

II.

WHAT'S NEW?

This chapter recaps changes that have occurred over the previous year that concern contractors, as well as changes affecting the upcoming year, but does not include everything.

1. Contractor's License Bond Amount Has Gone Up

Effective January 1, 2016, SB 467 makes changes to the law with respect to the amount of the contractor's license bond. The new requirement is \$15,000, increased from \$12,500. The last time that the amount was increased was January of 2008. The increase is long overdue.

The increase in the amount allows for some that make claim to the bond to now recover a greater amount. Presently, \$7,500.00 of the \$12,500.00 bond is available to anyone that qualifies. Pursuant to *Business and Professions Code* section 7071.5, the additional \$5,000.00 is made available to residential owners. Even though the penal sum of the bond amount increases to \$15,000.00, the amount of \$7,500.00 will remain the amount available to those who qualify and the entire \$15,000.00 bond amount will be made available in residential situations.

2. New Requirements For Home Improvement Salesperson

Salespersons are required to be registered with the Contractors' State License Board. If you are a contractor that uses salespersons to assist in obtaining customers, your salespersons must be registered with the CSLB. Failure to register puts the salesperson in the position of being charged with a misdemeanor. It also puts the contractor in a position of being in violation of the Licensing Law, which could subject the contractor to Citation and perhaps even Accusation.

The law requiring any salesperson that sells for any company, must register themselves each time that they act as a salesperson for each separate company has recently changed. Business and Professions Code section 7153 stated in part that anyone who solicits, sells, negotiates, executes home improvement contracts for a licensed contractor, outside of the contractors normal place of business must be registered with the CSLB as a Home Improvement Salesperson (HIS).

SB 561 became law effective January 1, 2016 and simplifies the process. The requirements that a salesperson register with each particular contractor that he/she is acting as a salesperson for is now eliminated. The salesperson will register once (every two years) and the contractor can then electronically notify the CSLB the salesperson is working for it.

In addition to the single registration provision, SB 561 will provide:

1. The CSLB will require the HIS to have a current and valid registration filed with the CSLB before making sales calls on behalf of contractors;
2. Require a contractor to notify the CSLB when they hire a registered HIS and also when that employment ceases;

3. The CSLB will accept applications electronically (including signatures) from the HIS applicant;
4. Registration will be valid for two years from the month of issue.

3. California Paid Sick Leave

The California Paid Sick Leave, which began July 1, 2015, has some confusion as to what is required.

To make sure that you are in compliance, make sure that you create a policy addressing the amount of leave provided or else the mandated accrual rate of one hour of sick pay for every 30 hours worked will be allotted without a cap. This could be almost nine days of sick pay rather than the mandated three days. As you can see, having a policy in place can be very beneficial.

There are also several notice, posting and record keeping mandates as follows:

Pay-Stub Notice – An employer must provide an employee with a written notice setting forth the amount of paid sick leave available to the employee each pay period. An employer can provide this notice to the employee either on the already-required itemized wage statement or in a separate written document provided to the employee with the payment of wages.

Wage Theft Notice – The Wage and Employment Notice, which employers have been required to provide to nonexempt employees since 2012, has been updated by the Labor Commissioner to contain information about an employee's right to accrue and use paid sick leave and about employee protections under the law. The updated Wage Theft Notice is available on the Labor Commissioner's website <http://www.dir.ca.gov/dlse/>.

Poster – There is a new required poster advising employees of the sick leave rights.

Recordkeeping Requirements – Employers will need to keep records for at least three years which document the number of hours that each employee worked and paid sick days accrued and used by each employee.

There are consequences for noncompliance such as back pay, damages and penalties up to \$4,000.

4. Public Works

Registration – In order to bid or work on public works jobs, contractors must register (and renew that registration by June 30, of every year) and meet requirements. For more information, visit the Department of Industrial Relations, Public Works website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

Reporting – If you are a contractor on public works you must enter your certified payroll records online at the Department of Industrial Relations website at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html> if the project was awarded on or after April 1, 2015.

5. Heat Illness Prevention

As of the printing of this book, the Department of Industrial Relations and Cal/OSHA amended the heat illness prevention regulation effective May 1, 2015. However, any updates can always be found at the Department of Industrial Relations website at <http://www.dir.ca.gov/dosh/heatillnessinfo.html>.

6. 2016 Energy Standards

There are new energy standards effective 2016. These will reduce energy costs, save consumers money, and increase comfort in new and upgraded homes and other buildings. These energy standards will take effect January 1, 2017, and focus on updating residential requirements to move closer to California's zero net energy goals; updating nonresidential and high-rise residential requirements; and improving the clarity and consistency of existing regulations. For more information, visit the California Energy Commissions website at <http://www.energy.ca.gov/>.

7. Important Cases from 2014

Steven K. Davis v. Fresno Unified School District

This case dealt with a somewhat common scheme to avoid competitive bidding, the Fresno Unified School District entered into a contract with a contractor whereby the contractor would lease a project site for \$1.00 in rent; it would then build the school on the site, and obtain progress payments, which were called "rent" during the construction, and when the project was completed, the contractor would cease to rent the premises and vacate the premises along with the newly constructed school.

A taxpayer filed a lawsuit against the school district contending that the project should have been competitively bid, among other claims. The trial court threw out the claims in a "demurrer" holding that the school district was not liable to the taxpayer. The Court of Appeal reversed that determination.

The Court discussed the Lease-Leaseback method which is codified in the law. However, it is supposed to be a situation where the contractor builds the facilities and leases the entire facilities back to the school district for a period of time, with the financing of the school by a third party lender. However, what was done in this case was that the school paid for the construction by the time the construction was completed. The approach was not what was contemplated by the statute – i.e., a new source of school funding. There was nothing novel about the way it was done in this particular case, and the District could have simply entered into a construction contract.

As alleged in the lawsuit that had been filed, the Lease-Leaseback contract was a "sham and subterfuge" to avoid the requirements of competitive bidding. The lease payments were not "lease payments" because they lasted only as long as the duration of construction, and were variable based upon the value of construction performed by the contractor prior to the date of the payment. The lease also provided that the school district would obtain title to the project as construction progressed and as corresponding payments were made, with all rights, title and interest in the contractor being conveyed back to the school district upon final payment.

Based upon the allegations that were alleged, the court held that they should be remanded back to the trial court because the exception to competitive bidding is only available to genuine leases and the subject Leaseback agreement was simply a traditional construction agreement, subject to competitive bidding.

FTR International, Inc. v. Rio School District

Based upon this recent decision, the applicability of the Martin Brothers Construction, Inc. v. Thompson Pacific Construction, Inc. decision, except as to cases determined in the third judicial district of California, is in question. In Martin Brothers, the Court of Appeal eviscerated the application of the prompt pay laws. Thompson Pacific was required to make progress payments to Martin Brothers. Thompson Pacific contended that it could withhold from Martin Brothers retention 150% of the disputed amounts claimed as additional compensation by Martin Brothers. This was different then a claim that Martin Brothers' work was substandard or that work had to be performed to correct its work. Rather, although there was nothing wrong with Martin Brothers work, and there was an undisputed sum that was due for the contract, but because there was an amount that was disputed, the court held that Thompson Pacific could withhold 150% of the amount that was disputed and the subcontractor was not entitled to penalties under the prompt pay laws.

Once again, this decision rejected the holding in FTR International, when the Second District, held that one could only withhold amounts necessary to either cover deficiencies in the work or because of lien or other types of claims relating to the contract work, and not because the contractor is claiming additional compensation.

In the FTR International, Inc. v. Rio School District case, FTR International, Inc. constructed a school for the Rio School District. It submitted approximately 150 proposed change orders due to problems with the plans, which were mostly denied. The School District refused to pay the balance due under the contract in addition to refusing to pay the amounts claimed under the change orders. The District, relying on a Court of Appeals decision from a different court district, Martin Brothers Construction v. Thompson Pacific Construction, argued it could properly withhold amounts due to the contractor where there was a dispute over the amount owing.

The Second District of the California Court of Appeal declined to follow Martin Brothers and held that the purpose of Public Contract Code section 7107 is to deter public entities from improperly withholding retention payments. The Court held that there is no reason to allow a public entity to retain funds once their purpose of providing security against "mechanic's liens and deficiencies in the contractor's performance" has been served. Unless the dispute relates to liens (or in the public works sense, Stop Payment Notices) or disputes over the performance, the public entity must release the funds or it will be liable for the statutory penalty.

Jacobs Facilities, Inc. v. Judicial Council of California

This case is a hyper-technical case. Jacobs Facilities was a wholly owned subsidiary of Jacobs Engineering Group. Jacobs Facilities had a contractor's license and entered into a contract to remodel a number of courthouses within the State of California. During the work, Jacobs Facilities sought to

assign its contract and obligations to another wholly owned subsidiary of Jacobs Engineering Group. After the internal assignment, the work was performed by the new entity, which was licensed when it began to and continued to perform the work. There was no formal acceptance of the assignment of the contract until almost one-year after the internal assignment was made. During that period of time, the operations of Jacobs Facilities were shut down, and its license lapsed. The Judicial Council of California argued that because it did not accept the assignment and the contract had an anti-assignment clause, that the only contract it had during that period of time was with Jacob Facilities and because it became unlicensed, it was not entitled to payment and was subject to disgorgement. The Court of Appeal therefore reversed judgment that was in favor of Jacob Facilities, and remanded the case back to the trial court to determine if substantial compliance applied. The Court of Appeal further opined that if substantial compliance did not apply, Jacobs Facilities could not collect for the work performed by the new entity.

The logic of the Court of Appeal was that Jacobs Facilities continued to operate, even after it became unlicensed, rather than the new entity performing the work. The Court of Appeal also refused to extend the holding of another court that allowed this type of assignment when a sole ownership license incorporated and transferred over the operations from the sole ownership to the newly formed corporation run by the same individual. The court held that because the facts showed that it was not a continuation of the same business as in the other example discussed, but rather a whole new division (albeit with the same parent corporation being its owner), the fact that there was no acceptance of the assignment, and that the operations appear to have been conducted by Jacobs Facilities even after it ceased to be licensed, rendered Jacobs Facilities and its assignee unable to collect unless they could prove substantial compliance on remand to the court.

Pacific Caisson & Shoring v. Bernard Bros. Inc.

Many contractors are unaware of the sanction that can be issued against them for a Judgment/Arbitration Award that is entered against them in a legal proceeding. Business and Professions Code section 7071.17 requires that licensed contractors notify the Contractors State License Board (“CSLB”), in writing, of any unsatisfied final judgment imposed on the licensee. If the licensee fails to notify the CSLB in writing within ninety (90) days, the license shall be automatically suspended. That is exactly what happened in the Pacific Caisson case.

The Pacific Caisson case went one step further. In a May 19, 2015, Second District, Court of Appeal ruling in Pacific Caisson & Shoring v. Bernard Bros. Inc.; the court found that a contractor whose license was suspended for failing to notify the state licensing board of a judgment against it cannot satisfy the second prong of the substantial compliance exception to Section 7031. This was the second Court of Appeal ruling in this matter. We had published a previous article in 2013, dealing with a different issue that was taken up on appeal in this matter. Gold Coast Drilling, Inc. (“Gold Coast”) defaulted under a stipulated judgment entered against it. Pacific Caisson & Shoring, Inc. (“Pacific Caisson”) was a company owned by the same owners of Gold Coast. Pacific Caisson later worked with Bernard Bros, Inc. (“Bernard Bros”). The Board suspended the licenses of Gold Coast and Pacific Caisson (as an associated license of Gold Coast) for two months for failing to notify the Board within 90 days of the unsatisfied stipulated judgment. When it sued for compensation for the work performed for Bernard Bros, the court found that Pacific Caisson did not qualify for the “substantial compliance

exception” and specifically found that prong two, which required that the contractor act reasonably and in good faith to maintain proper licensure, was not satisfied. The owners of Pacific Caisson acted unreasonably if their failure to notify was based on ignorance, given their decades of contracting experience.

In the *Pacific Caisson* case, the lower court held that Pacific Caisson was “duly licensed,” however, because the license was suspended for a two month period, Pacific Caisson was not licensed “at all times” during performance of the subcontract and found that Pacific Caisson cannot collect its money from Bernards. Pacific Caisson argued that although its license was suspended for a two month period, they have substantially complied with the licensing law so as to be entitled to recover from Bernards even though there was a lapse in their licensing.

Business and Professions Code section 7031(e), allows for contractors to overcome gaps in their license if, in fact, they can satisfy the four prong test identified in 7031(e). The Appellate Court examined the position being taken by Pacific Caisson and determined that Pacific Caisson did not satisfy prong number two of the four prong test that requires that the contractor “act reasonably and in good faith” to maintain its license. Despite the arguments being made by Pacific Caisson, the Appellate Court ultimately concluded that Pacific Caisson did not act reasonably and in good faith to maintain its license. As a result, the Appellate Court determined that Pacific Caisson did not satisfy prong number two and since the law requires that you satisfy all four prongs, the Appellate Court upheld the lower court’s ruling that Pacific Caisson did not substantially comply with licensing law. As a result, Pacific Caisson was not entitled to recover its money from Bernards.

All of the above occurred as a result of Pacific Caisson’s failure to notify the CSLB of an unsatisfied judgment. The failure to notify the CSLB resulted in the CSLB suspending Pacific Caisson’s license. Pacific Caisson’s license was suspended for approximate two months, which in turn put them in a position of not being able to collect for work they performed and when Pacific Caisson attempted to convince the court that Pacific Caisson has substantially complied with licensing law, the court determined that they did not.

The moral of this story is that all unsatisfied judgments entered against contractors which include arbitration awards must be reported to the CSLB within ninety (90) days of the Judgment/Award. Failure to do so will cause the contractor’s license to be automatically suspended.

8. The Contractors’ State License Board

A member of Abdulaziz, Grossbart & Rudman typically goes to all Contractors’ State License Board’s board meetings. The CSLB meetings are held at various locations across the state throughout the year. These meetings give the public the chance to attend and discuss items that are on the agenda or other issues that they may bring up.

Under the leadership of prior Registrar Steve Sands, the CSLB has instituted a number of new and more efficient ways to do business. The financial conditions of the county, particularly California, have made it harder to see how efficient the CSLB has been running, but it is becoming more noticeable.

Registrar Retired

Prior Registrar, Steve Sands, retired effective January 1, 2015. Mr. Sands served as the CSLB's Registrar of Contractors since January 1, 2001. Steve Sands' leadership had the CSLB recognized as a leader in proactive enforcement programs and partnerships with state and local agencies that help curb the underground economy. Additionally, many of the CSLB programs are now being used as a model for the National Association of State Contractors Licensing Agencies and other agencies within the Department of Consumer Affairs. Steve Sands did a fantastic job and will be greatly missed. The Prior Chief Deputy Registrar (Steve Sands' second in command), Cindi Christenson, became the new Registrar and the transition has been very seamless.

Labor Enforcement Task Force

The Labor Enforcement Task Force combats the underground economy in California to create an environment where legitimate businesses can thrive. In this joint effort between state agencies and affected communities, information and resources are shared to ensure hard-working, compliant business owners and their employees have an opportunity for healthy competition. Their goals are to:

- Ensure workers receive property payment of wages and are provided a safe work environment;
- Ensure California receives all employment taxes, fees and penalties due from employers;
- Eliminate unfair business competition by leveling the playing field;
- Make efficient use of the state and federal resources in carrying out the mission of the Labor Enforcement Task Force.

The Labor Enforcement Task Force members include:

- Department of Industrial Relations
- Employment Development Department
- Contractors' State License Board
- California Department of Insurance
- Board of Equalization
- Bureau of Automotive Repair
- State Attorney General

This program is just one of the many ways that the CSLB is combating the underground economy.

Pilot Program with Building Departments

The Enforcement division became aware in 2014 that the Attorney General's Office was experiencing difficulty securing Building Department staff to testify at Administrative hearings in support of building code violations. The Board reviewed and discussed the possibility of CSLB establishing operational agreements with building departments at its March 16, 2015 meeting and unanimously approved this concept. The Board is now asked to conduct a final review of the presentation packet before the civil penalty reduction/elimination pilot program is taken to city councils and boards of supervisors.

Request for support for CSLB's efforts to enter into operational agreements with local building departments have been made. The building officials unanimously felt that an effective program depends on the adoption of any agreements by resolution at public meetings by local elected officials. Enforcement staff developed a plan to make public presentations at these council and supervisor meetings, along with a plan to further expand what CSLB can accomplish at the local level by reaching out to community groups and to those who have received an administrative citation to assist them in building a law-abiding business.

The Board is being asked to consider a limited program whereby CSLB can reach out to those who were recently cited and encourage them to attend a workshop to learn about the licensing process and other relevant laws and requirements related to running a legitimate construction business in California. If an individual completes the licensure process and attends Employment Development Department (EDD) and Division of Occupational Safety and Health (DOSH) workshops, we would consider vacating the civil penalty. In those instances where an individual is not qualified for a license but participates in the workshops, we would supply information about what steps to take to become qualified and consider a reduction in the civil penalty.

As of September 2015, staff recommends that the Board approve the Civil Penalty Reduction Pilot Program to support CSLB's efforts to address the underground economy in construction.

Deceptive Solar Practices

The solar energy industry has seen explosive growth in recent years. Last year, U.S. solar power capacity grew by 6.2 gigawatts, a 30 percent increase from 2013; and the country now has a total capacity of 20 gigawatts. California leads the nation in solar production: 5 percent of our in-state electricity now comes from large-scale solar, and our output exceeds by more than three times that of the next highest state. Growth in solar energy is expected to continue, especially as California law requires utilities to obtain 33 percent of electricity from renewable sources by 2020. Small-scale solar installations comprise a significant part of this solar energy development. The costs of solar panels continue to decrease and government programs continue to offer financial incentives for solar installation.

As the solar energy market has expanded, so too has the number of contractors that offer solar energy services. Unfortunately, this market growth - and the potential for profit - has attracted some unscrupulous operators trying to cash-in on the solar energy boom. The CSLB has experienced a surge in complaints involving solar energy installations: Almost all of the complaints CSLB receives fall into four categories:

1. Unregistered and improperly licensed, or unlicensed contractors and salespersons;
2. Predatory sales pitches;
3. Long term, ambiguous contracts with lending options at high rates of interest; and
4. Less-than-promised (or no) savings in energy costs.

CSLB is addressing the issue of solar industry complaints by focusing on educating consumers and contractors, collaborating with industry and government partners, and enforcing existing contracting laws.

To further the CSLB's partnership with the California Energy Commission, they are setting up meetings to address these issues as well as reaching out to the Solar Energy Industries Association (SEIA) to conduct workshops intended to educate contractors about California contract requirements; salespersons about how to conduct themselves when in someone's home; and consumers about what they can expect in regard to energy savings and how to make an informed decision before entering into a contract for a solar system.

Summary

Please note that the information about what is going on with the CSLB is quite extensive and this was just meant to be a highlight of some of the more pertinent items. Please visit their website, which just gained a new look, at www.calb.ca.gov for additional information.

9. Legislation

Chaptered Bills

Chaptered bills are pieces of legislation that have passed through the Legislature as well as the Governor, and are now laws that are in effect or become effective on a certain date. The following are just a few new laws of interest to those in the industry but by no means, cover all new laws in the State:

AB 2 (Alejo) Community revitalization authority

In short, this new law allows local agencies to form a community revitalization authority and to carry out provisions of the Community Redevelopment Law for purposes related to infrastructure, affordable housing, and economic revitalization as well as providing for the financing of these activities by the issuance of bonds serviced by tax increment revenues, and would require the authority to adopt a community revitalization and investment plan that includes elements describing and governing revitalization activities. Again, this is a very short summary of this new law.

AB 219 (Daly) Public works: concrete delivery

This new law expands the definition of "public works" to include the hauling and delivery of ready-mixed concrete, as defined, to carry out a public works contract, with respect to contracts involving any state agency or any political subdivision of the state after the effective date of July 1, 2016.

AB 288 (Holden) Unemployment insurance: electronic reporting and funds transfers

Authorizes the governing board of a community college district to enter into a College and Career Access Pathways partnership with the governing board of a school district with the goal of developing seamless pathways from high school to community college for career technical education or preparation for transfer, improving high school graduation rates, or helping high school pupils achieve college and career readiness.

AB 304 (Gonzalez) Sick leave: accrual and limitations

This new law cleans up the California Paid Sick Leave from last year with mostly insignificant changes.

It authorizes an employer to provide for employee sick leave accrual on a basis other than one hour for each 30 hours worked, provided that the accrual is on a regular basis and the employee will have 24 hours of accrued sick leave available by the 120th calendar day of employment.

It authorizes an employer to limit an employee's use of paid sick days to 24 hours or 3 days in each year of employment, a calendar year, or a 12-month period and require an employer to calculate paid sick leave based upon an employee's regular rate of pay, total wages divided by total hours worked in a 90-day period, or the wages for other forms of paid leave, as specified. It also provides that an employer is not required to reinstate accrued paid time off to an employee, rehired within one year of separation from employment, that was paid out at the time of termination, resignation, or separation.

This took effect immediately upon passage as an urgency statute July 13, 2015.

AB 323 (Olsen) California Environmental Quality Act: exemption: roadway development

The California Environmental Quality Act (CEQA) requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. This new law extends the above exemption to 2020.

AB 327 (Gordon) Public works: volunteers

This new law extends the provision with respect to specified public works performed by a volunteer, a volunteer coordinator, or a member of the California Conservation Corps or a community conservation corps through to January 1, 2024.

AB 349 (Gonzalez) Common interest developments: property use and maintenance

This makes any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of artificial turf or any other synthetic surface that resembles grass void and unenforceable. It also prohibits a requirement that an owner of a separate interest remove or reverse water-efficient landscaping measures, installed in response to a declaration of a state of emergency, upon the conclusion of the state of emergency.

AB 509 (Perea) California Private Postsecondary Education Act of 2009: exemptions

This law now exempts a bona fide organization, association, or council that offers pre-apprenticeship training programs on behalf of one or more labor-management apprenticeship programs that are approved by the Division of Apprenticeship Standards if the organization, association, or council satisfies specified requirement from the provisions of the Act.

AB 552 (O'Donnell) Public works contracts: damages

This law, among other things, provides that a public works contract entered into on or after January 1, 2016, that contains a clause expressly requiring a contractor to be responsible for delay damages is not enforceable unless the delay damages have been liquidated to a set amount and identified in the public works contract.

AB 566 (O'Donnell) School facilities: leasing property: construction contracts

This new law applies to schools utilizing lease/lease-back arrangements for projects from \$1 million and over and require a 'skilled and trained workforce'. Imposes these requirements on a public project if funding for the project includes reimbursement from any future state school bond.

AB 622 (Hernandez) Employment: E-Verify system: unlawful business practices

Expands the definition of an unlawful employment practice to prohibit an employer or any other person or entity from using the E-Verify system to check the employment authorization status of an existing employee or an applicant who has not received an offer of employment, except as required by federal law or as a condition of receiving federal funds. This also requires an employer that uses the E-Verify system to provide to the affected employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee's E-Verify case or any tentative no confirmation notice.

AB 823 (Bigelow) Counties: ordinances

The requirements are modified for a county board of supervisors to publish a summary of a proposed ordinance or proposed amendment to an existing ordinance to meet the publication requirement for an ordinance to take effect (30 days after publication), including, among other new requirements, posting on the county's Internet Web site.

AB 852 (Burke) Public works: prevailing wage

Expands the definition of "public works," for the purposes of provisions relating to the prevailing rate of per diem wages, to also include any construction, alteration, demolition, installation, or repair work done under private contract on a general acute care hospital, as defined, when the project is paid for, in whole or in part, with the proceeds of conduit revenue bonds that were issued on or after January 1, 2016, among other things.

AB 970 (Nazarian) Labor Commissioner: enforcement of employee claims

This authorizes the Labor Commissioner to enforce local laws regarding overtime hours or minimum wage provisions and to issue citations and penalties for violations, except when the local entity with jurisdiction in the matter has already issued a citation or has initiated an investigation against an employer for the same violation

AB 987 (Levine) Employment discrimination: unlawful employment practices

Prohibits an employer or other covered entity from retaliating or otherwise discriminating against a person for requesting accommodation of his or her disability or religious beliefs, regardless of whether the accommodation request was granted.

AB 1141 (Chau) Civil Actions

This new law allows for greater flexibility in summary judgment actions by allowing parts of the action to move forward without throwing out other issues that are in a legitimate dispute, among other items

AB 1171 (Linder) Construction Manager/General Contractor method: regional transportation agencies: projects on expressways

This authorizes regional transportation agencies to use the Construction Manager/General Contractor project delivery method to design and construct certain expressways that are not on the state highway system if: (1) the expressways are developed in accordance with an expenditure plan approved by voters, (2) there is an evaluation of the traditional design-bid-build method of construction and of the Construction Manager/General Contractor method, and (3) the board of the regional transportation agency adopts the method in a public meeting.

AB 1185 (Ridley-Thomas) Los Angeles Unified School District: best value procurement: pilot program

This establishes a pilot program to authorize the Los Angeles Unified School District to use, before December 31, 2020, a best value procurement method for bid evaluation and selection for public projects that exceed \$1 million and require a ‘skilled and trained workforce’.

AB 1308 (Perea) Apprenticeship programs: approval

This revises conditions for when the apprentice training needs in the building and construction trades justify a new apprentice program and removes the authority of the California Apprenticeship Council to approve a new apprenticeship program justified by special circumstances by regulation.

AB 1358 (Dababneh) School facilities: design-build contracts

This authorizes, until January 1, 2025, a school district, with the approval of the governing board of the school district, to procure design-build contracts for public works projects in excess of \$1,000,000, awarding the contract to either the low bid or the best value.

AB 1431 (Gomez) Local Agency Public Construction Act: job order contracting

This repeals the provisions of the Local Agency Public Construction Act relating to the LAUSD and authorizes job order contracting in a similar manner for school districts until January 1, 2022 and other relevant things along these lines.

AB 1506 (Hernandez) Labor Code Private Attorneys General Act of 2004

This gives an employer with the right to cure a violation of the requirement that an employer provide its employees with the inclusive dates of the pay period and the name and address of the legal entity that is the employer before an employee may bring a civil action under the Labor Code Private Attorneys General Act of 2004, among other things.

AB 1513 (Hernandez) Employment: workers’ compensation and piece-rate compensation

This requires the itemized statement provided to employees compensated on a piece-rate basis to also separately state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period. It also requires those employees to be compensated for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates, separately from any piece-rate compensation. It repeals obsolete workers’ compensation study requirements.

SB 350 (DeLeon) Clean Energy and Pollution Reduction Act of 2015

This law requires the amount of electricity generated and sold to retail customers per year from eligible renewable energy resources be increased to 50% by December 31, 2030 as well as make other revisions to the Renewables Portfolio Standards (RPS) Program and to certain other requirements on public utilities and publicly owned electric utilities as well as imposing a state-mandated local program by expanding the definition of a crime or establishing a new crime.

It also requires the State Energy Resources Conservation and Development Commission to establish annual targets for statewide energy efficiency savings and demand reduction that will achieve a cumulative doubling of statewide energy efficiency savings in electricity and natural gas final end uses of retail customers by January 1, 2030, among other things.

SB 432 (Mendoza) Public works: aliens

This law repeals the definition of “alien” as any person who is not a born or fully naturalized citizen of the United States with respect to the extension of public works.

SB 467 (Hill) Professions and vocations

This law requires the Attorney General to submit a report to any department that referred a complaint to the Attorney General, as well as the Governor, and the appropriate policy committees of the Legislature, on or before January 1, 2018, and on or before January 1 of each subsequent year, that includes specified information regarding the actions taken by the Attorney General pertaining to accusation matters relating to consumer complaints against a person whose profession or vocation is licensed by an agency within the department.

This will also require the Director of Consumer Affairs to implement “Complaint Prioritization Guidelines” for boards to utilize in prioritizing their complaint and investigative workloads with the Medical Board of California exempt from these guidelines.

This extends repeal dates of the Contractors’ State License Board authority to exist and appoint a registrar to January 1, 2020.

Existing law requires every applicant for an original contractor’s license, the reactivation of an inactive license, or the reissuance or reinstatement of a revoked license to evidence financial solvency, as specified, and requires the registrar to deny the application of any applicant who fails to comply with that requirement. Existing law, as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, requires the applicant or licensee to file or have on file a contractor’s bond in the sum of \$12,500.

This repeals that evidence of financial solvency required when applying for reinstatement of a revoked contractor’s license. Lastly, and maybe most importantly, it now requires a contractor’s bond to be in the sum of \$15,000 rather than the prior \$12,500.

SB 513 (Beall) Carl Moyer Memorial Air Quality Standards Attainment Program: fees

This makes adjustments to the Carl Moyer Program to help enhance it.

SB 560 (Monning) Licensing boards: unemployment insurance

This authorizes the CSLB to enforce the obligation to secure the payment of valid and current workers' compensation insurance by all contractors employing employees, among other items.

SB 561 (Monning) Contractors: home improvement salespersons

This law changes the home improvement salesperson requirements slightly. A home improvement salesperson is still required to register with the CSLB but they will now only have to do it one time regardless of how many contractors they work for. It will now be the obligation of the employing contractor to notify the CSLB when they hire a registered home improvement salesperson as well as when that employment ceases.

SB 588 (DeLeon) Employment: nonpayment of wages: Labor Commissioner: judgment enforcement

This enacts special provisions for the enforcement of judgments against an employer arising from the employer's nonpayment of wages for work performed in this state authorizing the Labor Commissioner to use any of the existing remedies available to a judgment creditor and to act as a levying officer when enforcing a judgment pursuant to a writ of execution, as provided.

It also authorizes a hearing to recover civil penalties against any employer for a violation of those provisions regulating hours and days of work in any order of the Industrial Welfare Commission, among other things.

SB 623 (Lara) Workers' compensation: benefits

This provides that a person shall not be excluded from receiving benefits under the Uninsured Employers Fund or the Subsequent Injuries Benefits Trust Fund based on his or her citizenship or immigration status.

SB 655 (Mitchell) Housing standards: mold

This adds visible or otherwise demonstrable mold growth, except mold caused by inappropriate housekeeping practice or improper ventilation, to a list of substandard housing conditions.

SB 762 (Wolk) Competitive bidding: best value: pilot program: design-build

This implements County Design Build projects over \$1 million in Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba Counties and will allow for Best Value opportunities, among other things.

Vetoed Bills

Vetoed bills are pieces of legislation that made it past the Legislature but the Governor refused to pass into law. Following are just a few of the Governor's veto messages:

AB 251 (Levine) Public Works: public subsidies

To the Members of the California State Assembly:

I am returning Assembly Bill 251 without my signature.

This measure seeks to codify a definition of the term 'de minimis' to determine what level of public subsidy triggers prevailing wage requirements on an otherwise private project.

Longstanding practice has been to view the subsidy in context of the project and use 2% as a general threshold for determinations. There has been no showing that the current practice is unreasonable.

While I remain a staunch supporter of prevailing wages I am concerned that this measure is too restrictive and may have unintended consequences. Two years ago, I cited the same concerns when I returned a similar bill without my signature. This measure does not adequately address those concerns.

Sincerely, Edmund G. Brown Jr.

AB 305 (Gonzalez) Workers' compensation: permanent disability apportionment

To the Members of the California State Assembly:

I am returning Assembly Bill 305 without my signature.

This bill prohibits the use of certain gender-related characteristics in the calculation of permanent disability benefits for injuries occurring on or after January 1, 2016.

The workers compensation system must be free of gender-bias. No group should receive less in benefits because of an immutable characteristic. However, this bill is based on a misunderstanding of the American Medical Association's evidence-based standard, which is the foundation of the permanent disability ratings, and replaces it with an ill-defined and unscientific standard.

Sincerely, Edmund G. Brown Jr.

AB 465 (Hernandez) Contracts against public policy

To the Members of the California State Assembly:

Assembly Bill 465 would outlaw the use of mandatory arbitration agreements as a condition of employment, making California the only state in the country to have this particular prohibition.

I have reviewed in depth the arguments from both sides about the fairness and utility of mandatory arbitration agreements. While most evidence shows that arbitration is quicker and more cost-effective than litigation, there is significant debate about whether arbitration is less fair to employees. The evidence on actual outcomes in arbitration versus litigation is conflicting and unclear, with some studies showing employees receive more in arbitration while other studies show the opposite.

While I am concerned about ensuring fairness in employment disputes, I am not prepared to take the far-reaching step proposed by this bill for a number of reasons.

California courts have addressed the issue of unfairness by insisting that employment arbitration agreements must include numerous protections to be enforceable, including neutrality of the arbitrator, adequate discovery, no limitation on damages or remedies, a written decision that permits some judicial review, and limitations on the costs of arbitration. See, e.g., *Armendariz v. Foundation Health Psychcare Services, Inc.* 24 Cal. 4th 83 (2000). If abuses remain, they should be specified and solved by targeted legislation, not a blanket prohibition.

In addition, a blanket ban on mandatory arbitration agreements is a far-reaching approach that has been consistently struck down in other states as violating the Federal Arbitration Act ("FAA"). Recent decisions by both the California and United States Supreme Courts have found that state policies which unduly impede arbitration are invalid. Indeed, the U.S. Supreme Court is currently considering two more cases arising out of California courts involving preemption of state arbitration policies under the FAA. Before enacting a law as broad as this, and one that will surely result in years of costly litigation and legal uncertainty, I would prefer to see the outcome of those cases.

For these reasons, I am returning AB 465 without my signature.

Sincerely, Edmund G. Brown Jr.

AB 1347 (Campos) Public contracts: claims

To the Members of the California State Assembly:

I am returning Assembly Bill 1347 without my signature.

This bill creates, for three years, a new dispute resolution process under which contractors could seek public agency review of claims that arise during public works projects.

Contractors who perform work for public agencies should be paid promptly. Swift resolution of payment disputes is in the best interest of contractors, workers, and the public agencies that are charged with efficiently managing taxpayer funds. I'm not convinced, however, that the procedures contemplated by this bill are an improvement over current law.

I am committed, however, to ensuring timely payment for work ordered by public agencies. In the interest of furthering that goal I am directing my departments to immediately work with industry partners and the proponents of this bill on ways of improving our prompt payment policies.

Sincerely, Edmund G. Brown Jr.