the Governor is referred to as a veto override.
- B. **Item Veto:** The California Constitution provides: "The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. He shall append to the bill a statement of the items reduced or eliminated with the reasons for his action. The Governor shall transmit to the house originating the bill a copy of his statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills." Overriding a gubernatorial veto requires a two-thirds vote.
- C. **Deadlines for Action:** The Constitution goes on to specify how much time the Governor has to act on (sign or veto) a bill sent to him/her. If the Governor does



not act within that time, the bill becomes law without signature. Generally, the Governor's deadlines are as follows:

1. In the first year of the session:
  - If the bill is delivered to the Governor before the interim recess: 12 days to act.
  - If the bill is delivered after the beginning of recess: 30 days to act.
2. In the second year of the session:
  - If the bill is delivered before adjournment: 12 days to act.
  - If the bill is delivered on or after September 1: until September 30 to act.

The Governor's timeframe for action begins when the bill is received. The date a bill passes the Legislature usually is not the day the Governor receives it. After passage by the Legislature, the bill must go to "enrolling and engrossing," where it is prepared for formal transmission to the Governor. Sometimes, several days will elapse between the time of final legislative approval of a bill and the time the Governor receives it.

### **VIII. Effective Dates of Statutes**

- A. Under the State Constitution, except for statutes calling elections, statutes providing for tax levies or appropriations for the "usual current expenses of the State," and urgency statutes, "...a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed."
- B. Urgency statutes are those "...necessary for immediate preservation of the public peace, health, or safety." A statement of facts constituting the necessity shall be set forth in one section of the bill (the "urgency clause"). Urgency bills become effective upon enactment unless a different effective date is specified in the bill. An urgency statute may not create or abolish any office or change the salary, terms, or duties of any office, or grant any franchise or special privileges, or create any vested right or interest.

### **DEPARTMENTAL PROPOSED LEGISLATION**

The subject matter of legislation is derived from a variety of sources. In some instances, legislators introduce bills based on their own knowledge of, or personal experience with, the subject matter the bill proposes to affect. Legislators are often asked by individuals or organizations to introduce (or "author" or "carry") a bill for them. Those making such requests are said to be the "sponsors" of the bill.

One significant source of sponsorship is the individual departments within state government. A department may feel that if a particular statute is amended, repealed, or enacted, then some function will be done more efficiently or a program's effectiveness will be enhanced. If this is the case, the department will request a member of the Legislature to introduce such legislation.





**No department under the authority of the Governor may sponsor legislation without the prior approval of the department's Agency Secretary and the Governor's Legislative Secretary.**

All proposals to introduce legislation from departments under the control of the Governor are sent to the Legislative Unit in the Governor's Office after approval by the Agency Secretary. The Legislative Unit forwards copies of the proposals to the Department of Finance (DOF) for review and comment. In addition, a department's proposal may also be forwarded to other departments that may be affected by the proposal for their comment. All legislative proposals must be consistent with the decisions made during budget preparation.

The fiscal impact of proposed legislation is of particular concern. Fiscal impact includes proposals which would: (1) appropriate money; (2) result, for any reason, in additional expenditure of state money by any state agency or to reimburse any local government for a state mandate; (3) result in any loss or gain of revenue to a state or local government entity; or (4) result in a substantial reduction in expenditures of state money by reducing, transferring, eliminating or making more efficient the administration of any existing responsibilities of any state agency, program or function.

It is the responsibility of the originating organization to develop valid fiscal information for proposed legislation. This information must include the estimated fiscal impact to both state and local government. The proposal must include an estimate of the initial fiscal impact in the first year of implementation and the full-year cost for a succeeding fiscal year. It must also identify the source of funds involved (e.g., General Fund, a particular special fund, a specific federal grant). When funds are available in the department's budget to cover any costs of a proposal, those resources must be identified to DOF by the proposing department. If the proposal does not involve an appropriation or state fiscal impact, a statement attesting to that fact and noting that funds will not be requested in subsequent budgets must be included in the department's proposal.

## **HEARINGS**

If it has prepared a bill analysis (see Bill Analysis section below) and recommended a position that has been approved by the Governor's Office Legislative Unit, a department under the control of the Governor may testify at policy committee hearings. A department should not express **any** position on a measure unless that position has been approved by the Governor's Office Legislative Unit.

DOF typically does not get involved with a bill while it is in the jurisdiction of a policy committee. DOF does, however, have a role in the hearing processes of the fiscal committees (Appropriations and Budget). A DOF "testifier" attends the hearings of the Assembly and Senate Appropriations Committees to present testimony on the fiscal impact of a bill and the Administration's position, if one has been approved, on legislation before those committees. The basis of both the testimony and the Administration's position (if one has been approved by the Governor's Office Legislative Unit) is the DOF bill analysis.



Other departments may present testimony in the fiscal committees if they are impacted by specific measures and have approved positions by the Governor's Office Legislative Unit. Their testimony should augment or reinforce the view expressed by DOF.

In the Budget Committees, DOF staff present and defend the Governor's Budget in hearings of the full committees and subcommittees that review different components of the Budget Bill. Departments under the administrative authority of the Governor join DOF in this function by elaborating on the justification for decisions reflected in the Governor's Budget.

### **BILL ANALYSIS**

Bill analyses are prepared for bills, when they are set for a hearing or otherwise requested by the Governor's Office. Occasionally, the Governor's Office Legislative Unit will request analyses of constitutional amendments, joint resolutions, or concurrent resolutions or for bills that are keyed "non-fiscal."

The purpose of the bill analysis function is to provide the Governor, his/her staff, agency secretaries, department heads, and the Department of Finance with information concerning the probable programmatic and fiscal effects of pending legislation. Typically, the bill analysis recommends a position that the Administration should adopt on the proposed legislation.

Until approved by the Governor's Office, bill analyses prepared by departments under the administrative authority of the Governor are not public documents and may not be made available to anyone outside of the review process. Once a position has been determined by the Governor's Office, an analysis consistent with that position generally is made available to the public and the Legislature. An analysis that has not yet been approved or that expresses a position inconsistent with that adopted by the Governor's Office may not be made public, since such documents are working papers of the Administration and do not necessarily reflect the policy position of the Governor.

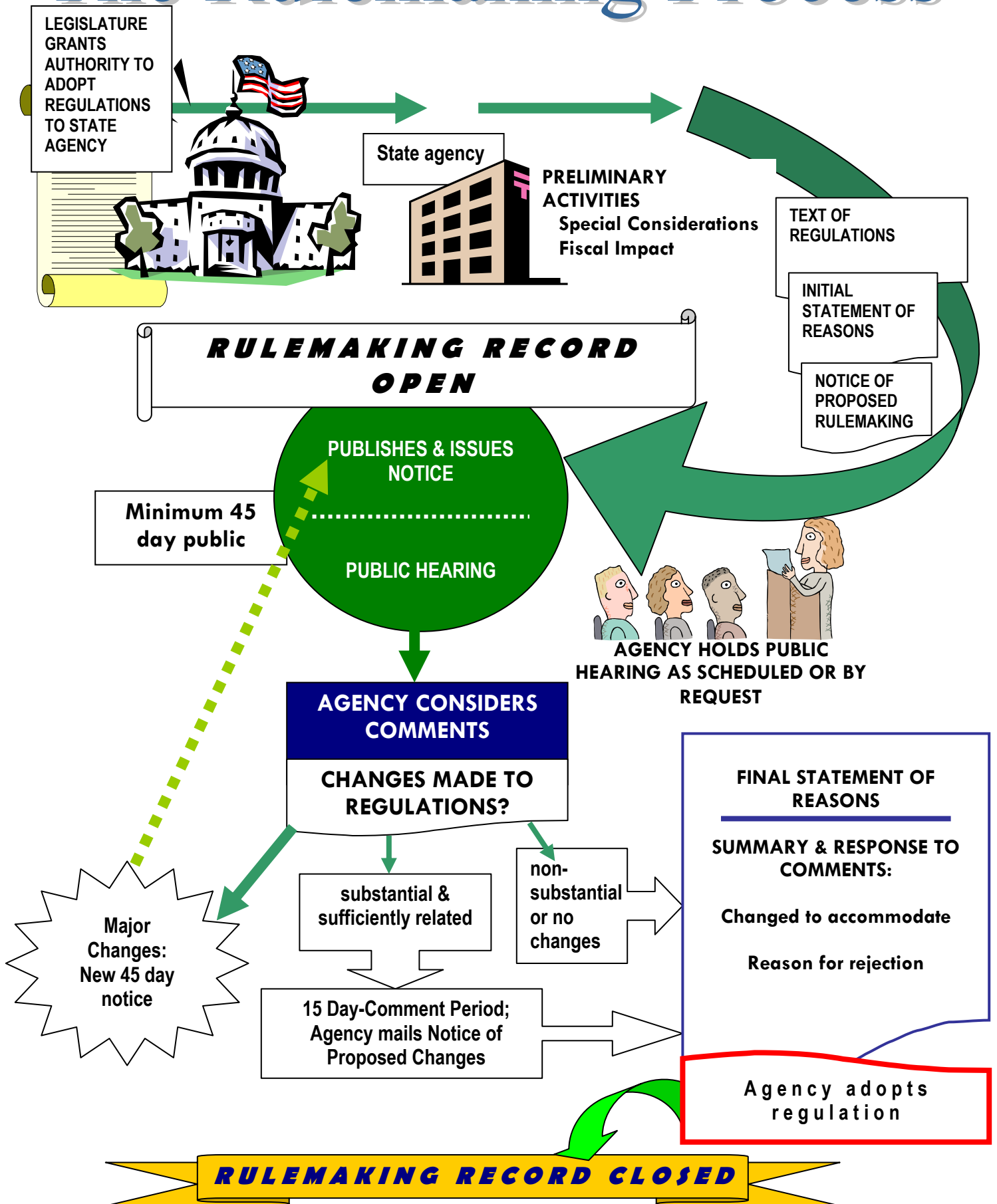
### **ENROLLED BILL REPORT**

When a bill is passed by the Legislature and sent to the Governor, an enrolled by report (EBR) is prepared for the Governor's Office by departments that would likely be affected by the bill. The EBR serves essentially the same function as the bill analysis except that it recommends to the Governor what action (i.e., sign, veto, sign with a message) should be taken on the measure. EBRs are considered confidential communications with the Governor and are not public documents. Consequently, even if approved, EBRs may not be released to the public by anyone without Governor's Office approval.

DOF prepares EBRs for all bills enrolled to the Governor, not just bills keyed by Legislative Counsel as having a fiscal impact.

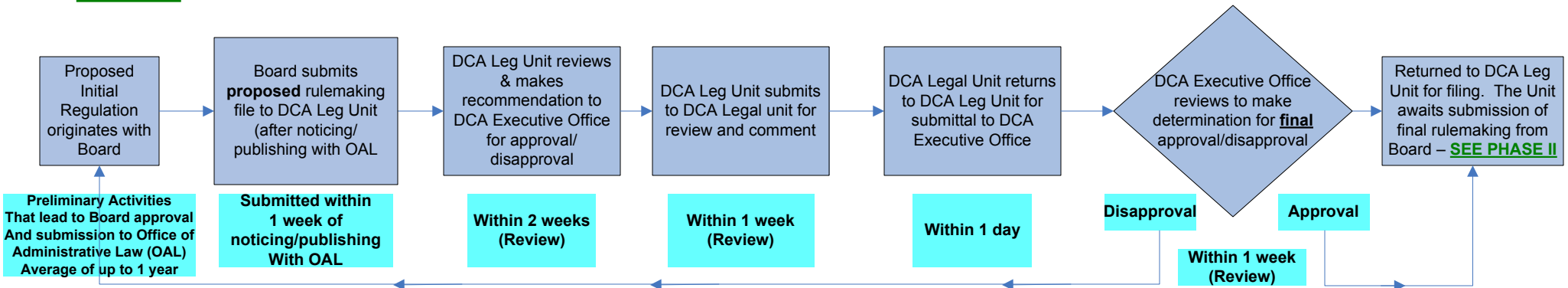
EBRs are not prepared for constitutional amendments and resolutions, since these kinds of legislative measures are not sent to the Governor for approval.

# The Rulemaking Process

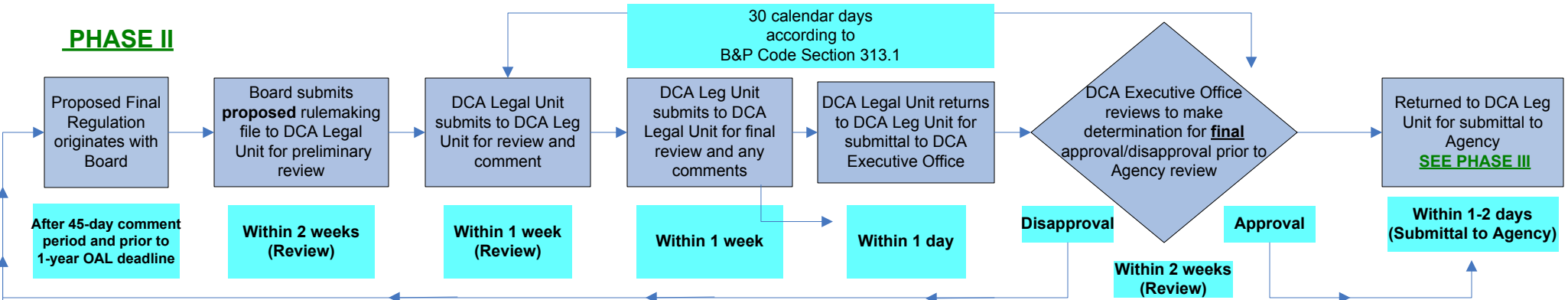


# Basic Regulations Review Process for Boards - TIMELINES

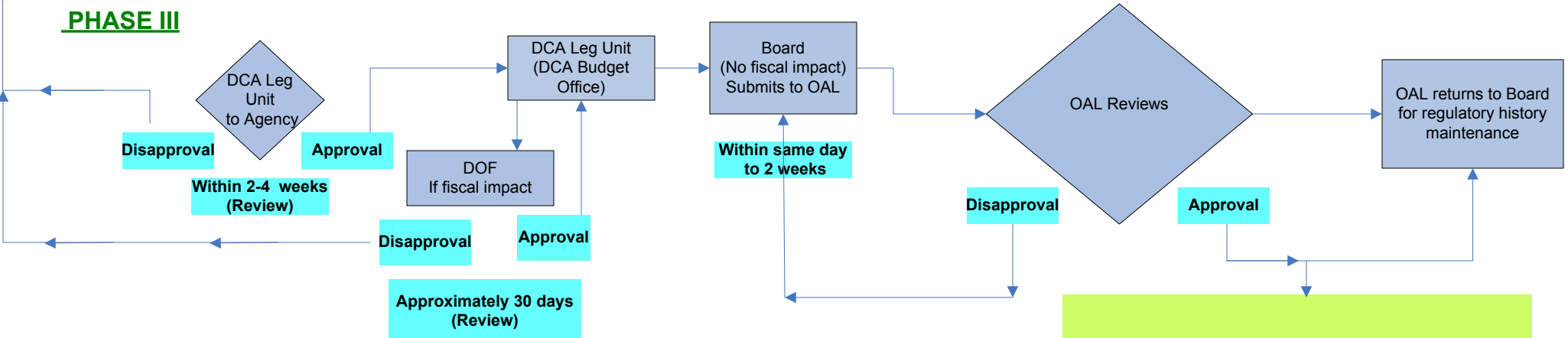
## PHASE I



## PHASE II



## PHASE III



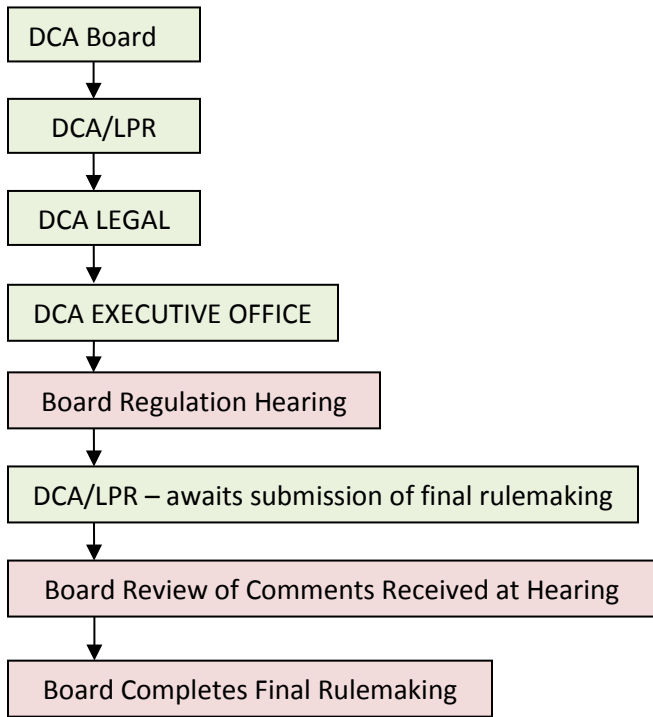
OAL: 30 working days to approve/disapprove (by law).  
 Effective Date(s): January 1, April 1, July 1, or October 1,  
 based on timeframes of OAL approval decisions.

Most timelines are approximate within a one-year timeframe

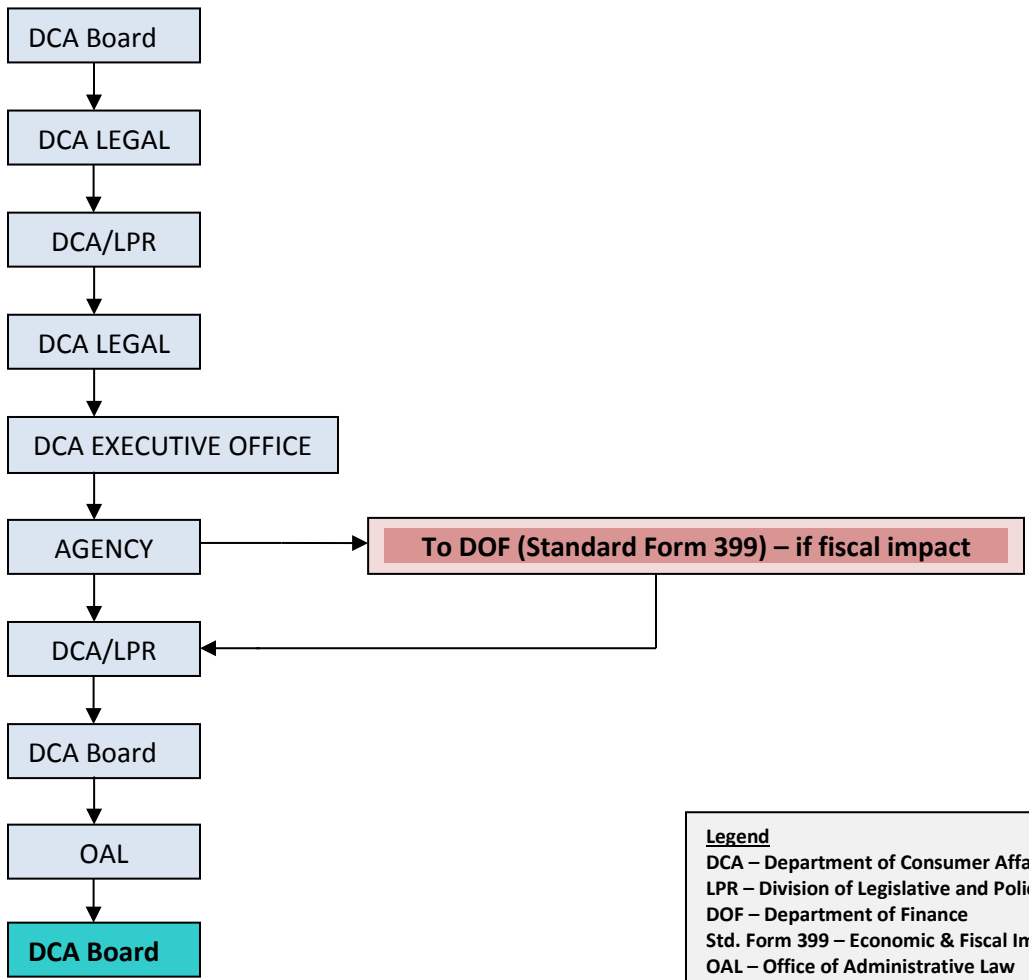
# BASIC RULEMAKING REVIEW PROCESS FOR BOARDS

Board to OAL for Hearing **NOTICE** and Rulemaking **PUBLICATION**

## Initial Phase of Board Rulemaking Process



## Final Phase of Board Rulemaking Process

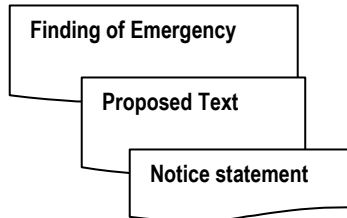


**Legend**  
DCA – Department of Consumer Affairs  
LPR – Division of Legislative and Policy Review  
DOF – Department of Finance  
Std. Form 399 – Economic & Fiscal Impact Statement  
OAL – Office of Administrative Law

# Emergency Rulemaking Process -- Timeline

## Day: - 5 (minus 5) Pre-OAL Submission Emergency Notice Stage

Emergency notice documents =



At least five working days prior to submitting emergency filing to OAL, agency must provide notice\* of its proposed emergency regulations by sending the:

- (1) **finding of emergency**
- (2) **proposed text** of emergency regulations
- (3) **statement** required by section 48, title 1, CCR

to interested parties, unless the emergency “clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.” (GC 11346.1(a))

\* “Notice” in this context is not the full-length Notice of Proposed Action for a regular rulemaking defined in Government Code (GC) sec. 11346.5. No documents are filed with OAL at this point. **Emergency notice documents (finding, text, statement) must be posted on agency’s website.** (GC 11340.85(c)) There is no comment period at this stage.

## Day: 0 Emergency Filed with OAL

Agency files Form 400, Emergency notice documents, and statements/findings as set forth in section 50, title 1, CCR

OAL posts Form 400, emergency regulation text, and Finding of Emergency on its website. Public comment period begins. (GC 11349.6(b))

Agency adds the date emergency is filed with OAL to its website. (GC 11340.85(c), 11364)

## Day: + 5 Emergency Comment Deadline

The public may submit comments for five calendar days, unless “the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.” (GC 11349.6(b))

**Day: + 8 Agency Response Deadline**  
(Agency response is voluntary.)

## Day: + 10 OAL Decision Deadline

OAL has up to 10 calendar days to review emergency regulations. (GC 11349.6)

**Approved emergency regulations remain in effect for 180 days.** Emergency regulations are repealed by operation of law unless agency files a completed Certificate of Compliance rulemaking by the 180<sup>th</sup> day or OAL approves a readopted emergency during that time.

**To make regulations permanent, agency must conduct a regular rulemaking and file a Certificate of Compliance.** (GC 11346.1(e), 11349.6(d))

Only **TWO** 90 day emergency readoptions are allowed. (GC 11346.1(h))



### The Regular Rulemaking Process Office of Administrative Law

Every department, division, office, officer, bureau, board or commission in the executive branch of the California state government must follow the rulemaking procedures in the Administrative Procedure Act (Government Code section 11340 et seq.) and regulations adopted by the Office of Administrative Law (OAL), unless expressly exempted by statute from some or all of these requirements. The Administrative Procedure Act (APA) requirements are designed to provide the public with a meaningful opportunity to participate in the adoption of regulations or rules that have the force of law by California state agencies and to ensure the creation of an adequate record for the public, OAL and judicial review.

Generally, there are two types of rulemaking procedures that a state agency can pursue: **regular** or **emergency**. The [regular rulemaking process](#) requires that a state agency meet certain public hearing and notice requirements. The [emergency rulemaking process](#) has different requirements, which generally include a brief public notice period, a finding of emergency, a brief public comment period, review by OAL and an OAL decision. In addition, some agencies have requirements related to regular or emergency rulemakings that are unique to that particular agency. (Please also see either OAL's [Regular Rulemaking Checklist](#) or [Emergency Rulemaking Checklist](#).)

For the [regular rulemaking process](#), once a state agency decides to conduct a regular rulemaking action, it develops the documents required to conduct a formal APA rulemaking proceeding. Some agencies involve the public during this stage, while others do not. Government Code section 11346.45 requires an agency to engage in pre-notice public discussions (also called “workshopping”) if the proposal is large or complex. The agency develops four documents during the preliminary activity stage which are needed to initiate the formal rulemaking process: (1) [the proposed text](#); (2) the [Initial Statement of Reasons](#); (3) the [STD Form 399 Economic and Fiscal Impact Statement](#); and (4) the [Notice of Proposed Regulatory Action](#) (notice).

To initiate a rulemaking action, an agency issues a notice by having it published in the [California Regulatory Notice Register](#), by mailing the notice to those persons who have filed a request for notice of regulatory action, and by posting the notice, text, and Initial Statement of Reasons on the agency’s website. See Government Code section 11346.5. Once the notice is published in the California Regulatory Notice Register, the APA rulemaking process is officially started and the agency has one year within which to complete the rulemaking and submit the rulemaking file to OAL.

The APA requires at a minimum a 45-day opportunity to comment to the agency in writing on the proposed regulation. The notice specifies where the comments must be directed and the date this opportunity to comment in writing on the proposal closes. Under the APA, an agency has an option as to whether it will hold a public hearing on a proposed rulemaking action. However, if an agency does not schedule a public hearing, any interested person can submit a written request for one to be held.



The written request for a hearing must be submitted at least 15 days prior to the close of the written public comment period, and the agency must give notice of and hold a public hearing. See Government Code section 11346.8.

After the initial public comment period, a rulemaking agency may decide to change its initial proposal either in response to public comments received or on its own initiative. The agency must then decide whether a change is (1) non-substantial; (2) substantial and sufficiently related; or (3) substantial and not sufficiently related. See Government Code section 11346.8(c). A rulemaking agency must make each substantial, sufficiently related change to its initial proposal available for public comment for at least 15 days before adopting such a change. Thus, before a rulemaking agency adopts such a change, it must mail a notice of opportunity to comment on proposed modifications along with a copy of the text of the new proposed changes to each person who has submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. The agency must also post the notice on its website. No public hearing is required. The public may comment on the proposed modifications in writing.

The agency must then consider comments received during the 15-day comment period that are specifically directed to the proposed modifications. An agency may conduct more than one 15-day opportunity to comment on modifications.

A rulemaking agency must summarize and respond on the record to timely comments that are directed at the proposal or at the procedures followed by the agency during the regulatory action. With each comment, the agency must either (1) explain how it has amended the proposal to accommodate the comment, or (2) explain the reasons for making no change to the proposal. The summary and response to comments is included as part of the rulemaking file in a document called a [Final Statement of Reasons](#). See Government Code section 11346.9.

A rulemaking agency must transmit a rulemaking action to OAL for review within one year from the date that the notice was published in the California Regulatory Notice Register.

[OAL then has 30 working days to conduct its review](#). OAL must review the rulemaking record to determine whether it demonstrates that the rulemaking agency satisfied the procedural requirements of the APA and to review the proposed regulations for compliance with the six legal standards set forth in the APA: Authority, Reference, Consistency, Clarity, Non-duplication and Necessity. OAL may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulations. See Government Code section 11349.1.



# A Guide for Accessing California Legislative Information on the Internet

Prepared by  
The Legislative Counsel  
State of California

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## ***Introduction***

Information regarding matters pending before the Legislature has been available to the citizens of California in printed form since 1849. That same information is now available on the Internet pursuant to California law.

This Public Access guide is designed to assist the general public in obtaining legislative information from the Public Access computer over the Internet. The guide also provides the following appendices: **Overview of the Legislative Process, Glossary of Legislative Terms, and Glossary of Internet Terms**. A review of the guide, including the appendices, should be completed before attempting to look at legislative information on the Internet. This guide is also available on the Internet.

## ***What Legislative Information is Available?***

California Law requires that for each current legislative session, the following information be made available on the Internet:

- The Legislative Calendar
- The schedule of legislative committee hearings
- A list of matters pending on the floors of both houses of the Legislature
- A list of the committees of the Legislature and their members
- The text of each bill introduced, including each amended, enrolled, and chaptered form of each bill
- The history of each bill introduced and amended
- The status of each bill introduced and amended

- All bill analyses prepared by legislative committees in connection with each bill
- Any veto message concerning a bill
- The California Codes
- The California Constitution
- All statutes enacted on or after January 1, 1993
- Rules of the Legislature are rules the Legislature adopts to govern its own legislative procedures. These rules are available on the Internet, as is information provided by individual Legislators. In addition to legislative information for the current session, information for the prior legislative session is also available.

All of the information is directly related to the legislative process and how a bill becomes law. Once laws are passed by the Legislature they can have a direct impact on your life. In a representative form of government, citizens possessing knowledge about issues and the process of government can affect the policy decisions under consideration by the Legislature.

Prior to selecting any of the legislative information, it is important that you understand the legislative process and how and where the legislative information fits into the process. A review of [Appendix A, Overview of the Legislative Process](#) and [Appendix B, Glossary of Legislative Terms](#) should be helpful.

## ***How do I Access the Legislative Information?***

### ***World Wide Web***

The Legislative Counsel's World Wide Web site on the Internet provides official California legislative information. The Legislative Counsel's home page offers easy access to various categories of legislative information. To access the Legislative Counsel's home page, use the following Uniform Resource Locator (URL): <http://www.leginfo.ca.gov>

The Home Page contains eight buttons or selections: Today's Events, Bill Information, California Law, Your Legislature, Legislative Publications, Legislative Websites, Legislative Counsel, and New Features. Each of these selections will take you to subsequent pages for retrieving specific legislative information. You can quickly retrieve the current day's schedule of floor sessions and committee meetings. You can also retrieve bill information by requesting a particular bill or searching the bills by subject, author or both.

### ***File Transfer Protocol (FTP)***

File Transfer Protocol (FTP) is an Internet tool that allows you to transfer files from the public access computer to your local computer using FTP commands. FTP commands are used to transfer files directly. The legislative information that is available through the public access website is contained on a database that supports the website. The FTP commands permit you, by identifying designated directories and subdirectories, to directly download the same database that is used to create the "Official California Legislative Information" website. Understanding the directories is critical to your understanding of the information.

There is a main legislative information directory and subsequent directories that contain the Daily File, Bill Information, California Codes, California Constitution, Statutes, Rules of the Legislature, and prior session information. Each of these directories is broken down further into subdirectories to allow you to more readily retrieve the information. The main legislative

information directory can be thought of as a tree trunk with branches representing the other directories and subdirectories.

There also is a directory entitled "bill" that contains the bill information, statutory text, and other legislative information in a structured, relational database, and instructions on its use.

### **Direct File Transfer**

This function provides a direct connection to the public access computer by way of an Internet FTP prompt. To access the Internet FTP prompt from your system's prompt, type:

**<ftp://leginfo.public.ca.gov/pub>**

At the user ID prompt, type anonymous. At the password prompt, type your electronic mail (email) address or a word of your choice. At the Internet FTP prompt, use FTP commands to access the files of legislative information.

### ***What Help is Available?***

As with any other computer program you have obtained, help can be provided by a variety of sources. For example, colleges and universities, libraries, public schools, instructors and students, and your friends, many of whom are very knowledgeable about computers and/or the Internet can provide helpful assistance. If you are accessing the legislative information by way of the website, there is a Help button on most pages that will provide you with assistance on retrieving information from that page. "Help" also will provide additional information about the contents of the legislative information.

There also is a Feedback button on each page that allows you to send us questions or comments about our service. If you would like to send us any questions or comments, or would like to be placed on the email list, send your request to the following address:

**[comments@leginfo.public.ca.gov](mailto:comments@leginfo.public.ca.gov)**

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## **Overview of Legislative Process**

The process of government by which bills are considered and laws enacted by the California State Legislature is commonly referred to as the legislative process. The California State Legislature is made up of two houses: the Senate and the Assembly. There are 40 Senators and 80 Assembly Members representing the people of the State of California. The Legislature maintains a legislative calendar governing the introduction and processing of the legislative measures during its two-year regular session.

### **Idea**

All legislation begins as an idea or concept. Ideas and concepts can come from a variety of sources. The process begins when a Senator or Assembly Member decides to author a bill.

### **The Author**

A legislator sends the idea for the bill to the Office of the Legislative Counsel, where it is drafted into bill form. The draft of the bill is returned to the legislator for introduction. If the author is a Senator, the bill is introduced in the Senate. If the author is an Assembly Member, the bill is introduced in the Assembly.

### **First Reading/Introduction**

A bill is introduced or read the first time when the bill number, the name of the author, and the descriptive title of the bill are read on the floor of the house. The bill is then sent to the Office of State Publishing. No bill except the Budget Bill may be acted upon until 30 days have passed from the date of its introduction.

### **Committee Hearings**

After introduction, a bill goes to the rules committee of the house, where it is assigned to the appropriate policy committee for its first hearing. Bills are assigned to policy committees according to subject area. For example, a Senate bill dealing with health care facilities would first be assigned to the Senate Health and Human Services Committee for policy review. Bills that require the expenditure of funds also must be heard in the fiscal committees, Senate Appropriations and Assembly Appropriations. Each committee is made up of a specified number of Senators or Assembly Members.

During the committee hearing the author presents the bill to the committee, and testimony may be heard in support or opposition to the bill. The committee then votes on whether to pass the bill out of committee, or that it being passed as amended. Bills may be amended several times. It takes a majority vote of the committee membership for a bill to be passed and sent to the next committee or to the floor.

Each house maintains a schedule of legislative committee hearings. Prior to a bill's hearing, a bill analysis is prepared that explains the intended effect of the bill on current law, together with background information. Typically the analysis also lists organizations that support or oppose the bill.

### **Second and Third Reading**

Bills passed by committees are read a second time on the floor in the house of origin and then assigned to third reading. Bill analyses are also prepared prior to third reading. When a bill is read the third time it is explained by the author, discussed by the Members, and voted on by a roll call vote. Bills that require an appropriation, or that take effect immediately, ordinarily require 27 votes in the Senate and 54 votes in the Assembly to be passed. Other bills generally require 21 votes in the Senate and 41 votes in the Assembly. If a bill is defeated, the Member may seek reconsideration and another vote.

### **Repeat Process in Other House**

Once the bill has been approved by the house of origin, it proceeds to the other house where the procedure described above is repeated.

### **Resolution of Differences**

If a bill is amended in the second house, it must go back to the house of origin for concurrence, meaning agreement on those amendments. If the house of origin does not concur in those amendments, the bill is referred to a two-house conference committee to resolve the differences. Three members of the committee are from the Senate and three are from the Assembly. If a compromise is reached, the bill is returned to both houses for a vote.

### **Governor**

If both houses approve a bill, it goes to the Governor. The Governor has three choices: sign the bill into law, allow it to become law without his or her signature, or veto it. A governor's veto can be overridden by a two-thirds vote in both houses. Most enacted bills go into effect on the first day of January of the next year. Urgency bills, and certain other measures, take effect immediately after they are enacted into law.

## **California Law**

Each bill that is passed by the Legislature and approved by the Governor is assigned a chapter number by the Secretary of State. These chaptered bills are statutes, and ordinarily become part of the California Codes. The California Codes are a comprehensive collection of laws grouped by subject matter.

The California Constitution sets forth the fundamental laws by which the State of California is governed. All amendments to the California Constitution come about as a result of constitutional amendments approved by the voters at a statewide election.

## **Glossary of Legislative Terms**

### **A**

#### **ACROSS THE DESK**

The official act of introducing a bill or resolution. The measure is given to the Chief Clerk or his or her representative at the Assembly Desk in the Assembly Chamber or to the Secretary of the Senate or his or her representative in the Senate Chamber. It then receives a number, is sent to the State Printer, and becomes a public document available in the bill room. Amendments are also “put across the desk.”

#### **ACT**

A bill passed by the Legislature and approved by the Governor.

#### **ACTION**

Disposition of any question before the Legislature.

#### **ADJOURN IN MEMORY (AIM)**

A Member may request that the Assembly or Senate session be adjourned in the memory of a person. This request must be in writing and shall be read by the Presiding Officer prior to the adjournment of session.

#### **ADJOURNMENT**

Termination of a meeting, occurring at the close of each legislative day upon the completion of business, accomplished by a successful motion to end session, with the hour and day of the next meeting being set prior to adjournment.

#### **ADJOURNMENT SINE DIE**

Literally, “adjournment without day,” meaning no days left; final termination of the two-year legislative session. Regular or special sessions of the Legislature are adjourned sine die at midnight on November 30 of each even-numbered year.

#### **ADMINISTRATIVE PROCEDURE ACT (APA)**

A statute containing required procedures for rule-making and administrative hearings. (Chapter 3.5, 4, and 5 [commencing with Section 11340] of Part 1 of Division 3 of Title 2 of the Government Code.)

#### **ADOPTION**

Approval or acceptance of motions, amendments or resolutions.

#### **ADVISE AND CONSENT**

Confirmation by the Senate of certain appointees of the Governor.

#### **AMENDMENT**

An alteration made, or proposed to be made, in a bill, motion, resolution or clause, by adding, changing, substituting or omitting language. Amendments must be submitted to Legislative Counsel for drafting.

**AUTHOR'S AMENDMENTS (Before Committee Hearing)**

Amendments submitted by the author of the bill to the committee and submitted to the Desk by the Chair of the committee to which the bill has been referred. Permits the adoption of the amendments by the House without the benefit of a committee hearing and recommendation.

**AUTHOR'S AMENDMENTS (At Committee Hearing or on the Floor)**

Amendments in Committee or on the Floor that are supported by the author.

**COMMITTEE AMENDMENTS**

Amendments proposed by a Committee or a Committee member in a Committee hearing. Adopted by roll call vote of the Committee. May or may not be hostile.

**HOSTILE AMENDMENTS (At Committee Hearing or on the Floor)**

Amendments proposed by another Member in Committee or on the Floor that are not supported by the bill's author.

**ANALYSIS OF THE BUDGET BILL**

The Legislative Analyst's comprehensive examination of the Governor's Budget; available to legislators and the public about six weeks after the budget is submitted by the Governor to the Legislature.

**APA RULEMAKING PROCEDURES**

Procedures set forth in the Administrative Procedure Act that generally require state agencies, when adopting regulations, to give public notice, receive and consider public comments, submit their regulations and supporting rule-making files to the Office of Administrative Law for review, and publish the regulations in the California Code of Regulations (see California Code of Regulations and Rule-Making).

**APPEAL**

A parliamentary procedure for challenging the decision of a presiding officer.

**APPORTIONMENT**

Division of the State into districts from which state and federal legislative representatives are elected (see reapportionment).

**APPROPRIATION**

The amount of money set aside for a specific purpose and designated from a specific source, such as the General Fund or the Environmental License Plate Fund.

**APPROPRIATIONS LIMIT**

Established by Proposition 4, which was passed by voters in 1979 (Article XIII B, California Constitution), the appropriations limit is the maximum amount of tax proceeds that State or local governments may appropriate in a fiscal year. The limit is adjusted annually but is based on 1986–87 appropriations.

**APPROVED BY THE GOVERNOR**

Indicating the signature of the Governor on a bill passed by the Legislature.

**ARCHIVES**

Location and contents of public records kept by the Secretary of State, including copies of all measures considered at each session, journals, committee reports, and documents of historic value.

**ASSEMBLY**

The House of the California Legislature, consisting of 80 Members, elected for two-year terms, from districts apportioned on the basis of population.

**ASSISTANT CHIEF CLERK**

Assists in the supervision and coordination of the operation of the proceedings and actions of the Assembly; performs the duties of the Chief Clerk in his or her absence.

**AUTHOR**

A Member of the Legislature who introduces a legislative measure.

**B****BICAMERAL**

A Legislature consisting of two Houses.

**BILL**

A draft of a proposed law introduced by a Member of the Legislature (Assembly Bill 4000-AB 4000, Senate Bill 1-SB 1).

**BILL ANALYSIS**

A summary of the purpose, content, and effect of a proposed measure or amendment, prepared for committee or floor proceedings.

**BILL DIGEST**

The legal synopsis of a measure; prepared by Legislative Counsel (see Digest and Legislative Counsel).

**BLUE PENCIL**

The California Constitution grants the Governor "line item veto" authority to reduce or eliminate any item of appropriation from any bill including the Budget Bill. In the 1960's the Governor actually used an editor's blue pencil for the task (see line item veto).

**BOND BILL (General Obligation Bonds)**

A bill authorizing the sale of State general obligation bonds to finance specified projects or activities; the measure subsequently must be approved by the voters.

**BUDGET ACT**

The Budget Bill after it has been signed into law by the Governor.

**BUDGET BILL**

The spending proposal for the next fiscal year submitted by the Governor and considered by both houses of the Legislature.

**BUDGET CHANGE PROPOSAL (BCP)**

A document prepared by a State agency and submitted to an agency secretary and the Department of Finance to propose a budget change to the baseline budget; used in preparing the Governor's Budget.

**BUDGET TRAILER BILL**

See "Trailer Bill."

**BUDGET YEAR**

The next fiscal year that begins July 1 and concludes on June 30; the year following the current fiscal year.

**C****CALIFORNIA CHANNEL (CAL-SPAN)**

The cable television channel that televises Assembly and Senate proceedings:  
[www.calchannel.com](http://www.calchannel.com)

**CALIFORNIA CODE OF REGULATIONS**

The official compilation of regulations legally adopted by State agencies and filed with the Secretary of State; the recognized source of California administrative law.

**CALL OF THE HOUSE**

The procedure used to compel attendance of Members and to require those in attendance to remain in the Chamber.

**CALL THE ABSENTEES**

Order by the Presiding Officer directing the reading clerk to read the names of Members who have not responded to a roll call.

**CAPITAL OUTLAY**

Funds to be spent acquiring, improving or constructing fixed assets.

**CAPITOL PRESS CORPS**

Members of the press who are responsible for covering events in the Capitol.

**CASTING VOTE**

The deciding vote the Lieutenant Governor may cast in the case of a tie vote in the Senate.

**CAUCUS**

(1) A closed meeting of the legislators of one political party. (2) A group of legislators who meet formally because of their interest in specific issues (e.g., Rural Caucus, Women's Caucus, Latino Caucus, Black Caucus, etc.).

**CAUCUS CHAIR**

A Member selected to serve as chair, with duties as prescribed by his or her caucus.

**CAUCUS SECRETARY**

An officer of the party caucus whose duties are prescribed by the caucus.

**CHAIR**

A designation of the current presiding officer, usually in the context of a committee hearing.

**CHAMBER**

The Assembly or Senate Chamber where Floor Sessions are held.

**CHAPTER**

After a bill has been signed by the Governor, the Secretary of State assigns the bill a Chapter Number, for example, "Chapter 123, Statutes of 1998," which subsequently may be used to refer to the measure.

**CHAPTERING OUT**

When, during a calendar year, two or more bills amending the same code section become law, the bill enacted last (with a higher chapter number) becomes law and prevails over ("chapters out") the code section in the bill or bills previously enacted. Chaptering out can be prevented with the adoption of "double jointing" amendments (see conflict, double jointing).

**CHECK-IN SESSION**

On non-Floor Session days, legislators are required to "check-in" with the Chief Clerk or Secretary of the Senate to be added to the roll for attendance purposes. A quorum must be recorded in order for legislative business to be transacted.

**CHIEF ADMINISTRATIVE OFFICER**

The chief Assembly staff person responsible for Assembly administrative, fiscal, personnel, and business affairs; reports to the Assembly Rules Committee.

**CHIEF CLERK**

A nonpartisan non-Member officer of the Assembly elected by the majority of the membership at the start of each two-year session as the Assembly's legislative officer and parliamentarian.

**COAUTHOR**

Any member of either house, with the agreement of the author of a bill, may add his or her name on that bill as a coauthor, usually indicating support for the proposed legislation.



**CODES**

Bound volumes of law organized by subject matter. The code sections to be amended by a bill are referred to in the title of the bill.

**COLA**

Cost-of-living adjustment.

**COMMITTEE CHAIR**

A Member selected by the Speaker to preside over the proceedings and actions of a specific committee.

**COMMITTEE OF THE WHOLE**

The entire Assembly or Senate sitting as a committee to consider any matter properly presented to it.

**COMPANION BILL**

An identical bill introduced in the other House. This procedure is less common in the California Legislature than in Congress.

**CONCURRENCE**

Approval by the House of origin to changes made to a bill while it was in the second House (e.g., Assembly approval of Senate amendments to an Assembly bill). If concurrence is denied, the bill is eligible to be sent to a two-house conference committee (see conference committee).

**CONCURRENT RESOLUTION**

A measure that can be introduced in either House, but must be approved by both Houses and filed with the Secretary of State to take effect. The Governor's signature is not required. These measures usually involve the business of the Legislature (e.g., adoption of the Joint Rules).

**CONDITION OF THE FILE**

When permitted by the Speaker (in the Assembly) or the President pro Tempore (in the Senate), a Member may make a brief statement at the close of a Floor session, to argue why it may be inadvisable for the Assembly or Senate to adjourn. The statement may be no longer than two minutes in the Assembly. The Senate has no time limit.

**CONDITIONAL (OR CONTINGENT) EFFECT** – The effect of a bill, or portion thereof, is made dependent upon the occurrence of a specified event

(e.g., passage of another measure, securing a federal waiver, receipt of revenues, etc.)  
(see contingent enactment language).

**CONFEREES**

Members appointed to a conference committee.

**CONFERENCE COMMITTEE**

A joint Assembly and Senate committee composed of six legislators, three from each House. The conference committee meets in public session to reconcile differences between the Assembly and Senate versions of a measure. Three Assembly conferees are chosen by the Speaker; three Senate conferees are chosen by the Senate Rules Committee.

**CONFERENCE REPORT**

Amendments agreed upon by a majority of a conference committee. Two Members from each House must agree on the conference report in order for the report to be considered by the Houses (see Conference Committee).

**CONFIRMATION**

The process of approving gubernatorial appointments to executive departments and many boards and commissions.

**CONFLICT**

During a calendar year, when two or more bills amend the same code section, they are said to be in conflict. Technical amendments must be taken to each bill prior to its approval by the Legislature in order to ensure that all changes proposed by the enacted bills take effect (see chaptering out, double jointing).

**CONSENT CALENDAR**

A group of noncontroversial bills passed by a committee to another committee or the full Assembly or Senate. Bills may be placed upon the Consent Calendar if they are reported to the Floor with that recommendation and (1) have received no “no” votes in committee and (2) have had no opposition expressed by any person present at the hearing.

**CONSTITUENT**

A person who resides within the district of a legislator.

**CONSTITUTIONAL AMENDMENT**

A resolution changing the language of the State Constitution, adopted by a two-thirds vote of the Legislature or presented by initiative. It requires an affirmative vote of the majority of the electorate to become effective.

**CONSULTANT**

A professional committee staff person.

**CONTINGENT ENACTMENT LANGUAGE**

Connects two bills so that one bill will not become operative unless another bill also takes effect (see conditional effect).

**CONVENE**

To assemble a meeting. The Legislature generally convenes twice a week.

**CURRENT YEAR**

The current state fiscal year—that is, the fiscal year we are in now. The State fiscal year begins on July 1 and ends the following June 30.

**D****DAILY FILE**

The official document published by each House showing bills eligible for Floor action that day; it also includes a schedule of committee hearings and Officers and Committees of the House.

**DAILY JOURNAL**

A publication produced by each House for each legislative day that contains the official record of the Floor Session, vote information, motions, parliamentary inquiries, and letters of legislative intent (see Journal).

**DEADLINES**

The dates by which bills must be introduced, heard and enacted. Established by the Constitution, and by Assembly, Senate, and Joint Rules.

**DELEGATED AUTHORITY**

Power granted by the Legislature to a State agency to implement or enforce a statute, including the power to adopt regulations.

**DESK**

The desk at the front of the Chamber where much of the clerical work of the body is conducted. Also, a generic term for the staff and offices of the Chief Clerk of the Assembly and the Secretary of the Senate.

**DESK IS CLEAR**

A statement by the Presiding Officer, prior to a motion to adjourn, meaning there is no further business.

**DIGEST**

Prepared by the Legislative Counsel, it summarizes the effect of the proposed bill on current law (see Bill Digest and Legislative Counsel's Digest).

**DISTRICT**

The area of the State represented by a legislator. Each district is determined by population and is known by a number. There are 40 Senate districts and 80 Assembly districts.

**DISTRICT BILL**

Legislation introduced specifically on behalf of a legislator's district, generally affecting only that district.

**DO PASS**

An affirmative recommendation made by a committee; moves a bill to the Floor or to the next committee, as specified, without amendment.

**DO PASS AS AMENDED**

An affirmative recommendation made by a committee; moves a bill to the Floor or to the next committee, as specified, providing the language of the bill is changed as specified.

**DOUBLE JOINTING**

Double jointing refers to technical amendments necessary when two or more bills propose to amend the same code section (i.e., are in conflict). Double jointing prevents the problem of chaptering out (see Chaptering Out, Conflict).

**DOUBLE REFERRED**

Legislation referred by Rules Committee to two policy committees for hearing. Both committees must approve the measure to keep it moving in the process. This is typically used for issue areas that overlap the jurisdiction of more than one policy committee.

**DROPPED**

When an author has decided not to pursue the passage of a bill.

**E****EFFECTIVE DATE**

As specified by the Constitution, the date when a law takes effect. The date is usually January 1 of the following year, unless the bill is an urgency measure or specifies another date.

**ENACTING CLAUSE**

The phrase at the beginning of each bill: "The people of the State of California do enact as follows:"

**ENACTMENT OR ENACTED INTO LAW**

The act of passing legislation involves both Houses. A bill moves through the legislative process and, if agreed upon by both houses, is sent to the Governor. If the Governor signs the bill or allows it to become law without his signature, it is enacted into law.

**ENACTMENT DATE**

The date the Governor signs a bill.

**ENGROSSED BILL**

Whenever a bill is amended, the printed form of the bill is proofread to make sure all amendments are inserted properly. After being proofread, the bill is “correctly engrossed” and is therefore in proper form.

**ENGROSSING AND ENROLLING**

A nonpartisan unit in each House responsible for proofreading all forms of measures. The unit also prepares and delivers bills to the Governor for consideration.

**ENGROSSMENT**

The process of comparing the printed bill to ensure it is identical to the original and to verify that any amendments have been correctly inserted.

**ENROLLED BILL**

Whenever a bill passes both Houses of the Legislature, it is ordered enrolled. Upon enrollment, the bill is again proofread for accuracy and then delivered to the Governor. The enrolled bill contains the complete text of the bill with the dates of passage certified by the Chief Clerk of the Assembly and the Secretary of the Senate.

**ENROLLMENT**

Occurs when bills are filed with the Governor and resolutions are filed with the Secretary of State, after they have been accepted by both Houses.

**EXECUTIVE SESSIONA**

committee meeting restricted to committee members and specifically invited guests.

**EXEMPT FROM REVIEW BY THE OFFICE OF ADMINISTRATIVE LAW**

A statutory provision exempting a state agency from the Administrative Procedure Act requirement to submit proposed regulations and their supporting rule-making file to the Office of Administrative Law for review. Other APA requirements apply. (See APA rule-making procedures).

**EXEMPT FROM THE ADMINISTRATIVE PROCEDURE ACT**

A statutory provision exempting a state agency or its regulations from compliance with all standards and procedures set forth in the Administrative Procedure Act.

**EXPUNGE**

A motion to delete from the record any reference to a specific action. The motion must be made on the day the vote is taken.

**EXTRAORDINARY SESSION**

A special legislative session called by the Governor to address only those issues specified in the proclamation. Measures introduced in these sessions are numbered chronologically with a lower case “x” after the number (e.g., AB 28x); they take effect generally the 91st day after adjournment of the special session.

**F****FILE NOTICE**

Bills that are scheduled for a committee hearing must be listed in the Daily File for not less than four days prior to the hearing. Two days’ notice is required if a bill is subsequently heard by another committee.

**FILE NUMBER**

The number assigned to a measure in the Assembly or Senate Daily File. The file number changes each day as bills move on or off the Daily File. File numbers are assigned to measures on second and third reading and unfinished business. Legislation is taken up on the Assembly or Senate Floor in chronological order according to file number. Items considered on the Floor are referred to by file number.

**FINAL HISTORY**

The publication printed at the end of every session showing the final disposition of all measures.

**FINANCE LETTER**

A proposal made by the Director of Finance to the chairs of the budget committees in each House to amend the Budget Bill and the Governor's Budget from the form submitted January 10, in order to reflect a revised plan of expenditure.

**FIRST READING**

The initial introduction of a bill. The clerk assigns it a number and reads its title and sends the bill to be printed. The bill is then referred by Rules committee to a standing committee for a future hearing.

**FISCAL BILL**

Any measure that contains an appropriation of funds or requires a state agency to spend money for any purpose or results in a substantial loss of revenue to the state. The Legislative Counsel determines which bills are fiscal bills, pursuant to Joint Rule 10.5. The designation appears at the end of the Legislative Counsel's Digest. Fiscal bills must be heard by the Assembly and Senate Appropriations Committees in addition to the appropriate policy committees in each House.

**FISCAL COMMITTEES**

The committees in each house that consider appropriations: Appropriations and Budget Committees. All fiscal bills are referred to a fiscal committee. The budget bill is referred only to the Budget Committee. Most other fiscal bills are heard by the Appropriations Committee if they have been approved by policy committees. If the fiscal committee approves the bill, it usually then moves to the Floor.

**FISCAL DEADLINE**

The date by which all bills with fiscal implications must be reported out of fiscal committee. Any fiscal bill missing the deadline is considered "dead" unless it receives a rule waiver allowing further consideration.

**FISCAL YEAR**

The 12-month period during which a budget is in effect. The State fiscal year begins July 1 and ends June 30 of the following year. The federal fiscal year begins October 1 and ends September 30 of the following year.

**FLOOR**

(1) That portion of the Assembly or Senate Chamber reserved for Members and officers of the Assembly or Senate and other persons granted the privilege of the Floor. (2) The term used to describe the location of a bill or the type of session, connoting action to be taken by the House. Matters may be said to be "on the Floor."

**FLOOR ANALYSIS UNIT**

A nonpartisan unit in the Chief Clerk's office which is responsible for editing the bill analyses that are prepared by committee staff. The packet of analyses is then made available for Members to reference during Floor Sessions.

**FLOOR MANAGER**

The legislator responsible for taking up a measure on the Floor; usually the bill's author in the house of origin and a Member of the other house designated by the author when the bill is heard there. The name of the Floor Manager in the second house appears in parentheses after the author's name in the Daily File.

**FLOOR PASS**

No visitor may observe the Assembly or Senate from the rear of the Chamber without a pass. Assembly passes are issued by the Speaker's office; Senate passes are issued by

the President pro Tempore's office. Passes are not required for the viewing area in the gallery above the chambers.

#### **FOREIGN AMENDMENTS**

Amendments not drafted by the Legislative Counsel Bureau.

#### **FOUR-DAY FILE NOTICE**

Joint Rule 62(a) requires bills set for hearing in the committee of first reference to be noticed in the Daily File for four days prior to hearing. Subsequent committees of reference require a Daily File notice of two days.

### **G**

#### **GALLERY**

The balconies of the chambers from which visitors may view proceedings of the Legislature.

#### **GERMANE**

Referring to whether a proposed amendment is relevant to the subject matter in the bill. Legislative Counsel may opine on germaneness, but the determination of germaneness is decided by the Presiding Officer, subject to an appeal by the membership.

#### **GOVERNOR'S BUDGET**

A spending plan for the State presented annually by the Governor in January, for consideration by the Legislature; compiled by the Department of Finance, in conjunction with state department heads.

#### **GOVERNOR'S REORGANIZATION PLAN**

A proposal to reorganize the functions within the Executive Branch, subject to approval by the Legislature.

#### **GRANDFATHERING**

A legal exemption whereby a situation is governed by an old law while a new law applies to all future, similar situations.

#### **GUT AND AMEND**

When amendments to a bill remove the current contents in their entirety and replace them with different provisions.

### **H**

#### **HANDBOOK**

The 3" x 5¾" hardbound edition of California Legislature published for each two-year legislative session. It contains indexed versions of the Assembly, Senate, and Joint Rules; biographies of Members; and other useful information. The handbook is published by the Assembly Chief Clerk and Secretary of the Senate for their respective houses.

#### **HEARING**

A committee meeting convened for the purpose of considering and acting upon or gathering information on a specific subject.

#### **HELD IN COMMITTEE**

When a bill fails to get sufficient votes to pass out of committee, it is held in committee.

#### **HELD UNDER SUBMISSION**

An action taken by a committee when a bill is heard in committee and there is an indication that the author and the committee members want to work on or discuss the bill further, but there is no motion for the bill to progress out of committee. This does not preclude the bill from being set for another hearing.

**HELD WITHOUT RECOMMENDATION**

An action taken by a committee when a bill is heard in committee and there is no indication that the committee wants the bill to progress out of committee. There is no motion for the bill to progress out of committee. This does not preclude the bill from being set for another hearing.

**HELP DESK**

The place to call with questions about the hardware or software of the legislative computer network.

**HIJACK**

An action to delete the contents of a bill and insert entirely new provisions. May occur with or without the author's permission.

**HISTORY**

A publication that gives a comprehensive list of all actions taken on every bill. It is published in weekly volumes by each house.

**HOUSE**

Refers to either the Senate or the Assembly in California.

**HOUSE OF ORIGIN**

The House in which a measure begins; the Assembly is the House of Origin for all Assembly measures. As opposed to the "Second House"—the house which hears measures following the House of Origin.

**HOUSE RESOLUTION**

A measure by the Assembly used for stating policies, such as the House Rules, and expressing views of the House. House Resolutions require adoption by a majority vote of the Assembly.

**I****INACTIVE FILE**

The portion of the Daily File containing legislation that is ready for floor consideration, but, for a variety of reasons, is dormant. An author may move a bill to the inactive file if he or she wishes to take it up at a later date. Once a bill is on the inactive file, one day's public notice is needed to place it back on the agenda.

**INITIATIVE**

A method of lawmaking that requires a vote of the people instead of a vote of the Legislature in order for a measure to become law. To qualify for a statewide ballot, statutory initiatives must receive signatures of voters equal to 5% of the votes cast for all candidates for Governor at the last gubernatorial election. Constitutional amendment initiatives must receive signatures equal to 8% of the same number of votes.

**INQUIRY SYSTEM**

A computer system designed by the Legislative Data Center which allows nearly immediate access to information on bill text, analyses, Daily File, Legislative Index, Daily Journal, California Constitution, legislative rules, and the California Codes.

**INTERIM**

The period of time between the adjournment of the first year of the biennium and the reconvening of the second year of the biennium.

**INTERIM STUDY**

The assignment of the subject matter of a bill to the appropriate committee for study during the interim recess.

## **J**

### **JOINT COMMITTEE**

A committee composed of equal numbers of Assembly Members and Senators.

### **JOINT RESOLUTION**

A resolution expressing an opinion about an issue pertaining to the federal government; forwarded to Congress for its information. Joint resolutions require the approval of both the Assembly and Senate but do not require approval by the Governor.

### **JOINT SESSION**

The Assembly and Senate meeting together, usually in the Assembly chamber. The purpose is to receive special information such as the Governor's State of the State Address.

### **JOURNAL**

The official chronological record of the proceedings of each House. The Journal is the minutes of the meetings of the House, printed daily. At the end of session, the Journal is certified, indexed, and bound (see Daily Journal).

## **L**

### **LAW**

Rules of conduct determined by the people through their elected representatives or by direct vote.

### **LAY ON THE TABLE**

A motion to set aside a matter (e.g., amendments) before the house which may not be taken up again during Floor session. The motion is not debatable.

### **LEGISLATIVE ADVOCATE**

A person engaged to present views of a group or organization to legislators. Commonly called lobbyists.

### **LEGISLATIVE ANALYST**

Staff director of the Joint Budget Committee. The Legislative Analyst provides a thorough, nonpartisan analysis of the fiscal impact of the Governor's Budget.

### **LEGISLATIVE COUNSEL**

The attorney for the Legislature, elected jointly by both houses. The Legislative Counsel and his or her legal staff is responsible for drafting all bills and amendments, preparing a digest (summary) of each bill, providing legal opinions, and generally representing the Legislature in legal proceedings.

### **LEGISLATIVE COUNSEL'S DIGEST**

A brief summary of the changes the proposed bill would make to current law. The digest is found in the beginning of each bill (see Bill Digest).

### **LEGISLATIVE DATA CENTER**

Department within the Office of Legislative Counsel that maintains the database in which legislation is drafted and amended; the Inquiry System, used to track and report legislation; and the computer systems used by Members and staff in their legislative work. Also provides technological support to the Legislature.

### **LIEUTENANT GOVERNOR**

The President of the Senate; designated by the State Constitution to preside over the Senate and cast a vote only in the event of a tie. If the Governor cannot assume his or her duties or is absent from the State, the Lieutenant Governor assumes the role of the Executive for the remainder of the term or during the absence.



**LINE ITEM VETO**

See Blue Pencil.

**LOBBYIST**

An individual who seeks to influence the outcome of legislation or administrative decisions. The law requires formal registration as a lobbyist if an individual is paid \$2,000 or more in any calendar month, or spends one-third or more compensated time in any calendar month, engaging in activities to influence the outcome of legislation or administrative decisions. State employees who lobby for state agencies are not required to formally register but are still subject to the lobbyist gift limits.

**LOBBYIST DIRECTORY**

A Directory of Lobbyists, Lobbying Firms, and Lobbyist Employers. Photos and addresses of lobbyists are included with a list of the clients they represent. Employers of lobbyists are listed alphabetically. This directory is available on-line at the Secretary of State's web site.

**LOWER HOUSE**

The Assembly.

**M****MAJORITY FLOOR LEADER**

In the Assembly, the Majority Floor Leader is an officer of the Assembly appointed by the Speaker. He or she represents the Speaker on the floor and, in conjunction with the Presiding Officer, expedites Assembly Floor proceedings through parliamentary procedures such as motions and points of order. The Majority Floor Leader works directly with the Speaker pro Tempore, other members of the majority party's leadership team, and the Minority Leader, to facilitate positive interaction between the Members during floor sessions. In the Senate, the Majority Leader is a party leader chosen by the majority party caucus.

**MAJORITY POLICY LEADER**

The Assembly Majority Policy Leader performs duties assigned by the Speaker, including assisting the Speaker in the development and implementation of the policy goals and objectives for the Assembly.

**MAJORITY OF THE HOUSE**

Quorum requirement of one more than half of the qualified members sitting at that time. For example, if there are four vacancies in the Assembly, 39 members would make a majority of the house.

**MAJORITY OF THOSE PRESENT AND VOTING**

A vote threshold determined by the number of members voting at that time. For example, if 40 members are voting on the adoption of amendments, a minimum of 21 "aye" votes would be necessary to adopt the amendments.

**MAJORITY VOTE**

A vote of more than half of the legislative body considering a measure. The full Assembly requires a majority vote of 41 and the full Senate requires 21, based on their memberships of 80 and 40, respectively.

**MAJORITY WHIP**

A member of the majority party's leadership team in the Assembly or Senate, responsible for monitoring legislation and securing votes for legislation on the Floor.

**MASON'S MANUAL**

The definitive reference manual for parliamentary procedure, unless specifically covered by the Legislature's own written rules. Most parliamentary situations are covered by the State Constitution, Joint Rules or Assembly Rules.

**MAY REVISION**

The updated estimate of revenues and expenditures, submitted by the Governor no later than May 14; replaces the estimates contained in the Governor's Budget submitted in January.

**MEASURE**

Any bill, resolution, or constitutional amendment that is acted upon by the Legislature.

**MESSAGES FROM THE GOVERNOR**

Official communications from the Governor that are read into the record.

**MINORITY FLOOR LEADER**

Elected by the caucus having the second largest house membership. Generally responsible for making motions, points of order, and representing the minority caucus on the floor.

**MINORITY WHIP**

A member of the minority party's leadership team in the Assembly or Senate, responsible for monitoring legislation and securing votes for legislation on the Floor.

**MINUTES**

An accurate record of the proceedings (see Journal).

**MOTION**

A formal request for action made by a legislator during a committee hearing or Floor Session.

**MOTION TO RECONSIDER**

A parliamentary procedure which, if adopted, reverses an action previously taken and returns the question before the body for another vote.

**MOTION TO RE-REFER**

This motion is utilized to send a measure from one committee to another. A motion to re-refer a bill or resolution from one committee to another committee may be made during the regular order of business. Debate is allowed as to the propriety of the re-referral, and requires 41 or more votes in the Assembly, 21 or more votes in the Senate.

**MOVE A CALL**

A parliamentary procedure that delays the announcement of the vote on a measure. This action gives a member additional time to gain more support or opposition to a bill. All calls must be "lifted" before the House adjourns that day.

**MOVE THE PREVIOUS QUESTION**

A motion made to end debate on a measure.

**N****NONFISCAL BILL**

A measure having no financial impact on the state and, therefore, not required to be heard in an Assembly or Senate fiscal committee as it moves through the legislative process. Non-fiscal bills are subject to later legislative calendar deadlines than fiscal bills.

## **O**

### **OATH OF OFFICE**

An oath taken by members-elect prior to being seated and embarking upon official duties.

### **OFFICE OF ADMINISTRATIVE LAW (OAL)**

The independent executive branch agency charged with reviewing state agency rulemaking and regulations for compliance with procedures and standards set forth in the rulemaking portion of the Administrative Procedure Act (APA).

### **OFFICERS**

Members or non-Members of the Legislature who are elected by the membership of their respective Houses at the beginning of each Session. Assembly Member officers include the Speaker and Speaker pro Tempore. Non-Member Assembly officers include the Chief Clerk and the Sergeant-at-Arms. Senate Member officers include the President pro Tempore; non-Member Senate officers include the Secretary of the Senate and the Sergeant-at-Arms.

### **ON CALL**

A roll call vote in a committee or in an Assembly or Senate Floor Session before it has been concluded and, therefore, has not been formally announced. Members may continue to vote or change their votes as long as a measure remains on call. Calls are usually placed at the request of a bill's author in an effort to gain votes. Calls can be lifted by request at any time during the committee hearing or Floor Session, but cannot be carried over into the next legislative day (see Move a Call).

### **ON FILE**

A bill on Second or Third Reading or Unfinished Business awaiting Concurrence; listed in the Assembly or Senate Daily File.

### **ON THE FLOOR**

Describing the state of being in the Assembly or Senate Chambers, where legislation is considered by the full Assembly or Senate.

### **OUT OF ORDER**

A parliamentary ruling by the presiding officer of a committee or the house that an action is not properly before the body or relevant to its discussion and, therefore, cannot be discussed at that moment.

**OVERRIDE** – An effort to reverse a Governor's veto by a vote of two-thirds of the members of each house. A successful override requires 54 votes in the Assembly and 27 votes in the Senate.

## **P**

### **PARLIAMENTARY INQUIRY**

A question posed by a Member during a committee hearing or Floor Session. A Member must be recognized for this purpose and the question is then answered by the committee chair or presiding officer.

### **PARLIAMENTARIAN**

Under Assembly Rule 32, the Chief Clerk is the Parliamentarian of the Assembly, responsible for advising the house on legislative procedures.

### **PASSAGE**

Favorable action on a measure before either House.

### **PASS AND RETAIN**

When a bill stays on File until the next day without penalty. If a Member wishes to wait an additional day before taking up a bill, the Member may ask the House for unanimous consent to pass and retain his or her bill on File until the next legislative day.

#### **PASS ON FILE**

When the House refuses to “Pass and Retain” a measure on the agenda, it is “Passed on File.” Although the bill remains on the agenda for the next day, if it is not taken-up the second time, it will automatically be placed on the inactive file.

#### **PASS TEMPORARILY**

A measure temporarily skipped on the agenda. If the bill’s author does not take-up the measure by the end of the day, it may be penalized or retain its place on File by unanimous consent. (See Pass on File.)

#### **PER DIEM**

Literally means “per day.” It is the daily expense money rendered to legislators.

#### **POINT OF ORDER**

A parliamentary procedure used by a Member to bring attention to a possible violation of the rules. The presiding officer then makes a ruling on the validity of the point of order.

#### **POLITICAL REFORM ACT OF 1974**

Proposition 9 created the Fair Political Practices Commission (FPPC) to enforce political campaign, lobbying, and conflict of interest laws in the state of California, similar to what the Federal Elections Commission does at the federal level. Part of these reforms included creation of gift limits, lobbyist reporting requirements, and regulation of state official fundraising activities. Any bills that amend this Act have a two-thirds vote requirement for passage, and are subject to a 12-day waiting period before final passage of each house. See Elections Code, Sections 81012.

#### **PRESIDENT OF THE SENATE**

The State Constitution designates the Lieutenant Governor as President of the Senate, allowing him or her to preside over the Senate and cast a vote only in the event of a 20–20 tie.

#### **PRESIDING OFFICER**

The Member who presides over a legislative Floor Session. In the Assembly, the presiding officer can be the Speaker, Speaker pro Tempore, or any other Assembly Member appointed by the Speaker. In the Senate, the presiding officer can be the President, the President pro Tempore, or any other Senator appointed by the President pro Tempore.

#### **PRESS CONFERENCE**

A presentation of information to a group of reporters. Capitol press conferences are frequently held in the Governor’s press room, Room 1190 of the State Capitol.

#### **PREVIOUS QUESTION**

If a Member seeks to cut off all further debate on a measure, he or she can move the previous question and force the body to vote immediately on the issue.

#### **PRINCIPAL COAUTHOR**

A Member of either the house of origin or the second house, singled out to share credit as a coauthor below the author of a measure.

#### **PRIVILEGE OF THE FLOOR**

Permission given by the presiding officer to view the proceedings from the Floor of the chamber, rather than from the gallery. Members make this request on behalf of constituents and guests.

**PUT OVER**

When action is delayed on a legislative measure until a future date without jeopardy to the measure.

**Q****QUASI-LEGISLATIVE**

The term applied to the action or discretion of public administrative officers or agencies to make law, primarily through rulemaking.

**QUORUM**

The minimum number of legislators needed to begin conducting official business in committee or on the Floor. A quorum is one more than half of the entire body.

**QUORUM CALL**

Transmitting the message that Members are needed to establish a quorum so proceedings can begin.

**R****READING**

Presentation of a bill before the House by reading its title. The Constitution requires a bill's title to be read three times in each House prior to its passage. A bill is either on First, Second, or Third Reading until it is passed by both Houses (see Title).

**REAPPORTIONMENT**

Redistricting the State for election; completed every ten years following the national census.

**RECESS**

(1) An official pause of any length in a committee hearing or Floor Session that halts the proceedings for a period of time but does not have the finality of adjournment. (2) A break of more than four days in the regular Session schedule such as the Spring Recess.

**RECONSIDERATION**

A motion that, if carried, allows a measure that failed or passed to be heard again in committee or on the Floor.

**REFERENDUM**

The method, used by members of the public, by which a measure adopted by the Legislature may be submitted to the electorate for a vote. A referendum petition must be signed by electors equal to five percent of the total vote for all gubernatorial candidates in the last gubernatorial election.

**REFERRAL**

Bill referrals are made by the Assembly and Senate Rules Committees to standing committees of their respective Houses.

**RE-REFERRAL PURSUANT TO A.R. 77.2 OR S.R. 29.10**

A bill that has been substantially amended may be re-referred to a committee by the Assembly Speaker (A.R. 77.2) or Senate Rules Committee (S.R. 29.10). Under these rules, the presiding officer of either house can re-refer a bill to committee without consent from the body. A motion to object is out of order.

**REGULATION**

A rule made by a state agency to carry out a legislative or administrative mandate. Must meet specified standards for adoption. A legally adopted regulation has the force of law (see Administrative Procedures Act).

## **RESOLUTION**

An opinion expressed by one or both houses which does not have the force of law. Concurrent and joint resolutions are voted on by both houses but do not require the Governor's signature.

## **ROLL CALL**

A vote of a committee or the full Assembly or Senate indicating the vote of each Member present and voting (as opposed to a "voice vote"). Committee roll calls are conducted by the committee secretary, who calls each Member's name in alphabetical order with the Chair's name called either first or last. Assembly Floor roll calls are conducted electronically with each Member pushing a button from his or her assigned seat. The green button designates "aye" and the red button designates "no." Senate roll calls are conducted by the Reading Clerk who reads each Senator's name in alphabetical order; the Senator voices his or her vote.

## **RULEMAKING**

The exercise of power granted by the Legislature to a state agency to adopt regulations to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

## **RULES**

Those standards and procedures which govern the operation of either or both Houses. There are Standing Rules of the Assembly, Standing Rules of the Senate, and Joint Rules.

## **RULE WAIVER**

A specific exception sought from the Assembly, Senate, or Joint Rules by an Assembly Member or Senator; formal permission must be sought and received.

## **S**

### **SECOND READING**

Each bill introduced must be read by title three times before final passage; this is the first order of business on the Daily File. The House approves or denies committee recommendations at Second Reading, usually without debate or vote.

### **SECOND READING FILE**

The portion of the Daily File that lists measures that have been reported out of committee. Measures which will be going to the Floor for consideration will stay on the Second Reading File for one day (without amendments) or two days (with amendments) before moving to Third Reading.

### **SECRETARY OF THE SENATE**

Principal parliamentarian and record keeper for the Senate; elected by Senators at the beginning of each two-year Session. The Senate Secretary and his or her staff are responsible for publishing the Senate daily and weekly publications.

### **SERGEANT-AT-ARMS**

Staff responsible for maintaining order and providing security for legislators. The Chief Sergeant-at-Arms in each House is elected by a majority of the Members of that House at the beginning of every legislative session.

### **SESSION**

The period during which the Legislature meets. The California legislative session is biennial—it occurs over a two-year period.

### **SHORT COMMITTEE**

Lacking a sufficient number of members of the committee; less than a quorum.

**SINE DIE**

Final adjournment. Literally, “without days,” the end of session (see Adjournment Sine Die).

**SPEAKER**

The highest ranking officer of the Assembly; usually elected by the Assembly Members at the beginning of each two-year legislative session. The Speaker or his or her designee presides over Floor Session. The Speaker’s powers and duties are established in the Assembly Rules.

**SPEAKER PRO TEMPORE**

The Speaker pro Tempore is appointed by the Speaker. He or she is an officer of the House who presides over Floor Sessions in the absence of the Speaker. As the presiding officer, the Speaker pro Tempore guides the Members through the daily business of the house, responds to parliamentary inquiries, and issues rulings on points of order when necessary.

**SPECIAL ORDER OF BUSINESS**

Occasionally a bill is of such importance that advanced notice is given about when it will be considered in the full Assembly, Senate, or committee. A request for a Special Order of Business may be made during a Floor Session by requesting unanimous consent to set the bill as a special order on a specific date and time. This assures adequate time for debate and allows all Members the opportunity to be present. When a bill will be heard as a Special Order of Business in committee, it is so noticed in the Assembly Daily File.

**SPONSOR**

The legislator, private individual, or group who developed a piece of legislation and advocates its passage.

**SPOT BILL**

A bill that amends a code section in a non-substantive way. A spot bill may be introduced to ensure that a germane vehicle will be available at a later date. Assembly Rules provide that a spot bill cannot be referred to a committee by the Rules Committee without substantive amendments.

**STANDING COMMITTEES**

Created pursuant to Assembly Rules, the Standing Committees consider legislation, the state budget, and internal legislative matters, as determined by their jurisdictions. Jurisdictions are set by the Assembly Rules Committee. Standing Committees must meet specific standards for notice, analyses, quorums, and voting (see Fiscal Committees).

**STATE AUDITOR**

Works at the direction of the Joint Audit Committee. The Auditor General audits the financial condition of State agencies.

**STATE MANDATE**

Chapter 1406, Statutes of 1972, first established the requirement for the State to reimburse units of local government for all costs mandated by the State. These costs may result from either legislative acts or administrative regulations that impose a new program or demand an increased level of service in an existing program. Proposition 4 of 1979 (Gann Initiative) incorporated this requirement into Section 6 of Article XIII B of the State Constitution.

**STATUTES**

The compilation of all enacted bills, chaptered by the Secretary of State in the order in which they become law.

**STOP THE CLOCK**

The term used to describe the process of continuing business after a time deadline has passed.

**SUBCOMMITTEE**

A subgroup of a full committee, composed of committee Members from both parties.

**SUMMARY DIGEST**

Brief summaries of each piece of legislation passed in the two-year session; prepared by Legislative Counsel. Measures are listed in the order they were signed into law.

**SUNSET DATE**

A date included in a measure which causes the act to “sunset,” or become ineffective, after a certain date.

**SUPPLEMENTAL DAILY FILE**

Like the Daily File, Supplemental Files serve as the agenda for Floor sessions. During legislative deadlines, supplemental files may be published in addition to the Daily File, in order to expedite the business of the house. These supplemental files usually consist of concurrence items and/or measures from committee reported out the same day. By producing supplemental files, the house can take up business immediately instead of waiting for the overnight printing of a new agenda for the next day’s session. Supplemental files differ slightly in appearance from Daily Files, as they are usually printed on standard copier paper instead of bound newsprint. Several supplemental files may be produced for a single floor session during periods of heavy workloads.

**SUSPENSE FILE**

A bill or set of bills, with a fiscal impact, set aside in Appropriations Committee by a majority of Members present and voting. These bills may be heard at a later hearing.

**T****TABLE**

To set aside. Typically used to dispense with, or set aside, amendments to a bill rather than vote “aye” or “no” on them. A motion to table is non-debatable and, once made, must be voted upon. TAX LEVY – Any bill that imposes, repeals, or materially alters a state tax. Legislative Counsel determines whether a bill is a tax levy and so indicates this information in the title, digest, and body of the bill. Tax levies have slightly different legislative deadlines than do other measures.

**TERM LIMITS**

The Term Limits Initiative, Proposition 140, was passed by the voters in 1990. It limits Assembly Members to three two-year terms and Senators and statewide Constitutional officers to two four-year terms.

**THIRD HOUSE**

Refers to Lobbyists.

**THIRD READING**

Each bill introduced must be read three times before final passage. Third reading is the stage at which bills are eligible for Floor debate and final vote.

**THIRD READING ANALYSIS**

A summary of a measure ready for Floor consideration. It summarizes the bill including its most recent amendments and information regarding how Members voted on the measure when it was heard in committee (see Floor Analysis Unit).



**THIRD READING FILE**

The portion of the Daily File that lists the bills that are ready to be taken up for final vote on the Assembly or Senate Floor.

**THIRD SET**

The third date scheduled by a committee for hearing a bill after two prior settings as requested by the author. If the measure is not successfully moved from committee after its third set, it is dead. Hearing date changes made by the committee chairperson do not count toward the set total.

**THIRTY-DAY PROVISION**

The 30-day waiting period following a bill's introduction before a bill may be heard or acted upon by the Legislature. The waiting period is required by the State Constitution and the Joint Rules, and can be waived by a three-fourths vote (60 in the Assembly; 30 in the Senate).

**TITLE**

That portion of a measure which identifies the subject matter of a measure and the code sections it will affect (see Bill Title).

**TOMBSTONE**

Specification in a bill that the act will be named for a state legislator.

**TRAILER BILL (or BUDGET TRAILER BILL)**

Legislation that implements specific changes to the law in order to enact the State Budget. Generally, a separate "trailer bill" is needed for each major area of budget appropriation, such as transportation, human services, education, revenue, etc. These bills are generally negotiated as part of the entire budget package each fiscal year.

**U****UNANIMOUS CONSENT**

The consent (permission) of all those Members present, absent any objection, debate, or vote; for example, unanimous consent granted to suspend the four-day File notice requirement to hear a bill in committee.

**UNDERGROUND REGULATION**

An agency regulation that should have been, but was not, adopted following procedures set forth in the rulemaking portion of the Administrative Procedure Act (commencing with Government Code Section 11340). Such regulations are invalid.

**UNFINISHED BUSINESS**

The section of the Daily File that contains bills pending concurrence in amendments taken in the second House, vetoed by the Governor, conference reports, and certain other motions.

**UPPER HOUSE**

The Senate.

**URGENCY CLAUSE**

Language in a bill which states the bill will take effect immediately upon enactment. A Floor vote on the urgency clause must precede a vote on the bill. A two-thirds vote is required for adoption of the clause and for passage of the bill.

**URGENCY MEASURE**

A bill affecting the public peace, health, or safety and requiring a two-thirds vote for passage. An urgency bill becomes effective immediately upon enactment.

## **USUAL CURRENT EXPENSES**

A term used to describe legislation that appropriates the necessary expenses of the various departments of the state government. Under the Constitution, such bills take effect immediately upon their enactment.

## **V**

### **VETO**

The formal action of the Governor disapproving a measure by returning it to its House of origin. The Governor's veto may be overridden by a two-thirds vote of each House. The Governor can also exercise a line-item veto, where the amount of an appropriation is reduced or eliminated, while the rest of the bill is approved. A line-item veto may also be overridden by a two-thirds vote in each House (see Blue Pencil).

### **VOICE VOTE**

A vote that requires only an oral "aye" or "no" with no official count taken. The presiding officer determines whether the "ayes" or "noes" carry.

## **W**

### **WEEKLY HISTORY**

A weekly publication that gives a comprehensive list of all actions taken on every bill during that week. It is published by each House (see History).

### **WHIP**

A party officer charged with monitoring Floor activity of caucus Members.

### **WITHDRAW FROM COMMITTEE**

A Floor vote to compel the discharge of a bill from committee.

### **W.O.R.F.**

An acronym for the term "without reference to file." Since the rules of both houses require bills to be listed on the day's agenda, a measure that is not listed in the official agenda would have to be taken up "without reference to file." The Assembly or Senate may suspend the rules to take up a "WOLF" item.

## **X - Y - Z**

## **APPENDIX C**

### **Glossary of Internet Terms**

#### **ARPANet**

An experimental network established in the 1970's on which the Internet is based, but no longer exists.

#### **Dial-up**

A connection made from your computer to an Internet computer by way of a modem and a telephone.

#### **Directory**

A listing of a collection of files related by topic.

#### **Electronic Mail**

Method of on-line communication for sending and receiving messages and files of information.

#### **Electronic Mail List**

A list that an individual voluntarily signs up to be on to receive notices regarding the legislative information system.

**File**

A document containing related information.

**File Transfer Protocol (FTP)**

Internet tool that allows you to send and retrieve files of information over the Internet.

**Internet**

World-wide computer network make up of many interconnected networks.

**InterNIC**

An Internet information service (800-444-4345).

**Modem**

A device that connects your computer to a telephone line in order to send and receive information by way of the Internet.

**Network**

A collection of computers linked together to allow the exchange of information.

**README file**

On-line help file that contains information on how to retrieve files of legislative information.

**Service Providers**

Commercial (for a fee) services that provide direct access or access through electronic mail to the Internet.

**Sub-directory**

Any directory that is subordinate to a higher and more general directory.

**Uniform Resource Locator (URL)**

The standard way to give the address of any resource on the Internet that is part of the World Wide Web (WWW). The URL for Official Legislative Information for the State of California is: <http://www.leginfo.ca.gov>

## AGENDA ITEM E

Discussion of Strategic Plan Objective to  
Review and Recommend Changes to  
Simplify and Update Contractors State  
License Law



## AGENDA ITEM E-1

# Business and Professions Code Section 7031 - Substantial Compliance



## AGENDA ITEM F

# Review of CSLB's Bonding Requirement



CALIFORNIA CONTRACTORS STATE LICENSE BOARD

# BOND REQUIREMENTS



APRIL 2014

# USING SURETY BONDS TO PROTECT CONSUMERS

## Introduction

The Contractors State License Board (CSLB or board) licenses and regulates California contractors. When consumers are harmed by the dishonesty or incompetence of a licensed contractor, the board can sometimes secure compensation for the consumer through its disciplinary process. To comply with a citation for poor workmanship, for example, a contractor can be ordered to pay damages to the consumer. Failure to pay the damages assessed in the citation can result in the contractor losing his or her license.

There are situations where CSLB cannot use the disciplinary process as leverage to secure restitution. For example, when the contractor surrenders the license, threats to suspend or revoke the license have no effect. When a contractor declares bankruptcy, unless the Board can prove fraud in bankruptcy court, the debt to the consumer is discharged and the Board loses leverage. Likewise, accidental damage is not usually addressed by disciplinary action. These are the situations when bonds and insurance can fill the gap.

It was with better compensation for consumers in mind that the Legislature in 2000 ordered the Board to examine and report on a variety of financial mechanisms and ways to make these mechanisms available to homeowners. Although the financial mechanisms discussed here must be understood to play a role in the Board's strategy for consumer protection, the Board has neither regulatory authority nor subject matter expertise in the areas of surety and insurance. This authority and expertise rests with the California Department of Insurance (CDI).

## 1. CAUSES OF FINANCIAL INJURY TO CALIFORNIA HOMEOWNERS

To sensibly discuss the use of bonds and insurance, this report begins by examining the circumstances that result in financial harm to homeowners.

California's home improvement industry can be split into two categories – service and repair, and home improvement. There is some overlap between the two. For the most part, however, service and repair includes simple repair jobs – leaking roofs or broken water heaters. Home improvement is usually the larger repair and improvement jobs – replacing the roof or building a room addition. Each category can result in its own kind of financial injury.

### Home Improvement

The causes of financial injury during home improvement include front-loaded contracts, mechanics liens, poor business practices, and poor workmanship. To the homeowner's further detriment, these injuries often occur in combination.



### Front-Loaded Contracts

Homeowners can lose both money and control of their projects when contractors front-load contracts. Front-loading occurs when payments get ahead of the work. For example, the contractor may collect an excessive down payment or take payments ahead of the work progress.

If a homeowner has paid the contractor 50 percent or even 100 percent of the money allotted in the contract but the contractor has completed a lesser percentage of work, the homeowner has limited leverage with the contractor. If the project goes off track, the homeowner cannot fire the contractor—there would not be enough money left to hire another contractor to complete the project. The homeowner usually has no choice but to continue with the contractor. The homeowner pours additional funds into a “money pit” in the hope that the contractor will come through. If the contractor ultimately abandons the project, the losses can be substantial.

### Mechanics Liens

Under present mechanics lien law, unpaid subcontractors or suppliers who have contributed to a construction project may place what is called a mechanics lien on the improved property. Even if the homeowner pays the prime contractor, if the contractor fails to pay the laborers, subcontractors and material suppliers, these individuals can place a lien on the property. The lien has immediate consequences for the homeowner. The lien affects the homeowner’s credit rating and reduces the homeowner’s ability to borrow money. Unpaid lien claimants can seek judicial foreclosure of the home to satisfy the lien. While foreclosure is rare, even though the homeowner has already paid the contractor, the homeowner may have to pay the subcontractor or supplier. This is referred to as the “double payment” problem.

Because subcontractors and suppliers rely on the mechanics lien right, these potential lien claimants do not need to check the contractor’s credit or make sure the contractor has paid other subcontractors and suppliers. Indeed, despite a pattern of not paying, the lien right allows an unscrupulous contractor to continue to receive goods and services.

Having a lien on a property also can cause difficulty or prevent selling the home.

### Poor Business Practices

Some contractors are fine artisans but terrible at managing businesses. To qualify for a license, applicants must take and pass the trade examination and the law and business examination, must demonstrate four years of journey-level experience in the particular license category and/or classification, and must pass a background check. Most of this experience is gained as an employee.

The assumption underlying CSLB licensing standards is that applicants with qualifying experience can decide for themselves whether they have enough experience to run a contracting business and how large that business can be. Some contractors, for example, take on more work than they can successfully complete. Although the marketplace may ultimately decide which contractor will be successful and which

contractor will not, the ferreting out process can be risky for consumers.

### Poor Workmanship

Most licensed contractors perform competent work and are never subject to the CSLB disciplinary system. However, a small percentage of licensees perform work that does not meet accepted industry standards.

Commercial property owners tend to be sophisticated business people, and usually understand that possession of a license does not mean a contractor has an adequate track record in every aspect of construction that falls under the relevant license category. Homeowners, on the other hand, do not routinely evaluate whether the contractor they are considering has adequate experience with the particular type and scope of the planned remodel. Unchecked, some contractors agree to perform work beyond the scope of their experience.

### Causes of Injury that Occur in Combination

If a home improvement project is appropriately managed, the contractor will collect a legal down payment, perform competent work according to the contract schedule, bill for completed work, and pay laborers, subcontractors and suppliers as the homeowner pays for the completed work.

If, however, a contractor fails to maintain strong business practices, the contractor can quickly get into financial trouble. If strapped for cash, the contractor will collect money from homeowners in advance of completing the work. The contractor will begin juggling payments to subcontractors and suppliers. Instead of cutting the contractor off, subcontractors and suppliers will continue to provide the contractor with undeserved credit by relying on the mechanics lien right.

Because the contractor needs more money to catch up, he or she will focus on getting the next home improvement contract instead of completing open contracts. Because the homeowner has not retained enough of the contract amount, the homeowner has no leverage to force the contractor to finish the project. Work that is completed is often rushed and substandard.

When this house of cards collapses, the contractor may abandon the work, often declaring bankruptcy. Meanwhile, the subcontractors and suppliers are holding the homeowner's home equity hostage in the form of a mechanics lien. The project is incomplete and the work that is complete may not meet trade standards.

### **Service and Repair**

The causes of financial injury in the service and repair sector are different from those in the home improvement sector. Service and repair contractors almost always complete their work and are less likely to be charged with incompetence. Liens are unusual. The service and repair sector is not problem-free, however. The cause of injury in service and repair is typically overcharging for necessary work and performing unnecessary work.

One current scam involves warm-air heating and air-conditioning (HVAC) systems. Information received through CSLB consumer complaints, district attorneys (DAs), the Better Business Bureau (BBB), and industry partners reveals that unscrupulous HVAC contractors are targeting consumers, especially the elderly, through telephone and direct mailing solicitations, offering maintenance services at reduced prices. Consumers lured in by these low-cost ploys are subject to the following harm by predatory contractors:

- Hard-sell tactics to obtain grossly inflated contracts;
- Additional work misrepresented as being necessary or safety-related and in need of immediate correction when, in fact, unnecessary;
- Building permits not obtained;
- Workers' compensation insurance not provided for employees, putting consumers at risk if an employee is injured on the job; and
- Failure to provide the 3-day right to rescind home improvement contracts.

## **2. INTRODUCTION TO SURETY BONDS**

The biggest misunderstanding about surety is that it is confused with insurance. Most people have a working knowledge of insurance and how it works. Not so with surety bonds. This section describes surety and compares it to insurance.

According to The Basic Bond Book, “a surety bond is a promise to be liable for the debt, default or failure of another.” The bond is a surety’s financial guarantee that a contractor will perform certain agreed-upon acts. Bonds can be used to guarantee virtually anything. In the construction industry, bonds range from those used to “bond around” specific lien rights to the most comprehensive of bonds—the performance and payment bond—a guarantee that the contractor will satisfactorily perform a specific construction contract and will pay all laborers, subcontractors, and suppliers.

The way the surety guarantee usually works is that the contractor seeking a bond submits comprehensive verifiable information about the project and the contractor’s capacity to complete the project. Based on this information, the surety determines whether to guarantee the contractor’s performance.

Surety companies never write a bond intending to pay a bond claim. However, paying losses is an important part of a surety’s function. If the surety does a good job underwriting the bond, the surety rarely has to pay. This is the first of many points that distinguish surety from insurance.

## **Main Differences**

### Type of Claim

Whether a claim is against insurance or surety depends on the different causes of damage. An insurance claim usually addresses damage arising out of an expected or accidental occurrence. A surety claim arises out of damages caused by a contractor's failure to do what is expected—perform the contract according to the plans and specifications and pay money that is owed. For example, suppose a roofing contractor has a surety bond covering her performance. The same contractor also has a comprehensive commercial general liability insurance policy. Months later, the roof leaks and ruins grandma's quilt and the newly refinished floor. The bond should cover fixing the roof. Insurance should cover the floor and the quilt.

### Duty to Defend

An insurance claim triggers a duty for the insurer to defend the contractor. Although a surety may defend the contractor in order to avoid paying a claim, the surety has no absolute duty to defend the contractor.

### Repayment

The surety company expects to be paid back. The insurance company does not. Because insurance risk is spread over all "like" policy holders, the insured contractor who suffers a loss does not have to pay the insurance company back—the premiums everyone pays are pooled to cover the cost. This, of course, is the purpose of insurance. Everyone pays so that one individual or business entity won't have to.

In surety, however, the surety premium is, in effect, a prequalification fee. Even though surety premiums may be adjusted to cover expected losses, there is no pool to cover losses; the surety expects to be paid back by the contractor.

### Underwriting

The most important difference is underwriting. Insurance spreads risk among like policy holders. For example, the insurer collects data and determines that 1 in 100 houses will burn down this year. The insurer sets premiums so that the owners of all 100 houses will pay to rebuild the one burned house. In contrast, surety does not routinely spread risk. Surety risk is assessed individually—can this contractor complete this project and pay all the bills for the contract price?

The value of a surety bond is that property owners can trust the evaluation of the contractor's business practices to the surety's expertise. This point brings us full circle to why insurance companies expect to pay and surety companies do not.

When a consumer is insured against the possibility of fire, flood, or another unexpected occurrence, underwriting determines how often and at what cost these possibilities will occur and establishes a premium that reflects the amount the insurance company believes it will need to pay.

Surety underwriting, on the other hand, examines whether individual contractors can

competently perform. For the most part, the premium covers the cost of evaluating the contractor, paying agents' commissions, paying premium taxes, paying losses, and, of course, making a profit. If the surety has appropriately underwritten a construction project, the surety company will only rarely have to pay on that bond.

There is risk in surety underwriting, however. Some contractors will not perform and will not have the capacity to pay the surety back. Some of this risk is reflected in the premium. The better a contractor's track record, the lower the bond premium. Conversely, a less than convincing track record leads to higher premiums. In some cases, a bond can be issued to a contractor with a poor track record only if the contractor puts up property as collateral. There comes a point, however, where a surety will not write a bond. When the surety won't issue a bond because of the contractor's poor performance, the bond is doing just what it is supposed to do—evaluating the contractor's potential for performance. When the surety won't issue a bond because the contractor fails to pay subcontractors and suppliers, again the bond is doing what it is designed to do. Sometimes, however, a competent contractor who pays subcontractors and suppliers may still have poor personal credit. The underwriting process would deny a bond to these contractors as well.

Theoretically, bonds can be issued to guarantee almost anything. Lien release bonds "bond around" lien claims to allow projects to go forward when there is a payment dispute. Bid bonds ensure that contractors bidding for work will actually enter into a contract.

It is important to note that not all contractors can qualify for all bonds. If bonds were mandatory, some contractors would be forced out of the market. This is because the underwriting process would identify contractors who cannot demonstrate the credit, capacity and competence to adequately perform.

### **3. TYPES OF BONDS**

#### **Performance and Payment Bonds**

A performance bond guarantees that the contractor will build in accordance with the particular project's plans and specifications and perform other obligations set out by the contract. A payment bond guarantees that material and equipment suppliers, subcontractors and laborers who work on a particular project will be paid.

Performance and payment bonds are often packaged together to make sure the project is completed and labor and material suppliers paid. These bonds' responsibilities are not unlimited, however. Each bond has an amount, called a "penal sum." If the cost of completing the contract and paying all contributors exceeds the penal sum, the surety can pay the penal sum to the property owner in lieu of completion and payment.

#### Application to Home Improvement Projects

Any project can go off track if the contractor lacks the assets to continue the project or the expertise to complete it. This is as true in the home improvement sector as it is in

the commercial sector. Commercial property owners routinely protect themselves against these problems by requiring the contractor to secure performance and payment bonds.

Recognizing the value of this protection, in the past some encouraged homeowners contracting for home improvement projects to require the contractor to get performance and payment bonds. But, even though homeowners are subject to the same risks as commercial property owners, homeowners rarely opt for these bonds. Why?

First, as noted in the introduction, homeowners do not understand the risks involved—mechanics liens, front-loading, paying only for progress, etc.

Second, even if homeowners understood the problems that could occur, the perceived cost of payment and performance bonds dissuades them from using them. Homeowners are usually on tight budgets for their home improvement projects.

Paying a premium to make sure the contractor does what consumers believe the contractor is already being paid to do—satisfactorily complete the project and pay for labor and material—makes no sense to homeowners.

Third, contractors often discourage homeowners from getting these bonds. Contractors who pay their bills and satisfy their customers say the bonds are not necessary. Of course, contractors who do not pay their bills and do not satisfy their customers also say that bonds are not necessary. Contractors in precarious financial shape do not want surety companies evaluating their capacity to contract.

Finally, it is widely believed that small, undercapitalized contractors would not be able to qualify for performance and payment bonds.

#### Protection Provided by Performance and Payment Bonds

A homeowner would be protected by a performance and payment bond in a variety of ways:

- If payments to the contractor got ahead of the work (front-loading), the homeowner still might lose control of the project but the risk of financial loss would be significantly reduced.
- Once the homeowner paid the contractor, payments to laborers, subcontractors, and suppliers would be guaranteed (mechanics liens).
- The homeowner would be better protected from a contractor's poor business practices because the surety would have attested to his or her capabilities.

#### Drawbacks

There is some question about whether these performance and payment bonds can be written for all home improvement contracts. The transaction costs (including underwriting) of full performance and payment bonds might be too expensive, particularly for smaller contracts. But even if these bonds are not efficient for smaller

contracts, they might be very useful for large projects of \$100,000 and above.

### Application to Service and Repair Work

A performance and payment bond would not be very useful to protect homeowners contracting for service and repair work. Injuries associated with service and repair contracts are excessive charges and unnecessary work, injuries a performance and payment bond does not address.

### Payment Bonds

As noted above, a payment bond guarantees that material and equipment suppliers, subcontractors and laborers who work on a particular project will be paid. In the home improvement context, a payment bond would protect homeowners from the risk of a mechanics lien.

### **Blanket Bonds**

A blanket bond is a bond written to cover more than one project. There are two kinds of blanket bonds—the one-size-fits-all approach of the contractor’s license bond, and the sliding scale bond that increases as the amount of work increases.

The blanket bond concept has many applications. A blanket payment and performance bond could be written to cover all of a contractor’s contracts. A blanket payment bond could be written to guarantee that the contractor will pay all for all labor and supplies.

### **Contractor License Bond**

The contractor’s license bond is designed to cover any damage arising out of a violation of Contractors License Law and will be discussed in more detail below. Basically, the contractor’s license bond is one \$12,500 bond, no matter how much work a contractor performs. Regardless of whether the contractor agrees to perform five \$1,000 jobs, one \$100,000 job, or 500 \$30,000 jobs, there is only one bond.

### **“Bond Equivalent”**

Business & Professions Code section 7159.5(a)(8) allows a contractor carrying a “bond equivalent” approved by the Board to be exempt from some of the home improvement contract requirements. Contractors who meet this provision are not limited to the down payment restrictions. They are not required to set a schedule of payments, and do not have to provide homeowners with information about liens.

Over the years, the CSLB has approved only one type of “bond equivalent”—a blanket performance and payment bond.

The main issue the CSLB faces in approving the use of blanket bonds is determining how large the penal sum of the blanket bond must be to cover all the work a contractor performs each year. To date, the board has relied on sworn statements by those responsible for the company’s finances.

## **Step Bonds**

A step bond is a blanket bond that has specific gradations. The State of Nevada employs a step bond system. The Nevada Board sets the amount of the bond “with reference to the contractor’s financial and professional responsibility and the magnitude of his operations.” The amount of the bond relates to the size of the contract a Nevada contractor can agree to perform. For example, if a contractor has a \$50,000 bond, the contractor can do any number of contracts of \$50,000 or less. To bring flexibility to the system, the Nevada Board allows a contractor to seek a one- time exception for a contract above his or her step amount.

Such a system could not easily be implemented in California. To determine the amount of work a contractor can safely perform, Nevada requires each applicant to provide detailed financial statements including assets and liabilities, credit histories, and other information that the Nevada Board uses to assess whether this individual may do business in Nevada. The Nevada Board uses this information as a building block for its decision to set the limit on the size of contracts the contractor can agree to perform.

By contrast, California does not collect any information about an applicant’s assets. Instead, California requires each applicant to affirm under penalty of perjury that he or she has operating capital exceeding \$2,500. California would need to significantly increase its review of each applicant’s financial information to implement a system like Nevada’s.

Nevada has just a little more than 16,000 licensees. California has nearly 300,000 active licensees. These numbers make Nevada’s approach impractical in California. In addition, CSLB has adopted an over-arching objective to streamline and simplify construction regulations in the state.

## **4. CONTRACTOR LICENSE BOND**

The contractor’s license bond is different from other surety bonds.

In 1964, the Legislature enacted a statute requiring every licensed contractor to carry a contractor license bond. The first bond was for \$1,000 and was designated to benefit members of the public who suffered financial injury as a result of a contractor’s violation of the Contractors License Law. Over the years, the Legislature refined the categories of bond beneficiaries. One refinement pertinent to this report is a special category for homeowners to enable them to get preference over other possible claimants.

Over the years, the Legislature has gradually increased the penal sum of the bond. Today the penal sum of the contractor’s license bond is \$12,500.

### **Comparing the Contractor License Bond to Other Surety Bonds**

Although the contractor’s license bond is a surety bond, it works much differently than other bonds. For example:

- In construction work, most surety bonds are written to cover specific contracts. The



contractor's license bond, on the other hand, is a blanket bond, written to provide compensation for all the work a licensee agrees to perform.

- Most surety bonds are written to cover one specific contract dollar amount, while the contractor's license bond is one \$12,500 bond. Regardless of whether the contractor agrees to perform five \$1,000 jobs, one \$100,000 job, or 500 \$30,000 jobs, there is only one \$12,500 bond.
- Most bonds are designed to pay claims when the contractor breaches the contract by failing to perform under the contract's specific terms. The contractor's license bond is not designed to cover damages arising out of breach of contract but, instead, to cover damages arising out of a violation of Contractors License Law. As discussed below, sureties may place more emphasis on this difference than is warranted by the legislative scheme.
- When any other bond pays out, sureties seek repayment from the contractor. The surety has strong help getting paid back from a contractor's license bond payout, however. If the contractor's license bond pays out, the Registrar must suspend the contractor's license until the surety has been repaid.
- When a contractor lacks the credit or competence to work on a large project, the surety won't issue a performance and/or a payment bond, and the contractor cannot be awarded that project. If a surety won't issue a contractor license bond, the contractor must post a cash deposit of the penal amount with the Board or the contractor cannot be licensed at all.

Some sureties maintain a larger pool of money than for other, underwritten bonds.

One substitute for underwriting was acknowledged by a surety representative who commented that the contractor's bond is more like insurance than surety. A surety writing these bonds must assess risk more like insurance companies than a surety. Instead of underwriting with an eye toward restricting the work a contractor can agree to perform, the surety must assume that some claims will be paid out but not repaid by contractors. Of course, unlike insurance, surety companies still expect contractors to pay them back.

Most sureties spend effort and energy to educate the contractor as to the valid reasons the contractor should settle.

The replacement for underwriting most useful to consumers is the work the surety undertakes after the bond is issued and a complaint is filed. Sureties have asserted that the primary value of the bond is the sureties' efforts to get the parties to settle. Sureties can claim a high success rate. The value of the sureties' efforts in securing payments to homeowners, subcontractors, and material suppliers must be acknowledged.

## **Bankruptcy**

When a contractor declares bankruptcy, the money due to the consumer is often

discharged in bankruptcy. When the contractor's financial obligation to the consumer is discharged, CSLB often loses the ability to order restitution.

However, bankruptcy does not exonerate the surety company. Thus, after a bankruptcy, a surety bond may be the only source of restitution for the consumer.

## **5. BARRIERS FACED BY CONSUMERS**

### **Multiple Complaints**

Multiple complaints are often made against the same \$12,500 bond. When things start to go wrong, a contractor can be engaged in multiple projects in various stages of completion and may have gotten behind in payments to subcontractors and material suppliers. When this house of cards falls, many can be harmed and the potential for meaningful recovery disappears.

Another way to view the bond is to consider that the one \$12,500 bond covers a two-year period. The actual coverage can be thought of as \$6,250 each year.

The penal sum of the bond has been raised five times since 1964. Each time the penal sum has been raised, the amount has been described as the highest amount surety companies can afford to pay without forcing new contractors out of business.

Currently, premiums range widely depending on the surety, with discounts for two and three-year extensions. Thus, with some exceptions, the cost of premiums would not keep a new contractor out of business.

Instead, it is said that if the penal sum is raised significantly, sureties would need to increase their underwriting of these bonds. Underwriting would force new applicants and contractors with poor credit out of the market, or worse, into the underground economy.

### **Surety Does Not Pay Out While License is Suspended**

Under Contractors License Law, the contractors' license bond runs concurrently with the contractor's license. If the license is suspended during the time an act or omission occurs, the surety will deny the claim even though the bond has not been canceled. Sureties state that the bond is written to cover licensed activities only.

### **Fees and Costs in Superior Court**

#### Non-Judicial Pro-Rata Distribution

When multiple claims are made against the same bond, sureties have two methods of deciding how to distribute the penal sum. Under the first method, identified as a "non-judicial pro-rata distribution procedure," the surety evaluates the individual claims to determine if the contractor, and therefore the surety, is liable for each, and then offers each complainant a pro-rata share based on the valid claims. This non-judicial distribution is the most frequently used method to manage multiple claims.

#### Interpleader

The second method is the interpleader process set forth in California Code of Civil

Procedure section 386. Under this method, the surety places the amount of the bond with the court and the court decides how the sum should be distributed between the claimants. The interpleader method has benefits for the surety. The surety can stop investigating claims; the court will now decide. If additional claims are filed, the surety simply directs the new claimants to intervene in the court suit.

The interpleader has drawbacks for consumers. First, the legal documents notifying the consumer of the surety's interpleader action are intimidating and nearly incomprehensible. Consumers call CSLB, worried that they are being sued. Some consumers drop their claims because they are afraid of litigation.

Second, the law governing interpleader bond actions allows the surety to request an award of reasonable attorney's fees and costs. These costs and fees are deducted from the penal sum. These costs and fees are minimally set at 10 percent of the bond and up.

# AGENDA ITEM G

Adjournment

