

TITLE 16. CONTRACTORS STATE LICENSE BOARD
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

NOTICE IS HEREBY GIVEN that the Contractors State License Board (Board or CSLB) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827, at 1:00 p.m. on Monday, January 10, 2011. Written comments must be received by the Board at its office at the above address not later than January 10, 2011 at 5:00 p.m. or at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposal if such modification is sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in the Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference Citations

Pursuant to the authority vested by Section 7008 of the Business and Professions (B&P) Code, and to implement, interpret, or make specific Sections 7000.6, 7068, 7068.1, 7071.17, 7111, 7124.6, 7151, 7151.2, 7159, and 7159.5 of said Code; Sections 1427 and 1474 of the Civil Code; and Sections 995.020, 995.310, and 995.360 of the Code of Civil Procedure, the Contractors State License Board is considering changes to Division 8 of Title 16 of the California Code of Regulations (CCR) as follows:

Informative Digest

Adopt Section 858. Blanket Performance and Payment Bond Defined

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedure Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7151 defines “home improvement” and “home improvement goods and services.” Section 7159 sets forth the requirements for home improvement contracts, notably including a limitation on contractors for a down payment that is not to exceed 10% of the contract price or \$1,000, whichever is less, and a requirement to include a Mechanics’ Lien Warning in the contract language. Furthermore, Section 7159 requires that a contract for home improvements contain a schedule of progress payments for the work that is to be accomplished in each phase of the project. Each progress payment must not exceed the value of the amount of work (labor and materials) that has been incorporated into each phase. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a “bond equivalent... approved by the registrar” shall be exempt from certain provisions of the home improvement contract requirements relating to down payments,

progress payments, and the Mechanics' Lien Warning for home improvement work. Civil Code Section 1427 defines an "obligation."

There is no existing CSLB regulation that defines a blanket performance and payment bond.

This proposal would adopt the regulation in order to:

- Define a "blanket performance and payment bond" (hereafter referred to as "blanket bond");
- Identify the fact that, pursuant to B&P Code Section 7159.5, blanket bonds are subject to approval by the Registrar; and
- Provide notice that the requirements for Registrar approval of blanket bonds are set forth in regulation.

Adopt Section 858.1. Blanket Performance and Payment Bond Requirements

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7151.2 defines a "home improvement contract." Section 7159 sets forth the requirements for home improvement contracts, notably including a limitation on contractors for a down payment that is not to exceed 10% of the contract price or \$1,000, whichever is less, and a requirement to include a Mechanics' Lien Warning in the contract language. Furthermore, Section 7159 requires that a contract for home improvements contain a schedule of progress payments for the work that is to be accomplished in each phase of the project. Each progress payment must not exceed the value of the amount of work (labor and materials) that has been incorporated into each phase. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a "bond equivalent...approved by the registrar" shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics' Lien Warning for home improvement work. Civil Code Section 1427 defines an "obligation." Section 1474 sets forth criteria for determining how liability for an obligation may be extinguished. Code of Civil Procedure Section 995.020 sets forth criteria for the applicability of the Bond and Undertaking Law. Section 996.310 et seq. establishes requirements for sureties on a bond. Section 996.360 sets forth conditions for return of a bond.

There is no existing CSLB regulation that sets forth blanket bond requirements.

This proposal would adopt the regulation in order to:

- Specify that to obtain Registrar approval, a blanket bond must meet specific requirements relative to the portion of a licensee's business that is subject to B&P Code Section 7159 (home improvement contracts);

- Require the dollar amount of a blanket bond to be not less than 100% of a licensee’s home improvement contract obligations, thereby establishing the “100% rule;”
- Provide criteria under which the dollar amount of the blanket bond may be capped at specified levels if the licensee is required to report annually to the United States Securities and Exchange Commission (U.S. SEC);
- Provide the standard form with which the blanket bond must conform; and
- Specify the deadline by which a licensee must increase an existing blanket bond if it does not comply with the specified minimum set by the regulation.

Adopt Section 858.2. Application for Approval of Blanket Performance and Payment Bond

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7068 establishes the qualification requirements for contractors. Section 7068.1 further delineates the qualification requirements, particularly as they relate to the qualifying individual. Section 7124.6 establishes provisions for public access to complaints against licensees, including disclaimers and limitations of disclosure. Section 7159 sets forth the requirements for home improvement contracts, notably including a limitation on contractors for a down payment that is not to exceed 10% of the contract price or \$1,000, whichever is less, and a requirement to include a Mechanics’ Lien Warning in the contract language. Furthermore, Section 7159 requires that a contract for home improvements contain a schedule of progress payments for the work that is to be accomplished in each phase of the project. Each progress payment must not exceed the value of the amount of work (labor and materials) that has been incorporated into each phase. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a “bond equivalent...approved by the registrar” shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics’ Lien Warning for home improvement work.

There is no existing CSLB regulation that sets forth application procedures for the blanket bond approval.

This proposal would adopt the regulation in order to:

- Outline the process for making application for approval of a blanket bond;
- Specify the information to be included in the application;
- Establish the eligibility qualifications, including the financial reporting requirements; and
- Create a standard certification form to be used by the licensee’s qualifier in the application and biennial submission processes.

Adopt Section 858.3. Minimum Standards for Approval of Blanket Performance and Payment Bond Approval – Cause for Denial

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a “bond equivalent...approved by the registrar” shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics’ Lien Warning for home improvement work.

There is no existing CSLB regulation that sets forth minimum standards or causes for denial or rescission of blanket bond approval.

This proposal would adopt the regulation in order to:

- Specify the minimum standards that a licensee must demonstrate relative to the financial health of his or her business (utilizing the current and quick ratios as the baseline metrics) in order to qualify for approval of a blanket bond; and
- Provide the Registrar with the authority to deny blanket bond approval if the information in the required financial reports indicates that the licensee’s business will not be able to meet current liabilities.

Adopt Section 858.4. Blanket Performance and Payment Bond Biennial Certification and Financial Reporting Requirements

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7068 establishes the qualification requirements for contractors. Section 7068.1 further delineates the qualification requirements, particularly as they relate to the qualifying individual. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a “bond equivalent...approved by the registrar” shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics’ Lien Warning for home improvement work.

There is no existing CSLB regulation that sets forth procedures for filing a biennial report by a licensee that maintains a blanket bond.

This proposal would adopt the regulation in order to:

- Specify that to maintain a blanket bond, a licensee must biennially file a certification statement as specified in Section 858.2 and a financial report relative to the licensee’s contracting activity;
- Specify the deadline by which the certification statement and report must be submitted to the Registrar; and

- Provide circumstances under which the Registrar’s approval may be rescinded.

Adopt Section 858.5. Blanket Performance and Payment Bond Audit Authorization and Procedures

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7111 sets forth provisions to make a licensee subject to disciplinary action if he or she fails to make, maintain, or produce for CSLB inspection relevant business records for not less than five years after date of construction project completion. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a “bond equivalent...approved by the registrar” shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics’ Lien Warning for home improvement work.

There is no existing CSLB regulation that establishes authorization and sets forth procedures for the Registrar to order an audit of a licensee that has an approved blanket bond on file with the Board.

This proposal would adopt the regulation in order to:

- Outline the conditions under which the Registrar may order an audit of a licensee’s business activities that are germane to the purpose for which the blanket bond has been filed by the licensee; and
- Specify that the Registrar is to have free access to the licensee’s records in order to complete the audit for the purpose of ensuring compliance with the 100% rule.

Adopt Section 858.6. Authorization and Procedures for Ordering the Amount of Blanket Performance and Payment Bond to Be Increased

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a “bond equivalent...approved by the registrar” shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics’ Lien Warning for home improvement work.

There is no existing CSLB regulation that establishes authorization and sets forth procedures for ordering the amount of a blanket bond to be increased.

This proposal would adopt the regulation in order to:

- Authorize the Registrar to order an increase in the amount of a blanket bond based on the results of an audit;
- Outline the reasons for which the order may be prescribed and the procedures for delivering the order; and
- Specify that the approval of the licensee's blanket bond shall be rescinded if the licensee fails to comply with the order by the specified deadline.

Adopt Section 858.7. Maintenance of Blanket Performance and Payment Bond

B&P Code Section 7000.6 declares that the highest priority of CSLB shall be public protection. Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7071.17 sets forth provisions for the posting of bonds for unsatisfied final judgments and for resultant disciplinary action and/or license suspension for noncompliance. Section 7124.6 establishes provisions for public access to complaints against licensees, including disclaimers and limitations of disclosure. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a "bond equivalent...approved by the registrar" shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics' Lien Warning for home improvement work.

There is no existing CSLB regulation that sets forth requirements and procedures for maintaining a blanket bond.

This proposal would adopt the regulation in order to:

- Specify that blanket bond approval is subject to rescission if any member of the licensee's personnel of record, or any salesperson registered to the licensee, is found to be culpable for any acts or omissions resulting in the suspension or revocation of licensure that is subject to public disclosure or named on any license that is subject to bond suspension;
- Direct the Registrar to provide due consideration to the protection of the public in determining whether or not a blanket bond approval should be rescinded; and
- Specify the maintenance procedures for a blanket bond in relation to the replacement of a qualifying individual.

Adopt Section 858.8. Rescission of Blanket Performance and Payment Bond Approval

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7159 sets forth the

requirements for home improvement contracts, notably including a limitation on contractors for a down payment that is not to exceed 10% of the contract price or \$1,000, whichever is less, and a requirement to include a Mechanics' Lien Warning in the contract language. Furthermore, Section 7159 requires that a contract for home improvements contain a schedule of progress payments for the work that is to be accomplished in each phase of the project. Each progress payment must not exceed the value of the amount of work (labor and materials) that has been incorporated into each phase. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a "bond equivalent...approved by the registrar" shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics' Lien Warning for home improvement work.

There is no existing CSLB regulation that sets forth procedures for rescission of a blanket bond approval.

This proposal would adopt the regulation in order to:

- Specify the conditions under which the Registrar is authorized to rescind approval of a blanket bond;
- Outline the rescission procedures and the process by which the licensee may appeal the Registrar's decision; and
- Provide for the automatic rescission of the Registrar's approval in the event that the blanket bond is cancelled.

Adopt Section 858.9. Posting of Blanket Performance and Payment Bond Information to License Records

B&P Code Section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the B&P Code. Section 7159.5 further delineates the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a "bond equivalent...approved by the registrar" shall be exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics' Lien Warning for home improvement work.

There is no existing CSLB regulation that sets forth procedures for posting of blanket bond information to the license record.

This proposal would adopt the regulation in order to:

- Specify the information that is to be posted to the license record when a blanket bond has been approved and when there is a pending rescission of a blanket bond approval; and

- Specify the time period during which this information is to be posted and the time period for which blanket bond information must remain on the license record subsequent to cancellation of the blanket bond or rescission of approval by the Registrar.

Local Mandate

The proposed regulatory action does not impose a mandate on local agencies or school districts.

Fiscal Impact on Public Agencies/STD 399

The proposed regulatory action will not result in costs or savings to any state agency, costs or savings to any local agency or school district that is required to be reimbursed under Part 7 of Division 4 (commencing with Section 17500 of the Government Code), other nondiscretionary costs or savings on local agencies, or costs or savings in federal funding to the state.

Cost Impact on Affected Private Persons

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Housing Costs

The proposed regulatory action will not have a significant effect on housing costs.

Effect on Small Business

The proposed regulatory action will not affect small businesses, because the proposed regulatory action does not impose a new mandate that is being required of all contractors. It defines and outlines procedures for a supplement to an existing requirement that is available on a voluntary basis for those contractors who choose to apply for approval of a blanket bond for business purposes.

Contact Person

Inquiries or comments concerning the proposed administrative action may be addressed to:

Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Attn: Betsy Figueira
(916) 255-3369
(916) 255-6335 (FAX)
bfigueira@cslb.ca.gov

The backup contact person is:

Michael Brown
(916) 255-3939
(916) 255-1395 (FAX)
mbrown@cslb.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Betsy Figueira at (916) 255-3369.

Comment Period

Written comments must be received by the Board at the Contractors State License Board, 9821 Business Park Drive, Sacramento, CA 95827 not later than Monday, January 10, 2011 at 5:00 p.m. or at the hearing to be held in the Board office at 1:00 p.m. on Monday, January 10, 2011.

Availability of Modifications

With the exception of technical or grammatical changes, the full text of any modified proposal will be available from the person designated in this notice as the contact person for 15 days prior to its adoption and will be mailed to those persons who submit written or oral testimony related to this proposed regulatory action or who have requested notification of any changes to the proposal.

Reference to Text and Initial Statement of Reasons

The Board has prepared a statement of the reasons for the proposed action, which is available to the public upon request. The express terms of the proposed action and all information upon which the proposal is based are available upon request.

Business Impact

CSLB is not aware of any significant statewide adverse economic impact that the proposed regulatory action will have directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulatory action does not impose a new mandate that is being required of all contractors. It defines and outlines procedures for a supplement to an existing requirement that is available on a voluntary basis for those contractors who choose to apply for approval of a blanket bond for business purposes.

Impact on Jobs/New Businesses

The proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California, because the proposed regulatory action does not impose a new mandate that is being required of all contractors. It defines and outlines procedures for a supplement to an existing requirement that is available on a voluntary basis for those contractors who choose to apply for approval of a blanket bond for business purposes.

Public Hearing

A public hearing will be held at the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827, at 1:00 p.m. on Monday, January 10, 2011.

Federal Mandate

The proposed regulatory action is not mandated by federal law or is not identical to any previously adopted or amended federal regulation.

Consideration of Alternatives

The Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome on affected private persons than the proposed regulatory action. The actual determination must be part of both the Initial and Final Statement of Reasons.

Availability of the Final Statement of Reasons

Interested parties may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the contact person named above.

Website Access

Materials regarding the proposed regulatory action can be found at www.cslb.ca.gov.