

Proposal #2 – Construction Contractors Board Enforcement Powers

June 28, 2006

During the May 24, 2006 meeting, the Task Force moved directed staff “to investigate whether improvements in the CCB’s method of researching corporate entities should be a recommendation of this task force.”¹ In the same meeting, the Task Force also moved to approve the following concepts:

- Increase the authority of the Construction Contractors Board to terminate the license of a contractor with a history of problems.
- Provide CCB with emergency suspension powers.
- Increase power of CCB to investigate and prosecute contractors.
- Give the Construction Contractors Board the authority to issue criminal citations against the most egregious contractors.²

Finally, the Task Force directed staff to “investigate whether improvements in the CCBs method of inquiring into the criminal history and financial stability through the application process should be a recommendation of this task force.”³

Testimony from panelists and the public suggest a general interest in enhancing the CCB’s enforcement authority. During the owner panel that testified in January 25, 2006, Betsy Lee “recommended that there needs to be...penalties for bad contractors.”⁴ In written testimony, Ms. Lee suggested higher standards for enforcement and criminal penalties for some contractors.⁵ During the public comment period held on February 15, 2006, Renee Haynes of Homeowners Against Deficient Dwellings suggested that the Task Force consider contractor license suspensions, meaningful civil penalties and criminal prosecutions.⁶ Larry Peabody, of the Oregon Remodelers Association, also testified during the February 15th meeting that the CCB needs more “teeth” and “enforcement tools.”⁷

During the joint Building Codes Division and Construction Contractors Board presentation on April 11, 2006, Craig P. Smith, Administrator of CCB, suggested three points for consideration: First, expand CCB’s authority to immediately suspend licenses of contractors that fail to pay construction debts. Second, strengthen revocation laws so that owners and officers of construction businesses that have been the subject of a CCB revocation proceeding are precluded from becoming an officer, owner or RMI of a new CCB license for a set period of time (i.e., one to two years). Finally, give criminal citation authority to CCB Special Investigations Unit (SIU) investigators.⁸ At the close of the April 11, 2006 meeting, Task Force members expressed preliminary approval on enforcement concepts.

After reviewing Task Force direction, testimony and research, staff examined immediately canceling a contractor’s license, prohibiting contractors with disciplinary problems from entering the business as a new corporate entity, and conferring on the CCB more authority to investigate and prosecute contractors in the criminal justice system.

Emergency Suspension of Contractor Licenses

¹ Audio recording: Construction Claims Task Force (May 24, 2006) (on file with author).

² Id.

³ Id.

⁴ Minutes, Construction Claims Task Force 6 (January 25, 2006).

⁵ BETSY LEE, EXHIBIT G WRITTEN TESTIMONY 3-4 (January 25, 2006).

⁶ Minutes, Construction Claims Task Force 7-8 (February 15, 2006).

⁷ Id.

⁸ Minutes, Construction Claims Task Force 7 (April 11, 2005).

Emergency suspension means that the license is immediately suspended, and the CCB must hold a post-suspension hearing so the contractor can contest the suspension. Oregon law contains regulatory models that reach similar results. For example, the Oregon Department of Transportation must immediately cancel a “dismantler certificate” if the holder loses a required bond or fails to pay imposed penalties.⁹ Currently, the CCB Administrator has power to suspend a license prior to a hearing in only when there is a “serious danger to the public welfare.”¹⁰ After considering other Oregon laws, staff recommends that the legislative report should include a recommendation to expand the instances in which CCB can exercise its emergency suspension powers.

Prohibiting Contractors with Disciplinary Problems from Reincorporating as a New Entity

Currently, Oregon law allows the Construction Contractors Board to suspend or refuse to issue a license if the owner or officer of a business was also an owner or officer of a business in any state of the Union that had a “construction debt”, or for an event that led to the suspension or revocation of the business license.¹¹ A construction debt is further defined as a “an amount owed under a final order or arbitration award issued by the board, or a judgment or civil penalty arising from construction activities within the United States.”¹² Because some form legal authority currently exists, at this time, staff recommends continued examination of this issue.

Criminal Citation Authority

Nine states surveyed consider certain acts related to construction a criminal offense. In all nine of these instances authority for pursuing criminal penalties is given to their attorneys general or district attorneys. Oregon provides criminal sanctions for certain licensing violations.¹³ Hawaii criminalizes working without a contractor license during a state disaster.¹⁴ Hawaii also enhances penalties for persons contracting to do work for the elderly without a license.¹⁵ Florida treats certain licensing offenses (such as working with a suspended contractor license) occurring during a state of emergency misdemeanors.¹⁶ One state, California, gives criminal citation authority to the agency that regulates contractors. California allows investigators employed by the Contractors' State License Board to act as “peace officers.”¹⁷ Based on the research, staff recommends expanding current criminal sanctions to include activities other than provided for under current law.

Summary

Based on the Task Force guidance, testimony, and research, staff recommends the following changes to CCB enforcement powers:

Recommendation #2. Incorporate into the final legislative report changes to the CCB’s enforcement authority to include:

1. *Adding emergency suspension authority over contractor licenses*
2. *Continued examination of prohibiting contractors with disciplinary problems from reincorporating.*

⁹ ORS 822.145(2).

¹⁰ ORS 701.135(2)

¹¹ ORS 701.102(2)(c).

¹² ORS 701.005(2).

¹³ ORS 701.990

¹⁴ HAW. REV. STAT. § 444-10.6.

¹⁵ HAW. REV. STAT. § 444-10.7.

¹⁶ Fla. Rev. Stat. § 489.127(2)(c).

¹⁷ A “peace officer” is generally defined as a “civil officer (such as a sheriff or police officer) appointed to maintain public tranquility and order.” BLACK’S LAW DICTIONARY 1151 (7th ed. 1999).

3. *Creating criminal penalties for certain acts otherwise governed by the CCB.*

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