



Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

MODIFIED NOTICE OF MEETING REGULATORY AND ENFORCEMENT COMMITTEE

October 11, 2012
10:00 a.m. to 12:00 p.m.
California Architects Board
2420 Del Paso Road, Suite 105
Sacramento, CA 95834

The California Architects Board (CAB) will hold a Regulatory and Enforcement Committee (REC) meeting via teleconference, as noted above, and at the following locations:

Sheran Voigt
2391 Meadow Ridge Drive
Chino Hills, CA 91707

Michael Merino
629 North Main Street
Orange, CA 92868

Robert De Pietro
Frank De Pietro and Sons
825 Colorado Boulevard, Suite 114
Los Angeles, CA 90041

Fermin Villegas
Atkinson, Andelson, Loya, Rund & Romo
12800 Center Court Drive S., Suite 300
Cerritos, CA 90703

Robert George
851 Cherry Avenue
San Bruno, CA 94066-2900

AGENDA

- A. Review and Approve May 10, 2012 REC Summary Report
- B. Update, Discuss, and Possible Action on Strategic Plan Objective to Define “Instruments of Service” for a Potential Regulatory Proposal
- C. Update, Discuss, and Possible Action on Strategic Plan Objective to Initiate a Conversation with The American Institute of Architects, California Council to Explore the Feasibility of a Qualifications-Based Selection Enforcement Process (Senate Bill 1424)
- D. Discuss and Possible Action on Regulatory Proposal Regarding Board Delegation to Executive Officer Regarding Stipulated Settlements to Revoke or Surrender License

2420 DEL PASO ROAD,
SUITE 105
SACRAMENTO,
CA 95834

916-574-7220 T
916-575-7283 F

cab@dca.ca.gov
www.cab.ca.gov

A quorum of Board members may be present during all or portions of the meeting, and if so, such members will only observe the REC meeting. Agenda items may not be addressed in the order noted below. The meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Hattie Johnson at (916) 575-7203, emailing Hattie.Johnson@dca.ca.gov, or sending a written request to the California Architects Board, 2420 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your requests at least five business days before the meeting will help to ensure availability of the requested accommodation.

The notice and agenda for this meeting and other meetings of the CAB can be found on the Board's Web site: cab.ca.gov. For further information regarding this agenda, please contact Hattie Johnson at (916) 575-7203.

Agenda A

REVIEW AND APPROVE MAY 10, 2012 REC SUMMARY REPORT

The Committee is asked to review and approve the summary report of the May 10, 2012 REC meeting held in Sacramento, California.



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CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

SUMMARY REPORT

REGULATORY & ENFORCEMENT COMMITTEE MEETING

May 10, 2012

Sacramento, California

Committee Members Present

Sheran Voigt, Chair
Fred Cullum
Robert George
Phyllis A. Newton, Esq.
Fermin Villegas

Committee Members Excused

Robert De Pietro
Michael Merino
Larry Segrue

Board Staff Present

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

Guests

Doug Rhodes, California Society of the American Institute of Building
Design

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A. Welcome and Introductions

Regulatory and Enforcement Committee (REC) Chair Sheran Voigt called the meeting to order at 10:00 a.m. She noted that Robert De Pietro, Michael Merino, and Larry Segreue were absent and excused. She indicated that Richard Conrad had resigned from the Committee.

Ms. Voigt welcomed the REC and staff, and requested self-introductions.

- Ms. Voigt announced that Phyllis Newton was a recipient of the Octavius Morgan Distinguished Service Award. She provided a brief history of Ms. Newton's background and work history. She noted that Ms. Newton had recently joined the not-for-profit Miyamoto Disaster Relief as its Executive Director, where she works with structural engineers to help rebuild communities devastated by natural disasters, including earthquake-damaged schools in Haiti. She added that Ms. Newton had been a member of the REC since 2006 and has spent more than two decades and many volunteer hours educating architects on liability, risk management, and other practice related issues. Ms. Newton stated that she was honored to be a recipient and thanked the Board.

B. Enforcement Program Update

Hattie Johnson informed the REC that architect consultants Bob Carter and Barry Williams represented the Board at the California Building Officials (CALBO) 2012 Annual Business Meeting on February 13-17, 2012. She stated that the highlight of the awards luncheon was the presentation of a "special award" to past Board member and REC Chair John Canestro, who was one of the original founders of CALBO.

Ms. Johnson stated that the architect consultants also made a presentation to The American Institute of Architects (AIA) East Bay. Mr. Carter added that the presentation pertained to avoiding violations. He noted that one disappointment was that there were not more candidates and associate members. He stated that the presentation was well received. He indicated that AIA East Bay would like the architect consultants to return to give another presentation with the licensees and a separate presentation for candidates.

Ms. Johnson announced that the next Board meeting was scheduled for June 14, 2012, in Sacramento. She indicated that Marilyn Lyon was now Board President and Ms. Voigt was Vice-President.

Ms. Johnson pointed out that there were currently 83 pending complaint cases in the Board's Enforcement Unit. She noted that compared to March 2011, there were 136 pending cases. She added that in 2010 there were 187 pending cases and in 2009, there were 263 pending cases. She indicated that the enforcement staff had re-doubled their efforts in order to lower the pending caseload.

Ms. Johnson stated that the Board had sent an advisement letter to California planning departments. She reminded the Committee that the 2011 Strategic Plan directed the REC to develop a strategy for working with the League of California Cities and the American Planning Association, California Chapter, to inform them of the Architects Practice Act (Act) requirements. She noted that the Board determined that a letter should be sent to

California planning departments advising them of the Act's requirements pertaining to unlicensed individuals submitting plans for non-exempt projects. Ms. Johnson indicated that the Board for Professional Engineers, Land Surveyors, and Geologists co-signed the letter, which was mailed to all planning departments on April 17, 2012. She added that she had received six contacts from planning departments concerning this letter and for the most part, it was positive feedback. Mr. Carter added that the San Jose building department has a website that contains information about when a licensee is required on a project. He added that some of the individuals have been referred to that website. He noted that the Sonoma County building department website will soon contain a check-in document that will state when a licensee is required on a project and their website will be referred to other jurisdictions as a reference for planning departments.

Robert George stated that when he did a straw poll of building officials in his area, he discovered that the positive responses may be the result of jurisdictions that have a project review board that meets early in a project. He added that it is at this point in a project where a client is advised whether a licensee would be required.

Ms. Voigt reminded the REC that this issue arose due to concern about consumers who unwittingly hire unlicensed individuals for non-exempt projects, not realizing that a licensee would be required to stamp and sign their project.

Doug McCauley noted that initially CALBO was going to co-sign the letter with the Board; however, it voted at its January meeting to stay "neutral" on this issue and to not co-sign the letter. He added that CALBO indicated members did not want to be in the position of telling one of their fellow local departments what they should do.

Ms. Johnson stated that staff is working on a regulation that would allow the Board to delegate authority to the Board's Executive Officer to approve stipulated settlements to revoke or surrender a license.

Ms. Johnson then circulated Consumer Tip Design cards, which contain useful consumer information related to hiring an architect to design a project.

Mr. McCauley noted that the Board recently underwent the Sunset Review process for the third time. He indicated that the Board received no follow-up recommendations from the Legislature. He added that the Board's sunset date was extended to January 1, 2016.

Ms. Johnson asked if anyone had a question regarding the citations issued and administrative actions contained in the meeting packet. Mr. George noted that last year, there was concern about collecting administrative fines assessed in citations. He asked if there was any change this year. Ms. Johnson responded that there were 17 citations issued since the last meeting, the majority to unlicensed individuals. She indicated that four had paid the administrative fine and two were making payments. She added that staff will be utilizing the services of a collection agency in addition to the Franchise Tax Board (FTB) Intercept Program. She stated that letters had been sent to approximately 50 unlicensed individuals, advising that their names would be forwarded to a collection agency if they did not pay their citation fines. She noted that many of the individuals who received the letter are currently making payments to the Board.

Ms. Voigt commented that 12 of the 17 citations issued during this time period were against unlicensed people. Ms. Johnson added that citations issued against unlicensed people are the most difficult to collect fines for. She noted that licensees who have a citation issued and do not pay the fine, cannot renew their license.

Ms. Newton asked if the Board had social security numbers for licensees and if this information was released. Ms. Johnson responded that the Board does have licensees' social security numbers; however, this information is not given to collection agencies. She indicated that the Board can release social security numbers to the FTB because it is a State agency. She stated the FTB Intercept Program allows the FTB to intercept state tax returns or lottery winnings and forward to the Board to satisfy an individual's citation fine. Mr. McCauley noted that there was legislation that would have allowed the Board to release an individual's social security number to a collection agency, but it failed to pass.

Fermin Villegas asked how citation fine amounts were determined. Ms. Johnson responded that it was based on California Code of Regulations section 152(d), which lists the criteria to be considered when assessing the amount of a fine. She added that a fine could go up to \$5,000 for each cause, if certain criteria were met. Mr. Villegas noted that the meeting packet contained information on a citation issued to an unlicensed person for forging an architect's stamp and signature on plans. He asked if this individual could also be criminally charged. Ms. Johnson stated that he could be criminally charged and in fact, this particular case had been referred to the Sacramento District Attorney (DA) who declined to prosecute it. She noted that the case was also referred to the El Dorado County DA; however, staff is not aware whether they accepted the case. She added that this unlicensed individual was making payments to the Board on his citation.

C. Review and Approve May 11, 2011 REC Summary Report

Ms. Voigt asked if there were any comments, corrections. or questions regarding the May 11, 2011 REC Summary Report. Mr. George requested a change on page five, line eight of the Summary Report, stating that when he expressed concern to the city, he was ignored by planning staff. Ms. Newton asked that page eight, line four should state that there are legal issues concerning an applicant or licensee's right to earn a livelihood.

A motion was made by Robert George and seconded by Fred Cullum to approve the May 11, 2011 REC Summary Report with the changes noted. The motion passed 5-0.

D. Discuss and Possible Action on Strategic Plan Objective to Pursue an Amendment to Clarify Consumers' Rights with Respect to Confidentiality

Ms. Voigt stated that this issue arose due to concern that confidentiality settlements or agreements would preclude consumers from responding to the Board's request for information concerning the settlement or agreement.

Ms. Johnson reviewed the suggested amendments to Business and Professions Code (BPC) section 5588.3. Ms. Newton noted that she was concerned that just stating "or other parties" was vague and suggested that "to a settlement agreement" be added to "or other parties."

Mr. McCauley indicated that legal counsel had suggested additional information to augment this amendment; however, it would specifically prohibit the use of a confidentiality clause. He noted that adding the additional information might make it more difficult to pass legislation.

Vickie Mayer asked Ms. Newton if she felt “or confidential agreement” should be added to the recommendation above, so that it would be consistent to the other similar references. Ms. Newton agreed that this should be added.

Mr. Villegas asked why this statute was limited only to licensees and not unlicensed people. Ms. Johnson responded that unlicensed people are not required to report settlement agreements.

A motion was made by Phyllis Newton and seconded by Robert George to approve the proposed amendment to BPC section 5588.3 with changes as discussed and recommend it to the Board. The motion passed 5-0.

E. Discuss and Possible Action on Strategic Plan Objective to Review Department of Consumer Affairs’ Best Practices, and Analyze and Adjust CAB’s Enforcement Procedures Where Appropriate

Ms. Voigt reviewed the list of best practices attached to this agenda item. She noted that only the items highlighted in blue required review by the REC. Ms. Johnson indicated that the items highlighted in blue were issues that were already being pursued by the Board or Department of Consumer Affairs (DCA). She asked the REC whether they felt there were any additional tasks that could be added to the list or deleted. She added that these tasks were recommended by the boards and bureaus within DCA and other states’ regulatory agencies. She noted that the majority of these recommended best practices were intended for the healing arts boards.

Ms. Newton asked if the item “Provide consumer information booklets or brochures” was still possible due to the State’s limited budget. Ms. Mayer responded that it was the promotional given away items at consumer fairs that were discontinued and prohibited. She noted that the *Consumer’s Guide to Hiring an Architect* is currently being formatted by DCA’s publication unit. Ms. Newton asked if the Act was in print. Ms. Mayer indicated that it is available on the Board’s website. She stated that if someone does not have access to a computer, Board staff will print it out and mail it to the individual. She noted that the *Consumer’s Guide to Hiring an Architect* will be printed and sent to building officials for distribution.

A motion was made by Fermin Villegas and seconded by Fred Cullum to recommend to the Board that it approve the best practices as presented. The motion passed 5-0.

F. Discuss and Possible Action on Strategic Plan Objective to Define “Instruments of Service” for a Potential Regulatory Proposal

Mr. Carter stated that the Board has been asked many times by individuals about the definition of “instruments of service.” He stated that he has always relied on AIA’s

definition. He indicated that the Certified Access Specialist Institute (CASI) went to the Legislative Counsel to obtain an interpretation as to whether Certified Access Specialist program (CASp) reports would be considered instruments of service that would require a stamp and signature. Mr. Carter explained that the Legislative Counsel opined that they are not final documents; therefore, they are not instruments of services. He noted that this is contrary to the standard of the profession. He stated that the Act should contain a definition of instruments of service, as the Landscape Architects Practice Act does.

A draft definition of instruments of service was distributed to those in attendance. Mr. Carter explained that Board staff had prepared the draft utilizing elements from the Landscape Architects Practice Act and AIA. He noted that staff had requested that legal counsel review it.

Ms. Newton stated that she was concerned about using the term “cost estimates” and that “calculations” was a little vague in the draft language. She wondered if this meant Title 24 calculations. Mr. George responded that building departments are requiring more and more calculations, not just structural but sustainability, egress, parking, etc. He noted that he felt that calculations should be included in the definition. He stated that some items need to be further defined as to whether they are required or should be included in a contract for services.

Mr. Carter noted that the draft language contains a list of services an architect can include in his contract; it does not require an architect to perform all of these items. Ms. Newton indicated that the terms “calculations” and “studies” are very broad. She wondered how the courts had defined the term “instruments of services.” She noted that there was case law on this issue. Mr. Carter agreed that case law should be reviewed. He noted that BPC section 5500.1, the definition of architecture, includes studies, analysis, and reports. He stated that whatever an architect does for another person, including studies, analysis, and reports, would be considered instruments of services. He explained that the definition of instruments of service that the Legislative Counsel provided to CASI included case law from more than 50 years ago. He indicated that the Board’s legal counsel had stated that there was more recent case law that broadens the definition.

Ms. Newton stated that a color spectrum study might be a service provided by an architect, which would be applicable to architects’ standard of practice. She wanted to ensure that this is what the Board was looking for, i.e., that it is a deliberative process in that a color spectrum study would be subject to the standard of practice.

Mr. Cullum questioned whether CASps who are architects are treated differently than unlicensed CASps. He wondered if this means that they are subject to a further level of review than unlicensed CASPs while providing the same service. Mr. Carter responded that this was addressed in a letter the Board sent to CASI, which will be discussed under Agenda Item H. He noted that CASps who are licensed as architects are not held to a higher standard as a CASp; they are held to a higher standard because they are architects, by virtue of the license. He explained that if the Board receives a complaint against an architect who is a CASp, the complaint will be treated as all complaints are. He added that if the complaint is relative to a CASp report or CASp study, it is forwarded to the Division of the State Architect (DSA) because they certify CASps and the Board may take action against the architect based on the DSA’s disposition.

Following discussion, the REC determined that further work was required on this issue, such as researching case law. Mr. Carter indicated that one of staff's concerns is that the proposed language refers to "...a person licensed to practice architecture..." He questioned whether this definition should include unlicensed individuals. He stated this language could allow unlicensed people to state they do not have to sign plans pursuant to BPC section 5536.1, which requires all people to sign instruments of service, because plans prepared by unlicensed people are not instruments of service.

Ms. Newton volunteered to assist in further research of this issue and case law. Ms. Voigt asked that when staff gathers more information, it be disseminated to the REC so that it can determine whether a task force should be formed or if another meeting was required, possibly by telephone conference.

G. Discuss and Possible Action on Strategic Plan Objective to Initiate a Conversation with The American Institute of Architects, California Council, to Explore the Feasibility of a Qualifications-Based Selection Enforcement Process (Senate Bill 1424)

Mr. McCauley explained that at the Board's Strategic Planning session, The American Institute of Architects, California Council's (AIACC) representative indicated that AIACC was reviewing legislation to assist with issues related to local agencies who do not adhere to the Qualifications-Based Selection (QBS) process. He noted that the remedy AIACC was reviewing was to add a statute to the Act that would make it a violation for an architect to respond to a procurement process where cost data is being requested in the early phases of QBS. He added that the Board was interested in this issue as a number of architect members do public projects and are involved with the QBS projects.

Mr. McCauley stated that AIACC introduced legislation (Senate Bill 1424 Harman) without Board input. He indicated that the bill failed on a party line vote in the Senate Business and Professions Committee. He added that the only group that opposed the bill was Professional Engineers in California Government, which is the union that represents architects and engineers in State government.

Mr. McCauley indicated if there is a jurisdiction that was not following the QBS process, the right of appeal would be the city council or city manager that has oversight of that entity. He stated that it is really not a Practice Act issue. He noted that AIACC's view of the issue with respect to the legislation is that it would provide a useful tool so if there was a Request for Qualifications (RFQ) that requested cost data, the architect could advise the jurisdiction that he could not respond to the RFQ because he would be in violation of the Act.

Mr. McCauley explained that the Board must follow-up on any complaints it receives. He noted that if a firm pursues an RFQ that requests cost data and prevails, and the firm that did not get the work files a complaint against the winning firm, should the Board issue a citation against the winning firm? He indicated that he did not know whether this bill would be introduced again and suggested that the issue be monitored.

Ms. Newton stated that if taxpayer resources were going to be expended to this issue, she would rather see the money go to an educational effort and some form of enforcement action against the entity violating the law. Mr. McCauley indicated that the Board's President and Vice President agreed with Ms. Newton's sentiment concerning education.

A motion was made by Phyllis Newton and seconded by Robert George that it recommend to the Board that this issue be monitored. The motion passed 5-0.

H. Update on Response to Certified Access Specialist Institute's Questions on Architects Practice Act

Mr. Carter noted that CASI sent the Board several questions following receipt of an opinion from the Legislative Counsel regarding instruments of service. He explained that the Board did not agree with the Legislative Counsel's opinion. He noted that CASI's president is an architect and he was asked by his members whether they had to stamp and sign their reports and have written contracts as architects when providing CASp services. He stated that the Board made specific responses to CASI's three questions and the letter was sent. He explained that the Board's position was that any services provided by an architect, whether CASp related or not, are the instruments of their service. He added that as evidence of responsible control of those documents, an architect would stamp and sign them as well as execute a written agreement. Mr. Carter explained that a CASp inspects and reports on American With Disabilities Act (ADA) or Title 24 violations, i.e., a door is not wide enough, the ramp is at an incorrect slope, etc., which are services that can be provided by both licensed and unlicensed CASps. He noted, however, that only licensees can make a recommendation to reconcile the ADA or Title 24 violation for non-exempt buildings.

Mr. George stated that he appreciated the effort that went into developing the response to CASI's questions. He stated that he now has a better understanding of this issue. Mr. Carter noted that CASI has not responded to the Board's letter.

I. Update on California Commission on Disability Access

Mr. McCauley indicated that staff had invited a speaker from the California Commission on Disability Access (CCDA), but had not received a reply. He noted that he wanted to share information regarding CCDA because it has jurisdiction over many accessibility related issues. He stated that one of the items includes the Board's requirement for continuing education concerning disability access. He added it also has authority to review legislative bills and take positions on bills regarding accessibility. Mr. McCauley indicated that he would continue to pursue a speaker from CCDA.

Ms. Voigt asked if there were any public comment. There being none, the meeting adjourned at 11:15 a.m.

UPDATE, DISCUSS, AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO DEFINE “INSTRUMENTS OF SERVICE” FOR A POTENTIAL REGULATORY PROPOSAL

The California Architects Board’s (Board) 2012 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to define what “instruments of service” is and determine whether there should be a regulation defining such.

This issue arose based upon a question by the Certified Access Specialist Institute (CASI), which represents approximately 150 certified access specialists (CASp) in California, the majority of which are architects and building officials. CASI inquired whether CASp services performed by a California licensed architect are considered instruments of architectural services and covered under the requirements of the Architects Practice Act (Act).

There are numerous terms used in the Act to describe the documents an architect may prepare or exercise responsible control over, which demonstrate that the term “instruments of service” includes more than just final documents for construction. Below are the various references to documents found in the Act:

- Business and Professions Code section (BPC) 5535.1: uses “...*architectural instruments of service...*” in definition of responsible control;
- BPC 5536.1 (a) and (c): uses “...*plans, specifications, and instruments of service...*” in defining documents to be signed and stamped;
- BPC 5536.22: uses “...*plans and specifications for the construction, alteration, improvement, or repair of a building or structure...*” in clarifying statement of licensure and signing and stamping;
- BPC 5536.25: uses “...*plans, specifications reports, or documents...*” and “...*or other contract documents...*” in defining types of documents an architect would sign and stamp for which they are not responsible for damages due to unauthorized changes;
- BPC 5537 (a): uses “...*plans, drawings, or specifications...*” in description of documents for exempt project types;
- BPC 5537 (b): uses “...*plans, drawings, specifications, or calculations...*” to describe documents to be signed and stamped by an architect or engineer to mitigate non-conventional framing issues;
- BPC 5538: uses “...*plans, drawings, specifications, instruments of service, or other data...*” in definition of exempt non-structural or non-seismic projects; and
- California Code of Regulations section (CCR) 151: uses “...*any instrument of service...*” and “...*all stages of the design documents...*” in aiding and abetting definition.

The Landscape Architects Practice Act, CCR 2602(f) defines instruments of service as:

“Instruments of service” means finalized working drawings, contract proposals, site analyses, environmental review documents, inspection reports, cost estimates, planning studies, and specifications which have been prepared by a person who holds a valid license to practice landscape architecture in this State or which have been prepared under his or her immediate and responsible direction.”

The American Institute of Architects defines instruments of service in Volume 1 of their *Architect's Handbook of Professional Practice* as:

“Instruments of service: drawings, specifications, and other documents prepared by the architect as part of the design process. In addition to drawings and specifications comprising the construction documents, instruments of service may be in any medium and include sketches, preliminary drawings, outline specifications, calculations, studies, analyses, models, and renderings.”

At the REC's May 10, 2012 meeting, member Phyllis Newton volunteered to assist in researching case law for this issue. Her findings are included in the attached Memo.

The REC is asked to review the definitions above, the relevant Act provisions, and Ms. Newton's case law findings to determine whether there should be a regulation defining “instruments of service,” and make a recommendation to the Board.

Attachment

Memo From Phyllis Newton Regarding Definition of “Instruments of Service,” dated July 26, 2012

MEMO

To: Hattie Johnson
From: Phyllis A. Newton
Date: July 26, 2012
Re: Definition of "Instruments of Service"

You asked for assistance in locating a definition of the term "Instruments of Service" as that term relates to the practice of architecture in California. The following are the results of a limited search conducted on July 25, 2012.

AIA Definition

Section 1.1.7 of the General Conditions of the Contract for Construction (AIA A-201 2007 Edition) provides the following definition:

§1.1.7 INSTRUMENTS OF SERVICE

Instruments of service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

Case Law

Using the AIA Citator, I did not find any cases interpreting Section 1.1.7 of the A-201. I did, however, find two very old California cases that address the question of what constitutes "Instruments of Service." Whether these definitions would be relevant today is questionable.

In *Joseph v. Drew*, the plaintiffs were licensed architects in partnership with a licensed general contractor. *Joseph v. Drew* (1950) 36 Cal.2d 575. The name of the firm included the contractor's last name along with the two architects until the contractor's death. Thereafter, the firm's name only included the names of the two licensed architects and the firm only engaged in the practice of architecture.

During the existence of the partnership, the defendants retained the firm to prepare drawings and specifications for several proposed buildings. Although some fees were paid, the plaintiffs brought an action to recover outstanding fees. In response, the defendants asserted that the plaintiffs were not legally competent to collect fees for architectural services since one of the partners was not an architect. They also sought recovery of the fees they previously had paid. All of the services were performed by the licensed architects. The lower court found that the plaintiffs were not entitled to collect their outstanding fees and also ordered that the paid fees be returned.

Section 5536 of the Architects Act provided in relevant part: "This chapter does not prevent an architect from forming a partnership with persons who are not architects but the name of the architect shall appear as the architect on all **instruments of service** and in no case may the other members of the partnership be designated as architects." Although many of the plans and specifications submitted to the defendants contained the firm name which included the contractor's last name, the plans

submitted to the building department only identified the two architects and their respective license numbers.

To assist the court in determining whether the firm failed to meet the statutory requirement of identifying the architects on all instruments of service, one of the plaintiff's, who the court noted was a duly qualified and competent witness, testified that the term "instruments of service" has a generally accepted meaning when used in connection with the architectural profession; that as so used the term refers to the 'final' plans and specification 'utilized for the actual construction of the building' as distinguished from 'preliminary' sketches and drawings." Thus, according to the plaintiff, only the plans submitted to the building department were required to carry the legend identifying the plaintiff architects.

The defendants, on the other hand, argued that the term "instruments of service" should be construed "as an all-inclusive phrase covering plans, drawings, specifications and other data relating to the practice of architecture – in short, all written instruments issued by the architect." The court held, however, that because the defendants had not offered any evidence to contradict the definition of instruments of service provided by the plaintiffs when they had the opportunity to do so, the uncontroverted testimony was to be accepted. As the term was defined, the plaintiffs satisfied the statute. Accordingly, the lower court's ruling was overturned and the architects were permitted to recover their fees.

Approximately five years later, in *People v. John Lloyd Wright*, the defendant was charged, in two separate actions, with violating the Civil Engineers Act and the Architects Act, respectively. *People v. John Lloyd Wright* (1955), 131 Cal.App.2^d Supp. 583. The defendant was not licensed under either act. The lower court dismissed both complaints without leave to amend and the state appealed.

In the action under the Architects Act, the defendant was charged with engaging in the practice of architecture in violation of section 5537 and in advertising that he was an architect in violation of section 5536. At the time, section 5537 provided:

This chapter does not prohibit a person from making any plans or drawings for his own buildings or from furnishing to other persons, plans, drawings, specifications, instruments of service, or other data for buildings if, prior to accepting employment or commencing work on such plans, drawings, specifications, instruments of service, or other data, the person so furnishing such plans, drawings, specification, instruments of service, or data, fully informs such other person or persons, in writing, that he, the person proposing to furnish such plans, drawings, specifications, instruments of service or data, is not an architect.

This section was adopted in 1939 from the original 1901 Act as amended in 1929. The 1929 amendment substituted the words "plans, drawings, specifications, **instruments of service**, or other data for buildings" for what was previously simply "plans or other data for buildings." (Emphasis added.) The court noted that the words "instruments of service" had been determined in *Joseph v. Drew* (see above), "to signify to the profession the final plans and specifications utilized for the actual construction of the building as distinguished from preliminary sketches and drawings."

In affirming the lower court's dismissal of the complaint under the Architects Act, the court noted that section 5537 expressly authorized the defendant to perform the services outlined in the statute subject to giving the required notice.

Agenda C

UPDATE, DISCUSS, AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO INITIATE CONVERSATION WITH THE AMERICAN INSTITUTE OF ARCHITECTS, CALIFORNIA COUNCIL TO EXPLORE THE FEASIBILITY OF A QUALIFICATIONS-BASED SELECTION ENFORCEMENT PROCESS (SENATE BILL 1424)

The California Architects Board's (Board) 2012 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to initiate a conversation with The American Institute of Architects, California Council (AIACC) to explore the feasibility of a qualifications-based selection enforcement process.

Government Code section 4526, also known as the "Mini-Brooks Act," mandates that contracts with state and local agencies for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms, be awarded on demonstrated competence and professional qualifications rather than competitive bidding. This law also mandates that state agencies adopt by regulation, and provides local agencies discretionary authority to adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies.

Senate Bill (SB) 1424 (Harman) was introduced on February 24, 2012. This bill would have required that architects licensed by the Board, as well as professional engineers and land surveyors registered with the Board for Professional Engineers, Land Surveyors, and Geologists, comply with the above law when competing for contracts with state or local agencies for architectural, engineering, or land surveying services. The bill was heard on April 23, 2012 by the Senate Business, Professions, and Economic Development Committee. It failed to pass. AIACC has indicated it will re-introduce the bill next year.

On September 26, 2012, Board staff met with Kurt Cooknick, Director of Regulation and Practice, AIACC, to discuss concerns such as how difficult it might be to prosecute a licensee who violated such a statute. In addition, staff advised Mr. Cooknick that this appeared to be an issue related to local and state agencies that contract for professional services. Mr. Cooknick indicated he would discuss this issue and the Board's concerns with the AIACC Board in November.

The REC is asked to consider staff's initial discussion with AIACC and recommend a course of action.

Attachments:

1. Government Code Sections 4525 – 4629.20
2. SB 1424 (Harman)
3. Bill Analysis

Qualification Based Selection: State Law

Government Code, Title 1, Division 5,

Chapter 10, §§4525—4529.5

Chapter 10.1, §§4529.10—4529.20

4525. Definitions in the Little Brooks Act

For purposes of this chapter, the following terms have the following meanings:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

[Amended; Chapter 432, Statutes of 1993]

4526. Selection must be made on demonstrated competence and professional qualifications state and local

Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

[Amended, Chapter 314, Statutes of 1991]

4526.5 Public contract code

A state agency head entering into a contract pursuant to this chapter shall, in addition to any other applicable statute or regulation, also follow Section 6106 of the Public Contract Code.

[Added, Chapter 1128, Statutes of 1990]

4527. Qualification for state contracts—optional locally

In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

[Amended, Chapter 314, Statutes of 1991]

4528. Mandatory state procedures—optional locally

(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

[Amended, Chapter 314, Statutes of 1991]

4529. Exception for non-professional services

This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

[Amended, Chapter 1016, Statutes of 1988]

4529.5. Evidence of expertise and experience

Any individual or firm proposing to provide construction project management services pursuant to this chapter shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

[Added, Chapter 698, Statutes of 1987]

4529.10. A/E defined

For purposes of Article XXII of the California Constitution and this act, the term "architectural and engineering services" shall include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services.

4529.11. STIP projects subject to Article XXII

All projects included in the State Transportation Improvement Program programmed and funded as interregional improvements or as regional improvements shall be subject to Article XXII of the California Constitution. The sponsoring governmental entity shall have the choice and the authority to contract with qualified private entities for architectural and engineering services. For projects programmed and funded as regional improvements, the sponsoring governmental entity shall be the regional or local project sponsor. For projects programmed and funded as interregional improvements, the sponsoring governmental entity shall be the State of California, unless there is a regional or local project sponsor, in which case the sponsoring governmental entity shall be the regional or local project sponsor. The regional or local project sponsor shall be a regional or local governmental entity.

4529.12. A/E services must be procured by fair process

All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

4529.13. Design and safety standards not changed: alternate design-build procurement permitted

Nothing contained in this act shall be construed to change project design standards, seismic safety standards or project construction standards established by state, regional or local governmental entities. Nor shall any provision of this act be construed to prohibit or restrict the authority of the Legislature to statutorily provide different procurement methods for design-build projects or design-build-and-operate projects.

4529.14. Standard accounting practices apply

Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

4529.15. Article XXII only applies to A/E

This act only applies to architectural and engineering services defined in Government Code section 4529.10. Nothing contained in this act shall be construed to expand or restrict the authority of governmental entities to contract for fire, ambulance, police, sheriff, probation, corrections or other peace officer services. Nor shall anything in this act be construed to expand or restrict the authority of governmental entities to contract for education services including but not limited to, teaching services, services of classified school personnel and school administrators.

4529.16. No loss of federal funds

This act shall not be applied in a manner that will result in the loss of federal funding to any governmental entity.

4529.17. Provisions severable

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

4529.18. Supremacy of Proposition 35

If any act of the Legislature conflicts with the provisions of this act, this act shall prevail.

4529.19. Proposition 35 to be construed liberally

This act shall be liberally construed to accomplish its purposes.

4529.20. Applicable to all governmental agencies

This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.

Introduced by Senator HarmanFebruary 24, 2012

An act to add Sections 5536.23, 6749.5, and 8759.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1424, as introduced, Harman. Professions and vocations: architects, professional engineers, and land surveyors: contracting with state or local agencies.

Existing law provides for the licensure and regulation of persons engaged in the practice of architecture by the California Architects Board and authorizes that board to discipline architects. Existing law provides for the licensing and regulation of professional engineers and land surveyors by the Board for Professional Engineers, Land Surveyors, and Geologists, and authorizes that board to discipline professional engineers and licensed land surveyors.

Existing law allows the making of contracts by state and local agency heads for architectural, landscape architectural, engineering, environmental services, land surveying, or construction project management services based on demonstrated competence and professional qualifications rather than competitive bidding. Existing law also requires state and local agencies to adopt procedures that prohibit unlawful activity in the making of contracts for these services, including rebates or kickbacks, and requires that individuals or firms proposing to provide services under these provisions provide evidence to the state or local agency of their expertise and experience in the provision of these services.

This bill would require that architects licensed by the California Architects Board, as well as professional engineers and land surveyors

licensed by the Board for Professional Engineers, Land Surveyors, and Geologists, comply with these provisions when competing for contracts with state or local agencies for the provision of architectural, engineering, or land surveying services.

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

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

- 1 SECTION 1. Section 5536.23 is added to the Business and
- 2 Professions Code, to read:
- 3 5536.23. When competing to provide architectural services to
- 4 a state or local agency, an architect shall comply with the
- 5 provisions of Chapter 10 (commencing with Section 4525) of
- 6 Division 5 of Title 1 of the Government Code.
- 7 SEC. 2. Section 6749.5 is added to the Business and Professions
- 8 Code, to read:
- 9 6749.5. When competing to provide engineering services to a
- 10 state or local agency, a professional engineer shall comply with
- 11 the provisions of Chapter 10 (commencing with Section 4525) of
- 12 Division 5 of Title 1 of the Government Code.
- 13 SEC. 3. Section 8759.5 is added to the Business and Professions
- 14 Code, to read:
- 15 8759.5. When competing to provide land surveying services
- 16 to a state or local agency, a professional land surveyor shall comply
- 17 with the provisions of Chapter 10 (commencing with Section 4525)
- 18 of Division 5 of Title 1 of the Government Code.

|Hearing Date: April 16, 2012 |Bill No:SB
| |1424 |

SENATE COMMITTEE ON BUSINESS, PROFESSIONS
AND ECONOMIC DEVELOPMENT
Senator Curren D. Price, Jr., Chair

Bill No: SB 1424 Author:Harman
As Introduced: February 24, 2012 Fiscal:Yes

SUBJECT: Professions and vocations: architects, professional engineers, and land surveyors: contracting with state or local agencies.

SUMMARY: Requires architects, engineers and land surveyors, when competing to provide services to a public agency, to comply with the law relating to entering into contracts based on demonstrated competence and professional qualifications rather than competitive bidding.

Existing law, the Business and Professions Code (BPC):

- 1)Licenses and regulates the practice of architecture under the Architects Practice Act by the California Architects Board (CAB) within the Department of Consumer Affairs (DCA).
 - a) Provides that CAB may take disciplinary action against an architect for the commission of an act or omission that is grounds for disciplinary action under the Architects Practice Act. (BPC § 5560)
 - b) Provides that the fact that an architect is practicing in violation of the Architects Practice Act is grounds for disciplinary action. (BPC § 5578)
- 2)Licenses and regulates the practice of professional engineers under the Professional Engineers Act, and land surveyors under the Professional Land Surveyors Act by the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG), within the DCA.

- a) Provides that BPELSG may take disciplinary action against an engineer for a violation of any provision of the Professional Engineers Act. (BPC § 6775)
- b) Provides that BBELSG may take disciplinary action against a land surveyor for any violation of any provision of the Professional Land Surveyors Act or of any other law relating to or involving the practice of land surveying. (BPC § 8780)

Existing law, the Government Code (GC):

- 1) Requires state and local agencies (public agencies) to enter into contracts for architectural, landscape architectural, engineering, environmental services, land surveying, or construction project management services based on demonstrated competence and professional qualifications rather than competitive bidding. (GC § 4526)
- 2) Requires public agencies to adopt procedures that prohibit unlawful activity in the making of contracts for these services, including rebates or kickbacks. (GC § 4526)
- 3) Requires that individuals or firms proposing to provide services under these provisions provide evidence to the state or local agency of their expertise and experience in the provision of these services. (GC § 4529.5)

This bill:

- 1) Provides within the Architects Practice Act, that when competing to provide architectural services to a public agency, an architect shall comply with the law relating to entering into contracts based on demonstrated competence and professional qualifications rather than competitive bidding.
- 2) Provides within the Professional Engineers Act, that competing to provide engineering services to a public agency, a professional engineer shall comply with the law relating to entering into contracts based on demonstrated competence and professional qualifications rather than competitive bidding.
- 3) Provides within the Professional Land Surveyors Act, that when competing to provide land surveying services to a public agency, a professional land surveyor shall comply with the law relating to entering into contracts based on demonstrated competence and professional qualifications rather than competitive bidding.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1.Purpose. This bill is sponsored by American Institute of Architects, California Council (Sponsor) to add a clause in the Practice Acts of architects, professional engineers, and land surveyors that they are required to follow the Mini-Brooks Act (Government Code 4525 et seq).

According to the Sponsor, the Mini-Brooks Act, requires a Qualifications Based Selection (QBS) criteria which allows for a process for selecting competing design professional firms according to their qualifications for the project rather than price. If the public agency and the design firm can reach an agreement that includes a fair and reasonable price to the public agency, the two parties can enter into a contract.

The Sponsor indicates that more public agencies are using price as a selection criteria, asking for an estimate of cost before qualifications and the scope of the project have been established, with some coming very close to selecting design professionals using a low-bid method of selection. Likewise, more design professionals are engaging in competition practices that violate the QBS law

The Sponsor believes that the bill will allow architects, professional engineers, and land surveyors to not be pressured into providing a price before entering into negotiations that will determine the level of services needed to design the project and meet the needs of the public agency. This bill would make a violation of the Mini-Brooks Act a violation of the design professional's licensure, thus empowering the design professional to follow the intent of existing California law, according to the Sponsor.

2.Background. The California Qualifications Based Selection (QBS) statute, effective January 1, 1990, allows for a process designed to rank competing design professional firms according to their qualifications for the project. After ranking the competing firms, the public agency negotiates with the top ranked firm on the scope of services and fees. If the two parties can reach an agreement that includes a price that is "fair and reasonable" to the public agency, the two parties can enter into a contract.

The Sponsor states that while the QBS statute is very clear that price is a negotiation item, as opposed to a selection item, a 2000 statute enacted by the voters with the passage of Proposition 35 arguably allows public agencies to use price as a selection item. This was not, according to the Sponsor, the intent of Proposition 35; nevertheless, it is being used to justify the use of price as a selection criteria by some public agencies.

The reason for qualifications and competence being the ranking criteria and price being a negotiated item is a recognition that the success of a project depends on the quality of the work performed by the design professional. Additionally, at the time for the Request for Qualifications, there is nothing for the design professional to competitively bid because full expectations of the project have not been determined.

3. Qualifications Based Selection (QBS). QBS refers to a procurement process established by the United States Congress as a part of the federal Brooks Act (40 USC 1101 et. seq.) and further developed as a process for public agencies to use for the selection of architectural and engineering services for public construction projects. It is a competitive contract procurement process whereby consulting firms submit qualifications to a procuring entity (public agency) who evaluates and selects the most qualified firm, and then negotiates the project scope of work, schedule, budget, and fees.

A primary element under a QBS procurement is that the cost of the work (price) is not considered when making the initial selection of the best or most appropriate provider of the professional services required. Fees for services will be negotiated, however, following selection and before contracting.

Many states in the US have adopted their own versions of the Brooks Act, commonly called a "Mini-Brooks Act."

The QBS process is intended for public agencies to select a qualified and competent design professional for the project at a fair and reasonable price to the public agency. For example, a local health care district that is building a hospital should hire an architect with experience and demonstrated competence in designing health care facilities, and the state when building a bridge or dam should hire a design team with experience and demonstrated competence in designing bridges or dams, respectively. The QBS process is intended to enable the design professionals to be selected based upon their qualifications and experience rather based upon the

lowest bid.

4. Proposition 35. In 2000, California voters enacted Proposition 35 which amended the California Constitution to allow the state and local governments to contract with qualified private entities for architectural and engineering services for all phases of a public works project. Since 1934, governmental entities in California had been allocated most public works architectural and engineering contracts because courts interpreted the Constitution to give civil servants a first right to these projects.

Since enacted, it has been argued that by requiring "a fair competitive selection process" Proposition 35 limited public agencies to choosing the lowest bidder, rather than using a qualifications-based procedure. The Sponsor states that was not the intent of the authors of Proposition 35; nevertheless, it is being used to justify the use of price as a selection criteria by some public agencies.

5. Arguments in Support. The California Land Surveyors Association (CLSA) states that the QBS bid/selection process initially ensures that all design professionals are qualified for the project, and that the price of the project is not considered until after the selection and ranking of the qualified design professional. Unfortunately, according to CLSA, many state and local agencies are forcing design professionals to compete on the basis of price, rather than on the basis of qualification for the specific project. SB 1424 merely requires that design professionals (architects, engineers, and land surveyors) comply with the existing provisions of California's QBS statute contained in Government Code 4525 et seq. If a design professional fails to comply with this existing and well known body of California law, the architect, engineer, or land surveyor would be subject to a disciplinary action from their specific licensing board, according to CLSA.

6. Arguments in Opposition. Professional Engineers in California Government (PECG) believes existing law provides sufficient clarity with respect to how architects and engineers bid on services. PECG does not believe any additional legislation is necessary. Further, PECG believes that the qualification based selection system does not provide the best deal to the taxpayer because cost is not the primary rationale for awarding contracts. Anything governments can do to inject cost as more of a subjective factor can only benefit taxpayers, according to PECG.

7. Policy Issues . By explicitly stating within the respective licensing acts for architects, engineers and land surveyors, that an

architect, engineer or land surveyor must comply with the provisions of the Government Code relating to entering into contracts based on demonstrated competence and professional qualifications, rather than competitive bidding, this bill shifts enforcement of the contract process to the respective licensing boards. It is unclear whether the California Architects Board or the Board for Professional Engineers, Land Surveyors, and Geologists is capable of, or equipped to enforce the law relating to contracting with public agencies.

In addition, the requirements that this bill would place upon architects, engineers and land surveyors may be unclear. The bill requires the architects, engineers and land surveyors to comply with contracting law requirements placed upon public agencies (specifically, Chapter 10 (commencing with Section 4525) of Division 5 of Title I of the Government Code). That law places requirements upon state agencies and local agencies contracting for projects. It is unclear how design professionals comply with mandates placed upon public agencies.

SUPPORT AND OPPOSITION:

Support:

American Institute of Architects, California Council (Sponsor)
California Land Surveyors Association

Opposition:

Professional Engineers in California Government

Consultant:G. V. Ayers

Agenda D

DISCUSS AND POSSIBLE ACTION ON REGULATORY PROPOSAL REGARDING BOARD DELEGATION TO EXECUTIVE OFFICER REGARDING STIPULATED SETTLEMENTS TO REVOKE OR SURRENDER LICENSE

The California Architects Board's (Board) 2011 Strategic Plan directed the Regulatory and Enforcement Committee (REC) to review and make recommendations concerning Department of Consumer Affairs' proposals regarding Senate Bill (SB) 1111. This legislation failed to pass, but DCA encouraged boards and bureaus to review the provisions included in SB 1111 to determine whether they might be utilized to improve their enforcement processes.

At its May 11, 2011 meeting, the REC voted to recommend to the Board that it pursue the proposal that addresses delegation to the Executive Office (EO) to approve stipulated settlements to revoke or surrender a license. At its June 16, 2011 meeting, the Board agreed with the REC's recommendation. At its September 15, 2011 meeting, the Board approved proposed language and directed staff to proceed with the rulemaking file.

For purposes of this proposal, existing California Code of Regulations section (CCR) 103 of the Architects Practice Act describes the authorities the Board has delegated to the EO for various disciplinary functions. Legal counsel recommended, and the Board agreed, that this section is the appropriate section to extend the EO's delegation for the approval of settlement agreements for revocation or surrender of a license.

Attached for the REC's review is the Board's approved proposed regulatory language.

Attachment

Proposed Regulatory Language CCR 103

CALIFORNIA ARCHITECTS BOARD
PROPOSED REGULATORY LANGUAGE

Article 1. Delegation of Certain Functions

Amend Section 103 as follows:

Section 103, Delegation of Certain Functions.

* * *

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the business-like dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; [to approve settlement agreements for the revocation or surrender of license](#); and the certification and delivery or mailing of copies of decisions under Section 11518 of the Government Code are hereby delegated to and conferred upon the executive officer of the Board.