

Regulatory & Enforcement Committee Meeting

California Architects Board

April 24, 2014

Sacramento, California



Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

NOTICE OF MEETING

REGULATORY AND ENFORCEMENT COMMITTEE

April 24, 2014

10:00 a.m. to 2:00 p.m.

California Architects Board
2420 Del Paso Road, Suite 105
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 above and the meeting will be adjourned upon completion of the agenda, which may be at a time earlier than that posted in this Notice. The meeting is open to the public and accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Leosha Eves at (916) 575-7203, emailing Leosha.Eves@dca.ca.gov, or sending a written request to the California Architects Board, 2420 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

AGENDA

- A. Welcome and Introductions
- B. Roll Call
- C. Public Comments
- D. Review and Approve April 25, 2013 REC Summary Report
- E. Enforcement Program Update
- F. 2014 Strategic Plan Objectives

- 1) Discuss and Possible Action on Strategic Plan Objective to Review and Update CAB's Disciplinary Guidelines
- 2) Discuss and Possible Action on Strategic Plan Objective to Review and Consider Adding a Provision Regarding "Scope of Work" to the Written Contract Requirements [Business and Professions Code (BPC) Section 5536.22]

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Continued

3) Discuss and Possible Action on Strategic Plan Objective to Review Reporting Threshold (\$5,000) in Reporting Requirements (BPC Section 5588)

4) Discuss and Possible Action on Strategic Plan Objective to Review and Explore Other Opportunities for Prosecuting Unlicensed Individuals, Such as Infractions

G. Discuss and Possible Action on The American Institute of Architects, California Council Proposed Legislation (Assembly Bill 2192 Melendez) Regarding Peer Review on Exempt Projects

H. Adjournment

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 Ms. Eves at (916) 575-7203.

Protection of the public shall be the highest priority for the CAB in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC section 5510.15)

WELCOME AND INTRODUCTIONS

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

ROLL CALL

Roll is called by the REC Vice Chair or, in his/her absence, by a member designated by the Chair.

MEMBER ROSTER

Fred Cullum
Robert De Pietro
Robert Ho
Gary L. McGavin
Michael Merino
Fermin Villegas
Sheran Voigt

PUBLIC COMMENTS

Members of the public may address the REC at this time. The REC Chair may allow public participation during other agenda items at his/her discretion.

Agenda Item D

REVIEW AND APPROVE THE APRIL 25, 2013 REC SUMMARY REPORT

The Committee is asked to review and approve the April 25, 2013 REC Summary Report.



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PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

SUMMARY REPORT

REGULATORY AND ENFORCEMENT COMMITTEE

April 25, 2013

Sacramento, California

Committee Members Present

Michael Merino, Chair
Fred Cullum
Robert De Pietro
Gary McGavin
Phyllis Newton, Esq.

Committee Members Excused

Robert Ho
Fermin Villegas
Sheran Voigt

Board Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Hattie Johnson, Enforcement Officer
Bob Carter, Architect Consultant
Barry Williams, Architect Consultant
Peter Merdinger, Enforcement Analyst
Sonja Ruffin, Enforcement Analyst

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Guests

Kurt Cooknick, Director of Regulation and Practice, The American Institute of Architects, California Council (AIACC)

A. Welcome and Introductions

Regulatory and Enforcement Committee (REC) Chair, Michael Merino called the meeting to order at 10:00 a.m. He welcomed the REC and staff, and requested self-introductions. Members, staff, and guests introduced themselves.

Mr. Merino explained that his background was local government and noted that the meeting would be guided by Robert's Rules of Order. He indicated that staff would present each agenda item and up to five minutes of public comments would be allowed for each member of the public. He noted this will be followed by Committee motion, discussion of the motion, and final vote. He requested that Committee members raise their hand to be recognized by the chair, if they wish to make a comment. He added that in the future, staff recommendations will be included in meeting agenda packages to assist in framing motions.

B. Roll Call

Hattie Johnson initiated roll call and indicated Robert Ho, Fermin Villegas, and Sheran Voigt were excused. A quorum was present.

C. Public Comments

Mr. Merino opened the floor for public comments. No comments were received.

D. Consent Agenda (Review and Approve October 11, 2012 REC Summary Report)

Mr. Merino asked for a motion to approve the Consent Agenda.

A motion was made by Fred Cullum and seconded by Robert De Pietro to approve the Consent Agenda. The motion passed 3-0-2 (Michael Merino and Gary McGavin abstained).

E. Enforcement Program Update

Ms. Johnson announced the Department of Consumer Affairs' (DCA) intention to award Bob Carter with a new contract as one of the Board's architect consultants. She stated the next meetings for the Board are scheduled for June 13, 2013 in Sacramento, September 12, 2013 in Southern California, and December 12 and 13, 2013 at a place to be determined. Ms. Johnson noted the number of complaint cases pending in March were 83. She indicated that a few years ago the number of pending complaint cases was over 300. Doug McCauley added this substantial decrease took effect under the State mandated furloughs, sunset review, and a wide range of other restrictions.

Mr. McCauley noted Assembly Bill (AB) 186 (Maienschein) relates to spouses, domestic partners, and other legal unions of active duty members in the armed forces providing for criteria of issuance of a conditional license. He indicated the legislation was amended to include a requirement that candidates meet specific preconditions for licensure.

Mr. McCauley stated the initial vote of the Board was to support this bill with caveats; however, based upon new information from legal counsel, the Board may re-evaluate this issue.

Mr. De Pietro questioned the affect of this bill on other boards and bureaus within DCA. Mr. McCauley responded that this bill affects licensure for other boards and bureaus. Mr. De Pietro questioned whether the individuals meeting this requirement would be provided with special treatment. Mr. McCauley stated it was his understanding that the persons meeting this criteria would receive an expedited temporary license if the person was licensed in another state. Mr. Merino noted that the Board supported the initial intent of this, bill but it may have to review all affects of the provisional licensure.

Mr. McCauley stated AAICC is sponsoring AB 630 (Holden), which concerns architect's instruments of service, and the use of those instruments by subsequent parties. He indicated that the Board voted to support this bill with caveats. Mr. McCauley noted there could be potential for concern in the event of early termination of the contract, even if the architect has been paid, and the client would be forced to renegotiate for use of the plans. He added that another concern the Board had was whether this legislation should be included in the Architects Practice Act.

Mr. McCauley stated Senate Bill 308 (Price) concerns the California Council of Interior Design Certification (CCIDC), which is a non-profit organization that certifies interior designers. He noted that in the interior design community there are two distinct groups; one which thinks the current system is effective and one which believes interior designers should be licensed under a state board. Mr. McCauley indicated one issue raised by this second group is that building departments will not accept interior designers' plans. He added that the proposed remedy would be to modify the building code's definition of a registered design professional to include engineer, architect, or certified interior designer and codify it in State law. Mr. Cullum noted non-life safety and non-structural plans may be designed by anyone. He added the question is what constitutes life safety. He advised that he accepted these types of plans in his role of building official; however, not all jurisdictions do. He noted that he felt the current definitions are acceptable.

Phyllis Newton stated that the statistics of the California Supplemental Examination (CSE), since the exam transitioned to the multiple-choice format, showed a 59% pass rate. She questioned how these statistics compared to the previous oral CSE format. Vickie Mayer stated the passing rate for the oral CSE was slightly lower than the new format. Mr. McGavin asked if there was an expectation of what pass rates should be. Mr. McCauley responded that there was not. He added the main requirement for a licensing occupational exam's success is abiding by the national standards to ensure that the exam development process is valid and results in an exam that tests for minimal competency. Ms. Newton noted The State Bar of California passage rate is approximately 50% and has been for decades. Mr. Merino indicated there is no specific percentage that can gauge a pass rate and any concerns would be directed to the Professional Qualifications Committee.

Ms. Newton stated the Board is doing an Occupational Analysis (OA) and asked whether the Strategic Plan objective concerning the definition of the practice of architecture could wait until the conclusion of the OA. Mr. Merino responded this will be discussed under Agenda Item F.1.

Kurt Cooknick asked if the Board has determined how consumers would be protected if an architect with a provisional 18 month license (pursuant to AB 186) contracts to provide services in the 17th month of this limited license for a project that will last longer than one month. Mr. Merino responded that the Board took a support position on this bill because of the intent; however, this issue needs to be revisited due to many factors including the CSE requirement. Mr. McCauley indicated that many of the other professional licensing boards have taken an opposing position on this issue.

Mr. Cooknick asked if the settlement cases closed under the statistics portion of the Enforcement Program Update could also include the outcome of how the cases were closed. Mr. Merino stated this issue will be responded to at the next meeting or at the Board level.

F. 2013 Strategic Plan Objectives

F.1 Discuss and Possible Action on Strategic Plan Objective to Examine Definition of the Practice of Architecture and Potentially Consider Creating a Definition of “Instruments of Service” for a Regulatory Proposal

Ms. Johnson stated this issue arose due to a question by the Certified Access Specialist Institute (CASI) which inquired whether the services performed by licensed California architects who are also Certified Access Specialists result in instruments of architectural service and covered under the Architects Practice Act. Ms. Johnson indicated the Board advised CASI that such work product would be considered instruments of services.

Ms. Johnson noted that the REC meeting packet, under Agenda Item F.1, contained two definitions of instruments of service: one from the Landscape Architects Practice Act and the other from The American Institute of Architects. She reminded members that Ms. Newton had researched case law concerning instruments of services and found two relevant cases from 1950 and 1955. She stated that the Board agreed with the REC’s recommendation that an analysis of the contemporary practice of architecture be performed to determine whether the definition contained in Business and Professions Code section (BPC) 5500.1 should be amended, followed by a further review of the definition of instruments of service.

Ms. Johnson stated that staff’s recommendation to the REC regarding this issue is that it recommend to the Board that the new OA [National Council of Architectural Registration Boards (NCARB) and CSE] be used as main research material for this objective and that AIACC provide background materials and additional evidence on the need to modify this statute. Mr. Merino opened this topic for public comment.

Mr. Cooknick stated the AIACC feels the timing for this topic should be tabled for now due to NCARB's practice analysis, which will not be published until July, followed by the Board's OA next year. He stated this information may be vital to this topic. He suggested tabling the issue until the OA has been reviewed and it is understood more clearly what the profession is experiencing. Mr. Merino stated that Mr. Cooknick's comment coincides with the staff recommendation.

Mr. McGavin questioned if this issue is looking at the current definition of architecture or the big picture and what architecture could be someday. Mr. Merino stated NCARB is concerned about this as well and is looking at the future definition of architecture.

A motion was made by Phyllis Newton and seconded by Fred Cullum to approve the staff recommendation to recommend to the Board that the new occupational analyses (NCARB and CSE) be used as main research material for this objective and AIACC provide background materials and additional evidence on the need to modify this statute. The motion passed 5-0.

F.2 Discuss and Possible Action on Strategic Plan Objective to Review and Consider Adding Mediation to Reporting Requirements [Business and Professions Code (BPC) Section 5588]

Ms. Johnson stated the BPC 5588 requires architects and their professional liability insurance carriers to report to the Board any settlement or arbitration award in excess of \$5,000. She indicated that when the Board receives this information, a report is opened and the architect is requested to provide additional materials, which will be given to the Board's architect consultant to determine whether there are any potential violations of the Architects Practice Act. Ms. Johnson indicated that in 2004 the Board approved the REC recommendation that BPC 5588 be amended to require settlements precipitated by a legal action be reported if they alleged wrongful conduct. She stated the wording of this section states arbitration awards, settlements, and judgments but does not include the term mediation. She noted the question was whether mediation is an action required to be reported.

Ms. Johnson stated staff asked this question of the Board's Deputy Attorney General (DAG) Liaison who opined that court ordered mediation is required to be reported; however, if this mediation was not precipitated by a legal action, mediation is not reportable. She indicated that staff recommends that the REC recommend to the Board that the term mediation be added to BPC section 5588, with clarified language that mediation and the other actions currently specified in this statute are reportable only if precipitated by civil action.

Mr. McCauley advised that the intent of the staff recommendation is to make clear that each of the elements of this statute is only reportable if precipitated by legal action. He added that this is the result of meetings with insurance companies and attorneys in 2004 and 2005. He noted the intent was that they did not want the Board bombarded with reports that may be the result of change orders. Mr. Merino

agreed and recommended approving staff's recommendation to add mediation and clarify the language in BPC 5588, revise it, and bring it to the full Board for the next Board meeting.

Mr. Cooknick expressed his concern of an unintended consequence with revising this section. He asked what would occur if a project the architect designed has a problem, and the architect resolves the issue and agrees to be responsible for the costs. He wanted to ensure that this would not be considered a reportable mediation pursuant to BPC 5588. Mr. Merino clarified his view of the staff recommendation is to only add a requirement that court ordered mediation be added to the section. Mr. Merino requested that AAICC work with the staff in revising this statute. Mr. De Pietro expressed his concern that the revision of language be clear that mediation is court ordered. Ms. Newton expressed her concern on the effect of the use of mediation. She noted that if mediation is used as called for in the vast majority of contracts and a settlement of \$10,000 is reached, that mediation would not be reportable; however, if the contract calls for litigation and the court orders mediation, then it would be reportable. She indicated this may encourage architects to use mediation in their contracts and might it be a detriment to consumers. She recommended that this be further studied and brought back to the REC, and offered her assistance.

Ms. Mayer asked Mr. Merino whether the REC should approve the recommendation that mediation be included in BPC 5588 before staff recommends a clarification of the language. She added that this issue was included in the Board's Strategic Plan. Mr. Merino stated that the REC is a body that makes decisions, like the Board does. He asked if staff wanted a task force to review this and make a recommendation to the REC. He indicated this whole issue should not be discussed at the meeting. Mr. Merino asked for volunteers for the task force. Ms. Newton and Mr. McGavin volunteered.

A motion was made by Robert De Pietro and seconded by Phyllis Newton to establish a working group to explore the inclusion of mediation to BPC section 5588, and provide the specific language (if applicable) to be revised for the REC's consideration before presenting to the Board. In addition, AAICC would be invited to participate. The motion passed 5-0.

F.3 Discuss and Possible Action on Strategic Plan Objective to Review and Update CAB's Disciplinary Guidelines

Ms. Johnson stated the function of the disciplinary guidelines is to establish consistency in disciplinary penalties for similar offenses on a statewide basis. She stated they are designed for use by administrative law judges, attorneys, licensees, staff, and others involved in the disciplinary process. Ms. Johnson noted the guidelines were last revised in 2000. She explained that the guidelines were shared with the Board's DAG Liaison, Mike German, who made suggested revisions that are included with staff revisions in the REC meeting packet. She stated the DAG suggested the REC may want to consider using three years minimum probation as

opposed to the current five years for some of the less serious violations. She noted that the staff recommended that the REC accept the proposed changes to the disciplinary guidelines as presented in the packet or as modified by the REC and that the new language go to the Board for approval and adoption of the new guidelines.

Ms. Newton commented she was concerned about striking out “governing the practice of architecture in California” on page eight, under item one, Obey All Laws. She stated that the affect would be that the probationer would have to obey all federal, state and local laws without it relating to the practice of architecture. She noted that this section should be narrowed to include the practice of architecture. Mr. Merino stated it is his understanding that there is currently a statute that addresses a licensee violating a law related to the practice of architecture. He suggested that the language in statute already in effect be utilized in the disciplinary guidelines. Ms. Mayer stated this revision was provided by the DAG Liaison and staff will contact him for more information concerning his recommendation. Mr. McCauley theorized the Board may want to retain the authority and flexibility and rely on the professional discretion of the judges, attorneys general, and enforcement staff. He noted that ultimately, the final disciplinary decision will be made by the Board.

Mr. Merino suggested that staff note this is an item of concern, and then bring back to the REC. Ms. Mayer noted that the DAG Liaison had indicated that this was standard language in other boards’ disciplinary guidelines.

Mr. De Pietro commented that under item five on page nine, Tolling for Out-of-State Practice, it states, “non-practice is defined as any period of time exceeding thirty days.” He asked what if the architect did not have any work for 30 days through no fault of his own and whether this time limit should be expanded. Ms. Mayer explained the practice of architecture includes offering architectural services which the architect might do within that 30 days; however, this will be confirmed with the DAG Liaison.

A motion was made by Gary McGavin and seconded by Phyllis Newton to further modify the language with the input received from the Committee and be presented at the next REC meeting for approval to recommend to the Board. The motion passed 5-0.

F.4 Discuss and Possible Action on Strategic Plan Objective to Review and Consider Adding a Provision Regarding “Scope of Work” to the Written Contract Requirements (BPC Section 5536.22)

Mr. Carter noted the written contract requirements in statute define the consumer and architect relationship and has done much to improve it. He stated that in the course of investigating complaint cases, staff has discovered that not requiring the scope of work be included in a written agreement has caused miscommunications and confusion between architects and consumers. Mr. Carter opined that the scope of work should be included in the description of services in BPC 5536.22.

Mr. Carter stated another issue concerns architects filing a mechanics' lien for design services. He noted this is acceptable; however, there are two key requirements before a lien is filed. One requirement is to have an executed written agreement with the property owner, not necessarily with the client; and the other is that the architect needs to have furthered the work in some fashion. He noted BPC 5536.22 (a)(3) requires the name and address of all parties and suggested that the contract include the name and address of the property owner. He stated if an architect has a contract with a tenant and not the property owner, the architect cannot file a mechanics' lien because the contract is not with the property owner.

Mr. Carter noted BPC 5536.22 (a)(4) requires the description of the procedure the architect and client will use to accommodate additional services. He explained that California Code of Regulations section (CCR) 160 (f)(1) forbids an architect from altering the scope of work without first obtaining written permission from the client. He indicated that many times, staff has seen the scope expand without written consent from the client. He recommended that BPC 5536 (a)(4) be revised to include contract changes including changes in project scope. He noted there are instances where the architect does not know the scope of the work at the beginning of the project. He stated that if this occurs, the architect and client's contract should state they are exploring to determine a design scheme and determine a definition of the project, and specify an hourly fee.

Mr. Cooknick stated that one missing element in this contract requirement is the timeframe to complete a project. He noted that there are many reasons a project would take time. Mr. Carter responded that another issue is budget or cost. He indicated that the AIA Manual of Practice describes scope as size, shape, cost, and time. Mr. Merino opined that there is some responsibility on the architect to ensure he is writing a competent contract. He stated he was concerned about mitigating every possibility of a conflict by a consumer and an architect. He questioned if this statute should include every possibility of a conflict and ultimately over-regulate the profession. He wondered whether these concerns are generated by a consumer issue.

Mr. Carter stated it is his belief there is an educational aspect for the profession as well as the consumer. He noted that the Board's *Consumer's Guide to Hiring an Architect* contains many elements that may be included in a contract which would make it strong. He indicated that if the scope of work were required to be included in the contract, the contract would be clearer.

Mr. Merino concurred with this, but wondered if this recommendation is moving from consumer protection to trying to fix the issues with the profession.

Ms. Newton stated she appreciated the concern for over-regulation and what staff was proposing. She added that asking for a distinction between the scope of the project and scope of services would be very confusing. She noted that she also appreciates the effort to address mechanics' lien, but a requirement that the lender be identified is needed. Mr. Merino noted that adding information to assist in

mechanics' liens was not consumer protection. He suggested that this be reviewed by the working group discussed previously, to determine what should be included as the minimum requirements for a contract.

Mr. McCauley stated that he felt the intent when this statute was created was to take a minimalist approach; however, the scope of the project is not something an individual would want missing in a contract. Mr. Merino questioned if any collaboration was made with AAICC and suggested there be greater dialog between the Board and the profession to clarify the topic.

Mr. Merino proposed more input from staff to take to the profession and bring it back to the Committee or perhaps refer it to the working group. Ms. Newton asked for staff preference. Mr. Carter suggested the working group formed under Agenda Item F.2 with Ms. Newton and Mr. McGavin also look at this item to ferret any further issues that may arise. Ms. Newton supported this decision and noted the practicality of referring it to the working group.

A motion was made by Fred Cullum and seconded by Robert De Pietro to refer the proposed revision of BPC 5536.22 to the working group consisting of Phyllis Newton and Gary McGavin for review, in collaboration with the AAICC. The motion passed 5-0.

E.* Enforcement Program Update (Continued)

The Committee returned to this Agenda Item so that Mr. McCauley could advise the REC about AB 834 (Williams). He noted that the bill empowers the California Energy Commission (CEC) to have a regulatory authority and a citation program much like the Board. He noted the redundancy of a non-licensing agency having the authority to issue citations for violations.

Mr. Merino quoted AB 834, "In assessing the amount of an administrative penalty, the commission shall consider all the following factors: the nature and seriousness of the violation; the number of violations; the persistence of the violation; the length of the violation; and the willfulness of the violation..." He further stated the bill goes on to two areas that cause him concern: "the violator's assets, liabilities, and net worth; and the harm to consumers and to the state that resulted from the amount of energy wasted due to the violation." Mr. Merino questioned who would determine wasted energy and noted that rights of privacy may be violated.

Mr. Cooknick stated the AAICC has an oppose position to the bill. He added it would be heard in the Legislature on April 29, 2013. Mr. McCauley indicated that he will present the bill to the Board President under the Board's emergency provision in the Board Member Administrative Procedure Manual. Mr. Merino stated that the REC felt this was an urgent matter. Mr. De Pietro stated the level of fine should not be based on an individual's net worth. Mr. Merino noted the other issue is that another agency has the potential to cite an architect, when architects are under the authority of the Board. He

stated the CEC should bring the complaint to the Board to investigate and issue a citation, if warranted.

Mr. Merino stated because the Board is a consumer protection agency, it needs to ensure there is appropriate jurisdictional efficacy to protect the consumer. He stated this potential conflict could do harm to the consumer if it is unclear on the appropriate authority for regulation of architects. Mr. Cooknick noted architects may not have construction administration as part of the agreement and should not be held responsible for installation they did not supervise.

G. Adjournment

The meeting adjourned at 12:45 p.m.

** Agenda Item continued to report on additional information.*

ENFORCEMENT PROGRAM UPDATE

Attached is the Enforcement Program Update. The report is 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 and Administrative Actions from April 11, 2013 through April 15, 2014.

ENFORCEMENT PROGRAM UPDATE

April 2013 through March 2014

Architect Consultants

Building Official Contact Program:

Between April 2013 and March 2014, the architect consultants responded to a total of 109 telephone and/or email contacts from building officials. These types of contacts generally include discussions regarding the California Architects Board's (Board) policies and interpretations of the Architects Practice Act (Act), stamp and signature requirements, and scope of architectural practice.

One of the architect consultant contracts was due to expire on June 30, 2013. A Request for Proposal (RFP) for the consultant services for three fiscal years (2013-2016) was released on February 19, 2013, and advertised on the Internet under the State Contracts Register. The deadline to submit proposals was March 19, 2013. The proposal received in response to the RFP was evaluated (first phase of the evaluation) on March 25, 2013. The second phase of the evaluation (interview) was held on April 10, 2013. Based on the results of the evaluation/interview scoring, the contract was awarded to Robert Carter.

The other architect consultant contract was due to expire on January 31, 2014. An RFP for the consultant services for three fiscal years (2014-2017) was released on August 30, 2013, and advertised on the Internet under the State Contracts Register. The deadline to submit proposals was October 16, 2013. The proposal received in response to the RFP was evaluated (first phase of the evaluation) on October 29, 2013. The second phase of the evaluation (interview) was held on November 13, 2013. Based on the results of the evaluation/interview scoring, the contract was awarded to Barry Williams.

California Building Officials (CALBO):

The 2014 Annual Business Meeting of CALBO was held March 3-7, 2014 in Anaheim. This was the 52nd annual meeting of the organization. The Board sponsored a vendor table as part of the Exhibitor's Program, which was staffed by Board architect consultants Bob Carter and Barry Williams. There were approximately 350 people representing various building departments throughout the State. The Board had over 20 documented direct contacts. The CALBO leadership extended a special thank you to the Board for participating and continuing its history of support to the organization. The Board expects at least three formal requests for chapter visitations including the International Code Council (ICC) chapters in Solano County, Madera County and the ICC Tri-Chapter meeting this spring in Santa Cruz.

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 2013 and March 2014, there were a total of 269 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 142 of the contacts, and other inquiries focused on written contract requirements, stamp and signature requirements, out-of-state licensees seeking to do business in California, and clarification regarding the scope of practice relative to engineering disciplines.

Architect Consultant Bob Carter made a presentation to approximately 50 attendees on August 28, 2013, at the County Building Officials Annual Conference & Caucus held in Sacramento. He provided an update on the Board's work with other stakeholders on Senate Bill (SB) 308 (Interior Designers) and on the Board's efforts with planning departments related to unlicensed practice. Several members requested a copy of the Board's joint letter with the Board for Professional Engineers, Land Surveyors and Geologists (BPELS) sent to planning departments on April 17, 2012.

Board Meetings

Since April 2013, the Board met on May 7, 2013, in Sacramento and via teleconference at various locations in California, June 13, 2013 in Sacramento, September 12, 2013 in Burbank, December 5-6, 2013 in Santa Barbara and February 26, 2014 in Pomona. The first day of the December meeting included a joint session with the National Council of Architectural Registration Boards (NCARB) Board of Directors. Meetings for the remainder of 2014 are scheduled for June 12 in the Bay Area; September 10 in San Diego; and December 10-11 in Sacramento.

BreEZe

The Department of Consumer Affairs (DCA) has been working with Accenture, LLP to design, configure, and implement an integrated, enterprise-wide enforcement case management and licensing system called BreEZe. This system supports DCA's highest priority initiatives of job creation and consumer protection by replacing aging legacy business systems with an industry-proven software solution that utilizes current technologies to facilitate increased efficiencies for DCA board and bureau licensing and enforcement programs. More specifically, BreEZe supports applicant tracking, licensing, license renewal, enforcement, monitoring, cashiering, and data management capabilities. Additionally, the system is web-based which allows the public to file complaints and search licensee information and complaint status via the Internet. It also allows applicants and licensees to submit applications, license renewals, and make payments online.

BreEZe is being deployed department-wide via three separate releases over an approximately two-year period. On October 8, 2013, the BreEZe system went live for Release 1 boards and bureaus for certain services. Release 1 boards and bureaus were given the option to stagger in the new system services based on their individual business process considerations; this option is being provided to all boards and bureaus, allowing them to choose when specific services go online. Release 2 and 3 boards and bureaus will continue to utilize the legacy business systems until their respective release dates – tentatively December 2014 and December 2015, respectively. According to DCA, after all three releases are completed, BreEZe will be the largest online enterprise licensing and enforcement solution in the world, bringing with it improved access to DCA board and bureau services, greater ease of use for stakeholders, and improved internal functionality that will greatly enhance licensing and enforcement efficiencies.

Budget

At the September 2, 2013 Board meeting, the Board voted to give the Executive Officer (EO) authority to proceed with a negative Budget Change Proposal (BCP) to reduce its spending authority by \$400,000 for fiscal year (FY) 2015/16. Board staff will prepare a BCP Concept Paper for submission to the Department of Finance, via DCA Budget Office staff, in mid-April 2014.

California Supplemental Examination (CSE) Administration

The computer-delivered CSE has been administered to 661 candidates in FY 2013/14 (as of March 31, 2014), of which 406 (61% passed and 255 (39%) failed. During FY 2012/13, the computer-delivered CSE was administered to 728 candidates, of which 456 (63%) passed, and 272 (37%) failed.

CSE Development and Occupational Analysis (OA)

CSE development is an ongoing process. The current Intra-Agency Contract (IAC) Agreement with the Office of Professional Examination Services (OPES) for development expires June 30, 2014. Staff is coordinating the development of the FY 2014/15 IAC with OPES which is expected to be presented to the Board for approval at the June meeting.

The Board typically conducts an OA every five to seven years by surveying practitioners to determine the necessary knowledge, skills, and abilities to perform architectural services with minimum competency. The most recent OA was conducted in 2007. OPES Chief, Heidi Lincer-Hill, provided a presentation to the Board at its December 5, 2013 meeting relative to CSE performance and 2017 OA. The Board authorized the EO to execute a new IAC with OPES to conduct the OA, and also conduct the required review of the national examination (per Business and Professions Code section 139) and a linkage study between the content of the ARE and the results of the Board's OA. The IAC was ratified by the Board at its February 26, 2014 meeting. In March, OPES conducted four focus group meetings as one of the initial stages of the OA. Three of the meetings were half-day meetings and involved the following stakeholders: 1) general building contractors; 2) engineers, land surveyors, and landscape architects; and 3) Building Officials. One of the meetings was a two-day meeting, which involved architects. OPES is currently analyzing the focus group meetings results, which will provide additional information with regard to job tasks and knowledge required of architects. The next stage of the OA will include interviews with architect subject matter experts in April; the purpose of these interviews is to enable OPES to develop a preliminary list of job tasks and knowledge statements. All contracted services performed under the IAC are projected to be completed by June 2015.

Communications Committee

Board President, Sheran Voigt, appointed members to the Communications Committee for 2014 and appointed Matt McGuinness to serve as Committee Chair. The Strategic Plan was approved by the Board at its February 26, 2014 meeting, which includes the Committee's objectives for 2014. Committee members are scheduled to meet on May 6, 2014 in Sacramento, to begin work on the 2014 objectives.

Continuing Education (CE) Audit System

Assembly Bill (AB) 1746 (Chapter 240, Statutes of 2010) became effective January 1, 2011 and amended the statutory provisions [Business and Professions Code (BPC) sections 5600 and 5600.05] pertaining to the CE requirement for licensees. This bill amended the CE provisions by: 1) requiring an audit of license renewals beginning with the 2013 renewal cycle; 2) adding a citation and disciplinary action provision for licensees who provide false or misleading information; and 3) mandating the Board to provide the Legislature a report on the level of licensee compliance, actions taken for noncompliance, findings of Board audits, and any recommendations for improving the process.

An audit system was developed by the Professional Qualifications Committee (PQC) and approved by the Board on June 14, 2012. The audits of license renewals began in January 2013.

The Licensing Unit audited at least 3% of the license renewals received in 2013 to verify the completion of the CE requirements by licensees. To date, the Licensing Unit has audited approximately 470 licensees and found 46 cases where licensees may have provided false and/or misleading information, or experienced difficulties that prevented them from successfully completing CE requirements. The Board’s Enforcement Unit has established procedures for processing the audit findings.

Enforcement Program Statistics

<u>Statistics</u>	<u>Current Month</u> March 2014	<u>Prior Month</u> February 2014	<u>Prior Year</u> March 2013
Total Cases Received/Opened**:	24	15	15
Complaints to Outside Expert:	0	0	0
Complaints to DOI:	0	0	2
Complaints Pending DOI:	1	1	4
Complaints Pending AG:	2	3	2
Complaints Pending DA:	3	3	4
Total Cases Closed*:	15	12	27
Total Cases Pending**:	124	113	83
Settlement Cases (§5588) Opened:	0	1	3
Settlement Cases (§5588) Pending:	6	8	15
Settlement Cases (§5588) Closed:	2	0	1
Citations Final:	1	2	2

**Includes citations, disciplinary actions and 36 cases referred to Enforcement Unit as a result of the continuing education coursework audits conducted after license renewal.*

***Includes complaint and settlement cases.*

At the end of each FY, staff reviews the average number of complaints received, pending, and closed for the past three FYs. From FY 2010/11 through FY 2012/13, the average number of complaints received per month was 22. The average pending caseload was 111 complaints and the average number of complaints closed per month was 24.

Legislation

AB 186 (Maienschein) would authorize boards to issue a provisional license to a spouse, domestic partner or other legal companion of an active duty member of the Armed Forces. At its June 13, 2013 meeting, the Board voted to adjust its position on AB 186 from “Support” to “Oppose Unless Amended,” and to request an exemption while noting the Board’s existing efforts to address the intent of the legislation. On June 25, 2013, the EO communicated the Board’s position to Assemblyman Maienschein’s staff and requested an amendment to provide an exemption for the Board from the bill’s provisions. The Board’s desire for an exemption was again communicated on November 4, 2013, when staff reiterated the Board’s position to the Assemblyman. When the Legislature reconvened in January 2014, the EO contacted the Assemblyman’s staff in an effort to seek an exemption for the Board and the Landscape Architects Technical Committee (LATC) from the bill’s provisions; Mr. McCauley did so again in February 2014 and received no follow-up response. The

Board voted to oppose this measure at its February 26, 2014 meeting as did the LATC at its meeting on March 20, 2014, AB 186 remains a two-year bill and has not been amended since June 24, 2013.

AB 630 (Holden) (Chapter 453, Statutes of 2013) would prohibit, as initially introduced, the use of an architect's instruments of service without written contract or written assignment authorization. At its June 13, 2013 meeting, the Board voted to support AB 630 if amended with language to require 1) a licensed design professional be utilized to protect the public from misuse of an architect's work product, and 2) any consent to utilize instruments of service shall not be unreasonably withheld. The American Institute of Architects, California Council (AIACC) opted not to accept the Board's first recommended amendment for concerns it would create new law. AIACC agreed to accept the Board's second recommended amendment and is now reflected in AB 630; however, a provision was augmented to allow instruments of service to be withheld for cause - if there is a lack of payment or failure to adhere to the contract requirements. At its September 12, 2013 meeting, the Board voted to support AB 630 as amended. The bill was signed by the Governor on October 1, 2013 and became effective January 1, 2014.

SB 308 (Chapter 333, Statutes of 2013) is the sunset bill for the California Council for Interior Design Certification (CCIDC). The Board's EO conveyed the Board's support for the extension of CCIDC's sunset date at the Sunset hearing. In addition, the position taken by the Board on the bill at its May 7, 2013 meeting was conveyed to the author's staff. The Board maintained its position at its June 13, 2013 meeting. At the September 12, 2013 Board meeting, the EO explained that CCIDC did have a desire to expand and modify the current definition of certified interior designer (CID). It was suggested to CCIDC that it needs to show CIDs' competence in new areas by demonstrating what is covered in their examination via its test plan and occupational analysis. Ultimately, agreement could not be reached on the new definition and it was not included in the bill because sunset bills must have consensus. The bill was signed by the Governor on September 23, 2013, and became effective January 1, 2014.

AB 2192 (Melendez), an AIACC-sponsored bill, would allow architects to utilize peer review of plans (for projects exempt from the Architects Practice Act) in lieu of government plan review. At its February meeting, the Board expressed concern about the details of AB 2192, but determined that more time to develop a thorough understanding of the proposed legislation is required; consequently, the Board took no position on AB 2192.

SB 850 (Block) was introduced on January 6, 2014, and would authorize Community Colleges to establish baccalaureate degree pilot programs at campuses to be determined by the Chancellor of the California Community Colleges. The Board voted to support SB 850 at its February 26, 2014 meeting and on March 27, 2014, the Board President sent a letter to Senator Block expressing support. The measure is set for hearing by the Senate Education Committee on April 23, 2014.

Newsletter

The next web version of *California Architects*, the Board's newsletter, is scheduled for publication in April 2014.

Records Management

Board staff updated the Records Holdings/Disposals Annual Report (Retention Schedule) for FY 2012/13 and submitted the report to the DCA on October 15, 2013 for approval. On December 5, 2013, the Report was approved by Department of General Services and subsequently approved by California State Archives on December 9, 2013.

Regulatory Changes

California Code of Regulations (CCR) section 103, Delegation of Certain Functions – The Board’s 2011 Strategic Plan directed the Regulatory and Enforcement Committee (REC) to review and make recommendations regarding SB 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 EO to approve stipulated settlements to revoke or surrender a license. The Board approved the recommendation on September 15, 2011. Following is a chronology, to date, for the processing of the Board’s regulatory proposal for CCR section 103:

December 7, 2011	Proposed regulatory changes approved by the Board
January 31, 2013	Notice of Proposed Changes in the Regulations published by OAL
April 3, 2013	Public hearing, no comments received
May 16, 2013	Regulation package to DCA’s Legal Office and Division of Legislative and Policy Review
June 18, 2013	Regulation package forwarded to Department of Finance
July 31, 2013	Regulation package to OAL for approval
September 9, 2013	Regulation package approved by OAL
January 1, 2014	Regulation became effective

Sunset Review

The Board’s next Sunset Review Report is due on November 1, 2014. The production of the draft Report is underway. The Executive Committee will review the first draft at its meeting scheduled for May 20, 2014.

CITATIONS ISSUED AND FINAL

April 11, 2013 – April 15, 2014

Lon Bike
(Wildomar)

BPC section 5536.22(a) – Written Contract

The Board issued a one-count administrative citation that included a \$250 fine to Lon Bike, architect license number C-8334, for an alleged violation of Business and Professions Code (BPC) section 5536.22(a) (Written Contract). The action alleged that Bike failed to execute a written contract prior to commencing professional services. Bike paid the fine, satisfying the citation. The citation became final on June 25, 2013.

Lawrence F. Cook
(Los Gatos)

BPC section 5536.22(a) – Written Contract
BPC section 5584 – Negligence

The Board issued a two-count administrative citation that included a \$2,000 fine to Lawrence F. Cook, architect license number C-5462, for alleged violations of BPC section 5536.22(a) (Written Contract) and 5584 (Negligence). The action alleged that Cook failed to execute a written contract prior to commencing professional services and failed to meet the standard of professional care and practice in the design of the garage framing system. Cook paid the fine, satisfying the citation. The citation became final on August 16, 2013.

Timothy Crete
(Burnet, Texas)

BPC section 5588 – Report of Settlement or Arbitration Award
CCR section 104 – Filing of Addresses
CCR section 160(b)(2) – Rules of Professional Conduct

The Board issued a two-count administrative citation that included a \$1,500 fine to Timothy Crete, architect license number C-24094, for alleged violations of BPC section 5588 (Report of Settlement or Arbitration Award) and Title 16, California Code of Regulations (CCR) sections 104 (Filing of Addresses) and 160(b)(2) (Rules of Professional Conduct). The action alleged that Crete failed to report to the Board in writing within 30 days of the date he had knowledge of a civil action judgment. Crete also failed to respond to the Board's requests for information and failed to notify the Board of his proper and current business name and address and mailing address in a timely manner. The citation became final on February 18, 2014.

John Croswhite
(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 fine to John Croswhite, 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 Croswhite affixed his signature under the heading “Architect” and on the Architect signature line on documents entitled Applications for Payment. The citation became final on November 13, 2013.

Aaron Dimaandal (Martin)
(Diamond Bar)

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 fine to Aaron Dimaandal (Martin), 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 Dimaandal (Martin) identified himself as an “Architect” and offered “Architectural” services on the Internet on the websites, orangecounty.craigslist.org and linkedin.com. On November 1, 2010, Dimaandal (Martin) was previously issued an advisement that an unlicensed individual in California cannot use the terms “Architect” or “Architecture” to describe himself or services offered. The citation became final on April 9, 2013.

James Biagio Gilbreath
(Vale, Arizona)

CCR section 160(b)(2) – Rules of Professional Conduct

The Board issued a one-count administrative citation that included a \$500 fine to James Biagio Gilbreath, architect license number C-24626, for an alleged violation of CCR section 160(b)(2) (Rules of Professional Conduct). The action alleged that Gilbreath failed to respond to the Board’s requests for information in regards to an investigation. The citation became final on December 12, 2013.

Kathryn Guillot
(North 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 \$2,500 fine to Kathryn Guillot, 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 Guillot’s company website, guillotdesigns.com, described her services as

“Architecture” and career as “Architectural.” Guillot’s company was also listed on the website yelp.com under the “Architects” category. The citation became final on December 2, 2013.

Peter Haddad
(Huntington Beach)

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 fine to Peter Haddad, 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 Haddad’s company, Peter Haddad Designs, was under the “Architects” category on the following websites: yellowpages.com, yelp.com, angleslist.com, radarfrog.gatehousemedia.com, ziplocal.com, peter-haddad-designs.placestars.com, and homeadvisor.com. The citation became final on December 2, 2013.

Hootan Hamedani
(Irvine)

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 fine to Hootan Hamedani, 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 Hamedani executed a written proposal for professional services for a tenant improvement in an existing Shell building. The proposal stated “This proposal for professional design services including “Architectural” drawings for Tenant Improvement...” The scope of work in the proposal stated that an “Architectural Code Research Report” will be prepared and “Architectural construction documents” will be provided. The citation became final on July 23, 2013.

David I. Hamedany
(San Pedro)

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 fine to David I. Hamedany, 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 Hamedany as the director of construction for the Pasadena Huntington Memorial Hospital, hired an architectural firm to provide Emergency Department renovation and expansion with two

shell floors and penthouse. On or about April 12, 2010, Hamedany forged an architect's signature on a Change Order with AA Construction to add additional water proofing between JJ Line and EE Line of Emergency Department expansion, not included in the original bid documents. The additional scope was valued at \$72,650. AA Construction performed no construction work for the Huntington Memorial Hospital. On or about May 2, 2011, Hamedany pled guilty to two counts of federal mail fraud arising from his role as the director of construction. On or about January 17, 2012, Hamedany was sentenced to three years in federal prison and ordered to pay \$4.8 million in restitution for forging an architect's signature on three Change Orders, thereby paying contractors for work that was never done at the Pasadena Huntington Memorial Hospital. On or about April 12, 2010, Hamedany forged an architect's signature on a Change Order with LE Construction, Inc. to add additional fire proofing needed for the North Corridor of the Emergency Department expansion project and additional fire proofing to the canopy structure. The additional scope was valued at \$198,300. LE Construction, Inc. performed no construction work for the Pasadena Huntington Memorial Hospital. On or about April 20, 2010, Hamedany forged an architect's signature on a Change Order with AA Construction to add additional water proofing for the Emergency Department Expansion project for the Canopy and Decontamination area, and provide full water proofing per owners' directives for the single-ply roof. The additional scope was valued at \$143,000. AA Construction performed no construction work for the Pasadena Huntington Memorial Hospital. The citation became final on May 6, 2013.

Kyong S. Lee
(Los Angeles)

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 fine to Kyong S. Lee, 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 Lee's company website, architectureandinterior.com, listed "Architecture Drawing," "Professional Works in Architecture," and "Architecture Design" as services her company provides. Lee's company website address also contained the term "architect." Lee was also identified as an architect on the Korea Times website, koreatimes.com. The citation became final on December 2, 2013.

Jeffrey Jonsson
(San Clemente)

BPC section 5536.22(a)(4) and (5) – Written Contract
BPC section 5585 – Willful Misconduct

The Board issued a two-count administrative citation that included a \$2,000 fine to Jeffrey Jonsson, architect license number C-27314, for alleged violations of BPC sections 5536.22(a)(4) and (5) (Written Contract) and 5584 (Willful Misconduct). The action alleged that Jonsson failed to include a description of the procedure to accommodate additional services and a description of the procedure to be used by either party to terminate the contract in the written contract. In addition, Jonsson knowingly submitted plan documents to the City of Dana Point for plan check that did not apply to the project site. On March 16, 2011, Jonsson was previously issued an administrative citation for the same alleged contract violations. In addition, Jonsson failed to provide drawings or design product for which he contracted. The citation became final on February 18, 2014.

Richele Mailand
(Santa Barbara)

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

The Board issued a two-count administrative citation that included a \$1,500 fine to Richele Mailand, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Mailand executed an agreement offering to provide “Architectural” drawings, then billed her client for “Architecture Design.” Mailand was also identified as the “Architect” on the lender document. Mailand offered design drawings, affecting the life safety of the occupants, for a project that is not an exempt project type as described in BPC section 5538. Such an offer constitutes the practice of architecture as defined in BPC section 5500.1. On May 25, 2010, Mailand was previously issued a Notice of Violation for using the word “Architecture” on an exterior sign on the office building where she provided design services; on her business card; and her company letterhead. The citation became final on March 12, 2014.

Matthew McGrane
(Santa Ana)

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 fine to Matthew McGrane, 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 McGrane executed a written proposal to provide tenant improvements for a restaurant. The proposal stated that “Drawings will include Architectural drawings only” and contained the phrase “Architectural design” throughout. The citation became final on August 19, 2013.

Junichi (Mark) Morita
(Gardena)

BPC section 5536(a) – Practice Without a 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 \$10,000 fine to Junichi (Mark) Morita, 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 Morita, as an employee of Gatten Sushi USA, Inc. prepared construction documents that included seismic related interior alterations for a restaurant tenant improvement project located in Irvine, California. Morita paid an architect \$500 to review and modify the design of the project. Morita submitted drawings for plan check to the City of Irvine Building and Safety Division for the Irvine project. Morita without architect’s knowledge, affixed the architect’s stamp to the drawings, which read: “Licensed Architect,” “Sunghoon Kim,” “C-30089,” and the legend “State of California” and forged the architect’s signature.

Morita executed a contract with an architect, where the architect would review the plans for a restaurant tenant improvement project located in West Covina, California. The plans would then be submitted to the City of West Covina Building Division, and the County of Los Angeles Public Health Department. Architect would also provide his license stamp and signature to secure a building permit. Morita prepared construction documents for the West Covina project that included seismic related interior alterations. Morita submitted drawings for plan check to the Building Division of the City of West Covina for the West Covina project. Morita without architect’s knowledge, affixed the architect’s stamp to the drawings, which read: “Licensed Architect,” “Tetsuyasu Uekuma,” “C-15597,” “Exp. “3-31-13,” and the legend “State of California” and forged the architect’s signature.

The citation became final on December 2, 2013.

Kim Ian Murray
(San Francisco)

BPC section 5536.22(a) – Written Contract

The Board issued a one-count administrative citation that included a \$1,000 fine to Kim Ian Murray, architect license number C-25755, for an alleged violation of BPC section 5536.22(a) (Written Contract). The action alleged that Murray failed to execute a written contract prior to commencing professional services. Murray paid the fine, satisfying the citation. The citation became effective on July 9, 2013.

Warren Earle Pechin
(Bakersfield)

BPC section 5536.22(a) – Written Contract

The Board issued a one-count administrative citation that included a \$250 fine to Warren Earle Pechin, architect license number C-8366, for an alleged violation of BPC section 5536.22(a) (Written Contract). The action alleged that Pechin failed to execute a written contract prior to commencing professional services. Pechin paid the fine, satisfying the citation. The citation became effective on October 21, 2013.

Allen Kent Smith
(Salt Lake City, Utah)

BPC section 5536.22(a)(3) – Written Contract
BPC section 5558 – Business Entity Report
BPC section 5585 – Willful Misconduct
CCR section 160(b)(2) – Rules of Professional Conduct

The Board issued a four-count administrative citation that included a \$2,000 fine to Allen Kent Smith, architect license number C-13393, for alleged violations of BPC sections 5536.22(a)(3) (Written Contract), 5558 (Business Entity Report), and 5585 (Willful Misconduct) and CCR section 160(b)(2) (Rules of Professional Conduct). The action alleged that Smith failed to include his license number on his written proposal, file the proper and current name and address of the entity through which he provides architectural services, satisfy a \$3,000 judgment filed against him by the client, and respond to the Board's requests for additional information. The citation became final on October 21, 2013.

Urs M. Reist
(Sacramento)

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

The Board issued a two-count modified administrative citation that included a \$3,000 fine to Urs M. Reist, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Reist prepared an invoice which contained his name and stated “Architectural As-Is Drawings,” and he sent an email to a client with his name and the title, “Project Architect.” Reist paid the fine, satisfying the citation. The citation became final on October 17, 2013.

Gary A. Rogers
(Clovis)

BPC section 5536(a)(3) and (4) – Written Contract

The Board issued a one-count administrative citation that included a \$1,000 fine to Gary A. Rogers, architect license number C-16583, for an alleged violation of BPC section 5536.22(a)(3) and (4) (Written Contract). The action alleged that in his written proposal, Rogers failed to include his license number and a description of the procedure that the architect and the client will use to accommodate additional services. Rogers paid the fine, satisfying the citation. The citation became final on September 23, 2013.

Moises Villegas
(Murrieta)

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

The Board issued a two-count administrative citation that included a \$5,000 fine to Moises Villegas, 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 Villegas verbally contracted with his client and his company, Infinity Construction to provide design, entitlements, construction drawings, and mechanical, plumbing and electrical engineering for a two-story mixed use building located in San Diego, California. Villegas affixed an architect’s stamp to the construction drawings for the project and submitted them to the City of San Diego for plan check review.

–On or about July 18, 2011, Villegas prepared mechanical, electrical and plumbing plans and detail drawings for a two-story pharmacy/studio apartment project. On or about April 19, 2012, Villegas submitted drawings of the project for plan check to the City of San Diego for review. Villegas affixed an architect’s stamp to the drawings, which read: “Registered Architect,” “Jack M.

George,” “Reg. No. C-2000,” “Exp. “12-11,” and the legend “State of California.”

–The citation became final on August 28, 2013.

Stephen Anthony Vitalich
(Venice)

CCR section 160(f)(1) – Rules of Professional Conduct

The Board issued a one-count administrative citation that included a \$1,000 fine to Stephen A. Vitalich, architect license number C-19742, for an alleged violation of CCR section 160(f)(1) (Rules of Professional Conduct). The action alleged that Vitalich failed to obtain prior approval in writing from the client for additional services. Vitalich paid the fine, satisfying the citation. The citation became final on June 12, 2013.

Keith Raymond Winterbower
(Newport Beach)

BPC section 5536(a) & (b) – Practice Without License or Holding Self Out as Architect
BPC section 5536.22 – Written Contract

The Board issued a two-count administrative citation that included a \$2,000 fine to Keith Raymond Winterbower, architect license number C-21309, for alleged violations of BPC sections 5536(a) and (b) (Practice Without License or Holding Self Out as Architect) and 5536.22 (Written Contract). The action alleged that Winterbower failed to execute a written contract prior to providing professional services to a client. On or about March 4, 2013, while Winterbower’s license was expired, affixed his architect stamp to the as-built floor plans which contained his name, license number, the words “Licensed Architect,” the legend “State of California,” and an invalid renewal date of July 1, 2013. The citation became final on December 12, 2013.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO REVIEW AND UPDATE CAB'S DISCIPLINARY GUIDELINES

The California Architects Board's 2013 and 2014 Strategic Plans contains an objective assigned to the REC to review and update CAB's disciplinary guidelines.

In 1998, the REC reviewed the Board's disciplinary guidelines and the possible need to amend the minimum penalties and add guidelines to address the Rules of Professional Conduct. Following this review, there was a general consensus that all sections of the guidelines be consistent with a 90-day minimum suspension. The REC proposed revisions to the guidelines with input from the Board's legal counsel and Deputy Attorney General (DAG) liaison that aided the Committee in finalizing its recommended changes.

The recommended changes were approved by the Board on September 15, 1998. California Code of Regulations section 154 (Disciplinary Guidelines) was amended to include the current version of the guidelines. The guidelines are distributed to interested parties and DAGs when pursuing disciplinary action.

The Board's 2013 Strategic Plan tasked the REC again with an objective to review and update the guidelines, if needed. To prepare for this objective, Board staff consulted with legal counsel and the DAG and reviewed the guidelines from both the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG), and the Contractors State License Board (CSLB) to determine if changes are needed. Staff's and legal's recommended modifications were provided to the REC for its review on April 25, 2013. The Committee was asked to review the guidelines with staff's and the DAG's modifications, and determine whether additional modifications were necessary, prior to making a recommendation to the Board.

The REC questioned the DAG's modification to delete the statement "governing the practice of architecture in California" on page eight, under item one, "Obey All Laws." The issue was whether the Board's authority goes beyond the laws not related to the practice of architecture. It was suggested that staff confer with the DAG to determine the appropriateness of the amendment and possibly leaving it as stated.

At the request of the REC, staff contacted the DAG to verify the appropriateness of the recommendations. The DAG advised that the language is standard in other DCA boards' guidelines. The DAG also advised that the Board keep in mind that this is a condition of probation, not the starting point for a new disciplinary action, so obedience to all laws and regulations should be stricter for those who have already committed some form of violation requiring discipline and probation. Probation means best, or at least improved, behavior. Incorporating BPC section 5586 would blur the line between new discipline and probation; keeping them separate and apart would avoid confusion.

Another issue raised by the REC was under item five, on page nine, “Tolling for Out-of-State Practice,” which states, “Non-practice is defined as any period of time exceeding thirty days.” The Committee asked what if the architect did not have any work for 30 days through no fault of his own and whether the time limit should be expanded. Staff clarified for the Committee that the licensee may still be “offering” during that time period which is included under the definition of the practice of architecture under BPC section 5500.1. Staff confirmed and the DAG agrees with staff’s interpretation of “offering,” holding one’s self out to the public and seeking work as an architect even if the person is not commissioned for work, as included in the practice of architecture. The DAG also stated that some boards’ time periods for tolling are 30 days, others are significantly longer, and the amount of time is the Board’s decision. However, they advised the Board keep in mind that they govern a learned profession and should set and maintain strict standards for the improvement of it and the protection of the public.

Staff made some additional editorial changes to the guidelines since the REC’s last review in April 2013. The REC is asked to review and approve the attached Disciplinary Guidelines and make a recommendation to the Board.

Attachment:

1. Board’s Disciplinary Guidelines with staff’s and the DAG’s draft modifications

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VI.	ATTACHMENT A

Introduction

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Architects Board (~~CAB hereinafter referred to as the~~ Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by Administrative Law Judges, attorneys, Board licensees, others involved in the Board's disciplinary process, and ultimately the Board, shall be revised from time to time and will be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses are referenced to the statutory and regulatory provisions.

For purposes of this document, terms and conditions of probation are divided into two general categories: (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

Additional copies of this document may be obtained by contacting the ~~CAB-Board~~ at its office in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and distribution of copies.

General Conditions

The Board requests that proposed decisions following administrative hearings include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if he/she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
- e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Factors to be Considered:

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. ~~Number and/or variety of current violations.~~ Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
5. Mitigation evidence.
6. ~~Rehabilitation evidence.~~ Evidence, if any, of rehabilitation submitted by the applicant.
7. ~~In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.~~
8. ~~Overall criminal record.~~
9. ~~Time passed since the act(s) or offense(s) occurred.~~ The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

Disciplinary Guidelines

The offenses are listed by section number in the Business and Professions Code or California Code of Regulations. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein, are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages _____.

Business and Professions Code Sections

Section 5577

Conviction of a Crime Substantially Related to the Qualifications, Duties and Functions of an Architect

MAXIMUM: Revocation or denial of license application

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Cost reimbursement [#12]
- c. Criminal probation reports [#14]

Section 5578

Acts in Violation of the Architects Practice Act

The appropriate penalty depends on the nature of the offense.

Section 5579

Fraud or Misrepresentation in Obtaining License

MAXIMUM/MINIMUM: Revocation

Section 5580

Impersonation or Use of Assumed or Corporate Name

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- b. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5582

Aiding and Abetting the Unlicensed Practice of Architecture

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5582.1

Signing Others Instruments of Service or Permitting Misuse of Name

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5583

Fraud or Deceit

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5584

Negligence

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. California Supplemental Examination [#9]
- c. Continuing education courses [#11]
- d. Cost reimbursement [#12]
- e. Restitution [#13]

Section 5584
Willful Misconduct

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5585
Incompetency or Recklessness

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. California Supplemental Examination [#9]
- c. Continuing education courses [#11]
- d. Cost reimbursement [#12]
- e. Restitution [#13]

General Provisions of Business and Professions Code

Section 125.6
Discrimination by Licensee

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 60 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Cost reimbursement [#12]

Section 480 (a)
Denial of Licenses

An applicant's application may be denied for (1) conviction of a crime [substantially related to the qualifications, functions, or duties of the practice of architecture](#); (2) any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; (3) any act which if done by a licensee would be grounds for suspension or revocation of license; or (4) knowingly making a false statement of fact required to be revealed in the application for such license.

RECOMMENDED DISCIPLINE: Denial of license

Section 496
Subversion of Licensing Examinations or Administration of Examinations

RECOMMENDED DISCIPLINE: Denial or revocation of license

California Code of Regulations
Article 9. Professional Conduct

Section 160
Rules of Professional Conduct

a. Competence

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. California Supplemental Examination [#9]
- c. Continuing education courses [#11]
- d. Cost reimbursement [#12]
- d. Restitution [#13]

b. Willful Misconduct

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. California Supplemental Examination [#9]
- c. Continuing education courses [#11]
- d. Cost reimbursement [#12]
- e. Restitution [#13]

c. Conflict of Interest

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

d. Full Disclosure

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

e. Copyright Infringement

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Violation of Probation

Maximum Penalty

Actual suspension; vacate stay order and reimpose penalty that was previously stayed; and/or revoke, separately and severally, for violation of probation and/or for any additional offenses.

Minimum Penalty

Actual suspension and/or extension of probation.

The maximum penalty is appropriate for repeated similar offenses, or for probation violations indicating a cavalier or recalcitrant attitude. If the probation violation is due in part to the commission of additional offense(s), additional penalties shall be imposed according to the nature of the offense; and the probation violation shall be considered as an aggravating factor in imposing a penalty for those offenses.

Conditions of Probation

Standard Conditions

(To be included in all Cases of Probation)

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations and comply with all conditions of probation governing the practice of architecture in California.

2. Submit Quarterly Reports

Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board on the Board's a Quarterly Report of Compliance form (4-001/11) obtained from the Board (Attachment A).

3. Personal Appearances

Upon reasonable notice by the Board, the respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Cooperate During Probation

Respondent shall cooperate fully with the Board, and with any of its agents or employees in their supervision and investigation of his/her compliance with the terms and conditions of this probation. Upon reasonable notice, the respondent shall provide the Board, its agents or employees with the opportunity to review all plans, specifications, and instruments of service prepared during the period of probation.

5. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as an architect or held any architecture related professional license or registration within 30 calendar days of the effective date of this decision. Respondent shall further provide information regarding the status of each license and registration and any changes in the license or registration status within ten calendar days, during the term of probation. Respondent shall inform the Board if he or she applies for or obtains an architectural license or registration outside of California within ten calendar days, during the term of probation.

In the event respondent should leave California to reside or to practice outside the State or for any reason stop practicing architecture in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return, or the dates of non-practice or the resumption of practice within California. Respondent's probation is tolled, if and when he or she ceases practicing in California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Section 5500.1 of the Business and Professions Code. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period. Respondent shall not be relieved of the obligation to maintain an active and current license with the Board. It shall be a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total of five years.

All provisions of probation other than the quarterly report requirements, examination requirements, costs reimbursement, restitution, and education requirements, shall be held in abeyance until respondent resumes practice in California. All other provisions of probation shall recommence on the effective date of resumption of practice in California. ~~Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period.~~

6. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation or the matter is referred to the Attorney General's office, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

7. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

Optional Conditions

8. Suspension

Respondent is suspended from the practice of architecture for _____ days beginning on the effective date of the Decision.

9. California Supplemental Examination

Within _____ days of the effective date of this Decision, respondent shall take and pass the California Supplemental Examination designated by the Board.

If respondent fails to pass said examination within 6 months, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he/she may resume practice. Failure to pass the required examination no later than ~~100 days~~ one year prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such examination.

10. Written Examination

Respondent shall take and pass (specified) sections of the Architect Registration Examination (ARE).

If respondent fails to pass said examination within one year or within two attempts, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he/she may resume practice. Failure to pass the required examination no later than ~~100 days~~ one year prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such examination.

11. Continuing Education Courses

Respondent shall successfully complete and pass professional education courses approved in advance by the Board or its designee, directly relevant to the violation as specified by the Board. The professional education courses shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than ~~100 days~~ one year prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for submitting to the Board for its approval the specifics of each course required by this condition, and for paying all costs of such courses.

12. Cost Reimbursement

Respondent shall reimburse the Board \$ _____ for its investigative and prosecution costs. The payment shall be made within _____ days/months of the date the Board's decision is final.

Option: The payment shall be made as follows: _____ (specify either prior to the resumption of practice or in monthly or quarterly payments, the final payment being due one year before probation is scheduled to terminate).

13. Restitution

Within _____ days of the effective date of this Decision, respondent shall make restitution to _____ in the amount of \$ _____ and shall provide the Board with proof from _____ attesting the full restitution has been paid. In all cases, restitution shall be completed no later than one year before the termination of probation.

14. Criminal Probation Reports

In the event of conviction of any crime, Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his/her probation officer.

15. Relinquish License and Wall Certificate

Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within 10 days of the effective date of this decision and order.

16. Notification to Clients/Cessation of Practice

In orders which provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the Board regarding notification to, and management of, clients.

Rehabilitation Criteria

California Code of Regulations, Title 16, Division 2, Section 110.1, Criteria for Rehabilitation states:

- (a) When considering the denial of an architect's license under Section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:
 - (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
 - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
 - (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
 - (5) Evidence, if any, of rehabilitation submitted by the applicant.
- (b) When considering the suspension or revocation of the license of an architect on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for licensure will consider the following criteria:
- (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee.
- (c) When considering the petition for reinstatement of the license of an architect, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).



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Attachment A

QUARTERLY REPORT OF COMPLIANCE

Comment [C1]: As noted earlier, recommend you do not attach this or any other form(s) to the DGs.

1. NAME: (Last/First/Middle) TELEPHONE #: () (Residence)

RESIDENCE ADDRESS:

CITY: STATE: ZIP CODE:

2. NAME OF FIRM: YOUR TITLE:

FIRM ADDRESS:

CITY: STATE: ZIP CODE:

TELEPHONE #: ()

3. On the back of this form detail your architectural activities for the probation period

beginning and ending Mo. Day Year Mo. Day Year

4. Site any other activities related to the practice of architecture:

ACTIVITY DATE

5. I declare under penalty of perjury under the laws of the State of California that the information contained in this quarterly report regarding my professional practice is true and correct.

Signature:

Date:

DATE: _____ QUARTER: _____ YEAR: _____

CLIENT NAME: _____ TELEPHONE #: (____) _____
(Last/First/Middle)

— ADDRESS: _____

— CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TITLE/ADDRESS	PROJECT DESCRIPTION	DATE START-COMPLETE	YOUR INVOLVEMENT

CLIENT NAME: _____ TELEPHONE #: (____) _____
(Last/First/Middle)

— ADDRESS: _____

— CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TITLE/ADDRESS	PROJECT DESCRIPTION	DATE START-COMPLETE	YOUR INVOLVEMENT

CLIENT NAME: _____ TELEPHONE #: (____) _____
(Last/First/Middle)

— ADDRESS: _____

— CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TITLE/ADDRESS	PROJECT DESCRIPTION	DATE START-COMPLETE	YOUR INVOLVEMENT

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO REVIEW AND CONSIDER ADDING A PROVISION REGARDING “SCOPE OF WORK” TO THE WRITTEN CONTRACT REQUIREMENTS (BPC SECTION 5536.22)

The California Architects Board’s 2013 and 2014 Strategic Plans contains an objective assigned to the REC to determine whether a provision should be added to the written contract requirement (Business and Professions Code [BPC]section 5536.22) concerning scope of work.

The written contract requirement was added to the Architects Practice Act in 1996 and has immensely improved architect/client relations. While the current requirement has accomplished much to protect consumers and architects, it has some deficiencies, which if addressed, could greatly improve the protections afforded the architect and the consumer.

In summary, the current BPC section 5536.22 requires that a written contract:

1. Describe the services to be provided by the architect;
2. Describe the basis of compensation and method of payment;
3. Identify by name and address the client and architect including the architect’s license number;
4. Describe the procedure to accommodate additional services; and,
5. Describe the procedure to be used by both parties to terminate the contract.

A missing critical requirement is a description of the project scope for which the architect’s services are being retained. Over the years, many of the disputes that have led to consumer complaints to the Board stemmed from a misunderstanding(s) by either or both parties of the project scope and/or failure to manage the changes in scope during the design process. Description of the project scope has direct bearing on the 1) design services required; 2) compensation related to these services; and, 3) project budget and schedule.

Project Scope: There are varying degrees of detail that can be provided in a project scope statement; however, in its most simple form the project scope defines what is to be built, how big it is to be and what the expected levels of quality should be. These facts will dictate (and ultimately be controlled by) the project budget and schedule. Often times, there is no clear definition of the project scope; therefore, the first phase of project services will explore and define the project scope.

Tracking progress and comparing it with stated goals and objectives is integral to effective project management. Without a defined project scope, it is often not clear whether the project is on track in meeting the expectations and project requirements established by the client and the architect.

At the April 25, 2013 REC meeting, the Committee was asked to review and discuss staff's recommended revisions to BPC 5536.22 before making a recommendation to the Board (See Attachment 1).

The Committee raised two issues that they felt should be considered by a working group: 1) adding the name and address of the property owner to the contract requirement, and 2) adding project scope to the written contract requirement. The Committee recommended both items be referred to the working group, in collaboration with The American Institute of Architects, California Council, for further discussion.

On July 15, 2013, the working group consisting of Gary McGavin and Phyllis Newton reviewed the proposed language to BPC section 5536.22 and the two issues raised by the REC and suggested the following changes to the proposed language:

- Separate “description of the project scope” from “description of services”;
- Add project address;
- Delete “name and address of the property owner”;
- Separate description of the procedure to accommodate additional services from contract changes; and
- Include changes in the description of the project, services and compensation and method of payment in the types of contract changes.

Board staff was asked to work with the Board's legal counsel to revise the language to incorporate the working group's suggestions. Legal counsel suggested slight modifications to the language that were non-substantive. The revised proposed language for the REC's consideration is shown in Attachment 2.

The REC is asked to review and discuss the recommended revisions to BPC section 5536.22 (Attachment 2) and make a recommendation to the Board.

Attachments:

1. BPC Section 5536.22 Proposed Language Reviewed at April 25, 2013 REC Meeting
2. BPC Section 5536.22 Proposed Language Including Working Group & Legal Counsel's Suggestions

BPC Section 5536.22 Proposed Language Reviewed at April 25, 2013 REC Meeting

5536.22. (a) An architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. That written contract shall be executed by the architect and the client, or his or her representative, prior to the architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following items:

- (1) A description of **project scope and the** services to be provided by the architect to the client.
- (2) A description of any basis of compensation applicable to the contract and method of payment agreed upon by both parties.
- (3) The name, address, and license number of the architect, and the name and address of the client, **the project address and the name and address of the property owner.**
- (4) A description of the procedure that the architect and the client will use to accommodate **contract changes including changes in project scope and additional in scope of** services.
- (5) A description of the procedure to be used by either party to terminate the contract.

BPC Section 5536.22 Proposed Language Including Working Group & Legal Counsel's Suggestions

5536.22 (a) An architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. That written contract shall be executed by the architect and the client, or his or her representative, prior to the architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following items:

- (1) A description of the project for which the client is seeking services.
- (~~2~~) A description of the services to be provided by the architect to the client.
- (~~2~~3) A description of any basis of compensation applicable to the contract and the method of payment agreed upon by both parties.
- (~~3~~4) The name, address, and license number of the architect, and the name and address of the client and project address.
- (~~4~~5) A description of the procedure that the architect and the client will use to accommodate additional services.
- (6) A description of the procedure that the architect and the client will use to accommodate contract changes including, but not limited to, changes in the description of the project, in the description of the services, or in the description of the compensation and method of payment.
- (~~5~~7) A description of the procedure to be used by either party to terminate the contract.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO REVIEW REPORTING THRESHOLD (\$5,000) IN REPORTING REQUIREMENTS [BUSINESS AND PROFESSIONS CODE (BPC) SECTION 5588]

The California Architects Board's 2014 Strategic Plan contains an objective assigned to the REC to review the \$5,000 reporting threshold in the reporting requirements (BPC 5588) (Attachment 1). This objective is the result of a prior recommendation made on a 2013 objective.

The 2013 Strategic Plan assigned the REC the objective to review and consider adding mediation to reporting requirements under BPC 5588. At the April 25, 2013 REC meeting, the Committee designated a working group (Gary McGavin and Phyllis Newton) to further discuss the objective and make a recommendation to the REC. The working group met on July 15, 2013 (see Attachment 2 for draft Working Group Summary Report) and determined mediation not be added to the reporting requirements. However, the group recommended the Board consider reviewing the \$5,000 reporting threshold.

BPC 5588 History

Since 1979, the Architects Practice Act, BPC 5588, has required architects and their professional liability insurance carriers to report to the Board any settlement or arbitration awards in excess of \$5,000. On June 23, 2003, the Board met with nine representatives from insurance carriers and other interested parties to discuss the Board's review process and application of BPC 5588. It was agreed that the Board's legal counsel request an opinion and interpretation from the Attorney General (AG) regarding BPC 5588.

The AG opinion was received on August 27, 2004. The Board reviewed the AG opinion on October 6, 2004. The Board directed the REC to: 1) examine the statute and the AG opinion to provide the Board with a recommendation on the parameters for reporting; 2) consider and identify the types of events that would be reportable under the AG opinion; 3) consider and identify what would be reportable in an ideal situation to help the Board protect consumers; and 4) consider whether the Board should ask the AG any additional questions. The Board also directed staff to: 1) seek compliance with reporting requirements relative to settlements and arbitration awards over \$5,000 that involve formal legal action; 2) collect statistical data on the nature of the claim (i.e., zoning, code, access, leaks) to provide feedback on areas of practice that may be deficient; and 3) implement draft reporting form developed by staff to be used by insurance companies to report settlements.

\$5,000 Threshold Reporting Requirement History

On December 9, 2004, the Board approved REC's recommendation that BPC 5588 should be amended to require that only settlements precipitated by legal action or arbitration awards that exceed \$5,000 and allege wrongful conduct (fraud, deceit, negligence, incompetence, or recklessness) with respect to the architectural services being provided must be reported to the Board. This recommendation was based on the Board for Professional Engineers, Land Surveyors, and Geologists' (BPELSG) legislation which limited reporting of settlements to an action, which was deemed a more appropriate standard for the design profession (as opposed to health related boards).. It was also crafted to avoid "change orders" from having to be reported to the Board. The Board also noted that The American Institute of Architects, California Council (AIACC) was the appropriate entity to sponsor such legislation and appointed a task force to address this issue and report its findings to the REC.

On March 24, 2005, the Task Force met and reviewed the BPELSG statutory language regarding settlements and arbitration awards reporting requirements and AIACC's proposed language, and developed proposed language for the REC to consider. During this discussion it was opined that the reportable amount of money, the Board's \$5,000 versus BPELSG's \$50,000 may be an issue; however, the \$5,000 was the appropriate threshold at the time for the Board based on the following:

- Raising the amount to \$50,000 would be a reduction in consumer protection.
- In a large scale project, a \$50,000 claim may be considered small; however, in a small project, the \$5,000 claim may be very substantial.
- Larger firms settle in excess of \$50,000 as a normal course of business. Maintaining the limit at \$5,000 would not have a major impact on a larger firm, but would impact a consumer with a smaller project who would be screened out at a limit of \$50,000.
- Anything over \$5,000 could not be filed in small claims court.

It was noted that the \$5,000 amount had been used for many years; and that \$50,000 may be too high, but there may be an amount in between the two that may be appropriate. The task force questioned whether the claims should be percentage based, but determined that using a percentage would be subject to interpretation.

It was suggested keeping the amount at \$5,000, then review the reports that the Board receives to determine if it needs to be changed. Enforcement staff has reviewed the settlement reports received over the past five years, the data will be provided at the meeting.

It is important to note that BPELSG recently amended BPC 6770 (Attachment 3) related to their reporting requirements, per Senate Bill (SB) 679 (Chapter 471, Statutes of 2013), effective January 1, 2014(Attachment 4). The amendment requires any civil action settlements or administrative actions resulting in a settlement greater than \$50,000 be reported and any civil action judgment, binding arbitration award, or administrative action resulting in a judgment or binding arbitration award of \$25,000 or greater against the licensee be reported to BPELSG.

The REC is asked to review and discuss the \$5,000 reporting threshold in BPC 5588 and make a recommendation to the Board.

Attachments:

1. BPC 5588 and 5588.1
2. Draft Working Group Summary Report
3. BPC 6770
4. SB 679 (Chapter 471, Statutes of 2013) and Senate Rules Committee Analysis

CALIFORNIA ARCHITECTS BOARD

BUSINESS AND PROFESSIONS CODE SECTION 5588

5588. (a) A licensee shall report to the board in writing within 30 days of the date the licensee has knowledge of any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture if the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater.
- (b) The report required by subdivision (a) shall be signed by the licensee and shall set forth the facts that constitute the reportable event. If the reportable event involves the action of an administrative agency or court, the report shall set forth all of the following:
- (1) The title of the matter.
 - (2) The court or agency name.
 - (3) The docket number.
 - (4) The claim or file number.
 - (5) The date on which the reportable event occurred.
- (c) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.
- (d) Failure of a licensee to report to the board in the time and manner required by this section shall be grounds for disciplinary action.
- (e) Any licensee who fails to comply with this section may be subject to a civil penalty of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) as an additional intermediate sanction imposed by the board in lieu of revoking the licensee's license. Any licensee who knowingly and intentionally fails to comply with this section may be subject to a civil penalty of up to twenty thousand dollars (\$20,000) as an additional intermediate sanction imposed by the board in lieu of revoking the licensee's license.

BUSINESS AND PROFESSIONS CODE SECTION 5588.1

- 5588.1 (a) Within 30 days of payment of all or any portion of a civil action judgment, settlement, or arbitration award described in Section 5588 against a licensee of the board in which the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater, any insurer providing professional liability insurance to that licensee or architectural entity shall report to the board all of the following:
- (1) The name of the licensee.
 - (2) The claim or file number.
 - (3) The amount or value of the judgment, settlement, or arbitration award.
 - (4) The amount paid by the insurer.
 - (5) The identity of the payee.
- (b) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or arbitration award described in Section 5588 against a licensee of the board in which the amount or value of the judgment, settlement, or arbitration award

Agenda F.3
Attachment 1

is five thousand dollars (\$5,000) or greater, any state or local governmental agency that self insures that licensee shall report to the board all of the following:

- (1)The name of the licensee.
- (2)The claim or file number.
- (3)The amount or value of the judgment, settlement, or arbitration award.
- (4)The amount paid.
- (5)The identity of the payee.



Edmund G. Brown Jr.
GOVERNOR

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

SUMMARY REPORT

WORKING GROUP
REGULATORY AND ENFORCEMENT COMMITTEE

July 15, 2013

Sacramento, California

Working Group Members Present

Gary McGavin
Phyllis Newton, Esq.

Board Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Hattie Johnson, Enforcement Officer
Bob Carter, Architect Consultant
Don Chang, Assistant Chief Counsel, Department of Consumer Affairs (DCA)

Guests

Kurt Cooknick, Director of Regulation and Practice, The American Institute of Architects, California Council (AIACC)

Hattie Johnson thanked Regulatory and Enforcement Committee (REC) Working Group members and guests for attending this meeting. She reminded the members that they were going to discuss whether “mediation” should be added to the reporting requirements in Business and Professions Code section (BPC) 5588, and whether “scope of work” should be added to the contract requirements in BPC 5536.22.

Ms. Johnson distributed draft language amending BPC 5588, which included “mediation” to the reporting requirements, if a civil action had preceded it. Phyllis Newton opined that the draft language was improved; however, she was still concerned this would have a negative impact on the voluntary settlement of disputes and contractually mandated meditation.

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Kurt Cooknick asked what the Working Group was attempting to accomplish and what the concern is. Doug McCauley responded that settlements, arbitration awards, and judgments of \$5,000 and over must be reported to the Board. Ms. Newton stated that a successful mediation does result in a settlement, but it is voluntary, which is an important distinction between this and other dispute resolutions. Mr. McCauley wondered whether there was a need to add “mediation” to the section. Gary McGavin noted that this could be a slippery slope in that an architect will realize that he made an error and will write the client a check. He asked how this would protect the public if it had to be reported to the Board.

Bob Carter explained that this issue came about because a question had come from an attorney asking if mediation should be reported. Mr. Carter indicated that the attorney’s client’s insurance company reported the mediation and the attorney felt it should not be reported. Ms. Newton asked what protected the public more: knowledge of wrong doing on the part of the architect so that an informed decision can be made by the consumer about the competency of the architect or not reporting a mediation. Mr. McGavin added that sometimes a settlement is just a business decision. Mr. McCauley indicated that receiving a settlement report does not mean it goes to disciplinary action. Ms. Newton asked if settlements reported to the Board were publicly disclosed. Mr. McCauley responded they were not.

Mr. Carter explained the process when a settlement is received. He noted that the Board initially requests a copy of the contract for the project from the architect. Don Chang stated that adding mediation may be taking a step backwards. He noted that the Board determined it did not want to receive a report for every change order. He added that mediation is a result of a dispute that has not risen to the level of taking a formal action against a licensee.

Ms. Newton asked if the Board should review the \$5,000 level threshold for reporting a settlement. Mr. McCauley indicated that the Board for Professional Engineers, Land Surveyors, and Geologists’ reporting threshold is \$50,000. Mr. Chang stated that it was the insurance companies that wanted the lower threshold.

Ms. Newton opined that if settlements have to be reported to the Board, this should encompass mediated settlements that result from a civil action. She reiterated her concern about the low reporting threshold. She noted that there are instances of nuisance claims and a mediation may be a business decision to resolve them. She added that paying a claim could save the relationship between a client and architect. Mr. McCauley reminded members that settlement reports were not for public disclosure. Mr. Carter added that he could only recall one instance where a settlement report resulted in an administrative citation.

Mr. Cooknick recalled one reason the reporting threshold was left at \$5,000 when this statute was revised, was for architects who provide services for small residential projects who settle with a client for less money. He noted that raising the threshold would exclude residential projects. Mr. McCauley suggested that the Working Group recommend to the REC that the issue of the \$5,000 reporting threshold be reviewed. The reason for this might include what the economy has been since 1980, what is the impact on consumer, what is the profession’s ability to reach accord, etc. Mr. Cooknick asked whether the insurance industry should be included in this

conversation. Mr. McCauley responded it could if the Board chose to make this a Strategic Plan objective. He noted that the REC would probably meet again in October and could make the recommendation to the Board, if it chooses.

The Working Group agreed to propose to the REC that it recommend to the Board that mediation not be added to the reporting requirements in BPC section 5588 since mediations are very rarely the result of a civil action and mediated settlements resulting from a civil action are already reportable. The Working Group also decided to propose to the REC that it recommend to the Board that it review the \$5,000 reporting threshold, based upon how the economy has changed since 1980 and the impact to the consumer.

Ms. Johnson explained that the second item of discussion for the Working Group was whether “scope of work” should be added to the contract requirements in BPC section 5536.22.

Mr. Carter noted that the issue relates to consumer complaints alleging the architect did not design the project the client desired. He explained this could be caused because both parties had a different idea of what the project should entail. He added that California Code of Regulations section 160(f)(1) states an architect cannot change the scope of the project without the client’s written approval. Ms. Newton noted that it may be difficult to make the distinction between scope of project and scope of services.

Mr. McGavin asked Mr. Cooknick if it would be difficult to change AIA contracts to comply if this became required. Mr. Cooknick responded that most agreements already include this element. Mr. McGavin stated that AIA contracts for small projects may not contain the scope of the project. He noted there is usually a blank portion to the contract where this could be specified. Ms. Newton opined that anything that added clarity to the contract reduces the potential for claims. Mr. Carter noted that this element would assist first-time users of architect services. Vickie Mayer suggested that the proposed element (scope of work) be a separate requirement in BPC section 5536.22 to make it stand out more. The members agreed.

Ms. Johnson stated that she and Mr. Carter would revise the proposed language, ensure it is acceptable to legal counsel, and then provide it to the Working Group to review it to determine whether they want to present it to the REC. Ms. Newton noted that the draft recommendation currently asks for the address of the property owner. Mr. Carter responded that this information would be required for an architect to file a lien. Ms. Newton asked if this would require an architect to ensure that the client truly owns a property if they so state. Mr. Carter stated that it would not. After discussion, the Working Group determined that “...and address of the property owner” would not be added to the recommended language.

The meeting adjourned at 11:00 a.m.

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

BUSINESS AND PROFESSIONS CODE SECTION 6770

6770. (a) A licensee shall report to the board in writing the occurrence of any of the following events that occurred on or after January 1, 2008, within 90 days of the date the licensee has knowledge of the event:
- (1) The conviction of the licensee of any felony.
 - (2) The conviction of the licensee of any other crime that is substantially related to the qualifications, functions, and duties of a licensed professional engineer.
 - (3) A civil action settlement or administrative action resulting in a settlement against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the amount or value of the settlement is greater than fifty thousand dollars (\$50,000).
 - (4) A civil action judgment or binding arbitration award or administrative action resulting in a judgment or binding arbitration award against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the amount or value of the judgment or binding arbitration award is twenty-five thousand dollars (\$25,000) or greater.
- (b) The report required by subdivision (a) shall be signed by the licensee and set forth the facts that constitute the reportable event. If the reportable event involves the action of An administrative agency or court, the report shall set forth the title of the matter, court or agency name, docket number, and the date the reportable event occurred.
- (c) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.
- (d) Nothing in this section shall impose a duty upon any licensee to report to the board the occurrence of any of the events set forth in subdivision (a) either by or against any other licensee.
- (e) Failure of a licensee to report to the board in the time and manner required by this section shall be grounds for disciplinary action.
- (f) For the purposes of this section, a conviction includes the initial plea, verdict, or finding of guilt; a plea of no contest; or pronouncement of sentence by a trial court even though the conviction may not be final or sentence actually imposed until all appeals are exhausted.

Senate Bill No. 679

CHAPTER 471

An act to amend Sections 6770, 6770.1, 6770.2, 8776, 8776.1, and 8776.2 of the Business and Professions Code, relating to licensees.

[Approved by Governor October 1, 2013. Filed with
Secretary of State October 1, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 679, Berryhill. Licensees: reporting requirements.

Existing law establishes, within the Department of Consumer Affairs, the Board for Professional Engineers and Land Surveyors. Existing law prohibits, in order to safeguard life, health, property, and public welfare, any person from practicing civil, electrical, or mechanical engineering, or land surveying unless appropriately licensed or specifically exempted from licensure, as specified. Existing law requires a licensee to report to the board in writing the occurrence of any of the specified events within 90 days of the date the licensee has knowledge of the event, including, but not limited to, any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering or land surveying if the amount or value of the judgment, settlement, or arbitration award is \$50,000 or greater.

This bill would revise those provisions to instead require a licensee to report to the board the occurrence of any civil action settlement or administrative action resulting in a settlement against the licensee, as specified, if the amount or value of the settlement is greater than \$50,000, and any civil action judgment or binding arbitration award or administrative action resulting in a judgment or binding arbitration award against the licensee, as specified, if the amount or value is \$25,000 or greater.

Existing law requires a court that rendered a conviction or judgment against a licensee, as specified, to report that fact to the board and provide the board with various documents. Existing law requires a state or local government agency that self-insures a licensee or an insurer that provides professional liability insurance to a licensee to report to the board specified information when payment of a civil action judgment, settlement, or arbitration award, as specified, against a licensee of the board has been made.

This bill would require a court that entered a settlement against a licensee, as specified, to report that fact to the board and provide the board a copy of the settlement and any orders or opinions accompanying the settlement. The bill would require a state or local government agency that self-insures a

licensee or an insurer that provides professional liability insurance to a licensee to report to the board specified information when payment of a civil action judgment, settlement, or binding arbitration award against a licensee of the board has been made.

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

SECTION 1. Section 6770 of the Business and Professions Code is amended to read:

6770. (a) A licensee shall report to the board in writing the occurrence of any of the following events that occurred on or after January 1, 2008, within 90 days of the date the licensee has knowledge of the event:

- (1) The conviction of the licensee of any felony.
 - (2) The conviction of the licensee of any other crime that is substantially related to the qualifications, functions, and duties of a licensed professional engineer.
 - (3) A civil action settlement or administrative action resulting in a settlement against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the amount or value of the settlement is greater than fifty thousand dollars (\$50,000).
 - (4) A civil action judgment or binding arbitration award or administrative action resulting in a judgment or binding arbitration award against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the amount or value of the judgment or binding arbitration award is twenty-five thousand dollars (\$25,000) or greater.
- (b) The report required by subdivision (a) shall be signed by the licensee and set forth the facts that constitute the reportable event. If the reportable event involves the action of an administrative agency or court, the report shall set forth the title of the matter, court or agency name, docket number, and the date the reportable event occurred.
- (c) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.
- (d) Nothing in this section shall impose a duty upon any licensee to report to the board the occurrence of any of the events set forth in subdivision (a) either by or against any other licensee.
- (e) Failure of a licensee to report to the board in the time and manner required by this section shall be grounds for disciplinary action.
- (f) For the purposes of this section, a conviction includes the initial plea, verdict, or finding of guilt; a plea of no contest; or pronouncement of sentence by a trial court even though the conviction may not be final or sentence actually imposed until all appeals are exhausted.

SEC. 2. Section 6770.1 of the Business and Professions Code is amended to read:

6770.1. Within 30 days of entry of a conviction described in paragraphs (1) and (2) of subdivision (a) of Section 6770, a settlement described in paragraph (3) of subdivision (a) of Section 6770, or a judgment described in paragraph (4) of subdivision (a) of Section 6770, by a court of this state that has been notified that the defendant is a licensee of the board, the court that rendered the conviction, settlement, or judgment shall report that fact to the board and provide the board with a copy of the conviction, settlement, or judgment and any orders or opinions of the court accompanying or ordering the conviction, settlement, or judgment.

SEC. 3. Section 6770.2 of the Business and Professions Code is amended to read:

6770.2. (a) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or binding arbitration award described in Section 6770 against a licensee of the board, any insurer providing professional liability insurance to that licensee shall report to the board the name of the licensee; the amount or value of the judgment, settlement, or binding arbitration award; the amount paid by the insurer; and the identity of the payee.

(b) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or binding arbitration award described in Section 6770 against a licensee of the board, any state or local government agency that self-insures that licensee shall report to the board the name of the licensee; the amount or value of the judgment, settlement, or binding arbitration award; the amount paid; and the identity of the payee.

SEC. 4. Section 8776 of the Business and Professions Code is amended to read:

8776. (a) A licensee shall report to the board in writing the occurrence of any of the following events that occurred on or after January 1, 2008, within 90 days of the date the licensee has knowledge of the event:

(1) The conviction of the licensee of any felony.

(2) The conviction of the licensee of any other crime that is substantially related to the qualifications, functions, and duties of a licensed land surveyor.

(3) A civil action settlement or administrative action resulting in a settlement against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of land surveying if the amount or value of the settlement is greater than fifty thousand dollars (\$50,000).

(4) A civil action judgment or binding arbitration award or administrative action resulting in a judgment or binding arbitration award against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of land surveying if the amount or value of the judgment or binding arbitration award is twenty-five thousand dollars (\$25,000) or greater.

(b) The report required by subdivision (a) shall be signed by the licensee and set forth the facts that constitute the reportable event. If the reportable event involves the action of an administrative agency or court, the report shall set forth the title of the matter, court or agency name, docket number, and the dates the reportable event occurred.

(c) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.

(d) Nothing in this section shall impose a duty upon any licensee to report to the board the occurrence of any of the events set forth in subdivision (a) either by or against any other licensee.

(e) Failure of a licensee to report to the board in the time and manner required by this section shall be grounds for disciplinary action.

(f) For purposes of this section, a conviction includes the initial plea, verdict, or finding of guilt; a plea of no contest; or pronouncement of sentence by a trial court even though the conviction may not be final or sentence actually imposed until all appeals are exhausted.

SEC. 5. Section 8776.1 of the Business and Professions Code is amended to read:

8776.1. Within 30 days of entry of a conviction described in paragraphs (1) and (2) of subdivision (a) of Section 8776, a settlement described in paragraph (3) of subdivision (a) of Section 8776, or a judgment described in paragraph (4) of subdivision (a) of Section 8776, by a court of this state that has been notified that the defendant is a licensee of the board, the court that rendered the conviction or judgment shall report that fact to the board and provide the board with a copy of the conviction, settlement, or judgment and any orders or opinions of the court accompanying or ordering the conviction, settlement, or judgment.

SEC. 6. Section 8776.2 of the Business and Professions Code is amended to read:

8776.2. (a) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or binding arbitration award described in Section 8776 against a licensee of the board, any insurer providing professional liability insurance to that licensee shall report to the board the name of the licensee; the amount or value of the judgment, settlement, or binding arbitration award; the amount paid by the insurer; and the identity of the payee.

(b) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or binding arbitration award described in Section 8776 against a licensee of the board, any state or local government agency that self-insures that licensee shall report to the board the name of the licensee; the amount or value of the judgment, settlement, or binding arbitration award; the amount paid; and the identity of the payee.

SENATE RULES COMMITTEE

SB 679

Office of Senate Floor Analyses

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UNFINISHED BUSINESS

Bill No: SB 679
Author: Berryhill (R)
Amended: 6/12/13
Vote: 21

SENATE BUSINESS, PROF. & ECON. DEVELOP. COMM.: 10-0, 4/15/13
AYES: Price, Emmerson, Block, Corbett, Galgiani, Hernandez, Hill, Padilla,
Wyland, Yee

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 32-0, 5/6/13 (Consent)

AYES: Anderson, Beall, Block, Calderon, Cannella, Corbett, Correa, De León,
DeSaulnier, Emmerson, Evans, Fuller, Gaines, Galgiani, Hancock, Hernandez,
Hill, Hueso, Huff, Knight, Leno, Lieu, Liu, Monning, Nielsen, Padilla, Pavley,
Price, Roth, Steinberg, Wright, Wyland

NO VOTE RECORDED: Berryhill, Jackson, Lara, Walters, Wolk, Yee, Vacancy,
Vacancy

ASSEMBLY FLOOR: 78-0, 8/22/13 (Consent) - See last page for vote

SUBJECT: Licensees: reporting requirements engineers or land surveyors

SOURCE: California Geotechnical Engineering Association

DIGEST: This bill revises the monetary threshold for a licensed engineer or land surveyor to report a civil action settlement or administrative action to the Board for Professional Engineers, Land Surveyors, and Geologists (Board) from “\$50,000 or greater” to “greater than \$50,000;” and requires a licensed engineer or land surveyor to report to the Board any civil action judgment or binding arbitration award or administrative action of \$25,000 or greater.

CONTINUED

Assembly Amendments make technical changes.

ANALYSIS:

Existing law:

1. Requires an engineering or land surveyor licensee to report to the Board in writing the occurrence of any of the following events within 90 days of the date the licensee has knowledge of the event:
 - A. The conviction of any felony.
 - B. The conviction of any other crime (misdemeanor) substantially related to the qualifications, functions, and duties of a licensed engineer or land surveyor.
 - C. Any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering if the judgment, settlement, or arbitration award is \$50,000 or greater.
2. Provides that failure of a licensee to report to the Board in the time and manner required shall be grounds for disciplinary action.
3. Requires a court that renders a conviction or judgment against an engineer or land surveyor to report that fact to the Board within 30 days and furnish a copy of the conviction or judgment and any accompanying orders or opinions of the court.
4. Requires an insurer that provides professional liability insurance to an engineer or land surveyor or a state or local government agency that self-insures an engineer or land surveyor to report to the Board when payment of a civil action judgment, settlement, or arbitration award of \$50,000 or greater, against a licensed engineer has been made.

This bill:

CONTINUED

1. Requires a licensed professional engineer or a licensed land surveyor to report to the Board any civil action settlement or administrative action resulting in a settlement against the licensee of greater than \$50,000.
2. Requires a licensed professional engineer or a licensed land surveyor to report to the Board any civil action judgment or binding arbitration award or administrative action resulting in a judgment or binding arbitration award against the licensee, if the amount or value is \$25,000 or greater.
3. Requires a court that entered a settlement against a licensed professional engineer or a licensed land surveyor for more than \$50,000 or a conviction or judgment of more than \$25,000 to report that fact to the Board and provide a copy of the settlement and any orders or opinions accompanying the settlement.
4. Requires an insurer that provides professional liability insurance to a professional engineer or to a land surveyor or a state or local government agency that self-insures a professional engineer or a land surveyor to report to the Board when payment of a civil action judgment, settlement, or binding arbitration award against a licensee has been made.

Background

In 2000, as a part of the Joint Legislative Sunset Review Committee's (JLSRC) review of the Board, SB 2030 (Figueroa, Chapter 1006, Statutes of 2000) mandated that an independent research group conduct an in-depth analysis of the Professional Engineer's Licensing Act. The California State University at Sacramento, Institute for Social Research (ISR) was hired and oversight was provided by the DCA; the report was completed in November 2002. A task force was appointed by the Board to review the report, take public comments regarding the report and make recommendations to the Board.

Among the findings of the ISR report, the report concluded that, similar to medicine, but on a larger scale, engineering activities have the potential for significant harm to large numbers of people. However engineering lacks a reporting system analogous to that for the practice of medicine. Mandated reporting would provide information on the potential for harm in exempt industries, and among unregulated disciplines and licensed engineers. The JLSRC stated that, similar reporting requirements regarding civil judgments and malpractice settlements exist for architects, landscape architects and attorneys and reporting requirements for civil actions, were required for certified public

CONTINUED

accountants. All health-related boards require reporting of civil judgments, settlements and arbitration awards including those which regulated physicians, podiatrists, osteopaths, marriage and family counselors, dentists, psychologists, chiropractors, registered nurses, vocational nurses, optometrists, and veterinarians.

Ultimately the JLSRC recommended establishing a requirement for licensees and insurers to report a civil action settlement or arbitration award to the Board.

Subsequently, the requirement for engineers and land surveyors to report settlements or judgments of \$50,000 or more to the Board was established by SB 1549 (Figueroa, Chapter 691, Statutes of 2004) as a result of the 2003 Sunset Review of the Board. The bill required a licensee to report to the Board within 90 days the conviction of any felony, and the conviction of the licensee of any other crime substantially related to the qualifications and work of the licensee, and any civil action judgment, settlement, arbitration award or administrative action against a licensee relating to the practice of professional engineering or land surveying in the amount of \$50,000 or greater.

Recent settlement data. From 2008-2012, licensees reported 112 actions to the Board in which a settlement, judgment, or arbitration award involving the licensee was \$50,000 or more. The overwhelming majority of reported actions were settlements, out of which only five were exactly \$50,000. One of these resulted in a formal accusation by the Board to revoke or suspend the license. All other settlements were significantly greater than \$50,000 and the reporting of these settlements to the Board would be unaffected by this bill. Of the 112 reports to the Board mentioned above, only two were arbitration awards.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/23/13)

California Geotechnical Engineering Association (source)

ARGUMENTS IN SUPPORT: According to the author's office, existing law requires in all cases where there is a settlement or adjudication of a lawsuit against an engineer where the amount equals or exceeds \$50,000, the engineer must be referred to the Board for a disciplinary review. The problem is, according to the author's office, that most engineering malpractice coverage has a \$50,000 deductible, so an insurer will often settle a case for that amount to avoid their own potential of incurring a more expensive cost of defense, even if there is no actual culpability or fault on the part of the engineer. The author's office indicates that

CONTINUED

the Board's disciplinary process can take several years and cause the engineer a great amount of stress while they are under scrutiny, even where their conduct was in reality faultless.

The bill's sponsor, California Geotechnical Engineering Association (CalGeo), writes that an unfortunate result of the existing law is that nuisance settlements where there is no finding of fault, and there is no liability found, are settled for the exact amount of \$50,000 because that coincides with the most common deductible for errors and omissions coverage in insurance policies for this profession. In addition, CalGeo writes, in cases where a trial or binding arbitration finds actual negligence on the part of the professional for a lesser amount, some of those cases escape review due to the current referral level. Ultimately, CalGeo believes that the bill will ensure additional scrutiny in cases where it is justified, and correct the current unintended problem where a nuisance or a suit settlement happens to be exactly \$50,000.

ASSEMBLY FLOOR: 78-0, 8/22/13

AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Bigelow, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dahle, Daly, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Harkey, Roger Hernández, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Mansoor, Medina, Melendez, Mitchell, Morrell, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams, Yamada, John A. Pérez

NO VOTE RECORDED: Vacancy, Vacancy

MW:d 8/23/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO REVIEW AND EXPLORE OTHER OPPORTUNITIES FOR PROSECUTING UNLICENSED INDIVIDUALS, SUCH AS INFRACTIONS

The California Architects Board's 2014 Strategic Plan contains an objective assigned to the REC to review and explore other opportunities for prosecuting unlicensed individuals, such as infractions.

Staff conferred with the Department of Consumer Affairs (DCA) Legal Counsel, to explore possible actions the Board may take and discovered that per Business and Professions Code section (BPC) 146 (Attachment 1), the Board has the ability to obtain the authority to issue notices to appear (NTA) to unlicensed individuals. BPC 147 (Attachment 2), allows the DCA Director to designate an employee with the power to issue infractions. However, to issue an infraction for unlicensed activity, the employee must actually witness the activity.

Legal Counsel advised if the Board were to utilize BPC 146, it was suggested to use the Contractor's State Licensing Board's (CSLB) model (see BPC 7011.4 Attachment 3). However, Legal Counsel indicated the difficulty in issuing NTAs is working with the local District Attorney's Office to ensure they are willing to prosecute the individual. . If the DA is unwilling to prosecute, nothing will come out of the issuance of an NTA.

The Board relies on information and documentation provided by both the complainant and subject of a case, as well as the expertise of its architect consultants to determine whether or not a violation has occurred. Unlike CSLB, the CAB does not conduct sting operations, thus staff does not physically witness the violation. Legal Counsel advised issuing infractions would not be a helpful tool.

The REC is asked to review and explore other opportunities for prosecuting unlicensed individuals and make a recommendation to the Board.

Attachments:

- 1) BPC 146
- 2) BPC 147
- 3) BPC 7011.4

GENERAL PROVISIONS

BUSINESS AND PROFESSIONS CODE SECTION 146

146. (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following applies:
- (1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.
 - (2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.
- (b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.
- (c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:
- (1) Sections 2052 and 2054.
 - (2) Section 2630.
 - (3) Section 2903.
 - (4) Section 3660.
 - (5) Sections 3760 and 3761.
 - (6) Section 4080.
 - (7) Section 4825.
 - (8) Section 4935.
 - (9) Section 4980.
 - (10) Section 4996.
 - (11) Section 5536.
 - (12) Section 6704.
 - (13) Section 6980.10.
 - (14) Section 7317.
 - (15) Section 7502 or 7592.
 - (16) Section 7520.
 - (17) Section 7617 or 7641.
 - (18) Subdivision (a) of Section 7872.
 - (19) Section 8016.
 - (20) Section 8505.
 - (21) Section 8725.
 - (22) Section 9681.
 - (23) Section 9840.
 - (24) Subdivision (c) of Section 9891.24.
 - (25) Section 19049.
- (d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

GENERAL PROVISIONS

BUSINESS AND PROFESSIONS CODE SECTION 147

147. (a) Any employee designated by the director shall have the authority to issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. Employees so designated are not peace officers and are not entitled to safety member retirement benefits, as a result of such designation. The employee's authority is limited to the issuance of written notices to appear for infraction violations of provisions of this code and only when the violation is committed in the presence of the employee.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the person, at the time of such arrest, had reasonable cause to believe was lawful.

CONTRACTOR'S STATE LICENSING BOARD

BUSINESS AND PROFESSIONS CODE SECTION 7011.4

7011.4. (a) Notwithstanding Section 7011, there is in the Contractors' State License Board, a separate enforcement division which shall rigorously enforce this chapter prohibiting all forms of unlicensed activity.

(b) Persons employed as enforcement representatives in this division and designated by the Director of Consumer Affairs are not peace officers and are not entitled to safety member retirement benefits. They do not have the power of arrest. However, they may issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

DISCUSS AND POSSIBLE ACTION ON THE AMERICAN INSTITUTE OF ARCHITECTS, CALIFORNIA COUNCIL PROPOSED LEGISLATION (ASSEMBLY BILL 2192 MELENDEZ) REGARDING PEER REVIEW ON EXEMPT PROJECTS

On February 20, 2014, The American Institute of Architects, California Council (AIACC) proposed legislation, Assembly Bill (AB) 2192 (Melendez) to amend Health and Safety Code section 17960. The bill would permit a local agency to create and implement a program where a building permit may be issued upon submission of plans prepared by an architect and reviewed by another unaffiliated architect for nonexempt category projects in lieu of government plan review.

AB 2192 was introduced to the Board at its February 26, 2014 meeting. The Board expressed concern about the details of the proposal, specifically the issue of recourse. AIACC's representative advised that there was time to amend the language and make improvements to the bill, and that it would be unfair for the Board to make a decision on the proposed legislation without a complete, more thorough understanding of its provisions. Board President, Sheran Voigt, agreed that the Board would take more time to review and consider AB 2192 before identifying an appropriate position.

The REC is asked to discuss AB 2192 and recommend a position for the Board to take.

Attachment:

1. Assembly Bill 2192 (Melendez)

ASSEMBLY BILL

No. 2192

Introduced by Assembly Member Melendez

February 20, 2014

An act to amend Section 17960.1 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2192, as introduced, Melendez. Housing: building plans

Under existing law, the building department of every city or county is required to enforce the provisions of the State Building Standards Code, the State Housing Law, and the other rules and regulations promulgated pursuant to that law pertaining to, among other things, the erection, construction, reconstruction, or repair of apartment houses, hotels, or dwellings. Existing law permits the governing body of a local agency to authorize its enforcement agency to contract with or employ a private entity or persons on a temporary basis to perform the plan-checking function. Existing law, when there is excessive delay in checking plans and specifications submitted as part of an application for a residential building permit, requires the local agency, upon the applicant's request, to contract with or employ a private entity or persons temporarily to perform the plan-checking function, as specified.

This bill would permit a local agency to create and implement a program whereby a building permit may be issued upon submission of plans prepared by an architect and reviewed by another unaffiliated architect, for specified types of projects.

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

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

1 SECTION 1. Section 17960.1 of the Health and Safety Code
2 is amended to read:

3 17960.1. (a) The governing body of a local agency may
4 authorize its enforcement agency to contract with or employ a
5 private entity or persons on a temporary basis to perform the
6 plan-checking function.

7 (b) A local agency need not enter into a contract or employ
8 persons if it determines that no entities or persons are available or
9 qualified to perform the plan-checking services.

10 (c) Entities or persons employed by a local agency may, pursuant
11 to agreement with the local agency, perform all functions necessary
12 to check the plans and specifications to comply with other
13 requirements imposed pursuant to this part or by local ordinances
14 adopted pursuant to this part, except those functions reserved by
15 this part or local ordinance to the legislative body. A local agency
16 may charge the applicant fees in an amount necessary to defray
17 costs directly attributable to employing or contracting with entities
18 or persons performing services pursuant to this section which the
19 applicant requested.

20 (d) When there is an excessive delay in checking plans and
21 specifications submitted as a part of an application for a residential
22 building permit, the local agency shall, upon request of the
23 applicant, contract with or employ a private entity or persons on
24 a temporary basis to perform the plan-checking function subject
25 to subdivisions (b) and (c).

26 (e) (1) *The governing body of a local agency may create and*
27 *implement a program whereby a building permit may be issued*
28 *upon submission of plans prepared by an architect and reviewed*
29 *by another unaffiliated architect.*

30 (2) *This subdivision shall apply only to the following project*
31 *types:*

32 (A) *Single-family dwellings not more than two stories and*
33 *basement in height.*

34 (B) *Multiple dwellings containing no more than four dwelling*
35 *units of not more than two stories and basement in height.*

36 (C) *Garages or other structures appurtenant to buildings*
37 *described in this paragraph, not more than two stories and*
38 *basement in height.*

1 (D) *Agricultural and ranch buildings, unless the building official*
2 *having jurisdiction deems that an undue risk to the public health,*
3 *safety, or welfare exists.*

4 (E) *Nonstructural or nonseismic storefronts, interior alterations,*
5 *or additions.*

6 (e)

7 (f) For purposes of this section:

8 (1) "Enforcement agency" means the building department or
9 building division of a local agency.

10 (2) "Excessive delay" means the enforcement agency of a local
11 agency has taken either of the following:

12 (A) More than 30 days after submittal of a complete application
13 to complete the structural building safety plan check of the
14 applicant's set of plans and specifications which are suitable for
15 checking. For a discretionary building permit, the time period
16 specified in this paragraph shall commence after certification of
17 the environmental impact report, adoption of a negative declaration,
18 or a determination by the local agency that the project is exempt
19 from Division 13 (commencing with Section 21000) of the Public
20 Resources Code.

21 (B) Including the days actually taken in (A), more than 45 days
22 to complete the checking of the resubmitted corrected plans and
23 specifications suitable for checking after the enforcement agency
24 had returned the plans and specifications to the applicant for
25 correction.

26 (3) "Local agency" means a city, county, or city and county.

27 (4) "Residential building" means a one-to-four family detached
28 structure not exceeding three stories in height.

ADJOURNMENT

Time: _____