

FEBRUARY 4, 2021
SACRAMENTO, CALIFORNIA

CONTRACTORS STATE LICENSE BOARD

Teleconference Board and
Enforcement and Legislative
Committee Meetings





NOTICE OF PUBLIC TELECONFERENCE BOARD MEETING

Thursday, February 4, 2021, 9:00 a.m.–9:30 a.m. (or until the conclusion of business)

Pursuant to the provisions of Governor Newsom’s March 17, 2020 Executive Order N-29-20, neither a public location nor teleconference locations are provided.

Teleconference Information to Register/Join Meeting for Members of the Public via WebEx:

<https://cslb.webex.com/cslb/onstage/g.php?MTID=ecb339760311bccfc80e40d27cf31ad94>

Call-In Number: (415) 655-0001 or (844) 621-3956

Access Code: 126 419 0125

Meetings are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. All times when stated are approximate and subject to change without prior notice at the discretion of the Board unless listed as “time certain.” Items may be taken out of order to maintain a quorum, accommodate a speaker, or for convenience. **Action may be taken on any item listed on this agenda, including information-only items.** The meeting may be canceled without notice.

Members of the public can address the board during the public comment session. Public comments will also be taken on agenda items at the time the item is heard and prior to the board taking any action on said items. Total time allocated for public comment may be limited at the discretion of the board chair.

MEETING AGENDA

- A. Call to Order, Roll Call, Establishment of Quorum, and Chair’s Introduction
- B. Public Comment Session for Items Not on the Agenda and Future Agenda Item Requests
(Note: Individuals may appear before the board to discuss items not on the agenda; however, CSLB’s board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).
- C. Presentation of Certificates of Recognition – May Include Oral Presentations Commemorating Achievements and Service of CSLB Staff
- D. Review, Discussion, and Possible Action Regarding Previously Board-Approved Proposed Rulemaking to Amend Title 16, Division 8, California Code of Regulations, Section 811 (Fees)
 - a. Review, Discussion, and Possible Action Regarding Comments Received Before and During the 45-Day Comment Period
 - b. Review, Discussion, and Possible Action Regarding Re-Adoption of Emergency Regulation Set to Expire on June 9, 2021
- E. Adjournment

Note: In addition to teleconference, the board intends to provide a live webcast of the teleconference meeting. The webcast can be found at www.cslb.ca.gov or on the board's YouTube Channel: <https://www.youtube.com/user/ContractorsBoard/>. Webcast availability cannot, however, be guaranteed due to limitations on resources or technical difficulties. The meetings will continue even if the webcast is unavailable.

Note that viewers of the webcast can only view the meeting, not participate. If you wish to participate, you must join the teleconference itself via the WebEx link above. If participating via teleconference, on day of meeting please register/join WebEx at least 15-30 minutes early to ensure that you have adequate time to install any required plugins or apps.

The meetings are accessible to those needing special accommodation. A person who needs a disability-related accommodation or modification in order to participate in the meetings may make a request by contacting Phyliz Jones at (916) 255-4000, or phyliz.jones@cslb.ca.gov, or 9821 Business Park Drive, Sacramento, CA, 95827. Providing your request at least five business days prior to the meetings will help ensure availability of the requested accommodation.

NOTICE OF PUBLIC ENFORCEMENT AND LEGISLATIVE TELECONFERENCE COMMITTEE MEETINGS

Thursday, February 4, 2021, 9:30 a.m.–11:30 a.m. (or until the conclusion of business)

Pursuant to the provisions of Governor Newsom's March 17, 2020 Executive Order N-29-20, neither a public location nor teleconference locations are provided.

Teleconference Information to Register/Join Meeting for Members of the Public via WebEx: <https://cslb.webex.com/cslb/onstage/g.php?MTID=ecb339760311bccfc80e40d27cf31ad94>

Call-In Number: (415) 655-0001 or (844) 621-3956
Access Code: 126 419 0125

Meetings are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. All times when stated are approximate and subject to change without prior notice at the discretion of each Committee's Chair unless listed as "time certain." Items may be taken out of order to maintain a quorum, accommodate a speaker, or for convenience. **Action may be taken on any item listed on this agenda, including information-only items.** The meeting may be canceled without notice.

Members of the public can address the Committee during the public comment session. Public comments will also be taken on agenda items at the time the agenda item is heard and prior to the CSLB's Committee taking any action on said items. Total time allocated for public comment may be limited at the discretion of each Committee Chair.

ENFORCEMENT COMMITTEE MEETING AGENDA

(Upon Adjournment of Executive Committee Meeting)

Enforcement Committee Members:

Kevin Albanese, Chair / Don Giarratano / Diana Love / Michael Mark / Marlo Richardson / Johnny Simpson / Nancy Springer

A. Call to Order, Roll Call, Establishment of Quorum and Chair's Introduction

- B. Public Comment Session for Items not on the Agenda and Future Agenda Item Requests
(Note: Individuals may appear before the Committee to discuss items not on the agenda; however, the CSLB's Committee can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).
- C. Presentation from Representatives of the Public Utility Commission (PUC) Regarding Two Proposed Rulemaking Decisions for Board Member Review, Discussion, and Possible Support
 - a. PUC Net Energy Metering Solar Consumer Protection Requirement that Investor-Owned Utilities Provide CSLB with Consumer Contract Information
 - b. PUC Establishment of a Recovery Fund for Net Energy Metering Solar Consumers
- D. Adjournment

LEGISLATIVE COMMITTEE MEETING AGENDA

(Upon Adjournment of Enforcement Committee Meeting.)

Legislative Committee Members:

Augie Beltran, Chair / Frank Altamura, Jr. / Rodney Cobos / Miguel Galarza / Susan Granzella / Jim Ruane / Mary Teichert

- A. Call to Order, Roll Call, Establishment of Quorum and Chair's Introduction
- B. Public Comment Session for Items not on the Agenda and Future Agenda Item Requests
(Note: Individuals may appear before the Committee to discuss items not on the agenda; however, the CSLB's Committee can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).
- C. Update on Previously Approved Legislative Proposals
- D. Review, Discussion, and Possible Action on 2021-22 Pending Legislation
 - a. AB 246 (Quirk) Contractors: Disciplinary Actions
 - b. SB 216 (Dodd) Contractors: Workers' Compensation Insurance: Mandatory Coverage
- E. Update and Discussion on 2019-21 Legislative Strategic Plan
- F. Adjournment

***Note:** Members of the board who are not members of the committee may attend the committee meetings. However, if a majority of members of the full board are present at any of the committee meetings, members who are not committee members may attend the meeting as observers only.

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CONTRACTORS STATE LICENSE BOARD

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FEBRUARY 4, 2021
SACRAMENTO, CALIFORNIA

CONTRACTORS STATE LICENSE BOARD

Board Meeting



AGENDA ITEM A

Call to Order, Roll Call, Establishment of Quorum and Chair's Introduction

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

Eight members constitute a quorum at a CSLB Board meeting, per Business and Professions Code section 7007.

Board Member Roster

KEVIN J. ALBANESE	DIANA LOVE
FRANK ALTAMURA, JR.	MICHAEL MARK
AUGIE BELTRAN	MARLO RICHARDSON
RODNEY COBOS	JAMES RUANE
DAVID DE LA TORRE	JOHNNY SIMPSON
MIGUEL GALARZA	NANCY SPRINGER
DONALD GIARRATANO	MARY TEICHERT
SUSAN GRANZELLA	



AGENDA ITEM B

Public Comment Session - Items Not on the Agenda

(Note: Individuals may appear before the CSLB to discuss items not on the agenda; however, the CSLB can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)). Public comments will be taken on agenda items at the time the item is heard and prior to the CSLB taking any action on said items. Total time allocated for public comment may be limited at the discretion of the Board Chair.

BOARD AND COMMITTEE MEETING PROCEDURES

To maintain fairness and neutrality when performing its adjudicative function, the Board should not receive any substantive information from a member of the public regarding matters that are currently under or subject to investigation, or involve a pending administrative or criminal action.

- (1) If, during a Board meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person shall be requested to refrain from making such comments.
- (2) If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action:
 - (a) The Board may designate either its Registrar or a board employee to review whether the proper procedure or protocol was followed and to report back to the Board once the matter is no longer pending; or,
 - (b) If the matter involves complaints against the Registrar, once the matter is final or no longer pending, the Board may proceed to hear the complaint in accordance with the process and procedures set forth in Government Code section 11126(a).
- (3) If a person becomes disruptive at the Board meeting, the Chair will request that the person leave the meeting or be removed if the person refuses to cease the disruptive behavior.



AGENDA ITEM C

Presentation of Certificates
of Recognition –
May Include Oral Presentations
Commemorating Achievements
and Service of CSLB Staff



AGENDA ITEM D

Review, Discussion, and Possible Action Regarding Previously Board-Approved Proposed Rulemaking to Amend Title 16, Division 8, California Code of Regulations, Section 811 (Fees)

- a. Review, Discussion, and Possible Action Regarding Comments Received Before and During the 45-Day Comment Period
- b. Review, Discussion, and Possible Action Regarding Re-Adoption of Emergency Regulation Set to Expire on June 9, 2021





Proposed Rulemaking Related to Title 16—Response to Comments

Background

This agenda item relates to the CSLB fee regulation in Section 811 of Title 16, Division 8 of the California Code of Regulations.

Business and Professions Code section 7137 provides that CSLB shall set fees by regulation. Currently, the statute provides that the renewal fee for an active license shall be \$400 but may be increased by regulation to \$450. The statute was last amended in 2016 (SB 1039, effective January 1, 2017).

At its September 2019 meeting, the Board voted to amend its fee regulation to increase the \$400 renewal fee to \$450, consistent with the maximum provided in the statute. The change also included increases for two other renewals to their existing statutory maximums: 1) inactive licenses (from \$200 to \$225); and 2) home improvement salesperson registrations (from \$83 to \$95). To address a pending structural budget imbalance, the Board vote included authorization to make this change on an “emergency” basis. These fees have been in effect since December 19, 2019, when the first emergency regulation became effective.

Because emergency rulemakings expire, the Office of Administrative Law (OAL) re-adopted that regulation on November 10, 2020, and it will now expire on June 9, 2021. The Board is required to make the emergency regulations permanent (also known as the “certificate of compliance”). The emergency rulemaking must be continually extended until the regular rulemaking is completed.

Accordingly, the Board is being asked to consider two issues:

1. **Regular Rulemaking/Certificate of Compliance:** CSLB received public comments about this rulemaking and is required by law to respond to these in its Final Statement of Reasons. Summaries of these comments and proposed draft responses follow for Board consideration. If the Board approves the comments, the package can be finalized, and the regulation changes made permanent.
2. **Emergency Regulation:** This rulemaking expires June 9, 2021. If the regular rulemaking/certificate of compliance is not completed by then, the existing fee changes expire. To prevent this, the Board is also being asked as a precautionary measure to authorize staff to request that OAL re-adopt the emergency regulations before they expire, if necessary. The re-adoption will likely be sought in mid-May 2021.



Staff Recommendation:

Regarding the Regular Rulemaking/Certificate of Compliance: That the Board approve the responses (as drafted) to the public comments received on June 10, 2020 and September 28, 2020 on the Board’s proposed rulemaking regarding Title 16, Division 8, California Code of Regulations, section 811 and authorize staff to make any non-substantive changes to the Board’s comments for inclusion in the Final Statement of Reasons.

Regarding the Emergency Regulation: That the Board authorize staff to seek re-adoption of the emergency regulations regarding Title 16, Division 8, California Code of Regulations, section 811 on or before June 8, 2021, if needed.

**PROPOSED RULEMAKING****Title 16, Division 8, California Code of Regulations
Section 811****45-day Comment Period—Comments Received and Draft Responses**

On September 28, 2020, the Board received a letter from Lee Howard about the Board’s regulatory proposal to permanently increase the renewal fees. Below are the Board’s responses to the comments made therein.

Comment 1**Comment Summary:**

This comment states that the regulatory proposal “overlooks the most obvious source” of funding and “focuses on making the honorable and responsible licensees accountable to pay for the misconduct of unethical, illegal, and in many cases dangerous ‘contractors.’” The comment further states that little financial restitution comes to the Board from those who commit bad acts, particularly compared to fines generated by environmental regulatory agencies that can be in the hundreds of thousands or even millions of dollars from those who violate the laws.

Response:

The Board has considered the comment and makes no changes to the language of the regulation based thereon. The purpose of the proposed regulations is to increase renewal fees to eliminate a structural budget imbalance between the Board’s revenue and expenditures and to maintain a prudent reserve.

Business and Professions Code (BPC) section 7138.1 requires the Board to fix fees “in order to generate revenues sufficient to maintain the Board’s fund balance reserve at a level not to exceed approximately six months of annual authorized board expenditures.”

Pursuant to BPC section 7099.2, the Board shall promulgate regulations covering the assessment of civil penalties. Subsection (b) establishes that the maximum civil penalty shall be \$5,000 for most violations, except BPC sections 7114 and 7118, which each carry a maximum penalty of \$15,000. As required in BPC section 7099.2, the Board adopted 16 CCR section 884, which sets the minimum and maximum civil penalty amounts that shall be assessed for violations of the Contractors License Law.

When a Board complaint investigation establishes that a serious violation has occurred, the registrar may issue an administrative citation against a contractor license. The citation can include an order to make restitution to an injured party and/or to pay a civil penalty of up to \$5,000 for a violation by a licensee (or up to \$15,000 for a licensee’s



aiding and abetting or entering into a contract with an unlicensed contractor); non-licensed contractors may be ordered to pay a civil penalty of up to \$15,000.

In 2019, the Board's Citation Enforcement Section issued 1,631 citations: 925 to licensees and 706 to non-licensed contractors. As a result, the Board collected \$2.1 million in civil penalties. The citations also resulted in \$697,000 in restitution paid to injured parties. Citations are disclosed on a contractor's online license history for five years. If a citation recipient complies with their citation order, the Board takes no further action. Those who choose to formally contest their citation may present their case at a formal hearing before an administrative law judge.

If the Board were to address the structural budget imbalance by means of civil penalty assessments alone, the Board would have to increase the civil penalty amounts by approximately 300% to make the currently collected \$2.1 million in civil penalties generate the same amount of funds as the renewal fee increase will be generating (nearly \$6.3 million, as shown in the Cost Impact table in the Initial Statement of Reasons).

In addition, at its December 12, 2019 meeting, the Board voted to pursue legislation to increase the statutory maximum civil penalty amounts in line with increases in California's Consumer Price Index since the civil penalty amounts were last increased. Therefore, in 2021, the Board will be seeking a legislative author for a bill to increase the maximum civil penalty amounts to \$8,000 for most violations and \$30,000 for violations of BPC sections 7114 and 7118. However, as discussed above, those increases will not be sufficient to address the structural budget imbalance and will not be immediate.

The renewal fees were increased in statute on July 1, 2017 (Senate Bill 1039, Stats of 2016, Ch. 799) to \$400 for the active license renewal fee, \$200 for inactive license renewal fee, and \$83 for home improvement salesperson registration renewal fee. The renewal fee increases being made in this rulemaking represent an increase of only approximately 12.5% over the existing renewal fees, raising the fees between just \$6-\$25 a year per renewal period. This economic impact on businesses is not anticipated to be significant because the fee increase is considered to be very minor compared to the income of most licensees and registrants.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Comment 2

Comment Summary:

The comment encouraged that "a system be put in place to ensure that the fines are actually paid" to make violators pay for their misconduct.

**Response:**

The Board has considered the comment and makes no changes to the language of the regulation based thereon. The Board has a system in place to ensure that civil penalty fines are actually paid. If a licensee fails to comply with the final order, whether or not they appealed their citation to an administrative law judge, the Board may suspend and then revoke their license. In 2019, the Board revoked the licenses of 254 citation recipients for non-compliance. Revoked licensees are also referred to the Franchise Tax Board for collection of the unpaid fines. Non-licensees who fail to comply with a final order are referred to a Board-approved collection agency.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Responses Received During Previous Rulemaking Package Comment Period

On June 10, 2020, the Board released modified text for a different rulemaking package, its proposed regulations implementing Assembly Bill (AB) 2138. Later that day, the Board received two emails that were mistakenly regarding the renewal fee increase that had recently been implemented by emergency regulation, instead of the AB 2138 modified text. Below are the Board's responses to the comments made therein because they related to renewal fee increases.

Comment 1 – Stanley Hutchinson**Comment Summary:**

This comment pleads for no renewal fee increases and asks the Board to instead cut staff and costs.

Response:

The Board has considered the comment and makes no changes to the language of the regulation based thereon. As mentioned previously, the renewal fee increases represent an increase of approximately 12.5% over the existing renewal fees, raising the fees between \$6-\$25 a year per renewal period. This economic impact on businesses is not anticipated to be significant because the fee increase is considered to be very minor compared to the income of most licensees and registrants.

In Fiscal Year 2017-18, the Board's total personnel services costs were approximately \$36 million and operating expenditures were approximately \$26 million. If the Board were to reduce operating expenditures of approximately \$6.3 million per year through staff or other cost cutting measures, it would have a significant impact on the Board's budget. The Board's productivity, efficiency, and public protection efforts would be significantly jeopardized.

Therefore, the Board is making no changes to the proposed regulations in response to this comment.

**Comment 2 – Kai Shiran****Comment Summary:**

This comment states that during the time of COVID-19 and the resultant lockdowns and “economic ruins,” it is not the time to increase the fees by 25%. The comment asks what would justify such increases when inflation does not exist and when the increase would put additional stress on licensees and registrants who are finding work hard to come by.

Response:

The Board has considered the comment and makes no changes to the language of the regulation based thereon. The justification for the renewal fee increases has been fully discussed in the ISOR, as has the economic impact on affected parties. Also, as noted above, the regulatory proposal raises the fees between just \$6-\$25 a year per renewal period. This economic impact on businesses is not anticipated to be significant because the fee increase is considered to be very minor compared to the income of most licensees and registrants.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Written Comments

Below are copies of the original comments received and replied to above.



CCR811 – Public Comment Received During 45-Day Comment Period

Lee Howard
3900 Parducci Road
Ukiah, CA 95482

September 28, 2020

Via Email: CSLB-MEET@SUBSCRIBE.DCALISTS.CA.GOV
CSLBINFO@SUBSCRIBE.DCALISTS.CA.GOV

Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827

Re: Comments Re: Proposed Renewal Fee Increase
Amendments to CCR, Section 811 of Title 16, Division 8
Public Hearing: *September 29, 2020 at 10:00 a.m.*

TO WHOM IT MAY CONCERN:

I have read the proposed regulatory action concerning increasing the fees on California contractors and have the following comments and concerns.

I note that the digest policy statement overview indicates "the Board is a self-supporting, special quality agency that generates the majority of its revenue from renewal fees." The new rulemaking proposes to permanently increase the fees charged to licensees for the program.

While the discussion seems correctly focused on making sure that there is sufficient financial viability for the Board to function, it overlooks the most obvious source of that funding. Specifically, it focuses on making the honorable and responsible licensees accountable to pay for the misconduct of unethical, illegal, and in many cases dangerous "contractors."

As someone who has turned in a good number of such disgraceful "contractors", it never ceases to amaze me how little financial retribution comes from those who commit these bad acts. I do a fair amount of work in the environmental arena; and when someone causes a spill, it is not uncommon for the fine to be in the hundreds of thousands of dollars or even millions of dollars in some cases. Environmental regulatory agencies in California get their funding from those who violate the laws, not from those who follow the law.

I am sensitive to the fact that no one wants the Board to become a profit-oriented enterprise which spends its time hunting down people to get their operating capital. That would be just as egregious as the current situation. However, what really needs to be done is a concerted effort to make sure that those who are violating the law pay for their illegal behavior.



Public Comment Letter
Contractors State License Board
September 28, 2020
Page 2

The California State Water Resources Board faced a similar dilemma years ago and simply posted a minimum penalty. If you are a contractor and are found to have violated a Rule, there is a minimum \$3,000 fine. In addition to encouraging compliance, if the Board were to adopt a similar policy, it would provide much needed funding for the Board's activities.

Finally, should the Board decide to make violators pay for their misconduct, I strongly encourage that a system be put in place to ensure that the fines are actually paid. Numerous studies of other state agencies who have the authority to fine violators have indicated that in most cases no follow-up activity is undertaken by the agencies to collect the fines or penalties levied. In other words, in the rare situation where agencies issue a complaint or violation and obtain a right to a recovery, they almost never move to collect the funds.

In summary, my suggestion would be that the Board institute a policy of issuing sanctions against bad contractors who choose to violate the law, along with a program to collect the fines, instead of raising the operating costs of good contractors who operate according to the law.

Thank you for your consideration.

Sincerely,

Lee Howard

Lee Howard



CCR 811 – Public Comments Regarding Fees

Received in Response to AB 2138 Modified Text Release

Re: Contractors State License Board: Not... [Download](#)

From: Stanley Hutchinson <strangen1@gmail.com>
Sent: Wednesday, June 10, 2020 3:51 PM
To: Contractors State License Board@CSLB <CSLBINFO@cslb.ca.gov>; Figueira, Betsy@CSLB <Betsy.Figueira@cslb.ca.gov>
Cc: CSLB-LICENSEES@subscribe.dcalists.ca.gov <CSLB-LICENSEES@subscribe.dcalists.ca.gov>
Subject: Re: Contractors State License Board: Notice of Proposed Rulemaking

CAUTION: This email originated from outside of CSLB. Do not click links or open attachments unless you recognize the sender and know the content is safe.

NO RENEWAL FEES INCREASE, NO RENEWAL FEES INCREASE.

CUT SOME STAFF, CUT SOME COST

NO RENEWAL FEES INCREASE, NO RENEWAL FEES INCREASE.

On Wed, Jun 10, 2020 at 3:21 PM Contractors State License Board@CSLB <CSLBINFO@cslb.ca.gov> wrote:



DEPARTMENT OF CONSUMER AFFAIRS
CONTRACTORS STATE LICENSE BOARD

**Notice of Availability of Modified Text of Proposed Regulations
Concerning Assembly Bill 2138**

**State of California, Department of Consumer Affairs
Contractors State License Board
California Code of Regulations
Title 16, Division 8**

**NOTICE OF AVAILABILITY OF MODIFIED TEXT OF PROPOSED REGULATIONS
CONCERNING ASSEMBLY BILL 2138**

NOTICE IS HEREBY GIVEN that the Contractors State License Board (Board) has proposed modifications made to proposed regulation 16 CCR sections 868, 868.1, 869, 869.5, and 869.9 related to Assembly Bill 2138. These regulations were originally noticed on March 13, 2020, the subject of a public hearing on April 28, 2020, and approved as modified by the Board at its June 5, 2020 meeting.

Label: 90 Day - Inbox Delete (3 months) Expires: Tue 9/8/2020 3:58 PM



kai shiran <kai6@me.com>
Wed 6/10/2020 3:58 PM
To: Figueira, Betsy@CSLB



CAUTION: This email originated from outside of CSLB. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi
I understand that the initial rule change was formalized late last year before the covid19 spread. now After 3 months of lock down and economic ruins I hardly think this is the time to increase the fees by 25% . In time where inflation doesn't exist what would justify such increases? Now that work is hard if at all to come by what would justify the additional stress on us?
Enough!!!
Sincerely
Kai shiran

AGENDA ITEM E

Adjournment



FEBRUARY 4, 2021
SACRAMENTO, CALIFORNIA

CONTRACTORS STATE LICENSE BOARD

Enforcement and
Legislative Teleconference
Committee Meetings



FEBRUARY 4, 2021
SACRAMENTO, CALIFORNIA

CONTRACTORS STATE LICENSE BOARD

Enforcement
Committee Meeting



AGENDA ITEM A

Call to Order, Roll Call, Establishment of Quorum and Chair's Introduction

ENFORCEMENT COMMITTEE MEMBERS

KEVIN ALBANESE, CHAIR

DON GIARRATANO

DIANA LOVE

MICHAEL MARK

MARLO RICHARDSON

JOHNNY SIMPSON

NANCY SPRINGER

Committee Chair Kevin Albanese will review the scheduled Committee actions and make appropriate announcements.



AGENDA ITEM B

Public Comment Session for Items Not on the Agenda and Future Agenda Item Requests

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 - (a) The Board or Committee may designate either its Registrar or a board employee to review whether the proper procedure or protocol was followed and to report back to the Board once the matter is no longer pending; or,
 - (b) If the matter involves complaints against the Registrar, once the matter is final or no longer pending, the Board or Committee may proceed to hear the complaint in accordance with the process and procedures set forth in Government Code section 11126(a).
- (3) If a person becomes disruptive at the Board or Committee meeting, the Chair will request that the person leave the meeting or be removed if the person refuses to cease the disruptive behavior.



AGENDA ITEM C

Presentation from Representatives of the Public Utility Commission (PUC) Regarding Two Proposed Rulemaking Decisions for Board Member Review, Discussion, and Possible Support

- a. PUC Net Energy Metering Solar Consumer Protection Requirement that Investor-Owned Utilities Provide CSLB with Consumer Contract Information
- b. PUC Establishment of a Recovery Fund for Net Energy Metering Solar Consumers





Background

The Public Utilities Commission (PUC) regulates utilities, protects consumers, safeguards the environment, and assures Californians' access to safe and reliable utility infrastructure and services. Among the essential services that PUC regulates is electrical service, which includes the electricity generated by residential solar systems that is then fed back to the grid serviced by investor-owned utilities (IOU), such as Pacific Gas & Electric Company, Southern California Edison, and San Diego Gas & Electric.

In October 2013, Governor Brown signed AB 327 (Perea), which directed the PUC to establish a process, available in many states, and known as “net energy metering” (NEM) that allows solar customers to earn utility bill credit for the unused electricity generated by their systems and returned to the grid. According to PUC, more than 90 percent of solar customers in the areas serviced by the state’s three largest IOUs participate in net energy metering.

To implement AB 327, on July 10, 2014, PUC opened a rulemaking that today consists of numerous rulings and decisions by the PUC regarding NEM, and which remains open. Among the important topics raised during this process was consumer protection, such as determining what kinds of disclosures should be provided to consumers before they install NEM-eligible equipment, whether that equipment should meet certain standards, and, eventually, the tactics and business practices of contractors that sell and install these systems.

These discussions about consumer protection ultimately led to three important PUC decisions that are part of the July 2014 rulemaking:

- A 2016 decision that included the ideas that resulted in AB 1070 (2017, Gonzalez Fletcher) that required PUC and CSLB to collaborate on the development of materials that provide consumers with accurate, clear, and concise information about the installation of a solar energy system.
- A 2018 decision that led to the development of the PUC Consumer Protection Guide that is provided to consumers prior to their solar system being connected to the grid in an IOU territory and also directed IOUs to review 100 applications to connect to the grid to check the accuracy of the contractor’s license information.
- A 2020 decision that led to the requirement that solar contractors have their customers sign the Consumer Protection Guide and upload certain documents to an “interconnection portal” before their solar system can be interconnected to the grid.

The Public Utilities Commission has been especially concerned about consumers who participate in NEM who find themselves committed to solar contracts that cost more than they expected, do not produce energy as expected, and/or the systems were never



interconnected to the grid. In the 2020 decision, PUC Commissioners stated, “in this proceeding, we have grappled with how to protect solar consumers who are participants in the NEM program, from solar providers and their agents who use unscrupulous tactics to evade detection and enforcement action by various regulatory agencies. Such actions have resulted in substantial transaction costs to some consumers, risk of property foreclosure from associated financing, and in some instances losses from abandoned solar units.”

To address these concerns, the PUC 2020 decision included the following two findings:

1. That the IOUs “need to implement changes to their interconnection portals to improve the quality and accuracy of information collected on solar providers and their agents.”
2. That there is “a need to fund restitution for customers who have been defrauded when attempting to go solar.”

Martha Guzman Aceves, the PUC Commissioner assigned to this rulemaking, has developed proposals to address these two concerns and has sought input and support from CSLB that will be brought back to the PUC as they consider the possible implementation of these proposals.



Proposed Requirement that Investor Owned Utilities Provide CSLB with Contract Information for Consumers Participating in Net Energy Metering

On January 5, 2021, PUC Commissioner Guzman Aceves issued a proposal for IOUs to more thoroughly review the documents uploaded by contractors to the interconnection portals for customers participating in net energy metering. The proposal also calls for the development by the IOUs of “solar transaction record” databases.

The solar transaction record would require that IOUs create a record of every interconnection application to connect to the grid. The interconnection portals would allow for the downloading of information about these agreements, such as utility name, CSLB license/HIS number, solar equipment information, PUC solar consumer guide, CSLB solar disclosure document, solar purchase/installation contract, and solar transaction financial disclosures. This information would be sent to CSLB pursuant to existing memorandums of understanding with the IOUs.

The proposal further provides that PUC develop a contractor “watch list” to identify contractors who violate the Consumer Protection Guide requirements or against whom PUC or CSLB have received complaints. It also provides for the IOUs to conduct targeted and random audits of 1,000 interconnection applications semi-annually. Depending on the information found during these audits, appropriate enforcement would be taken.

CSLB Handling of Solar Contract Information

The solar transaction record proposal described above would expand and formalize a process that CSLB and PUC have already engaged in with the IOUs.

To proactively identify marketplace practices that may result in consumer harm, CSLB collaborated with the PUC to review contracts submitted to the utilities for connecting to the electrical grid (i.e., interconnection packets). The findings of these efforts, as reported in the September 9, 2020 Solar Task Force Update to the board, revealed that of 153 interconnection packets over 90 percent were in violation of Contractors State License Law. On November 17, 2020, CSLB issued an industry bulletin reminding contractors about solar contract requirements.

In response to the PUCs January 2021 proposal, CSLB Enforcement management have developed the following strategies to achieve consumer protection goals while limiting the redirection of Enforcement resources:

1. Review 600 interconnection packets annually, instead of the proposed semi-annual 1,000. (CSLB would receive and review 300 interconnection packets—100 from each of the three IOUs—every six months.)



2. The interconnection packets will be reviewed to confirm the following:
 - The Home Improvement Salesperson is appropriately registered.
 - Inclusion of the CSLB solar disclosure document.
 - Inclusion of approximate start and completion dates in the solar installation contract.
 - Inclusion of a payment schedule in the solar installation contract that restricts a down payment to no more than 10% of the contract price or \$1,000, and that subsequent payments do not exceed the value of work performed or materials supplied.

3. Upon discovery of one or more of the violations above, staff will review the contractor's complaint history to determine if there is a pending complaint or a history of repeated acts and take the following action:
 - If the solar contractor does not have a history of repeated violations and there is no open investigation, staff will send a custom letter to the licensee, along with educational material, and advise them to bring their contract, business practices, and/or personnel of record into compliance within 30 days and to demonstrate compliance.
 - If there is an open investigation against the contractor, staff assigned to that investigation will be advised about the results of the audit and required to notify the contractor about the need to come into compliance as described above. The name of the interconnection packet solar customer will not be disclosed.
 - If there is not an open complaint but the contractor has a history of repeated violations, staff will contact the interconnection packet solar consumer identified in the interconnection packet and asked permission for CSLB to use their contract for corrective/disciplinary action that may include, an advisory notice, letter of admonishment, citation, or accusation, as appropriate.

Staff Recommendation: That the Enforcement Committee recommend that the full board support PUC's Enhanced Auditing Proposal and Solar Transaction Record proposal, with the modification to reduce the number of interconnection packets to be reviewed by CSLB from 1,000 semi-annually to 600 annually.



COM/MGA/lil 1/5/2021

FILED
01/05/21
10:31 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Develop a Successor to Existing Net
Energy Metering Tariffs Pursuant to
Public Utilities Code Section 2827.1,
and to Address Other Issues Related
to Net Energy Metering.

Rulemaking 14-07-002

And Related Matter.

Application 16-07-015

**ASSIGNED COMMISSIONER'S RULING SEEKING COMMENTS ON
ENHANCED AUDITING PROPOSAL AND SOLAR TRANSACTION RECORD**

This ruling seeks party comments on a proposal by the California Solar & Storage Association (CALSSA) for enhanced audits by the electric investor-owned utilities (IOU), and for development by the electric IOUs of solar transaction record (STR) databases as a component of an enhanced audits program. Parties may file comments in response to this ruling no later than January 22, 2021, and reply comments no later than January 29, 2021.

Decision (D.) 18-09-044 adopted a number of solar consumer protections, including development of a Solar Consumer Protection Guide (Guide),¹ and directed the electric IOUs to conduct semi-annual spot audits of at least 100 interconnection applications, to confirm whether a solar provider has a valid Contractor State License Board (CSLB) license and entered that number for its

¹ D.18-09-044 authorized the development of a solar information packet, which is now referred to as the Solar Consumer Protection Guide.

interconnection application, and to verify that the customer signed forms attesting that the customer received and read the Guide and CSLB Solar Energy System Disclosure Document prior to signing a contract or agreement with a solar provider. D.20-02-011 adopted further consumer protections and authorized the Commission's Consumer Protection and Enforcement Division (CPED) to propose a citation program for the consumer protection requirements established by D.18-09-044 and D.20-02-011.

On May 18, 2020, the electric IOUs jointly filed a petition for modification of D.20-02-011 (petition). The electric IOUs requested that the CPUC (or Commission) modify D.20-02-011 to "eliminate or defer any IOU citation program and instead continue exploring other options such as the registration program that remains under consideration, a secure portal for regulator access to documentation and information collected at interconnection, a taskforce to work with other enforcement agencies, increasing the frequency of spot audits, as well as others through stakeholder workshops and comments."² In considering the petition, I continue to explore ways to ensure that existing requirements are being followed and mechanisms to enhance these consumer protections.

On April 27, 2020, CPED published a draft resolution to create a net energy metering (NEM) citation program for enforcing the consumer protection requirements established by D.16-01-044, D.18-09-044, and D.20-02-011; the proposed program included an STR portal requirement.

On September 25, 2020, CPED staff held a workshop to provide stakeholders further opportunity to discuss the draft resolution. During the

² *Petition for Modification of Decision 20-02-011 of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company (U 39-E) and San Diego Gas and Electric Company (U 902-E)*, filed May 18, 2020, at 3.

workshop, both the electric IOUs and CALSSA made presentations with suggestions for alternative ways to achieve the goals of enhanced enforcement proposed by CPED. CALSSA presented an alternative proposal that consists of the following elements:

- Contractor watch list: CPED or CPUC staff would maintain a watch list, consisting of contractors that have a violation of Guide requirements, or about whom CPUC or CSLB staff receive complaints warranting placement on the watch list. A contractor meeting either of these criteria would remain on the watch list for the current quarter and the following quarter. CPUC staff would refresh the watch list at the end of each quarter, removing contractors that do not have new issues;
- Targeted audits: Each IOU would conduct a semi-annual spot audit of at least 1,000 interconnection applications, half of which would be random and the other half would target contractors on the watch list;
- Increased scrutiny of contractors on watch list: In addition to targeted audits, the IOUs would:
 - Send all contracts (if fewer than ten applications) or contracts for at least ten of each contractor's applications, to both CPUC and CSLB staff for review,
 - Conduct a visual inspection of least ten of the contractor's applications as they are submitted. This number would increase by ten for each successive quarter that a contractor remains on the watch list; and
- Escalated cases that require visual inspection: the IOUs would inspect the following documents as they process interconnection applications, rather than in a later audit:
 - Guide and attestations,

- Solar installation contract, including the CSLB cover sheet and supplemental information sheet(s),³ and
- Electronic audit trail for electronic signatures.

CALSSA asserts that slowing down the interconnection process for a contractor puts them at a competitive disadvantage, thus suggesting that its proposal will deter contractors from violating the Commission's consumer protection requirements.

While the IOUs' presentation focused primarily on the "Impacts on Interconnection Timelines and Costs" related to the proposed NEM citation program, they also provided some specific suggestions.

A copy of both the electric IOUs' and CALSSA's workshop presentations, detailing the CALSSA proposal and IOU suggestions, are included in this ruling as an attachment.

In considering CALSSA's proposal, I continue to see value in developing an STR portal as a component of such an enhanced audit program. The purpose of the STR portal would be to enable CPUC staff to access transaction details and documents to investigate alleged violations of the Commission's consumer protection requirements. The contents of each STR would be as specified in the current version of Draft Resolution UEB-004.⁴

³ CSLB staff developed a draft Solar Energy System Disclosure document with input from Commission staff. Per AB 1070's requirements, the cover page of the Solar Disclosure Document is intended to comply with California Business and Professions Code Section 7169(b). The CSLB will also develop supplemental information pages that include additional information, including an electric bill savings estimate pursuant to D.20-08-001.

⁴ As of the date of this ruling, the current version of Draft Resolution UEB-004 is included in Item 51 of the Commission's December 17, 2020 meeting agenda. Direct url: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M354/K033/354033086.pdf>.

I invite parties to comment on CALSSA's proposal, and to address the value of directing the electric IOUs to develop an STR portal as a component of an enhanced audit program. Comments responsive to this ruling shall address the following specific questions:

1. Are any further modifications to the STR portal requirement necessary, beyond what is described above?
2. Should the Commission approve the enhanced spot audit program as proposed by CALSSA, which would increase each IOU's semi-annual spot audit reporting requirement from 100 to 1000 applications?
3. Do enhanced audits or the development of the STR portal constitute a 'Primary Purpose' in accordance with customer data privacy provisions outlined in D.11-07-056? Why or why not?
4. To share potentially personally identifiable information and data with the CSLB for the purposes of enforcement via the STR or enhanced audits described in this ruling, do the IOUs require a specific order of the Commission? Why or why not?
5. Should a 'watch list' approach, as described in CALSSA's proposal, be adopted?
6. What criteria should CPUC and CSLB staff use to determine whether a complaint warrants placing the contractor that is the subject of the complaint on the contractor watch list?
7. Should additional or alternative factors, other than complaints or violations, serve as criteria for placing a contractor on the watch list?
8. If you disagree with CALSSA's proposal for increased scrutiny (visual inspection) of applications received from contractors on the watch list as described above, explain why and propose an alternative means of determining the scope of the IOUs' visual inspections.
9. Identify specific additional items of information that are crucial for the IOUs to share (if any) to effectively enable CPUC and CSLB staff to investigate complaints and alleged violations. Should CPUC staff have discretion to adjust parameters such as

the number of contracts an IOU must send to CPUC and CSLB staff, or the scope of visual inspections?

10. What additional elements (if any) are necessary to effectively deter contractors from violating state law, including the Commission's consumer protection requirements?
11. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall each provide their estimates of the cost of each element of the proposed enhanced audit program and the STR portal as described in this ruling. Each IOU shall specify or describe the basis of each cost estimate (e.g., similar activities, contractor estimates, improvement of existing infrastructure to support the STR portal, new tools purchased, etc.), and provide reference to any recent general rate case filings for similar activities, or filings in other proceedings for similar activities.

IT IS SO RULED.

Dated January 5, 2021, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves
Assigned Commissioner



PUC Establishment of a Recovery Fund for Net Energy Metering Solar Consumers

At the September 2020 board meeting, staff provided an update on the Interagency Solar Taskforce and introduced PUC's plan for a recovery fund to provide restitution to solar consumers participating in net energy metering who have been harmed when other remedies have been exhausted. This can occur when a contractor is subject to license revocation, files for bankruptcy, or is unlicensed, leaving homeowners with no financial redress.

To assist in determining the number of complaints that may meet the requirements for the recovery fund and the average dollar amount of potential claims against the fund, CSLB staff conducted an in-depth data analysis of residential solar complaints investigated between January 2018 and July 2020.

During this time, 251 solar-related complaints were referred to legal action, and 141 of those were closed without action because either the contractor's license had been revoked or revocation was imminent. Additionally, 17 of the 251 involved unlicensed persons.

The analysis determined that the average cost to correct a solar complaint where the alleged violations included poor workmanship and/or abandonment was \$7,996. For those complaints that included allegations of fraud and/or misrepresentation, a notable percentage, the cost to correct the work is insufficient to address the harm. Therefore, the average solar contract amount of \$33,857 in such cases was used to establish a potential recovery fund payout.

Based on these figures, PUC estimates that the recovery fund would require an annual balance of \$1,631,763. The PUC proposes that it be funded by an additional, industry supported, fee of between \$10 and \$20 per connection to the grid.

CSLB Recovery Fund Referral Protocol

The Public Utilities Commission will contract with a third-party to administer the recovery fund; CSLB would refer cases to the fund. Enforcement management have developed the following protocol for the identification of solar cases appropriate for the recovery fund.

Contractors Subject to Disciplinary Action by CSLB

- A recovery fund payout would be triggered when the license is subject to a final administrative or legal action (arbitration, citation, accusation, or criminal referral) that includes an order of correction and the solar contractor has not satisfied the financial injury.



Contractors Subject to Complaints when Other Remedies Exhausted

- For all cases against a contractor when CSLB’s administrative options are exhausted, CSLB will continue to identify all complaints received against that contractor, whether the complaint is known during the preparation of the legal action or received after the legal action is final. In all such cases, Enforcement staff will determine, following review by a supervisor, whether a probable violation has occurred and if the complaint involves allegations, that if proven, would present a risk of harm to the public and where the license is subject to suspension or revocation or criminal prosecution.
- For any such complaints, CSLB will share with the recovery fund the estimated financial injury to the consumer.
- Legislation will be required to compel the contractor to reimburse the fund if the financial injury was not established through a formal disciplinary action/proceeding.

Staff Recommendation: That the Enforcement Committee recommend that the full board support PUC’s Recovery Fund for Net Energy Metering Solar Consumers proposal, with the modified protocol for contractors subject to complaints when other remedies have been exhausted.



COM/MGA/smt 9/3/2020

FILED
09/03/20
03:24 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering.

Rulemaking 14-07-002

And Related Matter.

Application 16-07-015

**ASSIGNED COMMISSIONER’S RULING PROPOSING
RECOVERY FUND FOR NET ENERGY METERING
SOLAR CONSUMERS**

Summary

This Assigned Commissioner’s Ruling (ruling) solicits party comment on a proposal to create a recovery fund for residential solar consumers who are unable to receive benefits from their solar installation and lack recourse to have the system fixed by the installer. Parties submitting comments must file and serve their opening comments no later than four weeks after the date this ruling is filed, and reply comments no later than six weeks after the date this ruling is filed.

1. Background

This proceeding has extensively considered ways to reduce and prevent fraud and other harms encountered when consumers attempt to install solar. Previous decisions have adopted solutions to prevent fraud; and the Commission has explored comprehensive, multi-agency approaches to provide meaningful

restitution for consumers who have been financially harmed as a result of fraudulent practices by contractors including solar marketers and installers. The recourse provided by the Recovery Fund would timely advance a state interest by ensuring more solar installations are brought online in a safe manner and providing additional assurance to program participants.

Decision (D.) 20-02-011 noted my intent as the assigned Commissioner for net energy metering (NEM) to release a ruling with a proposed restitution fund for defrauded solar consumers. This is that proposal. The term “recovery” rather than restitution is used in this proposal to align with the administrative financial recovery process.

D.20-02-011 underscores the Commission’s commitment and obligation to address the problem of solar fraud:

[Investor-owned utility (IOU)] ratepayers being defrauded or misled, and being saddled with solar systems that do not provide benefits, runs counter to our energy goals and our overall responsibility to ensure a reliable electric grid... Some stakeholders assert that industry’s existing voluntary practices of complaint resolution are enough. We are not persuaded by this last point, particularly in the absence of any substantive, collective industry commitment to ensuring that some of the most egregious cases can be resolved. More must be done.

Even before D.20-02-011, the concept of a recovery fund has been raised in this proceeding. The March 8, 2019 *Assigned Commissioner’s Ruling Regarding Enhanced Consumer Protections for Net Energy Metering Customers* invited comments on enhanced consumer protections measures. These included the creation of a recovery fund as well as other measures, some of which were subsequently adopted. The October 18, 2019 *Assigned Commissioner’s Ruling regarding enhanced consumer protections via potential modifications to customer information packet signature requirement, and solar provider registration process for*

interconnecting under net energy metering also raised the potential for a recovery fund funded by citation program penalties.

Parties provided comments on these ideas, including:

- A neutral party such as Commission staff should coordinate on issues, interact with consumers with complaints, help direct cases to other agencies as needed, and help consumers determine whether solar providers or their agents have a valid license or complaints against them;
- Any Commission system for imposing penalties could focus on misrepresentations, violation of interconnection requirements, and blatant deception; existing civil and criminal penalties do not adequately address the problem.

Over the course of this proceeding, concern over solar fraud, particularly from unscrupulous lead generators and sales agents misleading consumers into entering harmful transactions, has grown. Through interagency coordination and direct contact from consumers seeking help, information about many fraud cases has come to the attention of the Commission and the Contractors State License Board (CSLB). In some cases, the consumer does not know the name of the salesperson, the name of the company that they supposedly have a contract with, and some do not even have a copy of the solar contract. In other cases, the consumers were told they were signing a tablet to determine if they were eligible for a free government program only to learn later that the signature was used on a contract that included significant debt they could not afford. Some consumers have been paying for years for panels that have yet to be interconnected.

One of the interagency efforts put in place during this proceeding is the Interagency Solar Consumer Protection Taskforce (Taskforce). Previous decisions have provided for the development of a memorandum of understanding (MOU) between the Commission and the CSLB, two key

participants of the Taskforce. The CSLB reported at the August 4, 2020 public Taskforce meeting that, as part of the IOU audit process required by D.18-09-044, it recently reviewed solar contracts collected by the IOUs. (These contracts are being collected in all interconnection applications as required by the Commission in D.18-09-044, and some of the contracts are sent to the Commission and provided to the CSLB.) The CSLB stated at the Taskforce meeting that its initial review of these contracts revealed troubling data suggesting a troubling regularity of unlawful business practices in California's NEM solar industry: over 90 percent of the 153 contracts reviewed by CSLB demonstrated a clear violation of the Contractors State License Law (Chapter 9, Division 3 of the Business and Professions Code (BPC)), particularly Article 10, the Home Improvement Business (BPC §§ 7150 -7170).

CSLB noted that the most concerning issues were: 1) the Home Improvement Salesperson (HIS) listed on the contract was not registered or the HIS was registered but not to the prime contractor, both of which are violations of the law; 2) the commencement and completion dates did not comply with BPC § 7159; and 3) the payment schedules stated in the contract requested payments in advance of work performed, also in violation of BPC § 7159.

While this sample size is not representative - in 2019 there were nearly 147,000 approved residential NEM interconnections statewide - the percentage of contracts showing violations of laws regarding basic practices and data from recent CSLB complaints provides additional context about the scope of the challenge this proposal seeks to address.

The CSLB has provided the Commission with public, de-identified data and conclusions about its complaints in the last two years. These include the following:

- CSLB received an average of 90 new solar-related complaints per month in Fiscal Year (FY) 2019-20. This monthly average complaint count is the highest CSLB has experienced since 2015.
- In FY 2019-20, 122 complaints were referred by the CSLB to legal action. In terms of CSLB's process, "referring a complaint to legal action" means that the CSLB registrar has asserted through investigation that there is a preponderance of the evidence, or clear and convincing evidence, that the violation has occurred. Legal actions include, for example, a citation or license revocation or suspension.
A much higher number of complaints are closed due to insufficient evidence or are settled or referred to arbitration, than are referred to legal action.
- Between January 2018 and July 2020, CSLB referred 251 solar-related complaints to legal action.
- Of these, 141 complaints were closed by the CSLB because the contractor's license had already been revoked. In these cases, the CSLB adds the consumer's complaints to the series of complaints already reflected in the accusation against the license and records any additional financial injury owed to the consumer against the license. That amount will need to be paid by the contractor if the contractor is ever going to be licensed again.
- 17 complaints involved unlicensed contractors.
- In 110 of the 251 cases, the CSLB alleged either misrepresentation in violation of BPC § 7161 or a willful and fraudulent act in violation of BPC § 7116.
- In 124 of the 251 cases, the CSLB alleged poor workmanship in violation of BPC § 7109.
- In 72 of the 251 cases the CSLB alleged abandonment of the project by the contractor without legal excuse, in violation of BPC § 7107.

Solar fraud has particularly harmed low-income, elderly, and non-English speaking consumers and communities. Adoption of the recovery fund proposed herein in tandem with continued coordination between the partner agencies of the Interagency Solar Consumer Protection Taskforce has the potential to provide defrauded solar consumers with a remedy that also advances the State's interest in NEM adoption..

2. Guiding Principles

The proposed program has been developed to align with the following guiding principles. Parties are encouraged to propose changes to the proposal that also align with these principles.

Retroactive and reparative. This primary principle is essential. The Commission has considered and adopted many consumer protections to prevent or mitigate *future* harms against solar consumers. But we have not enacted any comprehensive programs specifically designed to right wrongs that have already occurred. An approach focused solely on prevention of harm would not align with this principle.

Incremental administrative recourse for consumers. There currently exists no administrative remedy to provide financial recompense for consumers who are victims of fraudulent practices in a solar transaction, even in the cases where the contractor has fully been disciplined to the extent of the law. In many of those cases, CSLB has ordered a financial injury paid to the consumer, but if the contractor declares bankruptcy or simply refuses to pay, the only recourse is for CSLB to discipline the license (*i.e.*, refer the complaint to legal action). The legal function of the CSLB Enforcement division is to remove bad actors from the marketplace, achieving consumer protections on a broad scale. While the CSLB does its best to protect consumers, it is ultimately focused on enforcing

contractor laws, not on making individual consumers whole; the CSLB's complaint-filing tutorial warns consumers that if their primary objective is to recover their financial damages they should consider civil action.

Efficacy. This is the principle that the fund or program can measurably and effectively compensate each eligible claimant with respect to their losses. An approach that merely offers consumers advice or “passes the buck” would not align with this principle.

Equity and inclusivity. This principle emphasizes that a broad range of harms have occurred and may still occur despite ongoing efforts to protect consumers. The program must have a broad reach such that consumers have equitable access to restitution. Cases of fraud are individually unique, and a truly protective and reparative program maximizes – not minimizes – the help it gives. An approach that narrowly defines and caps a few small harms and erects many barriers to accessing funds would not align with this principle.

Shared responsibility. This principle holds that the responsibility to ensure that consumers who have been defrauded or otherwise harmed can access financial restitution is shared among solar developers and contractors, utilities, government agencies, and solar consumers. Market failures that allow fraud to proliferate harm the solar industry. Defrauded consumers left without recourse harm the solar industry. True restitution benefits all.

3. Consumer Claims Eligible for Funds

The following sections provide detail on the fund and the administrative and implementation process. As an overview, the proposed elements are:

- A recovery fund account would be created by the IOUs and overseen by the Commission;

- A residential NEM consumer protection interconnection surcharge would be established, and the IOUs would collect it and place the revenue into the fund;
- The recovery fund would be administered by a third-party recovery fund administrator (RFA) under contract with the Commission or via a contract with one of the IOUs under Commission oversight;
- Under the MOUs established under the Taskforce, the RFA would receive eligible claims from the CSLB, verify recipient eligibility and disburse funds to claimants;
- In all cases in which consumers recover from the fund, the RFA will forward a certified attestation of that fact to the CSLB for inclusion in the contractor's license record.

This section provides an overview of the categories of consumer claims expected to be referred by CSLB. The main categories of claims are those related to fraud and misrepresentation impacting solar consumers' costs and savings,¹ stranded systems, and residual claims. These categories are not necessarily mutually exclusive.

a. Misrepresentation of Costs and Savings

Referred complaints in which the CSLB alleges misrepresentation and/or fraud in violation of BPC §§ 7161 and 7116 may be eligible for compensation from the recovery fund. These consumers have been misled about the real cost of investing in distributed solar as well as the cost of energy for solar consumers.

i. Annual True-ups

Many consumers report being misled by contractors' or sales agents' claims of "free solar," and false declarations that solar owners do not have to pay energy bills. In these instances, defrauded consumers are unaware of the annual

¹ Business and Professions Code Section 7161.

true-up bill they may face at the end of each year and therefore have not factored this cost into their decision to finance a solar system.

ii. Power Purchase Agreements (PPA)

In other cases, solar consumers have entered into a contract to lease a system, or pay for the electrical output of the system, without full knowledge or comprehension of the terms of the lease. PPAs are the leading type of financing.

iii. Other Harmful Misrepresentations

Claims that demonstrate similar harms resulting from lies or other misrepresentations (*for example*, the consumer did not even know they were agreeing to install solar).

b. Stranded systems

Some solar consumers who have been defrauded have systems which are partially installed and not connected to the grid, incomplete in another way, or are otherwise stranded. Examples of complaints include those related to Non-Interconnected Systems, systems with Noncompliant Inverters, and systems which require Panel Installation.

i. Non-interconnected systems

Some defrauded solar consumers have received systems which have not been connected to the grid. These consumers face a choice: either they can interconnect the system to the grid or remove the panels installed on their residence. In either case, there is an associated cost, either for interconnection (*e.g.* interconnection fee) or panel removal and roof repairs.

ii. Noncompliant inverters

In some cases, contractors have installed solar systems at consumers' residences without inverters or with noncompliant inverters. The Commission's Rule 21 governing interconnections requires distributed energy resources (DERs) including customer-sited solar systems to utilize smart inverters.

iii. Lack of system

Some defrauded consumers have entered into a contract for solar but never received a solar system or have a system that does not work and cannot be interconnected.

c. Exceptional claims

Finally, complaints regarding solar fraud which are not covered by any of the aforementioned categories may be referred by the CSLB (as long as they meet the eligibility requirements).

4. Proposed Recovery Fund for Solar Consumers

a. Eligible recipients: Residential customers of electric investor-owned utilities

Recovery funds will only be provided to solar consumers who are active residential customers of the electric IOUs, who are taking service under the NEM tariff or are eligible to do so, and whose claims are referred to the RFA by the CSLB, as described below.

Claims related to projects financed via Property Assessment Clean Energy (PACE) are under the authority of the Department of Business Oversight (DBO) which is empowered to achieve restitution for complaints related to those loans. Therefore, PACE-financed projects will not be eligible for funds under this proposal.

b. Referral of claims that exhaust existing remedies

The recovery fund is intended to benefit defrauded or otherwise financially harmed consumers whose claims have exhausted existing administrative options without recovering funds.

As such, the RFA will only accept claims referred by the CSLB in which the CSLB affirms the claims meet the following criteria:

- The complaint arises out of a contract for solar energy system as defined in subdivision (g) of BPC § 7169, installed at a residence and not as a standard feature on new construction; and The complaint investigation has resulted in a “legal action” (defined in Section 2, Background, supra), either a citation under authority of BPC § 7099 or administrative action to suspend or revoke a contractor’s license pursuant to BPC § 7090; and
- The legal action contains either (1) an order of payment of a specified sum to an injured party in lieu of correction pursuant to BPC § 7099, or (2) an order of restitution, as a condition of probation or of a new or reinstated license pursuant to BPC § 7095, 7102, and/or Government Code § 11519; and
- The order of payment of a specified sum to an injured party, or the order of restitution, has become the final decision of the registrar in a proceeding conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the consumer has not received the funds; and
- The action contains any one or more of the following causes of discipline: violation of BPC §§ 7107 (Abandonment), 7109 (Departure from Accepted Trade Standards or Plans or Specifications), 7110 (Violation of Building or Safety Laws), 7113 (Failure to Complete for Contract Price), 7115 (False Completion Certificate Filed to Obtain Financing), 7116 (Willful or Fraudulent Act Causing Harm), 7119 (Failure to Prosecute Work Diligently), 7120 (Failure to Pay for Materials or Services), 7159 et seq (Contract Form Requirements) or 7161 (Misrepresentation); and/or
- The action is against an unlicensed or a licensed contractor that the CSLB has referred to a local agency for prosecution, and that referral has resulted in a judgment following a plea or verdict of guilty or a plea of nolo

contendere or finding of guilt and contains a court ordered restitution or that has resulted in a judgment.

These criteria ensure that the only cases referred to the RFA will be solar complaint cases in which the CSLB determined that fraud/misrepresentation occurred, or that fraud/misrepresentation and/or poor workmanship or abandonment occurred; the consumer was financially harmed; payment of a specified sum to an injured party was established or an amount of restitution was ordered; and the consumer did not recover funds. With these rules in place the RFA can perform its administrative task of disbursing funds.

c. Recovery amounts per claim

The RFA will not adjudicate claim amounts. Every complaint that will be referred by the CSLB to the RFA for recovery will have an estimate of financial injury to the consumer and the RFA will disburse funds in that amount. For complaints involving fraud/misrepresentation in which the CSLB's financial injury determination may not sufficiently retribute the injured party, the consumer may receive a categorical amount predetermined by the Commission. The Commission is taking comments on the proper and reasonable approach for recovery funds to be provided in these cases in particular.

The CSLB does not estimate and thus the Recovery Fund will not provide traditional civil remedies in the form of damages (*e.g.* lost time, pain and suffering, emotional distress, lost work). It does calculate financial injury to the consumer in cases involving a violation of BPC § 7113. Multiple elements make up the CSLB's estimate of financial injury: Cost to Correct and Contract Price. Both elements are calculated pursuant to CSLB statute and administrative process.

- Cost to Correct: This is the amount of money required to bring the project up to the agreed-upon status. It is

calculated by independent industry experts retained per BPC § 7019 using the following equation:

(Amount paid to the contractor/on the contract + Amount paid to correct or complete the contract + Amount paid for materials or labor to prevent or remove a lien) - (Contract price + Agreed upon extras) = Cost to Correct

- **Contract Price:** This is the amount in dollars and cents for the work agreed to in the contract. BPC § 7159 subdivisions (c), (5) and (6) specify this definition, and also require that the contract separately present the contract price (money paid for the contract) from the finance charge (the cost of the money).

Whether the financial injury consists of any of these elements varies extensively case by case. For example, a consumer who was not misled but whose system was improperly built or abandoned may only have financial injury in the amount required to bring that system up to the trade standard as determined by the CSLB's industry experts. And consumers who were victimized by both misrepresentation and poor workmanship may have damages in both categories.

d. Recovery amount for subset of claims

If a consumer was defrauded via misrepresentation into signing a contract (*for example*, they were promised a utility bill of zero in perpetuity or they did not even know they were signing a contract), their financial injury estimated by the CSLB may not be sufficient. Note that this by design includes cases where the system works properly; many situations like this exist where the solar system works but the consumer cannot afford it or does not want it.

Under this proposal, these complaints would recover funds in the amount of the Contract Price, but party comment is requested on an alternative approach, described below.

i. Alternative approach for this subset of complaints

Instead of disbursing funds in the amount of the Contract Price, the RFA would provide a standard amount intended to only cover the funds needed to remove the solar panels and repair the roof if it is damaged. This amount would be set at one-third of the Contract Price, or \$10,000, whichever is greater. This would appropriately provide some restitution to defrauded consumers while mitigating overall costs.

e. Administration of claims

Upon receipt of a referred CSLB claim, the RFA will:

- Verify that the claimant is an active IOU customer by contacting the relevant IOU and confirming the active account number and customer information.
- If the customer cannot be verified as an active IOU customer, the RFA will notify the CSLB and the consumer that the referred claim is rejected.
- Contact the claimant and verify that the claimant is the individual identified in the referred claim and that their personal and contact information is accurate.
- Collect an attestation from the claimant that they have not received other restitution for the reimbursed damages, and that if they receive in the future any other restitution through civil or criminal court proceedings they will reimburse the fund for funds received.
- Disburse funds to the claimant in the amount identified in the referred claim as the financial injury.
- For claims demonstrating fraud and/or misrepresentation (violations of BPC §§ 7116 or 7161) in which the Contract Price is reflected in the financial injury estimate and the customer had a negative true-up bill at the end of their first year on the NEM tariff, the RFA will add that true-up amount as well.

- Provide a certified attestation to the CSLB of funds paid for inclusion in its records.

The RFA will provide a report to the Commission and CSLB quarterly on its activities, total claims and funds processed, and trends.

f. Protests or disputes related to claims process

If claimants wish to dispute the outcome of their claim, they may file a complaint at the CSLB under its existing process for registering a complaint against the CSLB with its Executive Office.

5. Program Funding Level and Source

The recovery fund will be funded by a new interconnection surcharge on residential IOU customers taking service under the NEM tariff. Interconnection Fees are one-time charges for customer-generators to cover the IOU's costs of interconnecting distributed systems to the grid. Using interconnection fees surcharge to fund recovery for IOU customers who are defrauded or misled about the costs and benefits of solar adoption and net energy metering – and who are measurably harmed by these violations, and/or whose solar systems are not providing benefits -- is consistent with the Commission's goal of ensuring grid reliability as well as the state's focus on expanding renewable deployment. It is also squarely within our responsibility to protect the public and ensure the provision of, and access to, safe and reliable utility infrastructure and services.

All NEM-eligible IOU customers are entitled to be served by contractors who abide by the law. It is reasonable for residential NEM interconnection fees to support the fund, particularly because going forward those who pay the fee will benefit from the recovery fund if they have been defrauded.

a. Data on financial damages informing overall fund amounts

The CSLB has provided the Commission recent data about the financial damages borne by consumers in the types of cases the recovery fund will address. The recovery account funding level and individual interconnection fee amount will be set based upon this data. The overall funding level is intended to be in line with a conservative estimate of the amount of funding that will be needed, based upon recent complaint data.

To arrive at an annual estimate of the number of complaints in this category and the corresponding funds needed for their Costs to Correct, the following recent data were used:

- Over the 27-month period from January 2018 to March 2020, 49 solar-related complaints referred to legal action by the CSLB were unresolved, meaning the Cost to Correct was not paid to the consumer. This represents about two-thirds of all the solar related complaints referred to legal action in this time period; in the other third of the complaints the contractor paid the costs or the costs were covered by the surety bond.
- Therefore, $49/27 = 1.8$ per month are estimated; 1.8 multiplied by 12 equals 21.7 (rounded to 22) complaints per year are estimated to be referred to the RFA.
- For the 49 complaints referenced above, the average Cost to Correct was \$7,996.
- Therefore, the estimated annual funds needed to cover Costs to Correct is $22 * \$7,996 = \$175,912$.

A separate analysis of data was used to estimate the funds needed to cover Contract Price. As discussed above, Contract Price is reflected in the Cost to Correct, but it is prudent to separately estimate the funds needed for this category to ensure the fund will remain solvent. This is because in some complaints, the entire amount of the contract will be paid and solar contracts are generally significantly higher in value than the \$7,996 average Cost to Correct.

- In the same 27-month period (January 2018 through March 2020), 142 complaints in which the CSLB alleged fraud and/or misrepresentation (violations of BPC §§ 7116 or 7161) were referred to legal action.
- In these 142 complaints the average contract price was \$33,857.
- $142/27 = 5.3$ complaints per month are estimated; 5.3 is multiplied by 12, yielding 63.6 (rounded to 64) estimated annual complaints related to fraud and/or misrepresentation.
- Because in one-third of recent complaints costs were recovered via the contractor or surety bond, the estimated number that will be referred to the RFA should be revised downwards by that amount, thus $64 * 0.67 = 42.9$ (rounded to 43).
- Thus, the estimated amount needed to fund the Contract Price element of financial injury is $43 * \$33,857 = \$1,455,851$.

Adding these two subtotals, the total estimated annual budget needed for the recovery fund is $\$175,912 + \$1,455,851 = \$1,631,763$.

Administrative costs are needed for the RFA to process complaints, verify basic data, dispense funds, coordinate with the Commission, the IOUs, and the CSLB, and produce written reports. Given the size of the fund and the administrative nature of these tasks, a budget for the RFA is proposed at \$100,000 annually.

Thus, the total annual estimated cost of the recovery fund is \$1,731,763.

The individual interconnection fee will be calculated by dividing \$1,731,763 by 140,000 (which is the number of residential NEM interconnection applications processed by the IOUs in 2019). This yields \$12.37, which for simplicity will be rounded to \$12.

6. Program Evaluation

Implementation of the initial version of the recovery fund is likely to yield new insights and opportunities for improvement. Accordingly, six months after the launch of the recovery fund, the Commission should review the fund's progress, consider expansion of eligibility factors as applicable per new complaint trends and the submission of any Residual Claims, evaluate the need for additional funding, and consider alternative or complementary sources of revenue.

7. Questions for Workshop and Party Comment

Parties are requested to respond to this proposal by filing and serving opening comments no later than four weeks after this ruling is filed and reply comments no later than six weeks after this ruling is filed. Comments should address the questions listed below and any other pertinent issues.

1. Should the Commission approve a recovery fund for solar consumers, either as proposed or with modifications?
2. If the Commission adopts a recovery fund, should any modifications be made to the proposed program? Provide examples and refer to existing recovery programs if possible.
 - a. Do other funding mechanisms under the Commission's jurisdiction exist, either in addition to the proposed approach or instead of it? In particular, do funding mechanisms that disincentivize violations exist?
 - b. Should there be income eligibility requirements, in which the recovery provided is adjusted to reflect the complainant's income or determine overall eligibility for the fund?
 - c. Should there be an overall cap on funds disbursed per claim?
 - d. Should the fund be proportionally divided, such that interconnection fees from one utility fund claims for

- customers located in that same utility's territory?
Would an overall split based on proportion of NEM interconnections be reasonable?
- e. Is the proposed administrative budget reasonable?
Provide examples if you recommend changes.
 - f. If recent consumer protections intended to prevent future violations are successful, we would expect to see a decline in violations eligible for recovery. Should a mechanism to track recovery funds and potentially reduce or eliminate the fee in future years be developed? What other reporting is needed?
 - g. Please provide input and recommendations specific to the proposed and alternative approach for the subset of complaints that do not involve a violation of BPC §7113. Should complaints in this category be eligible? If so, should another standard recovery amount be set and based upon what metrics? Is it reasonable to provide recovery for the true-up bill in these cases?
3. If the proposal is not adopted, how would the Commission ensure financial recovery can be provided to IOU NEM customers in line with the proposed principles?
 4. Should claims related to PACE-funded projects be eligible for funds if they have exhausted DBO's administrative remedies? If so, how might a similar referral process from the Department of Business Oversight work?
 5. Assuming a recovery fund is adopted, what next steps to begin implementation are necessary? These may include:
 - a. A solicitation held by an IOU to select the RFA (in which the IOU holds the contract but the selection of the RFA and the oversight of the RFA is done by Energy Division in coordination with CSLB).
 - b. An initial workshop or Taskforce meeting focused on detailing the administrative process by which CSLB will interact with the RFA, working out such steps as how to ensure confidentiality, track complaints, and exchange information.

Prior to opening comments, a remote workshop will be held on September 22, 2020 at 10 a.m. Registration and other information for attending this workshop will be circulated to the service list at least 10 days prior to the workshop. A draft agenda is below.

Draft workshop agenda – Proposed Recovery Fund for NEM Solar Consumers:

- Overview of the proposal – Assigned Commissioner
- Background on CSLB process – CSLB
- Discussion and questions – Led by Assigned Commissioner’s Office and Energy Division Staff

IT IS RULED that:

1. Parties submitting opening comments in response to this ruling must file and serve their comments no later than four weeks after this ruling is filed.
2. Parties submitting reply comments in response to this ruling and opening comments must file and serve their comments no later than six weeks after this ruling is filed.

This order is effective today.

Dated September 3, 2020, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES
Martha Guzman Aceves
Assigned Commissioner

AGENDA ITEM D

Adjournment



FEBRUARY 4, 2021
SACRAMENTO, CALIFORNIA

CONTRACTORS STATE LICENSE BOARD

Legislative
Committee Meeting



AGENDA ITEM A

Call to Order, Roll Call, Establishment of Quorum and Chair's Introduction

LEGISLATIVE COMMITTEE MEMBERS:

AUGIE BELTRAN, CHAIR

FRANK ALTAMURA, JR.

RODNEY COBOS

MIGUEL GALARZA

SUSAN GRANZELLA

JIM RUANE

MARY TEICHERT

Committee Chair Augie Beltran will review the scheduled Committee actions and make appropriate announcements.



AGENDA ITEM B

Public Comment Session for Items Not on the Agenda and Future Agenda Item Requests

(Note: Individuals may appear before the committee to discuss items not on the agenda; however, CSLB's committee can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)). Public comments will be taken on agenda items at the time the item is heard and prior to the CSLB taking any action on said items. Total time allocated for public comment may be limited at the discretion of the Board Chair.

BOARD AND COMMITTEE MEETING PROCEDURES

To maintain fairness and neutrality when performing its adjudicative function, the Board should not receive any substantive information from a member of the public regarding matters that are currently under or subject to investigation, or involve a pending administrative or criminal action.

- (1) If, during a Board or Committee meeting, a person attempts to provide the Board with substantive information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person shall be requested to refrain from making such comments.
- (2) If, during a Board or Committee meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action:
 - (a) The Board or Committee may designate either its Registrar or a board employee to review whether the proper procedure or protocol was followed and to report back to the Board once the matter is no longer pending; or,
 - (b) If the matter involves complaints against the Registrar, once the matter is final or no longer pending, the Board or Committee may proceed to hear the complaint in accordance with the process and procedures set forth in Government Code section 11126(a).
- (3) If a person becomes disruptive at the Board or Committee meeting, the Chair will request that the person leave the meeting or be removed if the person refuses to cease the disruptive behavior.



AGENDA ITEM C

Update on Previously Approved Legislative Proposals





Update on Previously Approved Legislative Proposals

Below is a summary and status update of legislative proposals the board approved at the December 2019, September 2020, and December 2020 meetings for which staff is seeking authorship for the 2021 legislative year. This is a status update only; no further action is required from the committee at this time.

Approved Proposals for Legislative Authorship in 2021

- a. Increase Civil Penalties for Specified Violations of the Contractors Law.** This proposal would raise the statutory cap on licensee civil penalties for the majority of violations from \$5,000 to \$8,000, and from \$15,000 to \$30,000 for specified violations that include filing of a false certificate of exemption from workers' compensation insurance and aiding and abetting unlicensed practice.

Status: Legislative proposal approved by the board at its December 12, 2019 meeting. Currently seeking authorship for the 2021 legislative year. As of this writing, staff believes it will have confirmed authorship.

- b. Authorize Additional Minor Violations in a Letter of Admonishment Issued by CSLB.** Existing law authorizes CSLB to issue a letter of admonishment (LOA) for less egregious violations of the law, but limits LOAs to a single violation. This proposal would authorize CSLB to include additional minor violations in an LOA as appropriate.

Status: Legislative proposal approved by the board at its December 12, 2019 meeting. Currently seeking authorship for 2021 legislative year. As of this writing, staff believes it will have confirmed authorship.

- c. CSLB Statutory Fee Increase.** At its December 2020 meeting, the board authorized staff to pursue a legislative change to increase the statutory minimum and maximum ranges for specified fees in CSLB's fee statute by approximately 25 percent according to the schedule recommended by the fee study consultant.

Status: Department of Consumer Affairs (DCA) is currently coordinating with agency/administration and legislative leadership to identify the best vehicle for a fee increase bill that accommodates the multiple DCA agencies that need an increase, including CSLB. This proposal will either be included in a budget bill around March 2021 or in a policy bill before the end of February 2021.

AGENDA ITEM D

Review, Discussion, and Possible Action on 2021-22 Pending Legislation

- a. AB 246 (Quirk) Contractors:
Disciplinary Actions
- b. SB 216 (Dodd) Contractors:
Workers' Compensation Insurance:
Mandatory Coverage





CONTRACTORS STATE LICENSE BOARD

LEGISLATIVE BILL ANALYSIS

BILL NUMBER: AB 246 (Quirk and Mathis) (Coauthors Bauer-Kahan and Lee)
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB246

STATUS/LOCATION: Introduced January 13, 2021. Pending Referral

SPONSOR: Contractors State License Board

SUBJECT: Contractors: violations: disciplinary actions

CODE SECTION: Amend Business and Professions Code § 7110

SUMMARY: Would make a licensed contractor's unlawful dumping of construction debris a cause of disciplinary action against the contractor.

EXISTING LAW: Provides in Business and Professions Code (BPC) § 7110 that CSLB can discipline a licensed contractor for several violations of California statutes that are not part of Contractors State License Law.

THIS BILL: Would add to BPC § 7110 a requirement that a contractor's violation of local or state dumping laws is a cause of discipline under Contractors State License Law.

COMMENT/ANALYSIS: CSLB's enforcement of this law, should it pass, will require evidence similar to that needed to support an administrative action for a licensed contractor's failure to comply with building code requirements, i.e., evidence that an existing city, county, or state dumping law has been violated.

FISCAL IMPACT: Minor and absorbable.

STAFF RECOMMENDATION: SUPPORT. This is a CSLB-sponsored measure.



CONTRACTORS STATE LICENSE BOARD

LEGISLATIVE BILL ANALYSIS

BILL NUMBER: SB 216 (Dodd)

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB216

STATUS/LOCATION: Introduced January 13, 2021. Pending referral.

SPONSOR: Contractors State License Board

SUBJECT: Contractors: workers' compensation insurance: mandatory coverage

CODE SECTION: Amend, repeal, and add §§ 7125 and 7125.4 of the Business and Professions Code

SUMMARY: Would preclude CSLB from accepting certificates of exemption from workers' compensation insurance from licensed C-8 Concrete, C-20 HVAC, and D-49 Tree Service contractors in the first year and from all contractors in three years, requiring that all contractors have a certificate of workers' compensation insurance on file by 2025.

EXISTING LAW: Requires every licensed contractor, or applicant for licensure, have on file with CSLB a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance. Contractors can file a certificate of exemption, certifying that they have no employees and are not required to obtain or maintain workers' compensation insurance. Existing law requires C-39 Roofing contractors with an active license to have a valid Certificate of Workers' Compensation Insurance at all times, whether or not they have employees.

THIS BILL: Would include the C-8 Concrete, C-20 HVAC, and D-49 Tree Service contractor licenses as those, along with the C-39 Roofing contractor, who must always have a Certificate of Workers' Compensation Insurance on file with CSLB. The bill further provides that by 2025, CSLB would no longer accept a certificate of exemption from workers' compensation insurance, thereby requiring that all contractors with an active license have a certificate of insurance on file by 2025.

COMMENT/ANALYSIS: Despite years of enforcement efforts, the number of workers' compensation exemptions on file with CSLB, and the number of contractors in violation of the workers' compensation laws remains consistent. CSLB research confirms that it is extremely unlikely that the approximate 50 to 60 percent of licensed contractors who currently claim an exemption have no employees. Instead, there is a demonstrated problem of contractors employing workers without providing workers' compensation insurance coverage. This problem creates an unfair competitive disadvantage for law-abiding contractors who are subject to higher business costs and puts employees and project owners at risk for workplace injuries. This bill will eliminate that problem.

STAFF RECOMMENDATION: SUPPORT. This is a CSLB-sponsored measure.

AGENDA ITEM E

Update and Discussion on 2019-21 Legislative Strategic Plan





2019-21 Strategic Plan – Legislative Objectives

Item 3.1

Description: Collaborate annually with industry and consumer leaders to share new legislative ideas.

Target Date: January 2019 – November 2019 (annually thereafter)

Current Status: Three meetings held in April and May 2019 with industry on legislation or regulation centered on: energy storage systems; workers' compensation for specified license classifications; and home improvement contract requirements. Additional stakeholder meeting held January 2020 on mandatory workers' compensation for additional classifications.

Item 3.2

Description: Seek legislation to mandate workers' compensation insurance for specified license classifications to protect workers and consumers. (Statutory)

Target Date: July 2021

Current Status: First stakeholder meeting held in April 2019; proposed classifications subject to this requirement revised; additional stakeholder meeting held January 2020 and legislative proposal approved for authorship at September 2020 board meeting. Author secured; Senate Bill 216 introduced in the Legislature on January 13, 2021.

Item 3.3

Description: Review disaster-related consumer protection laws, including the hazardous substances certification requirements. (Statutory)

Target Date: October 2021.

Current Status: Provided technical assistance to author of SB 1189 to extend home improvement contract provisions to disaster rebuilds. Additional plan is under development to issue a survey to building officials to assess the need for updating the certificate and limitations described in BPC section 7058.7—Hazardous Substance Certification. A meeting will be tentatively scheduled in February 2021 with Department of Toxic Substances Control.



Item 3.4

Description: In conjunction with the Licensing division, review multiple qualifier responsibilities and bonding requirements to determine if regulatory or legislative changes will improve consumer protection.

(See Licensing objective 1.5)

Target Date: January 2021

Current Status: Bond study on sufficiency of \$15,000 contractor license bond completed, which included an analysis of the qualifier bond concerns; submitted for committee review on November 4, 2020; approved by the full board at its December 2020 meeting; submitted to Legislature December 23, 2020.

Item 3.5

Description: Clarify home improvement contract requirements to improve licensee understanding and compliance. (Statutory)

Target Date: October 2021.

Current Status: First of multiple stakeholder meetings held in April 2019. As a result of unanticipated delays in various projects following the COVID-19 pandemic, the project has been delayed. The next stakeholder meeting is tentatively scheduled for May 2021, with a draft proposal for committee review by the summer of 2021.

Item 3.6

Description: Review laws and update penalties as necessary to ensure they are adequate for the violations in order to encourage compliance and protect consumers. (Regulatory and Statutory)

Target Date: December 2021.

Current Status: Legislative proposal to increase civil penalties was approved at September 2020 board meeting and staff will seek legislative author for 2021 legislative session.

Item 3.7

Description: Clarify in regulation (CCR section 825) the definition of foreperson, supervising employee, and contractor to provide applicants greater clarity about the experience needed to obtain a license. (Statutory)

Target Date: June 2021

Current Status: The board voted at its December 2020 meeting to make this strategic plan item a statutory proposal rather than a regulatory proposal. Staff will present a legislative proposal to the committee in the summer of 2021.



Item 3.8

Description: Research the feasibility of a graduated fee increase for larger licensed contractors to increase enforcement resources and public outreach.

Target Date: September 2021

Current Status: The issue of graduated (or higher) fee increases for larger licensed contractors is comprehensively reviewed in the fee study prepared by Cooperative Personnel Services and approved by the board at the December 2020 meeting.

AGENDA ITEM F

Adjournment

