Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

NOTICE OF MEETING

REGULATORY AND ENFORCEMENT COMMITTEE
May 10, 2012
10:00 a.m. to 2:00 p.m.
California Architects Board
Sequoia Room
2420 Del Paso Road, Suite 109A
Sacramento, CA 95834

The California Architects Board (CAB) will hold a Regulatory and Enforcement Committee (REC) meeting as noted above. A quorum of Board members may be present during all or portions of the meeting, and if so, such members will only observe the REC meeting. Agenda items may not be addressed in the order noted below. The meeting is accessible to the physically disabled. A person who needs a disability-related accomodation or modification in order to participate in the meeting may make a request by contacting Hattie Johnson at (916) 575-7203, emailing Hattie.Johnson@dca.ca.gov, or sending a written request to the California Architects Board, 2420 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your requests at least five business days before the meeting will help to ensure availability of the requested accomodation.

The notice and agenda for this meeting and other meetings of the CAB can be found on the Board's Web site: *cab.ca.gov*. For further information regarding this agenda, please contact Hattie Johnson at (916) 575-7203.

AGENDA

A. Welcome and Introductions

B. Enforcement Program Update

C. Review and Approve May 11, 2011 REC Summary Report

D. Discuss and Possible Action on Strategic Plan Objective to Pursue an Amendment to Clarify Consumers' Rights with Respect to Confidentiality

E. Discuss and Possible Action on Strategic Plan Objective to Review Department of Consumer Affairs' Best Practices, and Analyze and Adjust CAB's Enforcement Procedures Where Appropriate

F. Discuss and Possible Action on Strategic Plan Objective to Define "Instruments of Service" for a Potential Regulatory Proposal

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G. Discuss and Possible Action on Strategic Plan Objective to Initiate a Conversation with The American Institute of Architects, California Council to Explore the Feasibility of a Qualifications-Based Selection Enforcement Process (Senate Bill 1424)

H. Update on Response to Certified Access Specialist Institute's Questions on Architects Practice Act

I. Update on California Commission on Disability Access

WELCOME AND INTRODUCTIONS

Sheran Voigt, Chair of the Board's Regulatory and Enforcement Committee, will open the meeting with introductions and remarks.

ENFORCEMENT PROGRAM UPDATE

Attached is the Enforcement Program Update. The report provides a synopsis of Board and Enforcement Unit activities and projects of interest to the Regulatory and Enforcement Committee.

Also included in this item is an overview of Citations Issued and Final through April 30, 2012.

ENFORCEMENT PROGRAM UPDATE
April 2011 through March 2012

Architect Consultants

Building Official Contact Program:
Between April 2011 and March 2012, the architect consultants responded to a total of 46 telephone and/or email contacts from building officials. These types of contacts generally include discussions regarding the California Architect Board's (Board) policies and interpretations of the Architects Practice Act (Act), stamp and signature requirements, and scope of architectural practice.

Architect consultants Bob Carter and Barry Williams represented the Board at the California Building Officials' (CALBO) 2012 Annual Business Meeting (ABM) on February 13-17, 2012, in Los Angeles/Universal City. CALBO was celebrating its 50th anniversary. The highlight of the awards luncheon was the presentation of a "special award" to past Board member and Regulatory and Enforcement Committee (REC) Chair John Canestro who was one of the original founders of CALBO. Mr. Carter joined representatives of Contractors' State License Board and Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG) in a presentation to the general body on the 16th. There were approximately 150 attendees and the consultants made direct individual contact with 25 of them who had specific questions or issues.

California Supplemental Examination (CSE) Administration Since its launch on February 1, 2011, the new computer-delivered, multiple-choice format of the CSE has been administered to 1,235 candidates through March 31, 2012. Of those candidates, 681 (55%) passed and 554 (45%) failed.

The Board, at its December 2011 meeting, voted to begin releasing CSE results to candidates at test sites beginning June 1, 2012, and to have staff work with the Office of Professional Examination Services (OPES) to develop a process for the future analysis of test items that does not create an interruption or delay in the release of results. Staff is currently working with OPES to address both of these items.

Education/Information Program:
The architect consultants are the primary sources for responses to technical and/or practice related questions from the public and licensees. Between April 2011 and March 2012, there were a total of 477 telephone and/or email contacts requesting information, advice and/or direction. Licensees requesting clarification of business name requirements or advice on business organization accounted for 152 of the contacts, and other inquiries focused on written contract requirements, stamp and signature requirements, out-of-state licensees looking to do business in California, and clarification regarding the scope of practice relative to engineering disciplines.

On March 28, 2012, architects consultants Carter and Williams made a presentation to the East Bay Chapter of The American Institute of Architects (AIA). Approximately 30 members of the Chapter attended the presentation, which included an overview of the purpose and composition of the Board, emphasizing that the Board exists to regulate the practice of architecture for the protection of the public's health, safety, and welfare. They also discussed the Act and the statutes regulating the practice of architecture in California. At the conclusion, they conducted

an informal and interactive questions and answers session about how to comply with the Act. They focused on the requirement for and the elements of executed written contracts, the need to communicate effectively, and to document in writing all changes in project scope.

Board Meetings

Since April 2011, the Board met on September 15, 2011 in Sacramento, December 7-8, 2011 in San Diego, and March 7, 2012 at Woodbury University in Burbank. Meetings for the remainder of this year are tentatively scheduled for June 14, 2012 in Sacramento, September 13, 2012 in Southern California and December 5-6, 2012 in the Bay Area.

At the Board meeting in December 2011, Marilyn Lyon was elected President; Sheran Voigt was elected Vice President; and Hraztan Zeitlian was elected Secretary for 2012.

Budget

On July 28, 2011, the Board completed a State and Consumer Services Agency directive to reduce the Board's budget by five percent. The directive was a result of anticipated ongoing spending reductions outlined in Executive Orders issued in the last fiscal year (FY).

Communications Committee

A "Design Success" consumer tips card was designed and approved by the Committee and presented to the Board at its September 15, 2011, meeting. Staff finalized the cover memorandum to accompany the card, which was distributed to building departments and other collateral entities in mid-February.

Enforcement Program Statistics

Statistics	Current Month	Prior Month	Prior Year
	March 2012	February 2012	March 2011
Total Cases Received and Opened*:	31	8	33
Complaints to Outside Expert:	0	0	0
Complaints to DOI:	1	1	0
Complaints Pending DOI:	2	2	2
Complaints Pending AG:	6	6	12
Complaints Pending DA:	2	2	3
Total Cases Closed*:	30	12	31
Total Cases Pending*:	83	82	136
Settlement Cases (§5588) Opened:	1	3	9
Settlement Cases (§5588) Pending:	14	16	28
Settlement Cases (§5588) Closed:	3	3	11
Citations Final:	0	0	3

*Total Cases categories include both complaint and settlement cases

Newsletter

The Spring 2012 issue of *California Architects* was posted on the Board's website on March 22, 2012 and electronically distributed to interested parties. The newsletter was also sent to the National Council of Architectural Registration Boards (NCARB) Member Board Members and Executives and The American Institute of Architects, California Council (AIACC) chapters to enhance its distribution. The next issue of the newsletter is currently in development and expected to be published in early-July.

Outreach

AIACC and Academy for Emerging Professionals (AEP) - The AIACC's AEP held its first annual Architectural Education Summit at the City College of San Francisco on November 18, 2011. The Summit was intended to serve as a strategic planning session for a five-year initiative to bridge the gap between architectural education and practice in California. Some of the Summit objectives included: developing relationships among stakeholders; having the profession reflect the demographics of the state; creating pathways to the profession for underrepresented K-12 and community college students; having accreditation and licensure more closely represent the values of the academy and the marketplace; disencumbering the paths to licensure to more fully integrate the academy and the profession; and establishing a process for gathering metrics annually.

Organizational partners for the event included the Association of Collegiate Schools of Architecture, the American Institute of Architecture Students, the Board, and NCARB. Other attendees included representatives from: National Architectural Accrediting Board architecture programs in California; California community colleges with architecture programs; chapters of the AIA; National Organization of Minority Architects; Asian American Architects/Engineers Association; Hispanic Architects and Engineers; Women in Architecture; Statewide Education; etc. The Keynote Speaker for the event was Wendy Ornelas, FAIA, Associate Dean and Professor at Kansas State University, and Daniel Iacofano of Moore Iacofano Goltsman Inc. facilitated the event. Board members Jon Baker, Jeffrey Heller, and Marilyn Lyon attended, as well as Doug McCauley, Vickie Mayer, and Justin Sotelo. The Summit included breakout sessions which were tied to the stated objectives and a final findings and strategic planning session; all of which will feed into a final document currently being prepared that captures the work collectively produced at the event.

Board staff members Marccus Reinhardt and Timothy Rodda provided a presentation at the California College of the Arts and University of California, Berkeley on November 16 and 17, 2011. The presentation included information on California licensing requirements and the Intern Development Program (IDP) in conjunction with NCARB IDP Director Harry Falconer. Approximately 150 students attended the presentations.

On March 8, 2012, architect consultant Carter and Rodda, provided a presentation to candidates, explaining the enforcement process, general licensing requirements, and the potential discontinuance of the Comprehensive Intern Development Program. Approximately 24 individuals attended the presentation.

Planning Department Advisement

The Board's 2011 Strategic Plan directed the REC to develop a strategy for working with the League of California Cities and the American Planning Association, California Chapter, to inform them of Act requirements. Following the discussion of this issue at the May 11, 2011 REC meeting and the June 16, 2011 Board meeting, it was determined a letter should be sent to California planning departments advising them of the Act's requirement pertaining to unlicensed individuals submitting plans for non-exempt projects. Board staff presented a draft letter to the Board at its December 7, 2011, meeting. CALBO, which had previously expressed an interest in jointly authoring the letter, voted at its January 2012 meeting to stay "neutral" on this issue and not co-sign the letter. Board staff also contacted BPELSG to ascertain its interest in participating in sending this letter to planning departments. This issue was discussed at BPELSG's March 8, 2012, meeting, where members voted that BPELSG would co-sign the letter with the Board. The letter was mailed to all the planning departments on April 17, 2012.

As of April 25, 2012, staff has received three contacts from planning department officials regarding the letter. Two of them requested language used by other municipalities that could be used by individuals who submit plans to acknowledge that he/she is a licensee. Staff was able to provide such language. The third person wanted to know if the mandate of the letter was in statute or just our opinion. After discussing the matter with staff, the person obtained a better understanding of the law. All three individuals went away with a positive impression of the Board.

Regulatory Changes

California Code of Regulations (CCR) section 103, Delegation of Certain Functions – The Board's 2011 Strategic Plan directed the REC to review and make recommendations regarding Senate Bill 1111 proposals. This legislation failed to pass, but DCA encouraged boards and bureaus to review nine provisions included in SB 1111 to determine whether they might be utilized to improve their enforcement processes. After reviewing the provisions, the REC recommended to the Board it amend CCR section 103 to allow the Board to delegate authority to the Board's Executive Officer to approve stipulated settlements to revoke or surrender a license. The Board approved the recommendation on September 15, 2011, and on December 7, 2011, directed staff to proceed with the regulatory change. Staff is in the process of gathering information for, and drafting the regulation package.

Sunset Review

The final Sunset Review Report was submitted to Business, Professions and Economic Development (BP&ED) Committee on September 30, 2010. The initial hearing for the Board was scheduled for November 10, 2010; however, it was rescheduled to March 21, 2011. The Board went before BP&ED on March 21, 2011 to present the report and address any concerns. A written response to BP&ED issues was provided by the April 20, 2011 (30-day) deadline.

SB 543 extended the Board's sunset date until January 1, 2016. The bill was heard by the Assembly Committee on Business, Professions, and Consumer Protection on July 5, 2011. The bill was amended with no changes that affect the Board and referred to the Assembly Committee on Appropriations on July 12, 2011. The bill was further amended to include DCA's BreEZe project proposal and authorization for Department of Finance (DOF) to augment the budgets of

all the programs involved in the project to cover its costs on August 15, 2011. The bill was sent to the Governor and signed on October 3, 2011.

CITATIONS ISSUED AND FINAL

May 1, 2011 through May 1, 2012

Amit Apel as(Woodland Hills)	BPC section 5536(a) – Practice Without License or Holding Self Out Architect BPC section 5536.1(c) – Unauthorized Practice The Board issued a four-count administrative citation that included a $5,000 civil penalty to Amit Apel, an unlicensed individual, for alleged violations of BPC sections 5536(a) (Practice Without License or Holding Self Out as Architect) and 5536.1(c) (Unauthorized Practice). The action alleged that Apel offered to design a residential condominium of at least 16 units and a residential condominium of at least seven units located in West Hollywood, California. Apel subsequently prepared design and preliminary construction documents for each project. The citation became final on April 25, 2011.
Vicky Leonor Barbieri (Glendale)	BPC section 5536.22(a)(3) and (5) – Written Contract The Board issued a two-count citation that included a $1,000 civil penalty to Vicky Leonor Barbieri, architect license number C-12380, for alleged violations of BPC section 5536.22(a)(3) and (5) (Written Contract). The action alleged that Barbieri failed to include her license number on the written contract and a description of the procedure to be used by either party to terminate the contract. She also failed to execute a written contract or modify the existing contract when providing professional services. Barbieri paid the civil penalty, satisfying the citation. The citation became final on October 25, 2011.
Diane Parker Carawan (Ventura)	BPC section 5584 – Negligence The Board issued a one-count administrative citation that included a $500 civil penalty to Diane Parker Carawan, architect license number C-25411, for an alleged violation of BPC section 5584 (Negligence). The action alleged that Carawan failed to verify zoning code requirements during review of a construction change modification. Carawan paid the citation, satisfying the civil penalty. The citation became final on May 26, 2011.

Benny Chang (West Hollywood)	BPC section 5536(a) – Practice Without License or Holding Self Out as Architect The Board issued a one-count administrative citation that included a $2,000 civil penalty to Benny Chang of BCG Studios, LLC, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Chang's company's website, www.bcgstudios.com, stated that their work encompasses "architectural" design. The citation became final on November 15, 2011.
Clive Anthony Dawson (Malibu)	BPC section 5536.22 – Written Contract The Board issued a one-count administrative citation that included a $500 civil penalty to Clive Anthony Dawson, architect license number C-12309, for alleged violations of BPC section 5536.22(a) (Written Contract). The action alleged that Dawson failed to include in the written contract a description of services to be provided by the architect to the client; license number of the architect; a description of the procedure that the architect and the client will use to accommodate additional services; and a description of the procedure to be used by either party to terminate the contract. Dawson also failed to modify or prepare a new contract to define the new scope of work. Dawson paid the civil penalty, satisfying the citation. The citation became final on November 29, 2011.
Phillip R. Felix (Newport Beach)	BPC section 5536(a) – Practice Without License or Holding Self Out as Architect The Board issued a four-count administrative citation that included a $2,000 civil penalty to Phillip R. Felix, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Felix's firm, "Lewis-Felix, Inc., Architects & Planners," signed agreements, which included fees for "architectural & engineering," and prepared plans for four projects. Felix's title block on the plans showed his firm name, which included the term "Architects." Felix also offered to design a commercial building, which is not a building described in BPC section 5537(a) as an exempt project. The citation became final on January 12, 2012.
Daniel Garness (Venice)	BPC section 5536(a) – Practice Without License or Holding Self Out as Architect The Board issued a three-count administrative citation that included a $7,500 civil penalty to Daniel Garness, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self

Out as Architect). The action alleged that Garness put out a resume on letterhead that stated "Garness Architecture + Landscape" and he provided a proposal for Architectural Services on letterhead which stated "Garness Architecture + Landscape." The proposal stated "We are pleased to present you with the following proposal for Architectural Services…." Garness also executed an "Agreement for Professional Services" which stated "This Agreement for Professional Services ("Agreement") is made this 6th day of March 2010, between Garness Architecture + Landscape ("Consultant") and…" The Agreement stated that "Consultant is an experienced Architect and has the expertise necessary to perform each and every Service and any Additional Services," and further states that "Consultant has the capability, experience, registrations, licenses, permits and governmental approvals required to perform the Services and any Additional Services." The citation became final on August 24, 2011.

Charles David Hefner
(Studio City)

BPC section 5558 – Business Entity
BPC section 5584 – Willful Misconduct

The Board issued a two-count citation that included a $2,500 civil penalty to Charles David Hefner, architect license number C-23963, for alleged violations of BPC sections 5558 (Business Entity) and 5584 (Willful Misconduct). The action alleged that Hefner was paid $3,100 as a retainer to begin Preliminary Design Work. Hefner failed to provide drawings or design product for clients. This breach of contract constitutes willful misconduct in the practice of architecture. The citation became final on April 5, 2012.

Jay Wendell Johnson
(La Canada)

CCR section 160(b)(2) – Rules of Professional Conduct
BPC section 5536(a) – Practice Without a License or Holding Self Out as Architect

The Board issued a two-count administrative citation that included a $2,000 civil penalty to Jay Wendell Johnson, architect license number C-13239, for alleged violations of California Code of Regulations section 160(b)(2) (Rules of Professional Conduct) and BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Johnson's architect license expired on January 31, 2011 and was not renewed. The Board sent two letters to Johnson's address of record requesting that he respond to allegations of unlicensed practice. Johnson failed to respond to the Board's requests for information regarding its investigation of alleged unlicensed practice. On or about September 27, 2011, the Internet revealed that Johnson has a website located at www.jayjohnsonaia.com. The website stated in part "He specializes in second floor addition projects where the architecture is seamless…." It also stated "Each estate is custom designed then crafted with finest architectural details, materials and workmanship." The citation became final on November 1, 2011.

Gary Ridley (Shingle Springs)	BPC section 5536(a) – Practice Without License or Holding Self Out as Architect The Board issued a one-count administrative citation that included a $1,500 civil penalty to Gary Ridley, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out As Architect). The action alleged that Ridley advertised/offered Drafting and Title 24 services on the website, www.sacramento.craigslist.org. The advertisement included the keyword term, "Architect." The citation became final on September 6, 2011.
Sean Rodrigues (Healdsburg)	BPC section 5536(a) – Practice Without License or Holding Self Out as Architect The Board issued a one-count administrative citation that included a $2,000 civil penalty to Sean D. Rodrigues, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out As Architect). The action alleged that Rodrigues offered to provide professional architecture and design services for the new Healdsburg Animal Shelter located in Healdsburg, California. This building type is not exempt since it does not satisfy the definitions for exempt building types in BPC section 5537(a). The citation became final on August 29, 2011.
Louis F. Romero (Newhall)	BPC section 5536(a) – Practice Without License or Holding Self Out as Architect The Board issued a one-count administrative citation that included a $2,500 civil penalty to Louis F. Romero, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Romero's company, Arcitex & Associates, was listed on the Internet under seven different websites as using "Architecture" and/or "Architectural Illustrators." The citation became final on June 30, 2011.
Gaetano Dan Salvo (San Pedro)	BPC section 5536(a) – Practice Without License or Holding Self Out as Architect The Board issued a one-count administrative citation that included a $2,000 civil penalty to Gaetano Dan Salvo, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Salvo had listings on the Internet under the "Architect" heading on the websites: theusaexplorer.com, architectnearyou.com, powerprofiles.com, cylex-usa.com and allbusiness.com.

Salvo appealed the citation and an administrative hearing was held. The Administrative Law Judge upheld the Citation and it became final on April 21, 2011.

Jennifer Siegal
(Venice)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect
BPC section 5536.1(c) – Unauthorized Practice

The Board issued a four-count administrative citation that included a $6,000 civil penalty to Jennifer Siegal, an unlicensed individual, for alleged violations of BPC sections 5536(a) (Practice Without License or Holding Self Out As Architect) and 5536.1(c) (Unauthorized Practice). The action alleged that Siegal stated that she has been doing "architecture work" since about 1994. Siegal identified herself as an architect during a lecture and on an Internet commercial, she described her business as "My Architecture is all about green materials, new technologies and harmonious spaces." Siegal sent invoices to her client for an "Architectural Design Retainer" and "Architectural Design Services." Siegal offered and prepared drawings for a two-story, steel framed, modular residence, which is not a building described in BPC section 5537(a) as an exempt project. The citation became final on January 23, 2012.

Edward Paul Skibitzke
(Pacific Palisades)

BPC section 5536.22 – Written Contract

The Board issued a one-count administrative citation that included a $250 civil penalty to Edward Paul Skibitzke, architect license number C-8640, for an alleged violation of BPC section 5536.22(a) (Written Contract). The action alleged that Skibitzke failed to amend the contract to include development of construction documents to obtain a building permit, or prepare a new written agreement. Skibitzke paid the civil penalty, satisfying the citation. The citation became final on August 30, 2011.

Addison Strong
(San Francisco)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a one-count administrative citation that included a $2,000 civil penalty to Addison Strong, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that when engaging the services of a consulting engineer, Strong presented a business card which read "ADDISON STRONG DESIGN STUDIO" and "ARCHITECTURE AND PLANNING" as services he provides. The citation became final on June 27, 2011.

Johnny Paul Wright (Lincoln)	BPC section 5536(a) – Practice Without License or Holding Self Out as Architect BPC section 5536.1(c) – Unauthorized Practice The Board issued a six-count administrative citation that included a $15,000 civil penalty to Johnny Paul Wright, an unlicensed individual, for alleged violations of BPC sections 5536(a) (Practice Without License or Holding Self Out as Architect) and 5536.1(c) (Unauthorized Practice). The action alleged that Wright prepared construction documents for a tenant improvement project located in Sacramento, California, which included seismic related interior alterations. Wright submitted these drawings for plan check to the County of Sacramento Building Department. Wright also prepared design documents for a Preschool/Day Care project located in El Dorado Hills, California and submitted the drawings for permit to the County of El Dorado Building Department. Wright prepared design documents for a commercial tenant improvement project located in Rancho Cordova, California and used calculations to develop a construction detail to laterally (or seismically) brace proposed new wall construction. Wright submitted these drawings for permit to the County of Sacramento Building Department. These building types are not exempt since they do not satisfy the definitions for exempt building types in BPC section 5537(a). On all three of the above projects, Wright used a California licensed architect's stamp with the name and license number of that architect, the expiration date, and the legend "State of California." He also forged the architect's signature on the drawings. The citation became final on August 12, 2011.

Administrative Actions

MARK ALAN BARLOW (Lompoc) A Statement of Issues was filed against Mark Alan Barlow, an unlicensed individual and candidate for licensure, after he appealed the Board's denial of his application for licensure. The denial was based on evidence that Barlow had: 1) been convicted of two interlineated misdemeanor counts of violating Penal Code section 602(l) (Trespassing); 2) disciplinary action taken against him by a public agency for an act substantially related to the qualifications, functions, or duties of an architect, in violation of Business and Professions Code (BPC) section 5586; and 3) committed an act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself. A stipulated settlement and disciplinary order was negotiated and adopted by the Board on June 16, 2011 and became effective on June 28, 2011. The terms and conditions of the stipulation included the issuance of architect license number C-33092, which was immediately revoked, the revocation stayed, and Barlow was placed on five years probation commencing from the date the license was issued. Other terms and conditions included reimbursing the Board $3,165 for its investigative and prosecution costs and successfully completing an ethics course approved by the Board.

ANDREW BARMAKIAN (Rancho Cucamonga) Effective January 20, 2011, Andrew Barmakian's architect license number C-7763, was revoked; however, the revocation was stayed and Barmakian's license was suspended for 90 days. He was placed on probation for five years with specific terms and conditions, including reimbursing the Board $4,195 for its investigative and prosecution costs. The action came after a stipulated settlement was negotiated and adopted by the Board.

An Accusation was filed against Barmakian for alleged violations of BPC sections 490 (Conviction of Crime) and 5577 (Conviction of Certain Crimes), and California Code of Regulations (CCR), Title 16, section 110 (Substantial Relationship Criteria). The Accusation alleged that Barmakian was convicted, pursuant to his plea of guilty, of violating Title 15, United States Code, section 1 (Conspiracy to Restrain Trade), a felony and crime substantially related to the qualifications, functions, and duties of an architect. Beginning in or about December 2000 and continuing until about May 2003, Barmakian and co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition by allocating customers and rigging bids for contracts of plastic marine pilings in the United States and elsewhere.

EDWARD W. POWELL (Oak View) Effective July 22, 2011, Edward W. Powell's architect license number C-27775, was revoked; however, the revocation was stayed and Powell's license was placed on probation for five years with specific terms and conditions, including restitution to the clients for $18,500. The action came after a stipulated settlement was negotiated and adopted by the Board.

An Accusation was filed against Powell for alleged violations of BPC sections 5578 (Violation as Ground for Discipline in General) and 5584 (Negligence or Willful Misconduct). The Accusation alleged that Powell's work on two clients' architectural plans fell below the standard of care. Powell's plans lacked the requisite information and detail necessary for City approval; and he failed to address a parking variance, instead incorporating tandem parking into the plans which is not an acceptable alternative for this type of project. Powell failed to complete the plans.

CURTIS SHUPE (Palm Desert) Effective January 13, 2007, Curtis Shupe's architect license number C-13388, was revoked; however, revocation was stayed, his license was suspended for 90 days and he was placed on probation for five years with specific terms and conditions, including restitution pursuant to an arbitration award to the clients in the amount of $63,876.36. The action came after a stipulated settlement was negotiated and adopted by the Board.

On October 6, 2010, a Petition to Revoke Probation was filed against Shupe for failure to submit quarterly reports as mandated by the terms and conditions in the stipulated settlement. Effective April 21, 2011, Shupe's architect license was revoked. The action came after a Default Decision and Order was adopted by the Board.

SCOTT A. SPENCER (La Jolla) A Statement of Issues was filed against Scott A. Spencer after he appealed the Board's denial of his application for licensure. Spencer was initially issued architect license number C-12989 on June 14, 1982. The license expired on May 31, 1987, and was not renewed. The denial was based on evidence that while his license was expired, Spencer prepared a set of plans dated June 15, 2000, for a project in La Jolla. The plans bore a stamp that read "Licensed Architect," "Scott A. Spencer," "No. C 12989," the legend "State of California," and his signature. Spencer prepared a contract, business cards and letterhead using the terms "architect" and "architectural." On April 2, 2004, the Board issued Citation No. 04-11, which charged Spencer with violating BPC section 5536(a) and (b) ordering him to cease and desist from violating these sections and imposed civil penalties against him totaling $2,500, which he paid on May 10, 2004.

On or about August 10, 2004, Spencer entered into a written contract to design and provide construction documents for a single family residence located in Del Mar. On or about November 10, 2008, Spencer prepared plans for the residence with a title block stating "Scott A. Spencer & Associates Architecture Planning." On or about January 29, 2009, Spencer appeared before a Project Review Committee Meeting of the Torrey Pines Community Planning Group in Del Mar to present and describe the project for the residence in order to obtain its approval for the residence to be built. At the meeting, Spencer identified, represented, and held himself out as an architect.

A Stipulated Settlement and Disciplinary Order was negotiated and adopted by the Board on December 7, 2011 and became effective on December 12, 2011. The terms and conditions of the Stipulation included the issuance of architect license number C-33340, which was

immediately revoked, the revocation stayed, and Spencer was placed on five years probation commencing from the date the license was issued. Other terms and conditions included reimbursing the Board $3,350 for its investigative and prosecution costs and successfully completing an ethics course approved by the Board.

RYUJI TSUYUKI (Los Angeles) Effective October 20, 2011, Ryuji Tsuyuki's architect license, number C-18519, was revoked. The action was the result of a Default Decision and Order, which was adopted by the Board.

An Accusation was filed against Tsuyuki for violations of BPC section 5584 (Willful Misconduct) and CCR sections 150 (Willful Misconduct) and 160(b)(2) (Unprofessional Conduct). The Accusation alleged that Tsuyuki was hired to prepare architectural drawings to enlarge a kitchen and a room above a garage for a residence. Tsuyuki was paid $15,000; however, he failed to complete the drawings and submit them to the city planning authority over the course of two years and he failed to return telephone calls or respond to emails from the homeowners. Tsuyuki also failed to respond to the Board's requests for information in conjunction with its investigation of the homeowners' complaint, within 30 days of its written request.

REVIEW AND APPROVE MAY 11, 2011 REC SUMMARY REPORT

The Committee is asked to review and approve the summary report of the May 11, 2011 REC meeting held in Sacramento, California.

CALIFORNIA ARCHITECTS BOARD
PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

Edmund G. Brown Jr.
GOVERNOR

SUMMARY REPORT

REGULATORY & ENFORCEMENT COMMITTEE MEETING

May 11, 2011

Sacramento, California

Committee Members Present

Sheran Voigt, Chair
Richard Conrad (Departed 12:45 p.m.)
Fred Cullum
Robert George
Michael Merino
Phyllis A. Newton, Esq. (Arrived 10:10 a.m.)
Larry Segrue

Committee Member Excused

Robert De Pietro

Board Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Hattie Johnson, Enforcement Officer
Bob Carter, Architect Consultant
Trish Rodriguez, Landscape Architects Technical Committee Program Manager

A. Welcome and Introductions

Regulatory and Enforcement Committee (REC) Chair Sheran Voigt called the meeting to order at 10:00 a.m. She noted that Robert De Pietro was absent and excused.

Ms. Voigt welcomed the REC and staff, and requested self-introductions.

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Ms. Voigt announced that Larry Segrue was a recipient of the Octavius Morgan Distinguished Service Award. She provided a brief history of Mr. Segrue's volunteer work for the Board and presented the award to Mr. Segrue. Mr. Segrue stated that he was honored to be a recipient and thanked the Board. He added that he began working with the Board in 1979 and was an architect consultant for the Board for 13 years.

B. Enforcement Program Update

Hattie Johnson informed the REC that Barry Williams was awarded a new contract for architect consultant services for the Board. She indicated that the award was protested by another proposer and on April 15, 2011, an Administrative Law Judge from the Office of Administrative Hearings denied the protest. She advised that the Department of Consumer Affairs' (DCA) Contract Unit is currently processing Mr. Williams' new contract.

Ms. Johnson stated that the next Board meeting is scheduled for June 16, 2011 at the University of Southern California. She indicated the Board members Pasqual Gutierrez, Ms. Voigt, and Hraztan Zeitlian were reappointed to the Board by the Governor on January 2, 2011. She added that Fermin Villegas was appointed to the Board by the Senate Rules Committee. She noted that the Board currently has one vacancy.

Ms. Johnson advised the REC that on April 26, 2011, the Governor issued Executive Order B-06, prohibiting discretionary in-state and out-of-state travel, unless it is mission critical. She explained that the REC was able to meet because the meeting had already been posted on the Board's website and it was in Sacramento. Vickie Mayer noted that travel has been restricted and new requirements would have to be met in order to expend funds for travel. She indicated that a budget letter would be coming with further instructions.

Doug McCauley added that there is still a hiring freeze and at this time, there are a limited number of DCA employees that the Board is allowed to hire from. He noted that the Governor had reduced the number of cell phones state employees were allowed to utilize and prohibited state agencies from producing promotional items that are distributed to consumers at events. Mr. McCauley stated that the Governor's May revision to the State's 2011/2012 budget may contain additional restrictions.

Ms. Johnson noted that the Enforcement Program Statistics in the meeting packet showed the March 2011 pending complaint cases at 144. She indicated that for April 2011, the pending complaint cases had been reduced to 134.

Ms. Johnson explained that the Board's Winter 2011 newsletter, which was the first newsletter to be produced electronically, was posted on the Board's website on January 6, 2011 and the next newsletter is expected to be published in May 2011.

Ms. Johnson indicated that the Board is now posting accusations and decisions against individuals on its website. She explained that an accusation is a formal statement of charges filed by the Attorney General's Office.

Mr. McCauley indicated that licensees' renewal fees had been increased. He noted that this required legislation to raise the ceiling of fees. Regulations to increase the fees were then drafted and became effective on January 1, 2011. He added that fees had not been increased for 20 years.

Mr. McCauley stated that the Board worked diligently with staff in preparing a 100 page Sunset Review Report. He advised that it was submitted to the Business, Professions and Economic Development Committee in September 2010 and was similar to the report prepared in 2003. He indicated that a hearing was held March 21, 2011, where initial inquiries from the Committee were responded to. Mr. McCauley noted that the Committee asked questions concerning the Supplemental Examination and the Intern Development Program, and also asked the Board to explain what factors it sees leading to the lower passage rates for California Architect Registration Examination candidates. He stated that these questions were responded to in writing and after the hearing there were follow-up questions responded to in a second submittal. He added that one of the issues the Board was asked to explain was its inconsistent position on continuing education (CE). He reminded the REC that the Board conducted a study in 2001. He stated that at that time, data from a survey showed CE was not a problem sufficient to warrant CE. Mr. McCauley pointed out that a number of critical variables have changed. For example, over 46 states require CE for architects and Senate Bill (SB) 1608 mandated CE on disabled access. He stated the Board now feels that due to the rapidly changing complexities of practice a more comprehensive health, safety, and welfare CE is warranted. He indicated that he did not believe there would be a second round of hearings. Michael Merino commented that the Board was not unanimous on its position regarding CE.

Ms. Johnson asked if there were any questions concerning the Citations Issued and Final and the Final Administrative Actions contained in the meeting packet. Robert George asked if the citations issued to Nam H. Kim and Bruce Cameron McVay were related because they had the same business name. Ms. Johnson responded that they were. Mr. George commented that it appeared that most of the citations were directed at small firms. He asked if there were ever any citations issued against larger firms. Ms. Johnson indicated that in most instances, the only way the Board is advised of issues with a larger firm was through a settlement report. She noted that usually in larger, more complex projects, the client's complaints are satisfied through a settlement and therefore they would not complain to the Board.

Mr. Merino stated that the REC had discussed over the years how the Board collected administrative fines assessed in citations. He asked how many of the individuals issued a citation listed in the packet had paid their fines. Ms. Johnson responded that of the 24 individuals shown, five had paid their administrative fines. She noted that this was 21% of the fines accessed. She added that this is an increase from last fiscal year. She stated that unlicensed individuals frequently change addresses and it is very difficult to locate them. She indicated that staff is still using the Franchise Tax Board Intercept Program in an attempt to collect unpaid fines. She added that the Board had a contract with a collection agency to collect the fines; however, their services cannot be utilized until the Board has statutory authority to release individuals' social security numbers. She

indicated that she anticipates there would soon be legislation giving the Board authority to release social security numbers to collection agencies. Mr. McCauley stated that this issue could potentially receive statutory authority based on the Sunset Review process. Mr. Merino noted that there are other initiatives in the meeting packet addressing issues like fingerprinting; however, he would like to see more emphasis on collecting unpaid administrative fines.

C. Review and Approve April 26, 2010 REC Summary Report

Ms. Voigt asked if there were any comments, corrections or questions regarding the April 26, 2010 REC Summary Report.

A motion was made by Michael Merino and seconded by Richard Conrad to approve the April 26, 2010 REC Summary Report. The motion passed 7-0.

D. Discuss and Possible Action on Strategic Plan Objective to Develop a Strategy for Working With the League of California Cities and the California Chapter American Planning Association to Inform Them of Architects Practice Act Requirements

Mr. McCauley stated that this issue is a result of the Board's last Strategic Planning session. He noted that for years, the Board has had a solid relationship with the State's building departments. He added that for more than 20 years, the Board has had an outreach program where the Board's architect consultants would visit International Code Council chapters to discuss the Architects Practice Act, stamping requirements, etc. He indicated that in addition to the two architect consultants, there are currently only two enforcement analysts, one enforcement technician and the enforcement officer in the Board's Enforcement Unit. He stated that there are over 400 building departments in the state who interact with architects on a daily basis and can assist the Board. He explained that architecture does not begin with construction documents being submitted to the building department and there was an interest in the Board visiting planning departments. He explained that this would include the League of California Cities (LCC) and the California Chapter American Planning Association (CCAPA). Mr. McCauley indicated that the REC was tasked with discussing what the message might be and the best way to reach out to these organizations.

Mr. Merino stated that he continually sees documents prepared by unlicensed individuals, during the planning process. He opined that these planning documents should be subject to the same stamping requirements as plans that go to the building department. He noted that he would like to see the message contain an explanation of the projects that would require the services of an architect or registered engineer. He added that the cost of membership to the LLC is high and some cities have opted not to belong. He explained that Orange County cities are establishing their own group.

Fred Cullum agreed that he frequently sees unlicensed people presenting plans for nonexempt projects. Unfortunately, the project can be almost completed before a licensed architect or engineer is required by a city.

Mr. Segrue suggested that the problem may be more systemic in that the statute does not delineate when a project becomes "architecture." He felt that if the statute was clarified, it would make the Board's presentation to LLC and CCAPA stronger. Mr. Merino agreed. He stated that if the law is clarified, maybe a city could adopt the law as an ordinance.

Mr. George wondered how the Board could convince the cities that it would be to their benefit to require licensees for an entire nonexempt project. He stated that he had had some of the same experiences Mr. Merino had expressed. Mr. George noted that when he expressed his concern to the city, he was overturned by the city council.

Mr. Merino stated that the Board wanted to ensure that the limitations for unlicensed people were codified so that a consumer would not have to go through the whole design process with an unlicensed person, only to discover that a licensee would be needed to stamp and sign the plans.

Mr. Conrad asked why unlicensed people were allowed to submit plans to the planning department for nonexempt projects. Bob Carter responded that planning departments do not enforce the Board's statute which building departments do enforce. He suggested that this issue be taken from a consumer protection standpoint by enforcing what the law says. He added that clarifying the law would assist in this endeavor. He noted that the real question is when does a project constitute architectural planning of the site.

Mr. Merino suggested that instead of guessing what the planning departments would consider an effective way to address this issue, the Board could create some synergy and explain to the CCAPA what the Board perceives the challenge is. He suggested asking CCAPA how the Board could publicize this to planners and how this could be made enforceable at the planning stage, i.e., how to make this happen at the entitlement planning stage to be compliant with the law.

Mr. McCauley stated he liked Mr. Merino's suggested approach because the Board could go straight to the organization rather than a grassroots method, which would be difficult based on budget constraints. Mr. Merino noted that he felt the initial reaction of CCAPA would be that the planners would think the Board does not have authority to enforce this requirement. He suggested going to the CCAPA before going to the LCC.

The REC recommended to the Board that it first open a dialog with the CCAPA to discuss the Board's role as a consumer protection agency and its statutes, describe the Board's concern regarding unlicensed individuals presenting plans to the planning department for non-exempt projects, and identify whether CCAPA perceives this to be an issue.

E. <u>Discuss and Possible Action on Strategic Plan Objective to Determine the Appropriateness of "Gag" Clauses in Civil Settlement Agreements</u>

Ms. Johnson noted that a gag clause would prohibit a licensee from entering into a settlement that prohibits reporting the settlement to the licensee's licensing agency. Ms. Johnson indicated that this issue was brought to the Board's attention at its last meeting

by Julie Fellmeth from the Center for Public Interest Law. Ms. Johnson stated that the Board already has a statute that somewhat addresses this issue. She advised that Business and Professions Code (BPC) section 5588.3 states: "Notwithstanding any other provision of law, a licensee shall not be considered to have violated a confidential settlement agreement or other confidential agreement by providing a report to the Board as required by this article."

Ms Johnson explained that SB 544 (Price) is proposed legislation directed at DCA's healing arts boards. She explained that there is one proposed section in this legislation that would affect all of DCA's boards and bureaus requiring "gag" clauses be prohibited as part of a civil settlement. She added that the bill was scheduled to be heard by the Business, Professions and Economic Development Committee on May 2, 2011, however, it was cancelled at the request of the author. Ms. Johnson asked REC members if they felt that the Board's existing statute and the proposed legislation would address problems associated with gag clauses.

Phyllis Newton stated that the term "gag order" is a misnomer. She stated that a gag order is imposed by a court and it cannot be violated. She noted that this is really an issue of confidentiality clauses, which are inserted in settlement agreements. She explained that in California, there is a requirement that an architect must report any settlement over $5,000 to the Board. Ms. Johnson indicated that these reports are not public information unless they result in an enforcement or disciplinary action. Ms. Newton noted that a confidentiality agreement does not prevent an architect from making a settlement report to the Board, because it is a statutory requirement. She stated that she felt that the provisions in SB 544 did not provide any more protection to consumers than what already existed in statute.

Ms. Mayer asked if the confidentiality agreement would extend to the client. Ms. Newton responded that it would. Ms. Mayer explained that there are times when more information may be needed from a client; however, they say they cannot provide the information because of the confidentiality agreement. She added that BPC section 5588.3 does not extend to consumers.

Mr. Merino stated that he felt this was a non-issue because there is already a statute that requires architects to report settlements to the Board. Mr. McCauley asked REC members if they felt that a clause could be added to BPC section 5588.3 that would allow other parties to the agreement to report and respond to the Board regarding settlements. They agreed that this addition to the statute should be recommended to the Board.

F. <u>Discuss and Possible Action on Strategic Plan Objective to Review and Make Recommendation Regarding Department of Consumer Affairs' (DCA) Proposals (Senate Bill 1111)</u>

Ms. Johnson stated that SB 1111 was introduced last year. She noted that it was pursued to improve DCA's boards' and bureaus' enforcement processes; however, the legislation failed to pass. She indicated that DCA is encouraging boards and bureaus to review some of the provisions included in SB 1111 and determine whether they might be utilized to improve the enforcement processes. She explained that DCA's suggestions were included in the meeting packet.

Mr. Merino opined that he was concerned about the issue of sexual misconduct included in proposal number two in the meeting packet. He stated that he felt that this issue would not apply to architects. He stated that the fact that an applicant is registered as a sex offender should be considered in the licensure process for architects, because there had been a court that convicted the individual. He asked if a convicted felon could be licensed as an architect. Ms. Johnson responded that this is taken on a case by case basis. The REC determined that they would review each provision separately:

1. *Board delegation to Executive Officer regarding stipulated settlements to revoke or surrender license: Permit the Board to delegate to the Executive Officer the authority to adopt a "stipulated settlement" if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the Board to vote to adopt the settlement. Recommend: Amend 16 CCR 1403.*

Ms. Johnson explained that this would allow the Executive Officer to adopt a stipulation that would revoke the license of an architect. Mr. Merino asked if all due processes had been met concerning this type of action. Mr. McCauley responded that this is an action the architect had agreed to. The REC agreed to recommend this proposal to the Board.

2. *Revocation for sexual misconduct: Require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in any act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed. Recommend: Amend regulations/disciplinary guidelines.*

Ms. Johnson stated that the concern with this provision would be that an ALJ would be required to revoke a license for a finding of sexual contact with a patient. She noted that the Board does have jurisdiction over a licensee who has been convicted of a crime. The REC agreed that this is not relevant to the Board.

3. *Denial of application for registered sex offender: Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender. Recommend: Amend the regulations pertaining to applicant requirements and disciplinary guidelines.*

Ms. Johnson noted that this type of information about an applicant would be taken on a case by case basis to determine licensure. She explained that an applicant has to report convictions on applications sent to the Board applying for various testing and licensure.

Mr. Merino stated that because due process had already taken place and an individual is convicted of a sexual offense, this provision should be recommended to the Board to support. Mr. Mayer noted that this would take away the Board's discretion in this area. She noted that she could not recall ever seeing this type of information on an application at this Board.

Mr. Merino opined that he felt the Board or staff should not be put in a position of determining whether a registered sex offender should be licensed. He stated that he felt

registered sex offenders should be denied a license. He stated that he was concerned that a family for a residential project would be exposed to a registered sex offender. Ms. Newton stated that she felt that the public was protected because the individual was on a registry. She stated that individuals should have an opportunity to earn a livelihood. She questioned the constitutionality of this provision. Mr. Merino asked what the basis was for staff to issue a license to someone who had been convicted of a crime. Ms. Mayer responded that the crime has to be substantially related to the practice of architecture in order to deny licensure and the Board considers rehabilitation in its determination.

A motion was made by Phyllis Newton and seconded by Fred Cullum to recommend that the Board oppose this provision. The motion passed 6-1 (Michael Merino opposed).

4. *Confidentiality agreements regarding settlements: Confidentiality agreements regarding settlements can cause delay and thwart a Board's effort to investigate possible cases of misconduct, thereby preventing the Board from performing its most basic function – protection of the public. Recommend: Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.*

Ms. Voigt noted that this proposal had already been addressed under Agenda Item E.

5. *Failure to provide documents and 718 (d) - Failure to comply with court order: Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records. Recommend: Define in regulation that failure to provide documents and noncompliance with a court order is unprofessional conduct.*

Ms. Johnson indicated that the Board does not subpoena medical records. Mr. Merino asked if the Board ever subpoenaed construction documents. Ms. Johnson responded that the staff had not yet done this but had the power to do so if necessary. Mr. Merino asked if staff felt this proposal would assist them in the enforcement process. Ms. Johnson stated that there is already a law that makes it willful misconduct if a licensee does not provide records, as requested by the Board, as part of an investigation. The REC agreed to recommend to the Board that this would be a non-issue because it is already addressed in current statute.

6. *Psychological or medical evaluation of applicant: Authorize the Board to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness; authorize the Board to deny the application if the applicant refuses to comply with the order; and prohibit the Board from issuing a license until it receives evidence of the applicant's ability to safely practice. Recommend: Amend regulations pertaining to applicant requirements that a psychological or medical evaluation may be required.*

Mr. Merino stated that this issue had previously been reviewed and considered by the Board. He noted that the REC had recommended that the Board adopt such a statute; however, the Board did not adopt the REC's recommendation. He stated that now the DCA is asking that this issue be addressed by the Board.

A motion was made by Michael Merino and seconded by Phyllis Newton to recommend that the Board support DCA's proposal. The motion passed 4-3 (Sheran Voigt, Fred Cullum and Larry Segrue opposed).

7. *Sexual misconduct: Currently defined in B&P Code §726. Recommend: Define in regulation that sexual misconduct is unprofessional conduct.*

The REC agreed to recommend to the Board that this would be a non-issue.

8. *Failure to provide information or cooperate in an investigation: Make it unprofessional conduct for a licensee to fail to furnish information in a timely manner or cooperate in a disciplinary investigation. Recommend: Define in regulation that failure to provide information or cooperate in an investigation is unprofessional conduct.*

Ms. Johnson advised that the Board already had California Code of Regulations section 160(b)(2), which addresses this issue. She explained that a licensee would be in violation if he/she did not provide requested information to the Board within 30 days of the request. The REC agreed to recommend to the Board that this would be a non-issue because it is already addressed in current statute.

9. *Failure to report an arrest, conviction, etc.: Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction. Recommend: Define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.*

Ms. Johnson explained that court clerks are currently required to report criminal actions by licensees to the Board pursuant to BPC section 5590. In addition, licensees are required to report criminal action taken against them on their biennial architect license renewal forms.

The REC agreed to recommend to the Board that this would be a non-issue because it is already addressed in current statute.

G. Discuss and Possible Action on Strategic Plan Objective to Utilize DCA's Recommended Enforcement Performance Measures as Appropriate

Ms. Johnson stated that the Performance Measures are quarterly statistical data that includes, among other things, the number of complaints received and the average number of days it takes to close a case. Mr. Merino stated that he preferred the statistical data chart staff prepared and presented at the last Board meeting. Ms. Voigt stated that this data shows the Board is doing well.

H. Discuss and Possible Action on Strategic Plan Objective to Review, Update, and Publish Consumer's Guide to Hiring an Architect

Ms. Johnson stated that the Guide was last updated in 2004. She noted that staff made suggested changes, which were included in the REC meeting packet.

The REC reviewed each section of the Guide and provided staff with guidance for changes. Ms. Newton volunteered to conduct a more in depth review of the Guide and provide her comments and recommendations to staff in a few days. She asked if the Guide would be printed in hard copy form or only be available on the Board's website. Mr. McCauley stated that based on budget constraints, it had not yet been decided. The REC agreed to have staff incorporate all changes and either present them at the next scheduled REC meeting or possibly conduct a teleconference regarding the changes to the Guide.

I. Discuss and Possible Action on Strategic Plan Objective to Monitor Fingerprint Requirement for Licensees to Determine its Potential Application to CAB

Ms. Johnson stated that at this time, the Board does not fingerprint its applicants. She noted that the Board of Accountancy (BA) receives about 3,000 applications for licensure per year that includes fingerprints. She indicated that they receive approximately 250 Records of Arrests and Prosecution (RAP) sheets per year. She added that based on the RAP sheets received, about 15-20 cases are sent to their enforcement unit for investigation.

Ms. Johnson advised that last year the Board received 733 Architect Registration Examination (ARE) Applications and 531 Applications for Licensure. She noted that based on the BA's data, the Board might receive 59 RAP sheets per year if fingerprints were provided with the ARE applications and 42 if they were provided with the Application for Licensure. She indicated that the Board is not included in proposed legislation that would require that it fingerprint its applicants. She stated that a need has not been identified to require this statute. She noted that at this point, staff is not recommending new mandates at this time given the fiscal climate, unless there is a documented specific need for it.

Mr. Merino stated that fingerprints are also used for identification purposes. Ms. Voigt noted that she would rather see the Board be given authority to release social security numbers to its contracted collection agency for collection of unpaid citation fines. Mr. McCauley indicated that there are few boards that do not have this requirement and the Board is one of them. The REC agreed to recommend to the Board that the legislation that requires the Board of Professional Engineers, Land Surveyors, and Geologists obtain fingerprints, be monitored.

The meeting adjourned at 1:05 p.m.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO PURSUE AN AMENDMENT TO CLARIFY CONSUMERS' RIGHTS WITH RESPECT TO CONFIDENTIALITY

The California Architects Board's (Board) 2012 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to pursue an amendment to the Business and Professions Code (BPC) to clarify consumer's rights with respect to confidentiality concerning civil settlement agreements. This originated from the Board's 2011 Strategic Plan, which directed the REC to determine the appropriateness of "gag" clauses in civil settlement agreements.

The REC discussed the gag clause issue at its May 11, 2011 meeting and determined it was really a "confidentiality clause" matter. After discussion, the REC recommended to the Board that a clause be added to BPC section 5588.3 that would allow other parties to the agreement to report and respond to the Board regarding settlements.

The REC's recommendation was presented to the Board at its June 16, 2011 meeting. The Board agreed with the REC and voted to seek an amendment to BPC section 5588.3, which would allow clients/consumers to respond to the Board's inquiry regarding settlement agreements, even with a confidentiality clause in place.

It is recommended that the following language in underlined blue be added to amend BPC section 5588.3:

a) Notwithstanding any other provision of law, a licensee or other parties shall not be considered to have violated a confidential settlement agreement or other confidential agreement by providing a report to the board as required by this article or in response to a request for information from the board.

The REC is asked to review the recommended amendment to BPC section 5588.3 and determine whether this would address problems associated with confidentiality clauses as it relates to consumers/clients, and make a recommendation to the Board.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO REVIEW DEPARTMENT OF CONSUMER AFFAIRS' BEST PRACTICES, AND ANALYZE AND ADJUST CAB'S ENFORCEMENT PROCEDURES WHERE APPROPRIATE

The California Architects Board's (Board) 2012 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to review the Department of Consumer Affairs' (DCA) best practices, and analyze and adjust the Board's enforcement procedures, where appropriate.

In recent years some of DCA's healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner. In fact, some boards took an average of three years to investigate and prosecute these cases, which was an unacceptable timeframe that could put consumers' safety at risk.

DCA reviewed the existing enforcement process and found systemic problems that limit the boards' abilities to investigate and act on these cases in a timely manner. These problems ranged from legal and procedural challenges to inadequate resources. In response, DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process at the healing arts boards. Part of the CPEI was to identify best practices for a number of enforcement processes and procedures. This effort was aimed at taking advantage of the most effective practices utilized by the various boards, and entities in other states, and ultimately reduce time in all aspects of the enforcement process.

In 2010, staff from DCA's boards and bureaus presented their findings concerning best practices. They defined best practices as the processes, practices, and systems identified in public and private organizations that performed exceptionally well and are widely recognized as improving an organization's performance and efficiency in specific area. DCA staff provided recommendations regarding best practices in the enforcement areas of: 1) complaint intake; 2) investigations; 3) discipline; and 4) probation. These recommendations are attached for the REC's review.

The recommendations highlighted in yellow are procedures that Board staff already utilize. The recommendations highlighted in blue represent recommendations the Board/DCA is working on. The recommendations highlighted in pink indicate recommendations that do not pertain to the Board.

The REC is asked to review these best practices recommendations, determine the applicability and value to the Board, and identify next steps.

Attachment:
1. DCA's best practices recommendations

BEST PRACTICE RECOMMENDATIONS

COMPLAINT INTAKE BEST PRACTICES TEAM REPORT

GENERAL RECOMMENDATIONS

- *Be accessible to public/consumers*
- *Have written procedures in place*
- *Provide consumer information*
- *Monitor staff performance*
- *Ensure sufficient staff training*
- *Ensure process remains uncomplicated*

SPECIFIC RECOMMENDATIONS

- *Post information regarding complaint process on websites*
- *Provide consumer information in booklets or brochures*
- *Ensure that staff receives sufficient initial training*
- *Ensure that staff possesses knowledge of the statutes and rules related to the profession*
- *being regulated*
- *Monitor performance to identify weak areas*
- *Provide staff with additional training as needed*
- *Develop written procedures for complaint intake processes*
- *Provide multiple avenues for complaint submittal*
- *Utilize clerical staff to acknowledge complaints*
- *Utilize clerical or analytical staff to research the history of a subject*
- *Research the history of the subject of the complaint*
- *Conduct further analysis of mediation in complaint intake*

INVESTIGATIONS BEST PRACTICES TEAM REPORT

RECOMMENDATIONS

The Subcommittee is recommending further review and consideration in the following areas:

- *Conduct further study of the identified Practices of Interest Standardize data definitions* (The Investigations Subcommittee defined ***Practices of Interest*** as practices that may decrease the cost and may improve the quality and quantity of investigations for all entities within DCA. The Investigations Subcommittee identified ***Practices of Interest*** that merit further review for validation as Best Practices. They were not able to determine whether these are Best Practices because of the limitation on available data, inconsistencies in the reporting of data, and the abbreviated timeframe provided to conduct the study.)

- *Establish acceptable time frames for investigations*
- *Establish data collection that measures cost, quantity and quality of investigations*

DISCIPLINE TEAM BEST PRACTICE REPORT

RECOMMENDATIONS

- *Eliminate outside resources and employ staff to the individual programs*
- *Formal investigations conducted by Special Investigators employed by the individual programs*
- *Develop Policies and Procedures and arrange training for staff to:*

  - Prepare accusations;
  - Prepare Statement of Issues;
  - and Prepare Default Decisions

- *Set Goals and Objectives to improve the Discipline Process*

PROBATION BEST PRACTICES TEAM REPORT

RECOMMENDATIONS

- *Establishment and utilization of Disciplinary Guidelines and standard/specific terms and conditions of probation*
- *Need for funding, staffing and resources, i.e., upgrading computer systems, to carry out consumer protection goals*
- *Use of SMEs or others who are able to monitor probationers as they practice to ensure compliance with terms and conditions of probation*
- *Reporting to the National Practioner Data Bank*
- *Posting probation details on entity websites*
- *Failure to pay cost recovery is a barrier to completing probation*

They also recommended pursuing the following:

- *Funding alternatives*
- *Making vacant probation program positions a priority*
- *Closer monitoring (on-site; face to face).*
- *More frequent reporting (Architect Probationers report quarterly, which is adequate.)*

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO DEFINE "INSTRUMENTS OF SERVICE" FOR A POTENTIAL REGULATORY PROPOSAL

The California Architects Board's (Board) 2012 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to define what "instruments of service" is and determine whether there should be a regulation defining such.

This issue arose based upon a question by the Certified Access Specialist Institute (CASI), which represents approximately 150 certified access specialists (CASp) in California, the majority of which are architects and building officials. CASI inquired whether CASp services performed by a California licensed architect are considered instruments of architectural services and covered under the requirements of the Architects Practice Act (Act).

There are numerous terms used in the Act to describe the documents an architect may prepare or exercise responsible control over, which demonstrate that the term "instruments of service" includes more than just final documents for construction. Below are the various references to documents found in the Act:

- Business and Professions Code section (BPC) 5535.1: uses *"…architectural instruments of service…"* in definition of responsible control;
- BPC 5536.1 (a) and (c): uses *"…plans, specifications, and instruments of service…"* in defining documents to be signed and stamped;
- BPC 5536.22: uses *"…plans and specifications for the construction, alteration, improvement, or repair of a building or structure…"* in clarifying statement of licensure and signing and stamping;
- BPC 5536.25: uses *"…plans, specifications reports, or documents…"* and *"…or other contract documents…"* in defining types of documents an architect would sign and stamp for which they are not responsible for damages due to unauthorized changes;
- BPC 5537 (a): uses *"…plans, drawings, or specifications…"* in description of documents for exempt project types;
- BPC 5537 (b): uses *"…plans, drawings, specifications, or calculations…"* to describe documents to be signed and stamped by an architect or engineer to mitigate non-conventional framing issues;
- BPC 5538: uses *"…plans, drawings, specifications, instruments of service, or other data…"* in definition of exempt non-structural or non-seismic projects;
- California Code of Regulations section (CCR) 151: uses *"…any instrument of service…"* and *"…all stages of the design documents…"* in aiding and abetting definition;

The Landscape Architects Practice Act, CCR 2602(f) defines instruments of service as:

> "Instruments of service" means finalized working drawings, contract proposals, site analyses, environmental review documents, inspection reports, cost estimates, planning studies, and specifications which have been prepared by a person who holds a valid license to practice landscape architecture in this State or which have been prepared under his or her immediate and responsible direction.

The American Institute of Architects defines instruments of service in Volume 1 of their *Architect's Handbook of Professional Practice* as:

> "Instruments of service: drawings, specifications, and other documents prepared by the architect as part of the design process. In addition to drawings and specifications comprising the construction documents, instruments of service may be in any medium and include sketches, preliminary drawings, outline specifications, calculations, studies, analyses, models, and renderings."

REC is asked to review the definitions above and the relevant Act provisions to determine whether there should be a regulation defining "instruments of service," and make a recommendation to the Board.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO INITIATE A CONVERSATION WITH THE AMERICAN INSTITUTE OF ARCHITECTS, CALIFORNIA COUNCIL TO EXPLORE THE FEASIBILITY OF A QUALIFICATIONS-BASED SELECTION ENFORCEMENT PROCESS (SENATE BILL 1424)

The California Architects Board's (Board) 2012 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to discuss with The American Institute of Architects, California Council the issue of enforcing the law concerning the "qualifications-based selection" process.

Government Code section 4526, also known as the Mini-Brooks Act, mandates that contracts with state and local agencies for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms, be awarded on demonstrated competence and professional qualifications rather than competitive bidding. This law also allows state agencies to adopt by regulation procedures that prohibit unlawful activity in the contracting process for these services.

Senate Bill (SB) 1424 (Harman) was introduced on February 24, 2012. This bill would have required that architects licensed by the Board, as well as professional engineers and land surveyors registered with the Board for Professional Engineers, Land Surveyors, and Geologists, comply with the above law when competing for contracts with state or local agencies for architectural, engineering, or land surveying services.

The bill was heard on April 23, 2012 by the Senate Business, Professions, and Economic Development Committee. It failed to pass.

The REC is asked to review SB 1424 and make a recommendation to the Board on how to proceed.

Attachments:

1. Government Code Sections 4525 – 4629.20
2. SB 1424 (Harman)
3. Bill Analysis

Qualification Based Selection: State Law

Government Code, Title 1, Division 5,
Chapter 10, §§4525—4529.5
Chapter 10.1, §§4529.10—4529.20

4525. Definitions in the Little Brooks Act

For purposes of this chapter, the following terms have the following meanings:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

[Amended, Chapter 432, Statutes of 1993]

4526. Selection must be made on demonstrated competence and professional qualifications state and local

Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

[Amended, Chapter 314, Statutes of 1991]

4526.5 Public contract code

A state agency head entering into a contract pursuant to this chapter shall, in addition to any other applicable statute or regulation, also follow Section 6106 of the Public Contract Code.

[Added, Chapter 1128, Statutes of 1990]

4527. Qualification for state contracts—optional locally

In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

[Amended, Chapter 314, Statutes of 1991]

4528. Mandatory state procedures—optional locally

(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

[Amended, Chapter 314, Statutes of 1991]

4529. Exception for non-professional services

This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

[Amended, Chapter 1016, Statutes of 1988]

4529.5. Evidence of expertise and experience

Any individual or firm proposing to provide construction project management services pursuant to this chapter shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

[Added, Chapter 698, Statutes of 1987]

4529.10. A/E defined

For purposes of Article XXII of the California Constitution and this act, the term "architectural and engineering services" shall include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services.

4529.11. STIP projects subject to Article XXII

All projects included in the State Transportation Improvement Program programmed and funded as interregional improvements or as regional improvements shall be subject to Article XXII of the California Constitution. The sponsoring governmental entity shall have the choice and the authority to contract with qualified private entities for architectural and engineering services. For projects programmed and funded as regional improvements, the sponsoring governmental entity shall be the regional or local project sponsor. For projects programmed and funded as interregional improvements, the sponsoring governmental entity shall be the State of California, unless there is a regional or local project sponsor, in which case the sponsoring governmental entity shall be the regional or local project sponsor. The regional or local project sponsor shall be a regional or local governmental entity.

4529.12. A/E services must be procured by fair process

All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

4529.13. Design and safety standards not changed: alternate design-build procurement permitted

Nothing contained in this act shall be construed to change project design standards, seismic safety standards or project construction standards established by state, regional or local governmental entities. Nor shall any provision of this act be construed to prohibit or restrict the authority of the Legislature to statutorily provide different procurement methods for design-build projects or design-build-and-operate projects.

4529.14. Standard accounting practices apply

Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

4529.15. Article XXII only applies to A/E

This act only applies to architectural and engineering services defined in Government Code section 4529.10. Nothing contained in this act shall be construed to expand or restrict the authority of governmental entities to contract for fire, ambulance, police, sheriff, probation, corrections or other peace officer services. Nor shall anything in this act be construed to expand or restrict the authority of governmental entities to contract for education services including but not limited to, teaching services, services of classified school personnel and school administrators.

4529.16. No loss of federal funds

This act shall not be applied in a manner that will result in the loss of federal funding to any governmental entity.

4529.17. Provisions severable

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

4529.18. Supremacy of Proposition 35

If any act of the Legislature conflicts with the provisions of this act, this act shall prevail.

4529.19. Proposition 35 to be construed liberally

This act shall be liberally construed to accomplish its purposes.

4529.20. Applicable to all governmental agencies

This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.

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SENATE BILL No. 1424

Introduced by Senator Harman

February 24, 2012

An act to add Sections 5536.23, 6749.5, and 8759.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1424, as introduced, Harman. Professions and vocations: architects, professional engineers, and land surveyors: contracting with state or local agencies.

Existing law provides for the licensure and regulation of persons engaged in the practice of architecture by the California Architects Board and authorizes that board to discipline architects. Existing law provides for the licensing and regulation of professional engineers and land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists, and authorizes that board to discipline professional engineers and licensed land surveyors.

Existing law allows the making of contracts by state and local agency heads for architectural, landscape architectural, engineering, environmental services, land surveying, or construction project management services based on demonstrated competence and professional qualifications rather than competitive bidding. Existing law also requires state and local agencies to adopt procedures that prohibit unlawful activity in the making of contracts for these services, including rebates or kickbacks, and requires that individuals or firms proposing to provide services under these provisions provide evidence to the state or local agency of their expertise and experience in the provision of these services.

This bill would require that architects licensed by the California Architects Board, as well as professional engineers and land surveyors

licensed by the Board for Professional Engineers, Land Surveyors, and Geologists, comply with these provisions when competing for contracts with state or local agencies for the provision of architectural, engineering, or land surveying services.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 5536.23 is added to the Business and Professions Code, to read:

5536.23. When competing to provide architectural services to a state or local agency, an architect shall comply with the provisions of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 2. Section 6749.5 is added to the Business and Professions Code, to read:

6749.5. When competing to provide engineering services to a state or local agency, a professional engineer shall comply with the provisions of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

SEC. 3. Section 8759.5 is added to the Business and Professions Code, to read:

8759.5. When competing to provide land surveying services to a state or local agency, a professional land surveyor shall comply with the provisions of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

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BILL ANALYSIS

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Hearing Date:April 16, 2012	Bill No:SB 1424

SENATE COMMITTEE ON BUSINESS, PROFESSIONS
AND ECONOMIC DEVELOPMENT
Senator Curren D. Price, Jr., Chair

Bill No: SB 1424Author:Harman
As Introduced: February 24, 2012 Fiscal:Yes

SUBJECT: Professions and vocations: architects, professional engineers, and land surveyors: contracting with state or local agencies.

SUMMARY: Requires architects, engineers and land surveyors, when competing to provide services to a public agency, to comply with the law relating to entering into contracts based on demonstrated competence and professional qualifications rather than competitive bidding.

Existing law, the Business and Professions Code (BPC):

1) Licenses and regulates the practice of architecture under the Architects Practice Act by the California Architects Board (CAB) within the Department of Consumer Affairs (DCA).

   a) Provides that CAB may take disciplinary action against an architect for the commission of an act or omission that is grounds for disciplinary action under the Architects Practice Act. (BPC § 5560)

   b) Provides that the fact that an architect is practicing in violation of the Architects Practice Act is grounds for

disciplinary action. (BPC § 5578)

2)Licenses and regulates the practice of professional engineers under the Professional Engineers Act, and land surveyors under the Professional Land Surveyors Act by the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG), within the DCA.

a) Provides that BPELSG may take disciplinary action against an engineer for a violation of any provision of the Professional Engineers Act. (BPC § 6775)

b) Provides that BBELSG may take disciplinary action against a land surveyor for any violation of any provision of the Professional Land Surveyors Act or of any other law relating to or involving the practice of land surveying. (BPC § 8780)

Existing law, the Government Code (GC):

1) Requires state and local agencies (public agencies) to enter into contracts for architectural, landscape architectural, engineering, environmental services, land surveying, or construction project management services based on demonstrated competence and professional qualifications rather than competitive bidding. (GC § 4526)

2)Requires public agencies to adopt procedures that prohibit unlawful activity in the making of contracts for these services, including rebates or kickbacks. (GC § 4526)

3)Requires that individuals or firms proposing to provide services under these provisions provide evidence to the state or local agency

of their expertise and experience in the provision of these services. (GC § 4529.5)

This bill:

1) Provides within the Architects Practice Act, that when competing to provide architectural services to a public agency, an architect shall comply with the law relating to entering into contracts based on demonstrated competence and professional qualifications rather than competitive bidding.

2) Provides within the Professional Engineers Act, that competing to provide engineering services to a public agency, a professional engineer shall comply with the law relating to entering into contracts based on demonstrated competence and professional qualifications rather than competitive bidding.

3) Provides within the Professional Land Surveyors Act, that when competing to provide land surveying services to a public agency, a professional land surveyor shall comply with the law relating to entering into contracts based on demonstrated competence and professional qualifications rather than competitive bidding.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. Purpose. This bill is sponsored by American Institute of Architects, California Council (Sponsor) to add a clause in the Practice Acts of architects, professional engineers, and land surveyors that they are

required to follow the Mini-Brooks Act (Government Code 4525 et seq).

According to the Sponsor, the Mini-Brooks Act, requires a Qualifications Based Selection (QBS) criteria which allows for a process for selecting competing design professional firms according to their qualifications for the project rather than price. If the public agency and the design firm can reach an agreement that includes a fair and reasonable price to the public agency, the two parties can enter into a contract.

The Sponsor indicates that more public agencies are using price as a selection criteria, asking for an estimate of cost before qualifications and the scope of the project have been established, with some coming very close to selecting design professionals using a low-bid method of selection. Likewise, more design professionals are engaging in competition practices that violate the QBS law

The Sponsor believes that the bill will allow architects, professional engineers, and land surveyors to not be pressured into providing a price before entering into negotiations that will determine the level of services needed to design the project and meet the needs of the public agency. This bill would make a violation of the Mini-Brooks Act a violation of the design professional's licensure, thus empowering the design professional to follow the intent of existing California law, according to the Sponsor.

2.Background. The California Qualifications Based Selection (QBS) statute, effective January 1, 1990, allows for a process designed to rank competing design professional firms according to their qualifications for the project. After ranking the competing firms, the public agency negotiates with the top ranked firm on the scope of services and fees. If the two parties can reach an agreement that includes a price that is "fair and reasonable" to the public agency, the two parties can enter into a contract.

The Sponsor states that while the QBS statute is very clear that price is a negotiation item, as opposed to a selection item, a 2000 statute enacted by the voters with the passage of Proposition 35 arguably allows public agencies to use price as a selection item. This was not, according to the Sponsor, the intent of Proposition 35; nevertheless, it is being used to justify the use of price as a selection criteria by some public agencies.

The reason for qualifications and competence being the ranking criteria and price being a negotiated item is a recognition that the success of a project depends on the quality of the work performed by the design professional. Additionally, at the time for the Request for Qualifications, there is nothing for the design professional to competitively bid because full expectations of the project have not been determined.

3.Qualifications Based Selection (QBS). QBS refers to a procurement process established by the United States Congress as a part of the federal Brooks Act (40 USC 1101 et. seq.) and further developed as a process for public agencies to use for the selection of architectural and engineering services for public construction projects. It is a competitive contract procurement process whereby consulting firms submit qualifications to a procuring entity (public agency) who evaluates and selects the most qualified firm, and then negotiates the project scope of work, schedule, budget, and fees.

A primary element under a QBS procurement is that the cost of the work (price) is not considered when making the initial selection of the best or most appropriate provider of the professional services required. Fees for services will be negotiated, however, following selection and before contracting.

Many states in the US have adopted their own versions of the Brooks Act, commonly called a "Mini-Brooks Act."

The QBS process is intended for public agencies to select a qualified and competent design professional for the project at a fair and reasonable price to the public agency. For example, a local health care district that is building a hospital should hire an architect with experience and demonstrated competence in designing health care facilities, and the state when building a bridge or dam should hire a design team with experience and demonstrated competence in designing bridges or dams, respectively. The QBS process is intended to enable the design professionals to be selected based upon their qualifications and experience rather based upon the

lowest bid.

4.Proposition 35. In 2000, California voters enacted Proposition 35 which amended the California Constitution to allow the state and local governments to contract with qualified private entities for architectural and engineering services for all phases of a public works project. Since 1934, governmental entities in California had

been allocated most public works architectural and engineering contracts because courts interpreted the Constitution to give civil servants a first right to these projects.

Since enacted, it has been argued that by requiring "a fair competitive selection process" Proposition 35 limited public agencies to choosing the lowest bidder, rather than using a qualifications-based procedure. The Sponsor states that was not the intent of the authors of Proposition 35; nevertheless, it is being used to justify the use of price as a selection criteria by some public agencies.

5.Arguments in Support. The California Land Surveyors Association (CLSA) states that the QBS bid/selection process initially ensures that all design professionals are qualified for the project, and that the price of the project is not considered until after the selection and ranking of the qualified design professional. Unfortunately, according to CLSA, many state and local agencies are forcing design professionals to compete on the basis of price, rather than on the basis of qualification for the specific project. SB 1424 merely requires that design professionals (architects, engineers, and land surveyors) comply with the existing provisions of California's QBS statute contained in Government Code 4525 et seq. If a design professional fails to comply with this existing and well known body of California law, the architect, engineer, or land surveyor would be subject to a disciplinary action from their specific licensing board, according to CLSA.

6.Arguments in Opposition. Professional Engineers in California Government (PECG) believes existing law provides sufficient clarity with respect to how architects and engineers bid on services. PECG does not believe any additional legislation is necessary. Further, PECG believes that the qualification based selection system does not provide the best deal to the taxpayer because cost is not the

primary rationale for awarding contracts. Anything governments can do to inject cost as more of a subjective factor can only benefit taxpayers, according to PECG.

7. Policy Issues . By explicitly stating within the respective licensing acts for architects, engineers and land surveyors, that an

architect, engineer or land surveyor must comply with the provisions of the Government Code relating to entering into contracts based on demonstrated competence and professional qualifications, rather than competitive bidding, this bill shifts enforcement of the contract process to the respective licensing boards. It is unclear whether the California Architects Board or the Board for Professional Engineers, Land Surveyors, and Geologists is capable of, or equipped to enforce the law relating to contracting with public agencies.

In addition, the requirements that this bill would place upon architects, engineers and land surveyors may be unclear. The bill requires the architects, engineers and land surveyors to comply with contracting law requirements placed upon public agencies (specifically, Chapter 10 (commencing with Section 4525) of Division 5 of Title I of the Government Code). That law places requirements upon state agencies and local agencies contracting for projects. It is unclear how design professionals comply with mandates placed upon public agencies.

SUPPORT AND OPPOSITION:

Support:

American Institute of Architects, California Council (Sponsor)
California Land Surveyors Association

Opposition:

Professional Engineers in California Government

Consultant:G. V. Ayers

UPDATE ON RESPONSE TO CERTIFIED ACCESS SPECIALIST INSTITUTE'S QUESTIONS ON ARCHITECTS PRACTICE ACT

The Certified Access Specialist Institute (CASI) represents approximately 150 certified access specialists (CASp) in California, the majority of which are architects and building officials. It is endeavoring to set professional standards and ethics for CASps. As a result, CASI wants to serve its membership by providing them with answers to key questions that have arisen over the past three years CASp has been in existence.

The American Institute of Architects, California Council (AIACC), in September 2010, posed a question to the Legislative Counsel on CASI's behalf. The question inquired whether CASp services performed by a California licensed architect are considered instruments of architectural services and covered under the requirements of the Architects Practice Act. Following receipt of an opinion from Legislative Counsel, AIACC suggested to CASI that it ascertain if the opinion differs from the California Architects Board's (Board) opinion.

CASI President Greg Izor, Executive Officer Doug McCauley, and architect consultant Bob Carter met in August 2011 to discuss CASI's questions regarding CASps. Staff for the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG) also attended the meeting. At the meeting, CASI stated they would provide the Board with more information on CASp along with specific questions.

On December 26, 2011, CASI sent the Board and BPELSG letters (Attachments 1 and 2) containing three questions. CASI indicated that this information would be used to better inform its membership, enabling them to perform services with a better understanding of regulations governing their practice.

As an aside, the Board's 2012 Strategic Plan calls for an objective for the Regulatory and Enforcement Committee (REC) to "Define 'Instruments of Service' for a potential regulatory proposal." This Strategic Plan objective is included under Agenda Item F in the REC meeting packet.

At its March 7, 2012 meeting, the Board reviewed and approved staff's draft response to CASI's questions. The approved response was mailed to CASI on March 30, 2012.

Attachments:
1. Letter from CASI dated December 26, 2011 to Doug McCauley
2. Letter from CASI dated December 26, 2011 to Susan Christ
3. Response letter to CASI questions dated March 30, 2012

CERTIFIED ACCESS SPECIALIST INSTITUTE

December 26, 2011

Doug McCauley
Executive Director
California Architects Board
2430 Del Paso road
Sacramento, CA 95834

Sent via email: Doug_Mccauley@dca.ca.gov

Ref: California Licensed Architects performing CASp services

Dear Doug,

As you may know our organization, the Certified Access Specialist Institute, not only represents approximately 150 certified access specialists in California but we are also embarking on setting professional standards and ethics for the practice of Certified Access Specialists (CASp) for our membership throughout the state. To that end our organization wants to serve our members and other CASp's by providing them with answers to key questions that have arisen over the 3 years the program has been active in California. Previously we submitted 5 critical questions to the Legislative Council for responses that we have shared with our membership to help clear up any misunderstandings in regards to the intent of SB 1608. Many of our members are licensed architects and we believe they would benefit from having a few of those questions also looked at by the California Architects Board.

Therefore, we request that you provide us with responses to the following questions so that we might use these responses to better inform our membership enabling them to perform the services of a Certified Access Specialist with a better understanding of all regulations governing their practice.

1. Are CASp services performed by a California licensed architect considered instruments of architectural services and covered under the requirements of the Architects Practice Act?
   Background: Some CASp's are licensed as architects. Under the California Architects Practice Act, an architect must affix his or her license stamp and signature to all instruments of service and must also have a written contract for services. Are CASp Inspection Reports and the accompanying services considered instruments of service under the licensing act, therefore requiring a licensed architect that performs them to affix his or her license stamp and signature? The answer to this question is critical for determining professional liability, specifically for architects, providing CASp services.

2. <u>What can a non-licensed CASp (non-architect) provide as mitigation recommendations on a CASp report without those recommendations being considered instruments of architectural services and covered under the requirements of the Architects Practice Act?</u>
   Background: When non-licensed CASp's provide CASp reports, those reports must contain recommendations for mitigating the noncompliance of the facility to ADA requirements. The majority of CASp reports deal with nonresidential facilities. Both the architects and engineers practice act defined clearly what projects are exempt. However, it is unclear how far a non-licensed individual can go in delineating the specific solutions or mitigation measures required for meeting ADA requirements. A specific definition of the content of mitigation measures is important in order for non-licensed CASp's to perform services required of them under SB 1608 without violating any practice act.

3. <u>What is the formal process to file a complaint against a licensed (licensed architect) or non-licensed CASp?</u>
   Background: Our organization has begun receiving inquiries from the public in regards to CASp services that may have not been performed an adequate or proper manner. Whereas our organization does not have a policy at this time for responding to these types of inquiries, it would be of great value to understand what the formal process of filing a complaint against a licensed CASp would be. Would this formal process also be applied to a non-licensed CASp? If so, would filing a complaint with the licensing board be the same process?

Your response to these above questions are very valuable in helping us not only inform our membership but establish professional standards and ethics that will be in agreement with both the architects and engineers practice act. Our organization is available for additional input or clarification that your Board may desire. We will make ourselves available to attend any Board meetings as requested to provide additional input as needed.

Sincerely,

Greg Izor, President
Certified Access Specialist Institute
760-489-5892
gizor@casinstitute.org

CERTIFIED ACCESS SPECIALIST INSTITUTE

December 26, 2011

Susan Christ
Senior Civil Engineer Registrar
Board for Professional Engineers, Land Surveyors, and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833

Sent via email: Susan.christ@dca.ca.gov

Ref: California Licensed Engineers performing CASp services

Dear Susan,

As you may know our organization, the Certified Access Specialist Institute, not only represents approximately 150 certified access specialists in California but we are also embarking on setting professional standards and ethics for the practice of Certified Access Specialists (CASp) for our membership throughout the state. To that end our organization wants to serve our members and other CASp's by providing them with answers to key questions that have arisen over the 3 years the program has been active in California. Previously we submitted 5 critical questions to the Legislative Council for responses that we have shared with our membership to help clear up any misunderstandings in regards to the intent of SB 1608. Many of our members are licensed architects and we believe they would benefit from having a few of those questions also looked at by the California Architects Board.

Therefore, we request that you provide us with responses to the following questions so that we might use these responses to better inform our membership enabling them to perform the services of a Certified Access Specialist with a better understanding of all regulations governing their practice.

1. Are CASp services performed by a California licensed engineer considered instruments of professional engineering services and covered under the requirements of the Engineers Practice Act?
   Background: Some CASp's are licensed as engineers. Under the California Engineers Practice Act, an engineer must affix his or her license stamp and signature to all instruments of service and must also have a written contract for services. Are CASp Inspection Reports and the accompanying services considered instruments of service under the licensing act, therefore requiring a licensed engineer that performs them to affix his or her license stamp and signature? The answer to this question is critical for determining professional liability, specifically for engineers, providing CASp services.

2. What can a non-licensed CASp (non-engineer) provide as mitigation recommendations on a CASp report without those recommendations being considered instruments of profession engineering services and covered under the requirements of the Engineers Practice Act?
   Background: When non-licensed CASp's provide CASp reports, those reports must contain recommendations for mitigating the noncompliance of the facility to ADA requirements. The majority of CASp reports deal with nonresidential facilities. Both the architects and engineers practice act defined clearly what projects are exempt. However, it is unclear how far a non-licensed individual can go in delineating the specific solutions or mitigation measures required for meeting ADA requirements. A specific definition of the content of mitigation measures is important in order for non-licensed CASp's to perform services required of them under SB 1608 without violating any practice act.

3. What is the formal process to file a complaint against a licensed (licensed engineer) or non-licensed CASp?
   Background: Our organization has begun receiving inquiries from the public in regards to CASp services that may have not been performed an adequate or proper manner. Whereas our organization does not have a policy at this time for responding to these types of inquiries, it would be of great value to understand what the formal process of filing a complaint against a licensed CASp would be. Would this formal process also be applied to a non-licensed CASp? If so, would filing a complaint with the licensing board be the same process?

Your response to these above questions are very valuable in helping us not only inform our membership but establish professional standards and ethics that will be in agreement with both the architects and engineers practice act. Our organization is available for additional input or clarification that your Board may desire. We will make ourselves available to attend any Board meetings as requested to provide additional input as needed.

Sincerely,

Greg Izor, President
Certified Access Specialist Institute
760-489-5892
gizor@casinstitute.org

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

Edmund G. Brown Jr.
GOVERNOR

March 30, 2012

Mr. Greg Izor, President
Certified Access Specialist Institute
P. O. Box 1071
Fresno, CA 93714

RE: California Licensed Architects Performing CASp Services

Dear Mr. Izor:

Thank you for your December 26, 2011 letter regarding the Certified Access Specialist program. We have discussed the issues you identified with legal counsel and have articulated our responses below.

1. Are CASp services performed by a California licensed architect considered instruments of architectural services and covered under the requirements of the Architects Practice Act?

Background: Some CASps are licensed as architects. Under the California Architects Practice Act, an architect must affix his or her license stamp and signature to all instruments of service and must also have a written contract for services. Are CASp Inspection Reports and the accompanying services considered instruments of service under the licensing act, therefore requiring a licensed architect that performs them to affix his or her license stamp and signature? The answer to this question is critical for determining professional liability, specifically for architects, providing CASp services.

BOARD RESPONSE:
The services provided by licensed architects acting in the capacity of a Certified Access Specialist (CASp) are considered to be professional services that may be included in their practice of architecture. Therefore, CASp architects are required to provide an executed written agreement for these professional services pursuant to the Architects Practice Act. [Business and Professions Code section (BPC) 5536.22]

Any documents, reports, plans and specifications prepared for the use of others by CASp architects in delivering and/or communicating results, findings and recommendations of these professional services are considered to be their instruments of service. Therefore, CASp architects are required to stamp and sign these instruments of service as evidence of their responsibility for them pursuant to the Architects Practice Act. [BPC 5536.1 (a)]

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2. What can a non-licensed CASp (non-architect) provide as mitigation recommendations on a CASp report without those recommendations being considered instruments of architectural services and covered under the requirements of the Architects Practice Act?

Background: When non-licensed CASps provide CASp reports, those reports must contain recommendations for mitigating the noncompliance of the facility to ADA requirements. The majority of CASp reports deal with nonresidential facilities. Both the architects and engineers practice act define clearly what projects are exempt. However, it is unclear how far a non-licensed individual can go in delineating the specific solutions or mitigation measures required for meeting ADA requirements. A specific definition of the content of mitigation measures is important in order for nonlicensed CASps to perform services required of them under SB 1608 without violating any practice act.

BOARD RESPONSE:
The Architects Practice Act and the Professional Engineers Act specifically define "exempt project types" for which "...any person..." is permitted to prepare plans, drawings, or specifications [BPC 5537 and 6737.1 respectively]. Additionally, the Architects Practice Act includes in its "exempt project types" those projects that are generally described as nonstructural or nonseismic interior alterations or additions [BPC 5538]. Therefore, to the extent that the "site"* being inspected by a CASp falls within the definitions of these "exempt project types," all CASps (licensed/registered design professional or not) could include in their reports design solutions (plans, drawings, or specifications) for their recommended "...correction needed."

However, if the "site"* does not fall within the definitions for "exempt project types," then only CASps who are licensed or registered design professionals can include design solutions (plans, drawings, or specifications) in their reports for their recommended needed corrections.

*"site" as used in this response, has the same meaning "...a place of public accommodation..." as provided in the Civil Code for CASp. Generally it means a structure or structures and the associated site [Civil Code Section 55.52 (9)].

3. What is the formal process to file a complaint against a licensed (licensed architect) or non-licensed CASp?

Background: Our organization has begun receiving inquiries from the public in regards to CASp services that may have not been performed in an adequate or proper manner. Whereas our organization does not have a policy at this time for responding to these types of inquiries, it would be of great value to understand what the formal process of filing a complaint against a licensed CASp would be. Would this formal process also be applied to a non-licensed CASp? If so, would filing a complaint with the licensing Board be the same process?

BOARD RESPONSE:
Any process for receiving, evaluating and resolving consumer complaints filed against Certified Access Specialists (CASp) related to their performance of CASp services should be the same whether the CASp does or does not hold any other state issued license, certification or registration. By statute and regulation, only the State Architect is authorized to *"...suspend certification or deny renewal of certification..."* based on *"...factual complaints or other relevant information..."* regarding the work of a CASp. [Government Code section 4459.8 and California Code of Regulations sections 151 thru 153.]

Therefore, the basic question regarding definition and implementation of enforcement policies and procedures related to performance of CASp services needs to be addressed by the State Architect.

Board licensees often hold additional licenses or registrations such as a contractor's license and/or an engineer's registration. Whenever the Board receives a consumer complaint that primarily concerns issues and activities related to the licensee's other license or registration, the complaint is reviewed and often forwarded to the respective licensing/registration board's enforcement unit for their "lead" in the investigation. If violations of the other license or registration laws are found, the licensee's conduct will be investigated since he/she can be held to the standard of the profession for substantially related violations. The license could potentially be disciplined by the Board also. Any CASp services complaints should go to the State Architect first.

The Board has jointly investigated and prosecuted consumer complaints with both the Contractors State License Board and the Board for Professional Engineers, Land Surveyors and Geologists. Such a working relationship could be established with the State Architect related to CASp enforcement if asked to do so. Additionally, Board enforcement staff could assist the State Architect in developing the consumer complaint processes for CASp related complaints.

I hope this is responsive to your issues. If you have any further questions, please contact the Board's Architect Consultant, Bob Carter, at (916) 575-7210.

Sincerely,

Douglas R. McCauley

DOUGLAS R. McCAULEY
Executive Officer

cc: Susan Christ, Board for Professional Engineers, Land Surveyors, and Geologists
Mark Christian, The American Institute of Architects, California Council

UPDATE ON CALIFORNIA COMMISSION ON DISABILITY ACCESS

The California Commission on Disability Access (CCDA) was created by 2008 legislation, Senate Bill 1608 (Corbett). This is the same bill that requires architects to take five hours of continuing education on disability access requirements each renewal cycle. The Legislature concluded that despite state law that provided persons with disabilities the right to full and equal access to public facilities, and that a violation of the right of any person under the Americans with Disabilities Act of 1990 also constitutes a violation of the Unruh Civil Rights Act, that persons with disabilities continue to be denied full and equal access to public facilities.

The bill established the CCDA for reasons related to disability access and requires it to conduct studies and develop recommendations that will enable persons with disabilities to exercise their right to full and equal access to public facilities, and to facilitate business compliance with the applicable laws, building standards, and regulations, to avoid unnecessary litigation. The CCDA is a 17-member independent commission consisting of 11 public and six ex-officio nonvoting members. At this time, the CCDA has three staff members.

CCDA's Executive Director, Jim Vitale, will provide the REC a presentation on CCDA.