

We Support the Propositions of Construction Enforcement – To Level the Playing Field

January 14, 2011

The Honorable Edmund G. (Jerry) Brown
Governor of California
State Capitol, Suite 1173
Sacramento, CA 95814

Subject: Construction enforcement – level the playing field

Dear Governor Brown:

This is a follow-up to a letter we sent you, dated December 17, 2010. We are a growing coalition of businesses, associations, and labor representatives, focused on effective but fair enforcement of key California laws and regulations regarding construction. The goal is to provide public protection and level the playing field for law-abiding construction contractors. We respectfully request a summit meeting with you and your affected cabinet members, agency heads and key staff to discuss this matter at your earliest convenience.

According to the Department of Labor and Workforce Development (DLWD), since early 2006 the construction industry has lost over 415,000 jobs in California. We are currently researching how much the California state general fund loses in revenue annually due to construction contractors not adequately paying the required wages, taxes, and other fees to operate in the state; but we are certain the amount is significant. Estimates are in the billions of dollars. Law-abiding construction contractors (signatory and non-signatory) are losing bids to companies cheating the system. We look forward to the leadership of Secretary Marty Morgenstern (DLWD) and we appreciate the efforts of Undersecretary Doug Hoffner (DLWD), and staff who have championed this issue and we believe a sincere and concentrated effort must be maintained to address this problem. Every day that we wait, qualified construction contractors go out of business, their employees lose decent paying jobs, worksite safety worsens and the public is at greater risk due to shoddy construction, leaving the cheaters to rule.

Our coalition is appreciative of the attention that California State agencies have provided and we look forward to a continued partnership with them to further address the problem. The following propositions are a foundation of our enforcement viewpoints:

1. Flagrant Violators operate in many areas of construction in California, and it will take a variety of comprehensive strategies to effectively enforce all these areas.
2. Consideration should be given to appoint someone to oversee construction enforcement between the various state agencies. Someone such as the Deputy Secretary for Labor Standards and Wages could have appropriate authority to coordinate between the various enforcing agencies. With more interagency cooperation, there would be much more efficiency utilizing state resources to track down contractors who are typically in violation of laws that encompass more than one agency. By all agencies making a claim against a flagrant violator, we would hope for results that either bring that violator into compliance, or force them out of business.
3. There are specific regulations and laws that protect employees, which must be effectively enforced. These include complying with wage and hour laws, providing workers' compensation coverage and paying the appropriate amount for that coverage, being properly licensed and/or utilizing legitimate subcontractors, complying with prevailing wage provisions; and providing Cal/OSHA mandated safety protections.

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4. Enforcement agencies in California need to focus on those employers who consistently and flagrantly violate these important regulations and laws.
5. There are two types of flagrant violators.
 - a. One is in the so called “underground economy”. These employers are often unlicensed, do not provide workers’ compensation coverage, pay cash to employees, and fail to follow Cal/OSHA safety regulations.
 - b. The other type is in the “semi-underground economy”. These employers in construction disguise themselves by being licensed, and have a certificate of workers’ compensation coverage. They violate important laws by utilizing unlicensed subcontractors, or subcontractors who may be licensed but have no workers’ compensation coverage for their employees. They also often pay half cash, avoid Cal/OSHA safety regulations such as fall protection or trench protection, commit workers’ compensation premium and payroll fraud; and misclassify employees or otherwise falsify records on prevailing wage jobs.
6. The Economic Employment Enforcement Coalition (EEEC) has made strong inroads into the “underground economy”. We believe these efforts should continue. We also believe, however, that, the Joint Enforcement Strike Force (JESF) as defined by Unemployment Insurance Code Section 329 needs a more focused approach by participating state agencies to a) impact the “semi-underground economy,” and, b) pay more attention towards the construction industry.
7. In order to maximize the efficiency of California enforcement agencies, they should focus on flagrant violators, whether they are part of the “underground” or “semi-underground” economy. In instances where good employers are working hard to be in compliance with regulations and laws, the inspecting agency should spend little time and resources.
8. It would be more cost effective to have the resources of these agencies focus on inspections and follow through of flagrant violators. The Cal/OSHA Consultation Services is one example of an appropriate use of consultation efforts versus enforcement; but major efforts still need to be made in enforcing against the flagrant violators.
9. Construction should receive a commensurate amount of enforcement resources.
10. Focused enforcement efforts are needed to enforce current laws, rather than automatically creating additional regulations and laws in California.
11. Underground contractors have become safe haven for many unscrupulous people to work, e.g. “deadbeat parents” and those who prey on unsuspecting victims like the elderly, and others trying to escape the law. Focused enforcement will expose and catch criminals.

In summary, the urgency of this issue cannot be overstated. The recession in construction has created much greater incentive for cheating in construction and legitimate construction employers are on the ropes. The state must continue to try and make a dramatic impact in construction enforcement right now. Please help us level the playing field. We respectfully look forward to jointly conducting this construction summit as soon as possible. We recognize the strains on your time; however, our mutual needs are so urgent that time is of the essence. Thank you for your consideration.

Sincerely,

Please see the attached list of coalition partners.

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Our sectors and industries represent thousands of companies and employees making up the California economy who will be irreparably harmed if contractors who flagrantly violate the laws are not stopped.

List of Coalition Partners (as of 1/28/11):

California Professional Association of Specialty Contractors
California Spa and Pool Industry Education Council
California Association of Sheet Metal and Air Conditioning Contractors
Western Electrical Contractors Association
California Fire Training Alliance
Northern California Contractors Association
Roofing Contractors Association of California
California Painting and Decorating Contractors Association of California
California Framing Contractors Association
Plumbing Heating and Cooling Contractors of California
Engineering Contractors' Association
Marin Builders' Association
California Fence Contractors Association
Flasher/Barricade Association
California Chapter of the American Fence Association
Associated Roofing Contractors of Bay Area Counties
Union Roofing Contractors Association
Air Conditioning Trade Association
National Association of the Remodeling Industry of Greater Sacramento
American Subcontractors Association of California
California Landscape Contractors Association
Roofing Contractors Association of Southern California
Institute of Heating & Air Conditioning Industries, Inc.
California Conference of Mason Contractor Associations, Inc.
Associated Tile Contractors of Northern California
Northern California Electrical Construction Industry – LMCT
Sacramento Regional Builders Exchange
Northern California Painting and Finishing Contractors Association
Northern California Glass Management Association
National Association of the Remodeling Industry of San Diego
Pacific Rim Drywall Association
California Landscape & Irrigation Council, Inc.
Northern California Carpenters Regional Council
Desert Contractors' Association
California Sign Association
Valley Contractors Exchange

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