

SB 465 Has Major Impact on State's Construction Industry



By Eric Firstman, Meyers Nave

On January 1, 2017, Senate Bill 465, as signed by Governor Jerry Brown, became law in response to the June 2015 apartment balcony collapse in Berkeley, California that killed six students and injured seven more.

The law's purpose and its immediate and long-term impacts on the construction industry can best be understood in the context of the press release issued by its co-author, State Senator Jerry Hill. The release states that the new law "ensures that state agencies tasked with overseeing the construction industry are taking appropriate steps to identify bad actors and improve building standards."

For the construction industry, it is especially important to understand that SB 465, and its focus on "bad actors" and improving the building code, passed unanimously in the Assembly and Senate. As a result, the construction industry should take compliance very seriously and actively participate in the working group studies that the law mandates be completed by January 1, 2018. The purpose of these working group studies is to assess: (1) potential changes in related building codes and (2) possible self-reporting of judgments, arbitration awards and settlement payments of negligent construction claims and other issues relevant to contractor licensing status.

We examine a few of the key impacts in this article.

Impact #1: Self-Reporting Convictions and Multi-Agency Reporting of Actions Against Contractors

Beginning January 1, 2017, licensed contractors must self-report, in

writing and within 90 days of their first knowledge, to the Contractors' State License Board (CSLB) any conviction of the licensee for any felony or any other crime that is "substantially related to the qualifications, functions, and duties of a licensed contractor." The legislation is unclear on the subject of its retroactive application. However, instead of stopping with this new reporting obligation, SB 465 further expanded this enforcement information tool in two important ways.

First, the new law requires California's Department of Industrial Relations' Division of Occupational Safety and Health (Cal/OSHA) to transmit to CSLB (and potentially other agencies) copies of any citations or other actions taken against any persons, licensed or not, working in the capacity of a contractor as defined in the Contractors' State License Law.

Prior to the new law, Cal/OSHA was only required to transmit to CSLB copies of "reports made in any investigation" involving a licensed contractor. Under the new law, Cal/OSHA will do more than transmit investigation reports. Cal/OSHA will also transmit to CSLB citations, regardless of whether the contractor is guilty of a violation, and other actions taken by Cal/OSHA against a contractor.

Second, the law reaches out to other agencies by authorizing CSLB to enter into interagency agreements with other state or local agencies to receive "any information relevant to its priority to protect the public." The new law is designed to provide CSLB with a comprehensive collection of data about contractors' work in general as well as specific regulatory and legal actions taken against contractors by other agencies.

The law imposes increased accountability regarding disciplinary information on contractors and empowers CSLB to gather information about licensee behavior that it deems necessary to utilize in deciding when action must be taken. It is critical for contractors to know exactly what information is available – from all relevant agencies – to CSLB and to conduct their business in a way that is consistent with its professional license standards.

Impact #2: Working Group Studies and Recommendations for Building Code Changes

One key aspect of the law is designed to have a powerful impact by helping CSLB identify and take action against bad actors and bad behavior. However, another component could have even greater impact because it could lead to changes in state building standards and codes. The legislation directs a working group formed by the California Building Standards Commission to study recent failures of elevated elements on the exterior of buildings, such as balconies, to determine whether statutory changes or changes to the California Building Standards Code are necessary. The working group must submit its report on findings and recommendations by January 1, 2018.

The working group may solicit input from a wide range of public and private entity stakeholders, including "the building industry, the wood, steel and concrete industries, and any other interested parties." It is important that all members of the construction industry participate immediately because the law states that the working group may "at any time" (prior to

January 1, 2018) determine that changes to the California Building Standards Code “are needed as soon as possible in order to protect the public.”

All members of the construction industry should understand that the new law closes the door to the working group’s activity on January 1, 2018, but it encourages the working group to act as fast as possible prior to that date.

Impact #3: Potential Self-Reporting of Judgments, Arbitration Awards and Settlements of Claims

When initially proposed, the part of the law that generated the most controversy was mandating that contractors report judgments, arbitration awards and settlements. Opponents of the reporting requirement, including the California Building Industry Association, noted that settlements are often a means of avoiding even costlier litigation and provide no information on the merit of claims. Other opponents described the litigious nature of construction and how construction defects may result from one of the many causes or actors in the chain of design and construction of the work shown on the plans and specifications.

Supporters, including Senator Hill, countered that “it is routine for other professional such as architects, accountants, and engineers to report settlements and judgments to their appropriate regulator.” Senator Hill described the contractor that built the failed Berkeley balcony as having “in previous years paid out \$26.5 million dollars in construction defect settlements.” However, without a reporting requirement in the current law, the CSLB had no opportunity to perform due diligence to ascertain the reason for the settlements.

As passed, the new law directs the CSLB to study judgments, arbitration awards, and settlements of construction defect claims on rental residential units and, by January 1, 2018, report its recommendation to the Legislature on

the merits of requiring contractors to report such information.

Get involved

The photographs of the torn waterproofing membrane and dry rotted joist ends protruding from the exterior building face following the Berkeley balcony tragedy are compelling, and the personal losses are horrific. Regulatory changes are frequently generated by catastrophes, and SB 465 is a first step toward new regulations of the construction industry.

The SB 465 working group studies regarding further reporting requirements and potential building code changes will be completed this year, and additional legislation is likely to follow. All representatives of the construction industry should make their voices heard regarding the expected new regulations. ■

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