FINAL REPORT

CONTRACTORS STATE LICENSE BOARD ENFORCEMENT PROGRAM MONITOR

Final Report on the Enforcement Program of the
Contractors State License Board
Pursuant to Senate Bill 2029 (Figueroa)
Including Status of Monitor Recommendations

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CSLB is today in the hands of dedicated public servants who are making a daily commitment to bettering their work on behalf of all Californians. The Monitor salutes them all.

The views in this report are those of the Monitor and his colleagues only, but we thank the many who have contributed so generously and so effectively to this project.

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EXECUTIVE SUMMARY

INTRODUCTION

This Executive Summary provides an overview of the developments, recommendations, and future issues in the Final Report of the Contractors State License Board Enforcement Program Monitor.

The Contractors State License Board (CSLB) Enforcement Program Monitor (Monitor) was established in 2001 by SB 2029 (Figueroa). The Monitor was appointed and supervised by Department of Consumer Affairs Director Kathleen Hamilton.

This Executive Summary presents the essential findings of the Final Report using the following organizational scheme:

- **Introduction**
- **Statutory Mandate of the CSLB Enforcement Program Monitor**
- **Contractors State License Board Developments**
  - **Previous Reports of the CSLB Enforcement Program Monitor**
  - **Impact of State Hiring Freeze and Budget Reductions**
  - **Update on Selected Issues of Concern from Prior Reports**
- **Status of Enforcement Monitor's Recommendations**
- **Future Issues for the Contractors State License Board**
- **Conclusion**

STATUTORY MANDATE OF THE CSLB ENFORCEMENT PROGRAM MONITOR

The Contractors State License Board (CSLB) Enforcement Program Monitor (Monitor) was established by SB 2029 (Figueroa), legislation resulting from the 1999–2000 sunset review of CSLB

undertaken by the Joint Legislative Sunset Review Committee. The Monitor was appointed and supervised by Department of Consumer Affairs Director Kathleen Hamilton, and served the full statutory two-year term ending April 1, 2003.

As provided in Business and Professions Code section 7092, the Monitor's mandate was to "monitor and evaluate the Contractors' State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system."

CSLB DEVELOPMENTS

A. Previous Reports of the CSLB Enforcement Program Monitor

On October 1, 2001, April 1, 2002, and October 1, 2002, respectively, the CSLB Enforcement Program Monitor released his first three reports as required by Business and Professions Code section 7092(d). These reports contained numerous findings and 40 specific recommendations relating to nine general areas of concern: mission and mandate, resources, management structure and information systems, contractor screening, complaint handling, investigations, prosecutions, public disclosure and outreach, and consumer remedies. The Board's progress on implementing those recommendations is analyzed below (commencing with Chapter III.C) and is summarized in Chapter IV.

Both CSLB and its staff readily embraced the recommendations in the Monitor's three reports. The momentum had clearly shifted, and CSLB was implementing the Monitor's recommendations, rebuilding the enforcement infrastructure, and securing the tools needed to create an effective, efficient, and decisive enforcement system. However, supervening events have slowed that momentum. Staffing limitations related to the state hiring freeze have slowed the agency's recovery from the impacts of the unfortunate "reengineering" experiment in 1999–2000, and have delayed implementation of a number of the Monitor's recommendations (detailed further in the following section on the impact of the freeze on CSLB).

During this reporting period, the Monitor's recommendations have helped prompt legislation to implement long-term structural and procedural changes to CSLB's enforcement program:

SB 1953 (Figueroa) in the 2001–2002 session was CSLB's sunset bill and incorporated essentially *verbatim* the five most important of the Monitor's recommendations contained in the Initial Report. Signed into law in September 2002, SB 1953 clarified that CSLB's highest priority is public protection; permitted CSLB to establish its license fees in regulation and authorized the Board to increase its existing fees by approximately 20% to rebuild and improve its enforcement program; required CSLB to annually submit detailed and consistent enforcement statistics to the Legislature; required applicants for licensure and registration to submit fingerprints to enable criminal history verification; enabled the Board to verify the experience claimed by license applicants by giving CSLB access to the records of the Employment Development Department; and extended the Board's sunset date to July 1, 2007.

SB 1919 (Figueroa), also signed in September 2002, incorporated the Monitor's recommendation that the required bond amount for all CSLB licensees be increased to $10,000 effective January 1, 2004, and to $12,500 by January 1, 2007. For the first time, SB 1919 has also reserved a portion of each surety bond ($2,500 as of January 1, 2004; $5,000 as of January 1, 2007) exclusively for homeowner victims.

The Monitor's Third Report, dated October 1, 2002, laid the groundwork for legislation, presently pending as SB 30 (Figueroa), which is intended to improve the clarity and effectiveness of consumer contracts for the benefit of consumers, contractors, regulators, and law enforcement.

This Final Report summarizes CSLB's progress in rebuilding after reengineering, coping with the hiring and budget limitations, and implementing the Monitor's 40 recommendations.

B. Impact of the State Hiring Freeze and Budget Reductions

The Board's efforts to implement several key Monitor recommendations have been slowed by the statewide hiring freeze of October 23, 2001. Despite CSLB requests that were supported by DCA Director Hamilton and Agency Secretary Adams, none of its vacant investigator positions have been exempted from the freeze. At the time of the freeze, CSLB's enforcement program suffered a 14% vacancy rate overall and a 20% vacancy rate in its investigative positions, triggered by the actions of a prior board and perpetuated by the hiring freeze. This vacancy situation has meant that CSLB does not have all the tools it needs to ameliorate the unsatisfactory delays, long cycle times, and backlogs in its complaint handling, investigation, and prosecution processes that were identified in the previous reports of the Monitor.

In addition, the 2002–03 budget bill required the Department of Finance to abolish at least 6,000 state positions vacant on June 30, 2002. On that date CSLB had 64 vacant positions (with an associated budget of $3 million) due to the hiring freeze, and ultimately the Board lost 42 positions, including 22 enforcement positions, of which 12 were line investigator positions.

Faced with these losses and vacancies, the Board has adopted contingency plans to address its staffing situation, including several process changes and cost-saving measures to help staff maintain most services and focus on the most serious cases.

C. Update on Selected Issues of Concern from Previous Reports

CSLB mission and mandate. New Business and Professions Code section 7000.6, added by SB 1953 (Figueroa), clarifies that public protection is CSLB's highest priority. The Board has tabled the issue of modernizing CSLB's name during the current budget situation, but the Monitor urges the Board to revisit the issue of clarifying the Board's current outmoded and misleading name when time and resources permit.

CSLB resources. SB 1953 (Figueroa) authorizes the Board to establish its fees in regulation through the Administrative Procedure Act rulemaking process, and authorizes CSLB to increase its license fees by approximately 20%. The Board has adopted an emergency regulation establishing its existing fees in regulation form, but has not yet taken action to increase fees in deference to the economic and budget circumstances.

The new authority of SB 1953 is important to ensuring CSLB fiscal solvency and enforcement program improvement on a long-term basis. CSLB now plans to initiate the rulemaking process in 2005 to increase fees approximately 10% in 2006. CSLB management hopes to use these new resources to complete the rebuilding of its enforcement structure and to increase its enforcement staff.

Management structure and information system. Responding to a number of Monitor recommendations, CSLB has rebuilt its management structure by filling its Enforcement Chief and other high-level enforcement program positions, reassigned several upper management staff to new responsibilities, restructured the management hierarchy at its Investigation Centers (ICs) to address excessive span of control problems for IC supervisors, and is restructuring its Statewide Investigative Fraud Team (SWIFT) to increase the effectiveness of its special investigations and proactive functions. CSLB staff are designing and implementing a new management information

system, the Imaging Workflow Automation System (IWAS), which will improve oversight capacity and connectivity between the licensing and enforcement divisions.

SB 1953 (Figueroa) also requires the Board to annually submit to the Legislature specific categories of detailed enforcement data. CSLB management is designing a system and assigning staff to capture the required data so the agency can comply with the statute effective October 1, 2003.

Licensing system and requirements. Licensing practices control the screening and exclusion of dishonest and/or incompetent contractors from the marketplace, and thus have a vitally important impact on CSLB's enforcement system.

SB 1953 (Figueroa) has dramatically changed two important aspects of CSLB licensing requirements. First, effective January 1, 2004, state law will require applicants for new CSLB licenses and registrations to submit fingerprints to enable accurate criminal history verification, and will require CSLB to participate in the Department of Justice's subsequent arrest notification program. Thus CSLB now has long-sought authority to adequately screen applicants for past criminal history. However, the state's budget woes are slowing CSLB's ability to implement this vital new tool. Notwithstanding approval for the hiring of five licensing technicians, nine such vacancies remain, and the Board's budget change proposal (BCP) to fund this work has been denied. The Monitor urges all possible assistance to permit CSLB to implement this long-needed reform.

Second, SB 1953 authorizes CSLB to access employment information from the Employment Development Department (EDD), enabling CSLB to more effectively verify experience claimed on licensure applications. CSLB staff are meeting regularly with EDD staff to arrange for utilization of EDD information. However, CSLB's Licensing Division does not have the staff to implement the new program now, and will need additional resources before doing so.

Complaint handling. Agencywide, CSLB received a total of 23,123 complaints during calendar year 2002 — about the same as fiscal year 2001–02 and up from 22,644 during 2000–01. Including SWIFT closures, the Board closed a total of 25,216 complaints during calendar year 2002 — a 2% increase over FY 2001–02 and a 16% improvement over FY 2000–01. Thus, at least during the past 18 months, CSLB closed more complaints than it received, enabling to keep pace with an increasing caseload and slightly reduce its existing backlog.

The Intake/Mediation Centers (IMCs), staffed by Consumer Services Representatives (CSRs) and Program Technicians (PTs), are the first line of attack on CSLB's massive caseload.

Implementing process improvements recommended by Ben Frank and the Monitor to reduce backlogs, CSLB dramatically increased its IMC complaint closures to a total of 17,392 in calendar 2002, more than twice the 8,280 figure for fiscal year 2000–01. The IMCs also reduced the number of complaints pending at the IMC level from 3,619 to 2,519 by August 31, 2002. However, due to staffing limitations, this number had returned to 3,642 by December 31, 2002, and caseloads had again increased (to 185 cases per CSR in Norwalk), which indicate that the backlog at the IMCs is again creeping upward as the IMCs struggle with only 23 of 29 authorized CSRs in place.

Prior improvements in IMC case closures, cycle times, and backlog reduction can be attributed to the increasing experience and training of the CSRs and to the many efficiency measures implemented by upper management during the summer of 2001. Staffing conditions will affect the pattern of improvement or stagnation in the near future.

Investigations. CSLB management has responded to the agency's resource limitations by implementing a contingency plan to reduce the volume of complaints to the depleted Investigation Centers, to handle necessary investigations more effectively, and to prioritize among cases for full-scale investigation. Coupled with other enforcement program improvements, this triage has so far managed to preserve the level of investigative and prosecution output for the present. However, signs of erosion in progress are beginning to show, and some planned improvements are being slowed.

The Monitor's reports have all documented the continuing problem of vacancies and inadequate staffing in CSLB investigator positions (ER I and ER II), which have been principal causes of excessive investigator caseloads, unsatisfactory cycle times, and large case backlogs. The Monitor recommended that these vacant positions be filled as a high priority. CSLB, DCA Director Hamilton, and Agency Secretary Adams have all worked to advance that priority. However, CSLB has had minimal success in obtaining enforcement program exemptions from the hiring freeze, and the budget cuts have resulted in the loss of 12 line investigator positions, among others.

CSLB's long-term prospects have been improved greatly by the new statutory authorization for fee increases, but the Board has not been able to implement those increases. As a result, the present investigator staffing remains at an inadequate level. In FY 2000–01, CSLB was authorized for 136 ER I and ER II investigators, but by the end of 2002 CSLB had only 94 filled investigator desks (with 15 vacancies) — a reduction of 22% below the 136 investigators many considered insufficient. Today, one out of five of these chairs is vacant or gone altogether.

Under Enforcement Chief Fogt, efforts to reduce caseloads, backlogs, and cycle times have borne initial fruit. Caseloads which have exceeded 60 per ER statewide (and as high as 95+ for the Bay Area ICs), were actually reduced during this reporting period to 39 cases per investigator statewide. But with one out of five investigators missing, the problems of long cycle times and backlogs at the ICs — which had eased somewhat — will continue and soon may grow.

To deal with the staff reductions, CSLB has implemented strategies to reduce the flow of cases to full-scale investigation while preserving the overall quality of outcomes for the public, including: (1) eliminating or reducing the investigation of new complaints against contractors who are already the subject of pending administrative actions; (2) expanding the highly promising "On-Site Negotiation" program statewide; (3) responding to the staffing shortages in the Bay Area ICs by diverting complaints to other ICs for investigation and assigning SWIFT investigators to handle Bay Area complaints; (4) relocating the Long Beach IC to Norwalk; and (5) changing the structure and function of the resources in SWIFT, including shifting some SWIFT staff to ICs, and restructuring along functional lines to better serve the special investigations and pro-active missions.

These new efforts have helped efficiency in CSLB investigations and most appear to have independent merit. However, these changes cannot alone meet the demands for improved service. CSLB needs its full authorized complement of 123 IC and SWIFT investigators — and then an appropriate increase in that number — before statutory goals of better service can be fully met.

CSLB management has worked closely with the Monitor to implement recommendations concerning improved law enforcement coordination and investigator training. Enforcement Chief Fogt and CSLB supervisors are now routinely participating in joint training with representatives of more than 40 state and local prosecutors' offices through the California District Attorneys Association (CDAA), now regularly attend bi-monthly meetings of the CDAA Consumer Protection Council in both southern and northern California, and are now coordinating casework efforts earlier and more consistently. Enforcement statistics and reports from prosecutors in both sections of the state indicate that working relationships with CSLB investigators have improved markedly, most clearly demonstrated by an impressive 63% increase in criminal case referrals from CSLB to local prosecutors.

Industry Expert Program. The Monitor's mandate requires an analysis of the operation of CSLB's "Industry Expert Program," in which licensed professionals are used to investigate complaints by visiting work sites and presenting opinions on whether contractors have committed

acts justifying discipline. The reports of these industry experts are used in CSLB arbitration proceedings, formal disciplinary matters, and civil actions. This section of the report describes the operation of the IEP, including: expert qualifications, training, selection and use, the reports generated, disqualification of experts, and the status and expense of the project, which today costs the Board approximately $1 million per year.

Although the statutory framework appears to authorize broader use of experts to investigate complaints against other licensees (which we believe is problematic), CSLB has implemented its authority with a more limited program in which industry experts do not themselves investigate the facts of a complaint but are only asked to give opinions on whether the work conforms to applicable trade standards and project plans, and on the method and cost of corrections to conform the work to those standards and plans. The Monitor views this limited use of licensees, within the context of a controlled program overseen by enforcement supervisors, as helpful to the Board's enforcement program and to consumers who would otherwise have to hire their own experts.

However, it is cause for concern that the standards and rules governing this important program are not codified in statute or regulation. CSLB follows many of the standards proposed for regulations (but never adopted), but those standards are not now law. The program would benefit from codification of its many rules and standards to ensure statewide consistency.

The Monitor supports current CSLB efforts to broaden the list of experts used and to reduce the frequent reuse of the same experts. The Monitor also concludes that consumers, contractors, and courts frequently misunderstand the purpose of the IEP and the significance of the cost estimate offered by the IE if he/she has found a deviation from industry standards or the contract. The Monitor agrees with CSLB staff members that a disclaimer should be included with the inspection report stating the limitations of the report and its uses.

Arbitration. CSLB administers both a Mandatory Arbitration Program (MARB) for disputes worth less than $7,500 and a Voluntary Arbitration Program (VARB) for disputes over amounts between $7,500 and $50,000. Since July 2002, CSLB arbitrations have been handled by administrative law judges from the Office of Administrative Hearings rather than by a private vendor. Effective January 1, 2003, AB 728 (Correa) expanded the MARB program to disputes less than $7,500 and made related changes.

CSLB's arbitration program continues to undergo changes. After six months of providing ALJs to handle all CSLB arbitrations, OAH asked to be relieved of the program. Accordingly, CSLB is now finalizing a bidding process through which a new private vendor will be selected to handle this responsibility. CSLB is also sponsoring legislation, AB 473 (Correa), to make changes in its arbitration program statutes, including: (1) limiting arbitration awards to monetary damages; (2) requiring CSLB to appoint and pay an industry expert for an arbitration proceeding only if CSLB determines an expert is needed to effectively resolve the dispute; and (3) reducing the required timeframes for compliance with arbitration awards and other CSLB orders.

Prosecutions. Several Monitor recommendations emphasized the need for greater coordination of efforts among CSLB staff and state and local prosecutors; more referrals of cases for criminal and civil enforcement; greater emphasis on key target crimes and efficient enforcement tools; and speedier and more efficient administrative enforcement. CSLB's enforcement program has made some of its greatest strides in these regards.

In the past eighteen months, Enforcement Chief Fogt and the Monitor have led an effort to bring CSLB investigators and state and local prosecutors together consistently to coordinate efforts and develop more and better cases for prosecution, including: joint training programs with CDAA and numerous individual offices; consistent participation in bi-monthly case roundtable meetings and white collar crime task forces; improved communication links between CSLB and the prosecution community, including developing access to CDAA's Consumer Protection Information Network; and the clear statement by CSLB leadership that enforcement cooperation has management's highest priority.

The result has been significant improvements in coordinated efforts, case referrals, and joint prosecutions. Over the Monitor's term, the Enforcement Division has managed an increase — of 20% or more — in key enforcement outputs, despite a 22% decrease in investigator resources from levels authorized in 2000–01. CSLB investigators made 1,249 criminal referrals in calendar year 2002, as compared to 764 in fiscal year 2000–01 (a 63% increase). There is also a greater incidence of CSLB referral of large-scale civil unfair business practices actions to the Attorney General and district attorneys for prosecution under Business and Professions Code section 17200 and 17500. Prosecution of target crimes, such as overpayment of deposits, and use of innovative enforcement tools, such as Penal Code section 23 summary license revocations, are also increasing statewide. These statistics confirm reports from prosecutors throughout California that CSLB cooperation, joint investigations, and early case referrals are at all-time high levels.

CSLB's administrative enforcement output has also improved: Administrative accusations filed on behalf of CSLB have increased from 264 to 344 (a 30% increase); formal disciplinary actions rose from 228 to 251 (a 10% gain), and licensee and nonlicensee citations both increased more than 20% during this two-year term. While these gains often only restore CSLB to its levels prior to "reengineering," the short-term improvements and the overall trend are praiseworthy.

In its efforts supporting prosecution, CSLB has done more with less in the past two years, indicating the value of the changes in leadership, structure, and process which have taken place.

The Monitor's Initial Report also called for greater efficiency and speed in the administrative cases handled for CSLB by the Attorney General's Licensing Section. CSLB executive management has begun implementation of strategies to improve the efficiency of CSLB's utilization of the AG staff. CSLB Case Management staff have enhanced their monitoring of AG time and progress on CSLB cases, and have met with Licensing Section staff to develop guidelines for more efficient handling of CSLB cases. These efforts have yielded a 30% increase in accusations filed by the Attorney General for CSLB in calendar year 2002.

But given long case cycle times and the expense of AG representation, CSLB must continue to improve this relationship. CSLB management is implementing changes in AG usage policies, including: (1) revised internal criteria governing case referrals to the AG; (2) increased use of citations (instead of accusations) in cases meeting citation criteria; (3) increased use of citations (instead of accusations) when defaults are anticipated; (4) increased use of mandatory settlement conferences; and (5) increased use of the AG's Office to obtain license revocation in criminal proceedings. The Monitor endorses all these strategies.

The Initial Report also documented the continuing concern over unlicensed contracting in California, and in particular over repeat offenders, many of whom move from county to county engaging in unlicensed activity and viewing citations or misdemeanor fines as just costs of doing business. In response to the Monitor's concerns, Senator Figueroa has introduced SB 443, which would require a minimum 90-day jail sentence for repeat convictions of Business and Professions Code section 7028 (contracting without a license), except in unusual cases. Based on current residential burglary and unauthorized practice of law statutes, this approach has proven effective in ensuring that actual jail sentences of significant length are imposed on repeat offenders.

Public disclosure and outreach. CSLB has now implemented SB 135 (Figueroa), a 2001 Board-sponsored bill that — effective July 1, 2002 — permits disclosure of serious complaints that

have been referred for investigation after a determination by Board enforcement staff that a probable violation has occurred. CSLB has responded to a Monitor recommendation to simplify and improve its Web site by making needed site changes and developing a glossary to assist consumers in using the site. Another Monitor suggestion called for improving the CSLB complaint form, and CSLB staff revised its form accordingly, making it available for downloading from the Web site. The Board's Public Affairs Office has continued with an aggressive public outreach campaign focusing on publicizing undercover sting operations, counseling seniors on common scams targeting the elderly, participating in a wide range of consumer education programs, and publishing new consumer guides, such as the well-received *Home Improvement Bill of Rights*.

Consumer remedies. SB 1919 (Figueroa) provides for a two-step increase in the amount of the required contractor's bond to $10,000 on January 1, 2004, and to $12,500 on January 1, 2007 — a net 66% increase in the amount of bond funds available for recompense for victims of violations of the Contractors License Law. Even more significant for consumer victims, SB 1919 sets aside a portion of each contractor's bond exclusively for homeowners: $2,500 effective January 1, 2004, and $5,000 effective January 1, 2007. As most consumer complaints are for less than $7,500, this new consumer set-aside should greatly improve actual restitution for victims.

Two other Monitor recommendations not enacted in 2002 are the subject of legislation pending in the 2003 session. Recommendation #35 proposed a good faith payment defense to mechanic's liens in home improvement contracts of $25,000 or less, and current AB 286 (Dutra) proposes a substantially similar remedy. And the Monitor's recommendation to provide for expungement of invalid and unjustified liens is now being addressed by AB 447 (Vargas).

In the Third Report, the Monitor analyzed in detail the problems with current home improvement contacts and the statutes which regulate them. The Monitor and CSLB staff agreed with many stakeholders in the construction industry that existing home improvement contracts are complex, unreadable, and of little help in preventing or resolving consumer problems; existing statutes regulating these contracts (and enforced by CSLB) are uncertain and inconsistent; and current required consumer disclosures in these contracts are often redundant and burdensome.

Recommendations in the Third Report urged three broad changes: revising and simplifying the elements of those contracts, including the state-mandated disclosures; amending Business and Professions Code section 7159 to clarify the law governing home improvement contracts and ensuring the most important consumer information is disclosed properly; and resolving the current practical problems of service and repair contracts, including a separate definition and regulation of service and repair work. The Board has supported legislation to implement these ideas.

Senator Figueroa has introduced SB 30 (presently in early draft form) to address these Monitor and CSLB recommendations. Proposed statutory reform language (see Appendix E) has been drafted by CSLB staff to implement these recommendations and has been circulated for comment to many industry, law enforcement, and consumer stakeholders.

The enhanced remedies contained in SB 1919, and the other remedial measures pending in the state Legislature today, are important first steps in what remains a long journey toward adequate consumer redress in this industry.

Summary of concerns. In his prior reports, the Monitor summarized fourteen previous studies of CSLB, his own independent review of CSLB's current enforcement program, and recent consumer surveys — all of which revealed substantial grounds for dissatisfaction with the Board's overall enforcement program performance. By early 2001, at the time of the appointment of the Monitor and the new CSLB Registrar Stephen Sands, CSLB's enforcement program performance was plagued by problems of long cycle times for complaint handling and investigations, excessive caseloads and backlogs for CSRs and investigators, inconsistencies in enforcement practices, and declining customer satisfaction. Overall CSLB enforcement output had plummeted since 1996–97 largely because of the ill-fated "reengineering" undertaken by prior management.

CSLB's efforts to address these concerns have been impressive and productive. CSLB has responded with full support for the Monitor's 40 recommendations and has brought skill and innovation to bear on these longstanding enforcement concerns.

The results of this renewed commitment to excellence at CSLB have included notable improvements in enforcement policy, structure, and process: The Enforcement Division's organizational structure was restored and leadership upgraded; new policies and practices governing enforcement case work and referrals were implemented; complaint handling and investigation practices were streamlined and modernized; morale was improved in most units of the agency; and communication and cooperation with other enforcement agencies blossomed. CSLB management and staff worked aggressively to reduce case backlogs, to implement process improvements, and to develop innovative new ways to do more with less, with the result that key indicators of case outputs, including total number of cases closed, have increased despite budget and staffing challenges. Most importantly there is a clear upward trend in most enforcement output categories in 2001–02 and in calendar year 2002.

An appraisal of these results using the performance criteria in the Initial Report shows an encouraging trend, notwithstanding the short-term challenges. In terms of **work quantity**, CSLB has increased most of its enforcement program outputs by 20% or more in the past two years. In terms of **cost-effectiveness**, the new CSLB management has grappled with reductions in enforcement personnel, especially in the critical CSR and investigator categories, but has achieved reductions in per-unit cost in accusations, citations, and most other enforcement program work outputs in 2002. Under Registrar Sands, CSLB has made **consistency of work product** (in the sense of predictable and even-handed enforcement results) a high priority, and today CSLB offers a more even-handed and consistent response to those seeking service. And as regards **work quality**, there has been much improvement in the job CSLB does in protecting the public during this two-year period, both in improving its enforcement output despite a decline in resources, and in the range and quality of CSLB's enforcement activities, as illustrated by such initiatives as the On-Site Negotiation program, the reorganized special investigations and proactive units, the improved use of effective criminal and civil enforcement tools and revocation procedures, the prospect of vastly improved applicant screening to prevent enforcement problems before they occur, and an increase in customer satisfaction.

CSLB's enforcement program is succeeding in the first phases of a long-term effort to provide much better service to the public, and the Monitor's concerns have been addressed to a laudable degree. But further progress — and even some of the existing gains — will be affected by the availability of the resources CSLB needs to better protect the public.

STATUS OF ENFORCEMENT MONITOR'S RECOMMENDATIONS

The table below presents in summary form the 40 recommendations of the Monitor and the status of those recommendations. Details of these recommendations and their status are provided in Chapter IV.

Monitor Recommendation	Board Position	Status
1. Update CSLB's statutory mandate and name	Adopted Oct. 2001 (as to mandate)	Implemented via SB 1953
2. Increase license fees	Adopted Oct. 2001	Authorization implemented via SB 1953
3. Fill key enforcement management positions	Adopted Oct. 2001	Partially implemented
4. Rebuild enforcement organizational structure	Adopted Oct. 2001	Implementation underway
5. Reallocate field resources	Adopted Oct. 2001	Partially implemented; requires budget augmentation
6. Require consistent annual statistical reporting	Adopted Oct. 2001	Implemented via SB 1953
7. Fingerprinting and criminal history verification	Adopted Oct. 2001	Authorized via SB 1953; requires budget augmentation
8. Expand public disclosure of contractor misconduct	Adopted in concept Oct. 2001	Partially implemented
9. Improve system of experience verification	Adopted Oct. 2001	Authorized via SB 1953; requires budget augmentation
10. Increase CSR staff	Adopted Oct. 2001	Implementation requires budget augmentation; some process changes implemented
11. Comprehensive CSR training	Adopted Oct. 2001	Implemented
12. Improve internal alert system	Adopted Oct. 2001	Full implementation by 4/30/03
13. Expand early mediation/resolution efforts	Adopted Oct. 2001	Implementation underway
14. Improve phone system and consumer complaint form	Adopted Oct. 2001	Partially implemented; requires budget augmentation
15. Eliminate career barriers for CSRs	Adopted Oct. 2001	Implemented
16. Increase peace officer staff	Adopted in general concept Oct. 2001	Implementation requires budget augmentation, personnel study
17. Increase investigator staff	Adopted Oct. 2001	Implementation requires budget augmentation
18. Improve investigator training	Adopted Oct. 2001	Implemented
19. Investigation coordination with prosecutors	Adopted Oct. 2001	Implemented
20. Restore office facilities for investigators, etc.	Adopted Oct. 2001	Partially implemented; requires budget augmentation

Monitor Recommendation	Board Position	Status
21. Update workload standards for investigators	Adopted in principle Oct. 2001	Implementation begun, will be completed when staffing stabilizes
22. More consistent case referrals	Adopted Oct. 2001	Implemented
23. Improve cooperation with state, local prosecutors	Adopted Oct. 2001	Implementation successful and on-going
24. Study disciplinary bonds; ensure adequate amounts	Adopted Oct. 2001	Study completed; implementation on-going
25. Improve prosecution of key aspects of fraud, abuse	Adopted Oct. 2001	Implementation successful and on-going
26. Increased use of judicial revocation of licenses	Adopted Oct. 2001	Implementation successful and on-going
27. Public disclosure of complaints and actions	Adopted by Board, Legislature	Implemented via SB 135; other aspects under study
28. Simplify, clarify Web site	Adopted Oct. 2001	Partially implemented; full implementation by 4/30/03
29. Web site information about unlicensed contractors	Adopted in general concept Oct. 2001	Further study needed
30. Web site linked to BBB	Adopted Oct. 2001	Implemented
31. Promote Fraud Alert System	Adopted Oct. 2001	Partially implemented
32. Increased bond amount	Adopted April 2002	Implemented via SB 1919 (effective 1/1/04 and 1/1/07)
33. Disclosure regarding excess down payments	Adopted April 2002	Pending in SB 30 (Figueroa)
34. Bond for consumers	Adopted April 2002	Implemented via SB 1919 (effective 1/1/04 and 1/1/07)
35. Good faith payment defense in mechanic's lien matters	Adopted in principle April 2002	Pending in AB 286 (Dutra)
36. Clarify bond payment standard	Adopted in principle April 2002	Proposal tabled pending Dept. of Insurance and legislature action
37. Expungement of invalid liens	Adopted April 2002	Pending in AB 447 (Vargas)
38. Simplified home improvement contracts	Adopted Feb. 2003	Pending in SB 30 (Figueroa)
39. Revise B & P § 7159	Adopted Feb. 2003	Pending in SB 30 (Figueroa)
40. Address service and repair contracts	Adopted Feb. 2003	Pending in SB 30 (Figueroa)

Ex. ES-A. Summary of Recommendations

FUTURE ISSUES FOR THE CONTRACTORS STATE LICENSE BOARD

The Monitor project addressed many of the issues of greatest importance to the success of the CSLB enforcement program, as indicated by the 40 recommendations and the changes which have resulted, described in Chapter IV. However, in the course of the project, the Monitor identified other issues with significant implications for the future success of CSLB. Without an attempt to prioritize these ideas, or endorse them all, they are memorialized here for future consideration as time and resources permit. The future issues include:

Mission and Mandate (Including Resources Issues)

1. Implementation of fee increase authorization.

2. Addressing recruitment and retention problems caused by pay disparities.

3. Adoption of a modern agency name, such as "Contractors Board of California," as other agencies have now done, to reflect the full range of licensing and enforcement functions of the Board.

Licensing Issues

4. Immediate implementation of fingerprinting and EDD information access.

5. Reevaluation of the structure and philosophy of California contractor licensing.

6. Improving information-sharing agreements and systems with contractor regulators in other states.

7. Evaluating of the content and worth of the current home improvement certification program before its scheduled January 1, 2004 sunset.

Investigations

8. Improved investigative authority to gain prompt access to specified contractor files.

9. Consider implementation of an alert system to track early warning signals of potential contractor major fraud or business failure.

Prosecutions

10. Improved and more efficient use of the Attorney General's Licensing Section, perhaps by creation of a specialized prosecution unit within the Section to focus on design/construction cases (similar to the current Health Quality Enforcement Section).

11. Export the successful concept of executive officer handling of specified disciplinary decisionmaking.

Consumer Remedies

12. Develop more adequate remedies for large-scale fraud or abuse cases.

13. Explore feasibility of CSLB and/or industry groups promulgating model contractor forms to express non-statutory "best practices" for the industry.

14. Consider seeking administrative authority for CSLB to revise the requirements for contract elements or disclosures to streamline the process of improving these elements.

CONCLUSION

Major improvements to CSLB's enforcement program have been achieved during the pendency of the Monitor project — as the result of the collaborative work of all industry stakeholders — and the long-term prospects for further improvement are excellent.

CSLB and its staff have enthusiastically embraced the Monitor's 40 recommendations for reform of the enforcement program, and the initial results have been gratifying. Through the efforts of the Department of Consumer Affairs, the state Legislature, CSLB and its staff, and numerous public and private representatives, the following accomplishments have been realized:

• CSLB's mission of public protection is now enshrined in law.

• CSLB can now anticipate a 20% revenue enhancement to boost enforcement resources.

• Fingerprinting and EDD information will soon allow effective licensee screening.

• The Enforcement Division is under dynamic new leadership.

• Streamlined and improved complaint handling and investigative processes are in place.

• Vastly improved annual statistical reporting is now required by law.

• More comprehensive and systematic training of enforcement staff is in place.

• Programs for early resolution of consumer complaints are now being implemented.

• Coordination and mutual training with state and local prosecutors is greatly improved.

• Consumer satisfaction with CSLB services is on an upward trend.

• Improved consumer remedies will soon be available, including a 66% larger contractor's bond and new provision reserving $5,000 of each bond exclusively for consumers.

• Overall enforcement program outputs have increased by an average of more than 20% despite a reduction of more than 20% in enforcement resources.

CSLB's enforcement program has demonstrated strong new momentum and clear improvement, and the Monitor's concerns have been addressed to a laudable degree. Further progress is needed and will be affected by the availability of the resources CSLB needs to meet statutory performance goals. But progress can continue on many fronts, and the long-term prospects are good for CSLB's enforcement program to consolidate lasting improvements in the quality and speed of its public service.

The significant progress in CSLB's enforcement program during the Monitor's tenure has occurred as the result of a consensus-based effort involving all public and private stakeholders in this important industry. The Monitor calls upon all those stakeholders to continue in this cooperative effort to improve construction industry professionalism and promote better service to the public by the Contractors State License Board.

Chapter I

INTRODUCTION

This is the fourth and final report of the Contractors State License Board Enforcement Program Monitor, as mandated by Senate Bill 2029 (Figueroa). This report and all the Monitor's efforts were completed under the direction of Department of Consumer Affairs Director Kathleen Hamilton.

This report documents the Monitor's efforts to fulfill his obligations under Business and Professions Code section 7092 to "monitor and evaluate the Contractors' State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement in the overall efficiency of the board's disciplinary system." As described within, the Monitor believes that major improvements to CSLB's enforcement program have been achieved and that the long-term prospects for further improvement are excellent.

This report summarizes the Monitor project and the state of CSLB's enforcement program by presenting:

(1) in Chapter III, a detailed update and analysis of changes and developments in CSLB's enforcement program, organized under twelve categories of concerns which have been the focus of our analysis since the project's inception, including: mission and mandate, CSLB resources, management structure and information system, licensing system and requirements, complaint handling, investigations, the Industry Expert Program, arbitration, prosecutions, public disclosure and outreach, consumer remedies, and a summary of concerns;

(2) in Chapter IV, an analysis of the status of the efforts to implement the Monitor's 40 recommendations for reforming and improving CSLB's enforcement program, which analysis shows the Board's remarkable support for essentially all of those recommendations, and the equally remarkable and largely successful efforts by CSLB staff to implement them; and

(3) in Chapter V, a list of 14 additional issues for future consideration by the Department of Consumer Affairs, the state Legislature, and the Board and CSLB staff, as they work together to improve CSLB and its service to the public.

The demonstrable improvements to CSLB's enforcement program have occurred as the result of a consensus-based effort involving all public and private stakeholders in this important industry. All Californians benefit when government, industry, and the public work together, as they have during this project, to improve the CSLB enforcement program. The Monitor calls upon all those stakeholders to continue in this cooperative effort to improve construction industry professionalism and promote better service to the public by the Contractors State License Board.

Chapter II

STATUTORY MANDATE OF THE CSLB ENFORCEMENT PROGRAM MONITOR

The Contractors State License Board Enforcement Program Monitor (the Monitor) was established by Senate Bill 2029 (Figueroa),[1] legislation resulting from the 1999–2000 sunset review of the Contractors State License Board (CSLB) undertaken by the Joint Legislative Sunset Review Committee.

CSLB licenses contractors in the state of California and is charged with the responsibility of protecting the public by enforcing state laws governing contractor conduct. SB 2029, authored by Senate Business and Professions Committee Chair Liz Figueroa, required the Board to establish as a goal the improvement of its disciplinary system, which has been the subject of extensive legislative debate and substantial critical commentary in recent years.[2]

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[1] Cal. Stats. 2000, ch. 1005, approved by Governor Davis September 29, 2000.

[2] *See* Arthur Andersen & Co., *Report on Management Review of Operations and Personnel Requirements* (1973); Department of Finance, *A Review of the Investigatory Function and Measurement of Productivity of the Contractors State License Board* (1975); Office of the Auditor General, *Contractors State License Board: Need for Improved Administration of the Complaint Processing Program* (1979); Department of Finance, *Report on the Joint Department of Finance/ Contractors State License Board Field Operations Task Force on Complaint Handling* (1980); Department of Finance, *Zero-Based Budget Study* (1982); Price Waterhouse, *Management Review of the Contractors State License Board* (1984); Price Waterhouse, *Report on Interim Workload and Staffing Standards for the Contractors State License Board* (1985); Arthur Young, *Contractors State License Board: Final Report on Field Office Operations, Workload Standards, and Staffing Requirements* (1989); Assembly Consumer Protection Committee Report (1993) (CSLB "critically deficient in protecting consumers from unscrupulous or unqualified contractors"); Joint Legislative Sunset Review Committee, *Contractors' State License Board: Board Overview, Issues, Findings and Recommendations* (1997); Price Waterhouse, *Transition Review of the California Contractors State License Board* (1998); Joint Legislative Sunset Review Committee, *Contractors' State License Board: Joint Legislative Sunset Review Committee 2000 Sunset Review Report* (2000); Bureau of State Audits, *Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection* (2000); NewPoint Group, *Contractors State License Board: Reengineering Project Assessment* (2001).

Effective January 1, 2001, SB 2029 provided for:

- Extension of CSLB's sunset date to January 1, 2004;
- Expansion of the Board's membership from 13 to 15, and a concomitant increase in the Board's quorum from seven to eight;
- A series of four studies to be conducted by the Board (including studies of home equity lending fraud, the impacts of its recent "reengineering" plan, recovery fund programs, and surety bonds) plus a review of its complaint disclosure policy; and
- The appointment of the CSLB Enforcement Program Monitor for a two-year term, then scheduled to end January 31, 2003. To provide a full two-year term for the Monitor, SB 1953 (Figueroa) (Chapter 744, Statutes of 2002) extended the Monitor's term to April 1, 2003.

In Business and Professions Code section 7092, SB 2029 provided for the appointment and authority of the Monitor, and established the Monitor's duty to "monitor and evaluate the Contractors' State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system."[3]

The Monitor is specifically instructed to direct his efforts to:

- Improving the quality and consistency of complaint processing and investigation, and reducing the time frames for each;
- Reducing any complaint backlog;
- Assuring consistency in the application of sanctions or discipline imposed on licensees; and

[3] Bus. & Prof. Code § 7092(c)(1).

- Further addressing: the accurate implementation of disciplinary standards, staff concerns regarding discipline, utilization of licensed professionals to investigate complaints, and the board's cooperation with other law enforcement agencies.[4]

The Monitor is required to submit a series of four reports of his findings and conclusions, including an initial report on October 1, 2001, and three subsequent reports at six-month intervals. The reports are to be submitted to the Board, the Department of Consumer Affairs, and the Legislature, and are to be made available to the public and the media.[5]

Department of Consumer Affairs Director Kathleen Hamilton appointed the Monitor on April 5, 2001. The Monitor selected Julianne D'Angelo Fellmeth as principal consultant, and work began immediately on the Monitor project.

On October 1, 2001, the Monitor published the first of the four required reports, entitled *Initial Report of the CSLB Enforcement Program Monitor*, presenting numerous findings grouped into nine analytical categories and proposing 33 initial recommendations for improvement to the enforcement program.[6]

On April 1, 2002, the Monitor published the second required report, analyzing enforcement developments at CSLB and proposing improved consumer remedies in the form of four additional recommendations.[7]

On October 1, 2002, the Monitor published the third required report.[8] The third report described SB 1953 (Figueroa) and SB 1919 (Figueroa), both signed by Governor Davis in September 2002, which implement several of the Monitor's major recommendations. In addition, the third report further documented continuing developments at CSLB, and offered an initial

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[4] *Id.* at § 7092(c)(2).

[5] *Id*. at § 7092(d).

[6] Papageorge and Fellmeth, *Initial Report of the CSLB Enforcement Program Monitor* (Oct. 1, 2001) (available at www.cpil.org) (hereinafter "*Initial Report*").

[7] Papageorge and Fellmeth, *Second Report of the CSLB Enforcement Program Monitor* (Apr. 1, 2002) (available at www.cpil.org) (hereinafter "*Second Report*").

[8] Papageorge and Fellmeth, *Third Report of the CSLB Enforcement Program Monitor* (Oct. 1, 2002) (available at www.cpil.org) (hereinafter "*Third Report*").

analysis and three preliminary recommendations surrounding the need to clarify the statutes that specify the contents of home improvement contracts.

This final report summarizes CSLB's progress in improving its enforcement program over the past two years, and offers additional issues for further consideration by the Board and others.

Chapter III

CONTRACTORS STATE LICENSE BOARD DEVELOPMENTS

As reflected below and in Chapter IV, CSLB has made substantial progress in addressing the vast majority of the Monitor's recommendations for improvement to its enforcement program. As such, it has succeeded in securing the necessary resources and statutory tools to enhance its enforcement program over the long term. However, the state's budget situation — including a hiring freeze that has endured for 18 months of this 24-month project and has impacted this agency more than most others because of its staff vacancy rate going into the freeze — has affected the Board's ability to implement its new authority and resources in the short term. A review of these developments, and the Board's efforts to address other enforcement program concerns, follows here.

A. Previous Reports of the CSLB Enforcement Program Monitor

Thus far in the project, the CSLB Enforcement Program Monitor has released three reports pursuant to Business and Professions Code section 7092(d). These reports track CSLB enforcement program data in critical areas, discuss enforcement policy issues, and contain numerous findings and a total of 40 specific recommendations for changes that would materially improve the Board's enforcement program. The Board's progress on implementing those recommendations is analyzed below (commencing with Chapter III.C) and is summarized in capsule form in Chapter IV.

The Initial Report described the Board's enforcement program in detail and analyzed the changes wrought by and impacts of CSLB's 1999–2000 "reengineering" of its intake/mediation and investigation functions. This project — undertaken and implemented by a prior registrar — actually reduced efficiency in key respects, substantially increased caseloads for CSLB intake/mediation and investigative staff, caused case backlogs and cycle times to soar, badly damaged staff morale, prompted massive staff attrition resulting in dramatically lower staff experience levels, and substantially decreased consumer satisfaction with CSLB's performance. In particular, the Monitor

noted that the reengineering project caused almost all of the Board's 29 consumer services representatives who staff its Intake/Mediation Centers to resign or transfer, leaving inexperienced and poorly trained replacements to cope with staggering backlogs. Further, staff attrition caused CSLB's investigative ranks to shrink by 19.7%, resulting in high investigator caseloads, unsatisfactory cycle times, and mounting case backlogs. The "bottom line" was reflected in 1999–2000 and 2000–01 CSLB enforcement program output statistics, which plummeted in most categories since 1996–97.[9]

With input from the Monitor and Ben Frank of the NewPoint Group, and under the direction of a committed and public-spirited Board, newly-hired Registrar Steve Sands and CSLB management spent fully the first year of the Monitor's term rebuilding the damaged organizational structure and business process of CSLB's enforcement program. In the Initial Report, the Monitor lauded these changes and advanced 33 specific recommendations toward long-term improvement of CSLB's enforcement program; these recommendations (described in detail in Chapter IV) covered all aspects of CSLB's regulatory program, including its mission and mandate, resources, management structure and information system, applicant screening, complaint handling, investigations, prosecutions, public disclosure and public outreach, and consumer remedies.

Both CSLB and its staff readily embraced the recommendations in the Monitor's Initial Report released on October 1, 2001. The momentum at CSLB had clearly shifted toward implementing the Monitor's recommendations, rebuilding the enforcement infrastructure, and securing the tools needed to create an effective, efficient, and decisive enforcement system.

However, supervening events have slowed that momentum. On October 23, 2001, Governor Davis — responding to a mounting general fund deficit caused by a variety of factors — imposed a hiring freeze on all state agencies, including "special-fund" agencies like CSLB (whose resources depend not on the general fund but on licensing fees from the regulated profession). The Monitor's Second Report, released on April 1, 2002, described the initial impacts of the hiring freeze on CSLB. In particular, CSLB was precluded from filling its investigator vacancies. These staffing limitations — which were particularly ill-timed for CSLB — have slowed the agency's recovery from the impacts of reengineering, and hampered its ability to implement a number of the Monitor's recommendations (see below for a more detailed discussion of the impacts of the freeze on CSLB).

The Monitor's Second Report also urged support for several pieces of pending legislation drafted by the Monitor to implement many of the Monitor's most important recommendations. The

[9] *Initial Report*, *supra* note 6, at 31, 85, 100.

Monitor's Third Report, released on October 1, 2002, described the final versions of those bills, which were supported by the Board and signed by the Governor in September 2002:

SB 1953 (Figueroa), CSLB's 2001–02 sunset bill, incorporates essentially *verbatim* the five most important of the Monitor's recommendations contained in the Initial Report. SB 1953 clarifies that CSLB's highest priority is public protection; permits CSLB to establish its license fees in regulation and authorizes the Board to increase its existing fees by approximately 20% to rebuild and improve its enforcement program; requires CSLB to annually submit detailed and consistent enforcement statistics to the Legislature; requires applicants for licensure and registration to submit fingerprints to enable criminal history verification; enables the Board to verify the experience claimed by license applicants by giving CSLB access to the records of the Employment Development Department; and extends the Board's sunset date to July 1, 2007.[10]

SB 1919 (Figueroa) increases the required bond amount for all CSLB licensees to $10,000 effective January 1, 2004, and to $12,500 by January 1, 2007. For the first time, SB 1919 also reserves a portion of each surety bond ($2,500 as of January 1, 2004; $5,000 as of January 1, 2007) exclusively for homeowner victims.[11]

The Monitor's Third Report also documented the impacts of the continuing hiring freeze and the 2002–03 budget bill on CSLB's enforcement program. Unfortunately, the situation worsened for the Board. Not only was CSLB unable to fill its enforcement program vacancies, it permanently lost 41.5 vacant positions, including 22 enforcement positions, in the 2002–03 budget bill. To address the loss of these positions (and an associated $1.8 million in funding), the Board and CSLB management adopted several contingency plans aimed at retaining existing staff and reducing the number of complaints referred for investigation, and considered a significant retrenching of its entire enforcement program.

The Monitor's Third Report also laid the groundwork for future legislation to improve the clarity and effectiveness of consumer contracts for the benefit of consumers, contractors, regulators, and law enforcement. Most participants in the construction process — and particularly those in home improvement — agree that the current requirements for the contents and language of home improvement contracts render those contracts complex, unreadable, unclear, redundant, and

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[10] Cal. Stats. 2002, ch. 744; see Appendix A.

[11] Cal. Stats. 2002, ch. 1123; see Appendix B.

burdensome, to the point where few homeowners even read (much less understand) their contracts. Quite simply, this often leads to unclear expectations, unhappy homeowners, and burgeoning complaint caseloads at CSLB at a time of enormous resources shortages. With the assistance of CSLB staff and stakeholders from all aspects of the home improvement process, the Monitor commenced this project in an attempt to clarify contract terms, promote contractor-consumer communication and avoid misunderstandings, and prevent a significant number of disputes from entering CSLB's caseloads.

This Final Report summarizes CSLB's progress in rebuilding after reengineering, coping with the freeze and the loss of a significant number of enforcement positions, and implementing the Monitor's 40 recommendations. Finally, it leaves the Board, the Legislature, the executive branch, and the public with final thoughts on further improvements in a variety of areas that should be considered in the future.

B. Impact of State Hiring Freeze and Budget Reductions

As mentioned above, on October 23, 2001, Governor Davis issued Executive Order D-48-01, which ordered an immediate statewide hiring freeze to stem a substantial general fund deficit. At that time, CSLB was experiencing a 13.8% vacancy rate in CSLB enforcement positions overall and a 19.7% vacancy rate in its line investigator positions. Throughout late 2001 and 2002, CSLB filed several requests for exemptions to the hiring freeze for its enforcement positions; the Monitor submitted a letter in strong support of the exemption requests in December 2001. Although exemptions have been granted to other special-fund agencies, and despite requests by CSLB (which were consistently supported by State and Consumer Services Agency Secretary Aileen Adams and Department of Consumer Affairs Director Kathleen Hamilton), all of CSLB's requests but one (involving just two clerical positions) have been denied.

This significant vacancy rate — which was triggered by the actions of a prior board and perpetuated by the hiring freeze — is three to four times the usual vacancy rate at a public agency, and has hampered CSLB in its efforts to ameliorate the unsatisfactory delays, long cycle times, and backlogs in its complaint handling, investigation, and prosecution processes that were identified in the previous reports of the Monitor.

The hope that this vacancy rate might be short-lived has not been realized because of the state's continuing general fund budget crisis and the 2002–03 budget bill. As described in the Third Report, budget control language included in the 2002–03 budget bill required the Department of

Finance to abolish at least 6,000 permanent vacant positions "from departments including all boards, commissions, departments, agencies, or other employment authorities of the state, as determined by the Director of Finance." This mandate eventually resulted in the permanent loss to CSLB of 41.5 positions overall, including 22 enforcement positions. The 22 lost enforcement positions include 12 line investigators (Enforcement Representative I), one investigative supervisor (Enforcement Supervisor I), two consumer services representatives, three program technicians, two office technicians, and two analyst positions in the Board's Enforcement Analytical Support & Training (EAST) unit. Exhibit III-A below reflects the staffing of CSLB's enforcement program as of December 31, 2002, incorporates the loss of these positions, and further reflects 28 additional enforcement program vacancies. The organizational chart shows a continuing 12% vacancy rate overall and a 13% vacancy rate in its investigator positions, but these are rates calculated after the loss of 22 authorized positions; the ER I vacancy rate would be in excess of 20% if those vital positions had not been eliminated.

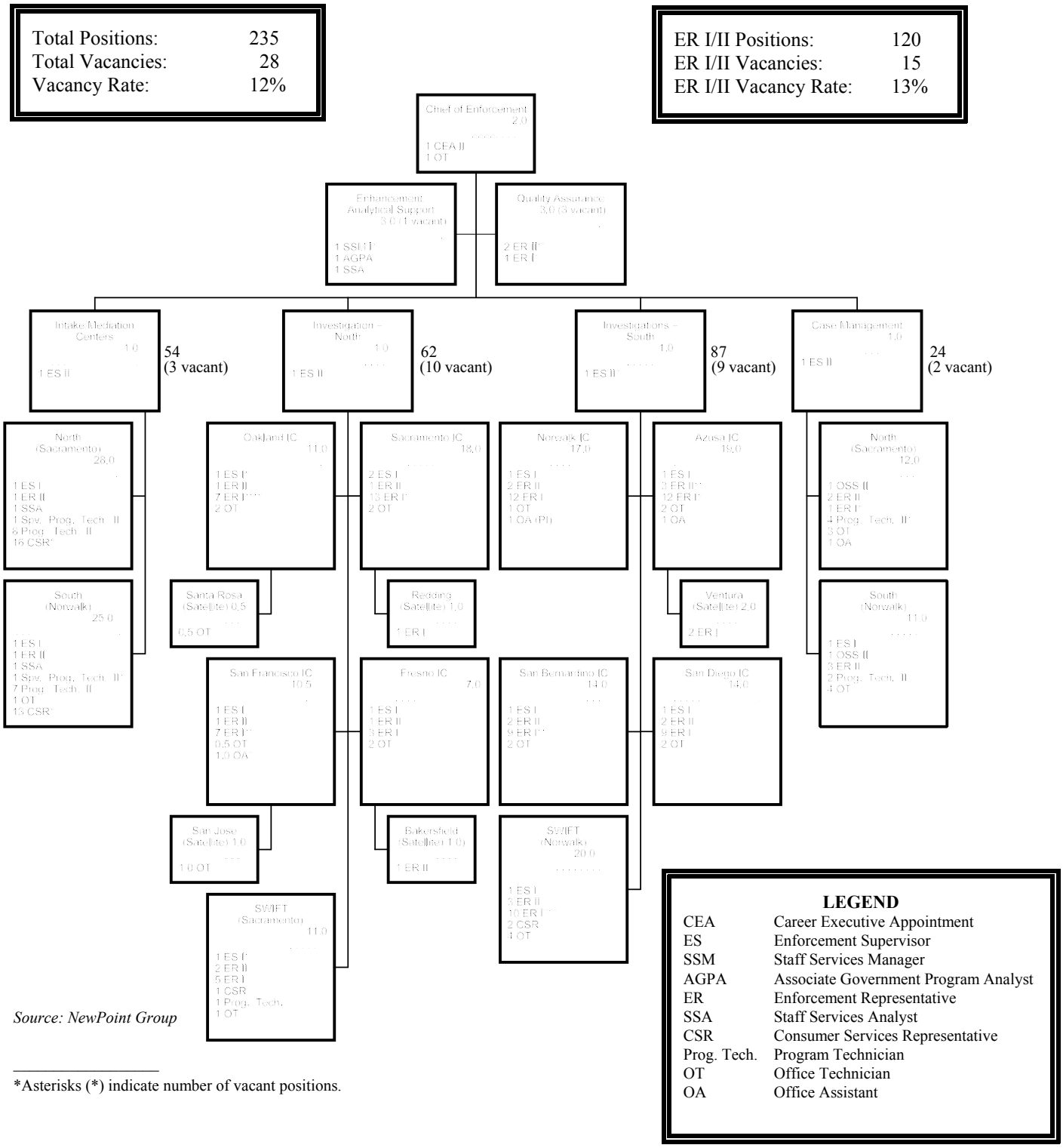
Faced with the permanent loss of 22 enforcement positions and an additional 28 vacancies which cannot be filled, the Board adopted, at its October 4, 2002 meeting, several process improvements and cost-saving measures that will allow staff to identify and focus on the most egregious cases (for example, cases involving health and safety issues, repeat offenders, and elder abuse). These measures are discussed below along with other changes to each specific program area.

C. Update on Selected Issues of Concern From Previous Reports

1. Mission and Mandate

In the Initial Report, the Monitor noted that — although CSLB's 1996 mission statement recognized that its fundamental role is to protect the public — nothing in the Contractors State License Law mandates public protection as the agency's primary priority. The Monitor recommended that CSLB sponsor legislation modernizing the Contractors State License Law to clearly establish public protection as the Board's highest priority. The Monitor also suggested that CSLB consider updating its name, because its current name ("Contractors State License Board") suggests a focus solely on licensing (to the exclusion of enforcement), and because the inclusion of the word "state" incorrectly implies that federal and/or local authorities also regulate contractors.[12]

[12] *Initial Report*, *supra* note 6, at 69–71, 101–03.



Source: NewPoint Group

*Asterisks (*) indicate number of vacant positions.

Ex. III-A. December 2002 Enforcement Program Organizational Chart

SB 1953 (Figueroa) and AB 269 (Correa), both supported by the Board and signed by the Governor in 2002, clarify that the Board's primary mandate is consumer protection. These bills add new section 7000.6 to the Business and Professions Code. Section 7000.6 provides: "Protection of the public shall be the highest priority for the Contractors State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." This clarification of CSLB's mandate is important both as a visible symbol of the agency's commitment to consumers, and as an aid to courts in interpreting the balance of the Contractors State License Law.

At its October 2001 meeting, CSLB decided that further study of the costs and implications of a name change was warranted, and the Board has tabled this issue during the pending budget crisis. Although a name change would require a one-time cost to alter letterhead, forms and publications, logos, and building identification, the Monitor continues to believe that the Board's current name is outmoded and misleading, and that — resources permitting — the adoption of a new name would symbolize in an important way the coming of a new era for this agency.

2. CSLB Resources

In the Initial Report, the Monitor noted that CSLB is funded almost exclusively by contractor license fees, and those fees were last adjusted effective January 1, 1994. Since then, fees have remained unchanged while the inflation rate has risen, the number of CSLB licensees requiring regulation has increased substantially, and public and legislative demands for improved CSLB service speed and quality have increased. Noting that representatives of the construction industry had indicated support for a fee increase if those funds are used to improve CSLB's enforcement efforts against unscrupulous, incompetent, and/or unlicensed contractors, the Monitor recommended that the Legislature authorize the Board to establish its license fees in regulation (rather than setting them inflexibly in statute) and increase those fees by approximately 20% as appropriate.[13]

Effective January 1, 2003, SB 1953 (Figueroa) amended section 7137 of the Business and Professions Code to require CSLB to establish its license fees in regulation. By establishing new statutory fee ceilings, the bill authorized the Board to increase most of its fees by approximately 20% through the rulemaking process (which involves public notice, an opportunity for comment, and review and approval by the Office of Administrative Law). The bill also amended Business and

[13] *Id.* at 71–72, 103–04.

Professions Code section 7138.1 to require the Board to set its license fees so as to enable it to maintain a reserve fund of approximately six months worth of operating expenditures.

Because CSLB's statutory license fees expired on December 31, 2002, the Board adopted an emergency regulation establishing its existing fees in regulation at its October 4, 2002 meeting. This regulation — section 811, Title 16 of the California Code of Regulations (CCR) — sets fees at their preexisting levels; following a public hearing at its January 23, 2003 meeting, the Board permanently adopted section 811. At this writing, the Board has not yet taken action to increase fees as authorized by SB 1953, in deference to the economic and budget circumstances.

As mentioned in the Third Report, the new authority under SB 1953 is important to ensuring CSLB fiscal solvency and enforcement program improvement on a long-term basis. However, in the short term during the ongoing budget crisis, increased revenue is meaningless unless the Board is authorized to spend it. At this writing, CSLB plans to initiate the rulemaking process in 2005 to increase fees by approximately 10% effective in 2006. CSLB management hopes to use these new resources to complete the rebuilding of its enforcement infrastructure and increase its CSR and investigative staff to levels capable of efficiently handling its large caseload (see below for a more detailed description of these recommendations).

3. Management Structure and Information System

In the Initial Report, the Monitor made a number of findings as to CSLB's management structure and its information system. First, the Monitor noted that vacancies in the Board's enforcement chief position and a number of other senior management enforcement positions had created a "leadership vacuum" in CSLB's enforcement program and excessive span of control problems for remaining CSLB enforcement supervisors; the Monitor recommended that the Registrar fill these positions and rebuild CSLB's enforcement infrastructure.[14]

In response to that recommendation, CSLB has rebuilt its management structure by naming long-time enforcement manager David Fogt as Enforcement Chief, and by filling other high-level enforcement program positions and reassigning several upper management staff to new responsibilities. In addition, CSLB has restructured the management hierarchy at its Investigation Centers (ICs) to address excessive span of control problems for IC supervisors. The Board has

[14] *Id*. at 72–73.

obtained approval to create two additional Enforcement Supervisor I positions at its Oakland and Sacramento ICs; appointed a permanent Enforcement Supervisor I at its Azusa IC; and obtained approval to reorganize its Case Management Unit to appoint one Enforcement Supervisor II over statewide operations and one Enforcement Supervisor I for day-to-day oversight in Norwalk. As described in the Third Report[15] and below, CSLB is in the process of reorganizing its Statewide Fraud Investigative Team (SWIFT) to lessen span of control problems and to increase the effectiveness of specialized SWIFT programs.

Also in the Initial Report, the Monitor commented on CSLB's management information system as it relates to enforcement. Specifically, the Monitor noted a lack of effective connection between the licensing information system and the enforcement information system. This ineffective linkage between licensing and enforcement documents has, on occasion, resulted in the licensure or re-licensure of individuals with histories of serious misconduct.[16] To address this problem, the Board's information technology staff continues its design and implementation of the Imaging Workflow Automation System (IWAS), a long-term electronic document management project that is currently in use in CSLB's Licensing Division and scheduled for use in the Enforcement Division in the near future. When the first phase is fully implemented in the fall of 2003, IWAS will provide enforcement staff with computerized access to licensing records and licensing staff with computerized access to case management documents; it will also reduce paperwork and provide a benchmark system for more efficient complaint handling.

The Monitor also noted that the definitions and categories of enforcement program data collected and reported by CSLB have varied over the years, making it difficult — if not impossible — to conduct meaningful comparisons of CSLB's enforcement performance over time. The Monitor recommended that legislation similar to Business and Professions Code section 2313 (applicable to the Medical Board of California) be enacted to require CSLB to report annually to the Legislature its key enforcement performance indicators and data in a consistent format.[17]

SB 1953 (Figueroa) added section 7017.3 to the Business and Professions Code, which requires CSLB to annually submit to the Legislature specific categories of detailed enforcement

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[15] *Third Report*, *supra* note 8, at 42–44.

[16] *Initial Report*, *supra* note 6, at 73.

[17] *Id*. at 73, 108.

data, including number of complaints received (itemized by source and by type); number of complaints closed prior to referral for field investigation (including reason for closure); number of complaints referred for field investigation (categorized by type); number of complaints closed after referral for investigation (including reason for closure); number of citations and/or fines issued; number of complaints referred to local prosecutors for criminal prosecution; number of complaints referred to the Attorney General for the filing of an accusation; number of accusations filed; number of accusations dismissed or withdrawn; number of formal disciplinary actions taken; number of automatic disciplinary actions (*e.g.*, for failure to comply with a citation or arbitration award); number of interim suspension orders sought and granted; and amount of cost recovery sought, ordered, and collected. The statute also requires CSLB to report workload data (including caseload statistics, cycle times, and overall productivity) for the Board's intake and investigative personnel, and case aging data for six specified stages of the enforcement process.

These data, reported consistently from year to year, will enable the Board, the Legislature, the Department of Consumer Affairs, and the public to meaningfully evaluate CSLB enforcement performance, detect stages at which backlogs or delays are accumulating, and gauge CSLB achievement of the enforcement goals recently established by the Legislature in Business and Professions Code section 7011.7.[18] Perhaps most importantly, these data will form the basis of future enforcement policy and staffing decisionmaking by the Board and its senior management.

The first report required by section 7017.3 is due on October 1, 2003. CSLB is in the process of designing a system that will identify, capture, and standardize (among its numerous regional offices) all of the data required by the statute, and naming an individual to both coordinate that design and ensure the timely release of the Board's enforcement data. CSLB expects to assign an individual to assume these responsibilities, effective July 1, to ensure compliance with the first October 1 report date.

4. Licensing System and Requirements

In his Initial Report, the Monitor noted that the Board's licensing program — to the extent it attempts to control the screening and exclusion of dishonest and/or incompetent contractors from

[18] Business and Professions Code section 7011.7(b), enacted as part of SB 2029 (Figueroa) in 2000, requires the Board to "set as a goal the improvement of its disciplinary system so that an average of no more than six months elapses from the receipt of a complaint to the completion of an investigation." Subsection (c) provides that investigations of cases involving complex fraud issues or contractual arrangements should be concluded within one year.

the marketplace — greatly impacts CSLB's enforcement burden. The Monitor identified a number of concerns about CSLB's licensing structure and its examination, criminal history verification, experience verification, bonding, and capitalization requirements.[19]

During the Monitor's term, the Legislature — with the full support of the Monitor, CSLB staff and Board members, and industry — has addressed three of these requirements: criminal history verification, experience verification, and bonding. Discussed immediately below are the changes to criminal history and experience verification; a discussion of the new bonding requirements is included in Chapter III.C.11 below.

Criminal history verification. As noted in the Monitor's Initial Report, the CSLB application form requires applicants to disclose, under penalty of perjury, whether they have ever been convicted of a crime — but CSLB has no independent method of verifying the veracity of the disclosure because it does not require fingerprinting of licensure/registration applicants. This failure has resulted in the Board's inadvertent licensure of applicants with substantially related criminal convictions and prior license revocations, with consequent harm to the public. The Monitor urged the Board and the construction industry to reach agreement on a fingerprinting requirement.[20]

Supported unanimously by the Board and industry, SB 1953 (Figueroa) at long last amends Business and Professions Code section 144 to add CSLB to the list of California occupational licensing agencies that require fingerprints from licensure applicants. Effective January 1, 2004, the bill also amends sections 7069 and 7153.1 to require applicants for new contractor licenses and home improvement salesperson registrations to submit fingerprints as part of their application for licensure/registration; require the Board to use those fingerprints to obtain criminal history information on applicants from the California Department of Justice (DOJ) and the U.S. Federal Bureau of Investigation; and require the Board to participate in DOJ's subsequent arrest notification program, which will notify the Board of the arrest of a licensee/registrant at point of arrest for appropriate tracking.

Thus, the Board finally has statutory authorization — indeed, a statutory mandate — to screen licensure applicants for past criminal history. However, the state's budget woes and the hiring freeze are slowing CSLB's ability to implement this public protection reform. CSLB's

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[19] *Initial Report*, *supra* note 6, at 74–78.

[20] *Id*. at 75–76, 108–10.

Licensing Division — which will primarily implement the new fingerprinting requirement for the ultimate benefit of the Enforcement Division and the public — lost 15 vacant positions pursuant to the 2002–03 budget bill, and is currently laboring to handle CSLB's massive licensing workload with an additional 14 vacancies. Of import to licensure applicants and the construction industry, these losses have resulted in huge backlogs and long delays in application processing.[21] Of import to enforcement efforts and public protection, the Licensing Division cannot implement the fingerprinting requirement unless it secures more staff.

CSLB submitted freeze exemption requests for 12 of its 14 Licensing Division vacancies, and was informed on February 6, 2003, that its requests were approved for five licensing technicians (still leaving nine vacancies). Even if this influx of staff were sufficient to implement the fingerprinting requirement, the Department of Finance has denied the Board's requests to augment budget to fund the program. The Board intends to resubmit a BCP for 2004–05.

The Monitor considers the new fingerprinting requirement to be one of the major accomplishments of this project, and of real importance to CSLB's mission. CSLB is a consumer protection agency charged with protecting the public as its highest priority, and it must be able to verify the identity of an applicant to whom it is giving a state occupational license and the accuracy of criminal history information asserted on the application form. Fully 23 other DCA regulatory agencies (and many other non-DCA occupational licensing agencies) have used fingerprinting in connection with their licensing and/or enforcement activities for many years. A fingerprinting requirement will not affect the vast majority of legitimate applicants who truthfully complete their applications; it will simply enable CSLB to detect those who lie on their applications, and it may deter individuals who would pose a substantial threat to the public from even applying for a license. Finally, this requirement will protect the public without unduly burdening licensure applicants. New "LiveScan" technology permits applicants to be electronically fingerprinted in many locations in every county in California at a cost of only $56–$68, and with turnaround notification to CSLB within approximately 72 hours. And, of course, CSLB is a special-fund agency; any savings accrued by failure to implement the fingerprinting requirement will not help the general fund deficit in the least.

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[21] In a February 20, 2003 memorandum to the Board, CSLB Registrar Steve Sands reported that "[t]he increase in workload, loss of staff and resources, and inability to fill vacant positions have had the following effects on service: (1) the number of applications in backlog increased from 2,130 on October 1, 2001 to 13,211 on February 1, 2003; (2) the number of renewals in backlog increased from 2,211 on October 1, 2001 to 7,634 on February 1, 2003; (3) the number of weeks before applications were pulled for processing increased from 8 weeks as of October 2001 to 28 weeks as of February 2003; (4) the number of weeks before renewal applications were pulled for processing increased from 1 week as of October 2001 to 6 weeks as of February 2003; (5) because of the backlogs, calls to the call center increased to the point that the number of 'busy' calls increased from 16,983 in July 2002 to 118,413 in January 2003."

The Monitor urges the Legislature and the Davis Administration to assist CSLB in any way possible to enable it to implement this long-needed reform by January 1, 2004. It is especially ironic that CSLB's loss of Licensing Division staff is impeding the implementation of this program — which will make the licensing process faster, more effective, and more protective of the public. Criminal history verification will prevent future Crown Builders tragedies,[22] and its implementation should be a high priority.

Experience verification. In the Initial Report, the Monitor noted that Business and Professions Code section 7068 and section 825, Title 16 of the CCR, require a first-time applicant for a contractor's license to demonstrate completion of at least four full years of experience as a journeyman, foreman, supervising employee, contractor, or owner-builder. However, CSLB historically checks only 3–6% of licensure applications to investigate any representation made therein. Further, it lacks an adequate system for verifying the experience claimed. The Monitor found that this system is inadequate to ensure that applicants meet statutory requirements for licensure, and recommended that CSLB research and implement other ways of verifying the experience claimed for licensure.[23]

SB 1953 (Figueroa) amended section 1095 of the Unemployment Insurance Code to add CSLB to a long list of governmental agencies that may access the records of the Employment Development Department to verify the experience claimed for licensure. Utilization of this new authority will enable CSLB to more efficiently and effectively investigate and verify experience claimed on licensure applications.

CSLB reports that Licensing Chief Mike Brown is meeting regularly with EDD staff in order to commence utilization of EDD information. However, CSLB's Licensing Division does not have the staff to implement the new program at this time, and will not, absent approval of exemptions from the hiring freeze for a sufficient number of licensing staff.

Better collection and use of public information on contractor misconduct. In the Initial Report, the Monitor noted that — in addition to fingerprinting, which would provide it with accurate information on applicant criminal history — CSLB lacks mandatory reporting statutes from which other agencies have benefitted for years (*e.g.*, Business and Professions Code section 800 *et seq*. applicable to the Medical Board). In Recommendation #8, the Monitor suggested that CSLB sponsor legislation enacting a statutory scheme requiring reporting to the Board of the following

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[22] *Initial Report*, *supra* note 6, at 75–76, 109–10.

[23] *Id*. at 75, 112–13.

information which is relevant to contractor performance and solvency: civil judgments, settlements, and arbitration awards in cases related to contractor performance or honesty; criminal arrests and convictions; bankruptcy filings; and debarments by government agencies.[24]

Although the Board took a "support in concept" position on Recommendation #8 at its October 2001 meeting and agreed to study both the value of collecting this information and the budget implications associated with this proposal, CSLB has not yet actively studied this issue. The Monitor reiterates the importance of this issue. Over a dozen other DCA occupational licensing agencies have extensive mandatory reporting statutes which provide them with information — much of which is public information — on licensee misconduct that is directly relevant to their licensees' professional performance of services for which licensure is a prerequisite. This information could and should be used by CSLB in making more informed licensing and enforcement decisions, and should be disclosed to the public on CSLB's Web site. We urge CSLB to promptly initiate a study of these reporting schemes and prepare recommendations on those which would best protect the public.

Other licensing issues. As the Monitor's primary statutory focus has been on CSLB's enforcement program, the Monitor has not investigated or analyzed CSLB's licensing program in depth. However, having observed the program, its complexity, the importance of its efficient functioning to the construction industry, and its impact on enforcement for two years, the Monitor believes licensing reform to be an important issue for further consideration by the Board, and this issue is included among other such priority matters in Chapter V below.

5. Complaint Handling

Overall CSLB 2002 complaint handling. As reflected in Exhibit III-B below, CSLB received a total of 23,123 complaints during calendar year 2002 (including SWIFT-originated non-licensee complaints) — about the same as fiscal year 2001–02 and up from 22,644 during 2000–01.[25]

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[24] *Id*. at 77–78, 110–12.

[25] The Monitor already reported fiscal year 2001–02 enforcement data in the Third Report. In this Final Report, we present (where it is available) calendar year 2002 data. Although we realize that comparing fiscal year data to calendar year data is not statistically desirable, the Monitor's project will be concluded once FY 2002–03 data become available, and we want to present readers with the latest available data.

Year	Non-Licensee Complaints by Source			Licensee Complaints by Type of Violation				Total Received	
	Consumers and Others	*SWIFT*	*Total*	*Abandonment/ Workmanship*	*Financial*	*Technical/ Other*	*Total*	*Excl. SWIFT*	*Incl. SWIFT*
FY 1998–99	3,316	4,317	7,453	9,803	2,134	5,640	17,577	20,713	25,030
FY 1999–00	2,616	5,746	8,358	9,469	2,123	4,871	16,463	19,075	24,821
FY 2000–01	2,270	3,922	6,192	10,001	1,910	4,498	16,409	18,679	22,601
FY 2001–02	2,777	3,551	6,328	10,050	2,200	4,595	16,845	19,622	23,173
CY 2002	2,902	4,435	7,337	10,000	2,058	4,039	16,097	18,999	23,123

Source: NewPoint Group

Ex. III-B. Complaints Received — FY 1998–99 through CY 2002[26]

Exhibit III-C below reveals that, including SWIFT closures, the Board closed a total of 25,216 complaints during calendar year 2002 — a 2% increase over FY 2001–02 and a 16% improvement over FY 2000–01. Thus, for at least the past 18 months, CSLB is closing more complaints than it is receiving — meaning that it is keeping pace with an increasing caseload, and making some progress on reducing its existing backlog.

Year	Non-Licensee Complaints	Licensee Complaints			Total Complaints Including SWIFT
		Abandonment/ Workmanship	*Financial*	*Technical/ Other*	
FY 1998–99	7,548	9,982	2,158	5,845	25,533
FY 1999–00	8,257	8,867	1,995	4,815	23,934
FY 2000–01	6,150	8,830	1,821	4,756	21,557
FY 2001–02	6,348	10,554	2,341	5,401	24,644
CY 2002	7,423	10,674	2,331	4,788	25,216

Source: NewPoint Group

Ex. III-C. Complaints Closed by Type of Complaint — FY 1998–99 through CY 2002[27]

[26] The shaded cells in Ex. III-B include data that may be skewed due to the one-day opening and closure of several hundred "business license" complaints by Northern SWIFT. *See infra* note 42, accompanying Ex. III-I, for further information on this issue.

[27] The shaded cells in Ex. III-C include data that may be skewed due to the one-day opening and closure of several hundred "business license" complaints by Northern SWIFT. *See infra* note 42, accompanying Ex. III-I, for further information on this issue.

The Monitor's contract with the Department of Consumer Affairs requires the Monitor to, among other things, "develop a process for tracking a selected sample of enforcement caseload of no less than 10 cases to monitor their progress from complaint receipt to final disposition." Accordingly, during the first week of February 2002, the Monitor was provided with a printout of all cases filed that week; from this printout, the Monitor randomly selected 41 cases for tracking. CSLB staff had no role in identifying these cases and is not aware of the specific cases tracked. On March 7, 2003, the Monitor's staff researched the status of these cases on CSLB's database and printed each case history; the results of this study are attached in Appendix C.

Complaint handling by the IMCs. As described in prior reports, CSLB's complaint handling function is now centered at two large Intake/Mediation Centers (IMCs) — one in Sacramento and one in Norwalk. Program Technicians (PTs) receive completed complaint forms, assign each case a complaint number, input certain information on CSLB's computer system, prepare a case file, and forward it to a Consumer Services Representative (CSR). CSRs determine whether the Board has jurisdiction and whether the case qualifies for one of two Board arbitration programs (see Chapter III.C.8 below); further, CSRs contact both parties to the dispute and attempt to discern whether the matter is amenable to mediation. If so, the CSR attempts to smooth out relations between the consumer and the contractor, and persuade the consumer to permit the contractor to return to repair unfinished or defective work. If the parties reach an agreement and the work is completed, the CSR closes the case. If no agreement is reached, the CSR requests documents relevant to the dispute, compiles a case file, and forwards the matter to the field for investigation.

The Monitor's Initial Report documented a number of problems with CSLB's complaint handling function, some of which resulted from the Board's "reengineering" project which — as explained above — essentially caused almost all of the Board's experienced CSRs to leave the agency between 1998 and 2000, leaving behind inexperienced and untrained replacements to handle mounting case backlogs.[28] The Sacramento and Norwalk IMCs handled these massive backlogs differently: Norwalk distributed all incoming cases to CSRs (causing staggering caseloads of 120–140 per CSR), while Sacramento limited CSR caseloads to 60 cases per employee and created a "holding file" where the rest waited in line — not assigned to staff — and grew very old.[29]

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[28] *Initial Report*, *supra* note 6, at 51.

[29] *Id*. at 55. Effective September 1, 2002, CSLB eliminated its Northern IMC "holding file" for incoming complaints and assigned out all then-pending cases to CSRs. To prevent recurrence of a holding file at intake, CSLB has instituted a strict policy that all received complaints are to be entered into its complaint tracking system within one business day of their receipt. *Third Report*, *supra* note 8, at 38.

In August 2001, CSLB — with the assistance of Ben Frank of the NewPoint Group — implemented a backlog reduction strategy which called on CSRs to process an average of 65 complaints per month (by settling/closing approximately 55% and working up the remaining 45% for transfer to the field for investigation). CSLB management hoped that its backlog reduction strategy would enable the IMCs to process about 20,000 complaints during calendar year 2002, thus clearing away the bulk of the backlog.[30] Exhibit III-D below indicates that the IMCs came close to realizing that goal during the first half of calendar year 2002 (by closing 9,579 complaints); however, they closed only 7,813 complaints during the second half of calendar year 2002 — for a total of 17,392 cases closed in intake/mediation during 2002.

ENFORCEMENT DIVISION CALENDAR YEAR 2002				
Month	**CSR Goal**	**CSR Actual**	**ER Goal**	**ER Actual**
January	1,820	1,673	705	757
February	1,820	1,539	710	709
March	1,755	1,777	710	788
April	1,820	1,593	721	744
May	1,820	1,577	706	785
June	1,755	1,420	705	688
July	1,755	1,366	686	681
August	1,755	1,416	686	732
September	1,755	1,261	686	720
October	1,755	1,510	696	783
November	1,755	1,096	696	682
December	1,690	1,164	681	686
TOTAL	21,255	17,392	8,388	8,755

Source: CSLB Staff

Ex. III-D. 2002 CSR/ER Complaint Closure Production

Complaint handling backlog. During fiscal year 2001–02, the IMCs cut the number of complaints pending at the IMC level from 3,619 at the start of the year to 2,874 as of June 30,

[30] *Second Report*, *supra* note 7, at 38.

2002.[31] Normal work-in-progress at 2001–02 CSR/PT staffing levels for the IMCs was about 1,850 complaints — thus, about 1,000 of the 2,874 complaints were considered "backlogged" as of June 30, 2002. Board data indicate that the IMCs further decreased the number of pending complaints to 2,519 by August 31, 2002.[32]

However, Exhibit III-E below indicates that the IMCs ended calendar year 2002 with 3,642 open complaints. This increase was attributed to heavier-than-usual complaint influx during September and October of 2002. Additionally, each IMC lost one CSR position pursuant to the 2002–03 budget bill. As of December 31, 2002 (and as reflected in Exhibit III-A above), the IMCs were functioning with only 27 of their 29 authorized CSR positions filled. Currently, the IMCs are functioning with only 23 of their 29 authorized CSR positions (Norwalk has lost an additional CSR to retirement, and two other CSRs are out on extended medical leave; and two Sacramento CSRs are out on extended medical leave). Average caseloads for CSRs have again soared — Norwalk CSRs are averaging 185 cases each, while Sacramento CSRs are handling average caseloads of 125. Thus, the backlog at the IMCs is again creeping upward.

	Intake/Mediation Centers (IMCs)		
Date	*Non-Licensee*	*Licensee*	*Total*
03/31/00	243	2,644	2,907
09/30/00	208	3,316	3,524
06/30/01	92	3,527	3,619
12/31/01	130	3,201	3,331
06/30/02	312	2,562	2,874
12/31/02	394	3,248	3,642

Source: NewPoint Group

Ex. III-E. IMC Pending Complaints — 3/31/00 through 12/31/02

CSLB continues to struggle with inconsistencies in CSR case handling procedures and case processing production between the Norwalk and Sacramento IMCs. Exhibit III-F below contains average monthly production data by IMCs for the months of August 2002 through February 2003. On average, the Norwalk IMC consistently settled and/or closed for other reasons more cases,

[31] NewPoint Group, *Report to the Enforcement Monitor* (Sept. 10, 2002) at 9.

[32] Contractors State License Board, *Agenda Packet for January 23, 2003 Meeting* (Jan. 2003) at Agenda Item F (Enforcement Committee Report).

transferred more cases to the field for formal investigation, and moved more cases per month than did the Sacramento IMC — sometimes doubling Sacramento's output. This inconsistency is even revealed in the longitudinal study attached as Appendix C. CSLB staff is aware of this inconsistency, and believes it can be explained in part due to the excessive investigator vacancies at the agency's Bay Area ICs (see discussion in Chapter III.C.6 below); because of these vacancies, Sacramento CSRs sometimes work to settle complaints for a longer period of time so as to avoid shipping them to the field. However, the degree of discrepancy between the two offices is probably due to more than Bay Area investigative vacancies; CSLB is tracking this issue and is addressing it.

Month	Production	Norwalk IMC	Sacramento IMC
August 2002	Avg. Closed by CSR	34.33	26.43
	Avg. Transferred to IC	28.75	14.75
	Avg. Moved by CSR	**63.08**	**41.18**
September 2002	Avg. Closed by CSR	34.81	26.31
	Avg. Transferred to IC	34.45	4.88
	Avg. Moved by CSR	**69.27**	**31.19**
October 2002	Avg. Closed by CSR	46.45	30.00
	Avg. Transferred to IC	30.36	11.56
	Avg. Moved by CSR	**76.81**	**41.56**
November 2002	Avg. Closed by CSR	34.90	22.62
	Avg. Transferred to IC	20.36	7.87
	Avg. Moved by CSR	**55.27**	**30.50**
December 2002	Avg. Closed by CSR	42.40	25.00
	Avg. Transferred to IC	18.60	9.62
	Avg. Moved by CSR	**61.00**	**34.62**
January 2003	Avg. Closed by CSR	56.33	32.62
	Avg. Transferred to IC	19.77	7.68
	Avg. Moved by CSR	**76.11**	**40.31**
February 2003	Avg. Closed by CSR	37.11	32.46
	Avg. Transferred to IC	27.55	13.69
	Avg. Moved by CSR	**64.66**	**46.15**

Source: CSLB Staff

Ex. III-F. Monthly CSR Production by Office (8/02 – 2/03)

Business process changes at the IMCs. Because of staffing losses, position vacancies, and average CSR caseloads that far exceed its goal of 65 cases per CSR, CSLB management implemented several business process changes during the summer of 2002. These changes were

intended to allow staff to identify and focus on the egregious cases (*e.g.*, cases involving health and safety issues, repeat offenders, and elder abuse) while still attempting to resolve disputes through mediation and providing consumers with alternatives for civil redress. As described in the Third Report, CSRs are now closing cases in which the consumer has chosen to go to civil court or arbitration and the hearing is within six months, and cases in which the consumer has already obtained a judgment or private arbitration award against the contractor.[33]

To further reduce the number of cases moving forward for investigation and streamline its intake and investigations process, the Board approved several other business process changes at its October 2002 meeting. Under the new procedures, CSRs will continue to attempt to resolve all complaints over which CSLB has jurisdiction. However, if mediation fails and there is no evidence of a threat to public safety or serious economic harm (*e.g.*, cases involving repeat offenders), CSRs will take the following actions:

(1) Where the underlying contract contains an arbitration clause, the consumer will be referred to that arbitration mechanism and his/her complaint will be closed.

(2) In complaints involving contracts or financial injury amounts under $5,000, consumers will be advised to make a claim on the contractor's bond and/or file a small claims court action. In this regard, CSRs will advise consumers about how to pursue a claim on the bond or to seek an award in small claims court. CSRs will also inform consumers that CSLB will assist them in enforcing a judgment or other award from small claims court, and will advise them that CSLB will keep their complaint on file in case other complaints are filed against the same contractor.

(3) Disputes between suppliers/subcontractors and prime contractors will no longer be handled by CSLB; the parties will be encouraged to seek civil remedies.

In addition, the public's ability to file complaints against contractors via CSLB's Web site was discontinued in November 2002. Consumers may still download the complaint form from the Web site, but must complete the form and mail it to CSLB. The Board hopes that consumers will be encouraged to include necessary documentation with the complaint form.

CSR training. In the Initial Report, the Monitor noted that the Board's CSRs were receiving little or no formalized training, which was responsible at least in part for the growth of huge case

[33] *Third Report*, *supra* note 8, at 31.

backlogs and excessive case cycle times at the CSR level.[34] CSLB's EAST unit has designed a comprehensive CSR training program, and has already administered several components of that program.[35]

In particular, CSRs received training in November 2002 on the new process changes adopted by the Board at its October 2002 meeting (see above). All CSRs received information on communicating these policy changes to the public, and participated in role-playing exercises to ensure they are trained in educating the public as to these policies.

6. Investigations

In overview, during this reporting period CSLB management has responded to resource limitations by implementing a contingency plan involving efforts to reduce the volume of complaints flowing to the depleted Investigation Centers, to handle necessary investigations more effectively, and to prioritize among cases for full-scale investigation. Coupled with other enforcement program improvements, this emergency triage has so far managed to preserve (and in some ways, improve) the level of investigative and prosecution output — an impressive accomplishment in light of the circumstances. However, signs of erosion in hard-won progress are beginning to show, and some of the lasting enforcement improvements which CSLB has planned are being slowed.

Investigator vacancies, caseloads and backlogs. The Monitor's three previous reports documented the continuing problem of vacancies and inadequate staffing in CSLB investigator positions (titled Enforcement Representative I (ER I) and Enforcement Representative II (ER II)). These vacancies and losses of staff have been principal causes of excessive investigator caseloads, unsatisfactory cycle times, and large case backlogs.[36] The Monitor recommended that these vacancies be filled as a high priority for CSLB. The Board, its executive staff, the Department of Consumer Affairs (and its Director Kathleen Hamilton), and the State and Consumer Services Agency (and its Secretary Aileen Adams) have all endorsed that priority and worked to advance it. However, CSLB has enjoyed minimal success in obtaining enforcement program exemptions from the hiring freeze and, as described above, the 2002–03 budget cuts have resulted in the loss of 22 enforcement positions at CSLB, including 12 line investigator positions.

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[34] *Initial Report*, *supra* note 6, at 80–81.

[35] *Second Report*, *supra* note 7, at 39.

[36] *See Initial Report*, *supra* note 6, at 83–85; *Second Report, supra* note 7, at 39–41; *Third Report*, *supra* note 8, at 38–41.

CSLB's long-term prospects have been improved greatly by the passage of SB 1953 with its authorization for up to 20% fee increases. When the increases can be implemented, these augmented resources should be earmarked in large part to support enforcement work. But the Board has not been able to implement even a portion of those authorized increases, and thus this relief is only on the horizon at this time. As a result, and notwithstanding the efforts of CSLB and DCA to address the staffing crunch, the present investigator staffing situation remains at an inadequate level (see Exhibit III-G below).

Investigation Center	Filled Investigator Positions (ER-I and ER-II)	Vacant Investigator Positions	Total Cases	Average Cases per Investigator	Cases Over 180 Days Old	Percent of Cases Over 180 Days Old
Sacramento	14	1	550	39.29	284	52%
Oakland	4	4	220	55.00	204	93%
San Francisco	6	2	265	44.17	256	97%
Fresno	5	0	208	41.60	112	54%
Norwalk	14	0	395	28.21	157	40%
Azusa	14	3	601	42.93	368	61%
San Bernardino	9	2	391	43.44	226	58%
San Diego	11	0	375	34.09	105	28%
TOTAL	**77**	**12**	**3,005**	**39.03**	**1,712**	**57%**
Statewide Investigative Fraud Team						
No. SWIFT	7	0	307	43.86	73.00	24%
So. SWIFT	10	3	344	34.40	51.00	15%
TOTAL	**17**	**3**	**651**	**38.29**	**124.00**	**19%**

Source: CSLB Staff

Ex. III-G: Investigator Staffing and Caseloads as of December 31, 2002

The state budget situation has worsened the problem of investigator staffing since the publication of the first three reports in October 2001, April 2002, and October 2002. The combination of losing 12 investigator positions and being unable to fill vacant positions has increased the staffing problem involving the crucial field-level investigator positions.

In the 2000–01 fiscal year budget, CSLB was authorized for 136 ER I and ER II investigators, a number which was widely viewed as inadequate for improved performance by the

CSLB enforcement program.[37] By December 31, 2002, CSLB had only 94 filled investigator desks (with 15 vacancies) — a reduction of 22% below the 136 investigators which many considered insufficient for the ICs and SWIFT units to do their jobs. Today in these front-line casework units, one out of five chairs is vacant or gone altogether.

The investigator vacancy rate remains especially problematical in the San Francisco Bay Area, where salary differentials and cost-of-living issues compound the problems of reduced resources. Today, of the 16 authorized investigator posts, only ten are filled.[38] Bay Area consumers are served by a CSLB investigative team about 60% the size many believe to be inadequate.

Under the leadership of Enforcement Chief David Fogt, efforts to reduce caseloads, backlogs, and cycle times have borne initial fruit. Caseloads which should be in the range of 30–40 cases per investigator, and have exceeded 60 per ER statewide (and as high as 95+ for the Bay Area ICs),[39] were actually reduced during this reporting period to 39 cases per investigator statewide.[40] But with one out of five investigators missing, the problems of long cycle times and backlogs at the ICs — which had eased somewhat — will continue and soon may grow.

Regarding cycle times, the proportion of all cases closed by the ICs in more than 180 days (or double the CSLB internal standard of 90 days) had declined modestly under the current CSLB leadership. But during this reporting period, that proportion increased from 50% of all cases to 57%. IC case cycle time statistics remained essentially constant: IC closures averaged 245 days during FY 2001–02, and averaged 248 days for calendar 2002; and the percentage of cases closed within given time frames is largely unchanged from the unimpressive figures in the last report.[41] Even these modest numbers reflect a heroic effort by the remaining personnel at offices such as San Francisco and Oakland (where about 40% of the original team is absent) and at offices where case overflows have been directed, such as Long Beach (now Norwalk) and San Diego.

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[37] *See Initial Report, supra* note 6, at 37, and sources cited in note 29.

[38] *See supra* Ex. III-G.

[39] *See Initial Report*, *supra* note 6, at 117–18. By contrast, typical caseloads for district attorney investigators working complex fraud matters in California are generally in the range of 15–30 cases. Caseloads three or four times this level are indefensible, and can only result in *de facto* prioritization, where some matters are relegated to the back of the file cabinet and delayed unacceptably.

[40] *See supra* Ex. III-G.

[41] *See* Ex. III-H (Distribution of Complaint Investigation Cycle Times); Ex. III-I (Average Number of Days to Close Complaints, by Type of Complaint).

Year	1–60 Days	61–120 Days	121–180 Days	181–240 Days	241–300 Days	301–360 Days	>360 Days
FY 1998–99	12%	17%	26%	22%	11%	6%	6%
FY 1999–00	12%	14%	21%	22%	14%	8%	10%
FY 2000–01	10%	14%	18%	19%	15%	10%	14%
FY 2001–02	11%	11%	14%	17%	15%	11%	21%
CY 2002	11%	11%	15%	17%	15%	10%	21%

Source: NewPoint Group

Ex. III-H. Distribution of Complaint Investigation Cycle Times FY 1998–99 through CY 2002

Month/Year	Licensee Complaints	Non-Licensee Complaints	Total
FY 1998–99	111	58	95
FY 1999–00	129	52	102
FY 2000–01	147	66	123
FY 2001–02	158	88	140
July 2002	139	90	124
August 2002	154	95	136
September 2002	159	55	119
August 2002	152	59	124
November 2002	158	65	123
December 2002	155	96	136

Ex. III-I. Average Number of Days to Close Complaints, by Type of Complaint FY 1998–99 through December 2002[42]

[42] The shaded cells in Ex. III-I include data that may be skewed due to the one-day opening and closure of several hundred "business license" complaints by Northern SWIFT. Lists of newly licensed contracting businesses (*i.e.*, businesses that have obtained local business permits from a city or county) are sent to CSLB. Occasionally, SWIFT checks some of these to ensure they have obtained a license from CSLB. If they have not, SWIFT opens a complaint, sends a letter to the business reminding it to obtain a CSLB license, and closes the complaint. Southern SWIFT opens 20–40 of these "business license" complaints per month; Northern SWIFT usually opens about 50–70 per month. However, in September and October 2002, Northern SWIFT opened and closed hundreds of these complaints, which would skew its numbers.

The Monitor believes SWIFT should continue to monitor new contractor businesses to ensure they have obtained a CSLB license, and that it should continue to send letters of reminder to those businesses that require a CSLB license. However, it is unclear why these are classified as "complaints." The Monitor suggests that CSLB separate these "business license" letters out from its other enforcement data and track it separately.

Even the initial agency-wide progress on reducing complaint backlogs, described above, cannot be maintained or extended with these vacancies. The reductions in investigator staff must ultimately mean that additional complaint backlogs will accumulate at the ICs, unless triage efforts to reduce the total volume of complaints to the ICs are extraordinarily successful.

In an attempt to deal constructively with these staff reductions, CSLB management has implemented new business strategies to reduce the flow of cases to full-scale investigation while preserving the overall quality of outcomes for the public. These strategies include:

(1) Eliminating or reducing the investigation of new complaints against contractors who are already the subject of pending administrative actions;

(2) Expanding the "On-Site Negotiation" program statewide, as it has been shown to yield a remarkable settlement rate, which reduces cycle times and investigative burden;

(3) Responding to the crisis-level staffing problems in the San Francisco and Oakland ICs, by diverting complaints originating in the Bay Area to other ICs for investigation, and assigning investigators from CSLB's Statewide Investigative Fraud Teams (SWIFT) to handle Bay Area complaints;

(4) Relocating the Long Beach IC to Norwalk, and ending the part-time public access at the Oxnard branch office; and

(5) Changing the structure and function of the resources in SWIFT, including shifting some SWIFT staff to ICs, and restructuring the remaining staff along functional lines.

These new efforts and programs, detailed below, hold promise for better efficiency in CSLB investigations, and appear to have independent merit. However, innovative complaint resolution tactics cannot alone meet the demands of the Legislature and the public for improved service. CSLB needs its full authorized complement of 123 IC and SWIFT investigators — and then an appropriate increase in that number — before statutory and internal goals of prompt and effective service can be met.[43]

Restructuring of enforcement resources. Enforcement program management has begun implementing several strategies for reallocating enforcement resources, as contingency planning for

[43] *See Initial Report*, *supra* note 6, at 70–71, 83–85, 117–18.

the continuing budget crisis. These have included relocating the Long Beach IC by consolidating it in the Norwalk office; eliminating the part-time customer counter at the Oxnard branch office, and consolidating investigations of certain non-licensee complaints by geographical location through the use of in-house meetings with complainants (as a means of reducing field visits). The restructuring of the SWIFT units is perhaps the most significant of these strategies.

Restructuring of SWIFT. Enforcement Division management is now is the process of restructuring the Statewide Investigative Fraud Teams (presently organized in northern and southern units) by reallocating investigator resources and then dividing remaining SWIFT staff along programmatic lines into separate units — one addressing special complex investigations, and the other focusing on unlicensed activity and related aspects of the underground economy. This returns these resources to an organizational scheme based on function, a system which recent experience has shown is more efficient. As documented in the Third Report,[44] when the old functional units (the Underground Economy Enforcement Unit, or UEEU, and the Special Investigations Unit, or SIU) were converted to the unified SWIFT format, legal actions per month declined from a high of 7.29 to 5 actions per month, and total closures per month declined from 26.95 in 1997–98 to 14.7 cases per month in 2001–02.

Staff specialization and single-task focus make much better sense in handling missions as diverse as proactive underground economy enforcement and reactive major case enforcement. This strategy is consistent with the spirit of Recommendations #17 and #18 of our Initial Report, which in part sought to promote specialization and the development of one or more units entirely dedicated to serving as major fraud task forces.[45] The return to a dedicated unit for each of these two important missions should improve industry and public understanding of and support for these efforts.

The reorganization of SWIFT is of course partly motivated by the necessity of transferring at least some of the desperately needed ER I and ER II resources to the understaffed Investigation Centers, a relocation which has proven essential to preserving the IC system. But at least some of the loss of overall resources allocated to these two important missions may be offset by likely gains in productivity and by the improved effectiveness that will flow from units tightly focused on the success of their respective missions.

On-Site Negotiation program. The On-Site Negotiation (OSN) program is a new procedure designed to bring early resolution to matters substantial enough for referral to ICs, but susceptible

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[44] *See Third Report, supra* note 8, at 42–44.

[45] *See Initial Report*, *supra* note 6, at 117–19.

of an early-intervention strategy. In the OSN program, all parties to a matter — the consumer complainant, the respondent, the industry expert (from CSLB's Industry Expert Program), and the CSLB investigator — meet at the job site to seek a prompt and mutually acceptable resolution to the complaint. The OSN program was launched on a pilot basis in the Azusa IC and, within its first several months of experimental operation, achieved acceptable agreements in almost 100% of more than 200 test cases.

CSLB management has now expanded the OSN program statewide, as a part of its larger program to promote early and quick resolution of complaints appropriate for such triage, and as a means of conserving investigative resources for cases where full-scale investigation is essential.

Consistent with the Monitor's Recommendation #13 promoting expansion of "early resolution and mediation efforts," the Monitor strongly supports the expanded OSN program as a promising vehicle for achieving multiple objectives for CSLB.[46] Consumer problems are much more likely to be settled amicably if they are addressed quickly before the parties become angry and entrenched in their positions. The act of physically bringing the disputants together with objective third-party "mediators" is surprisingly effective, as many disputes arise from emotions and communication failures rather than fundamentally opposed positions.

The OSN strategy has real potential both as a means of achieving the desirable prompt resolution for the complainant, and also as a means of conserving investigator resources which would otherwise be spent on a comprehensive investigation and enforcement proceeding. Full implementation of the expanded OSN strategy, and exploration of other "face-to-face" early mediation efforts, should continue to be high priorities for the Enforcement Division.

Investigator training and improved law enforcement coordination. CSLB management has moved forward in conjunction with the Monitor to implement prior recommendations concerning improved investigator training and law enforcement coordination.[47]

Current Enforcement Division management has replaced the prior approach to investigator training, detailed in the Initial Report,[48] with more systematic and comprehensive training of ERs.

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[46] *Id*. at 115.

[47] *See* Recommendation #18 (improve and regularize investigator training) and Recommendation #19 (ensure coordination with state and local prosecutors) in *Initial Report*, *supra* note 6, at 118–20.

[48] *Id*. at 87–88.

The ER training plan and curriculum have been revised to include greater emphasis on criminal and civil enforcement, in addition to administrative enforcement, of applicable state law. Opportunities to link to state prosecutor training are now also routinely used. In May 2002, the Chief of Enforcement and nearly all CSLB investigative supervisors attended and participated in the annual three-day Consumer Protection Prosecution Conference of the California District Attorneys Association (CDAA), which provides training for most of the state and local prosecutors enforcing laws relevant to CSLB. This conference, and other training programs sponsored by CDAA, will be ongoing vehicles for improved ER training. Individualized and group training has also been arranged with staff from the Los Angeles City Attorney's Office and the Santa Clara District Attorney's Office, among others.

Coordination and cooperation among CSLB investigators and state and local prosecutors has also improved dramatically. CSLB investigators now regularly attend CDAA meetings, case roundtable discussions, and training conferences in order to more fully integrate their investigative efforts with those of the state and local prosecutors who handle contractor cases. In particular, IC supervisors and staff now regularly attend the bi-monthly meetings of CDAA's Consumer Protection Council in both southern and northern California, at which meetings CSLB staff are participating with district attorneys, city attorneys, and deputy attorneys general in case roundtable discussions, which include the exchange of experiences and case selection criteria and the formation of investigative partnerships to pursue construction fraud matters. Reports from prosecutors in both sections of the state indicate that working relationships with CSLB investigators have improved markedly.

CSLB supervisors are implementing changes in process to take advantage of the benefits of early case coordination with state and local prosecutors. Investigators are now provided training and instructions to coordinate investigations with other law enforcement agencies, when certain criteria are met indicating benefit from joint work. The special investigations units within the remaining SWIFT teams are now acting as coordinators of the resources needed to respond to complex or high-visibility matters, resulting in better coordination of efforts with local law enforcement on major cases. This improved early coordination has resulted in numerous new case initiatives undertaken by joint teams of staff from CSLB and local prosecution offices. Results are reflected in the 63% increase in criminal case referrals achieved by CSLB investigators this year (discussed more fully below), and also in the increase in high-profile criminal filings and high-impact civil unfair business practices enforcement actions, such as the recent Drain Patrol action filed in December 2002 by the San Joaquin District Attorney's Office working in conjunction with CSLB investigative staff.

7. Industry Expert Program

In general. Business and Professions Code section 7092(c)(2) requires the Monitor to analyze — among many other things — CSLB's "utilization of licensed professionals to investigate complaints...." This is a reference to the Board's Industry Expert Program (IEP), created in Business and Professions Code section 7019 in 1987. Section 7019 authorizes CSLB — "if funding is made available" — to "contract with licensed professionals, as appropriate, for the site investigation of consumer complaints." The decidedly unflattering legislative history of the bill creating the IEP indicates that it was established to help CSLB tackle a huge backlog of 12,000 uninvestigated complaints; this tremendous backlog, coupled with consumers' lack of accessibility to the Board and its lack of enforcement action, resulted in consumer inability to recover their financial losses and correct damage to their homes or businesses.[49]

Thus, section 7019 authorizes the Board to contract with "licensed professionals" to assist in site investigations. Under this authority, CSLB has created the IEP — a list of licensed contractors[50] known as "industry experts" (IEs) who are trained and qualified to present their opinion on whether a respondent contractor has committed certain acts which would justify discipline of the license, including a departure from accepted trade standards,[51] departure from plans and

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[49] This historical background is reflected in non-codified legislative intent language at Cal. Stats. 1987, ch. 1264 ("[t]he Contractors' State License Board has consistently failed to serve the needs of consumers who have attempted to file and resolve complaints against licensees of the board. This failure is underscored by the board's almost total lack of adequate technological means to communicate with consumers and others in a timely manner and to manage its licensing and enforcement workload effectively. The failure of the Contractors' State License Board to preserve a measure of consumer protection in the contractor industry is evidenced by the board's tremendous backlog of uninvestigated complaints which is increasing on a daily basis. The effect of the lack of accessibility, the complaint backlog, and the lack of enforcement action has been an inability of consumers to recover their financial losses and correct damages to their homes or businesses in a timely manner and the perpetuation of a largely risk-free environment for those contractors who violate the law. It is the intent of this act to enable the Contractors' State License Board to provide consumers with meaningful protection against contractors in violation of the law, to reduce the number of backlogged complaints, to reduce the number of backlogged consumer complaints, and efficiently carry out its regulatory responsibilities").

[50] Interestingly, section 7019 does not expressly authorize CSLB to contract with licensed contractors to assist in the investigation of complaints against other contractors. The law authorizes the Board to contract with licensed engineers, architects, landscape architects, geologists, and accountants; in 2002, it was amended by SB 2026 (Figueroa) to additionally permit CSLB to contract with "interpreters and manufacturer's representatives whose skills are required to aid in the investigation or prosecution of a licensee...." However, CSLB's IEP consists exclusively of licensed contractors.

[51] Bus. & Prof. Code § 7109(a).

specifications,[52] failure to complete the work as specified in the contract,[53] or abandonment.[54] Very generally, the expert — who has been retained by a CSLB ER investigating a particular complaint — visits the site, inspects the work, and prepares a report containing his/her opinions and (where appropriate) an estimate of the cost to make any necessary corrections to bring the project to acceptable trade standards or into compliance with the plans and specifications. The expert opinions — which are paid for by the Board — are used to support the finding of a violation of the Business and Professions Code, and the cost estimates are frequently used as the basis for negotiation toward settlement of a dispute. CSLB IE reports may be used in CSLB arbitration proceedings, formal CSLB disciplinary matters, and in civil actions.

Section 7019 is currently the only statute that authorizes and/or sets any standards for the IEP.[55] In 1997, SB 857 (Polanco) added section 7019.1 to the Business and Professions Code, which specified in some detail the required contents of the expert's report and established timeframes for the release of the report to the complainant, the contractor against whom the complaint has been made, and other designated parties. Section 11 of SB 857 (Polanco) required CSLB to "consult with representatives of the industry it regulates, with consumer groups, and with other parties that have demonstrated an interest in the operation of the program of licensing contractors, and evolve in conjunction with those discussions, a potential administrative regulation or regulations that the board believes would best serve the interests of the public, and the affected parties for the definition, administration, governance, and implementation of a program such as that provided in Section 7019.1 of the Business and Professions Code...." In May 1999, CSLB proposed section 895 *et seq*., Title 16 of the CCR, a set of regulations to implement section 7019.1 and to standardize the functioning and operation of the IEP statewide. Among other things, the regulations would have codified standards for the required qualifications of all industry experts (to include successful completion of a CSLB training course on the role of the industry expert in the Board's investigatory process), set forth grounds for disqualification of an expert, further defined the required contents of the expert's report, and set specific standards for the timing of the release of the report to the

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[52] *Id*. at § 7109(b).

[53] *Id*. at § 7107.

[54] *Id*.

[55] Business and Professions Code section 7085.5(u), which pertains to the Board's arbitration program and requires the Board to appoint and pay for the services of one IE in arbitration cases, assumes the existence of the IEP but does not set standards for it.

respondent licensee.[56] Although the Board adopted the proposed regulations in April 2000, the Office of Administrative Law disapproved them in January 2001 for a variety of reasons. Because section 7019.1 had sunsetted by its own terms on July 1, 2000, the Board dropped the rulemaking proceeding.

As such, section 7019 remains the only law that governs the IEP. All other standards governing the program appear in Section 5 (Licensee Investigations) of CSLB's Complaint Handling Procedures Manual ("Manual"), commencing with section 5.1.4.

Qualifications to become an industry expert. Contractors who wish to serve as IEs must complete an application form and submit it to the Registrar. Both the application form and section 5.1.4.1 of the Manual state that IEs must meet the definition of an "expert witness" in Evidence Code sections 720 and 721. Section 5.1.4.3 of the Manual states that a contractor acting as an IE must (1) be licensed in California; (2) have at least four years of experience in the construction industry acting as a licensed contractor in the trade(s) in which he/she is rendering an opinion; (3) have successfully completed the Board's training course on the role of an IE in the Board's investigative process; (4) possess current knowledge of accepted trade standards in his/her area of expertise; and (5) be able to communicate effectively, orally and in writing, as needed to prepare an expert's report and present evidence at a hearing. Additionally, IEs cannot have been the subject of legal action by the Registrar in the past five years. The application form, which must be signed under penalty of perjury, asks for information on construction-related restraining orders or judgments, disciplinary actions by CSLB, and criminal convictions. Finally, the IE is required to agree that he/she will not use his/her IE status in any advertising or sales promotion, and that he/she will not enter into any contract to perform the completion or correction of any work that is the subject of his/her inspection.

Training of industry experts. Once the application form has been submitted, a prospective IE must complete CSLB's training program for industry experts. This program consists of a daylong training session covering the structure of CSLB and its various components, the mechanics of the IEP and the role of the industry expert in CSLB investigations and prosecutions, and grounds for dismissal as an industry expert. Additionally, prospective IEs engage in a report writing workshop where they are trained to use the Board's standardized report format and instructed on the Board's deadlines for inspections and submission of expert reports.

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[56] *See* 17:1 CAL. REG. L. REP. (Winter 2000) at 97–99.

In the past, CSLB has administered this training program in person in a classroom-style format. Because of staff losses and budget constraints, CSLB is in the process of videotaping the training session so it can be mailed to prospective IEs, they can view it at their convenience, and then certify that they have completed the program.

Generally, completion of the training program is required before an IE can be assigned to a case. However, section 5.1.4.4 of the Manual permits an Enforcement Supervisor to train an expert who has not completed the training program where there is an urgent need for an expert in a particular specialty area and no expert qualified in that area is participating in the IEP.

As part of IE training, "all new applicants for the IE program will be required to inspect two to three job sites with an experienced CSLB investigator."[57] However, CSLB staff inform us that this "on-the-job" component of IE training "has not been happening lately."

Once an IE completes the application form and the training program, his/her name is added to CSLB's master list of industry experts. As long as an expert remains qualified, the duration of appointment to the IE panel is indefinite, and no further training is required. The master list is available to all CSLB ICs online. Every three months, CSLB's EAST unit updates the list to add new IEs, purge those who are no longer qualified, and add comments regarding past IE performance and/or areas of expertise.

Selection and use of experts. When an ER is investigating a case that presents issues requiring an expert, the ER consults the master list for the name of an IE with qualifications and expertise related to the project under investigation.[58] Each time an ER employs an IE from the master list, the ER is responsible for qualifying the expert (*e.g.*, checking to ensure the IE has not been the subject of complaints to or legal actions by CSLB). The ER interviews the potential IE to ensure that the person meets the requirements to qualify as an expert in the particular matter under investigation, determine the expert's availability, and — together with the expert — evaluate whether any fact might preclude the expert from rendering a neutral and unbiased opinion (*e.g.*, the expert is a competitor of the respondent, the expert knows either the complainant or the respondent,

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[57] Contractors State License Board, *Industry Expert Program Guidelines* (July 2000) at 8.

[58] In addition to the use of IEs by individual ERs, CSLB is developing a list of "pro bono" IEs who have agreed to assist the ICs with the new On-Site Negotiation (OSN) programs free of charge. *See supra* text at note 46 for information on the OSN program.

etc.). If the ER believes the expert is qualified and unbiased, and the expert agrees to perform the inspection and write the report for the price quoted by the ER and within the timeframe required by the ER (generally, the inspection must be completed and the report submitted within 30 days of first contact with the ER[59]), the ER then mails the IE a referral package containing a number of forms and instructions, including information on the case and the specific issues on which CSLB needs an expert opinion.

Under section 5.1.4.7 of the Manual, the ER who chose the expert is responsible for monitoring compliance with the deadlines and for reviewing the report once it is submitted to ensure that it is complete, accompanied by photographs, and contains all the information required.

The inspection report. Once the IE receives his/her instructions, the IE and the ER arrange to visit the jobsite so the expert can inspect the work and photograph the site for possible later use as evidence. The expert then prepares the official inspection report, whose format is quite specific and given to IEs on disk by the Board. The report format directs the expert to inspect specific complaint items, record his/her observations, and opine as to whether the job conforms to the plans and specifications and to accepted trade standards. If not, the expert must state the accepted trade standard, the cause of the defect, the method of correction, and the cost to correct that particular item. The report may also contain photos.

According to section 5.1.4.7 of the Manual, the inspection report is "the property of CSLB." Section 5.1.4.9, which governs release of the report, states that "the industry expert report may not be released until the investigator determines it is accurate and complete. At this point, it may be released to the complainant, respondent, or respondent's surety company upon request. If the report is in the hands of an Attorney General or District Attorney, that person will need to authorize its release."

Disqualification of IEs. If CSLB takes legal action against the license of an IE and/or if the IE relinquishes his/her California license for any reason, that individual will be dismissed from the IEP. Other grounds for dismissal from the program include advertising as a CSLB expert, soliciting for completion of work that the IE inspected as a CSLB IE, soliciting construction work as an IE, soliciting work from a complainant or respondent while CSLB action is pending if the pending

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[59]Contractors State License Board, Complaint Handling Procedures Manual, at 5.1.4.5; *see also* Contractors State License Board, *Industry Expert Program Guidelines* (July 2000) at 10.

action involves the IE as a CSLB IE, failure to submit complete reports on a timely basis, falsifying official documents, giving false or incomplete testimony, and behavior that is detrimental to embarrassing to CSLB.[60]

Status and cost of CSLB's IEP. CSLB's master list currently contains the names of approximately 600 qualified experts; the Board's goal is a pool of 700 experts in a wide variety of classifications and locations across the state. The current pool is heavily weighted with general building "B" contractors and contains very few specialty contractors. The Board constantly recruits in its licensee newsletter and through other media, soliciting qualified contractors to join the program; its staff losses and budget constraints prevent it from being more proactive in this area.

The program costs the Board approximately $1 million per year. IEs are paid $300 for a typical inspection plus preparation of the report (mileage and photograph expenses are additional). IEs are paid $50 per hour for testimony at administrative, arbitration, or civil hearings (with a four-hour minimum). According to Board staff, these fees are not market prices for qualified experts or for licensed contractors; staff believes that many experts participate because they want to "give something back" to their profession and help to remove those whose abuses give the construction industry a black eye.

Recently, CSLB has instituted a number of cost-saving measures associated with the IEP. Most of the agency's ERs have been outfitted with digital cameras; they are often able to photograph the jobsite and electronically transmit the photos to the IE, thus saving the IE from having to personally inspect the site and expediting the process. Further, CSLB's new On-Site Negotiation program places the homeowner, contractor, ER, and IE at the scene for inspection and negotiation purposes, and can save the time and cost of preparing an inspection report if a settlement is reached.[61]

Issues raised by the IEP. Although Business and Professions Code section 7019 appears to authorize CSLB to use non-employee licensees to investigate complaints against other licensees (which we believe is problematic), CSLB has implemented this authority with a more limited program wherein industry experts do not themselves investigate the facts of a complaint but are simply asked to opine on whether the work conforms to applicable trade standards and to the plans and specifications for the project. If not, they are further asked to opine on the method and cost of

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[60] Contractors State License Board, *Industry Expert Program Guidelines* (July 2000) at 20.

[61] *See supra* text at note 46 for information on the OSN program.

corrections needed to conform the work to applicable trade standards and to the plans and specifications for the project. We view this limited use of licensees, within the context of a controlled program actively overseen by enforcement supervisors, as helpful to the Board's enforcement program and to consumers who would otherwise have to hire their own experts.

However, it is cause for concern that the many standards and rules set forth above are not codified in statute or regulation. This program is an important component of the Board's enforcement function. When IEs become involved in a case, the Board clearly has jurisdiction, the case is not meritless, the contractor's license is at risk, and the contractor has due process rights to prompt release of the inspection report which may be used against him. In Business and Professions Code section 7019.1 and proposed section 895 *et seq*., Title 16 of the CCR, the Legislature and Board, respectively, attempted to formalize several important aspects of the IEP, including required qualifications and training for experts and required contents and release of the inspection report. Although CSLB appears to follow many of the same standards that were in sections 7019.1 and 895 *et seq*., those standards are not law. We believe the program would benefit from codification of its many rules and standards, if for no other reason than to ensure statewide consistency in the administration of this program.

The Board also admits that it has experienced the same problem as have other agencies which recruit and retain experts to assist in investigations — the natural tendency of an ER to reuse the same expert, or a limited corps of experts, over and over, while not using other experts with whom the ER is not familiar. CSLB management discourages the overuse of the same expert for good reason, as it can lead to impeachment of the expert. EAST is monitoring the repetitive use of IEs and adding that information to the master list, and management has encouraged the ICs to invite new and seldom-used IEs to staff meetings and/or engage in other tactics to meet new IEs and orient them to CSLB and its enforcement program, so that an ample supply of qualified experts is available and used throughout the state. The Monitor supports this approach.

Finally, CSLB enforcement staff state that consumers, contractors, and courts frequently misunderstand the purpose of the IEP and significance of the cost estimate offered by the IE if he/she has found a deviation from standards or the contract. According to staff, many consumers and contractors disagree with the results of the report and the cost estimate, and demand "second opinions" by second IEs. Further, staff is informed that small claims courts are simply awarding the amount stated by the IE without requiring further evidence of damages. Staff believes that a disclaimer should be included with the inspection report stating that the report and the cost estimate

are for administrative/agency purposes only, and that the IE's inspection and report is not equivalent to a complete home inspection. This issue is still being reviewed by staff.

8. Arbitration

Pursuant to Business and Professions Code section 7085 *et seq*., CSLB administers two arbitration programs to encourage the settlement of consumer-contractor and contractor-contractor disputes without disciplinary action. Under section 7085(b), disputes over contracts worth less than $7,500 *shall* be referred to CSLB's Mandatory Arbitration Program (MARB)[62]; under section 7085(a), disputes over contracts worth more than $7,500 but less than $50,000 *may* be referred to CSLB's Voluntary Arbitration Program (VARB) with the concurrence of both the complainant and the contractor. The statute specifies that complaints referred to MARB/VARB must meet several criteria, including the following: (1) the complained-of licensee "does not have a history of repeated or similar violations"; (2) the licensee has no outstanding disciplinary actions filed against him/her; and (3) the parties have not previously agreed to private arbitration in the underlying contract or otherwise. Touted as "fair, fast, and free," CSLB arbitrations are binding — meaning the parties have only a limited ability to challenge the arbitrator's decision in court. CSLB's arbitration decisions are also confidential — meaning they are not disclosed on CSLB's Web site or elsewhere unless a contractor against whom a monetary judgment is entered fails to pay the judgment (at which time CSLB suspends the contractor's license and that action is posted on the Board's Web site).

CSLB's arbitration program continues to undergo changes. Previously, CSLB contracted exclusively with a private vendor which provided arbitrators for CSLB arbitrations at Board expense. In the Second Report, we noted that — effective July 1, 2001 — parties to CSLB arbitration proceedings were given a choice of a private arbitrator or an administrative law judge (ALJ) from the Office of Administrative Hearings (OAH), a centralized panel of ALJs.[63] During the spring of 2002, OAH announced that it was capable of handling all CSLB arbitrations. Under such conditions where a state agency can provide needed services, the Board was advised by legal

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[62] Prior to January 1, 2003, the cutoff between MARB and VARB was $5,000. Effective January 1, 2003, AB 728 (Correa) (Chapter 312, Statutes of 2002) amended Business and Professions Code section 7085 to change the cutoff to $7,500.

[63] *Second Report*, *supra* note 7, at 43.

counsel from the Department of General Services that it is not permitted to contract with an outside vendor. Therefore, effective July 1, 2002, OAH ALJs began to handle all CSLB arbitrations.[64]

After six months of providing ALJs to handle all CSLB arbitrations, however, OAH — which has also experienced staffing losses — expressed its desire to be relieved of the program. Accordingly, on January 10, 2003, CSLB released a request for proposals to take over the arbitration program, and asked for bids by February 21. After reviewing four proposals, CSLB chose the Arbitration Mediation Conciliation Center of Calabasas as its arbitration contractor. However, one of the other bidders has protested the award; it is anticipated that a decision will be made in this regard by an Administrative Law Judge by the end of April. At this writing, OAH is still responsible for CSLB arbitrations.

In the meantime, CSLB is sponsoring legislation carried by Assemblymember Lou Correa, Chair of the Assembly Business and Professions Committee, to make several changes in its arbitration program statutes. As amended March 24, 2003, AB 473 (Correa) would limit arbitration awards to monetary damages (to the exclusion of the remedy of specific performance, which often leads to further disputes between contractor and consumer); require CSLB to appoint and pay an industry expert for an arbitration proceeding only if CSLB determines an expert is needed to effectively resolve the dispute; and reduce the required timeframes for compliance with arbitration awards and other CSLB orders. Under existing law, a licensee who fails to comply with an arbitration award, an order of correction, and an order to pay civil penalties is given a 30-day deadline in which to comply; failure to comply within that 30-day timeframe results in automatic suspension of the license. Further, that suspended license is automatically revoked if the order is not complied with in one year. AB 473 would reduce that one-year revocation timeframe to 90 days, and give the Registrar discretion to delay (for good cause) the revocation for up to one year. Finally, AB 473 clarifies that an unsatisfied final arbitration award is to be treated like an unsatisfied civil judgment (which is grounds for suspension of a license).

9. Prosecutions

An effective enforcement program must produce concrete enforcement results, measured as successful criminal, civil, or administrative enforcement actions. The goals of any enforcement program should be special deterrence (deterring the individual violator from repeat offenses) and general deterrence (deterring other potential violators), and these goals are only achieved when a regulatory system has the credibility which comes from proven case results.

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[64] *Third Report*, *supra* note 8, at 45–46.

The Initial Report and subsequent updates emphasized several dimensions of improvement needed in the prosecution of contractor misconduct, including greater coordination of efforts among CSLB staff and state and local prosecutors; more referrals of cases for criminal and civil enforcement; greater emphasis on key target crimes and efficient enforcement tools; and speedier and more efficient administrative enforcement.[65]

During the two-year tenure of the Monitor, CSLB's enforcement program has made some of its greatest strides in the realm of improved scope and volume of case prosecutions.

Improved coordination between CSLB enforcement staff and prosecutors. Monitor Recommendations #22 (consistent statewide referral criteria) and #23 (improved cooperation in prosecutions) in the Initial Report, as well as several related recommendations, represent the Monitor's general goal of improved communications and coordination between CSLB staff and state and local prosecutors.[66]

As documented in the Initial Report, prosecution efficiency and effectiveness require better and more consistent communication on case priorities and case leads between CSLB investigators and prosecutors, and more commitment to joint casework and cooperation. Unlike many street crime prosecutions, economic crime cases require early coordination and continuing joint efforts throughout the entire process of investigation and prosecution.

In the past eighteen months, Enforcement Chief David Fogt and the Monitor have led an effort to bring CSLB investigators and state and local prosecutors together consistently to coordinate efforts and develop more and better cases for prosecution, through a variety of mechanisms described above, including joint training programs with CDAA and numerous individual offices; consistent participation in bi-monthly case roundtable meetings and white collar crime tasks forces; improved communication links between CSLB and the prosecution community, including developing access to CDAA's Consumer Protection Information Network and the state Consumer Fraud Index. Perhaps most important, Enforcement Chief Fogt and his senior managers and supervisors, by their words and actions, have made clear to CSLB staff that enforcement cooperation has management's highest priority.

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[65] *Initial Report, supra* note 6, at 90–94.

[66] *Id*. at 121–26; *see also* Recommendations #24–#26.

The result has been material improvements in coordinated efforts, case referrals, and joint prosecutions, documented both by individual responses from prosecutors statewide and the statistics of CSLB enforcement output, reviewed below.

Increases in enforcement outputs, including criminal referrals. The changes in policy and procedure implemented by the Enforcement Division during the term of the Monitor have resulted in impressive enforcement output improvements during a time of decreasing resources. As documented in Exhibit III-L below, using FY 2000–01 as the benchmark, over the two-year tenure of the Monitor's project the Enforcement Division has managed a consistent increase — typically of 20% or more — in key enforcement outputs, despite a 22% decrease in investigator resources from levels authorized in 2000–01.[67]

Perhaps the clearest indicator, and among the most impressive improvements in the CSLB enforcement program during the Monitor's term, is the dramatic increase in CSLB referrals of licensee and nonlicensee criminal matters to local prosecutors. Despite a significant reduction in staff, CSLB investigators made 1,249 such criminal referrals in calendar year 2002, as compared to 764 in fiscal year 2000–01. This is a prodigious 63% increase in this key indicator of law enforcement effectiveness.[68] Of special significance is the increase in the number of licensees referred for criminal prosecution during this period. From a baseline of 27 such referrals in fiscal year 1999-2000, the first seven months of FY 2002–03 are on a pace that projects to a record 144 such referrals (no less than five times as many licensee referrals as three years ago).[69] These statistics confirm the numerous reports received by the Monitor from prosecutors in both southern and northern California to the effect that CSLB cooperation and utilization of joint investigations and early case referrals are at all-time high levels.

In a similar vein, there is a much greater incidence of CSLB referral of large-scale civil unfair business practices actions to the Attorney General and district attorneys for prosecution under Business and Professions Code section 17200 and 17500. Recent unfair competition civil actions such as the northern California Drain Patrol case are indicators of a sea change in awareness of this enforcement alternative among CSLB staff.

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[67] *See infra* Ex. III-L (CSLB Enforcement Program Output); *see also* Ex. III-G and related text, *supra*.

[68] *See infra* Ex. III-L.

[69] Contractors State License Board, *Agenda Packet for March 26, 2003 Enforcement Committee Meeting* (Mar. 2003) at Agenda Item G–14.

CSLB's administrative enforcement shows a similar pattern of clear improvement during this two-year period: Administrative accusations filed on behalf of CSLB have increased from 264 to 344 (a 30% increase); formal disciplinary actions rose from 228 to 251 (a 10% gain), and licensee and nonlicensee citations both increased more than 20% during this two-year term. Indeed, every statistical indicator of enforcement output has increased since 2000–01 with the sole exception of cost recovery ordered (down from an unusually high result in 2000–01 but higher than four of the previous six years).[70] While many of the current gains only restore CSLB to its output levels prior to the ill-fated "reengineering" project, the short-term improvements and the overall trend are praiseworthy.

CSLB management and staff have turned a renewed commitment to enforcement work into demonstrable gains in enforcement output. In prosecution output, CSLB has been doing more with less in the past two years, indicating the value of the changes in leadership, structure, and process which have taken place.

Prosecution priorities and target crimes emphasis. Monitor Recommendations #25 and #26 stressed the importance of improved prosecution of specified "signal" crimes (such as excessive down payments) and increased use of efficient tools such as judicial revocation of contractor licenses under Penal Code section 23 and Business and Professions Code section 7106.

The mutual training efforts and roundtable case meetings described above have been used effectively to advance the cause of these prosecution priorities and underutilized legal tools.[71] Training at CDAA's annual consumer conference and at regional council sessions have included discussion of improved used of Business and Professions Code section 7106 and Penal Code section 23 to promote judicial revocation of contractor licenses, and also training on the significance of the "early warning signs" including violations of Business and Professions Code sections 7159, 7121 and 7121.5.

CSLB staff met with the Attorney General's Licensing Section staff in January 2002 and finalized an agreement that the Department of Justice would provide a Deputy Attorney General to represent CSLB in civil and criminal proceedings against contractors in efforts to invoke Penal Code section 23 and Business and Professions Code section 7106. The CSLB *Enforcement Manual* has been updated to include training and instructions on wider use of these provisions for summary revocation, and quality assurance audits are now in place to ensure compliance with these policies.

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[70] *See infra* Ex. III-L.

[71] *See Initial Report, supra* note 6, Recommendations #21, #25, #26.

The campaign to promote state and local prosecutor use of these tools is succeeding. Although no statewide statistics are available, the Monitor has learned of increased use of summary revocations in prosecutions in both northern and southern California as the result of this campaign.

Attorney General utilization issue. The Monitor's Initial Report identified the need for greater efficiency, greater speed, and better case tracking in the administrative enforcement process handled for CSLB by the Attorney General's Licensing Section.[72]

Many highly capable prosecutors serve in the Licensing Section, and the litigation results they obtain are often laudable. But recent case output and cycle time statistics paint a mixed picture. On the positive side, Attorney General staff filed 344 accusations for CSLB during calendar year 2002, a substantial 30% increase over 264 and 263 filed in fiscal years 2000–01 and 2001–02, respectively.[73] But as illustrated by Exhibits III-J and III-K below, average case cycle times — measured by average days per case before a pleading is filed and by average days pending for unfiled cases — have stagnated in the southern California offices of the Licensing Section, and have increased alarmingly in the northern California offices of San Francisco and Sacramento so that the north's much greater time efficiency in June 2001 is now largely gone. Statewide, the Licensing Section takes about seven months on average to file an accusatory pleading in a CSLB case.

Licensing Section Office	Total Number of Cases Pending		Total Number of Days Pending in AG's Office Before Pleading Was Filed		Average Days Per Case Before Pleading Filed	
	June 2001	February 2003	June 2001	February 2003	June 2001	February 2003
Los Angeles	85	74	13,975	15,108	164.412 (5.48 mos)	204.162 (6.81 mos)
San Diego	26	29	5,446	6,048	209.462 (6.98 mos)	208.552 (6.95 mos)
Sacramento	9	28	1,601	6,860	177.889 (5.93 mos)	245.000 (8.17 mos)
San Francisco	24	29	1,877	5,558	78.208 (2.61 mos)	191.655 (6.39 mos)

Source: CSLB enforcement data

Ex. III-J. Attorney General's Office Case Cycle Times: Age of Pending Cases at Time of Filing June 2001 vs. February 2003

[72] *Id*. at 91–92.

[73] *See infra* Ex. III-L.

Licensing Section Office	Total Number of Unfiled Cases		Total Number of Days Pending		Average Days Per Unfiled Case	
	June 2001	February 2003	June 2001	February 2003	June 2001	February 2003
Los Angeles	48	67	10,925	13,987	227.604 (7.59 mos)	208.761 (6.96 mos)
San Diego	36	42	7,282	9,703	202.278 (6.74 mos)	231.023 (7.70 mos)
Sacramento	14	24	1,173	5,248	83.786 (2.79 mos)	218.666 (7.29 mos)
San Francisco	35	11	3,684	1,381	105.257 (3.51 mos)	125.545 (4.18 mos)

Source: CSLB enforcement data

Ex. III-K. Attorney General's Office Case Cycle Times:
Age of Pending Cases With No Pleading Filed
June 2001 vs. February 2003

CSLB executive management has begun implementation of a variety of strategies to improve the efficiency of CSLB's utilization of Attorney General services in administrative proceedings against contractors. The Case Management staff have greatly enhanced their monitoring of AG time and progress on CSLB cases. Early in 2002, as part of this effort, senior Case Management staff met with Licensing Section staff to develop guidelines for more efficient handling of CSLB cases and to improve the speed and output of those cases. These efforts have borne fruit: As illustrated in Exhibit III-L, calendar year 2002 accusations filed by the Attorney General have increased by 30% over FY 2001–02 figures.

But given the growing cycle times, and in light of budgetary needs to control the substantial expense of AG representation, it is important that CSLB continue to refine and improve this cooperative relationship with the Department of Justice. CSLB management is presently implementing the following changes in its policies relating to AG administrative actions: (1) the development and use of a revised set of internal criteria governing case referrals to the AG, for the purposes of standardizing AG utilization and helping control the referral of cases which may not require AG action, and in particular raising the financial harm criterion — one of several internal guidelines for requesting accusations — from $10,000 to $15,000; (2) the increased use of citations (instead of accusations) in cases meeting citation criteria; (3) the increased use of a citation (instead of an accusation) when a default is anticipated (because the license will be automatically suspended for failure to comply with the citation); (4) implementation in northern California of increased use of mandatory settlement conferences; and (5) the increased use of the AG's Office to obtain license

revocation in criminal proceedings (where a license may be revoked by the court instead of via accusation, thus eliminating the need for a more costly AG accusation).[74] The Monitor endorses all these strategies for better and more efficient administrative prosecution.

Increased criminal sanctions for repeat offenders. The Initial Report documented the continuing concern over unlicensed contracting in California.[75] CSLB staff, local and state prosecutors, and industry and business groups such as the Better Business Bureau all point to unlicensed activity as one of the principal sources of consumer complaints in this industry. There is widespread concern in particular over the problem of repeat offenders in this arena. Current citations and misdemeanor prosecution may deter some unlicensed workers, but CSLB staff and prosecutors indicate that a number of scofflaws continue to move from county to county engaging in unlicensed activity and treating the occasional citation or misdemeanor fine as no more than a cost of doing business.

The Monitor has advocated increased criminal sanctions for repeat offenders in this industry. In response, on February 20, 2003, Senator Liz Figueroa introduced SB 443 (Figueroa), which would require that for a second or subsequent conviction of Business and Professions Code section 7028 (contracting without a license), "the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by a imposition of a lesser sentence..." (see Appendix D). If the court imposes only a fine or a sentence of less than 90 days in such cases, "the court shall state the reasons for its sentencing choice on the record."

This increased sanction for multiple offenders is based on successful legislation presently applicable to residential burglary[76] and unauthorized practice of law,[77] among others. This approach has proven effective in ensuring that actual jail sentences of significant length are imposed on repeat offenders, who sometimes scorn lesser sanctions. Based on results in other areas of law enforcement, this increased certainty of incarceration will materially change the risk/reward calculations of potential violators and serve as a powerful deterrent to repeat violations. This added

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[74] Memorandum from Registrar Stephen P. Sands to CSLB Members, dated October 31, 2002 ("Enforcement Program Changes") at 3-4.

[75] *Initial Report, supra* note 6, at 90.

[76] *See* Penal Code § 462.

[77] *See* Bus. & Prof. Code § 6126 (a), as amended by SB 1459 (Romero), Cal. Stats. 2002, ch. 394, § 1.

sanction would be an important new tool for CSLB enforcement program. SB 443 is supported by CSLB and is presently set for hearing in the Senate Public Safety Committee on April 29, 2003.

10. Public Disclosure and Outreach

CSLB's complaint disclosure policy. During the Monitor's term, Governor Davis has signed and CSLB has fully implemented SB 135 (Figueroa) (Chapter 494, Statutes of 2001), a CSLB-sponsored bill that (among other things) adds section 7124.6 to the Business and Professions Code. Effective July 1, 2002, section 7124.6 requires CSLB to disclose to the public the date, nature, and status of all serious complaints on file against a licensee that have been referred for investigation after a determination by Board enforcement staff that a probable violation has occurred. The bill further requires CSLB to adopt a disclaimer that will inform a consumer to whom complaint information is given that the complaint is still an allegation.

SB 135 permits broader disclosure of complaints than occurs at most DCA agencies, and can directly protect consumers from choosing an irresponsible contractor who is a poor businessperson, the subject of numerous complaints, and known to CSLB. Yet it is also fair to contractors. Under SB 135, not every pending complaint is disclosed. Complaints that are resolved or referred for arbitration are not disclosed, thus preserving the ability of legitimate contractors to resolve disputes without disclosure. Only those complaints containing allegations that, if true, "would present a risk of harm" justifying suspension, revocation, or criminal prosecution are disclosed; minor complaints remain confidential unless referred for legal action. Further, prior to disclosure, those complaints must be investigated, reviewed by a CSLB supervisor, and referred for further investigation because the supervisor is persuaded that evidence of a "probable violation" exists. Finally, the required disclaimer informs consumers that the complaint is still in the allegation stage.

Another component of SB 135 requires CSLB to disclose formal disciplinary actions for a minimum of seven years; citations must be disclosed for five years after date of compliance with the citation. This provision became effective on January 1, 2003. CSLB has implemented both provisions of SB 135, and is currently sponsoring legislation to make technical changes to Business and Professions Code section 7124.6 concerning the length of time for which citations and accusations will be disclosed.

Web site revisions. CSLB's Web site contains a vast array of information for consumers, licensees, and licensure/registration applicants. For consumers, the Web site provides instant

information about licensees (by name and by license number); numerous helpful brochures and fact sheets (some in six languages) addressing every facet of the construction process; news releases and consumer alerts; numerous reports on regulatory issues; a long list of helpful links to other agencies and organizations; and an online complaint form. As recently as February 2003, CSLB published an updated and revised version of its *Consumer Guide to Filing Construction Complaints* on its Web site, and is currently in the process of revising several other consumer guides.

Although CSLB's Web site is generally quite useful, the Monitor's Initial Report identified a number of areas in which it is not "user-friendly" — primarily in the "licensee look-up" feature. The Monitor noted that the site fails to explain terms of art which may have meaning to CSLB but which have no meaning whatsoever to consumers (*e.g.*, "V/S," "RMO," "P/S/T"). The Web site also uses undefined legal jargon and several incorrectly defined legal terms.[78] These are easily correctable problems, and CSLB staff has now assembled a lengthy glossary of acronyms, terms of art, and legal terms and phrases used on the Web site and in its various publications. Staff has made an excellent start, and hopes to post the glossary by April 30, 2003.

Complaint form revision. As suggested by the Monitor in Recommendation #14, CSLB revised its consumer complaint form in November 2002. The form is available for downloading on CSLB's Web site. Although CSLB used to permit consumers to complete the form and file a complaint online, that service has been discontinued. CSLB staff hopes that consumers who are required to mail the form to the Board will be encouraged to enclose necessary documentation related to their complaint.

Public outreach. CSLB's Public Affairs Office (PAO) has implemented a successful new strategy that both protects the public and informs the public of the Board's mission and existence. CSLB's SWIFT unit has recently engaged in a number of undercover sting operations targeting unlicensed contractors. As each sting operation occurred, a Department of Consumer Affairs videographer filmed the event and created broadcast-quality footage for distribution to local media. PAO staff then held press conferences the day after the busts, both to warn consumers of the dangers of hiring unlicensed contractors and to distribute the film to local news outlets. In November 2002, for example, three SWIFT investigative teams orchestrated six separate stings in four cities, resulting in the issuance of citations to a record-breaking 66 unlicensed contractors plus comprehensive television and print media coverage from every major media outlet in each of the locations.

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[78] *Initial Report*, *supra* note 6, at 95.

Also in 2002, PAO engaged in six major public awareness campaigns; conducted six "Senior Scam Stopper" forums aimed at educating senior citizens who are often the targets of contractor fraud; coordinated CSLB's participation in 20 home and garden shows through the state; engaged in nearly 30 community outreach and consumer information events; arranged for 58 presentations by CSLB experts to consumer, industry, and service groups; and created and published four new consumer publications. As a result of PAO's media relations and outreach activities, ads, and promotions, more than 40 million people read, heard, or saw CSLB's consumer protection messages during 2002.

Public access. During this reporting period, CSLB closed the public access counter at its Oxnard branch office and moved the Long Beach IC to its existing office in Norwalk, thus reducing by two the number of locations where licensees, prospective licensees, and members of the public can have face-to-face contact with Board personnel.

11. Consumer Remedies

The Monitor's Initial Report and Second Report addressed the continuing inadequacy of remedies for consumers victimized by contractor fraud and misconduct.[79] The Second Report analyzed in detail the scope and extent of the remedies problem, and offered the Monitor's initial recommendations for improvement in those remedies. Included were recommendations that CSLB support legislation to increase its existing contractor's bond amount ($7,500 for most contractors; $10,000 for swimming pool contractors) and reserve some portion of that bond exclusively for homeowners; provide homeowners with a good faith payment defense against mechanic's liens in home improvement contracts of $25,000 or less; clarify the legal standard for bond payouts; and establish a lien expungement provision to assist consumers with unjustified and void liens.

With the full support of CSLB, all four remedial proposals appeared in essentially the form recommended by the Monitor in bills introduced during the 2002 legislative session. The good faith payment defense proposal was included at the request of Assemblymember Dutra in his AB 568, in deference to his role with this issue and in the California Law Revision Commission process which helped generate the proposal. The other remedy proposals appeared in SB 1919 authored by Senator Figueroa and supported by the Monitor. Ultimately, SB 1919 (Figueroa) was focused on the issues of increasing the contractor's license bond amount and reserving a portion exclusively for consumers, and this version of SB 1919 was approved by Governor Davis on September 29, 2002.

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[79] *Initial Report, supra* note 6, at 96–98; *Second Report*, *supra* note 7, at 49–82.

SB 1919 (Figueroa): contractor's license bond increase and consumer set-aside. As documented in the Second Report, the contractor's bond required in Business and Professions Code section 7071.5 *et seq*. for all licensees — presently $7,500 for most contractors and $10,000 for swimming pool contractors — is the primary means of compensation or redress for consumers who suffer losses as the result of contractor misconduct.[80] SB 1919 (Figueroa) will materially increase the total amount of the contractor's bond and set aside a portion of that bond for exclusive access by homeowners.

SB 1919 provides for a two-step increase in the amount of the required contractors bond: to $10,000 on January 1, 2004, and to $12,500 on January 1, 2007. This represents a net 66% increase in the amount of bond funds available for recompense for victims of violations of the Contractors License Law. And, as documented in the Second Report, the benefits of this increase in the bond's face value extend beyond total payouts available. A higher bond amount provides substantial additional incentives for surety company efforts at informal settlement and dispute resolution, which efforts yield consumer relief presently estimated by Surety Company of the Pacific at $10 million per year.[81]

Of even greater significance for consumer victims, SB 1919 includes a unique provision setting aside a portion of each contractor's bond "which shall be reserved exclusively for the claims of" any homeowner contracting for home improvement on his or her personal family residence damaged as a result of a violation of the License Law.[82] The amount set aside for consumers in each bond will be $2,500 effective January 1, 2004, and $5,000 effective January 1, 2007. Unprecedented in California contractor bonding history, this provision addresses one of the most acute remedial problems described in the Second Report — the troubling competition between consumers and more sophisticated claimants (including subcontractors, suppliers, and others) for the limited bond payouts. This "race to the courthouse," generally won today by industry claimants because of their superior system knowledge, will be eliminated entirely with regard to the $5,000 set-aside.

When fully in effect, the new contractor's bond will increase by two-thirds the available restitution funds and will guarantee that a part of each will be available exclusively for consumer

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[80] *Second Report, supra* note 7, at 54–58. Other means of repair or redress include arbitration or mediation, compromise or redress after CSLB or surety company intervention, civil actions, and small claims court cases. *See id.* at 49–61.

[81] *Id*. at 56–57.

[82] Bus. & Prof. Code § 7071.6, Cal. Stats. 2002, ch. 1123, § 2.

victims. And since a majority of consumer complaints to CSLB involve amounts less than $7,500,[83] this new bond set-aside reserved for consumers should greatly increase the percentage of cases where consumers actually get compensation. The Monitor views this enhancement of practical consumer remedies to be among the most significant developments in public protection arising during the tenure of the Monitor project.

Remaining remedial issues. As noted above, Assemblymember John Dutra and the California Law Revision Commission helped focus attention on the problem of double liability for homeowners and played a leading role in the development of the proposal for a good faith payment defense to mechanic's liens in smaller consumer contracts.[84] AB 568, Assemblymember Dutra's 2002 version of the good faith payment defense for home improvement contracts of $25,000 or less, was fundamentally similar to Monitor Recommendation #35. AB 568 passed the Assembly but failed to move out of the Senate Judiciary Committee during 2002. However, Assemblymember Dutra has introduced his AB 286 during 2003, which provides for substantially the same remedy for home improvement contracts of $20,000 or less.[85]

The Monitor staff continues to view the double liability problem as substantial: double payments for home improvement work (or unfair demands for multiple payments) occur frequently and can result in real hardships for California consumers.[86] The Monitor urges the Legislature, industry, and public interest groups to continue the search for an adequate means of addressing this problem while protecting the legitimate interests of both consumers and honest industry members in this regard.

In order to streamline SB 1919 (Figueroa) as a vehicle for improvements to the contractors bond, the two additional remedy recommendations — clarification of the bond payment standard and automatic expungement of void liens — were deleted from Senator Figueroa's bill. Both consumer remedy proposals, detailed in the Second Report,[87] remain worthy of consideration for the state Legislature.

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[83] Contractors State License Board, *Using Surety Bonds and Insurance to Compensate Homeowners for Losses Caused by Licensed Contractors* (Oct. 1, 2001), at 31.

[84] *See Second Report*, *supra* note 7, at 66–70 (Recommendation #35).

[85] An amendment dated March 13, 2003, would lower this threshold amount to $15,000.

[86] *See Second Report, supra* note 7, at 51–54 and sources cited therein.

[87] *Id*. at 70–75.

A proposal to amend Civil Code section 3144 to provide for expungement of invalid and unjustified liens is now being addressed by Assemblymember Juan Vargas, who has introduced his AB 447 to amend section 3144 in this regard. A procedural change along these lines is modest in scope yet has considerable potential for easing an unfair burden on homeowners.

Home improvement contract reform. In the Third Report, the Monitor analyzed the existing problems of current home improvement contacts and the statutes which regulate them.[88] We address this continuing concern here, as improving the clarity and usefulness of home improvement contracts and the laws which regulate them is central to preventing consumer harm and to providing redress when it occurs. And, of course, the laws regulating this aspect of the construction industry are important to the CSLB enforcement function as a whole.

By way of overview, and as documented in the Third Report, the Monitor and CSLB staff agreed with many stakeholders in the construction industry that existing home improvement contracts are complex, unreadable, and of little help in preventing or resolving consumer problems; existing statutes regulating these contracts (and enforced by CSLB) are uncertain and inconsistent; and current required consumer disclosures in these contracts are often redundant and burdensome.

Recommendations in the Third Report urged change in three broad dimensions: Recommendation #38 called for an attempt to promote clear and effective home improvement contracts by revising and simplifying the elements of those contracts, including the state-mandated disclosures. Recommendation # 39 proposed amendments to Business and Professions Code section 7159 to clarify the law governing home improvement contracts and disclosures, and to ensure all important consumer information is required in the contracts themselves. And Recommendation #40 advocated improved consumer protection and contractor compliance by resolving the current practical problems of service and repair contracts, including the separate definition and regulation of service and repair work as distinct from home improvement contracting. The Board has embraced these recommendations in principle and has supported legislation to implement them.

Senator Liz Figueroa responded to these proposals with the introduction of SB 30 in 2003 for the stated purpose of revamping home improvement contracting statutes (principally Business and Professions Code section 7159) and the contracts they govern. Although still in early draft form, SB 30 has been introduced for the purpose of addressing Monitor and CSLB recommendations by revising section 7159, and related statutes, to clarify the requirements of home improvement

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[88] S*ee Third Report, supra* note 8, at 57–84.

contracts, to simplify and improve the disclosure of vital consumer information, and to address the practical problems of service and repair contracts, including establishing a higher dollar threshold and revised disclosure requirements for such contracts.

After extensive consultations with all involved stakeholders, CSLB staff (principally Ellen Gallagher and Robert Porter), with the assistance of Monitor staff, have drafted proposed statutory reform language (attached here as Appendix E) to implement these recommendations and have circulated these proposals for comment to a wide array of industry, law enforcement, and consumer stakeholders.

The process of attempting to clarify and improve these state laws and these contracts will be a complex collaborative effort, involving CSLB Board and staff, the Department of Consumer Affairs (including Director Hamilton and her staff), Senator Figueroa and her staff, the staff of the Monitor's project, and many key members of the construction industry, law enforcement, and consumer communities of California. That collaboration is under way and the prospects appear good for developing a consensus which will permit dramatic improvements in this important aspect of the consumers' interface with the construction industry in California.

In summary, the cause of improved consumer remedies for contractor misconduct remains a compelling one: Consumers, especially victims of large-scale fraud or abuse, continue to face challenges and difficulties in making themselves and their homes whole again. The enhanced remedies contained in SB 1919, and the other remedial measures pending in the state Legislature today, are important first steps in what remains a long journey toward adequate consumer redress in this industry.

12. Summary of Concerns

In the Initial Report and his subsequent reports, the Monitor summarized fourteen previous studies of CSLB, his own independent review of CSLB's current enforcement program, and recent consumer surveys — all of which revealed substantial grounds for dissatisfaction with the Board's overall enforcement program performance.[89] By early 2001, at the time of the appointment of the Monitor and the selection of new CSLB Registrar Stephen Sands, CSLB's enforcement program performance was plagued by problems of long cycle times for complaint handling and investigations (including an *average* investigative time of 221–245 days), excessive caseloads and backlogs for

[89] *Initial Report*, *supra* note 6, at 98–100; *Second Report*, *supra* note 7, at 47–48.

CSRs and investigators, inconsistencies in enforcement practices, and declining customer satisfaction (down to a 54% level by 2001). As reflected in Exhibit III-L below, overall CSLB enforcement output had plummeted since 1996–97, in part as a consequence of the ill-fated "reengineering" effort undertaken by prior CSLB management.

In his Initial Report, the Monitor summarized his concerns about CSLB enforcement under the broad categories of work quantity, work cost-effectiveness, work consistency, and overall work quality.[90] We return to this broad analysis of overall enforcement program effectiveness in this summary section of the Enforcement Program Monitor's Final Report.

The story of CSLB's efforts to address these concerns still awaits its final chapters, but those efforts have been impressive and productive. During the two-year pendency of this project, the Monitor has observed consistent progress in this enforcement program, progress which began and continued because of the unswerving commitment of the Legislature, the Department of Consumer Affairs, Board members, CSLB executive management led by Registrar Sands, and CSLB staff to comprehensive improvement of the job CSLB does in protecting the public. The entire CSLB team has responded with full support for the Monitor's 40 recommendations and has brought skill and innovation to bear on these longstanding enforcement concerns.

The results of this renewed commitment to excellence at CSLB have been generally very gratifying, and have included notable improvements in enforcement policy, structure, and process: The Enforcement Division's organizational structure was restored and leadership upgraded; new policies and practices governing enforcement case work and referrals were implemented; complaint handling and investigation practices were streamlined and modernized; morale was improved in most units of the agency; and communication and cooperation with other enforcement agencies blossomed. CSLB management and staff worked aggressively to reduce case backlogs, to implement process improvements, and to develop innovative new ways to do more with less, with the result that key indicators of case outputs, including total number of cases closed, have increased despite an enormous budget and staffing challenge. As illustrated in Exhibit III-L above, there is a clear upward trend in most enforcement output categories in 2001–02 and in calendar year 2002.

An objective appraisal of these results using the performance criteria introduced in the Initial Report shows an encouraging trend, notwithstanding the short-term challenges.

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[90] *Initial Report, supra* note 6, at 98–100.

	1996–97	1997–98	1998–99	1999–00	2000–01	2001–02	CY 2002
Accusations Filed*	306	242	192	224	264	263	344
Formal Disciplinary Actions Taken Via Accusation	261	208	170	192	228	278	251
Automatic Revocation/Suspension for Failure to Pay Arbitration Award	324	249	226	207	179	207	241
Automatic Revocation/Suspension for Failure to Comply with Citation	1,674	1,616	1,171	883	628	787	818
Licensee Citations	2,344	1,369	1,023	846	833	1,117	1,051
Non-Licensee Citations	2,301	1,545	1,657	1,600	1,008	1,136	1,223
Referrals to Prosecutor for Filing of Criminal Action	664	1,034	1,083	841	764	996	1,249
Cost Recovery Ordered	$342,586	$275,829	$170,166	$474,052	$887,912	$571,471	$462,955
Cost Recovery Collected	$62,878	$99,369	$88,707	$85,209	$170,875	$182,973	$181,989

* Multiple cases against the same contractor are frequently combined into one accusation.
Source: CSLB enforcement data

Ex. III-L. CSLB Enforcement Program Output

In terms of **work quantity**, CSLB has increased most of its enforcement program outputs by 20% or more in the past two years. And several key indicators of work volume have skyrocketed, including a 63% increase in criminal case referrals and a 30% increase in accusations filed, achieved in about 18 months' time.

In terms of **cost-effectiveness**, it would be difficult to fault the efforts of the new CSLB management as it has grappled with reductions in enforcement personnel, especially in the important CSR and investigator categories. By way of example, a staff of roughly 95 investigators made 1,249 criminal case referrals in 2002 (about 13.1 referrals per investigator) when a staff of about 109 investigators made only 764 such referrals in fiscal year 2000–01 (7.0 referrals per investigator). The increase from 7.0 to 13.1 referrals per investigator/ year represents a reduction in per-unit cost of almost 50%. Similar, if less dramatic, reductions in per-unit cost were achieved with regard to accusations, citations, and most other enforcement program work outputs in 2002. Plainly, under its new management CSLB is getting more bang for the public's buck.

Consistency of work product (in the sense of predictable and even-handed enforcement results) has been a challenge for CSLB for many years.[91] With full support from the Board, Registrar Sands and Enforcement Chief Fogt have made consistency in statewide policy and procedure a high priority. The Monitor has noted changes to clarify and regularize the Enforcement Division's organizational structure; more uniform statewide complaint handling techniques and a reduction in complaint handling time differences; better and more standardized personnel training; and real progress toward clear and consistent standards regarding case referrals and cooperation with outside agencies. The struggle to achieve consistency in process and in result must continue, as illustrated by some continuing disparities in IMC operations, among other such matters. But today CSLB offers a more even-handed and consistent response to those seeking service.

Work quality, or overall effectiveness of the enforcement program, defies easy measurement in the case of CSLB, as it does with any agency dealing in justice, deterrence, and public protection. But with that caveat, the Monitor concludes there has been a measurable and praiseworthy improvement in the job CSLB does in protecting the public during this two-year period. Despite a decline in the resources available to it, CSLB has improved its enforcement program output by a weighted average of more than 20% across nearly all of its enforcement activities, including accusations, criminal referrals, licensee and nonlicensee citations, and others.[92]

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[91] *Id*. at 40, and sources in notes 45–47.

[92] *See supra* Ex. III-L.

But of equal importance, the range and quality of CSLB's enforcement activities have improved, with enforcement program initiatives such as the On-Site Negotiation program to promote rapid resolution of consumer complaints; reorganized special investigations and proactive units to do a better job of specialty case investigations; improved disclosure of enforcement activities to the public; improved use of effective criminal and civil enforcement tools and revocation procedures; and the prospect of vastly improved applicant screening, via fingerprinting and employment verification, to prevent enforcement problems before they occur.

Although no one statistic or fact tells the complete story, the Initial Report placed appropriate emphasis on the implications of an agency experiencing a decline of nine percentage points in its consumer satisfaction surveys to a modest 54% satisfied. As illustrated in Exhibit III-M below, CSLB customer satisfaction has risen to 60% in less than 18 months, and the trend line points toward continuing improvements. Thus, CSLB's enforcement program is succeeding in the first phases of a long-term effort to render much better quality service to the public.

But no summary of the status of his concerns can ignore the Monitor's continuing concern about the constraints faced by this agency — and so many others — during a time of budget and staffing limitations. These budgetary constraints have led to staff shortages, especially in CSLB's investigator and CSR positions, slowing progress in key aspects of the enforcement program. However, progress has been made, with new statutes now in place to provide long-term resources and much-needed enforcement tools.

In conclusion, CSLB's enforcement program is showing strong new momentum and clear improvement, and the Monitor's concerns have been addressed to a laudable degree. But further progress — and even some of the existing gains — will be affected by the availability of the resources CSLB needs to better protect the public promptly and effectively.

Customer satisfaction with the Board's complaint investigation services has improved from 54% to 60% since 2000.

Questionnaire Statements	1994	1995	1996	1997	1998	1999	2000	2001	2002*
1. The Board contacted me promptly after I filed my complaint.	70%	71%	74%	75%	77%	73%	69%	68%	72%
2a. Before hiring, I thoroughly checked my contractor's qualifications.	48%	49%	50%	46%	48%	49%	NA	NA	NA
2b. Before hiring, I inquired about my contractor's qualifications with the Contractors State License Board.	NA	NA	NA	NA	NA	NA	29%	34%	28%
3. The procedures for investigating my complaint were clearly explained to me.	64%	66%	70%	70%	71%	69%	65%	69%	71%
4. The Board kept me informed of my case's progress during the investigation.	49%	56%	60%	62%	64%	59%	54%	55%	60%
5. I was treated courteously by the Board's representative(s).	78%	78%	82%	82%	84%	82%	78%	80%	83%
6. My case was processed in a timely manner.	51%	56%	60%	61%	64%	59%	54%	53%	60%
7. I understand the outcome of the investigation (whether or not I agree with the action taken).	55%	62%	65%	66%	68%	66%	61%	63%	68%
8. The action taken in my case was appropriate.	45%	50%	53%	53%	54%	53%	49%	50%	54%
9. I am satisfied with the service provided by the Board.	50%	56%	58%	61%	63%	59%	**54%**	55%	**60%**

Source: CSLB Staff

* Data from Jan.–June 2002.

Ex. III-M. CSLB Customer Satisfaction Survey Summary

Chapter IV

STATUS OF ENFORCEMENT MONITOR'S RECOMMENDATIONS

A. Introduction

This chapter provides a summary of the Monitor's 40 recommendations for strategies to improve the performance of CSLB's enforcement program. These recommendations were proposed in the first three Monitor reports[93] and were developed to address nine major aspects of CSLB's enforcement program, including CSLB's mission and mandate, resources, management structure and information system, contractor screening, complaint handling, investigations, prosecutions, public disclosure and outreach, and consumer remedies. This chapter presents the first 37 recommendations in order and within those categories, for organizational clarity; and presents the final three recommendations under a separate category of "Home Improvement Contracts" to which those concepts specifically apply.

In general, the Monitor has found a laudable and near-unanimous commitment to these recommendations on the parts of the Board, CSLB staff, the Department of Consumer Affairs, and the Legislature. Remarkable progress has been made toward implementation of the recommendations, and the long-term prospects for full implementation are good.

The following review of the Monitor's recommendations presents, for the most part, only the procedural status of the efforts to adopt and implement these recommendations. A discussion of the significance of the recommendations and their implementation is included in the various categories of concerns reviewed in Chapter III above.

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[93] See *Initial Report, supra* note 6, at 104–33 (Recommendations #1–33); *Second Report, supra* note7, at 62–82 (Recommendations # 34–37); *Third Report, supra* note 8, at 68–74 (Recommendations # 38–40).

B. CSLB Mission and Mandate

Recommendation #1: **Update CSLB's statutory mandate and agency name** by amending Business and Professions Code section 7000 to state clearly that protection of the public is the first priority of CSLB (similar to Business and Professions Code subsections 2229(a) and (c) applicable to the Medical Board). Also consider adopting a modernized version of the agency's name (*e.g.*, "Contractors Board of California") — as many other DCA boards have done — to more accurately describe the modern licensing *and* enforcement missions of the agency.

Status: Regarding the CSLB statutory mandate, the Board adopted this recommendation in October 2001 and the Monitor assisted in drafting and in advocating passage of SB 1953 (Figueroa), CSLB's 2002 sunset review legislation. SB 1953 (Figueroa)[94] and AB 269 (Correa)[95] added new section 7000.6 to the Business and Professions Code, which declares: "Protection of the public shall be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interest sought to be promoted, the protection of the public shall be paramount." SB 1953 was signed into law on September 20, 2002, and took effect January 1, 2003.

Regarding the agency's name, the Board adopted Recommendation #1 in principle in October 2001, and proposed to study and evaluate the concept of a name change to better reflect the contemporary functions of the agency. Due to the presence of other priorities, the Board is not considering a name change at this time.

C. CSLB Resources

Recommendation #2: Increase license fees (unchanged since 1994) by approximately 20% to restore CSLB budget and enforcement resources to 1994 per capita levels and to ensure a sufficient reserve.

Status: The Board adopted this recommendation in October 2001 and the Monitor assisted in drafting and in advocating passage of SB 1953 (Figueroa), CSLB's 2002 sunset review legislation, which amended Business and Professions Code section 7137 to permit the Board to set

[94] Cal. Stats. 2002, ch. 744; see Appendix A.

[95] Cal. Stats. 2002, ch. 107.

fees in regulation and to establish a new maximum fee schedule which generally implements a 20% increase in the fee structure.

The authorized changes in maximum levels for some of the more important fees include:

Fee Schedule Item	Current Fee	Authorized Fee
Application/examination fee	$250	$300
Initial license fee	$150	$180
Additional class fee	$ 50	$ 60
Active renewal fee (2-year)	$300	$360
Inactive renewal (4-year)	$150	$180

SB 1953 also authorized an increase in the Board's reserve fund from two months of annual authorized Board expenditures to six months' such expenditures.

CSLB has adopted section 811, Title 16 of the CCR, which establishes its license fees in regulation at preexisting levels. The Board has not yet exercised its authority to increase fees, but the legal authorization to increase fees and supplement enforcement resources is in place.

D. CSLB Management Structure and Information System

Recommendation #3: Fill key enforcement management positions, including the enforcement chief position and other senior enforcement positions, to ensure appropriate leadership and accountability in the enforcement program.

Status: The Board and the senior management of CSLB embraced this recommendation and took prompt steps to implement these changes, including:

• Appointment of new Chief of Enforcement (CEA II) David Fogt, who provided immediate and vigorous new leadership for the CSLB enforcement program as a whole;

• Conducting of civil service examinations for several critical enforcement personnel classifications, including Enforcement Representative II (ER II), Enforcement Supervisor I (ES I), and Enforcement Supervisor II (ES II);

• Appointment of a new senior supervisor to accommodate the splitting of the staff of the Sacramento Investigation Center (IC), which previously had suffered from an unmanageable span of supervisorial control;

• Appointment to fill the long-vacant permanent supervisor position for the Azusa IC.

Resource augmentation will be necessary to continue the appointments in the various supervisor classifications necessary to complete the implementation of this recommendation.

Recommendation #4: Rebuild the enforcement organizational structure to correct the problems caused by the reengineering project of 1999–2000, including rebuilding of the enforcement organization on a functional basis with appropriate spans of control (especially for senior enforcement managers and enforcement supervisors).

Status: The Board and CSLB management have agreed with the concept of this recommendation and efforts to restructure the enforcement organization have begun, focusing on reduced spans of control and changes to the organizational structure to emphasize functional roles.

Registrar Sands and Enforcement Chief Fogt have adopted several personnel and structural changes to improve span of control concerns. For example, the appointment of a second supervisor in the Sacramento IC permitted the splitting of investigators assigned to that unit so that supervisors have a more reasonable and direct relationship with the ERs they supervise.

Noteworthy organizational changes along more rational lines of function have already been implemented, with the most significant being the restructuring of the Statewide Investigative Fraud Team (SWIFT), which had previously combined two functions and was organized along geographical lines. SWIFT is now being reorganized into two functional units, one dedicated to special or complex investigations and one dedicated principally to proactive enforcement in the unlicensed contracting arena, permitting greater clarity of mission and improved lines of authority over specified functions.

Recommendation #5: Reallocate field resources to better reflect the pattern of demand for consumer services (including opening offices in areas of high demand such as the San Fernando Valley and south Orange County).

Status: This is one of several Monitor recommendations which has been adopted in principle by the Board but which can only be implemented fully after appropriate augmentation of resources and staff.

CSLB management has reallocated cases to distribute workload more equally among the existing Enforcement Representatives, and this process will continue. The Registrar and staff submitted to Department of Finance a budget change proposal (BCP) requested funding approval for the reopening of two offices (in Orange County and the San Fernando Valley) to better reflect the pattern of CSLB complaints throughout the state. To date, this approval has not been forthcoming. The Board and management staff plan to study the opening of an office in the San Fernando Valley area, which today is the area most critically underserved, based on complaint volume.[96]

Recommendation #6: Require consistent annual statistical reporting by the CSLB enforcement program by establishing a new statutory mandate for such reporting (based on Business and Professions Code section 2313 applicable to the Medical Board).

Status: The Board adopted this recommendation in October 2001 and the Monitor assisted in drafting and obtaining passage of SB 1953 (Figueroa), CSLB's 2002 sunset review legislation, which added new section 7017.3 to the Business and Professions Code. Section 7017.3 requires CSLB to "report annually to the Legislature, not later than October 1 of each year" a specified list of various kinds of statistical data for the prior fiscal year.

This provision for uniform statistical reporting, modeled on successful precedent at the Medical Board, requires CSLB to provide standardized annual statistical data in 20 specified categories of enforcement program work output, thus enabling accurate measurement of CSLB enforcement program performance year-to-year.

E. Contractor Screening

Recommendation #7: Require fingerprinting and criminal history verification for licensees, with accompanying standards for use and for privacy protection in appropriate cases, and expand use of criminal convictions in licensing and enforcement decisionmaking.

Status: Despite a lengthy history of unsuccessful attempts at this important screening mechanism, the Board adopted this recommendation in October 2001 and the Monitor assisted in drafting and obtaining passage of SB 1953 (Figueroa), CSLB's 2002 sunset review legislation, which amended Business and Professions Code sections 144, 7069, and 7153.1 to mandate that

[96] See *Initial Report, supra* note 6, at 106–07.

CSLB require applicants for licensure to furnish a set of fingerprints for the purpose of criminal history record checks. Effective January 1, 2004, the Board is to require the furnishing of these fingerprints, including by electronic format where available.

CSLB management reports that, despite a commitment to this important verification goal, the loss of staff in the licensing program has created a huge backlog in applicant processing and CSLB cannot implement this mandate with current staff.[97] CSLB management has submitted two formal BCP requests seeking funding approval for this program, without success as of this writing.

Recommendation #8: Expand the flow of information on contractor misconduct into CSLB for purposes of enhancing licensure and enforcement decisionmaking by (a) seeking enactment of mandatory reporting statutes (similar to Business and Professions Code section 800 *et seq*. applicable to the Medical Board); and (b) requiring license renewal reporting of relevant criminal convictions by adding a question to the contractor license renewal form regarding conviction of crime since the last renewal.

Status: The Board adopted this recommendation in concept in October 2001, and CSLB presently requires reporting of certain of the information envisioned in this recommendation. In particular, CSLB now requires reporting of unpaid civil judgments[98] and, where civil judgments or arbitration awards are unpaid, CSLB takes appropriate action against the license of the offending party. However, CSLB does not presently require the full panoply of reporting required for medical professionals under Business and Professions Code section 800 *et seq*. applicable to the Medical Board.

As regards more complete disclosure of settlements and awards, the Board has not yet concluded how to strike the appropriate balance between the advantages of confidentiality and the benefits of public disclosure. While acknowledging the benefits of public information, the Board and CSLB management believe that confidentiality may encourage pro-consumer settlements which might otherwise require civil litigation or CSLB enforcement action if disclosure were mandatory.

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[97] See infra Chapter III ("CSLB Developments") at subsection C.4 ("Licensing System and Requirements").

[98] Bus. & Prof. Code § 7071.17(b).

For the present, the Board has determined to follow an expanded disclosure policy, consistent with the mandate of SB 135 (Figueroa),[99] relating to "high-risk" contractors. The Board plans to evaluate the cost-effectiveness of these disclosures, and use this information to help determine the proper disclosure policy for the future.

By supporting the adoption of the fingerprinting requirement for new license applicants, CSLB believes it will substantially address the second component of this recommendation regarding ongoing reporting of relevant criminal violations. When new applicants become part of the Department of Justice's database, CSLB will routinely receive information from DOJ on subsequent criminal arrests and convictions of its licensees. Over time, this will have the effect of phasing in a system of automatic reporting of relevant criminal violations by all CSLB licensees.

Recommendation #9: Improve the system of experience verification for license applications, including continuing the current applicant screening pilot project using a public records service.

Status: The Board adopted this recommendation in October 2001 and the Monitor assisted in drafting and obtaining passage of SB 1953 (Figueroa), CSLB's 2002 sunset review legislation, which amended Unemployment Insurance Code section 1095. The amendment added new subsection (v), which permits the Director of the Employment Development Department (EDD) to release information "[t]o enable the Contractors' State License Board to verify the employment history of an individual applying for licensure...."

This new authority will ultimately provide access to the single most valuable source of work experience verification: the records of EDD documenting prior employment and prior employment taxes paid. However, CSLB management reports there is insufficient staff in its Licensing Division to systematically access this data at this time. The Board and Registrar are solidly committed to use of this valuable verification tool, and plan to seek BCP authorization and/or budget augmentation through the new fee structure to enable Licensing Division personnel to access and use the new experience data.

During the Monitor's tenure, CSLB completed its pilot project (called the Public Records Service project, or PRS) involving the use of an outside public records information service to provide more comprehensive data for verification of employment experience claims. CSLB

[99] Cal. Stats. 2001, ch. 494. See Bus. & Prof. Code § 7124.6; see also Chapter III ("CSLB Developments") at subsection C.10 ("Public Disclosure and Outreach").

management has reported: "Over a ninety-day period, it was projected that 1,383 applications would be screened through the PRS to ascertain the veracity of applicant information....However, the PRS system was so slow and cumbersome that the total number of applications used for the project had to be drastically reduced." Ultimately only 228 applications were reviewed by the PRS system, with only 19% involving data requiring further scrutiny, and only one application out of the 228 resulting in a denial (as the result of a criminal conviction). CSLB and the Monitor agree that the most critical information can be obtained through the implementation of the fingerprinting requirement, and CSLB has no further plans for use of outside public records services.

F. Complaint Handling

Recommendation #10: Increase the Consumer Services Representative (CSR) staff to reduce caseloads to manageable levels and enable CSRs to perform more actual case mediation.

Status: Although the Board and CSLB management adopted this recommendation, implementation will be tied to resolution of the existing resource issues. As part of the impact of the fiscal year 2002–03 staff reductions, two CSR positions were eliminated entirely, and one Staff Services Analyst position was converted to a CSR position. At this writing, there are three vacant CSR positions, and four additional CSRs are temporarily absent due to long-term illness, out of a total of 29 authorized CSR positions. Thus, an increase in CSR staff could not be accomplished during this period.

However, CSLB management has implemented an improved business process for CSRs, aimed at reducing redundant and unnecessary tasks, expediting case handling, and—where possible—permitting CSRs to play a greater role in early case mediation efforts.

Recommendation #11: Institute comprehensive CSR training, including clear statewide case standards and restored interaction with investigators.

Status: The prior approach, detailed in the Initial Report,[100] of *ad hoc* CSR training (or no training at all) has been replaced by a commitment to systematic training of these important service representatives. CSLB management has designed and begun to implement a comprehensive CSR training program to address this recommendation, including a new curriculum of critical topics and new training materials.

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[100] *Initial Report, supra* note 6, at 80–81.

To address another aspect of this recommendation — restoring valuable CSR/ER interaction — CSRs now routinely attend staff meetings at the relevant ICs in order to develop relationships with investigators and gain further training on Enforcement Division activities and procedures and on substantive law.

Progress has also been made toward systematic and consistent statewide case processing standards for CSR operations. The present CSR vacancy rate of about 25% (resulting from the loss of a total of 7 CSRs in recent months out of a total CSLB staff of 29 CSRs) makes it impractical to implement the desired permanent case processing standards at this time. However, supervisors have partially addressed this goal by articulating clear performance goals for their CSR subordinates and all CSR staff are now aware of these goals. When the staffing situation is addressed, CSLB management is committed to developing clear statewide case standards for CSR performance.

Recommendation #12: **Improve and fully computerize the internal alert system** to ensure a rapid and coordinated response to major and repeat offender cases.

Status: The Board and CSLB management adopted this recommendation and implementation is under way. The computerized version of the old "alert board" system, known as the "Internal Alert System" or IAS, has now been made available to all CSLB field personnel through CSLB's internal computer network (the Virtual Private Network, or VPN). Staff is now working on the required programming to implement the full version of the IAS. The target date for completion of this project is April 30, 2003.

Recommendation #13: Greatly expand early resolution/mediation efforts made during the first 30 days of complaint processing (including reinstatement and expansion of an early mediation pilot project attempted in Norwalk in early 2001).

Status: The Board and CSLB management approved this recommendation and efforts are under way to implement increased early-term mediation of consumer and business complaints.

The staff of the Intake/Mediation Center (IMC) in Norwalk have been provided in-house orientation and training to improve their capacity to identify incoming complaints which may be suitable for face-to-face mediation with the goal of early resolution. CSLB management reports that its goal is to reinstitute procedures permitting CSRs to conduct "face-to-face" early mediation — bringing the complainant and the contractor together withing the first 30 days or so before positions become entrenched — which approach was successful in a pilot project in the Norwalk IMC in 2001.

CSLB management is actively seeking new procedures to implement the philosophy of early dispute resolution, in part as a means of reducing the volume of complaints to the ICs during this time of budget limits. The most promising of these is the statewide implementation of the "On-Site Negotiation" program, in which complainants, contractors, and CSLB staff meet at the work site to attempt prompt resolution of less complicated complaints. In initial pilot applications of the OSN process (involving more than 200 cases), CSLB staff achieved a settlement rate in excess of 90% for cases selected as likely to be appropriate for early resolution. The OSN program has now been implemented statewide. In addition, efforts are under way to assign an ER from each IC to participate in the program, both to assist IMC staff in identifying appropriate complaints for this process and to provide support for CSRs conducting the negotiations.

Recommendation #14: Improve the telephone information system for complainants to promote prompt access to staff, and **improve the consumer complaint form** to promote understanding and ease of use.

Status: Improvements to the CSLB telephone system and complaint form were authorized by the Board and CSLB management.

However, and not surprisingly, public telephone access worsened appreciably when staff reductions began to take full effect and when call volume grew. Calls to CSLB's Call Center have increased and available response staff has decreased, to the point where 118,413 "busy" calls were registered by CSLB's phone system in January 2003, up from only 16,983 in July 2002 (before the staff reductions took effect).

CSLB has responded by acquiring a new computerized telephone system, dubbed the Automated Phone Response System (APRS). Implementation will occur in four phases and is scheduled for completion by December 31, 2003. Phase 1, completed in February 2003, established a toll-free number (800-321-2752) allowing consumers to reach a central system and choose from a response menu. The APRS system can sort and forward calls to the appropriate IMC based on the caller's area code. Phase 2, scheduled for April 1, 2003, will enable the consumer to receive a faxed complaint form. Subsequent phases will enable the system to direct calls to the appropriate Case Management office, and will ultimately direct callers to the appropriate IC using the caller's complaint number.

Addressing the second component of this recommendation, CSLB staff have redesigned the CSLB complaint form for improved clarity and ease of use. The new form is now available to the public via CSLB's Web site, permitting downloading and printing of the form for immediate use.

Recommendation #15: Eliminate career ladder barriers for Consumer Services Representatives and Program Technicians.

Status: Responding to this recommendation, CSLB management has reconstructed its internal protocols for career development for both CSRs and Program Technicians, so that employees in either category have a more clearly defined and more realistic career path toward advancement within the Enforcement Division personnel structure. Of even greater symbolic and practical significance, within the past three months two CSRs have actually been promoted to ER I positions, sending an enormously positive signal that CSRs can and should aspire to advancement within the Enforcement Division.

G. Investigations

Recommendation #16: Increase the CSLB peace officer staff from three to a minimum of 8–10 to improve criminal and civil investigative capabilities.

Status: In October 2001, the Board and CSLB management embraced the general concept of this recommendation, which proposed a modest expansion in the peace officer staff to permit improvements in criminal and civil investigations and enforcement work. However, the increase in staff proposed here, and the necessary reclassification of staff to peace officer status, would require additional resources and Department of Personnel Administration approval. Due to the presence of other priorities at a time of limited resources, CSLB has tabled further consideration of this proposal until the preconditions for its implementation are present.

Recommendation #17: Increase the Enforcement Representative staff sufficiently to reduce caseloads and to staff two or more "major fraud" strike forces (each with peace officers assigned) for rapid deployment on major cases.

Status: At the October 2001 Board meeting and subsequently, CSLB and its management have enthusiastically supported an increase in Enforcement Division resources in general, and this recommendation's proposal of increased ER staff in particular. CSLB commitment to this concept was a key component of the Board's support for SB 1953 (Figueroa), which provided authorization for fee increases of up to 20% to fund enhanced enforcement work. However, resource constraints have prevented implementation of this recommendation for the present. As a result of the hiring freeze and the 2002–03 state budget, a total of 12 ER positions have been eliminated; as of March 10, 2003, an additional 12 ER positions are vacant, representing a decline of more than 20% in ER staff from 1999 levels.

Progress on this recommendation must await additional resources; however, the vital precondition for fulfilling this goal — the authorization for increased fees — is now in place. And the Board and CSLB management have indicated that increases in enforcement staff will be among the first priorities when the new fee authority is implemented. Increased ER staff will permit the reduced caseloads and reorganized investigator teams contemplated in this recommendation.

Recommendation #18: Improve and regularize investigator training, with greatly increased emphasis on criminal and civil enforcement investigation techniques (including systematic professional training on evidence law, search and arrest warrants, administrative subpoenas, witness interviews, financial records, and asset freeze/forfeiture).

Status: Current Enforcement Division management has replaced the prior approach to investigator training, detailed in the Initial Report,[101] with a philosophy of systematic and comprehensive training of ERs. The preliminary stages of this new training approach have now been completed. The ER training plan and curriculum have been revised to include greater emphasis on criminal and civil enforcement, in addition to administrative enforcement, of applicable state law.

As envisioned by this recommendation, CSLB investigators now regularly attend California District Attorneys Association (CDAA) meetings, case roundtable discussions, and training conferences in order to more fully integrate the training of CSLB investigators with the training of state and local prosecutors handling these cases. In May 2002, the Chief of Enforcement and nearly all CSLB investigative supervisors attended and participated in CDAA's annual three-day Consumer Protection Prosecution Conference, which provides training for most of the state and local prosecutors enforcing laws relevant to CSLB. This conference, and other training programs sponsored by CDAA, will be ongoing vehicles for improved ER training. Individualized and group training has also been arranged with staff from the Los Angeles City Attorney's Office and the Santa Clara District Attorney's Office, among others.

Recommendation #19: Ensure early investigation coordination with state and local prosecutors in appropriate cases by jointly developing and implementing an investigative protocol for CSLB investigators and prosecutors' offices.

Status: The Board and CSLB management have adopted this recommendation, and CSLB supervisors are implementing changes in process to take advantage of the benefits of early case

[101] *Initial Report, supra* note 6, at 87-88.

coordination with state and local prosecutors. Investigators are now provided training and instructions to coordinate investigations with other law enforcement agencies, when certain criteria are met indicating benefit from joint work. The special investigations units within the remaining SWIFT teams are now acting as coordinators of the resources needed to respond to complex or high-visibility matters, resulting in better coordination of efforts with local law enforcement on major cases. This improved early coordination has resulted in numerous new case initiatives undertaken by joint teams of staff from CSLB and local prosecution offices, yielding both high-profile criminal filings and high-impact civil unfair business practices enforcement actions, such as the recent Drain Patrol action filed in December 2002 by a consortium of northern California district attorneys working in conjunction with CSLB investigative staff.

Recommendation #20: Restore sufficient office facilities for investigators for interviews, meetings, and cooperation with colleagues, and reevaluate and apply "home-officing" only on an individualized basis.

Status: Consistent with this recommendation, CSLB management initiated a statistical evaluation of the results of the then-existing mandatory "home-officing" program and determined to continue to permit home-officing only on a individual-by-individual basis and only where it improves the overall efficiency of the agency's operations. CSLB management reports that insufficient office space exists today to provide individual offices for all investigative staff. However, a significant portion of field investigative staff can now be accommodated, and additional resources will permit full implementation of this recommendation, including available individual office space for all those ERs who work best within the structure of the office environment.

Recommendation #21: Update workload standards for investigators, to reflect the changed nature and increased complexity of current casework, by conducting a new workload standards study and implementing appropriately changed standards.

Status: The Board approved this recommendation and CSLB management has begun a process that will entail systematic review of staffing levels and appropriate workload standards. An initial statistical study of complaint handling production has been completed, which provided information on average complaint handling ability and realistic work output expectations. ER supervisors have provided their subordinates with individual productivity goals and expectations. It is anticipated that formal workload standards will be implemented once the investigator staffing situation has stabilized.

H. Prosecutions

Recommendation #22: Establish more consistent statewide case referral criteria to improve enforcement uniformity, and monitor referral patterns to ensure improved compliance.

Status: The Board adopted this recommendation in October 2001 and CSLB enforcement management has taken steps to establish greater consistency in case referrals to the Attorney General and local prosecutors. The *Investigative Procedure Manual* has been updated to include Enforcement Monitor materials on case referrals and the relevant recommendations from Monitor reports. Annual quality assurance audits have been conducted to monitor referral patterns to ensure more consistent and appropriate referrals for administrative, criminal, and civil actions. And Case Management staff are now implementing an improved tracking system with regard to Attorney General administrative matters to ensure that referrals there are appropriate and that allegations directed to the Attorney General are properly substantiated.

Recommendation #23: Improve and standardize cooperation between CSLB enforcement staff and state and local prosecutors involved in administrative, criminal, and civil prosecutions.

Status: Since Board and CSLB management adoption of this recommendation in October 2001, the Monitor has observed dramatic improvements in early and systematic cooperation between CSLB investigators and local prosecutors in criminal and civil enforcement matters involving contractors.[102] Under the leadership of Enforcement Chief David Fogt and his supervisors, CSLB investigators are now trained and instructed to coordinate investigations with other law enforcement agencies, when appropriate case criteria are met. And units of the SWIFT teams are now used to better coordinate efforts with local law enforcement on high-impact or otherwise serious cases.

CSLB field investigators now regularly attend California District Attorneys Association (CDAA) bi-monthly case roundtable meetings in northern and southern California, using this forum to exchange case leads and information on patterns of violations and on pending cases. Other venues where CSLB staff have participated during this period include the San Diego District Attorney's Consumer Fraud Task Force, the San Diego District Attorney's Insurance Premium Fraud Task Force, the Inland Empire Economic Crime Investigators Association, and the Transient Criminal Activity Seminar of the National Association of Bunco Investigators.

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[102] See Chapter III ("CSLB Developments") at subsection C.9 ("Prosecutions").

The relationships developed in these venues have resulted in increased joint case work on Enforcement Division sweeps and on complex and high-impact cases warranting criminal or civil enforcement action. As detailed in Chapter III above, this has resulted in a 63% increase in criminal case referrals to local prosecutors, and to a noteworthy increase in joint efforts on high-visibility civil unfair business practice prosecutions. High quality communications and relationship-building among investigators and prosecutors — both during cases and between cases — has paid real dividends in increased enforcement effectiveness.

Recommendation #24: Conduct a study of the present pattern of disciplinary bonds and initiate necessary action to ensure that disciplinary bond amounts are sufficient to promote public safety.

Status: In response to this recommendation, CSLB staff conducted a bond study to evaluate the existing disciplinary bond process now in place under Business and Professions Code section 7071.8. CSLB staff concluded that, as a general matter, the face amounts of these disciplinary bonds should be increased to more accurately reflect the extent of the consumer harm in the previous disciplinary actions and thus to provide better protection to subsequent customers of the disciplined contractors. CSLB is now implementing process improvements to ensure that bonds more accurately reflect the total financial injury at issue, up to and including the current statutory maximum of $75,000 (or $100,000 for pool contractors) where significant misconduct has occurred.

Recommendation #25: Improve prosecution of key aspects of contractor fraud and abuse by working with prosecutors to combine efforts and increase the investigation and criminal prosecution of: (a) excessive down payments (Business and Professions Code section 7159); (b) qualifiers on revoked/suspended licenses (Business and Professions Code section 7121.5); and (c) employment of unlicensed executives (Business and Professions Code section 7121). If necessary, seek appropriate legislation providing for true debarment from any form of employment in the construction industry for repeat or extremely serious law violations (similar to antitrust contractor debarment or three-strikes criminal statutes).

Status: This recommendation was adopted by the Board in October 2001 and has been enthusiastically implemented by CSLB management and staff. Enforcement Division Chief Fogt and his supervisors have trained and instructed field investigators to improve awareness of problems of fraud and abuse, the need to successfully prosecute violators of the down payment and revoked/unlicensed provisions, and the related need to flag culpable parties to prevent relicensure

of those convicted of crime. Quality assurance audits have been completed to ensure compliance with these new policies to heighten emphasis on criminal enforcement of these violations.

Working with the Enforcement Monitor and CDAA, CSLB staff have increased communication and cooperation with state and local prosecutors to improve mutual familiarity with case selection and filing criteria, as part of a bilateral effort to facilitate acceptance and filing of these types of cases by local prosecutors (see Recommendations #22 and #23).

The Enforcement Division has also undertaken to develop joint protocols, in the form of Memoranda of Understanding (MOU), with the Department of Industrial Relations (DIR) and the Department of Labor Standards Enforcement (DLSE) to provide for routine exchange of investigation information to promote license discipline by CSLB. In place now is the DIR agreement, which provides for California Occupational Safety and Health Agency (Cal-OSHA) referral to CSLB of completed investigations involving worker deaths or serious injuries, for the purpose of appropriate license discipline. A second such working agreement with DLSE is anticipated in April 2003 and will facilitate referral of completed investigations of contractors debarred from public projects for CSLB disciplinary action.

As noted above, this increased emphasis on referral of key criminal violations has contributed to the dramatic 63% increase in overall criminal prosecution referrals (both licensee and nonlicensee) by CSLB investigators (compared with the 2000–01 period), and to a similar increase in referral of licensees for criminal prosecution, which referrals have risen from 27 in all of FY 2000–01 to a projected 144 such referrals for FY 2002–03 (an increase of more than 400% in three years' time).

Recommendation #26: Promote increased use of judicial revocation of contractor licenses by educating judges and prosecutors regarding the authority provided by Business and Professions Code section 7106 and Penal Code section 23.

Status: The Board and CSLB management adopted this recommendation and efforts are under way to better employ this valuable but underutilized tool for expedited revocation of the licenses of those engaged in the most serious forms of contractor misconduct. CSLB staff met with the Attorney General's Licensing Section staff in January 2002 and finalized an agreement that the Department of Justice would provide a Deputy Attorney General to represent CSLB in civil and criminal proceedings against contractors in efforts to invoke Penal Code section 23 and Business and Professions Code section 7106. The CSLB *Enforcement Manual* has been updated to include

training and instructions on wider use of these provisions for summary revocation. And CDAA and CSLB spokespersons are engaged in a campaign of further education of state and local prosecutors as to these tools, using meetings and training programs sponsored by CDAA and other organizations. The Monitor has learned of increased use of summary revocation in prosecutions in both northern and southern California as the result of this campaign.

I. Public Disclosure and Public Outreach

Recommendation #27: Improve public disclosure of complaints and actions against contractors, beginning with passage and implementation of SB 135 (Figueroa), but also determining the feasibility of disclosure of other public information such as criminal convictions, civil judgments, and bankruptcies.

Status: Effective July 1, 2002, SB 135 (Figueroa) provides for increased public disclosure of specified information about CSLB complaints that "have been referred for investigation after a determination by board enforcement staff that a probable violation has occurred, and have been reviewed by a supervisor, and regard allegations that if proven would present a risk of harm to the public and would be appropriate for suspension or revocation of the contractor's license or criminal prosecution." CSLB now operates its information system making public the date, nature, and status of all complaints on file against a licensee under the following criteria: (1) administrative law violations are disclosed when an ER has determined that a probable violation occurred, which if proven would subject the licensee to license suspension or revocation; (2) criminal violations are disclosed when accepted for filing by a prosecutor; (3) outstanding construction-related civil judgments are disclosed when forwarded to CSLB; and (4) bankruptcy filings are disclosed when substantiation is supplied by a licensee to discharge an outstanding civil judgment known to CSLB. (For CSLB policy regarding criminal history disclosures, see discussion at Recommendation #8.)

Recommendation #28: Simplify and clarify the CSLB Web site, explaining technical terminology and providing more user-friendly access to complaint disclosure information.

Status: The Board has adopted this recommendation and CSLB has initiated the first of the anticipated Web site improvements. CSLB staff have tentatively set April 30, 2003, as the target completion date for the interactive voice response (IVR) service, which operates in an interdependent fashion with the Web site. When fully operational, this system will support easier access to CSLB disclosure information. Staff have also completed the initial draft of a user-friendly glossary of technical terms, including the most common legal terms and acronyms, which will be

available to help consumers better understand the Web site disclosures and the CSLB process. Other efforts at simplifying access to the site, and simplifying information available there, are planned.

Recommendation #29: Add appropriate information to Web site regarding unlicensed contractors with substantial numbers of complaints or actions.

Status: While both the Board and the Registrar support the concept of increased public disclosure of information useful to consumers in selecting contractors, CSLB has determined that further study is needed to determine the feasibility and liability implications of posting identifying information relating to nonlicensees on the CSLB Web site.

Recommendation #30: Add a Web site link to Better Business Bureau Web sites, with an appropriate disclaimer that CSLB does not approve, endorse, or take responsibility for information at those sites.

Status: The Board approved this recommendation in October 2001 and, on May 1, 2002, the Better Business Bureau's Web site was successfully linked to CSLB's home page. Under the category of "Important Links," the CSLB Web site now provides access to the BBB site and other consumer protection organizations as well.

Recommendation #31: Promote the fraud alert system by increasing the use and visibility of the system for alerting other law enforcement agencies and the public.

Status: The Board adopted this recommendation and the Enforcement Monitor has now acquired approval from the CDAA Consumer Protection Committee for specified access, through designated personnel under the control of the Enforcement Chief, to CDAA's Consumer Protection Information Network and, as appropriate, the related Consumer Fraud Index. Use of these systems will help CSLB staff identify contractor-related fraud matters and will improve communications with California fraud prosecutors on matters of mutual concern. Information so acquired can be used, with appropriate safeguards, to augment CSLB's Fraud Alert System. CSLB plans to procure the appropriate contract to permit access to this system as part of its FY 2003–04 budget.

J. Consumer Remedies

Recommendation #32: Increase bond amount to a realistic contemporary level (a minimum of $15,000), and revise bonding and/or payment requirements for home improvement

projects to address "double payment" and mechanic's lien problems (including either required payment bonds for home improvement projects in excess of $10,000, mandatory joint control or joint signature payments, or a similar alternative).

Status: The Board adopted this recommendation in principle in April 2002 and the Monitor assisted in drafting and in obtaining passage of SB 1919 (Figueroa), which amended the contractor's bond requirements of Business and Professions Code section 7071.6.[103] Under the new bond requirements, as of January 1, 2004, a licensee must have on file a contractor's bond in the amount of $10,000, of which amount $2,500 is reserved exclusively for consumers. Effective January 1, 2007, the sum of the required bond will be $12,500, with $5,000 of that amount reserved exclusively for consumer use. For the first time, beginning next January, California consumers will have exclusive access to a portion of each contractor's bond, in addition to existing access to the balance of each such bond.

Recommendation #33: Promote consumer enforcement of legal limits on excess down payments by requiring a clear and conspicuous consumer disclosure on all home improvement contracts regarding maximum down payments pursuant to Business and Professions Code section 7159(d) (*e.g.*, "DO NOT SIGN THIS CONTRACT, AND DO NOT MAKE ANY PAYMENT, IF YOUR CONTRACTOR IS ASKING YOU FOR A DOWN PAYMENT OF MORE THAN 10% OF THE TOTAL CONTRACT PRICE OR $1,000, WHICHEVER IS LESS").

Status: SB 30 (Figueroa) has been introduced to address this recommendation by revising section 7159, both in structure and content, to clarify the requirements of home improvement contracts and to simplify and improve the disclosure of vital consumer information (see Appendix E). Among the revised consumer disclosures proposed in SB 30 is a simple and clear disclosure to this effect.

Recommendation #34: Require a home improvement contractor's bond for the exclusive benefit of consumers, as part of the home improvement contractor certification program.

Status: The Board adopted this recommendation in principle in April 2002 and the Monitor assisted in drafting and obtaining passage of SB 1919 (Figueroa), which amended the contractor's bond requirements of Business and Professions Code section 7071.6. Under the new bond

[103] Cal. Stats. 2002, ch. 1123, § 2; see Appendix B.

requirements, and for the first time, California home improvement consumers will have exclusive access to a portion of each contractor's bond, while retaining existing access to the balance of each such bond. Consumers will have exclusive access to $2,500 of the $10,000 bond required of all contractors as of January 1, 2004, and will have exclusive access to $5,000 of the $12,500 bond required as of January 1, 2007.

Recommendation #35: Provide homeowners a good faith payment defense against lien claims in home improvement contracts of $25,000 or less.

Status: The Board adopted this recommendation in principle in April 2002 and Assemblymember John Dutra introduced AB 568 during the 2002 legislative session to enact such a provision. AB 568 ultimately failed passage, and Assemblymember Dutra has introduced AB 286 during the 2003 legislative session, containing substantially similar provisions, in a further attempt to provide for this form of good faith payment defense against lien claims in smaller home improvement contracts.

Recommendation #36: Clarify the payment standard applicable to the contractor's license bond.

Status: While the Board has supported the concept of clarification of the payment standard applicable to contractors' bonds, the Department of Insurance — which is charged with primary responsibility to regulate insurance products, including surety bonds — has not yet taken further action on determining the correct legal standard for such payments. CSLB has currently tabled this proposal while it awaits further clarification from the Department of Insurance and the legislature.

Recommendation #37: Provide a new lien expungement provision to assist consumers with unjustified and void liens.

Status: This proposal was supported by the Board at its April 2002 meeting and is now the subject of AB 447 (Vargas), which would provide for automatic expungement of invalid and void liens from county property records, with the goal of clearing title for innocent consumers without their having to suffer the burden and expense of taking legal action to remove invalid liens from public records.

K. Home Improvement Contracts

Recommendation #38: Promote clear and effective home improvement contracts by revising and simplifying the elements of those contracts, including the state-mandated disclosures, through legislative change and promulgation of model contract forms, as appropriate.

Status: SB 30 (Figueroa) has been introduced to address this recommendation by revising section 7159, both in structure and content, to clarify the requirements of home improvement contracts and to simplify and improve the disclosure of vital consumer information (see Appendix E).

Recommendation #39: Revise Business and Professions Code section 7159 to clarify the law governing home improvement contracts and disclosures, and to ensure all important consumer information is required in the contracts themselves.

Status: SB 30 (Figueroa) has been introduced to address this recommendation by revising section 7159, both in structure and content, to clarify the requirements of home improvement contracts and to simplify and improve the disclosure of vital consumer information (see Appendix E).

Recommendation #40: Improve consumer protection and contractor compliance by resolving the current practical problems of service and repair contracts, including, as appropriate, separately defining and regulating service and repair work as distinct from home improvement contracting.

Status: SB 30 (Figueroa) has been introduced to address the practical problems of service and repair contracts and to provide for a higher dollar threshold and revised disclosure requirements for such contracts (see Appendix E).

Chapter V

FUTURE ISSUES FOR THE CONTRACTORS STATE LICENSE BOARD

The two-year Monitor project has considered many of the issues of greatest importance to the long-term success of the CSLB enforcement program, and made a total of 40 recommendations relating to nine principal areas of concern. However, in the course of its work, the Monitor staff has identified a number of other issues with significant implications for the future success of this important state regulatory agency.

Californians are fortunate to have the confluence of energetic leaders and commitment to the public interest found today in the Department of Consumer Affairs, the state Legislature, the Board and management of CSLB, law enforcement, consumer organizations, and construction industry groups. To take best advantage of these valuable resources, the Monitor offers the following list of issues for future consideration by all those who wish to see CSLB become a model of effective and enlightened business regulation.

The list is organized generally around the principal areas of concern addressed in the four Monitor reports. No attempt has been made to prioritize among these ideas, nor does an idea's presence here necessarily indicate the Monitor endorses it. Rather, our purpose is to memorialize ideas, both large and small, for future consideration as time and resources permit.

Mission and Mandate (Including Resources Issues)

1. Implementation of fee increase authorization.

A watershed development in the long-term prospects for CSLB resources occurred when the Governor signed SB 1953 (Figueroa), with its authorization for approximate 20% increases in CSLB license fees. As CSLB is funded almost exclusively by contractor license fees, and those fees were

last adjusted effective January 1, 1994, this authorization was long overdue. In the past nine years, CSLB has experienced a substantial reduction in inflation-adjusted per licensee funding roughly equal to the 21.2% increase in the California Consumer Price Index.

Even without this apparent reduction in inflation-adjusted resources, the California Legislature and public now demand from CSLB increased levels of service speed and service quality. The Legislature has established a statutory goal of six months for the full investigation and handling of most CSLB complaints, and one year for the most complex fraud matters.[104] CSLB never consistently met such a stringent service standard at its previous resource level, and the agency cannot do so today in light of recent resource limitations.

Increased efficiency in the CSLB business process has been achieved, and a concerted effort to improve that process further is under way now. However, as a realistic matter, improvement in the level of public service sufficient to meet the reasonable demands of the Legislature and the public will not occur until CSLB is able to implement its new authority and obtain the resources it needs to hire and train an adequate complaint and investigative staff. While we all acknowledge the first priority of the state's budget crisis, CSLB and the Department of Consumer Affairs should seek the first reasonable opportunity, consistent with the larger budget plans, to implement this new authority and improve CSLB's enforcement performance.

2. Recruitment and retention problems.

As documented in this and previous reports,[105] CSLB suffers from a substantial competitive disadvantage *vis a vis* other agencies with regard to the recruitment and retention of its valuable employees. Federal agencies, and some state and local enforcement offices as well, have the capacity to offer higher salaries and better benefits for such vital staff as CSLB's investigators. Many of those agencies have the ability to offer geographical adjustments ("pay differentials") that compensate for work in locations with unusually expensive housing or other costs of living.

This problem is especially acute for CSLB in retaining experienced investigators in its San Francisco and Oakland Investigation Centers. A principal reason for the continuing staff shortages in those offices is the high cost of living in the Bay Area and the capacity of competing law enforcement agencies to offer more competitive pay scales.

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[104] Bus. & Prof. Code § 7011.7.

[105] *See supra* Ch. III at subsection C.6 ("Investigations").

As fiscal circumstances permit, CSLB should give prompt consideration to working with the Department of Consumer Affairs and the Department of Personnel Administration on a strategy to revise the pay and benefit scales of CSLB investigators and other staff, especially in high-cost areas of the state.

3. Adoption of modern agency name.

In light of the current priorities, the Monitor understands the Board's decision to table for the present the issue of a new and more accurate name for the Board. However, at the earliest possible opportunity, consideration should be given once again to incurring the one-time costs necessary to change the name "Contractors State License Board," which is at best an outdated description of a dynamic modern agency and at worst a misleading indicator of the agency's functions.

The overwhelming trend among CSLB's sister agencies is the modernization of agency names to reflect the more general missions of DCA regulatory bodies. In the past 25 years, no fewer than 17 of the current 38 DCA boards and bureaus have modernized their names, usually to delete the term "examiners," "examining," or "registration," which were analogous to the term "license" in CSLB's name. Included among these are most of our boards regulating the health sciences, as well as those governing architects, engineers, court reporters, geologists, and others. For example, the Medical Board of California — an agency with a closely analogous mix of licensing and enforcement duties — took action to change its name from "Board of Medical Examiners" to "Board of Medical Quality Assurance," to its current more accurate and general name.

In the same spirit, CSLB should strongly consider "Contractors Board of California" or a similar name of a more general nature, in order to better describe itself as a modern consumer protection agency with both licensing *and* enforcement functions. The new name would improve accuracy for the benefit of the industry and the public, and would symbolize in an important way the coming of a new era for this agency.

Licensing Issues

4. Immediate implementation of fingerprinting and EDD information access.

The Monitor considers the new fingerprinting requirement to be one of the major accomplishments of this project, and a significant improvement in CSLB's ability to protect the public from fraud and abuse.

CSLB is charged with protecting the public as its highest priority, and it must be able to verify the identity of an applicant to whom it is giving a state occupational license and the accuracy of criminal history information asserted on the application form. Fully 23 other DCA regulatory agencies (and many other non-DCA occupational licensing agencies) have used fingerprinting in connection with their licensing and/or enforcement activities for many years. A fingerprinting requirement will not affect the vast majority of legitimate applicants who truthfully complete their applications; it will simply enable CSLB to detect those who lie on their applications, and it may deter individuals who would pose a substantial threat to the public from even applying for a license.

Similarly, access to EDD employment history information is a cost-effective and reliable way to dramatically improve CSLB's modest ability to verify the experience claims of license applicants. As with fingerprinting, this will bring the dual benefits of ability to detect lies and deterrence of those who might be tempted to lie.

The Monitor recommends that CSLB seek ways to implement both of these valuable screening devices by January 1, 2004, or as early as practicable thereafter. No clearer signal could be sent of CSLB's resolve to improve its protection of the public.

5. Structure and philosophy of California contractor licensing.

California licenses contractors based largely on the concept of licensing entities, rather than individuals, and our licensing approach provides for a highly complex system of specialized classifications and categories. At some point, CSLB and its constituents should reevaluate the structure of this system and the regulatory philosophy behind it, to determine if this is the best way to regulate this important occupation.

Examining the focus on entities rather than on individuals. CSLB is one of the few occupational licensing agencies in the Department of Consumer Affairs that licenses businesses (frequently operating under fictitious names) as opposed to individuals (easily identifiable by name and/or Social Security number). The licensure of businesses as opposed to individuals permits dishonest individuals to move from license to license without detection by either the Board or the most diligent consumer attempting to perform a background check (as urged by CSLB on its Web site). The licensure of businesses run by a "qualifying individual" often means that the qualifying individual sits at a desk in an office, and it is only the agents of that "qualifying individual" who are actually dispatched to the homes of consumers. These agents or employees are often not licensed or checked in any way. And even the new fingerprinting requirement will apply only to the licensee

"qualifying individual" and not to many of the employees or agents of that individual who gain access to the homes and personal possessions of consumers.

Between concerns over easy "mobility" of fraud artists, and equal concerns over the absence of scrutiny of many of those with direct public contact, there are sufficient grounds to reconsider whether individual licensure, or some other variation on this concept, might be preferable.

Examining the complexity of the current licensing system. The Board's licensing system is complex in other ways. CSLB regulates 284,000 licensees — more than any other DCA agency except one (the Board of Barbering and Cosmetology). CSLB does not issue just one type of license; rather, it licenses general engineering contractors, general building contractors, and over 40 categories of specialty contractors — more than any other agency in DCA. The Board must develop and constantly revalidate trade-specific licensing examinations for all these categories of contractors — an extremely expensive and time-consuming proposition. Licensing technicians must schedule applicants for examinations and check to ensure they satisfy the Board's minimal "financial solvency" requirement. Additionally, CSLB registers home improvement salespersons and certifies home improvement contractors. Further, in order to obtain or maintain a license, a contractor must post a bond. Contractors with employees must have adequate workers' compensation to cover those employees. Failure to satisfy these requirements results in automatic suspension of the license. These conditions of licensure require instantaneous communication between CSLB and private insurance companies; they also require immediate updating of CSLB's Web site so that consumers can be informed of the suspension of a license due to failure to maintain the bond or workers' compensation insurance. And unlike other occupational licensing agencies, CSLB is not assisted by a comprehensive nationwide database of licensing/disciplinary information from other states, to enable it to detect California applicants with histories of misconduct in other states.[106]

These aspects are just the tip of the extraordinarily complex licensing iceberg at CSLB. And this complex system is administered by a diminishing and beleaguered Licensing Division staff,[107] which is so heavily overloaded with the current complexities that it cannot now take advantage of truly valuable new screening tools of fingerprinting and experience verification — both of which are extremely important to public protection.

CSLB should reexamine its complex licensing program — perhaps with the assistance of an outside consultant (who has the technical expertise the Monitor does not possess) — with an eye

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[106] *See* further discussion of inter-agency information exchange in this chapter, *infra*, at # 6.

[107] *See supra* Ch. III at subsection C.4 ("Licensing System and Requirements").

toward streamlining and modernizing that program. An ideal licensing system should ensure that those who have direct contact with consumers and/or their money are competent and honest, or at least have no record of incompetence or dishonesty. Such a system should retain and strengthen aspects of current licensure that add demonstrable value to the Board's consumer protection mission, but should shed or update outdated steps, requirements, and classifications.

6. Information-sharing agreements and systems with contractor regulators in other states.

As mentioned above, CSLB — in issuing licenses to over 40 classifications of contractors — does not enjoy the benefits of a comprehensive nationwide database containing information on contractors who have been licensed in other states. By contrast, in licensing physicians, the Medical Board of California is able to rely on the National Practitioner Data Bank (NPDB), a nationwide database of information on physicians and certain other health care professionals operated by the U.S. Department of Health and Human Services. The NPDB contains licensing and disciplinary information from all other state medical boards, hospital disciplinary actions taken against physicians, and malpractice insurance payout information. CSLB has access to a minimal "Disciplinary Data Base" compiled by the National Association of State Contractors' Licensing Agencies (NASCLA), of which only 32 state boards are members. Only revocation information is available from this database, and the reliability and timeliness of that information depends on voluntary reporting from an incomplete list of state boards (not all of which license all the categories of contractors licensed by CSLB). CSLB checks the NASCLA database on licensure applicants, but has no guarantee that the information is complete and/or timely.

The Monitor means no disrespect to NASCLA, which is a nonprofit corporation attempting to serve as a clearinghouse of information for contractor licensing agencies and trade associations. And the Monitor knows that CSLB probably has little influence on the way NASCLA runs its database. However, it would behoove CSLB and the California public if the Board — if it is dissatisfied with the quality, timeliness, and/or level of detail available through NASCLA's database, and resources permitting — were to initiate and enter into memoranda of understanding with adjacent sister states (especially including Nevada, Arizona, and Oregon) for the purpose of exchanging licensing and enforcement information in a prompt and complete manner.

7. The current home improvement contractor certification program.

CSLB's current "Home Improvement Contractor Certification Program" is largely nonsubstantive and may in fact be misleading to consumers. Business and Professions Code section

7150.3 establishes a "certification program" for contractors engaging in home improvement work. To achieve this certification (which is now required for all contractors performing home improvement activities), a licensee must take and pass a 20-question, open-book, multiple-choice examination that is available on the Internet. The exam is not trade-specific; it merely tests licensees' knowledge of the requirements of Business and Professions Code section 7159. Exam preparation materials are also available on the Internet; a licensee may take the exam an unlimited number of times until he/she passes. The extent to which passage of this exam improves the competence of home improvement contractors is dubious, and has not been satisfactorily measured or analyzed to date. However, the conferral of "certification" (which, like "licensed, bonded, and insured," is now trumpeted by some contractors in their advertising) based upon passage of such an exam implies to consumers that a contractor has survived enhanced screening and achieved superior status, when such is clearly not the case.

CSLB should carefully evaluate the content and impact of this certification prior to recommending any extension of the program's sunset on January 1, 2004. Consideration should be given to expanding the requirements and content of this certification program, which in fact addresses an area of substantial consumer protection concern. In the alternative, the program can be allowed to sunset if close analysis indicates it provides no material protection to the public, and no substantial improvements can be initiated.

Investigations

8. Contractor file access authority.

In our interviews with them, prosecutors, investigators, and consumer services representatives expressed consistent frustration with the limitations of CSLB's investigative authority, especially as regards the ability to move very quickly once an initial indication of a large-scale fraud or scam emerges. By way of tragic example, the CSLB investigators and investigators and auditors from the San Diego District Attorney's Office arrived weeks too late to seize or inspect the files and records of the defunct Crown Builders and its owner Mark Lee Ross.[108] The incriminating documents were long gone, and an estimated 70 families had been bilked out of $50,000–$130,000 each.

Immediate access to home improvement contractor files and records, under appropriate standards and with appropriate safeguards, would greatly increase both the chances of apprehension

[108] *Initial Report, supra* note 6, at 76, 108.

of a major fraud artist like Ross, and the opportunity to avert such fraud in the first place. CSLB should consider whether it should seek investigative authority — similar to that of other licensing agencies such as the Department of Motor Vehicles — for CSLB investigators to have direct and immediate access to specified categories of home improvement contractor files or records, such as records of payments received from homeowners and disbursed to subcontractors or suppliers. Full consideration should be given to due process issues and appropriate standards and safeguards. But, as with DMV and other agencies, licensure sometimes brings the obligation to provide access to specified records to the licensing agency on reasonable demand. Such access here would greatly enhance CSLB's ability to protect the public.

9. Alert system for warning signals of business fraud or failure.

Several prosecutors and investigators, as well as CSLB staff, noted that major financial fraud and business failure cases, such as Crown Builders and Pelican Pools, often provide important warning signals that might permit an alert agency to avert massive consumer harm. In particular, clear danger signs are present when a contractor begins to operate his/her business in "Ponzi" scheme fashion, using new deposits entirely to keep the business afloat rather than to acquire the promised materials and labor. A pattern of payment problems to third-party subcontractors and suppliers often indicates imminent business collapse and consumer losses.

Many of the worst major fraud cases could have been averted if a system had been in place which could appropriately track such indicators as creditor collection actions and other patterns of problems in payments to third parties. Consideration should be given to the feasibility of such a tracking or early warning system as a means of averting large-scale business frauds.

Prosecutions

10. CSLB and Attorney General's Licensing Section.

The Initial Report and the three succeeding reports have documented the performance of the Attorney General's Licensing Section and the status of the working relationship between the Licensing Section and CSLB.[109] All parties acknowledge good faith and good efforts on all sides, but there is clearly room for improvement in the cost, speed, and effectiveness of the administrative enforcement system as presently constituted.

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[109] *Initial Report, supra* note 6, at 91–92; *Second Report, supra* note 7, at 44; *Third Report, supra* note 8, at 47–48; *see infra* Ch. III at subsection C.9 ("Prosecutions").

Several observations support the need for a closer and better working relationship between CSLB investigators and managers and Licensing Section deputy attorneys general (DAGs). Construction and design matters are often highly complex and technical, and specialized knowledge is often needed to handle these cases effectively. The Contractors State License Law is one of the most complicated, most interpreted (through judicial opinion), and — in places — most antiquated statutes in place today; specialized experience in the application of the statute and its implementing regulations is essential to effective and efficient enforcement. The present system of general DAGs handling CSLB matters along with many other types of licensing enforcement matters does not address this concern, and must inevitably make it more difficult to process cases quickly and achieve optimum results.

Similarly, CSLB staff often receives inadequate legal guidance in preparing matters for administrative prosecution. CSLB investigators effectively function alone, receiving guidance on the legal aspects of their work only from their investigative supervisors (who, although very experienced, are not attorneys) and occasional training courses. Even though they are a key ingredient in a critical law enforcement function, CSLB ERs rarely if ever interact with or receive any legal advice or guidance from the attorneys who may eventually prosecute the cases they are investigating.

In other more traditional prosecutorial settings, prosecutors and investigators work together in teams from the day a case is assigned. The attorney is immediately involved in the case and can guide (if necessary) the gathering of evidence that will prove the key elements of the offense; further, the prosecutor is available to prepare subpoenas or secure search warrants to prod uncooperative suspects. Rather than the attorney/investigator "teamwork" structure that typifies the law enforcement process at most public prosecutors' offices, the enforcement process at most California administrative agencies — and CSLB is no exception — involves (1) investigators with no legal guidance investigating a case, preparing the file, and "handing it off" to (2) attorneys functioning with little or no investigative support. Although the "hand-off" system may work adequately in simple street crime-type cases, it does not work well in complex matters and/or white collar crime cases of the sort frequently handled by CSLB — where time is of the essence, and where critical documentary evidence may be destroyed or lost if not immediately secured and properly handled.

In light of these factors, the Monitor concludes that consideration should be given to the creation of a specialized prosecution unit within the Licensing Section to focus on design/construction cases, similar to the specialized Health Quality Enforcement Section (HQES) presently dedicated to administrative cases for the Medical Board and allied health licensing boards.

The Medical Board experience is meaningful precedent here. Created in 1991,[110] HQES is a unit of the Attorney General's Office consisting of deputy attorneys general who specialize in physician/health care provider discipline matters working directly with and for the Medical Board of California and related boards. This system provides the kind of specialized enforcement assistance, and beneficial mutual training, that is missing from the present process for CSLB.

The HQES approach provides the direct contact and coordination that works so well in other areas of white collar crime enforcement. For example, HQES has created the "Deputy in District Office" (DIDO) program, in which HQES prosecutors work from MBC district offices several days a week in order to provide early review of incoming cases and legal guidance to investigators. HQES DAGs become involved in subpoena enforcement to assist investigators in obtaining requested medical records; review all completed investigations before their referral to HQES (to ensure that all "loose ends" are tied up and the matter is ready for pleading); and draft initial pleadings in investigations being transmitted from district offices to HQES for accusation filing. Among other positive results, the DIDO program has dramatically cut the time it takes HQES DAGs to file MBC accusations from well over nine months to approximately 30 days.

A unit of prosecutors specializing in CSLB cases could establish better, more reliable, and more constructive working relationships with CSLB investigators in their geographic areas, leading to better-trained investigators and to higher-quality investigations.

The benefits of close cooperation, joint case work, and mutual training are substantial and have been proven in a closely analogous regulatory setting. Careful consideration should be given to creating a specialized unit within the Attorney General's Office, perhaps devoted to all the design and construction boards (including the California boards regulating architects, engineers, and geologists), to better serve the administrative enforcement needs of CSLB and the public.

11. Role of Registrar in disciplinary decisionmaking.

As noted in the Initial Report, the decisionmaking aspect of CSLB's enforcement program is unique from enforcement decisionmaking at most other occupational licensing agencies in one respect: Board members do not participate in agency enforcement decisionmaking.[111]

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[110] Gov't Code § 12529 *et seq*.

[111] *Initial Report*, *supra* note 6, at 65.

At most other occupational licensing agencies that conduct enforcement pursuant to the Administrative Procedure Act (APA),[112] board members who are appointed by elected officials participate directly in the enforcement process. Usually, they do not preside directly over evidentiary hearings — that function is delegated to administrative law judges (ALJs) from the Office of Administrative Hearings. However, at other agencies, board members review proposed decisions of those ALJs and determine whether to adopt them as their own; the board — not the ALJ — makes the "final agency decision" that is then subject to judicial review (should the licensee seek review). Because board members are the "final judges" in enforcement cases, and because their decisions in these cases is required to be based on evidence that has been admitted into the record by the ALJ (as opposed to ex parte communications and other forms of off-the-record information), board members at other APA agencies must be insulated from public comment at board meetings and from other communications that pertains to pending cases.

CSLB conducts its enforcement proceedings pursuant to the APA. However, CSLB members do not review ALJ decisions and do not participate in enforcement decisionmaking in individual cases. Instead, the Registrar — pursuant to Business and Professions Code section 7091(d) — reviews all ALJ decisions and makes all final agency enforcement decisions. The Board — largely through its Enforcement Committee — makes policy decisions affecting the conduct of its enforcement program, but does not participate in individual cases.

Having observed CSLB's system for two years, and having had an opportunity to compare it to enforcement decisionmaking at other agencies, the Monitor can attest to certain advantages accruing from CSLB's unique procedure.[113] Adjudicative decisionmaking by one individual can be faster than having to wait for a quarterly board meeting. Assuming long-term employment of an experienced Registrar, enforcement decisionmaking by one individual can be more consistent than the decisions of a multimember board whose membership is changing constantly. Board members — who are not full-time employees of the Board and have busy jobs and lives — are not burdened with the requirement of reading lengthy ALJ opinions and evidentiary records.

Further, whereas board members at other occupational licensing agencies must reject public comment on issues related to pending enforcement cases, Board members at CSLB can and do receive considerable public comment on many issues and abuses in the construction industry that

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[112] Gov't Code § 11370 *et seq*.

[113] And CSLB's procedure is not completely unique. The State Bar Board of Governors — which is not subject to the APA — does not participate in attorney discipline proceedings or decisionmaking. Rather, the Bar delegates enforcement decisionmaking to a set of administrative law judges appointed by the California Supreme Court and elected officials.

are the subject of pending disciplinary actions — because they are not the decisionmakers in those actions. At meetings of other boards, members of the public simply may not speak of issues relating to pending cases — because the entire board would have to leave the room. At CSLB, only the Registrar leaves the room during the public comment period that is required by the Bagley-Keene Open Meeting Act,[114] and Board members are fully able to learn of pressing issues and serious abuses from member of the public who are concerned enough to have attended the meeting and prepared public comment. Perhaps for this reason, CSLB benefits from more public comment from consumers than do most other DCA agencies we have observed.

CSLB's unique decisionmaking mechanism does not appear to work any disadvantages on the enforcement process, and in fact has several advantages. The Monitor believes that other DCA agencies should be encouraged to explore it.

Consumer Remedies

12. Adequacy of remedies for large-scale fraud or abuse cases.

Important progress in consumer restitution has been made with the passage of SB 1919 (Figueroa), which will ultimately increase the contractor's bond by 66% to $12,500 and will reserve $5,000 of that total exclusively for consumer access. Since most consumer complaints to CSLB involve amounts less than $7,500, many more consumers will be made whole under the new system.

However, even this improved bond cannot provide adequate relief for cases involving large-scale contractor fraud or business failure. Fortunately, major cases involving dozens of victims, or more, are far less common than small-scale disputes. However, they occur with sufficient frequency, and their impact is sufficiently grave, that consideration should be given to additional remedial provisions to address these large-scale consumer harms when they do occur.

The Monitor's Second Report provided a wide-ranging list of alternative means of providing restitution for larger-scale consumer fraud in industries such as this.[115] All of these potential solutions involve difficult choices and present differing problems of application. But consideration should be given to those, and to other alternatives not presented there, to address this less frequent but highly troubling scenario.

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[114] Gov't Code § 11125.7(a).

[115] *Second Report, supra* note 7, at 49–82.

13. Model contract forms promulgated by CSLB and/or industry.

The Monitor's Third Report discussed needed improvements to California home improvement contracts and the state laws which govern them.[116] SB 30 (Figueroa), now pending in the Legislature, is intended to address both contract requirements and the primary statutes which regulate them.[117] However, while many of the required components of home improvement contracts will be specified, SB 30 is not intended to provide a true "model" form or forms which could be used by contractors to ensure full compliance. Due to the variety of consumer contracts which are required in the industry, a statutory model form would be difficult to compose and implement.

However, several commentators have spoken in favor of a role for CSLB and/or industry trade groups in developing one or more models or forms, or model terms for use in contracts. The Monitor believes such CSLB and industry collaboration would be an effective means of expressing non-statutory "best practices" within the industry. Appropriate safeguards and disclaimers would be needed to avoid issues of legal liability or estoppel. However, other states and regulatory bodies have undertaken to promulgate such models and forms,[118] and this appears to be an appropriate role for a collaborative effort of CSLB and industry representatives.

14. Administrative authority for CSLB to revise requirements for contract elements and/or disclosures.

SB 30 (Figueroa), now pending in the Legislature, is intended to redefine and clarify the current requirements governing home improvement contract disclosures in California.[119] Clear guidance in statutory form is needed in this regard, and the elaborate process of legislative enactment is appropriate.

However, it has been suggested that individual issues of specific contract requirements and disclosures might be more efficiently handled by CSLB through the regulatory process, once the essential policy decisions have been made by the Legislature. Once the comprehensive statutory revision is in place, consideration should be given to whether CSLB should seek authority, similar

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[116] *Third Report, supra* note 8, at 57–74.

[117] *See* Appendix E.

[118] *Third Report, supra* note 8, at Appendix B.

[119] *See* Appendix E.

to the trade regulation rulemaking authority of the Federal Trade Commission,[120] to revise specific contract requirements and/or disclosures by administrative regulation. This authority would permit CSLB to update and improve consumer contract requirements through an orderly and public process, but one that does not require the full legislative process.

[120] See 15 U.S.C. § 42 *et seq*.

Chapter VI

CONCLUSION

This report concludes the Contractors State License Board Enforcement Program Monitor project, as mandated by Senate Bill 2029 (Figueroa) and as implemented by Department of Consumer Affairs Director Kathleen Hamilton.

This report, and the three which preceded it, have documented both the Monitor's analysis of CSLB's enforcement program and his efforts to fulfill the obligations of Business and Professions Code section 7092 to "monitor and evaluate the Contractors' State License Board discipline system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement in the overall efficiency of the board's disciplinary system."

The Monitor believes that major improvements to CSLB's enforcement program have been achieved — as the result of the collaborative work of all industry stakeholders — and that the long-term prospects for further improvement are excellent.

CSLB and its staff have enthusiastically embraced essentially all of the Monitor's 40 recommendations for reform of the enforcement program, and the initial results have been gratifying. Through the efforts of the Department of Consumer Affairs, the state Legislature, CSLB and its staff, and numerous public and private representatives, the following accomplishments and improvements have been realized:

• CSLB's mission of public protection is now enshrined in law.

• CSLB can now anticipate in the days to come a 20% revenue enhancement which will dramatically boost enforcement program resources.

• More effective criminal history and experience screening will soon be in place, with the advent of long-sought fingerprinting authority and EDD information access.

• CSLB has rebuilt its Enforcement Division under effective new leadership, bringing new policies and clear direction to the enforcement program.

• Streamlined and improved complaint handling and investigative processes are now in place or are in the process of implementation.

• Vastly improved annual statistical reporting is now required by law, and will begin October 1, 2003, for the first time permitting truly accurate year-to-year evaluation of CSLB enforcement performance.

• More comprehensive and systematic training of consumer service representatives and investigators is now in place.

• Innovative programs for early and rapid resolution of consumer complaints are now being implemented statewide.

• CSLB has dramatically improved coordination with state and local prosecutors in the investigation of contractor fraud and abuse matters, and mutual training with those agencies.

• Improved referral standards and greater cooperation with prosecutors has led to a 63% increase in criminal case referrals, and solid increases in other forms of prosecution activity.

• Consumer satisfaction with CSLB services is on an upward trend, rising from 54% to 60% in 18 months' time.

• Consumer remedies are materially improved with the passage of SB 1919 (Figueroa), ultimately including a 66% increase in the contractor's bond amount (to $12,500) and a new provision setting aside $5,000 of that bond exclusively for consumer access.

• And perhaps most significant of all, overall enforcement program outputs have increased by an average of more than 20% in two years, despite a reduction of more than 20% in key CSR and investigator resources.

All of these developments point to a much brighter future for CSLB and its enforcement program. But a great deal remains to be done to help CSLB fully meet the demands of the Legislature and the public for wide-ranging improvements in the speed and quality of its

enforcement work. CSLB's promising new momentum is challenged today by the prevailing resource limitations. For the immediate future, CSLB will struggle to maintain its service levels while living within its more limited means. But progress can continue on many fronts, and the long-term prospects are good for CSLB's enforcement program to consolidate lasting improvements in the quality and speed of its public service.

In conclusion, CSLB's enforcement program has demonstrated strong new momentum and clear improvement, and the Monitor's concerns have been addressed to a laudable degree. But further progress is needed and will be affected by the availability of the resources CSLB needs to meet statutory performance goals.

The demonstrable improvements to CSLB's enforcement program during the Monitor's tenure have occurred as the result of a consensus-based effort involving all public and private stakeholders in this important industry. All Californians benefit when government, industry, and the public work together, as they have during this project, to improve the CSLB enforcement program. The Monitor calls upon all those stakeholders to continue in this cooperative effort to improve construction industry professionalism and promote better service to the public by the Contractors State License Board.

The Monitor project staff extend their thanks to Director Hamilton for the opportunity to serve and their gratitude to all those who have joined with the Monitor in this good cause.

APPENDICES

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Appendix A

Senate Bill No. 1953
Chapter 744, Statutes of 2002

An act to amend Sections 144, 7000.5, 7011, 7069, 7092, 7137, 7138.1, and 7153.1 of, and to add Sections 7000.6 and 7017.3 to, the Business and Professions Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to contractors, and making an appropriation therefor.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 20, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1953, Figueroa. Contractors.

(1) Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs. Existing law authorizes the board to appoint a registrar of contractors who is responsible for all of the board's administrative duties. Under existing law, these provisions will become inoperative on July 1, 2003, and will be repealed on January 1, 2004.

This bill would extend these provisions to January 1, 2008. This bill would state that the highest priority for the board, in performing its licensing, regulatory, and disciplinary functions, is the protection of the public.

(2) Existing law requires the board, within 30 days prior to the meeting of the general session of the Legislature, to submit a report to the Governor and the Legislature describing its transactions for the preceding biennium.

This bill would require the board to submit an additional report to the Legislature, by October 1 of each year, containing statistical and case aging information, as specified, pertaining to complaints the board received the previous year.

(3) Existing law requires the Director of Consumer Affairs to appoint a Contractors' State License Board Enforcement Program Monitor who is responsible for monitoring and evaluating the board's disciplinary system and reforming the board's enforcement program. Existing law repeals this provision and this position on January 31, 2003.

This bill would extend this provision and this position until April 1, 2003.

(4) Existing law prohibits an applicant, officer, director, partner, associate, and a managing employee from committing any acts or crimes that are grounds for denial of a license. Existing law requires a home improvement salesperson to submit an application for licensure to the board with the appropriate fee.

This bill would require, on and after January 1, 2004, that all applicants for a contractor's license or a home improvement salesperson license submit a set of fingerprints to the board with his or her application. The bill would require the board to obtain and receive criminal history information from the Department of Justice and the Federal Bureau of Investigation for a criminal history records check.

(5) Existing law statutorily provides the fees that the board may charge for, among other things, an application for an original license, rescheduling an examination, and the renewal of an active or an inactive license.

This bill would authorize the board to set these fees by regulation, subject to increased fee maximums for specified licenses and services. Because these fees would be deposited into the Contractors' License Fund, which is continuously appropriated, the bill would make an appropriation.

(6) Existing law provides that the board may set fees at a level necessary to generate a 3-month reserve fund based on annual board expenses.

This bill would authorize the board to set fees to maintain the amount of the reserve fund at a level not to exceed approximately 6 months of annual authorized board expenditures.

(7) Existing law authorizes the Director of the Employment Development Department to permit the use of information in his or her possession for specified purposes.

This bill would additionally authorize the director to release information to the board so the board may verify the employment history of an individual applying for a contractor's license.

(8) This bill would incorporate additional changes in Section 144 of the Business and Professions Code proposed by SB 1952, to be operative only if SB 1952 and this bill are both enacted and become effective on or before January 1, 2003, and this bill is enacted last.

Appropriation: yes.

The people of the State of California do enact as follows:

SEC. 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following boards or committees:

(1) California Board of Accountancy.
(2) State Athletic Commission.
(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Programs.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.
(24) Contractors' State License Board.

SEC. 1.5. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

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(1) California Board of Accountancy.
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(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Advisory Commission.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) The California Board of Occupational Therapy.
(24) Contractors' State License Board.

SEC. 2. Section 7000.5 of the Business and Professions Code is amended to read:
7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.

(b) The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board by the department shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

(c) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 7000.6 is added to the Business and Professions Code, to read:
7000.6. Protection of the public shall be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 4. Section 7011 of the Business and Professions Code is amended to read:
7011. The board by and with the approval of the director shall appoint a registrar of contractors and fix his or her compensation. The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.

For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer and, subject to Section 159.5, other assistants and subordinates as
may be necessary.

Appointments shall be made in accordance with the provisions of civil service laws.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 7017.3 is added to the Business and Professions Code, to read:
7017.3. The Contractors' State License Board shall report annually to the Legislature, not later than October 1 of each year, the following statistical information for the prior fiscal year. The following data shall be reported on complaints filed with the board against licensed contractors, registered home improvement salespersons, and unlicensed persons

acting as licensees or registrants:

(a) The number of complaints received by the board categorized by source, such as public, trade, profession, government agency, or board-initiated, and by type of complaint, such as licensee or nonlicensee.

(b) The number of complaints closed prior to referral for field investigation, categorized by the reason for the closure, such as settled, referred for mandatory arbitration, or referred for voluntary arbitration.

(c) The number of complaints referred for field investigation categorized by the type of complaint such as licensee or nonlicensee.

(d) The number of complaints closed after referral for field investigation categorized by the reason for the closure such as settled, referred for mandatory arbitration, or referred for voluntary arbitration.

(e) For the board's Intake/Mediation Center and the board's Investigation Center closures, respectively, the total number of complaints closed prior to a field investigation per consumer services representative, and the total number of complaints closed after referral for a field investigation per enforcement representative. Additionally, the board shall report the total number of complaints closed by other board staff during the year.

(f) The number of complaints pending at the end of the fiscal year grouped in 90-day increments, and the percentage of total complaints pending, represented by the number of complaints in each grouping.

(g) The number of citations issued to licensees categorized by the type of citation such as order of correction only or order of correction and fine and the number of citations issued to licensees that were vacated or withdrawn.

(h) The number of citations issued to nonlicensees and the number of these citations that were vacated or withdrawn.

(i) The number of complaints referred to a local prosecutor for criminal investigation or prosecution, the number of complaints referred to the Attorney General for the filing of an accusation, and the number of complaints referred to both a local prosecutor and the Attorney General, categorized by type of complaint, such as licensee and nonlicensee.

(j) Actions taken by the board, including, but not limited to, the following:

(1) The number of disciplinary actions categorized by type, such as revocations or suspensions, categorized by whether the disciplinary action resulted from an accusation, failure to comply with a citation, or failure to comply with an arbitration award.

(2) The number of accusations dismissed or withdrawn.

(k) For subdivisions (g) and (j), the number of cases containing violations of Section 7121, 7121.5, and subdivision (e) of Section 7159 categorized by section.

(l) The number of interim suspension orders sought, the number of interim suspension orders granted, the number of temporary restraining orders sought, and the number of temporary restraining orders granted.

(m) The amount of cost recovery ordered and the amount collected.

(n) Case aging data, including data for each major stage of the enforcement process, including the following:

(1) The average number of days from the filing of a complaint to its closure by the board's Intake/Mediation Center prior to the referral for an investigation categorized by the type of complaint, such as licensee or nonlicensee.

(2) The average number of days from the referral of a complaint for an investigation to its closure by the Investigation Center categorized by the type of complaint, such as licensee or nonlicensee.

(3) The average number of days from the filing of a complaint to the referral of the completed investigation to the Attorney General.

(4) The average number of days from the referral of a completed investigation to the Attorney General to the filing of an accusation by the Attorney General.

(5) The average number of days from the filing of an accusation to the first hearing date or date of a stipulated settlement.

(6) The average number of days from the receipt of the Administrative Law Judge's proposed decision to the registrar's final decision.

SEC. 6. Section 7069 of the Business and Professions Code is amended to read:

7069. (a) An applicant, and each officer, director, partner, associate and responsible managing employee thereof, shall not have committed acts or crimes which are grounds for denial of licensure under Section 480.

(b) As part of an application for a contractor's license, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting a criminal history record check. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format where readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, including any subsequent arrest information available. This subdivision shall become operative on January 1, 2004.

SEC. 7. Section 7092 of the Business and Professions Code is amended to read:
7092. (a) (1) The director shall appoint a Contractors' State License Board Enforcement Program Monitor no later than January 31, 2001. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and familiarity with relevant administrative procedures.

(c) (1) The enforcement program monitor shall monitor and evaluate the Contractors' State License Board disciplinary system and procedures, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations, and the improvement of the overall efficiency of the board's disciplinary system.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, and the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than October 1, 2001, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement program monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) This section shall remain in effect only until April 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before April 1, 2003, deletes or extends that date.

SEC. 8. Section 7137 of the Business and Professions Code is amended to read:
7137. The board shall set fees by regulation. These fees shall not exceed the following schedule:

(a) The application fee for an original license in a single classification shall not be more than three hundred dollars ($300). The application fee for each additional classification applied for in connection with an original license shall not be more than seventy-five dollars ($75). The application fee for each additional classification pursuant to Section 7059

shall not be more than sev enty-five dollars ($75). The application fee to replace a responsible managing officer or employee pursuant to Section 7068.2 shall not be more than seventy-five dollars ($75).

(b) The fee for rescheduling an examination for an applicant who has applied for an original license, additional classification, a change of responsible managing officer or responsible managing employee, or for an asbestos certification or hazardous substance removal certification, shall not be more than sixty dollars ($60).

(c) The fee for scheduling or rescheduling an examination for a licensee who is required to take the examination as a condition of probation shall not be more than sixty dollars ($60).

(d) The initial license fee for an active or inactive license shall not be more than one hundred eighty dollars ($180).

(e) The renewal fee for an active license shall not be more than three hundred sixty dollars ($360). The renewal fee for an inactive license shall not be more than one hundred eighty dollars ($180).

(f) The delinquency fee is an amount equal to 50 percent of the renewal fee, if the license is renewed more than 30 days after its expiration.

(g) The registration fee for a home improvement salesperson shall not be more than seventy-five dollars ($75).

(h) The renewal fee for a home improvement salesperson registration shall not be more than seventy-five dollars ($75).

(i) The application fee for an asbestos certification examination shall not be more than seventy-five dollars ($75).

(j) The application fee for a hazardous substance removal or remedial action certification examination shall not be more than seventy-five dollars ($75).

SEC. 9. Section 7138.1 of the Business and Professions Code is amended to read:

7138.1. Notwithstanding Section 7137, the board shall fix fees to be collected pursuant to that section in order to generate revenues sufficient to maintain the board's reserve fund at a level not to exceed approximately six months of annual authorized board expenditures.

SEC. 10. Section 7153.1 of the Business and Professions Code is amended to read:

7153.1. (a) The home improvement salesperson shall submit to the registrar an application in writing containing the statement that he or she desires the issuance of a registration under the terms of this article.

The application shall be made on a form prescribed by the registrar and shall be accompanied by the fee fixed by this chapter.

(b) The registrar may refuse to register the applicant under the grounds specified in Section 480.

(c) As part of an application for a home improvement salesperson, the board shall require an applicant to furnish a full set of fingerprints for purposes of conducting criminal history record checks. Fingerprints furnished pursuant to this subdivision shall be submitted in an electronic format where readily available. Requests for alternative methods of furnishing fingerprints are subject to the approval of the registrar. The board shall use the fingerprints furnished by an applicant to obtain criminal history information on the applicant from the Department of Justice and the United States Federal Bureau of Investigation, including any subsequent arrest information available. This subdivision shall become operative on January 1, 2004.

SEC. 11. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or

determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(l) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the victims of crime program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

SEC. 12. Section 1.5 of this bill incorporates amendments to Section 144 of the Business and Professions Code proposed by both this bill and SB 1952. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 144 of the Business and Professions Code, and (3) this bill is enacted after SB 1952, in which case Section 1 of this bill shall not become operative.

Appendix B

Senate Bill No. 1919
Chapter 1123, Statutes of 2002

An act to amend, repeal, and add Section 7071.6 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1919, Figueroa. Contractors.

Existing law, the Contractors' State License Law, provides that the Contractors' State License Board, within the Department of Consumer Affairs, is responsible for the licensure and regulation of contractors. Existing law requires a contractor to provide a $7,500 bond for the benefit of homeowners and other persons that are damaged by the licensee. Existing law requires a swimming pool contractor to provide the bond in the amount of $10,000. The bill would require, on and after January 1, 2004, that all classifications of contractors provide a $10,000 bond. The bill would increase the bond to $12,500 on and after January 1, 2007.

The people of the State of California do enact as follows:

SEC. 1. Section 7071.6 of the Business and Professions Code is amended to read:
7071.6. (a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of seven thousand five hundred dollars ($7,500), except that a license bond in the sum of ten thousand dollars ($10,000) shall be required for an applicant or licensee to obtain the
swimming pool classification outlined in Section 832.53 of Title 16 of the California Code of Regulations.

(b) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(c) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

(d) This section shall become inoperative and is repealed on January 1, 2004, unless a later enacted statute deletes or extends that date.

SEC. 2. Section 7071.6 is added to the Business and Professions Code, to read:
7071.6. (a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of ten thousand dollars ($10,000), regardless of the classification. However, on and after January 1, 2007, the sum of the bond that an applicant or licensee is required to have on file shall be twelve thousand five hundred dollars ($12,500).

(b) Excluding the claims brought by the beneficiaries specified in subdivision (a) of Section 7071.5, the aggregate liability of a surety on claims brought against a bond required by this section shall not exceed the sum of seven thousand five hundred dollars ($7,500). The bond proceeds in excess of seven thousand five hundred dollars ($7,500) shall be

reserved exclusively for the claims of the beneficiaries specified in subdivision (a) of Section 7071.5. However, nothing in this section shall be construed so as to prevent any beneficiary specified in subdivision (a) of Section 7071.5 from claiming or recovering the full measure of the bond required by this section.

(c) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(d) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

(e) This section shall become operative on January 1, 2004.

Appendix C

Longitudinal Study

The contract between the Department of Consumer Affairs and the CSLB Enforcement Monitor requires the Monitor to, among other things, "develop a process for tracking a selected sample of enforcement caseload of no less than 10 cases to monitor their progress from complaint receipt to final disposition."

Accordingly, during the first week of February 2002, the Monitor was provided with a printout of all cases filed during that week with the Northern Intake/Mediation Center (IMC) in Sacramento and with the Southern IMC in Norwalk. From this printout, the Monitor randomly selected 41 cases for tracking. CSLB staff had no role in identifying these cases and is not aware of the specific cases tracked. On March 7, 2003, the Monitor's staff researched the status of these cases on CSLB's database and printed each case history.

Of the 41 cases tracked, 36 were against licensed contractors and 5 were against nonlicensees.

Of the 41 cases tracked, 27 were closed by consumer services representatives (CSRs) at the IMCs and 14 were referred to an Investigation Center (IC) for field investigation.

Statewide, the 41 cases remained at the IMCs for an average of 66.36 days — which exceeds CSLB's stated goal of 45 days.

Of the 14 cases referred to an IC, four are still under investigation, and have been under investigation for an average of 327 days (almost 11 months) — which exceeds CSLB's stated goal of 90 days.

Of the 14 cases referred to an IC, ten have been closed for various reasons (see below for details). The ICs closed these cases within an average of 132 days (4.4 months).

Of the 41 cases filed during the first week of February 2002, one has resulted in formal disciplinary action (the issuance of a citation with which the contractor did not comply, and his license was thus automatically suspended). One other case been referred to the Attorney General's Office for the filing of an accusation. Three other cases resulted in warning letters, and CSLB secured restitution in two cases (for $1,500 and $386, respectively).

Although the sample studied here is extremely small, the cases reveal continuing differences in the IMCs' case handling procedures and cycle times between the north and the south — inconsistencies the Board has long labored to eliminate.

Northern IMC (Sacramento):

Of the 21 cases filed during the first week in February 2002 in Sacramento and randomly chosen for tracking in this sample, 17 were against licensed contractors (including 4 cases filed by bonding companies b/c the bonding co had to pay a claim), and 4 were against nonlicensees.

Of the 21 cases, 16 were closed by CSRs at the IMC and 5 were referred to an IC for investigation.

The 21 cases remained in the IMC for an average of 80 days — close to double CSLB's stated goal of 45 days. During mid-2002, nine of these cases spent time in the Sacramento IMC's "holding file" (HFX) for incoming cases (where cases sit until they can be referred to a CSR so as to maintain manageable caseloads for CSRs) for an average of 38 days (from a low of 14 days to a high of 42 days). As mentioned in the Third Report, CSLB eliminated the Sacramento IMC holding file on approximately September 1, 2002, and instituted a strict policy against reinstituting the holding file.

Of the five cases referred to an IC, one is still open (having been under investigation for 308 days). One was closed because the complainant has filed a civil action against the contractor; one was closed because the complainant has already secured a civil judgment against the contractor; one case against a nonlicensee was referred to a prosecutor for criminal/unfair competition prosecution; and one was closed for lack of jurisdiction (the basis was not disclosed). Not counting the one pending investigation, the ICs took action in these 4 cases in an average of 143 days (4.78 months).

Of the 21 cases, one has resulted in formal discipline. In that case (a bond case), the licensee was issued a citation on July 12, 2002. On November 21, 2002, his license was suspended for failure to comply with the citation. Two other cases resulted in warning letters.

Southern IMC (Norwalk):

Of the 20 cases filed during the first week in February 2002 and randomly chosen for tracking in this study, 19 were against licensed contractors and 1 was against a nonlicensee.

Of the 20 cases, 11 were closed by CSRs at the IMC and 9 were referred to an IC for investigation.

The 20 cases remained in the IMC for an average of 51.7 days — just above CSLB's stated goal of 45 days.

Of the 9 cases referred to an IC, three are still under investigation (having been under investigation for an average of 333 days, or about 11 months). One was referred for the filing of an accusation (and the respondent is already the subject of an accusation in a different case). One was settled during investigations through the use of the On-Site Negotiation program; two were closed because they were referred to arbitration; and two were closed because the complainant chose not to pursue the case; Not counting the three cases still under investigation, the ICs took action in these 6 cases in an average of 124 days (4.14 months).

Of the 20 cases, one has resulted in a referral for an accusation. One case resulted in warning letters, and CSLB secured restitution in two cases (for $1,500 and $386, respectively).

Appendix D

SB 443 (Figueroa)
Introduced February 20, 2003

An act to amend Section 7028 of the Business and Professions Code relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 443, as introduced, Figueroa. Contracting without a license: repeat offenders.

Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law makes it a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license. Existing law requires the court, in the instance of a repeat offender, to impose a specified fine or to imprison the repeat offender in the county jail for not less than 10 days nor more than 6 months, or both.

This bill would instead require, except in unusual cases, that a repeat offender be confined in the county jail for not less than 90 days. The bill would require the court to state on the record its reasons if the court imposed a jail sentence of less than 90 days or only a fine.

Because the bill would change the existing misdemeanor penalty concerning repeat offender violations, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless ~~such~~ *the* person is particularly exempted from the provisions of this chapter.

(b) If ~~such~~ *the* a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($4,500), whichever is greater, ~~or imprisonment in the county jail for not less than 10 days nor more than six months, or both~~ *and the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.*

(c) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(d) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution

because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Appendix E
DRAFT AMENDMENTS TO SB 30 (FIGUEROA): HOME IMPROVEMENT CONTRACTS REFORM
Proposed Changes to Existing Statutes

The following is the current draft of proposed statutory language to incorporate the concepts of home improvement contracts reform into SB 30 (Figueroa).

Repeal Business and Professions Code § 7018.5. Notice to Owner; mechanics' lien; form, contents

Amend Business and Professions Code § 7030. Statement required on contracts; notice required prior to contract; disciplinary action

(a) Every person licensed pursuant to this chapter shall include the following statement in at least 10 point type on all written contracts other than home improvement contracts as defined in Section 7151.2 with respect to which the person is a prime contractor:

"Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826."

~~(b) At the time of making a bid or prior to entering into a contract to perform work on residential property with four or fewer units, whichever occurs first, a contractor shall provide the following notice in capital letters in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type:~~

~~"STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING--IF THE TOTAL PRICE OF THE JOB IS $500 OR MORE (INCLUDING LABOR AND MATERIALS).~~

~~LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.~~

~~YOU MAY CONTACT THE CONTRACTORS' STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE INFORMATION."~~

(b) Every person licensed pursuant to this chapter shall include the following statement in at least ~~10=~~ 12-point type on all contracts written pursuant to Section 7151.2 and on the home improvement checklists required pursuant to section 7159.4 (a)(i) and 7159.(4)(a)(ii).

"Information about the Contractors State License Board (CSLB):

CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about licensed contractors, including disclosable complaints and disciplinary actions and civil judgments reported to CSLB.

Use only licensed contractors. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees.

For more information:

- Visit CSLB's Web site at www.cslb.ca.gov;
- Call CSLB at 1-800-321-CSLB (2752); or
- Write CSLB at P. O. Box 26000, Sacramento, CA 95826."

~~(c)~~ Failure to comply with the notice requirements set forth in subdivision (a) or (b) of this section is cause for disciplinary action.

Amend Business and Professions Code § 7151.2. Home improvement contract defined

(a) "Home improvement contract" means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement as defined in Section 7151, and includes all labor, services, and materials to be furnished and performed thereunder. A registered salesperson employed by a home improvement contractor may enter into a home improvement contract on behalf of that contractor.

(b) ~~"Home improvement contract" also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson, and (a) an owner or (b) a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services.~~

A "service and repair contract" is a home improvement contract initiated by the homeowner or tenant to accomplish service and/or repair in which (1) the contract price is seven hundred and fifty dollars or less; (2) the negotiation between the parties was initiated by the prospective buyer; (3) the contractor has not sold the buyer goods and/or service beyond those reasonably necessary to address the particular problem that caused the buyer to call for service and/or repair; and (4) for which payment will be made only after work is satisfactorily completed.

Amend Business and Professions Code § 7159 to read as follows. General contract requirements; effect of noncompliance; violations

This section applies only to home improvement contracts, including service and repair contract, as defined in Section 7151.2. A violation of this section is cause for discipline.

(a) Every home improvement contract and any changes in the contract shall be evidenced in writing and signed by all the parties to the contract.

(b) The writing shall be legible and shall be in a form that clearly describes any other document that is to be incorporated into the contract.

(c) Before any work is started, the owner shall be furnished with a copy of the written agreement, signed by the contractor. Receiving the copy triggers the owner's three-day right to cancel if the right to cancel is applicable.

(d) Any documents to be incorporated into the contract shall be described within the contract; for example, a bill of materials, a detailed description of the work to be done, or an arbitration agreement.

(e) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provisions of law.

(f) Any change-order forms for changes or extra work shall be incorporated in, and become a part of, the contract if they are in writing and signed by both parties.

Repeal [by operation of law] Business and Professions Code § 7159.3. Home improvement contracts and estimates; attached statements

Enact new Business and Professions Code § 7159.3. [Home Improvement Contract Information, Notices and Disclosures]

This section applies to all home improvement contracts as defined in Section 7151.2. Contractors performing home improvement work are required to provide the following information, notices and disclosures in all home improvement contracts. Failure to provide this information, these notices or these disclosures is cause for discipline.

(a) The name, business address, and license number of the contractor and the license category relevant to the project.

(b) The name and registration number of the home improvement salesperson, if any.

(c) The notice: "Notice to the Buyer: You are entitled to a completely filled in copy of this agreement before any work may be started."

(d) The heading "Commercial General Liability Insurance (CGL)," followed by whichever statement that is both relevant and correct:

(1) "[The name on the license or "This contractor"] does not carry commercial general liability insurance"; or

(2) "[The name on the license or "This contractor"] carries commercial general liability insurance written by [the insurance company]. You may call the [insurance company] at _____to check the contractor's insurance coverage"; or

(3) "[The name on the license or "This contractor] is self-insured."

(e) The heading: "Workers' Compensation," followed by the statement that is both relevant and correct:

(1) "[The name on the license or "This contractor"] has no employees and is exempt from workers' compensation requirements; or

(2) [The name on the license or "This contractor"] certifies that he or she carries workers' compensation insurance for all employees and has verified that all subcontractors also carry this insurance for his or her employees."

(f) The heading: "Approximate Start Date" and "Approximate Completion Date," each followed by the approximate dates for start and completion.

(g) The heading: "Description of the project and detailed description of the materials to be used and the equipment to be used or installed:" followed by a description of the project and a detailed description of the materials to be used and the equipment to be used or installed.

(h) If documents are to be incorporated into the contract, the heading, "List of Documents Incorporated into the Contract," followed by the list of documents incorporated into the contract.

(i) The signatures of the contractor or the contractor's representative, and the buyer(s).

(j) The date the contract was signed.

Enact new Business and Professions Code § 7159.4. Additional Contract Information Requirements for Home Improvement Contracts other than Service and Repair.

This section applies to all home improvement contracts except service and repair contracts. In addition to the requirements of Section 7159.3 contractors performing home improvement work are required to provide the following information, notices and disclosures in all home improvement contracts. Failure to provide this information, these notices or these disclosures is cause for discipline.

(a) Notice of the type of contract: Home Improvement.

(b) The heading: "Contract Amount," followed by the amount of the contract in dollars and cents.

(c) For swimming pools, in addition to the project description required under 7159.3, a plan and scale drawing showing the shape, size, dimensions and the construction and equipment specifications .

(d) If a downpayment will be charged, the heading: "Downpayment" and a space where the actual downpayment appears followed by the text in capitol letters: "THE DOWNPAYMENT MAY NOT EXCEED $1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS."

(e) If a payment schedule provides for progress payments to be made prior to completion of the contract, the contract shall include a schedule labeled "Schedule of Progress Payments," stated in dollars and cents and specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied, and the statement "The schedule of progress payments should be planned so that, except for the downpayment, the total amount of payments to be made at any given time will not exceed the value of the work performed. The time for payment should be tied to the completion of specific phases of work."

(f) If applicable, the heading, "List of documents to be incorporated into the contract," followed by the list of documents incorporated into the contract.

(g) The heading "Note about Extra and Change Orders" followed by the statement:

"Extra and change orders become part of the contract once the order is prepared in writing and signed by the parties. The order must describe the scope of the extra and/or change, the cost to be added or subtracted from the contract and the effect the order will have on the schedule of progress payments.

(h) Except when the contract is negotiated at the contractor's place of business, the three-day notice of the right to cancel found in Civil Code section 1689.7(a)(4)(i).

(i) The following notice in 12 point times new roman type.

"**MECHANICS LIEN WARNING**:

Anyone who helps improve your property, but who is not paid, may file what is called a mechanics' lien on your property. A mechanics' lien is a claim—like a mortgage or home equity loan—made against your property and filed with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers and laborers who helped to improve your property may file mechanics' liens. If a court finds the lien is valid, you could be forced to pay twice or

have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to file a lien, subcontractors and material suppliers must provide you with a document called a "20-day Preliminary Notice." This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to file a lien on your property if he or she is not paid.

Be careful. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or from laborers who work on your project. The law assumes that you already know they are improving your property.

Protect yourself from liens.

You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and these suppliers delivered goods or material. Then wait 20 days, paying attention to the Preliminary Notices you receive.

Pay with joint checks.

When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check to the contractor and the subcontractor or material supplier.

Contact CSLB for information on other ways to prevent liens.

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice or face the forced sale of your home to pay what you owe.

(i) Each home improvement contract shall be accompanied by a checklist prepared by the board through regulation setting forth the items that an owner should consider when reviewing a proposed home improvement contract.

Enact new Business and Professions Code § 7159.5 Additional Contract Information Requirements for Service and Repair Contracts

This section applies to all home improvement contracts as defined in Section 7151.2 (b). In addition to the information required under Section 7159.3, contractors using a service and repair contract are required to provide the following information, notices and disclosures in all home improvement contracts. Failure to provide this information, these notices or these disclosures is cause for discipline.

(a) Notice of the type of contract: Service and Repair

(b) The notice: "Work performed under a service and repair contract is limited to $750 unless the work agreed to under the contract is an emergency necessary for the immediate protection of people, or real or personal property."

(c) Where the contract is a fixed contract amount, the heading: "Contract Amount" followed by the amount of the contract in dollars and cents.

(d) Where the contract is estimated by a time and materials formula, the heading "Estimated Contract Amount" followed by the estimated contract amount in dollars and cents. The contract must disclose the set rate and the cost of materials. The contract must also disclose how time will be computed; for example, in increments of quarter hours, half

hours, or hours and the statement:

"The actual contract amount of a Time and Materials contract may not exceed the estimated contract amount without authorization from the buyer."

(e) Except when the contract is negotiated at the contractor's place of business, the three-day notice to the right to cancel found in Civil Code section 1689.7(a)(4)(ii).

(f) Each service and repair contract shall be accompanied by a checklist prepared by the board through regulation setting forth the items that an owner should consider when reviewing a proposed service and repair contract.

Enact new Business and Professions Code § 7159.6. Home Improvement Contract Amounts; Payments; Disciplinary Actions and Criminal Violations

(a) This section applies to home improvement contracts as defined in 7151.2 (a).

(1) The contract must include the agreed contract price in dollars and cents. The contract amount will include the entire cost of the contract including profit, labor and materials but excluding finance charges.

(2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract price.

(3) If a downpayment will be charged, the downpayment may not exceed $1,000 or 10 percent of the contract price, whichever is less.

(4) If, in addition to the downpayment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.

(5) Upon payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanic's lien pursuant to Section 3114 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.

(6) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with subdivision (4).

(7) Except for the downpayment, the contractor may not request nor accept payment that exceeds the value of the work performed.

(8) A contractor furnishing a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the registrar covering full performance and completion of the contract is exempt from the downpayment and progress payment requirements of these subsections and may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

(b) A violation of this section is cause for discipline.

(c) A violation of subsection (a)(3), (a)(4), (a)(5) and (a)(7) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one

hundred dollars ($100) nor more than five thousand dollars ($5,000) or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment. An indictment or information shall be brought, or a criminal complaint filed within four years from the date the buyer signs the contract.

(d) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more than twenty-five thousand dollars ($25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

Enact new Business and Professions Code § 7159.7. Service and Repair Contract Amounts; Payments; Disciplinary Actions and Criminal Violations

(a) This section applies to contractors performing home improvement work under a service and repair contract as defined in 7151.2(b).

(1) The contract may not exceed $750 unless the service and/or repair work agreed to under the contract is necessary for the immediate protection of persons or real or personal property.

(2) Under a service and repair contract, the contract amount may be stated as either a fixed contract amount in dollars and cents or, if a time and materials formula is used, as an estimated contract amount in dollars and cents.

(3) The contract amount will include the entire cost of the contract including profit, labor and materials but excluding finance charges.

(4) The actual contract amount of a Time and Materials contract may not exceed the estimated contract amount without authorization from the buyer.

(5) The contractor may not accept payment prior to completion of the service and/or repair.

(6) A service and repair contractor may charge only one service charge. For purposes of this section, service charge includes a service or trip charge or an inspection fee.

(7) A service and repair contractor that charges a service charge must disclose in all advertisements that there is a service charge and, when the customer initiates the call for service, disclose the amount of the service charge.

(8) The contractor must offer to the customer any parts that were replaced.

(9) A contractor furnishing a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the registrar covering full performance and completion of the contract may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

(b) A violation of this section is cause for discipline.

(c) A violation of subsection (a)(1) (a)(3), (a)(4), (a)(5) and (a)(6) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) or by imprisonment in the county jail not

exceeding one year, or by both fine and imprisonment. An indictment or information shall be brought, or a criminal complaint filed within four years from the date the buyer signs the contract.

An indictment or information against a person who is licensed or who is subject to licensure shall be brought, or a criminal complaint filed, for a violation of subsections (a)(1), (a)(3), (a)4), (a)(5), and (a)(6) within four years from the date the buyer signs the contract.

(d) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more than twenty-five thousand dollars ($25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

Enact new Business and Professions Code § 7159.9. [Enforceability of Change-Orders; Availability of Equitable Remedies.

No change-order is enforceable against the buyer unless the change order clearly sets forth the scope of work encompassed by the change-order, the amount to be added or subtracted from the contract for the changes and the affect the extra or change order will make in the progress payments or the completion date. The buyer may not require a contractor to perform extra or change-order work without providing written authorization. Failure to comply with the requirements of this subsection does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

Amend Civil Code § 1689.5. Definitions

As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14:

(a) "Home solicitation contract or offer" means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars ($ 25) or more, including any interest or service charges. "Home solicitation contract" does not include any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto, or any contract for repair services with a contractor who is duly licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if (1) the contract price is seven hundred and fifty dollars or less ~~than one hundred dollars ($ 100)~~, (2) the negotiation between the parties was initiated by the prospective buyer, and (3) the contractor has not offered the buyer goods and/or services beyond the scope of the initial request. ~~the contract contains a written and dated statement signed by the prospective buyer stating that the negotiation between the parties was initiated by the prospective buyer.~~

(b) "Appropriate trade premises," means premises where either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(c) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of the real property whether or not severable therefrom, but does not include any vehicle required to be registered under the Vehicle Code, nor any goods sold with this vehicle if sold under a contract governed by Section 2982, and does not include any mobilehome, as defined in

Section 18008 of the Health and Safety Code, nor any goods sold with this mobilehome if either are sold under a contract subject to Section 18036.5 of the Health and Safety Code.

(d) "Services" means work, labor and services, including, but not limited to, services furnished in connection with the repair, restoration, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken, but does not include the services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services offered by banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, that are not connected with the sale of goods or services, as defined herein, nor the sale of insurance that is not connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the state.

(e) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

Amend Civil Code § 1689.6. Right to cancel home solicitation contract or offer

(a) (1) Except for contracts written pursuant to Business and Professions Code Section 7151.2(b), in ~~In~~ addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7.

(2) For contracts written pursuant to Business and Professions Code Section 7151.2(a), in addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third business day after the buyer receives the signed and dated copy of the contract.

(b) In addition to any other right to revoke an offer, any buyer has the right to cancel a home solicitation contract or offer for the purchase of a personal emergency response unit until midnight of the seventh business day after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7. This subdivision shall not apply to a personal emergency response unit installed with, and as part of, a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, which shall instead be subject to subdivision (a).

(c) In addition to any other right to revoke an offer, a buyer has the right to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by disaster that was not void pursuant to Section 1689.14, until midnight of the seventh business day after the buyer signs and dates the contract.

(d) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(e) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(f) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or

offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the home solicitation contract or offer.

(g) "Personal emergency response unit," for purposes of this section, means an in-home radio transmitter device or two-way radio device generally, but not exclusively, worn on a neckchain, wrist strap, or clipped to clothing, and connected to a telephone line through which a monitoring station is alerted of an emergency and emergency assistance is summoned.

Amend Civil Code § 1689.7. Requisites of home solicitation contract or offer; cancellation; definition

(a) (1) In a home solicitation contract or offer the buyer's agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation, shall be dated, signed by the buyer, and except as provided in paragraphs (2) and (4), shall contain in immediate proximity to the space reserved for his or her signature a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The statement required pursuant to this subdivision for a home solicitation contract or offer for the purchase of a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code) which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(3) The statement required pursuant to this subdivision for the repair or restoration of residential premises damaged by a disaster pursuant to subdivision (c) of Section 1689.6 is as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See the attached notice of cancellation form for
an explanation of this right."

(4) (i) The statement required pursuant to this subdivision for the home improvement contracts as defined in Business & Professions Code Section 7151.2 (a) is as follows:

"**Your Right to Cancel this Contract**

Unless this contract was negotiated at the contractor's place of business, you, the buyer, have the right to cancel this contract.

You may cancel by e-mailing, mailing, faxing or delivering a written notice to the contractor at the contractor's place of business by midnight of the third day after you received the signed copy of the contract which includes this notice. Include your name, your address and the date you received a copy of the contract."

(ii) The statement required pursuant to this subdivision for service and repair contracts as defined in Business & Professions Code Section 7151.2 (b) is as follows:

"Your Right to Cancel this Contract

Most consumer contracts allow you, the buyer, 3 days from the day you sign the contract to cancel. However, service and repair contracts of $750 or less do not include the right to cancel if:

- You made the call to the contractor to request service and/or repair, and:
- The contractor did not sell you goods and/or services beyond those reasonably necessary to address the particular problem that caused you to call for service and/or repair;
- Payment was not due until the job was completed.

A service and repair contract may exceed $750 only if the service or repair is an emergency or an immediate necessity repair needed for the immediate protection of people or property.

If any of these requirements are not met, you may cancel the contract by e-mailing, mailing, faxing or delivering a written notice to the contractor at the contractor's place of business within three days of receiving this notice. Include your name, your address and the date you received a copy of the contract."

(b) The agreement or offer to purchase shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (1) the name and address of the seller to which the notice is to be mailed, and (2) the date the buyer signed the agreement or offer to purchase.

(c) Except as provided in subdivision (d), the agreement or offer to purchase shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the agreement or offer to purchase and be easily detachable, and which shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

"Notice of Cancellation"

/enter date of transaction/

_____

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to _____

/name of seller/

at _____ not later than midnight of _____.

/address of seller's place of business/ (Date)

I hereby cancel this transaction. _____
(Date)

_____
(Buyer's signature)

(d) Any agreement or offer to purchase a personal emergency response unit, as defined in Section 1689.6, which is not installed with and as part of a home security alarm system subject to the Alarm Company Act which has two or more stationary protective devices used to enunciate an intrusion or fire and is installed by an alarm company operator operating under a current license issued pursuant to the Alarm Company Act, shall be subject to the requirements of subdivision (c), and shall be accompanied by the "Notice of Cancellation" required by subdivision (c), except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(e) Any agreement or offer to purchase services for the repair or restoration of residential premises damaged by a disaster that is subject to subdivision (c) of Section 1689.6, shall be subject to the requirements of subdivision (c) of this section, and shall be accompanied by the "Notice of Cancellation" required by subdivision (c) of this section, except that the first paragraph of that notice shall be deleted and replaced with the following paragraph:

You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

(f) Immediately following the statement describing the right to cancel, each home improvement contract written pursuant to 7151.2 shall include the statement "Once you have canceled the contract, you may need to take more steps to complete the process. Visit CSLB's Web site or call 1-800- 312-CSLB (2752) for instructions on what to do when you are canceling a home improvement or service and repair contract."

~~(f)~~ (g) The seller shall provide the buyer with a copy of the contract or offer to purchase and the attached notice of cancellation, and shall inform the buyer orally of his or her right to cancel and the requirement that cancellation be in writing, at the time the home solicitation contract or offer is executed.

~~(g)~~ (h) Until the seller has complied with this section the buyer may cancel the home solicitation contract or offer.

~~(h)~~ (i) "Contract or sale" as used in subdivision (c) means "home solicitation contract or offer" as defined by Section 1689.5.

Civil Code § 1689.13. Emergency or immediate necessity repairs or services

Sections 1689.5 to 1689.7, inclusive, Sections 1689.10 to 1689.12, inclusive, and Section 1689.14 shall not apply to a contract that is initiated by the buyer or his or her agent or insurance representative and that is executed in connection with the making of emergency or immediate necessity repairs or services that are necessary for the immediate protection of persons or real or personal property, provided that the buyer furnishes the seller with a separate dated and signed personal statement describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three or seven business days, whichever applies.