



## CONTRACTORS STATE LICENSE BOARD

9821 Business Park Drive, Sacramento, CA 95827

Mailing Address: P.O. Box 26000, Sacramento, CA 95826

800.321.CSLB (2752) | [www.cslb.ca.gov](http://www.cslb.ca.gov) | [CheckTheLicenseFirst.com](http://CheckTheLicenseFirst.com)

STATE OF CALIFORNIA

Governor Edmund G. Brown Jr.

# Little Hoover Commission Testimony CSLB'S INDIVIDUAL AND PARTNERING EFFORTS TO CURB CALIFORNIA'S UNDERGROUND ECONOMY

Thursday, March 27, 2014, 9:30 a.m.

Room 437, State Capitol

## **BACKGROUND**

CSLB was established in 1929 to license and regulate the construction industry at the encouragement of legitimate contractors who identified the need for a state regulatory body to monitor construction practices and standards. The goal was to level the playing field by creating a consistent and fair business environment, and for consumer protection. For nearly 85 years, CSLB has been engaged in efforts to curb the underground economy and help maintain industry integrity.

CSLB was established as the Contractors License Bureau under the Department of Professional and Vocational Standards. Today, CSLB is part of the Department of Consumer Affairs and is guided by a 15-member Board that is appointed by the governor and the legislature. Board members include contractors, non-contractors, a building official, and a labor organization representative. It operates under California Business and Professions Code (B&P) sections 7000-7199 and CSLB Rules and Regulations (Contractors' License Law).

CSLB licenses and regulates contractors in 43 classifications that constitute the construction industry. There are approximately 300,000 licensed contractors in the state. CSLB also registers home improvement salespersons who are employed by contractors.

CSLB consistently has offered active outreach programs and materials to help inform and educate contractors and consumers about legal contracting practices and how to avoid fraud.

## **CSLB'S PRIMARY APPROACHES TO COMBAT THE UNDERGROUND ECONOMY**

CSLB has, for decades, and continues to take a multi-faceted approach to combating unlicensed activity related to the underground economy that falls into two main categories: reactive and proactive. Following are a few CSLB programs specific to underground economy activity.

## **PUBLIC COMPLAINTS**

CSLB accepts complaints from consumers, contractors, building departments, and confidential informants (contractors/union representatives/labor compliance investigators) as follows:

**Consumer Complaints** – These are complaints that are filed by consumers against licensed and unlicensed contractors regarding construction-related disputes, usually in regard to a contract. Complaints are screened to determine possible underground activity, including unlicensed activity; contracting with an inactive, revoked suspended or expired license; failure to maintain workers' compensation (WC) insurance for employees; and/or state Building Code violations. Complainants are asked to document employee labor on their project to confirm compliance with tax and insurance requirements.

**Building Department Complaints** – Complaints are routinely filed by local building department personnel regarding unlicensed activity; contracting with an inactive, revoked suspended or expired license; failure to maintain WC for employees; and/or Building Code violations. The following chart indicates disciplinary actions taken against licensees for Building Code violations in 2012 and 2013:

<b>Building Code Violations ICs</b>	<b>2012</b>	<b>2013</b>
Citations Issued for Building Code Violations	111	225
Accusations (Including Building Code Violations)	53	61

**Industry Lead Referrals** – Lead referrals allow an interested party to confidentially report illegal activity on an active construction project, including unlicensed activity; contracting with an inactive, revoked, suspended or expired license; and/or failure to maintain WC for employees.

CSLB is authorized (effective 1-1-2011) to issue a Stop Order, prohibiting worksite activity and employment of uninsured workers:

<b>Stop Orders</b>	<b>2012</b>	<b>2013</b>
Stop Orders Issued	506	610
WC Exemptions Canceled	190	253
Stop Orders Lifted – Compliance	144	198
Stop Order Remained in Effect	196	195
Stop Order In Effect Non-Licensee	58	38

Administrative and criminal action taken against licensed and unlicensed persons includes:

<b>Legal Actions</b>	<b>2012</b>	<b>2013</b>
Licensee Citations	992	1139
Accusations Against Licensees	366	365
Non-Licensee Citations	825	1139
Non-Licensee Prosecutor Referrals	2,900	2,657

## CSLB INITIATIVES AND PARTNER AGENCY PROGRAMS

CSLB traditionally has initiated or joined in collaborative enforcement programs with other state and local agencies to assure compliance with state construction laws and for consumer protection.

**Workers' Compensation License Suspension Pilot** – CSLB has determined 60 percent of licensees have a WC exemption on file. CSLB research indicates more than 20 percent of the exemptions are false.

- All contractors are required to verify their exemption status at the time of renewal every two years (effective 1-1-2012, AB 397, Monning). License renewal packets now include a letter, advising contractors about the requirements.
- In 2012, CSLB's Intake and Mediation Center (IMC) implemented an automatic suspension program for licensees who fail to provide WC for employees. The consumer complaint form includes a question that asks if there were employees on the project; licenses with false exemptions are routinely suspended and referred for investigation. As a result, the number of citations issued to licensees for failure to maintain WC for employees has increased significantly.

IMC staff began notifying Licensing division staff when a complaint was received against a licensee who had an exemption from WC insurance on file and acknowledged employing workers. B&P Code §7125.2 provides CSLB authority to automatically suspend a license under operation of law when a licensee fails to secure WC insurance for employees.

Licensing staff inform contractors that their WC exemption is cancelled and that they must submit proof that they have obtained a valid WC policy within 30 days or the license will be suspended without further notice. The contractor can file a second exemption but is instructed that doing so will subject the exemption to verification by CSLB and partnering agencies such as the Employment Development Department (EDD) and the Department of Industrial Relations' (DIR) Division of Labor Standards Enforcement (DLSE).

The following two charts indicate WC cancellations, compliance, and disciplinary actions:

<b>Enforcement Data</b>	<b>FY 2011–12</b>	<b>FY 2012–13</b>	<b>FY 2013–14</b>
WC Exemption Cancellations	371	472	288
New Policies Obtained	136	174	123

<b>WC Violations - ICs</b>	<b>2012</b>	<b>2013</b>
Citations Issued for WC Violations	195	116
Accusations (Including WC Violations)	57	31

### **Peace Officer Staff Increased**

In 2013, eight additional CSLB Enforcement division peace officers were sworn in. The extensive hiring process included a comprehensive background investigation and completion of the Peace Officer Standards and Training Commission (POST) Academy. Peace Officers enhance CSLB's ability to investigate consumer complaints that include construction-related underground economy activity, relating to WC insurance violations and construction-related financial crimes.

### **Staff Reassigned to Focus on WC Violations**

To further enhance and expedite discipline of illegal operators, two investigator positions were added to the IMCs, one each in September and October 2013. The new investigators complement IMC pilot programs in the areas of WC, building permits, and illegal advertising since they issue administrative citations for violations by licensed contractors and unlicensed operators. Each investigator is averaging approximately five administrative actions per month.

### **Public Works Unit Expanded**

Two additional enforcement representatives (ERs) were hired to perform investigations for Enforcement's Public Works Unit. The unit is successful working with awarding agencies to prequalify project bidders, disclose violations on CSLB's website against contractors that have been imposed by other agencies, and secure criminal and/or administrative actions against public works contractors that committed serious violations. Following are disciplinary actions by the Public Works Unit for the past two calendar years:

<b>Public Works Unit</b>	<b>2012</b>	<b>2013</b>
Total Number of Complaints	97	142
Number Referred for Legal Actions	49	45
Number of Denied/Withdrawn Apps	4	13

### **Partnering Agency County Task Force**

Beginning in January 2011, CSLB implemented the Partnering Agency County Task Force (PACT) to partner with DAs throughout California. The program has continued to expand and now includes 20 participating counties. The program teams CSLB ERs with DA investigators, building officials, and other state agency representatives. CSLB's Statewide Investigative Fraud Team (SWIFT) ERs are assigned to one or more of the participating counties to target unlicensed activity and WC insurance violators.

### **Partnering Government Agency Complaint Disclosure**

On September 6, 2013, CSLB Board members unanimously approved disclosing partner agencies' disciplinary actions on CSLB's website. As a result, an innovative protocol was developed and established. CSLB now flags licensees on its website by including an advisory statement and an electronic link to the partner agency's website. This disclosure provides an easily accessible means for awarding authorities and prime contractors to determine if a contractor is a responsible/responsive bidder for public works projects.

Staff launched the project with two partner agencies: DIR's DLSE and Caltrans. DLSE issues Civil Wage and Penalty Assessments (CWPAs) for Labor Code violations, and Caltrans issues Stop Notices for violations that include non-payment of labor, services, equipment or materials

on public work projects. CSLB accomplished this 2013-2014 Strategic plan objective without new legislation.

### **Undercover Sting Operations**

During 2013, undercover stings continued to be the most effective method to identify and prosecute unlicensed persons acting in the capacity of a contractor without a license and committing other significant violations of Contractors' License Law including employing workers without WC insurance. SWIFT ERs partnered with local law enforcement and EDD to pose as homeowners seeking bids for home or commercial property improvements, such as roofing, HVAC, painting, landscaping, swimming pool construction, flooring, etc.

Stings conducted during 2013 included:

<b>2013 SWIFT Stings</b>	
Total Sting Operations	84
NTAs (notices to appear in superior court)	773

### **STATE AGENCY PARTNERING**

#### **2013 Outstanding Tax and Civil Liability Suspensions**

CSLB routinely partners with EDD on all proactive enforcement operations. During 2013, CSLB staff began routinely partnering with EDD's Criminal Investigation Division, as well as with EDD, Franchise Tax Board (FTB), DLSE and DIR's Division of Occupational Safety and Health (DOSH), resulting in the suspension of 456 licenses for outstanding liabilities that total more than \$32 million. CSLB's license suspension program resulted in payment of more than \$14 million to allied state agencies.

#### **CSLB-EDD Partnership**

CSLB's Joint Enforcement Strike Force (JESF) partners include EDD, DLSE, and District Attorney (DA) Investigators. The primary focus of CSLB ERs assigned to JESF is pursuing criminal charges against contractors who violate license, tax withholding, and/or WC insurance requirements. CSLB prioritized partnering with EDD on all proactive investigations (i.e., leads, sweeps, and stings).

#### **CSLB/EDD 2013 Partnering Statistics**

- 725 inspections at active construction sites
- 605 referrals to EDD Audits
- A record **\$207,521,183.00** in unreported tax withholding

The following statistics are the minimum number of construction-related proactive investigations resulting from the CSLB/EDD partnership for 2013 cases; however, the actual number may be higher:

<b>EDD/CSLB Joint Investigations</b>	
Convictions	4
Complaints Filed	6
Complaints Requested	3
Search Warrants Conducted	6

In addition to partnering with EDD, CSLB routinely partners with FTB, DOSH and DLSE:

<b>JESF Outstanding Liabilities, January – December 2013</b>		
<b>TOTAL LIABILITIES</b>	<b>Liability Suspension</b>	<b>Penalty Recovered</b>
CSLB, EDD, DOSH, DLSE, & FTB	\$32,457,770	\$14,326,681.00
EDD Only	\$24,121,391	\$ 8,882,013.00

**Labor Enforcement Task Force (LETf)** – CSLB ERs assigned to LETf primarily conduct sweeps with partner state agencies DLSE, DOSH, EDD and FTB at active job sites to verify compliance with licensing, WC insurance, tax, and job safety requirements. In general, LETf partners issue administrative actions against violators.

<b>LETf 2013 Results</b>	
Number of Inspections	820
Businesses Out of Compliance	655
% of Businesses Out of Compliance	80
Total Citation Penalties and Assessments	\$2,654,527.40

## **STRATEGIES TO GAIN COMPLIANCE WITH HVAC INDUSTRY**

Heating, Ventilating, and Air-Conditioning (HVAC) contractors, designated as CSLB Specialty license classification C-20, have been identified as a construction sector with low WC insurance and building permit compliance. To address these deficiencies, CSLB has implemented innovative new strategies that include the following:

- **Reporting Method**  
CSLB developed a building permit complaint form in 2010 that enables legitimate contractors and industry partners to file a complaint against any contractor who fails to obtain a building permit. A “zero tolerance” policy also was implemented to ensure that any HVAC permit violations would receive an automatic administrative citation.
- **Targeted Stings**  
HVAC sting targets have been identified after conducting surveillance of supply houses, approaching contractors at supply houses, and following contractor vehicles from supply houses to project sites. CSLB also has hired two retired CHP officers to support this strategy.
- **Educational Campaign**  
Enforcement sent more than 17,000 letters to HVAC contractors, reminding them about business and permit requirements. CSLB also has issued industry bulletins and newsletter articles to support this effort.
- **Ambassador Program**  
An Ambassador Program will be launched on May 7, 2014, to provide licensees with education material to provide to their customers. The handouts include information about the approximate 300 percent return the consumer will realize only if the HVAC unit is installed correctly. CSLB has trained arbitrators to help enforce the requirement that the contractor return to a job site and perform work necessary to meet Building Code and Title 24 requirements, at the contractor’s expense. CSLB has met with more than 100 building officials to gain their cooperation. Building officials were requested to report contractors who have not obtained a permit and/or final inspection, and have not provided proof of WC insurance.

## **RECOMMENDATIONS TO COMBAT CALIFORNIA'S UNDERGROUND ECONOMY**

- Partner with building departments and identify ways to reduce the burdens for contractors who follow the law (i.e., online permitting, providing self-certification for some contractor projects, etc.).
- Improve information-sharing among cities, counties, and the State (i.e., centralized database that captures permit records).
- Partner with public utilities to share information on rebates they have paid to consumers. This information will identify the contractor who performed the installation. Develop a protocol for material manufacturers and distributors to provide to CSLB information regarding who is buying materials and where materials are being delivered.
- No utility should give a rebate to a contractor or company for installation of equipment unless there is a valid contractor license that is in good standing with CSLB (i.e., solar panels, HVAC, etc.), and is in compliance with all license, WC, wage, and/or tax laws.
- Reduce/remove restrictions, regarding sharing tax-related information of construction businesses (wages, insurance, sales tax, etc.), as it would be helpful if CSLB knew how many employees are registered by a contractor with EDD and how much sales tax is paid by licensed contractors.
- Encourage the Building Standards Commission to establish and enforce a regulation whereby building departments must enter data (permits, etc.) into a construction monitoring database, and then have the information cross-referenced into EDD's Automated Collection Enhancement System (ACES) database so that it can be accessed by other state regulatory agencies.
- Use Washington State as an example of preventing fraud and abuse in WC by effective partnering between agencies.
- Respectively request that the Little Hoover Commission evaluate the underground economy in California to determine both its size and impact to government agencies as well as legitimate businesses.