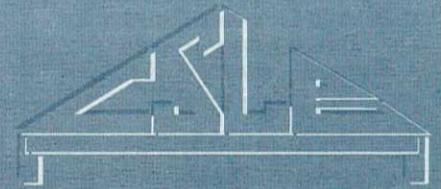


Licensed Contractor



DAVID R. PHILLIPS, Registrar

Winter 1991

PETE WILSON, Governor

Registrar's Corner

by David R. Phillips,
Registrar of Contractors



It is with pleasure that I again send greetings to licensees of the CSLB and all other interested readers. We have several topics in this issue that should be of interest to most

of you. Primarily, we have included some 1991 legislation which, with the exception of one bill, will become effective on January 1, 1992. These new laws will affect most licensees indirectly, if not directly. The article about the appellate court case brings out some interesting information concerning classification. For readers concerned about the activity of unlicensed contractors, we have an excellent article on how the CSLB is combating unlicensed contracting. This should be of special interest to those who find themselves competing with these people.

I again want to bring your attention to the board meeting schedule and invite you to attend. The Board will be holding a public hearing at the January 1992 meeting to consider adding a special classification and amending another. These meetings are usually very interesting. I hope to see many of you there.

CSLB Board Meeting Schedule

January 17, 1992 San Diego
April 24, 1992 Berkeley
July 17, 1992 Los Angeles Area

Combating Unlicensed Contracting

The question most frequently asked by members of the construction industry is, "What are you doing about unlicensed contracting?"

To answer this question, let's start with the laws that are on the books. The Board has three options at this time:

(1) It can issue an administrative Non-Licensee Citation, which consists of an assessment of civil penalties ranging from \$200 to \$4500 and an abatement order (cease & desist).

(2) It can seek a Misdemeanor Criminal Prosecution which, upon conviction, may result in a sentence of up to \$2000 and/or six months in jail. This prosecution

must be handled by the local prosecutor (City or District Attorney) based on an investigation conducted by the Board.

(3) It can issue a Misdemeanor Notice to Appear Citation which requires the subject to appear in court. This option is available only when the subject is cited by a Board peace officer or staff of the Unlicensed Activity Unit.

Options one and three are the methods most frequently used by the Unlicensed Activity Unit (UAU), the subject of this article.

The UAU was authorized by the legislature in 1989 in response to growing concerns about unlicensed contracting. The Contractors State License Board (CSLB) requested funding for a specialized unit to combat unlicensed contracting throughout the state. Unfortunately, only a demonstration project for southern California was authorized.

continued on page 7, Combating Unlicensed Contracting

Recent Legislation Affects Contractors

Several pieces of legislation were passed during the 1991 session of the legislature which will have an affect on contractors and on contracting businesses. All of the bills listed will become effective on January 1, 1992, except Assembly Bill 506 which was an urgency bill and which became effective immediately. Three of the bills were sponsored and supported by the Board. They are:

AB 425 by Assemblyman Richard Mountjoy which amends Section 7068.1 of the Contractors State License Law [CSLL] to limit the number of firms a qualifying person may act as a qualifier. Present law provides that a person may not act as the qualifying person for an addi-

tional individual or firm unless specified conditions are met. It also does not limit the number of firms for which a qualifying person may act as a qualifier. *In this legislation a qualifier is limited to qualifying no more than 3 firms in any one year period.* The bill further provides that any person acting as a qualifier for more than 3 firms on January 1, 1992 shall comply with the limiting provision by January 1, 1993. Failure to comply will result in the automatic disassociation of the qualifying individual and automatic suspension of the licensee's contractor's license.

AB 800 by Assemblyman Robert Frazee amends Sections 7028.7 and 7028.15 of the CSLL to provide for the

issuance of a citation to a responsible officer or employee of a public entity who knowingly awards a contract to an unlicensed contractor. Under present law it is a misdemeanor, and a cause for the issuance of a citation, for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor without having a license unless otherwise exempted. This legislation expands on this to include employees of public agencies who become lax in awarding contracts without verifying the license status of the bidder. This bill specifically provides that within 72 hours of receiving notice that a public

continued on page 6, New Legislation

California Licensed Contractor

Official Publication of the
Contractors State License Board
Winter 1991

STATE OF CALIFORNIA

Pete Wilson
Governor

JAMES CONRAN
Director, Department of Consumer Affairs

DAVID R. PHILLIPS
Registrar of Contractors

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Stephen H. Lazarian, Jr., Chairperson

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Marla Marshall, Chairperson

Strategic Planning Committee
Roger O. Lighthart, Chairperson

Steve Kolb, Editor

Letters to the editor, articles, information of interest to contractors and suggestions for future articles are welcome. Deadlines for submission are January 1, March 1, June 1, and September 1. Inclusion of submitted material in the quarterly CLC is at the discretion of the editor and dependent on time and space considerations.

Headquarters of the CSLB is located at:

9835 Goethe Road
P.O. Box 26000
Sacramento, California 95826

**DISCIPLINARY ACTION
July to September 1991**

Note: Disciplinary actions do not include licenses suspended for failure to maintain required bonds. The following explanation may be helpful to identify causes of disciplinary action indicated by sections referenced in the table of Disciplinary Actions.

Business and Professions Codes

490	Relationship of conviction of a crime to licensed activity	7111	Failure to keep records and to make them available to a representative of the Registrar
7018.5	Failure to provide notice to owner regarding lien provisions	7111.1	Refusal to or failure to cooperate with deputy in investigation
7026.7	Advertising as a contractor without a license	7112	Misrepresentation of a material fact on an application
7028	Acting in the capacity of a contractor without a license	7113	Failure to complete a project for the price stated in the contract
7029	Contracting as a joint venture without the required license	7113.5	Avoiding or settling for less than lawful obligations as a contractor through the various bankruptcy proceedings
7029.5, 7029.6, 7029.7	Failing, as a plumbing, electrical sign or well drilling contractor, to display his/her name, address and contractor's license on each side of the commercial vehicle used in his/her business	7114	Aiding and abetting an unlicensed person
7030	Failing to include in a contract the notice that contractors are licensed by the Contractors State License Board	7115	Failure to comply with the Contractors' Law
7030.5	Failing to fulfill the requirement that the contractor's license number be placed on all contracts, subcontracts, calls for bid, and other forms of advertising	7116	Committing a willful or fraudulent act as a contractor
7071.11	Judgment or admitted claim against bond	7117	Acting as a contractor out of namestyle
7083	Failing to report a change of address, namestyle, or personnel within 90 days	7117.5	Contracting with inactive license
7090.1	Failure to comply with civil penalty or "order to correct" in Registrar's citation	7118	Contracting with unlicensed person
7097	Suspension of additional licenses	7119	Failure to prosecute a job with diligence
7098	Revocation of additional licenses	7120	Failure to pay for materials or services
7099.6	Non-compliance with a final citation	7121	Prohibition against associating with suspended or revoked licensee
7107	Abandonment of a project without legal excuse	7122	Participation of license in violating Contractors Law
7108	Diverted funds or property received for a specific job to other purposes	7122.5	Responsibility of Qualifying Person for acts committed by his/her principal
7109	Willfully disregarded plans and specifications, or has failed to complete the job in a good and workmanlike manner	7123	Conviction of a Felony in connection with construction activities
7109.5	Violation of Safety Laws resulting in death or serious injury	7124	A plea of nolo contendere is considered a conviction
7110	Willful disregard and violation of building laws	7154	Employment of unregistered home improvement salesman
7110.1	Violation of Section 206.5 of the Labor Code	7155	Participation in violation by a home improvement salesman
		7157	Model Home kickback prohibition
		7159	Failure to comply with contract requirements
		7161(b)	False advertising

LICENSES REVOKED

NAMESTYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
A & A Wallpapering	North Highlands	540540	8/30/91	7090.1
A & M Construction	San Jose	507581	8/11/91	7107,7113,7115, (7159), 716, 7121.5
ACR	Fresno	507880	7/25/91	7090.1
AM-PM Plumbing & Heating	Baldwin Park	292473	8/11/91	7097,7098,7109,7113,7116,7121
A S & W Construction	Hayward	502801	9/6/91	7090.1
Above All Construction Inc	El Cajon	510240	8/15/91	7097,7098,7113,7115,(7159),7116,7120,7154,7121,7121.5
Allied Carpet	Bellflower	504661	8/27/91	7090.1
Almaden Roofing	San Jose	483291	9/25/91	7090.1
Amaya, Xavier	Downey	428569	8/17/91	7097,7098
American Improvement Co., Inc.	Pleasant Hill	348944	7/20/91	7107,7109,7115(7159),7121, 7121.5
Armstrong Kitchens Purchase Company Inc	San Francisco	541180	8/22/91	7107,7113,7115 (7159),7116,7161(a), (b), 7121, 7121.5,7122.5
Astor Builders	Los Angeles	382292	8/11/91	7097,7098,7101,7109,7113,7115 (7071.11), 7121
B & D Automotive Inc. dba Franklin Maintenance and Equipment Co.,	Yuba City	453460	8/17/91	7109,7113,7071.11
Baker Bob Construction	Sonora	470992	7/25/91	7090.1
Baker Dennis Eugene	Gardena	564281	7/2/91	7090.1
Barroso, Julio	Los Angeles	424450	8/9/91	7108,7111,7114,7115,(7026.5),7028,7116,7121.5,7122.5
Barter Builders	Sacramento	447900	9/25/91	7090.1
Bay Roofing	East Palo Alto	522701	7/25/91	7090.1
Bernardo, Reyes	Pomona	447010	8/22/91	7113,7115 (7159)
Berry Development Co Inc	Dana Point	455099	7/11/91	7090.1
Beus William Preferred	Blue Lake	484803	7/25/91	7090.1
Billwell Company The	Alhambra	509941	7/23/91	7090.1
Blue Haven Pools & Spas Inc	Rancho Cordova	550683	8/27/91	7107,7109,7113,7115 (7167),7111,7117,6,7121,7121.5,7122.5
Bradley, Garland T	Alameda	342821	8/11/91	7109,7113,7115(7028,7083.1),7117,7121.5
Brands Roofing Co	Eureka	332945	9/25/91	7090.1
Break Through Builders	Orinda	377887	9/11/91	7090.1
CBC Associates	San Jose	534642	8/17/91	7107,7113,7115(7159),7116,7121.5,7122.5
Cabinet Connection Inc., The	San Jose	483082	8/17/91	7097,7098
Cabinet Connection Inc., The	San Jose	483082	8/17/91	7107,7109,7113,7115 (7018.5,7030,7159),7121
Cairo Landscaping & Engineering Inc.Dba Cairo Landscaping	El Cajon	511527	7/10/91	7090.1
California Consulting Contractors	Lafayette	481646	7/25/91	7090.1
California Landscape Services	West Sacramento	428665	8/5/91	7090.1
California Mobile Home Service	Bakersfield	413486	7/25/91	7090.1
Cal-Tech Roofing	Modesto	505147	8/2/91	7107,7109,7111,7111.1,7113,7115(7083),7116,7154,7121,7122.5
Campbell Harold H & Son	Watsonville	294740	7/25/91	7090.1
Carpet Depot	Roseville	532705	7/25/91	7090.1

continued on page 3, Disciplinary Action

Proposals for New Fire Alarm and Locksmith Classifications

At the October 1991 meeting of the CSLB in Sacramento, the Board took action to grant a public hearing on a petition from Locksmith Contractors to establish a new specialty classification for the business of locksmithing. Based upon a showing by the petitioners that locksmiths were per-

forming life safety measures within the codes administered by the National Fire Protection Act and that they were required to hold several C-61 classes the Board consented to grant the public hearing.

People from the fire alarm industry had also petitioned the Board to remove

the installation of fire alarms from the C-7 Low Voltage classification. The Board agreed to grant the petition from the fire alarm industry to hold a public hearing.

The Board set the public hearings to be held at the next regular meeting of the Board in San Diego on January 17, 1992.

The hearing on the fire alarm peti-

tion is to remove the installation of "low voltage fire alarm systems" from the rule and to specifically remove it by adding "Low voltage fire alarm systems are specifically not included in this section". The rule would read as follows:

832.07 Class C-7 Low Voltage Contractor.

A communication and low voltage contractor installs, services and maintains all types of communication and low voltage systems which are energy limited and do not exceed 91 volts. These systems include, but are not limited to telephone systems, sound systems, cable television systems, closed-circuit video systems, satellite dish antennas, instrumentation and temperature controls, and low voltage landscaping lighting. Low voltage fire alarm systems are specifically not included in this section.

The removal of fire alarm systems from the C-7 classification would place fire alarm systems solely within the C-10 Electrical classification.

The hearing on the locksmith petition would add Section 832.28 to the California Code of Regulations to read as follows:

832.28 C-28 Lock and Security Equipment Contractor.

A lock and security equipment contractor evaluates, sets-up, installs, maintains and repairs all doors and door assemblies, gates, locks and locking devices, panic and fire rated exit devices, manual and automatic operated gate and door closures and releases, jail and prison locking devices and permanently installed or built in safes and vaults. This classification includes but is not limited to master key systems, metal window guards, security doors, card activated and electronic access control systems for control equipment, motion and other types of detectors and computer systems for control and audit of control systems and other associated equipment.

Anyone interested in attending this public hearing may get further information by calling (916) 366-5243.

Disciplinary Action, continued from page 2

LICENSES REVOKED

NAME/STYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
Castro J L	Isabela, Puerto Rico	360392	9/7/91	7090.1
Cencore Corp	Los Angeles	399833	8/17/91	7097,7098,7107,7109,7113,7115(7018.5),7159,7121,7121.5,7122.5
Central Calif Installations	Modesto	496681	8/2/91	7097,7098
Century 21 Pools Inc	Rancho Cucamonga	316680	8/15/91	7109,7113,7115 (7030)
Chavez Construction	San Jose	490107	8/17/91	7097,7098
Clark Construction Company	Carmichael	503424	7/25/91	7090.1
Ioninger Earl M	Riverside	450851	7/11/91	7090.1
Cole Bros Earthquake	Venice	501504	8/11/91	7097,7098,7107,7109,7116,7121
Consumers Construction Corporation	Sherman Oaks	483451	7/29/91	7098,7122.5
Cloninger, Earl M	Riverside	450851	7/11/91	7090.1
Cole Bros Earthquake	Venice	501504	8/11/91	7097,7098,7107,7109,7116,7121
Consumers Construction Corporation	Sherman Oaks	483451	7/29/91	7098,7122.5
Continental Roofing Co	Rancho Cucamonga	491025	8/11/91	7071.5,7097,7098,7107,7109,7110,7113,7115 (7028,7030,7083,7159),7116,7121
Coules, Scott Paul	Upland	474978	8/11/91	7097,7098,7099,6,7107,7113,7115(7108.5,7030,7083),7117,7121
Cox, J H III	Fair Oaks	530863	8/27/91	7097,7098,7122.5
Creedon Painting and Wallcovering Service	Placerville	507757	9/25/91	7090.1
Curtis, Marianna and Engabretson, Charles dba Sunmac	Costa Mesa	488415	8/17/91	7097,7098
Cybulski, Glenn M Landscape Const	Petaluma	504001	10/23/91	7107,7109,7113,7115,(7159),7116,7117,6,7121
D S D Construction Co Inc.	Anaheim	399776	7/16/91	7090.1
Dawn Painting Co.	Perris	412770	8/11/91	7109,7113,7115(7159) (b),(c),(d),(h),7097,7098
Jeco Plumbing Inc.	Brea	480004	7/2/91	7090.1
Decwell Painting & Decorating	N Hollywood	470906	8/8/91	7090.1
Diamond Builders, Inc	Chatsworth	464515	7/29/91	7107,7109,7110,7113,7115(7158,7159),7116,7117,6,7121.5
Dillard-Crawford Construction Company	Kings Beach	506710	8/23/91	7107,7113,7115, (7159),7121.5
Dinges Plumbing and Heating Inc. Dba Dinges Plumbing	Burbank	515540	9/15/91	7090.1
Dinges Plumbing * Dinges Plumbing and Heating Incorporated	Burbank	515540	8/11/91	7097,7098,7107,7109,7113,7115 (7083), 7121
Diversfield Builders	Chatsworth	414207	7/23/91	7090.1
Douglas Roofing Co	Pomona	261229	8/11/91	7097,7098,7109,7113,7116,7121,7121.5
Dublin Plastering	Dublin	427951	7/25/91	7090.1
Energy Plus Inc	San Marcos	458204	8/19/91	7097,7098,7109,7113,7117,6,7115 (7085.5,7068.1,7121.5,7122.5)
Engabretson, Charles	Smithfield	467566	8/17/91	7097,7098,7107,7109,7113,7116,7120,7121
Eppler Roofing	San Mateo	478322	7/25/91	7090.1
Fairbolt Construction Inc	Sonoma	524550	8/2/91	7085.6
Ferman, Ray A Minority Contractor	San Jose	234229	7/26/91	7090.1
Filippelli, Joe	Blue Jay	357915	8/11/91	7097,7098,7107,7113,7115(7018.5,7159),7116,7121,7121.5
Fiorco	Bell Gardens	261782	7/23/91	7090.1
Fonte Construction	Arlita	525686	8/11/91	7097,7098,7107,7109,7111,7113,7115(7159),7115(b),7117(b),7121,7121.5
Foraker Robert Contracting	Palm Springs	318574	7/2/91	7090.1
Four Seasons Fire Protection	Lancaster	456572	8/8/91	7090.1
Garcia, Alfredo	Los Angeles	464619	7/16/91	7090.1
Gaspar Roof Co.	San Diego	422323	8/17/91	7097,7098,7107,7109,7113,7115(7159),7116,7119,7121.5
Gobbell, Ralph	Carmichael	506906	8/25/91	7109,7113,7115(7159)
Gold Country Log Homes	Plymouth	302438	7/20/91	7107,7109,7110
Golden State Construction	Shingle Springs	339328	7/25/91	7090.1
Golden State Contractors	Los Angeles	419465	8/11/91	7107,7109,7113,7097,7098,7121,7121.5
Gualtier, Stephen	San Diego	519994	8/11/91	7097,7098,7109,7113,7117,7110,7111.1
Haase Const	Rancho	565805	7/23/91	7090.1
Halsien Homes	Cobb	441416	7/17/91	7107,7109,7121
Hammer "N" Nails Construction	Glendale	503359	8/11/91	7071.11,7097,7098,7109,7113,7121,7121.5,7123
High Grade Construction Company	Glendale	425493	10/23/91	7107,7113,7115 (7030.5, 7159), 7117,7121
Hinrichs, Paul	Escondido	348665	8/11/91	7097,7098,7107,7109,7113,7118,7115 (7028), 7121,7121.5
Howard, James E.	San Bernardino	539992	7/16/91	7090.1
J F R Construction	Sacramento	517536	9/25/91	7090.1
Jim's Custom Concrete	Sacramento	429445	7/25/91	7090.1
Johnson A P & Company	Reseda	574291	10/13/91	490,7112,7121
K & M Industries	Chatsworth	520624	8/17/91	7097,7098,7107,7110,7113,7115(7030,7159),7117,7117.6,7121,7121.5,7122.5
Kare-Free Company Inc	Cerritos	503430	8/20/91	7090.1
Kartsbad Custom Painting	Carlsbad	510079	8/11/91	7097,7098,7107,7109,7113
Kelley, Larry	Bakersfield	495149	8/20/91	7090.1
Kern, Russell S dba RK Pools & Spas	Sepeveda	442515	8/17/91	712,7121,7121.5
Kienle and Mc Gown	Glen Ellen	344033	8/11/91	7107,7109,7113,7110 (1689.7cc), 7115 (7018.5, 7159),7121
Kitchen Savers	Grass Valley	412462	8/17/91	7097,7098
William F Kreighenloter	Chatsworth	586991	8/17/91	7097,7098
Le, Duang	San Diego	527832	8/11/91	7083,7107,7108,7109,7113, 7115 (7159) (b) (d) (h) (i) (j), 7097, 7098
Lewis, Michael	Concord	536032	7/20/91	7122
Lorenzo's Construction Co.	Redwood City	480577	8/22/01	7107,7108,7112,7114,7115 (7159), 7116, 7121, 7154, 7161.b
MIT Design and Construction Co Inc	Los Angeles	578675	8/17/91	7097,7098
Marvin, Randall	Oceanside	519944	8/11/94	7097,7098,7071.11
Massa, Salvatore Thomas	Redondo Beach	325904	8/11/91	7097,7098,7107,7109,7113,7115 (7028,7083,7159), 7116,7121
Mawhirter, David	Granada Hills	391684	8/17/91	7097,7098
Mid Valley Roofing	Sacramento	338317	9/25/91	7090.1
Mijude Inc Dba Customtone Kitchens	Anaheim	539852	7/11/91	7090.1
Miller, Henry M	Los Angeles	496152	8/17/91	7122
Modern International Technical	Los Angeles	507771	8/17/91	7097,7098,7107,7109,7113,7115, (7159), 7116, 7121, 7121.5
Moreau Builders	Torrance	319262	10/21/91	7107,7109,7110,7113,7115(7159), 7121,7121.5

continued on page 4, Disciplinary Action

Yates v Superior Court . . . Your License Classification and Your Work

The matter of a contractor performing under a contract to do work not covered by his or her license has some very serious consequences. Section 7031 of the Contractors' State License Law [CSLL] not only prohibits an unlicensed contractor from bringing suit in a court of law for collection of compensation, but has the same effect on licensed contractors who contract outside of their classification. Section 7031 is broadly stated in this regard since it requires that a person must allege and prove that he or she was a DULY licensed contractor at all times during the performance of the act or contract. The courts have held that "duly licensed" includes, in addition to all the other requirements for licensure, that the person be licensed in the proper classification to perform on the contract.

Some years ago a suit was filed in the Superior Court of California, Los Angeles County in which the owner of a project attempted to avoid payment to a contractor on the grounds that the contractor performed work outside of his license classification. The owner failed because the contractor was able to prove that his license did allow him to perform the work although it was under some unusual circumstances. This case was unusual in that the court ruled that an "A" contractor could do concrete work on a "B" structure.

In 1982, Paula and Terrence Oehlberg entered into a contract with Ron Yates Construction Co., Inc. in which Yates was to construct a seawall, septic system and a foundation for

Oehlberg's beach-front residence. The construction of the seawall required the use of 2 caissons and the foundation required the use of 8 caissons. Pursuant to the contract Yates commenced work in August of 1982 and worked until October 1982 when the Oehlbergs terminated their contract with Yates. Although Yates had substantially completed the project, the Oehlbergs refused to pay.

In October 1982 the Oehlbergs commenced an action in the Los Angeles County Superior Court, seeking damages for breach of contract. Yates cross complained for recovery of the reasonable value of labor and materials provided under the contract.

Some time later the Oehlbergs contacted CSLB to determine if Yates was properly licensed to perform the work. CSLB responded that an "A" was proper for doing the seawall and septic system, but could not do the foundation. In its response CSLB stated that only a "B" contractor was proper to do the foundation.

The original summary judgement and summary adjudication of issues was denied. A year later, in November of 1985, the Oehlbergs renewed their motion for summary adjudication on the same ground. The Superior Court held that, as a matter of law, Yates was not properly licensed to construct the foundation, but was properly licensed to build the seawall and septic system. Further, the court ruled that Yates was precluded pursuant to Section 7031 from recover-

ing the value of the labor and material provided. Yates appealed. Case No. 2d Civ. B018647, Ron Yates Construction Co., Inc. v Superior Court of California in the Second Appellate Division of the California Court of Appeal is the result of this appeal.

The appellate court stated, "We agree with Judge Epstein [Superior Court] that the question is not properly determined by the Board's interpretation of the law, but disagree with his conclusion that the question whether the work requires 'specialized engineering knowledge and skill' [7056] is irrelevant." The matter of the Board's interpretation of Section 830 of the California Administrative Code [Board Rule 830] which was relied on by the Superior Court was addressed by the Appellate Court. It stated that while great weight is given to administrative interpretations of regulations enacted by those charged with the enforcement they cannot prevail if unauthorized by law; that it is well established that a regulation cannot restrict or enlarge a statute; and that it is the law that has to be examined to determine legislative intent.

The court reviewed the history of Section 7056 and concluded that it was the intent of the legislature, in 1951 when it amended the original law defining the general engineering classification, to expand the categories enumerated in the statute and to that end, modified the words "fixed works to include any fixed works requiring the "specialized engineering knowledge and skill" of the general engineering [Class A] contractor.

The court stated that the records illustrated that over the years the Board through various of its employees has taken inconsistent positions on the question of the work allowed under the Class A license. On some occasions it had advised prospective licensees that a Class A licensee may contract to construct a residence foundation requiring engineering knowledge and skill, while at other times only a Class B licensee may properly contract to build any foundation for a residence. The court further emphasized that the Office of the Attorney General, while acting as an advisor to the Governor in 1951 when the law was amended had contradicted the position that was taken by that office in its capacity as attorney for amicus curiae in the present case.

In light of its discussion, the court held that a general engineering contractor may contract to construct a foundation for a residence if it requires "specialized engineering knowledge and skill." It was the court's conclusion that the Oehlberg's foundation required the specialized knowledge and skill of a general engineering contractor so Yates was not precluded in maintaining an action to recover the reasonable value of labor and materials under the contract.

This case was presented here in an effort to bring to licensees' attention that performing work in a classification other than the classification in which the licensee is licensed can result in the licensee not being able to collect compensation for work performed. This case also points out that the determination of the proper classification for a particular project is not always the easiest thing to do. This is particularly so in projects involving the overlap of the scope of work of the general engineering and the general building contractor.

It is because of the overlap in the work of the Class "A" and the Class "B" contractors that the Board is presently undertaking a study to determine the feasibility of combining the operations of both classes into a super classification. There is still much work to be done before anything definite will come from the study.

Disciplinary Action, continued from page 3

LICENSES REVOKED

NAME/STYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
Morgan Dan Gardening	Lancaster	522374	7/25/91	7090.1
Moya, Emmanuel G	Montclair	511494	7/25/91	7090.1
Mr B L D Contracting Services Inc	Fairfield	568670	7/27/91	7109
Mr Build Contracting Services	Fairfield	408079	7/27/91	7109
Murphy J P Company	Pleasanton	332843	7/25/91	7090.1
National Bath Refinishers	Pacifica	359374	7/25/91	7090.1
Nazaroff, John Michael	Fresno	530172	8/20/91	7090.1
Nazaroff, John Michael	Fresno	530172	8/30/91	7090.1
Nazaroff, John Michael	Fresno	530172	9/25/91	7090.1
New Asphalt Cultivators Inc The	Hayward	521465	7/25/91	7090.1
Nordic Drywall Co.	Fair Oaks	447077		7090.1
Original Watergate Plumbers The	San Rafael	304982	8/20/91	7090.1
Osborne, Robert	Sacramento	319762	8/11/91	7107,7113,7111.1, 7115 (7083), 7121
Osborne, Arthur K.	Lakewood	365468	7/16/91	7090.1

continued on page 6, Disciplinary Action



Increased Liability to Contractors

by Karl W. Grossenbacher, Deputy Director, Tax Branch
State Employment Development Department

Contractors who do not check to make certain that their subcontractors are licensed by the Contractors' State License Board may receive a nasty financial jolt when an audit reveals that employment taxes have not been withheld from payments made to unlicensed subcontractors. The State Employment Development Department (EDD) would like to help ensure that you understand "the rules" concerning these employment taxes.

Under a new law passed by the California Legislature (AB 2667), as codified in Sections 621.5 and 13004.5 of the California Unemployment Insurance Code (CUIC), a contractor, whether licensed or unlicensed, will be held to be employer of any unlicensed subcontractor or construction worker who performs services that require a contractor's license. Such contractors will be liable for unemployment insurance (UI), employment training tax (ETT), disability insurance (DI) and personal income tax withholding (PIT). The new law is applicable to services performed on or after January 1, 1991.

Prior to January 1, 1991, only licensed contractors could be held to be the employer of unlicensed subcontractors or construction workers under California law, and this was only for purposes of UI, DI, and ETT. For PIT purposes, the determination as to whether a worker was an employee was determined under common law rules. In other words, did the contractor who hired the worker have the right of direct supervision and control over the manner by which the worker performed his or her services?

Sections 21.5 and 13004.5 state in part that an "employee" shall also mean individual who is an employee, pursuant to Section 2750.5 of the Labor Code.

Section 2750.5 says that a worker performing services for which a license is required or who is performing such services for a person who is required to obtain such a license is an employee rather than an independent contractor. To prove independent contractor status all of the following conditions must be met:

- (a) The individual directs and controls the manner of performance by which the services contracted for are accomplished.
- (b) The individual is customarily engaged in an independently established business.
- (c) The individual's independent contractor status is bona fide and not a subterfuge to avoid employee status.

In addition to the above factors, if performing a function for which a contractor's license is required, the individual must have a valid contractor's license to perform the work.

The term "valid license" in these examples means the license was issued to the correct individual or entity, the license is in the proper classification for the type of service being provided, and the license was active and in good standing for the entire period of the job.

Some examples of application of Sections 621.5 and 13004.5 include:

1. When a contractor (licensed or unlicensed) hires a worker who is not licensed as a contractor or subcontractor to perform work which requires a license, the contractor is considered to be the employer of the worker, or the subcontractor, for purposes of all state employment taxes (UI, ETT, DI and PIT).
2. A general contractor who holds a valid California contractor's license subcontracts to an out-of-state contractor to perform services for which a license is required. The out-of-state contractor has a license issued by another state, but is not licensed in California. In this instance, the subcontractor is an employee of the general contractor for all state employment tax purposes because the subcontractor does not hold a valid California contractor's license.
3. A general contractor who holds a valid contractor's license subcontracts to an individual who was determined to be an independent contractor under the usual common law rules; however, that individual does not hold a valid contractor's license. The subcontractor is a statutory employee of the general contractor under Section 621.5 and 13004.5 of the CUIC.
4. An unlicensed owner of commercial or residential rental property hires unlicensed construction workers to perform construction work on his or her own buildings. Such owners are not typically required to be licensed, so the workers may not be statutory employees

under Sections 621.5 and 13004.5 of the CUIC. However, EDD recommends that owners contact the Contractors' State License Board (CSLB) to determine if a license is required. If the workers are not mandatorily determined to be employees because of Sections 621.5 and 13004.5, the common law tests would be applied to determine if they are employees, or if they are instead acting in the capacity of a contractor.

5. A general contractor, either licensed or unlicensed, subcontracts to an individual who has a valid contractor's license. The individual is told by the general contractor how to accomplish his or her work, has no investment in the business, is paid by the hour, and may or may not provide his or her own tools. The individual is not engaged in an independently established business. The general contractor controlled the time and place the work was performed and could sever the relationship at will.

The individual would not be an independent contractor simply because he or she holds a valid contractor's license. However, the individual would be an employee, because he or she did not meet all of the conditions set forth in Section 2750.5 of the Labor Code.

If you have any questions regarding information contained in this article or the employment status of contractors within your business, please contact the Employment Tax District Office of the Employment Development Department. For the office nearest you, refer to the State Government section of your local telephone directory under "Employment Development Department."

New Legislation
continued from page 1

entity is intending to award a contract to an unlicensed contractor, the Registrar shall give written notice to the public entity that a citation will be issued if a contract is awarded to an unlicensed person. The bill further provides that these provisions will not affect the right of a licensed land surveyor to form joint ventures with licensed contractors to render services within the scope of their respective practices.

AB 2190 by Assemblyman Robert Frazee consolidates and renumbers provisions of the CSLL and makes other technical and related changes. This bill revises the CSLL to eliminate duplicate language, conflicting provisions, and obsolete language. It also consolidates similar subject matter. Some sections have been combined to eliminate duplicate language. Some have been renumbered to bring material with the same subject matter together.

Some sections have been moved from one area to another for the same reason. Article 10, the Home Improvement Business article has had a major overhaul to consolidate the swimming pool provisions with the home improvement provisions. This legislation has gone further in that it has consolidated the present Section 7026.4, the tree service section, into Section 7026.1 and has amended it to include all people as contractors who do tree service work rather than just those who contract with licensed contractors. The exemption for minor work [that which is under \$300] still applies.

Other bills which the Board did not sponsor and which the Board may or may not have supported are as follows:

AB 506 by Assemblyman Richard Mountjoy adds Section 7040.1 to the CSLL to exempt nonprofit organizations which provide weatherization services at no cost to households under federally funded low income programs. The bill provides that these organizations may contract to properly licensed contractors when an activity would disturb a hazardous material or constitute asbestos-related work as defined in Section 6501.8 of the Labor Code. This bill is automatically repealed on January 1, 1996. This is an

urgency statute and became effective October 9, 1991.

AB 1071 by Richard Mountjoy makes some technical changes in Section 7071.6. The present law was due to be repealed on January 1, 1992 and a new law on the same subject to be effective on the same date. Section 7071.6 is the bonding law which provides for Contractor Bonds and for Judgement Bonds. The bill simply retains present language in the section.

AB 1382 by Assemblyman Bill Lancaster amends Section 7031. This section presently provides that no person can bring an action in court for compensation without proving that he or she was properly licensed at all times during performance of the contract. Under this law the doctrine of substantial compliance does not apply. This bill makes an exception to the prohibition of using the doctrine of substantial compliance when it is shown at the hearing that the person was a duly licensed contractor during any portion of the 90 days immediately preceding the act or contract for which compensation is sought. The lapse in the license has to be due to an inadvertent clerical error or other error or delay not caused by the person. This new provision has no retroactive effect. This bill does not provide any relief for anyone contracting outside of the proper classification insofar as the bill is clear that the category of license in question would have authorized the performance of the contract. Any questions concerning these changes should be directed to an attorney.

AB 1639 by Richard Katz adds Chapter 10.35 [commencing with Section 25914] to the Health and Safety Code.

This act deals with contracts relating to asbestos and hazardous substances. It provides that a separate contract must be used if the asbestos or hazardous substance is not disclosed in the bid or contract documents. If the presence of these substances is disclosed, a separate contract will not be required. A contractor may continue to work in an unaffected area if these substances are encountered during progress of the project. Although the CSLL has not been amended directly, this bill has a direct effect on the certification and registration of prime contractors who bid on work that involves asbestos. It provides that notwithstanding any other law a contractor may bid on a project involving asbestos related work so long as the asbestos related work is actually performed by a contractor who is certified by the Board and registered with the Division of Occupational Safety and Health (DOSH) of the Department of Industrial Relations. This provision is in conflict with Section 7058.6 of the CSLL, but prevails because of the "Notwithstanding any other law" provision.

AB 2158 by Assemblywoman Carol Bentley adds Article 8.5 to the CSLL. This act creates the Construction Management Education Sponsorship Act of 1991. It is for the establishment of a grant program for qualified public postsecondary educational institutions for the support of courses of study in construction management. A separate account is set up in the Contractors License Fund for the purpose as described. The act provides that the Board shall allow a contractor to contribute \$25 to this special account at the time an applicant pays

the initial license fee and at the time a contractor sends in the renewal fee. This fee is a contribution and is in addition to the regular fees. The Board may accept grants from federal, state, or local public agencies or from private foundations or individuals to assist in this program.

Senate Bill 618 by Senator Henry Mello adds Section 7164 to the CSLL to require special conditions in a contract between an owner and a contractor for the construction of a single-family dwelling which will be retained by the owner for at least one year. The contract shall be in writing and shall contain the name, address, and license number of the contractor. It shall contain the approximate dates when the work will begin and when it will be substantially completed and a legal description of the location where the work will be done. The contract must also contain the Notice to Owner as required by Section 7018.5 and a notice that the owner has the right to require the contractor to have a performance a payment bond and that the expense of the bond may be borne by the owner. These provisions are not all exclusive and do not relieve the contractor from all other applicable provisions of law. This law, while in the home improvement article, pertains to new construction. The contract requirements are not as inclusive as the requirements in a home improvement contract, but include only those requirements under this act. This is not by any means all the information needed in a good contract. For additional information, see *The Home Improvement Contract Form*, Fall 1991 CLC, page 6.

Disciplinary Action, continued from page 4

LICENSES REVOKED

NAME/STYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
Paradise Patis	Rialto	479265	7/2/91	7090.1
Parker, Bruce M.	Chatsworth	472922	8/11/91	7097,7098,7107,7109,7110,7113,7115,(7030,7167), 7117.5 (b), 7117.6, 7120, 7121
Paul, Benjamin Charles	Campbell	383396	7/25/91	7090.1
Paul, Benjamin Charles	Campbell	383396	9/25/91	7090.1
Pickard's Construction	Red Bluff	343458	7/17/91	7107,7109,7113,7115 (7028,7159), 7116, 7117.5, 7121
Pitts, John Roofing	San Juan Capistrano	450718	8/11/91	7097,7098,7109,7113,7115 (7159, 7030,7071.13),7121
Pozen, Nate	Los Angeles	457740	7/29/91	7098,7122.5
Precision Pools and Spas	Castaic	576113	7/17/91	490,7112,7121.5

continued on page 7, Disciplinary Action



Combating Unlicensed Contracting continued from page 1

At this writing, attempts are continuing to obtain comparable units for central and northern California. Industry members in central and northern California are encouraged to contact their local legislators and the Governor's Office if they believe a unit is warranted for their respective areas.

The southern California unit is small (five investigators) but effective. Since the inception of the program in late 1989, the unit has been engaged in more than 4,600 actions against licensees and non-licensees. Almost 900 administrative non-licensee citations and 150 notice to appear citations have been issued. Additionally, 200 citations have been issued to licensed

contractors for hiring unlicensed contractors. The focus of the unit is to encourage licensure so when a citation for unlicensed contracting is issued, the subjects are given license application forms. To date 225 subjects have applied for licensure.

The unit uses various methods to cite unlicensed contractors. It responds to tips and complaints filed by licensed contractors, governmental agencies, industry associations, trade unions and consumers. The unit is also unique in that it is the only CSLB unit to utilize undercover "sting" operations and "sweeps" of areas that are alleged to be the source of unlicensed contracting.

Stings

Stings are covert operations in which the unit establishes a home in need of work and arranges for bids from contractors who are advertising without any indication of licensure. When a violation of law is established, the subjects are placed under arrest by a Board peace officer, issued a Misdemeanor Notice to Appear Citation, and released with a promise to appear in court. Failure to appear for arraignment results in an arrest warrant being issued. The unit is always interested in obtaining facilities for use in stings, so if you have a residential or commercial

location that can be used for an undercover operation, please call the unit at (714) 994-7435.

Sweeps

Sweeps are operations in which the unit will gather a team of investigators to check for licensure. An area will be targeted based on complaints from local governmental agencies, trade associations and labor organizations. On occasion, representatives from the Bureau of Field Enforcement of the Department of Industrial Relations (Labor Commissioners) are invited to participate so that they may monitor for compliance with labor codes. Violators are issued administrative Non-Licensee Citations.

Given the size of the unit, it cannot respond to every possible violation involving unlicensed contracting. Therefore, complainants and informants are encouraged to concentrate on unlicensed contractors who are involved in multiple projects or unlicensed contractors who are working on projects where there is threat to health and safety. The unit will try to give priority to these type of complaints.

The unit is most effective when it is able to catch the subject on the project site. If you believe you have a subject for investigation, be prepared to provide the following information to the unit: Your name (this will be kept confidential upon request), your phone number, name of subject (or dba), type of work, job address (where the work is being performed) and how long they have been at the job address. The unit will attempt to respond within 48 hours of your complaint.

As mentioned earlier, the legislature authorized a demonstration project for southern California. The unit's jurisdiction is limited to southern California. It cannot conduct investigations in central and northern California.

If you have any questions, call the Unlicensed Activity Unit at (714) 994-7435.

Disciplinary Action, continued from page 6

LICENSES REVOKED

NAMESTYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
Preferred Patio	Corona	554794	7/16/91	7090.1
Pringle & Sons Construction	Hayward	349855	7/25/91	7090.1
Stanilia Greg Construction	Covina	503513	8/31/91	7090.1
on Drywall	Oceanso	492554	8/20/91	7090.1
Interiors Inc c/o Homeshow	Torrance	448921	7/23/91	7090.1
Ray & Co Painting	Fresno	362421	9/25/91	7090.1
Restoration Specialists	Middletown	516786	8/17/91	7097,7098,7120,7113,7116,7121.5
Restoration Specialists of San Diego Inc	San Diego	551912	8/17/91	7097,7098
Richard John Const	Oakley	381367	9/25/91	7090.1
Roth C H General	San Diego	501455	8/30/91	7090.1
Ryan, C A	Auburn	124466	8/11/91	7111,7111.1, 7121.5
Ryan, Howard Thomas III	Los Angeles	342182	9/7/91	7090.1
Sandpiper Vinyl Pools Inc.	Laguna Niguel	483293	7/16/91	7090.1
Seaco Drywall	Claremont	474197	7/16/91	7090.1
Shiloh Construction	Studio City	463597	8/17/91	7097,7098,7107,7108,7110,7111,7113,7115, (7088.1), 7116, 7121, 7121.5
Signature Highlights	Torrance	533253	8/11/91	7097, 7098,7107, 7113, 7115 (7030, 7083, 7071.11, 7159) 7116, 7121.5
Snow Construction	Marysville	382971	8/11/91	7107,7109, 7113, 7115, (7071.11), 7116, 7120, 7121.5
Sonoma County Roofing	Santa Rosa	417268	8/30/91	7107,7109,7113
Southeast Electrical Contractors	San Francisco	461014	7/25/91	7090.1
Star Company	Irvine	582656	10/23/91	490, 7112, 7121, 7123
Steiner, John S	Idyllwild	511618	8/17/91	707.1.11, 7107, 7115 (7083), 7097, 7098, 7121
Strong Bill Inc.	Devore	522233	9/25/91	7090.1
Sturdy Construction	Carmichael	508277	7/25/91	7090.1
Suburban Excavation Inc	Rancho Cucamonga	298079	8/15/91	7099.1, 7121
T N Co Construction	Tracy	492217	8/20/91	7090.1
Telco DBA Tellez Asphalt Paving Company	Burbank	336698	7/23/91	7090.1
Thaxton, John D	Orange	458698	8/11/91	7097,7098,7107,7113,7115,(7030.5, 7030), 7117, 7071.11,7108
Thomas, Jeffrey M.	Palmdale	498198	7/23/91	7090.1
Thomason, Chuck DBA Thomason Development		429255	9/18/91	7090.1
Trueax, Philip E.	Apple Valley	381829	7/16/91	7090.1
Turnock, John M.	Cathedral City	466971	7/23/91	7090.1
Unique Exteriors	Corona	474278	7/10/91	7090.1
Universe Ceramic Tile	Los Angeles	518760	9/7/91	7090.1
Vesely Construction Inc	Grass Valley	534295	8/17/91	7107,7109,7113, 7115 (159), 7116
Vesely Construction Inc.	San Jose	534295	8/17/91	7097, 7098
Vesely Construction	San Jose	412462	8/17/91	7097,7098
Victory Fire Protection	Oak View	384215	7/25/91	7090.1
Vitale Construction	Valley Springs	483456	8/11/91	7109,7113,7097, 7098,7121,7121.5
Western Construction Co	West Hollywood	487510	7/23/91	7090.1
Western Pacific Design and Remodeling Company Inc.	Los Angeles	434829	8/17/91	7097,7098,7107,7109,7110,7113,7114,7115 (7030,7068.1,7159), 7121.5,7122.5
Whedbee Construction and Development Corporation	Vacaville	568799	7/27/91	7109

LICENSES SUSPENDED

NAMESTYLE	CITY	LICENSE#	EFFECTIVE DATE	VIOLATION CONTRACTORS LAW
BALISTRERI, JOSEPH S. GENERAL BUILDING CONTRACTOR	ALPINE	339127	4/8/91	7107, 7109, 7113, 7121, 7154
Development Co.	Capitola	300674	7/5/91	7113,7120,7121

REVOCATION VACATED

NAMESTYLE	CITY	LICENSE#	EFFECTIVE DATE	CITATION
Santa Fe Construction Company Incorporated	San Diego	416089	10/14/91	CIT-2871720

CAL/OSHA Investigates Charges of Safety "Consultant" Front Schemes

San Francisco The California Occupational Safety & Health Administration's (CAL/OSHA) criminal investigative unit is looking into allegations by business owners that person's posing as CAL/OSHA safety consultants are involved in schemes to defraud employers, according to the Department of Industrial Relations, headquartered here.

The questionable activities are related to a recent provision of the law, SB 198, which requires employers to have an injury and illness prevention program in place.

Department of Industrial Relations director Lloyd Aubry said, "While an injury and illness prevention program is required of all employers under SB 198, we do not want to see those very employers who are attempting to comply with the law fall victim to fraud"

Aubry advises employers to request identification from anyone claiming to be a CAL/OSHA representative. If the per-

son cannot produce official state identification then the employer should report the incident to the nearest office of the Department of Industrial Relations. "CAL/OSHA consultants will enter a business only at the request of the employer," he said. "They assist the employer, at no cost, in developing ways to prevent workplace injuries and illnesses."

Although not rampant, these schemes have surfaced in Chico, Modesto, Palm Desert, Sacramento, Palm Springs, San Bernardino and Ventura, as well as other locations, according to Aubry.

In some cases, an individual will enter or telephone a business representing himself as an employee of CAL/OSHA. He says he is working as a consultant to ascertain if businesses are complying with the requirements of SB 198, stressing that failure to have an injury and illness prevention program in place will result in monetary penalties and possible incarceration. The "consultant" then offers to sell the

employer a program for an inflated price.

In virtually every case the alleged consultants exaggerate the amount of penalties an employer may be assessed and make claims of possible incarceration for failure to have an injury and illness prevention program.

Aubry advises, "Clearly, the focus of this law is on prevention of workplace injuries and illnesses, and although the potential for penalties does exist, these harsher punitive measures are required only in rare instances for the worst offenders"

Aubry cautions that before contracting for services, an employer should closely

scrutinize the credentials of the consultant and attempt to discern the reputable consultants from those who lack the necessary expertise in occupational safety and health.

Any employer who wants assistance developing an injury and illness prevention program should contact the CAL/OSHA Consultation Service, a unit of the Division of Occupational Safety & Health at (415) 737-2843 for referral to the nearest office. The Consultation Service provides free assistance to employers in all aspects of occupational safety and health and has offices located in Downey, Fresno, Sacramento, San Bernardino, San Diego, South San Francisco and San Mateo.

Unlicensed Contractor Citations

During fiscal year 1990-91, 2,108 nonlicensee citations were issued by CSLB. From July 1 to September 30, 1991, the CSLB issued 184 criminal (misdemeanor) citations against unlicensed contractors and 433 administrative citations to licensed contractors.



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Contractors State License Board

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