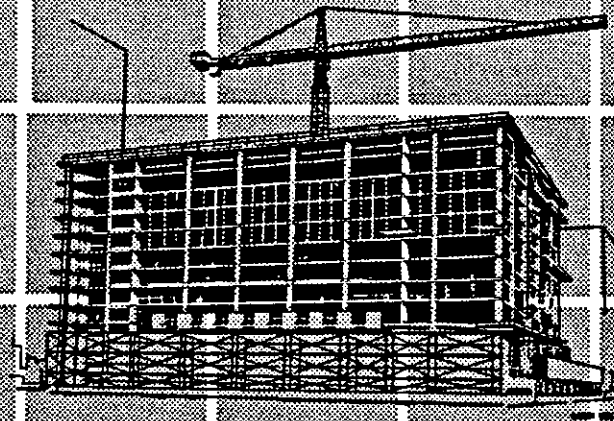


TECHNICAL PUBLICATION NO. 109

**A STUDY OF FLORIDA'S LICENSING
SYSTEM FOR CONSTRUCTION CONTRACTORS**

*This research project was sponsored by
The Building Construction Industry Advisory Committee under a grant from the
State of Florida Department of Education*



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The data gathering process for this report has crossed state, departmental, and agency boundaries. To present a true list of all of those who have been involved and who have contributed significantly would take more space than warranted. On the other hand, it does not appear fair to ignore both persons and organizations that extended a helping hand in the undertaking.

The Office of Planning and Budgeting within the Executive Office of the Governor provided the raw data from which we extracted our Consumer Price Index. Staff members of both houses of the Legislature provided smooth and draft copies of reports that they thought might be useful, and members of the staff of the Archives section at the capitol delved through the dusty boxes of records from the Construction Industry Licensing Board. At the Departmental level, every query for information was answered promptly, and within the professional staff of the CILB, Dan O'Brien and Milt Rubin were both courteous and helpful as we scrounged through the offices for ancient information. Kind words are not enough to express our gratitude to Pat Doyle, also of the CILB, for her memory and patience as we repeatedly tapped her files for things past or long forgotten.

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The professional staff members of the California Contractors Licensing Board provided the information requested from their state with alacrity and completeness. Mickey Matsumoto, the Deputy Registrar, walked us through their disciplinary and enforcement procedures; Bill schooling provided the overview and details of their examination system; Everett Lawson did the same with their licensing and application procedures; and Lori Johnson, the head of their management services, acted as our guide and provided us with the financial information from California that glued all the rest together.

The authors acknowledge that the research reported herein was conducted by Professor John M. Dye under the management and direction of Professor Jose D. Mitrani and Professor Irtishad Ahmad.

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. Executive Summary	1
II. Findings, Conclusions, & Recommendations	
A. Findings	4
B. Conclusions	6
C. Recommendations	6
III. Introduction	
A. Background	8
B. Literature Survey	10
C. Consumer Price Index	14
IV. A Review of the Operations of the Florida Construction Industry Licensing Board	
A. General	16
B. Data Collection	18
C. Work Load Indicators	21
D. Administration	22
E. Examination	34
F. Licensure	41
G. Discipline and Enforcement	51
H. Growth Projection	70

V.	A Review of the Operations of the California Contractor State License Board	
	A. Background	74
	B. Data Collection	75
	C. Administration and Examination	76
	D. Licensure	87
	E. Discipline and Enforcement	92
VI.	A Comparison of the Florida and California Contractor Licensing Boards	
	A. Mode of Operation	100
	B. Licensure	102
	C. Examination	103
	D. Discipline and Enforcement	105
VII.	A Review of Pending Legislation	109

LIST OF FIGURES

Figure	Title	Page
1	Organization of Department	19
2	CILB Revenues & Operating Expenses	24
3	CILB Operating Expenses	26
4	CILB Administrative Costs	28
5	Regression of CILB Admin Costs	29
6	CILB Full Time Employees	30
7	CILB Admin Costs per Employee	31
8	Regression of Employee Admin Costs	31
9	DPR Admin Support Costs for CILB	33
10	Regression of DPR Admin Support	34
11	CILB Examinations Administered	36
12	Cost per Examination Administered	39
13	Examination Pass/Fail Statistics	41
14	Distribution of Licenses	43
15	CILB Total Licenses	45
16	Licenses per 1,000 Population	46
17	DPR Licensure Costs	47
18	DPR Licensure Costs per License	48
19	DPR Licensure Costs per License	49
20	CILB Licensure Applications	50
21	Construction Related Complaints	56
22	DPR Disciplinary Expenses for CILB	57
23	Regression of DPR Disp Expenses	58
24	DPR Disciplinary Expenses Categories	59
25	Complaints received by DPR	60
26	Total DPR Disciplinary Expenses	62
27	Investigative & Legal Costs	63
28	Completed Disciplinary Actions	65
29	Complaints per License	66
30	Population of State of Florida	71
31	CSLB Revenues & Expenditures	77

32	CSLB Expenditures per Licensee	78
33	Regression of Figure 32	79
34	CSLB Personnel Positions	80
35	CSLB Number of Examinations	83
36	CSLB Examination Statistics	84
37	CSLB Exam & Admin Personnel Costs	85
38	CSLB Personnel Costs per Exam	87
39	CSLB Total Licensees	89
40	CSLB Estimated Cost per License	90
41	CSLB Licensure Applications	91
42	CSLB Construction Complaints	95
43	CSLB Complaints per Licensee	96
44	CSLB Costs of Enforcement	98
45	Comparison of Examination Costs	104
46	Comparison of Complaints	106
47	Comparison of Cost per Complaint	108

LIST OF TABLES AND CHARTS

Table/Chart	Description	Page
1	Consumer Price Index	15
2	Florida Disciplinary Proceedings	55
3	Forecast of Changes	72
4	Comparison of California and Florida Boards	101
5	Comparison of CILB and UCIB	110
6	Categories of State Certified Contractors	112

I. EXECUTIVE SUMMARY

This project was initiated by the Building Construction Industry Advisory Committee (BCIAC) as a part of their continuing effort to aid the construction industry in the State of Florida. Questions were posed to the Committee by their representative from the Florida Construction Industry Licensing Board (CILB) for the state for which there were no good answers. Discussions among Committee members led to a request that a study be undertaken that would benefit the industry by examining the role of, and functions performed by, the CILB.

Since inception, the role of the Board has undergone near continuous revision by the legislature. Throughout the Board has retained responsibility for setting licensing fees, examination content, and civil disciplinary measures. However, as currently structured under the Department of Professional Regulation (DPR), the Board has these responsibilities without the corresponding authority to determine how fees are used or to control the investigations of alleged misconduct by contractors. These functions are now performed by the DPR. It is this responsibility without authority which the investigators found most frustrating to the Board members' efforts as they work to protect the public interest and safety.

This study focused primarily on economic factors related to the daily work of the Board and their relationship to the Department to determine if there were functions which appeared to need improvement in service or organization. Factors were derived which allowed the researchers to:

- eliminate the influence of inflation in the data produced by the investigation;
- reduce data to unit costs;

- eliminate the influence of inflation in the data produced by the investigation;
- reduce data to unit costs;
- prepare regression analyses to show trends;
- compare costs incurred with those incurred in another state operating under a different organizational arrangement for the regulation of contractors;
- project future costs and workloads in selected areas.

Similar research was done for the Contractors State Licensing Board (CSLB) of California. The contractor licensing agency for that particular state was chosen because of three factors:

- California, like Florida, is a growth state. A rapid expansion of population in an area stimulates construction by providing a demand for homes, commercial facilities, and governmental infrastructure that attracts contractors;

- unlike Florida, the California construction licensing system provides an organizational set-up that allows the Board staff to control most functions of administration, examination, licensure, and discipline;

- the California legislature adopted a program with a philosophy of regulation differing from Florida. In that state, the emphasis is licensing with a relatively low emphasis on the qualifications of the applicants, then screening the work of the contractors through enforcement and disciplinary proceedings. In Florida, more emphasis is placed on screening the applicants before licensure to ensure that well-qualified persons are

licensed as contractors.

The researchers also reviewed currently proposed legislation sponsored by the DPR which would again change the composition of the Board, renaming it, and adding yet additional contracting categories to be monitored.

II. FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

A. Findings

The researchers were able to identify the following items that they recommend should be considered by the legislature, DPR, and the members of the CILB as they study the future role and mission of the Board:

ADMINISTRATION

- that there are insufficient accurate historical fiscal data related to the period when the Board was semi-autonomous, controlling its own investigative and legal staff, to make unequivocal and complete comparisons with all aspects of the current mode of operation under DPR;

- that the current fees levied by the Board are insufficient to cover the direct and indirect costs associated with the Board's operations, either currently or as forecast;

- that the administrative overhead burden of the DPR staff allocated the CILB but which is not directly related to the functioning of the Board, has quadrupled since 1982;

There are gaps in the data from the early years of the Board's operations. At best, the accounting procedures during the period 1968 through 1982, were less than adequate.

EXAMINATION

- that the unit cost of examining contractors in Florida is double that in California;

- that the California system for examining contractors has been more efficient and consumer oriented than the Florida

system;

- that the recent changes in examination sites/test dates initiated by the Board are an improvement in efficiency and customer orientation;

The system used to examine prospective contractors in the State of Florida is changing even as this report is being written. There are already an increased number of examination sites and an increase in the frequency of examinations for one class of contractors. Data concerning the costs and efficacy of these changes will be available in the future.

DISCIPLINE, ENFORCEMENT & LEGISLATION

- that the number of construction related complaints registered with the DPR, per licensee, in Florida is half that for California;

- that the proposed legislation eliminates the duplication of licensing of certain categories of contractors by state and local jurisdictions;

- that the proposed legislation does not abolish the current two-tier system since it allows local jurisdictions to continue to define and license specialty contractors in categories not recognized by the state;

- that the proposed legislation does not effectively deal with the issue of responsibility versus authority as they relate to the role and mission of the Board.

The researchers are aware that the draft of proposed legislation is a moving target and that the results of their review represent a snapshot at one point in time. The draft reviewed was dated December 2, 1992.

B. Conclusions

Based upon the interviews, files reviewed, and data reduction the researchers have concluded:

- that data examined for this report do not provide any evidence that the growth in administrative overhead within the DPR has resulted in an increased efficiency or an increase in the well-being and safety of the public;

- that the contractor examination system previously utilized by the DPR was not cost-effective and not convenient for the public. Data for the revised system now being put in place should be reviewed in the future;

- that the disciplinary and enforcement functions that still fall under the purview of the Board consume an inordinate amount of the Board members' time;

Although the investigative, hearing, and legal aspects of disciplinary and enforcement now are performed within other agencies, Board members still review cases for probable cause that an infraction has occurred and must take final action on a variety of findings.

C. RECOMMENDATIONS

The researchers recommend:

- that a study be performed to develop recommendations as to the proper role, functioning, and organization of the CILB;

- that objective, quantifiable measurements be developed that can be used to quantify relative levels of service and protection of the public safety and welfare, and that these be

used to justify growth in the administrative overhead burden of the DPR;

- that the CILB and DPR continue revision and updating of the contractor examination system;

- that the legislature consider further study of the goals and objectives behind the licensure of contractors and the method by which these should be implemented.

The researchers felt that the draft legislation reviewed has many fitting changes that rectify "small picture" problems facing the CILB. However, they felt that it did not address the more fundamental problems of the proper role and functioning of the CILB in the regulation of the construction industry.

III. INTRODUCTION

A. Background

Since the inception of licensure for Florida contractors in 1968 the number of licensing categories under the aegis of the Construction Industry Licensing Board (CILB) has grown from three (residential, building, and general contractors) to eighteen. The number of construction related licenses now exceeds one hundred thousand. During the same period the regulatory system for administering the examination, licensing, and oversight has gone through several evolutions. The CILB was originally established as a totally autonomous organization under the Department of Occupational and Professional Regulation (DOPR). The actual Board consisted of members of the construction industry serving without compensation, supported by a salaried Executive Director and a small office staff. Still under that department, it became less and less autonomous as the legislature channeled functions to other agencies. Since 1983, in response to changes mandated by the legislature, including enlargement and a revision of the organization of the DOPR, the Board has functioned strictly as an advisory and regulatory agency within a new Department of Professional Regulation (DPR). There is only minimal office staffing as the day to day examination, licensing, investigative and legal work is done within other divisions or bureaus.

One result of the revisions in the law made by the legislature is that the Board still retains the responsibility for the examination, licensure, and disciplinary functions essentially as established in 1968. However, the actual examination, licensure, investigative and legal portions of these functions are now performed by other agencies over which the Board has no authority and little or no control. A corollary problem area is the increasing workload for the actual Board members as the number of licensees and disciplinary

cases increases. Even though the investigation and hearing phases are conducted elsewhere, final disciplinary action in cases requiring fines, revocation, suspension, or denial of renewal for licenses, must be considered by the Board. Fully nine tenths of the full Board meetings are occupied with this single facet of their responsibility. Each individual member serving on a committee that reviews cases before legal action is completed must spend an equivalent of two man days per week to keep up with the case load.

Discussions with Board members have indicated a desire for a change in the operating procedures of the Board. The essence of these opinions has resulted in the examination of the following in this report:

- the cost of operations and the work load of the CILB;
- the local and state wide (two tier) licensing system as it relates to the CILB;
- anticipated changes in work load that relate to changes in population;
- a comparison of the cost of operation and efficiency of the CILB as compared to another state experiencing population growth;
- a review of legislation proposed by the DPR which affects the CILB.

The research centered on the current and recent past operating data for the CILB and DPR, using budgetary data to establish base lines for costs and anticipated growth. Both Board members, members of the professional staff, and members of the staff of the DPR participated in discussions and contributed

to the effort. A similar effort was conducted for the State of California, another major growth state, in order to extract from their experience and organization those elements that might be beneficial to the State of Florida.

The body of this report is divided into five primary parts: the results of the Florida study; the results of the review of the California contractor licensing system; a comparison of the two; a review of proposed legislation; and findings, conclusions, and recommendations. These are supported by a literature survey, various figures, and appropriate appendices.

B. Literature Survey

The literature survey commenced with a study by Chang & Bendrick of the University of Florida done under a grant from the Building Construction Industry Advisory Committee (BCIAC).¹ The thrust of the study was to review and evaluate the contractor licensing system as it now exists in the State of Florida, to define problem areas, and to develop recommendations for increasing efficiency. As a result of their work the authors concluded the following problem areas existed:

1. Lack of CILB cost and management control related to investigative and legal work;
2. Lack of modern data processing within the licensing system;
3. Florida's two tier system of contractors, i.e., some state certified with a state-wide license and some locally licensed and only registered by the state;
4. There are no state-wide minimum standards for

¹ Chang, W. P. & Bendrick, T.S., "A comprehensive Study of Licensing Construction Contractors in Florida," Technical Publication No. 76, School of Building Construction, University of Florida, 1992.

building code enforcement personnel;

5. The disciplinary process for licensed contractors is inefficient.

Automated information retrieval systems for libraries were queried for articles written in trades journals, newspapers, and other magazines for the period covering the last five years in to determine if other states and jurisdictions were establishing or changing their contractor licensing systems. Computer sorts were done for the following fields: Contractor; Contractor Licensing; Building; Building Construction; Building Construction Licensing; Developer; and Developer Licensing. A total of 39 magazine and newspaper articles were uncovered dealing with complaints about unlicensed contractors, restrictions on work done by developers, loop holes in regulations and lack of firmness on the part of regulators. However, in totality these shed little light on the organization of licensing activities in other states or the methods in which they handled the problems discussed in the Chang and Bendrick report.

The third leg in the survey was to search for books, government publications, and other writings that might lead to an understanding of the functioning of the CILB. The Florida Construction Law Manual provided an overview and expansion on the existing Florida Statutes and an insight on the two tier licensing program.² It gathers into one publication all of the state law covering construction contracting. A study of the text gave the researchers a greater understanding of the current method of operation for the CILB.

² Leiby, Larry R. Florida Construction Law Manual, Second Edition, Shepard's/McGraw-Hill, Inc., Colorado Springs, CO, 1988.

G. A. Toy was the author of a doctoral thesis at the University of Florida which provided the researchers with the background of construction contractor licensing in the United States, beginning with North Carolina in 1925.³ Documentation is provided showing the origination, purpose, and goals of the licensing effort as well as generalized licensure requirements, disciplinary systems, and an evaluation of problems arising from construction contractor licensing.

The Florida House of Representatives Committee on Regulatory Reform issued a draft report examining disciplinary procedures and results for construction contractor licensing agencies, both state and local.⁴ The data provided suggest, but do not prove, that the disciplinary process used by the DPR and the CILB is leading to an increasing backlog of cases awaiting action. For example, there were 6,600 complaints filed against licensed contractors between the first of January, 1989, and the 3rd of August, 1991 for which the Department found probable cause to continue an investigation. This is an annual rate of approximately 2,500 cases. However, the data presented for one of these same years showed approximately 1,300 cases were resolved or completed. Unfortunately, the staff did not attempt to correlate all data on an annual or fiscal year basis so the real magnitude of the problem cannot be determined from the report. They did document that the time used to adjudicate the "average" case is 354 days, with 180 days utilized in the investigatory phase and 174 days in legal processing and review.

³ Toy, Gene A., "A Model for Protecting the Public Through Contractor Licensing," Dissertation in the Graduate School of the University of Florida, 1989.

⁴ "Construction Contractor Discipline in Florida: The Benefits and Problems in Florida's "Two Tier" System of License Issuance," Draft Report by the staff of the Florida House of Representatives Committee on Regulatory Reform, September, 1991.

In yet another legislative report, in 1991 the staff of the Senate Committee on Professional Regulation issued a review of Chapter 455, Florida Statutes, which establishes the DPR and outlines its functions.⁵ There are two sections of this report of interest to the researchers, one dealing with disciplinary proceedings and another with revenues and expenditures. The study walks through the administrative details of resolving complaints against licensed individuals, from inception to final board action. Problems have occurred when the administrative hearing officer has included a recommended penalty, as required by statute, but a board has changed this penalty in their final action on the case. The courts have generally held that the boards must have compelling reason to do so notwithstanding their greater expertise in the licensing area than the hearing officer. The study recommended that each board establish guidelines that specifically delineate aggravating and mitigating circumstances to be considered by hearing officers.

The Senate staff also reviewed the method by which the licensed activities are "charged" for their share of DPR expenses. There were two specific items at issue: is the method of apportioning expenses sound; should the individual boards be appropriated funds by the legislature or should the funds be "pooled" at the DPR level. Without going into detail the staff found that the allocation procedures were sound with only minor (unspecified) modifications needed. The review of the budgeting question was short, concentrating on the fact that the current pooling of funds allows the Secretary of DPR to move funds within the Department to cover unexpected shortfalls in one area or another. If the boards were individually budgeted then this flexibility would be lost. Consequently no changes

⁵ "A Report on A Review of Chapter 455, Florida Statutes, Policy and Procedure," Staff of the Florida Senate Committee on Professional Regulation, October 1991.

were recommended from the current system. .

C. Consumer Price Index

Throughout the work the investigators sought to reduce the discussion of the work load indicators to a common denominator, usually dollars, so that comparisons could be made objectively. The recognized method of comparing in constant dollars involves establishing the consumer price index (CPI). This is a statistical measurement of changes in the cost of goods and services bought by urban wage earners and clerical personnel.⁶ If, for example, 1982 is chosen as a base year, then the CPI for that year at the time that the measurement is made is 100. (The costs of the goods and services at that time divided by the same number and multiplied by one hundred). Since pricing changes from month to month during the year, from year to year, between geographic areas, and upon the items measured it is necessary to fix a point in time during the base year and make the comparison with other years on a consistent basis.

The CPI used in this study to compare money received and expended between various years is shown in Table 1. It was constructed from data furnished by the Office of Planning and Budgeting in the Executive Office of the Governor. The base year is 1982.

⁶ "The consumer Price Index: A Short Description." U. S. Bureau of Labor Statistics, U. S. Government Printing Office, 1967.

TABLE/CHART 1

CONSUMER PRICE INDEX

YEAR	1982 BASE		DECEMBER OVER DECEMBER	
	CPI	% Change from previous year	Multiplier (1968 = 1.0)	
1968	35.6	4.71	1.000	
1969	37.7	5.90	1.059	
1970	39.8	5.27	1.118	
1971	41.1	3.27	1.154	
1972	42.5	3.41	1.194	
1973	46.3	8.94	1.301	
1974	51.9	12.09	1.458	
1975	55.6	7.13	1.562	
1976	58.4	5.04	1.640	
1977	62.3	6.68	1.750	
1978	67.9	8.99	1.907	
1979	76.9	13.25	2.160	
1980	86.4	12.35	2.427	
1981	94.1	8.91	2.643	
1982	97.7	3.83	2.744	
1983	101.4	3.79	2.848	
1984	105.5	4.04	2.963	
1985	109.5	3.79	3.076	
1986	110.8	1.19	3.112	
1987	115.7	4.42	3.250	
1988	120.8	4.41	3.393	
1989	126.4	4.64	3.551	
1990	134.2	6.17	3.770	
1991	138.2	2.98	3.882	

IV. A REVIEW OF THE OPERATIONS OF THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD

A. General

Prior to 1967 building contractors in the State of Florida were licensed to work by individual counties, cities, or other jurisdictions. The license was valid only for the geographic areas governed or regulated by the issuing body. A contractor normally based and licensed in Lee County, but desiring to work in Palm Beach County, could not do so without also meeting the competency requirements and obtaining a license for Palm Beach County. Cities within the counties were free to impose additional requirements and require a city license. In the case cited, the contractor from Lee County could also have been subject to additional requirements of the City of West Palm Beach.

An added problem within the construction industry in Florida at that time was the lack of adequate monitoring and disciplinary procedures for contractors engaging in unscrupulous business practices, providing unsafe working conditions, or doing unacceptable work. Firms found guilty of inflicting harm on the public in one jurisdiction and denied further work there were free to move to another and to continue operating. There was no systematic communication network between counties or cities concerning revocation or suspension of licenses. What one authority did had no effect on licensure in another.

Limited statewide regulation of the building construction industry was established by the Florida legislature in 1967. The preamble to the act stated that the legislature recognized the construction industry could pose the possibility of significant harm to the public if incompetent or dishonest contractors provided unsafe products or services. The law provided for an autonomous Construction Industry Licensing Board

(CILB), generally referred to as the Board, under the umbrella of the Department of Occupational and Professional Regulation (DOPR). It was the responsibility of the Board to carry out the examination, licensing, and disciplinary processes set forth by the act. The intent was that upon successful completion of a certification examination administered by the Board and acceptance of evidence of financial responsibility and insurance, contractors would be licensed to work anywhere within the state. These state-certified contractors would not be subject to local competency requirements. The act also established the Board as the single authority responsible for the disciplinary problems that might arise with the certified contractors. In addition, if local contractors chose to not take the certification examinations and go through the state-wide licensing, the act provided for their "registration" so that these individuals could be tracked and local jurisdictions apprized of unscrupulous activities. In certain cases, the Board also acted as the disciplinary body for these registered contractors.

The 1967 act regulated only general, building, and residential contractors. In 1973 the legislature added five additional categories to be registered or certified (sheet metal, air conditioning, mechanical, roofing, and swimming pool); directed that the Board contract with an independent testing firm for the preparation and administration of examinations, changed the Board membership to reflect the increase in the fields monitored, and added a public, non-building industry member to represent consumers.

In 1976 the legislature further amended the law with respect to disciplinary hearings. Prior to this change, hearings were held before Board members. The change required that all such hearings were to be held before a designated hearing examiner from the Department of Administrative Hearings

(DOAH) instead. In 1979, as a part of the reorganization of the Department of Occupational and Professional Regulation (DOPR) into what is now the Department of Professional Regulation (DPR), the CILB became a regulatory Board within that Department. The investigative services, licensure administration, and testing administration were all transferred to DPR. The Board retained authority to establish application, licensing, and renewal fees; to track insurance requirements; to establish guidelines for determining the financial responsibility of applicants; to have final action on disciplinary matters, including revocation, suspension or denying licensure as well as assessing fines or placing a contractor on probation and issuing letters of censure or reprimand; and to determine the content of examinations for licensure.

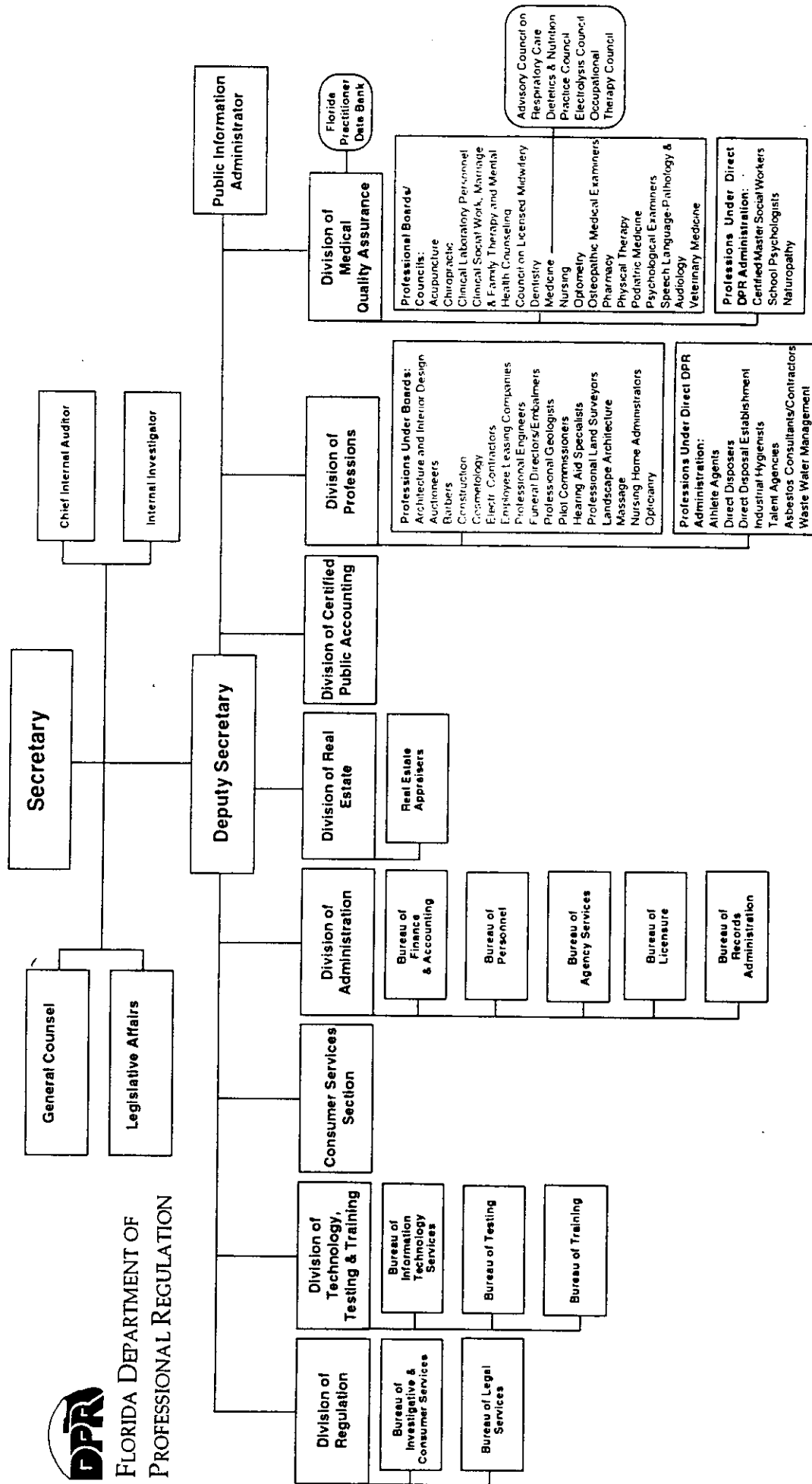
The current membership of the Board consists of 18 members appointed by the Governor. The act specifies that four members shall be general contractors; three shall be building or residential contractors; two members shall be building officials; two members shall be public representatives without ties to the construction industry; and one member from each of the following contracting fields: roofing, sheet metal, air conditioning, mechanical, pool, plumbing, and underground utility. Figure 2 shows the current configuration of the DPR and how the CILB fits under the departmental structure. At the current time electrical contractors and associated fields, septic tank contractors, and pollutant storage contractors fall under separate agencies and are not subject to regulation by the CILB.

B. Data Collection

Data collection for matters concerning the Florida CILB and the DPR centered on two sources. Numerical, or "hard" data were



**FLORIDA DEPARTMENT OF
PROFESSIONAL REGULATION**



**FIGURE 1
ORGANIZATION OF THE DEPARTMENT OF PROFESSIONAL REGULATION**

obtained from records of the DPR, from the Office of the Governor, from records of the Auditor General, legislative committees, the CILB, and from federal publications. In order to obtain the sense or feelings of CILB and professional staff members, the researchers attended meetings of the CILB during which the goals and objectives of the Board were discussed, read the minutes of the Board meetings from previous years, and conducted interviews with various staff and Board members, both past and present.

Commencing in 1977 the Division of Budget in the Executive Office of the Governor began publishing an annual report showing the current and previous 9 years of appropriations data.⁷ Two problems arose in the use of these volumes, 14 of which have been published covering 1968 through 1991. The data are appropriations data, not actual expenditures. Secondly, the level of detail provided varies greatly from year to year, since it is provided by individual departments and agencies and only reflects what they desire to show for a given period. While early volumes contained extensive detail for DPR, the current edition shows only a single line, lumping all of the boards and functions of the Department into a single sum.

Within the Department of Professional Regulation, the Secretary issues an annual report to the legislature on the functions performed within the Department, appropriations data for past and current years, and work load data.⁸ The data are organized by fiscal year and changes that make apparent inconsistencies, such as increased funding due to an increase in

⁷ "Florida Ten-Year Summary of Appropriations Data," Executive Office of the Governor, Office of Planning and Budgeting, Tallahassee, FL.

⁸ "Annual Report," The Florida Department of Professional Regulation, Northwood Centre, 1940 North Monroe Street, Tallahassee, FL.

functions mandated by the legislature, may or may not be noted. The researchers were able to obtain these reports from Fiscal Year 1979 through 1991, excepting 1982.

Budgetary and licensing data were obtained from the records of the CILB for a portion of the detail not provided by the DPR reports. The data were extracted by reviewing the minutes of board meetings, obtained from the State archives, from the Office of the Comptroller, and from copies of the notes provided to members of the Board prior to each scheduled meeting.

Economic and census reports from the federal government were used to document and forecast growth as well as to account for inflation. Using an index that relates all dollars appropriated, expended, or fees charged to a current year allows comparisons to be made that are otherwise meaningless.

The researchers attended two meetings of the CILB where the members discussed the functions of the Board, the possibility of improving the Boards performance, problems that they perceived were hampering the Board, and possible solutions to these problems. In addition they interviewed individual members, building officials from various jurisdictions within the state, and individual contractors.

C. Work Load Indicators (WLI's)

A review of the data obtained from budgetary sources indicated that certain elements could be examined on a fiscal year basis that would establish trends in four areas: Administration; Examinations; Licensure; and Disciplinary Actions. Within each of these areas WLI's have been developed that allow comparisons of the work load handled by the board during various years. In some cases, these indicators were

established for periods during which the Board was autonomous, as well as during years in which it has been under the aegis of the DPR. Inasmuch as is possible, the data obtained from the State of California with respect to its contractor licensing system were also organized into these functional groups. This allows for a direct comparison of the two systems in selected areas.

D. Administration

From the first enactment of laws establishing the CILB until the present time, the legislature has provided that funding for the Board be derived from fees rather than from appropriation from the general revenue fund. The start up costs of the Board were provided from the governor's discretionary funds for the first year of operation. The law provides that funds generated by the Board over and above those required for operation revert to the general revenue at the end of a fiscal year. Since consolidation within DPR, revenue generated by the Board through licensure, licensure renewal, and examination fees are "pooled" at the departmental level with those derived from other regulatory boards within the Department. The entire organization is thus centrally funded through fees and assessments from all of the regulatory agencies.

The researchers defined the first administrative WLI to be the cost of operations of the Board less the cost of the examination, licensure, and disciplinary WLI's. This is not a "clean" definition, since certain costs and functions of the other WLI's (office supplies, office rental, salaries of secretaries, the director, costs associated with Board members, etc.) often overlap. Still, it is useful to separate the functions as much as possible in order to isolate cost data and establish trends.

The budgetary data found from Board inception until 1982 were obtained primarily from the Office of the Auditor General and minutes of Board meetings. The accounting procedures that were in place during this period do not allow the separation of the Board's appropriations, costs and revenues into the WLI, except for isolated cases. From 1968 through the end of fiscal year 1971, record keeping appears to have been poor at best. The Auditor General's Report covering those years states, "In my opinion...the accompanying statement of operations (financial report) of the Florida Construction Industry Licensing Board as of June 30, 1971, does not present fairly the result of its operations...in conformity with generally accepted accounting procedures."⁹ However, even though a "clean" WLI could not always be determined prior to establishment of a more responsive accounting system, it was possible to establish total costs of operations for most years by using legislative appropriation data, Auditor General reports, and more recent records from DPR.

In the review and collating of the data the researchers attempted to ensure consistency by removing from the revenues and cost of operations items not related to the CILB, such as legislatively directed funding transfers to other agencies, repayments of these transfers, and the transfer of surplus funds to the general revenue accounts. Figure 2 depicts the revenues earned and the costs of operations for the CILB on a cash basis for those years for which the data are available. The cost of operations includes all of the work done for the Board by the DPR and other governmental agencies and which are then "back charged" to the Board.

⁹ "Report on Audit of the Accounts of the State of Florida Department of Professional and Occupational Regulation Division of Occupations Florida Construction Industry Licensing Board for the fiscal year ending June 30, 1971," Office of the Auditor General of the State of Florida, Tallahassee, Florida, March 7, 1972.

CILB REVENUES AND OPERATING EXPENSES

CONSTANT 1991 DOLLARS (Millions)

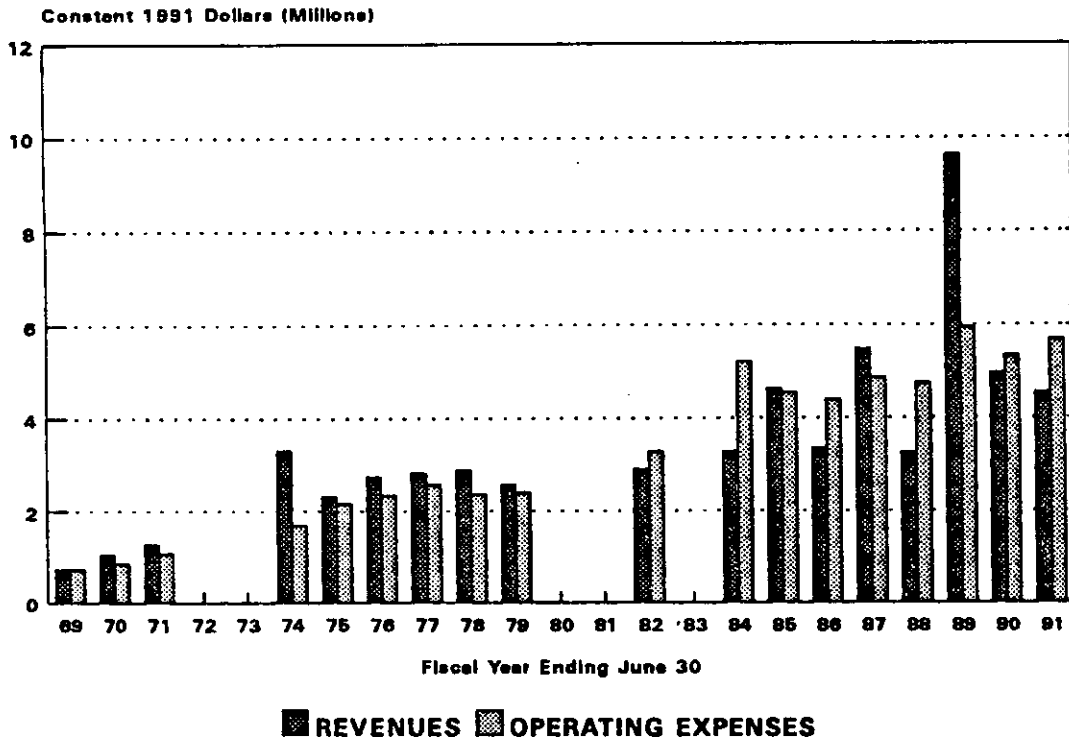


FIGURE 2

The reduction of the data to constant dollars removed inflationary factors. The investigators also eliminated the non-CILB related expenditures and payments required by the legislature and switched to a cash rather than an accrual accounting base. This showed that for those years between 1969 and 1979 where data were available, revenues exceed costs in all but one year. However, since 1982 and consolidation with DPR (83 date missing) the cost of operations has exceeded revenues for five out of the nine years. Using accrual

accounting, the year-to-year changes may be masked by carry-over of excesses or deficiencies from one reporting period to the other. In the long run, however, excesses must at least balance deficiencies for a governmental organization where the only source of funds is the revenue generated within the agency. In the period from 1982 through 1991 the data shows a cumulative loss amounting to \$2,345,000.

The second WLI for administration of the Board was developed by taking the constant dollar operating costs and normalizing these as a function of the number of licenses in existence for each of the years. If a trend is discernable on the resulting graph it would show an increasing, decreasing, or level cost of operations in one area of the work performed. Since data were not available for all years it was not possible to produce a single trend. However the data for two significant periods were available and are depicted in Figure 3. During the first period, 1974 through 1979, the CILB was essentially autonomous under the DOPR. The second grouping of data, 1984 through 1991, covers the period while the Board is a regulatory agency under the DPR with most of the examination, licensure, and investigative functions performed elsewhere but the costs back charged to the Board.

During the period 74-79, a linear regression of the data shows a trend towards an operating cost per license of (\$59). The same regression analysis for the period 1985 through 1991 projects a rate of (\$53) at the end of the period.

CILB OPERATING EXPENSES COSTS PER LICENSE

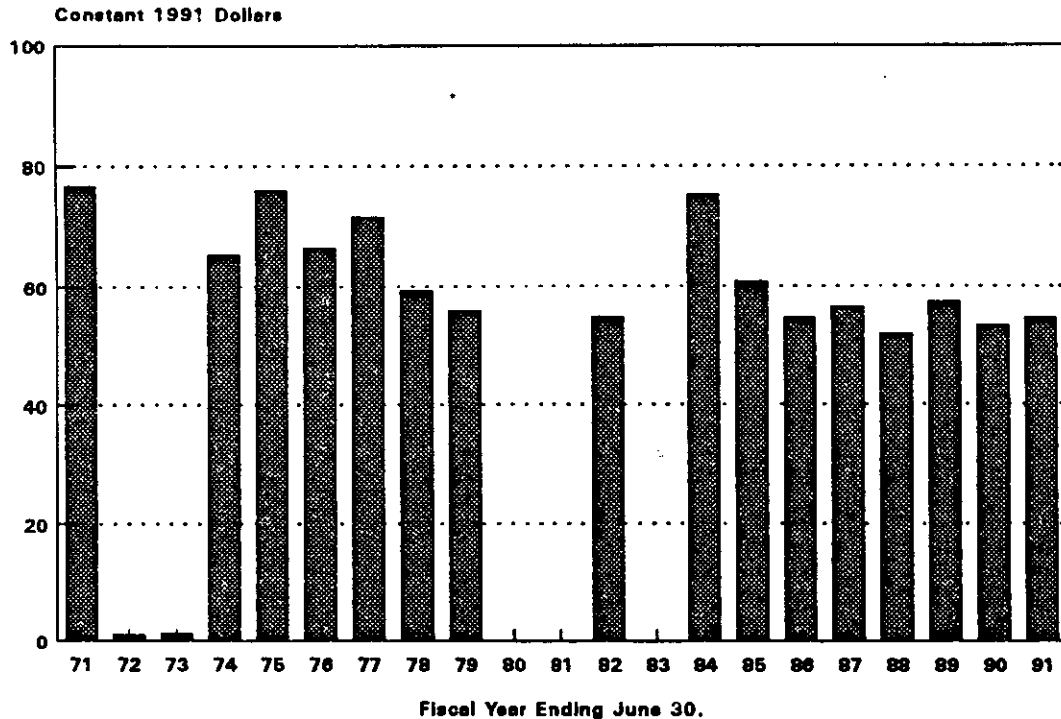


FIGURE 3

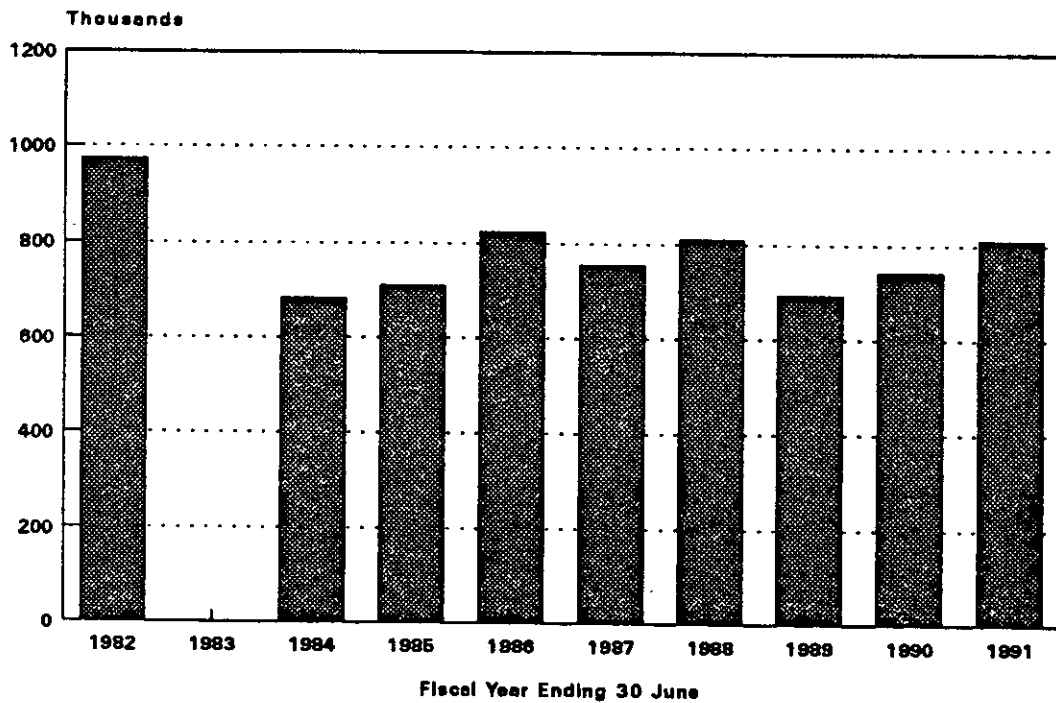
The trends displayed misrepresent the total of the work load of the Board to some extent since the total number of construction licenses that DPR and the Board report on an annual basis contains active licenses, inactive licenses, and "other." The "other" category includes, inter alia, anyone that held a license under the Board at any time since inception and which license has not been voluntarily surrendered or involuntarily revoked but for which a renewal application has not been received. Little record keeping or work effort is associated

with this category. At the end of fiscal year 1991, this classification amounted to 41% of all of the licenses reported. Unfortunately, no consistent data were found prior to fiscal year 1989 which separated the license categories active, inactive, and "other". The DPR has undertaken a program to purge the files of licensees that have not renewed their license, either active or inactive, after two renewal periods. The results of this work should be apparent by the end of fiscal year 1994 and a more realistic number of licensed individuals should be available.

The researchers were able to isolate and examine the CILB offices administrative costs during the period of fiscal 1982 through 1991. These costs were defined as the Board's office salaries and benefits, other personnel expenses, expenses such as office supplies and rent, and capital outlays for equipment. Figure 4 graphically shows these administrative costs in constant 1991 dollars.

CILB ADMINISTRATIVE COSTS

CONSTANT 1991 DOLLARS



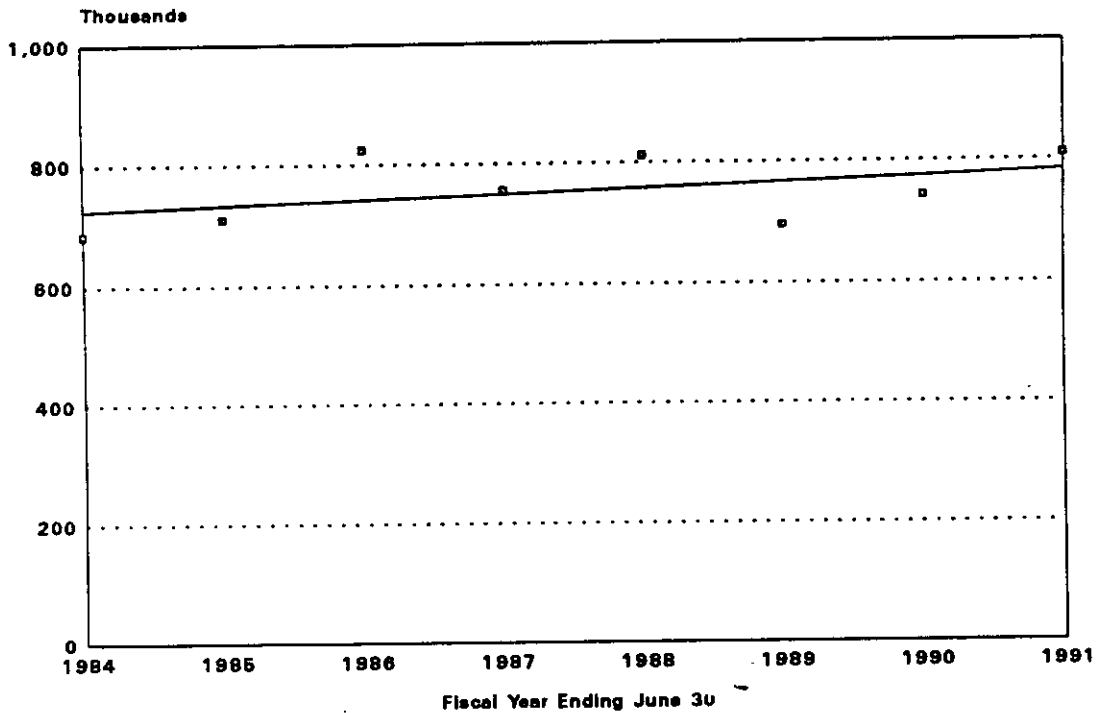
Salaries and Benefits, Other Personnel
Services, Expenses, Capital Outlay

FIGURE 4

If the data for 1982 and 1983 are ignored as being tainted by the fact that functions were being transferred from the Board to DPR during this period, a linear regression of the remaining data shows an upward trend, as depicted in Figure 5. Consequently it can be stated that the administrative overhead for the Board has increased modestly during the period.

CILB ADMINISTRATIVE COSTS

CONSTANT 1991 DOLLARS



Salaries and Benefits, Other Personnel
Services, Expenses, Capital Outlay

FIGURE 5

The number of full time employees (FTE) of the Board was examined to see if the administrative cost increase noted above could be attributed to a change in the work force. The data for FTE's for the period from 1972 through 1991 are presented in Figure 6.

CILB OFFICE AUTHORIZED FULL TIME EMPLOYEES

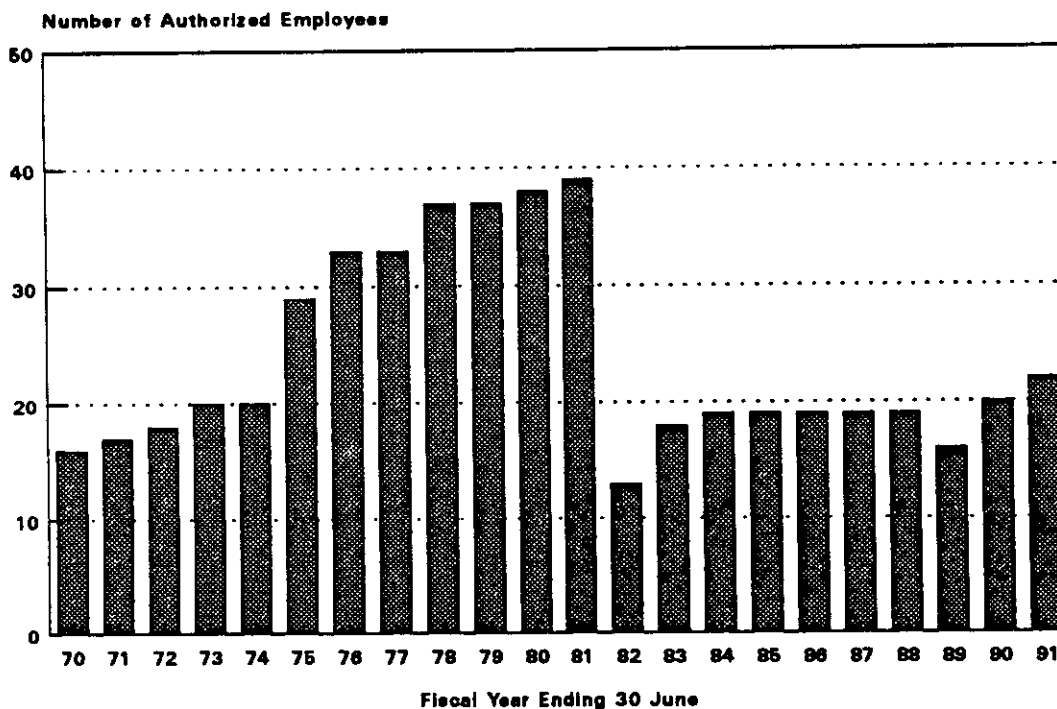
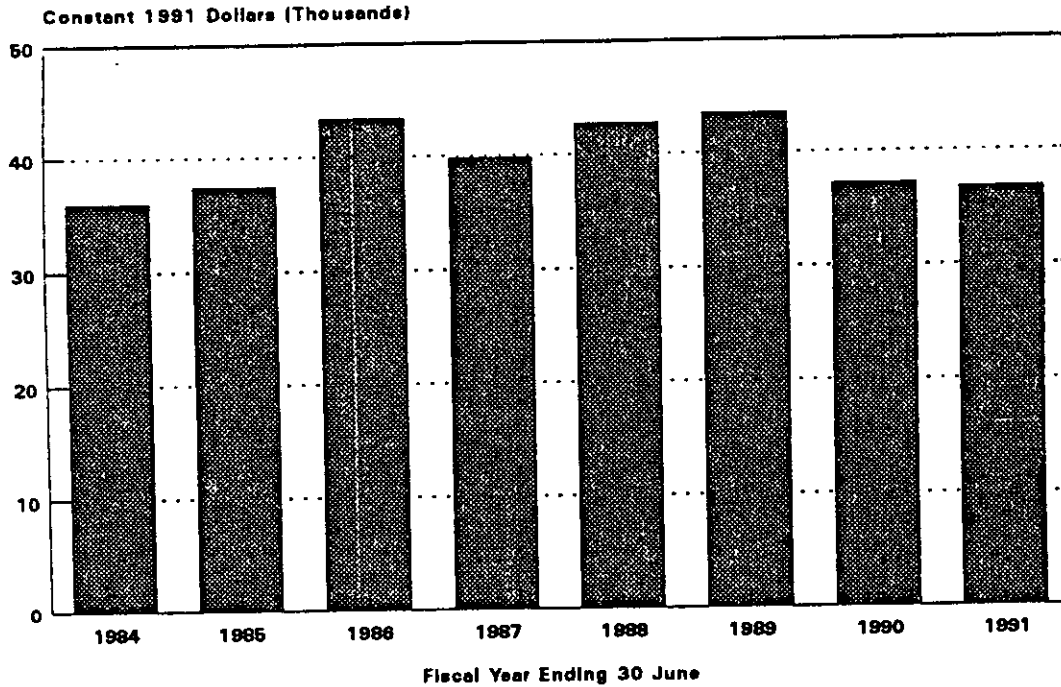


FIGURE 6

The administrative cost data was normalized for the FTE's for the period 1984 through 1991 (Figure 7) and a linear regression for this is presented in Figure 8. An examination of Figure 8 shows a flat trend and it can be concluded that, for the period in question, changes in administrative costs of the Board's office are primarily a function of the number of full time employees.

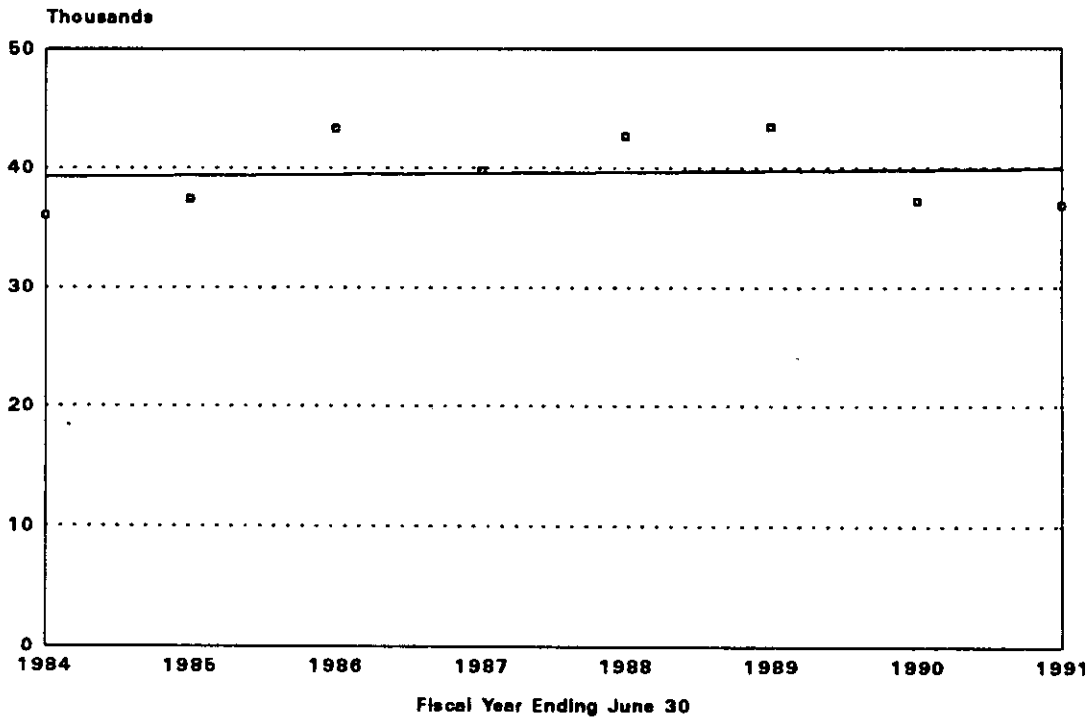
CILB OFFICE ADMINISTRATIVE COSTS PER FULL TIME EMPLOYEE



Salaries & Benefits, Other Personnel
Services, Expenses, Capital Outlay

FIGURE 7

CILB OFFICE ADMINISTRATIVE COSTS PER FULL TIME EMPLOYEE



Salaries and Benefits, Other Personnel
Services, Expenses, Capital Outlay

FIGURE 8

The researchers also examined the administrative support costs charged to the CILB by the Department of Professional Regulation. The Department pamphlet describing the methodology for burdening the departmental overhead describes administrative support as consisting of the following: all cost areas in the office of the Secretary, the Assistant Secretaries, the Director of finance, the Director of Administration, Personnel Systems, Office Operations, Property, Finance and Accounting, the Print Shop, the Mail Room, and (only for those organizations in Tallahassee) the Child Care Center.¹⁰

Interviews conducted with both Board members and with the staff in the Board's offices indicated a lack of understanding of the methodology by which the administrative charges were derived and a general feeling that the methodology might be less than fair. As previously mentioned, the matter was dealt with at some length in a Senate staff report which cited a review by an independent consulting firm that had reviewed the DPR documentation and found the methodology was reasonable.¹¹ A review of the same documents by the researchers revealed nothing out of the ordinary as an accounting and burdening system. We did find at least one area of misplaced concern. The researchers had been informed that a portion of the burden assigned was done by using the total number of licensees reported for the year, including the large number in the "other" category that has been discussed previously. This would have inflated the pro rata share of DPR overhead costs assigned to the CILB. However, at the present time the DPR methodology excludes the "other" category of licensees and overhead shares

¹⁰ "Cost Allocation Methods, 1900-1991," Pamphlet published by the Department of Professional Regulation, State of Florida, Tallahassee, Florida.

¹¹ op. cit., Staff Report of the Senate Committee on Professional Regulation, "Review of Chapter 455, FS," 1991.

are factored on the number of active and inactive licenses.

The constant dollar DPR administrative overhead charged to the CILB for the years 1982 through 1991 are displayed in Figure 9 and a linear regression for the data is shown in Figure 10. There is no doubt that the administrative burden of DPR has increased over the period. In fact, it has doubled. Since this burden is essentially pure overhead since it excludes the cost of the licensure, examinations, and disciplinary functions it raises questions that should be answered. The first of these, is there an increase in benefit to the public or safety being provided for by the increased costs? Secondly, are better services being provided to the Board or the public which result in the increase? The answers to these are subjective and beyond the scope of this report.

DPR ADMINISTRATIVE SUPPORT COSTS FOR CILB

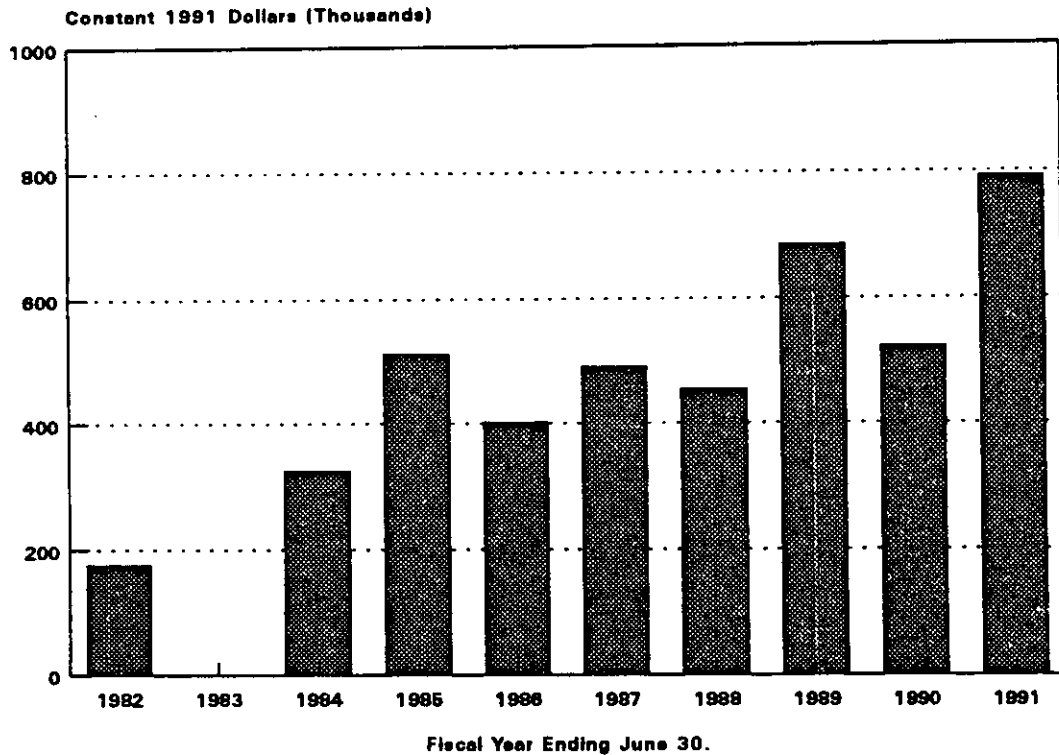


FIGURE 9

DPR ADMINISTRATIVE SUPPORT COSTS FOR CILB CONSTANT 1991 DOLLARS

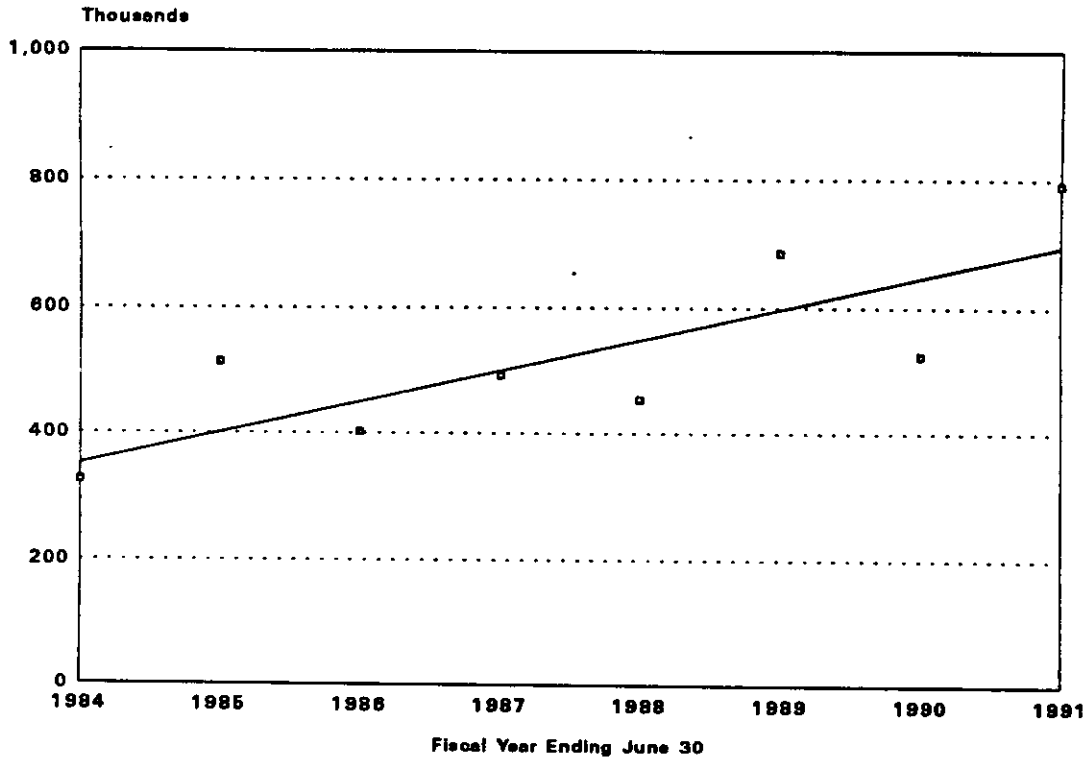


FIGURE 10

The budgetary data available to the researchers did not allow a factoring of the Board's administrative costs into that associated directly with certified contractors and that attributable to registered contractors.

E. Examinations

The requirement to examine prospective certified contractors was included in the first legislation establishing the CILB. It has been continued throughout all revisions to the

statutes. During the period 1967-72 the Board was responsible for writing the examination for each discipline as well as giving, proctoring, and grading the test. If an applicant considered that the questions were unclear or that they had been marked unfairly, the Board also heard the appeal and acted upon it.

In 1973 the legislature mandated that the Board contract with a professional testing firm to both prepare and to give the exams. Subsequent to the reorganization of the Department of Professional and Occupational Regulation (DOPR) into the current Department of Professional Regulation (DPR) and the inclusion of the CILB as one of those Boards under the DPR umbrella, the Division of Examination and Licensure absorbed the examination functions of the Board. Board members still review the examinations for each discipline, provide guidance as to the content of the examination material, and review appeals of grading.

The investigators researched the examination functions of the Board in two areas: number of examinations and the costs of administering these tests. These two indices were scrutinized as work load indicators to see how that part of the Board's responsibility has developed. No research was conducted to determine if the pass-fail rates were reasonable (although data are included in this report for those rates), if the examination procedures were satisfactory, or if the examinations adequately measured the applicants knowledge of their discipline, law, or code requirements.

The total number of examinations administered for all disciplines is shown in Figure 11, commencing the first year that the tests were given through the end of fiscal year 1991. The general trend of the graph shows an increasing number of examinations administered annually but which also mirrors the

test site are also provided by the Board office and a request for the examination to be administered is transmitted to DPR. The Board hires part time help during peak months, just before examining periods, to ensure timely responses to applicants. As compared to 1974, when the first contracted examination was administered, the Board work load averaged over the last four years has increased by a factor of 3.5.

It must be noted, however, that the upward trend is not just a function of an increasing number of applicants in traditional contracting fields but also due to an increase in the number of disciplines certified by the Board. During the period from February 1969 when the first examinations were held through March of 1973, when the Board was reorganized by the legislature, there were only three fields examined: general, building, and residential contractors. Commencing with the examinations given in March and April of 1974, 6 additional disciplines were added: mechanical, air conditioning, sheet metal, roofing, and swimming pool contractors. In February of 1981 Plumbing was added as a separate discipline; in 1982, solar water heating and underground utilities. By the end of fiscal year 1991 seventeen different disciplines were examined and in the case of Pollutant Storage contractors, both a written and a practical examination were used. Subsequent to 1991, the legislature has added yet another discipline, asbestos removal, for which examination is required for State certification. Noting the proliferation of disciplines for which the CILB is now responsible suggests that it may be beneficial to examine the necessity for the continued sub-categorization of contractors and whether or not the public benefits from the process. At the present time (end FY 1991) only 64 % of the examinations administered are in the traditional general, building, and residential contracting fields and the other 34 % are for sub-contractors or specialized fields.

Data for the cost of conducting the examinations were obtained from several different sources and not available for all the years since the program was initiated. Annual reports prepared by the Office of the Auditor General were examined but did not provide the detail required to isolate the examination functions from other office activity in the period prior to 1973. Similarly, the budgetary data and minutes of Board meetings were reviewed from the first Board meeting through the re-organization in 1973 without success. Data from 1973 through 1978 were obtained from the Board's response to questions from the Senate Governmental Operations Committee.¹² That from 1984 forward was obtained from annual reports of expenditures for the Board by the Department of Professional Regulation. The costs associated with the examination functions of the Board, for those years for which complete data were found, are displayed in Figure 12.

Before analyzing the data the investigators were faced with the question of completeness, i.e., are there functions carried on by the Board office with respect to examinations for which the dollar value was not included in the data. It was concluded that there were, but that these functions (screening applications, answering telephones, discussions, executive director's time, etc.) were done by the Board office prior to and after consolidation within DPR and are properly accounted for under the administrative functions of the Board.

¹² "Florida Construction Industry Licensing Board Completed Questionnaire for Senate Governmental Operations Committee," 1979.

COST PER EXAM ADMINISTERED

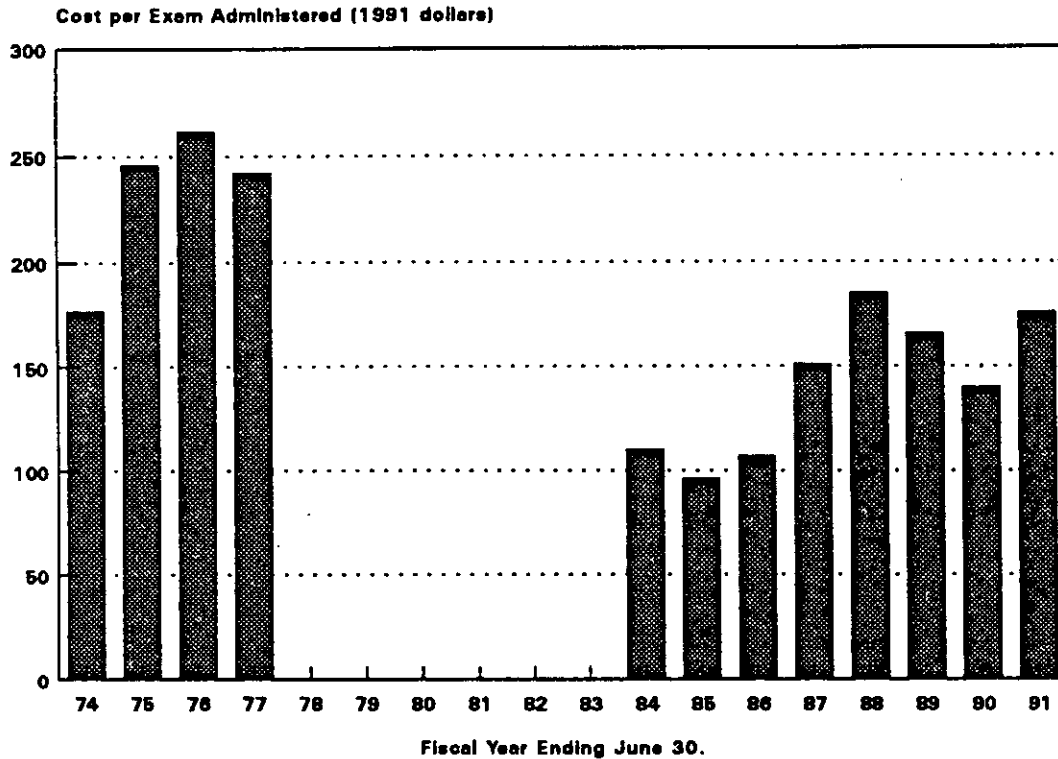


FIGURE 12

The data in Figure 12 have been reduced to constant 1991 dollars and normalized to show the average cost of administering each examination for each year in order to compare the costs incurred by the Board and DPR for performing like services. Such comparisons should be viewed with reservations since the content and length of examinations has changed over the years. For example, one reason for the increase in cost per examination between 1986 and 1988 may be the decision by the Board to alter the structure of the examinations to increase coverage of the applicants knowledge of business practices and law. An

additional increase in cost over the years may be due to the proliferation of construction fields tested that was previously discussed. In 1974 there were three; in 1989 there were sixteen; and in 1991, eighteen.

Still, the average costs for administering examinations under DPR as compared to a comparable period under the CILB (examinations and examination services contracted out) have declined. There may be some economy of scale; data available from DPR annual reports shows 150 separate examinations were prepared and administered for FY 1991 while, as noted above, only 18 of these were related to disciplines monitored by the CILB. Therefore the fixed costs of preparation, site scheduling, proctoring, and other overhead divided by an increasing number may, in fact, account for a part of this decrease. On the other hand, the variable costs associated with the preparation of so many different examinations may swallow a portion of any such savings. No analysis was made to determine the relationship of these factors as that was beyond the scope of this work.

Figure 13 provides the pass/fail data and graphs for the examinations administered. The data suggests that an effort should be made to determine if the gradual increase in the gap between examinations administered and those with a passing score reflects a determination to better serve the public interest, a lowering of the qualifications of the applicants, or is it indicative of unnecessary restraints on licensure. No analysis was made of the data. It is produced here for completeness and for comparison with California data later in the report.

EXAMINATION STATISTICS

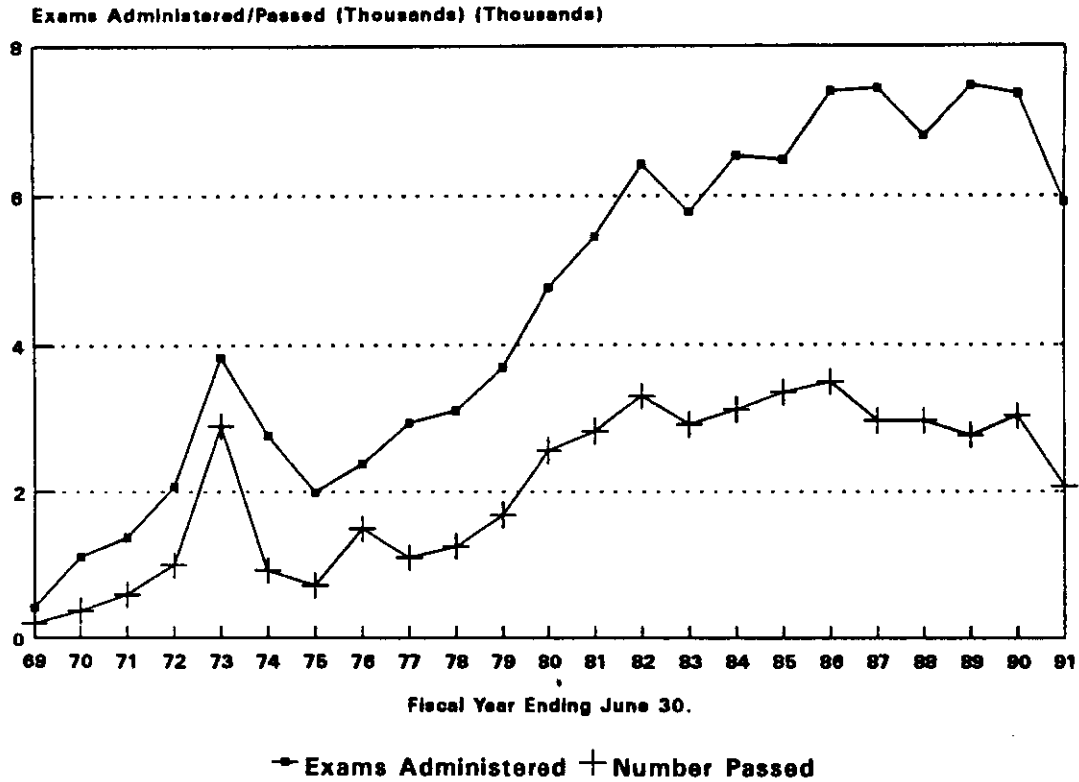


FIGURE 13

The examination functions of the CILB are essentially unaffected by the requirement to register locally licensed contractors. The local jurisdictions licensing these contractors prescribe the examinations, if any, that are required.

F. Licensure

The Board issues licenses to both certified and registered

contractors. Initial licensure occurs subsequent to passing examinations and satisfying other qualifying criteria in the case of certified contractors, and upon application and review of documentation in the case of registered contractors. The review of applications occurs at the Board administrative office, not within the DPR Division of Examinations and Licensure. Upon successful completion of the review, the Board office issues a temporary "letter" license to the individual allowing them to operate for 60 days, and requests that a permanent license be issued by the DPR Licensure Bureau. At the end of June, 1991, forty-eight percent of the licensed contractors in the state were state certified, fifty-two percent were locally licensed in a category recognized by the state and state registered. In addition, there were another 7,400 "specialty" contractors, licensed in local jurisdictions in a category not examined or otherwise provided for in the state certification process, but registered with the state as required by law. These specialty contractors are not reflected in the data generally provided in the annual reports of the numbers of licensees.

Applications for renewal of licenses are sent to both registered and certified contractors automatically from the DPR Licensure Bureau. Given that the return information is provided in the correct format, the fee amount correctly paid, and that there are no outstanding disciplinary matters pending, the license is renewed without additional work at the Board. Continuing education, additional testing, etc., is not required no matter how long the period since initial testing. It is conceivable that an individual can become licensed, never again engage in contracting, and yet remain licensed as a contractor in the state. Records for licenses issued are maintained at the DPR level and accessed by computer at the Board office.

A search was made for data that would allow the licensure

of each category or discipline to be examined separately but these records apparently do not exist for most previous years. In 1989 the DPR started accumulating and publishing statistics showing the distribution between active, inactive, and "other," where the other category includes those who have held a license but not renewed it and those who have applied for a license but the application process is not completed. The distribution of these categories at the end of fiscal year 1991 is shown in Figure 14.

DISTRIBUTION OF LICENSES IN 1991 ACTIVE, INACTIVE AND OTHER

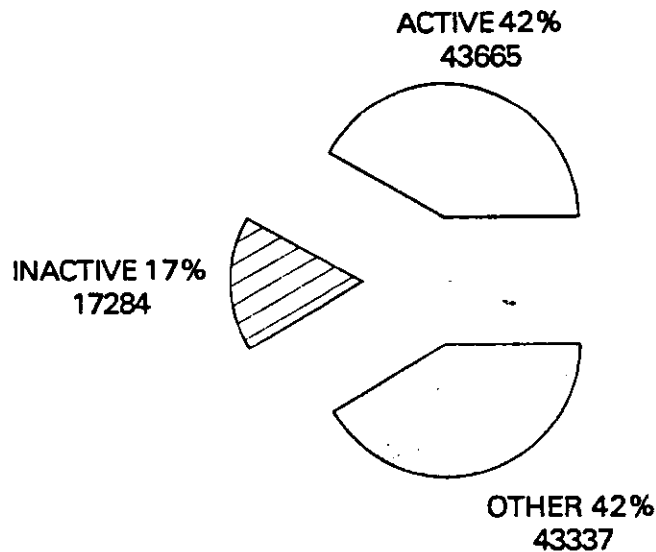


FIGURE 14

The data shown in Figure 14 graphically show one of the problem areas encountered when trying to objectively examine the tasks performed by the CILB and DPR. Fully 41.6% of the licenses outstanding at that time were in the "other" category. Even if all of the new licenses to be processed in a normal year were still pending, there would be over thirty thousand licenses termed "other" for which no work is done, for which scant information is available, but which are still on the books. DPR has started a program to purge the files of these totally inactive licenses. Licenses for those individuals not renewing after two renewal periods, starting June 30, 1989, will be expunged from the records. This program will not be fully implemented until the end of August in 1994.

The total number of outstanding licenses under the purview of the CILB is displayed in Figure 15. The data are for all fields and all categories; registered, certified, active, inactive, and other, excepting locally licensed specialty contractors registered by the state but for which no state-wide category exists.

CILB TOTAL LICENSES

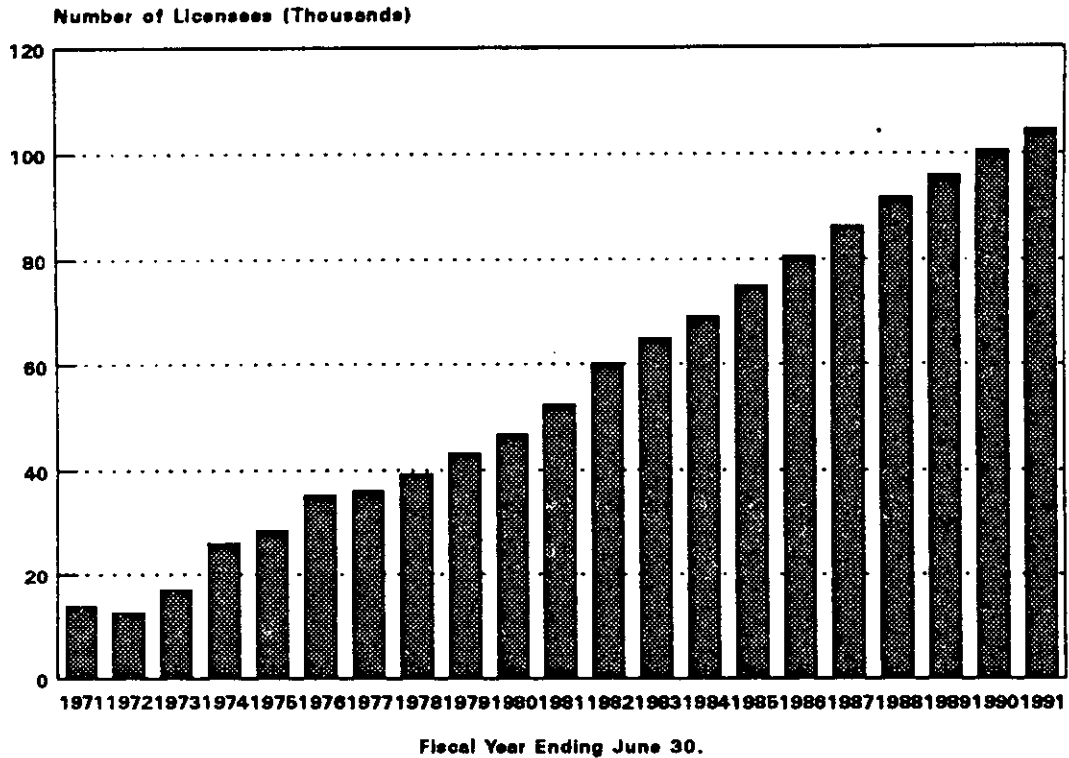


FIGURE 15

The data for Figure 15 show a five fold increase in the total number of outstanding licenses since 1973 when the legislature added categories other than general, building, and residential contracting. If the data are normalized on population, to show the number of licensed contractors per one thousand residents, the graph shown in Figure 16 results. The data indicate that the growth in the number of contractors licensed by the CILB exceeds the growth in population of the state. Consequently one would expect that, all other things

being equal, the total cost of regulation in this case should exceed the normal cost growth shown by the consumer price index.

FLORIDA CONSTRUCTION LICENSES

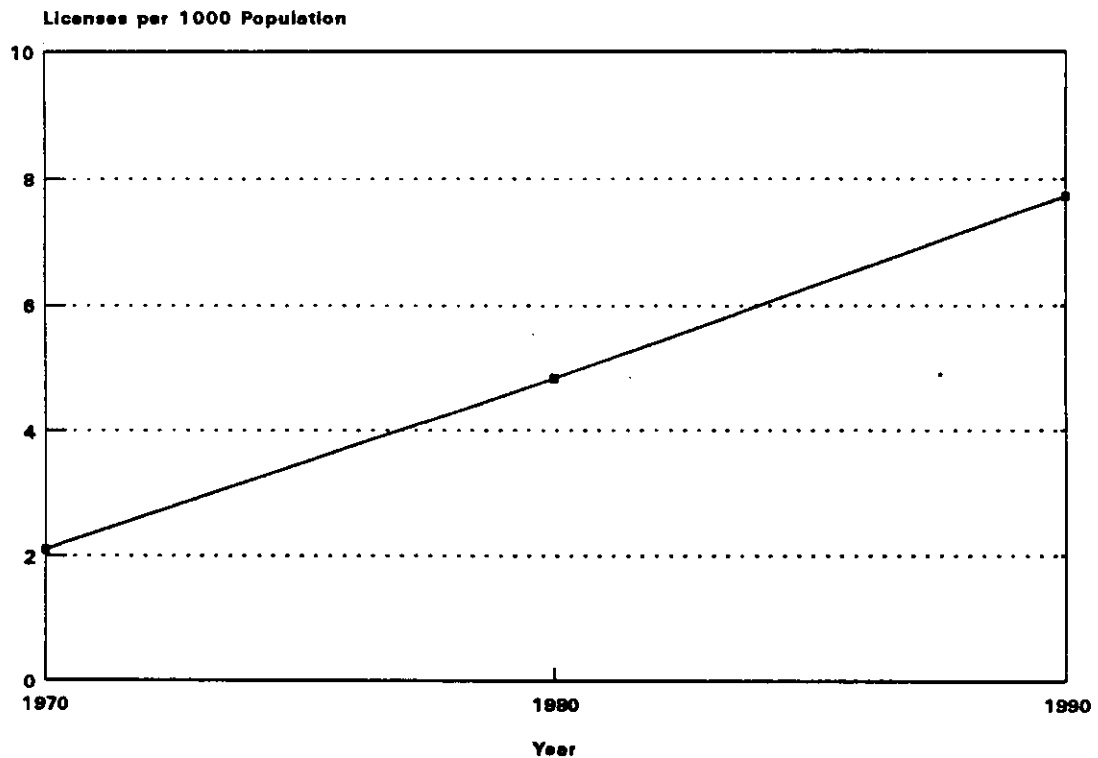


FIGURE 16

The constant dollar costs charged to the CILB by the DPR Bureau of Licensure are depicted in Figure 17 with a linear regression fit superimposed on the graph. Despite the "dip" in 1991 expenditures, the linear regression indicates a downward trend in costs of operations over the years.

DPR EXPENSES FOR CILB LICENSURE FUNCTIONS

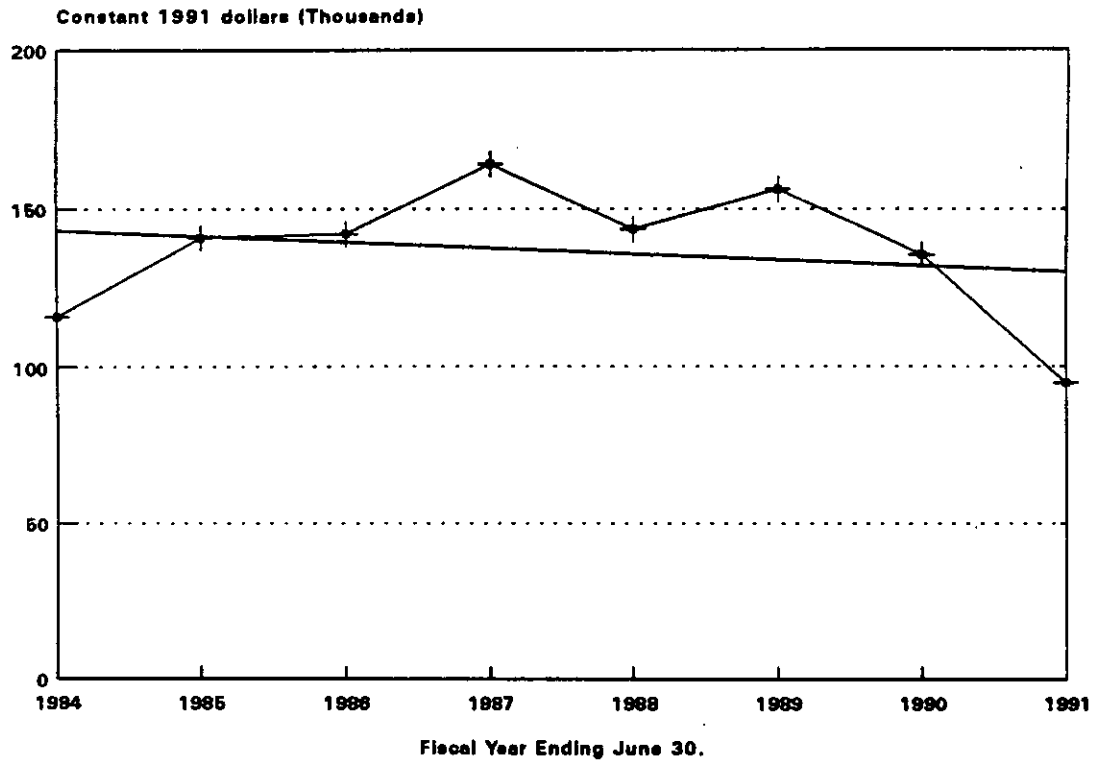


FIGURE 17 -

When the basic data of Figure 17 are normalized on the total licenses outstanding, the resulting graph, Figure 18, also shows a decline in the costs of that DPR assesses the CILB for each license issued. The declining cost of the DPR licensure functions may be attributable to increased efficiency within DPR, to declining prices for the materials used, to a decline in the amount of service performed, or any of the normal organizational variables that would be investigated in an efficiency study.

DPR LICENSURE CHARGE PER LICENSE

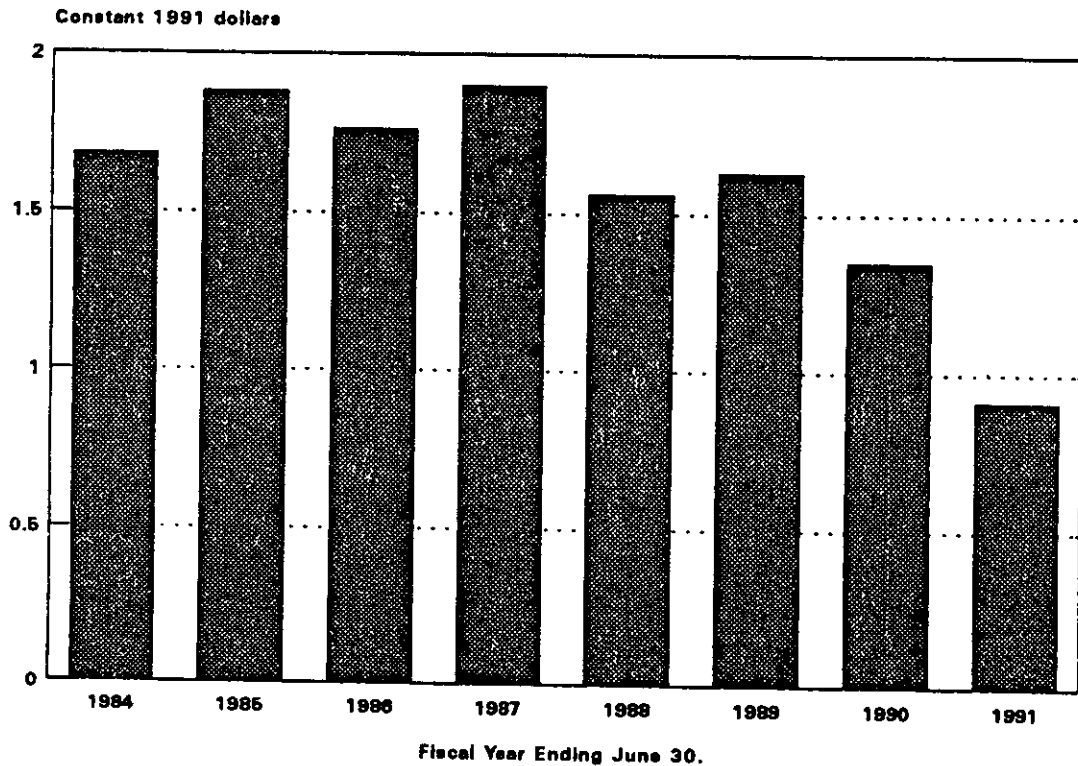


FIGURE 18

The decreasing unit cost revealed in Figure 18 also could have been a result of the large number of "other" licenses for which there is no activity and essentially no cost charged to the Board. The data for those years for which the "other" category could be broken out allows only a four year look and it is arguable that, standing alone, this is too short a period to establish a definite trend. However, a graph of the data where only active and inactive license categories are considered, superimposed on a graph where all license categories are used as a basis for calculations (Figure 19), essentially mirrors the

trend at a different level. This allows the conclusion that the decrease in the per unit costs to the CILB of the DPR licensure function is definitely not just caused by an inflated number of licenses.

DPR LICENSURE COST PER LICENSE

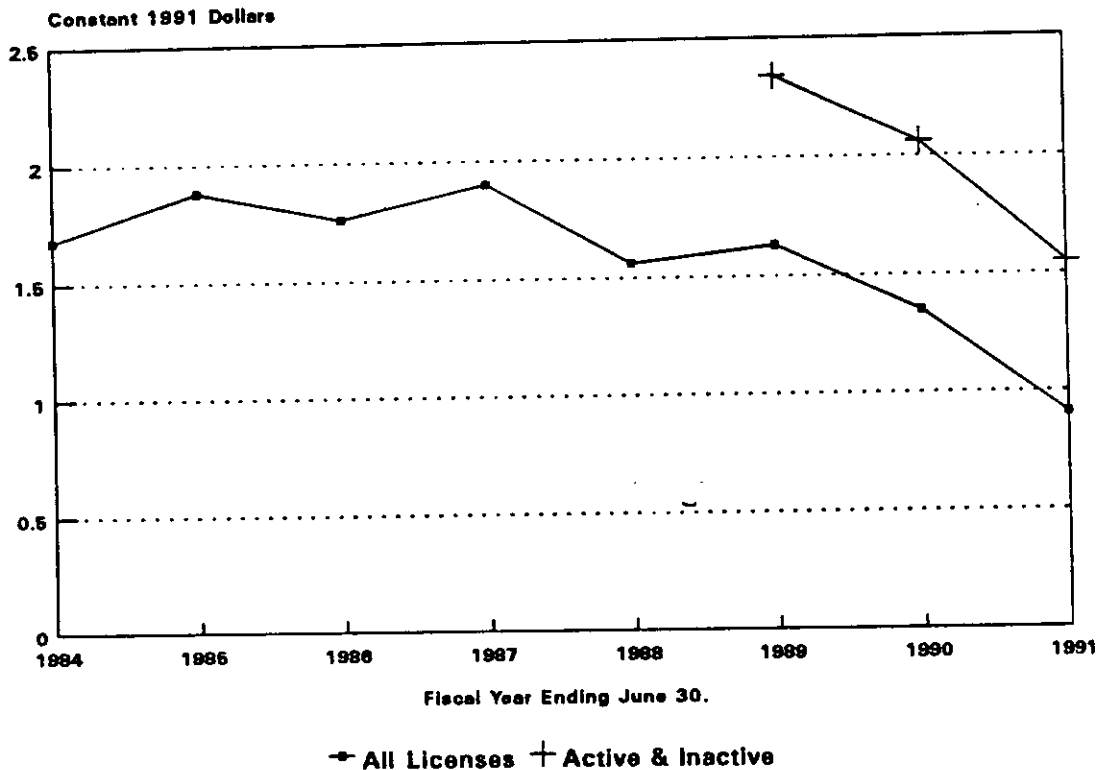


FIGURE 19

As a final statistic in this section, Figure 20 graphs the total number of applications for licenses received by the CILB for the last 7 years. The data are not only applications for new licenses but also for renewal, and for both active and inactive licenses (excepting the "other" category). Superimposed on this graph is a line showing the constant dollar cost of the

licensing function divided by the number of applications. The dollar cost per license application reflected on this chart as well as Figure 18 are so small that it is apparent the charges by DPR are essentially only for printing and postage. Consequently the researchers concluded that the cost of the licensure function recoverable from published data in reality is just, i.e., the costs of the actual work and overhead in this very narrow function.

FLORIDA CILB LICENSING APPLICATIONS TOTAL APPLICATIONS AND COST FOR EACH IN CONSTANT 1991 DOLLARS

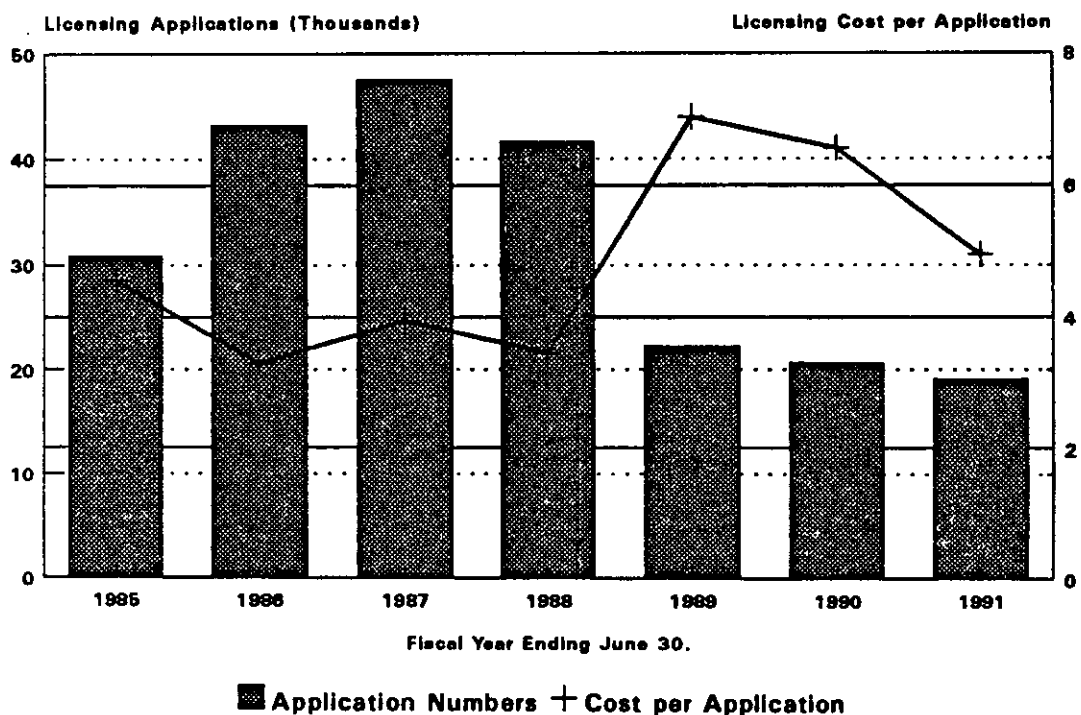


FIGURE 20

In the previous sections of this report it has been stated that the Board's central office cost data are not necessarily

"clean", i.e., there are functions performed that are not necessarily mentioned in the budget detail. In at least this one area, the DPR charges appear to be very clean indeed.

The opposing trends shown in Figure 20, decreasing applications but increasing costs per application, are indicative of a relatively constant overhead cost regardless of the work load. Since the variable mailing and printing charges are submerged in the administrative overhead charges to the CILB, it can be assumed that the fixed costs consist primarily of salaries and other like costs. Consequently the data suggest a surplus of personnel within the Bureau of Licensure. The word "suggest" is used since the data for the other Boards and Agencies under DPR were not examined and the trend shown here may not be true for the Department as a whole.

G. Discipline and Enforcement

The fourth functional area of the CILB that the investigators examined was the handling of disciplinary cases. The authority of the Board for disciplining licensed contractors is provided in the enabling statute establishing the Board.¹³ The Board may revoke, suspend, or deny the issuance or renewal of a license; may require financial restitution to a customer; may impose an administrative fine up to \$5,000; may place a contractor on probation, require continuing education, assess costs of investigation, or reprimand or censure a contractor that is found guilty of any of several violations of the Florida law. It should be noted that the Board has no authority to pursue the prosecution of un-licensed contractors and no authority to discipline such individuals or firms.

¹³ Florida Statutes Chapter 489, with revisions through 1990.

Under current Florida law, only individuals hold contracting licenses, not firms. A licensed individual may serve as the primary or secondary qualifying agent for a corporation or other business organization. If a firm is found to have violated a section of the Florida statutes with regard to construction, then the disciplinary action taken by the Board is against the individual holding the license. The firm may, of course, pay any fines or make restitution if that is required. However, if the qualifying agents license is suspended, revoked, or not renewed the firm must obtain another qualifier to continue in business.

Disciplinary proceedings are normally instituted by a complaint to the Department of Professional Regulation concerning a licensed individual or the firm for which that individual serves as the qualifier. Complaints may be made by telephone hot-line or initially by letter. No action is taken by the DPR until such time as the alleged violation has been reduced to a written statement by the person(s) registering the complaint and this statement received.

When the written complaint is received it is initially reviewed for legal sufficiency. There are many things that an individual may not like about a contractor or firm, but not all of these are legally sufficient to justify action by the Board. In general the complaint must allege that the contractor has committed one or more of the following violations of Florida law: fraud in obtaining a license; being convicted or found guilty of a crime which related to contracting, regardless of the jurisdiction; willfully or deliberately violating provisions of the applicable building codes; aiding an unlicensed contractor to perform contracts; "renting" the license to a business entity over which the license holder has no real control; financial mismanagement or misconduct in the execution of a contract which causes financial harm to the consumer; being

disciplined by a municipal or county agency having the authority to do so; abandonment of a construction project; being guilty of fraud, deceit, gross negligence, or incompetence in the practice of construction. If the complaint does not survive this scrutiny, then no further action is taken other than to inform the complainant that there does not appear to have been a violation of the statutes.

If the complaint survives the original scrutiny it is forwarded to the DPR Bureau of Investigative Services. Within this agency the complaint may be handled by correspondence without a formal investigation, either from Tallahassee or from one of the regional field offices of the Department. If the apparent offense warrants a field investigation, a trained investigator is assigned to the case. In either instance, a report is made to the Department in Tallahassee of the results of the investigation. This report is provided to the DPR Bureau of Legal Services where the complaint and the investigation are reviewed to establish that there is, or that there is not, probable cause to consider punitive action against the contractor.

If the investigation reveals that there is probable cause to take action against the contractor, but the offense is deemed to be minor, the legal section of DPR will issue a letter of guidance. This action is reported to the Board and closes out the case. However, in the case of more serious misconduct, the legal section refers the report and an attorney's recommendation to the CILB Probable Cause Committee which makes the determination to proceed with the case or to drop it.

Given that probable cause for further action is found, the report is returned to the legal department which recommends Board action consistent with guidelines and precedents established by the Board for similar cases. If the contractor

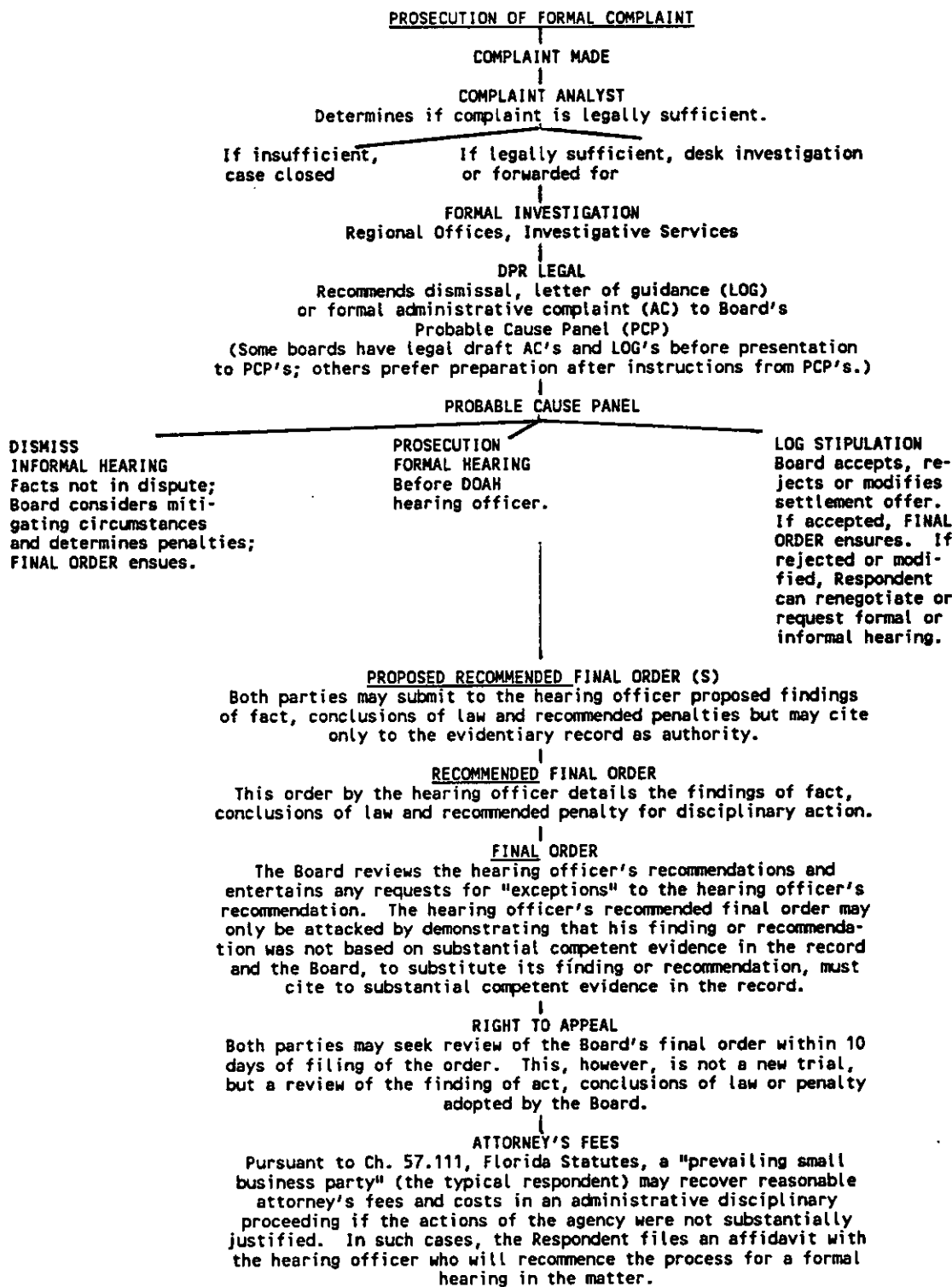
accepts the findings and recommended action, the case goes to the Board for approval. If the contractor disputes the findings or the recommended action, an administrative hearing is held within the Department of Administrative Hearings, an agency separate from the DPR and the CILB. The hearing officer can find for the Board or the contractor. If the finding is for the Board, the case goes to the Board for approval. The contractor can, at that time, appear before the Board, not to contest the findings of fact, but to place into evidence any mitigating circumstances that might exist which the license holder thinks should be considered. The Board then takes final action on the case as deemed appropriate. A flow chart detailing the procedures outlined is presented on the following page.

Records could not be found of the number of complaints received by the CILB prior to consolidation under the DPR. The data depicted in Figure 21 are that for the legally sufficient complaints received subsequent to consolidation, either at Jacksonville or Tallahassee, in written form so that they could be processed as described above. As a matter of interest it may be noted that during the three year period covered by fiscal years 1987-88 through 1989-90, the DPR received an average of 19,341 complaints for an average number of 1,173,374 outstanding licenses. However, while the professions under the CILB accounted for only 8% of these licenses, they were the cause of 26% of the complaints that were received. While overall DPR complaint data are not germane to this report, it should be noted that the decline in construction related complaints shown in the period 1989 through 1991 is not true for the department as a whole. During the same period covered by Figure 21, the overall number of complaints continued a steady upward trend.

TABLE/CHART 2

FLOW CHART OF DISCIPLINARY PROCEEDINGS

Prepared by the Staff of the Florida House of Representatives
Committee on Regulatory Reform



CONSTRUCTION INDUSTRY COMPLAINTS RECEIVED BY DPR

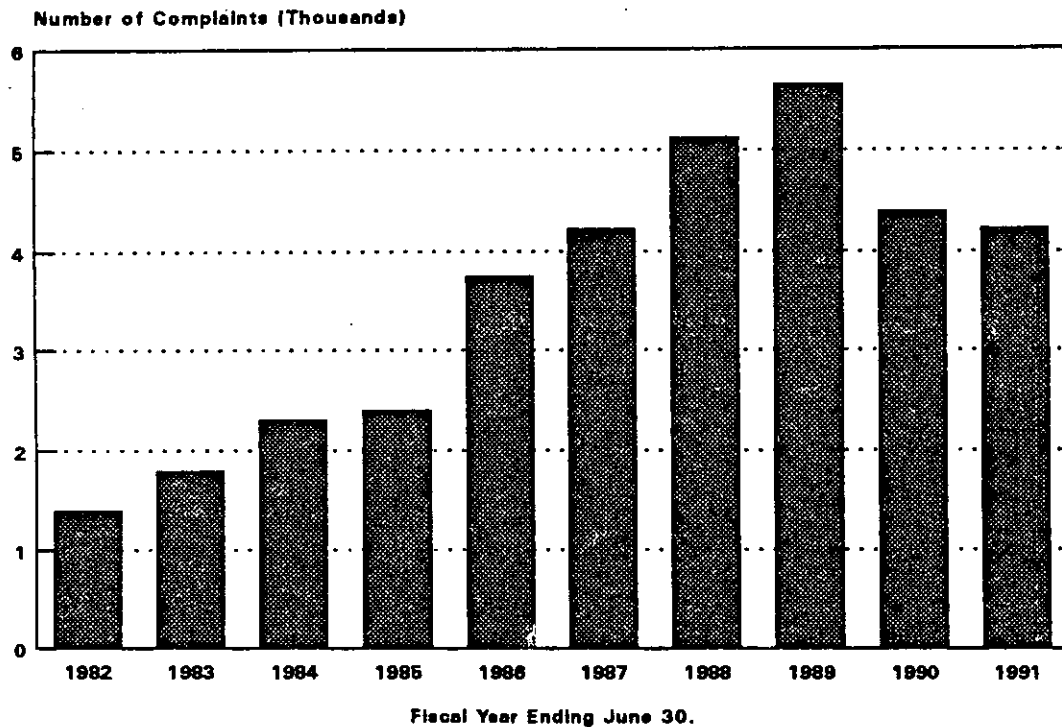


FIGURE 21

The DPR charges the CILB for the disciplinary functions that they manage in four areas: the handling of complaints; the investigative work; the payments made to the Department of Administrative Hearings (DOAH) for those hearings that are required; and legal costs. The total of these charges, reduced to constant dollars, is displayed in Figure 22. A linear regression analysis performed on the data and superimposed upon the chart shows an increase from 1984 to 1991 amounting to \$750,000, annually.

DPR TOTAL DISCIPLINARY EXPENSES FOR CILB

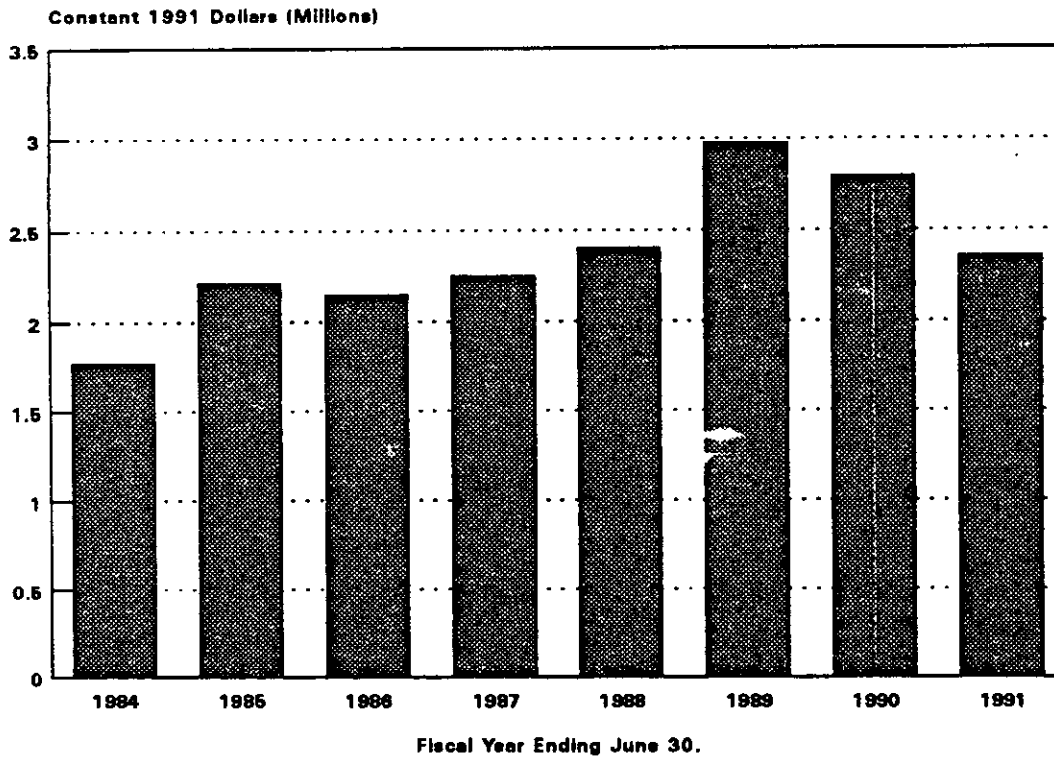


FIGURE 22

During the interval 1984 to 1991, a regression performed on the disciplinary related costs charged to the CILB as a percentage of the CILB total revenue showed an increase of 44%. (Figure 23). Consequently, an increasing share of the Board total revenue is being devoted to an area in which very little revenue is generated.

DPR TOTAL DISCIPLINARY EXPENSES FOR CILB

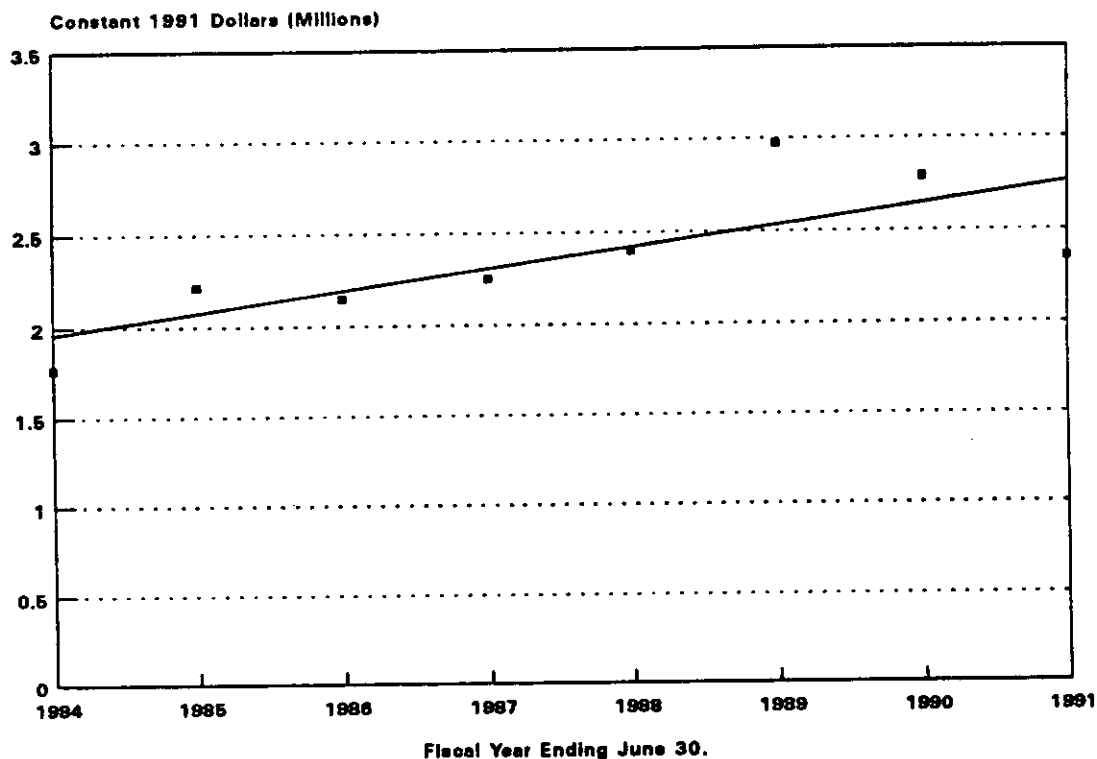


FIGURE 23

Figure 24 shows the distribution of the disciplinary costs billed to CILB by functional areas within the DPR. Excepting the funds transferred to the Department of Administrative Hearings (DOAH), these functional areas fall under the purview of the Director of the Division of Regulation. A review of the accounting procedures by which these charges are established shows that they are directly a function of the number of personnel hours spent handling the Board affairs. In the case of the administrative support for the Director's office, the total burden is divided among the Boards and agencies served and

weighted by 1/4 of the complaint hours, 1/4 of the investigative hours, and 1/2 of the legal hours expended for the Board within the Division. At the end of fiscal year 1991 there were 52 Boards or agencies for which the Division of Regulation provided services. However, during that year the work for the CILB amounted to 19.5 % of the personnel hours for the complaints section, 10.8 % of the investigative personnel hours, and 21.6% of the total legal hour. Consequently, the Board contributes a large share of the administrative overhead (second only to the Medical Board which receives the highest number of complaints and spends the most money for investigations and legal expenses).

DPR DISCIPLINE EXPENSES BY CATEGORY

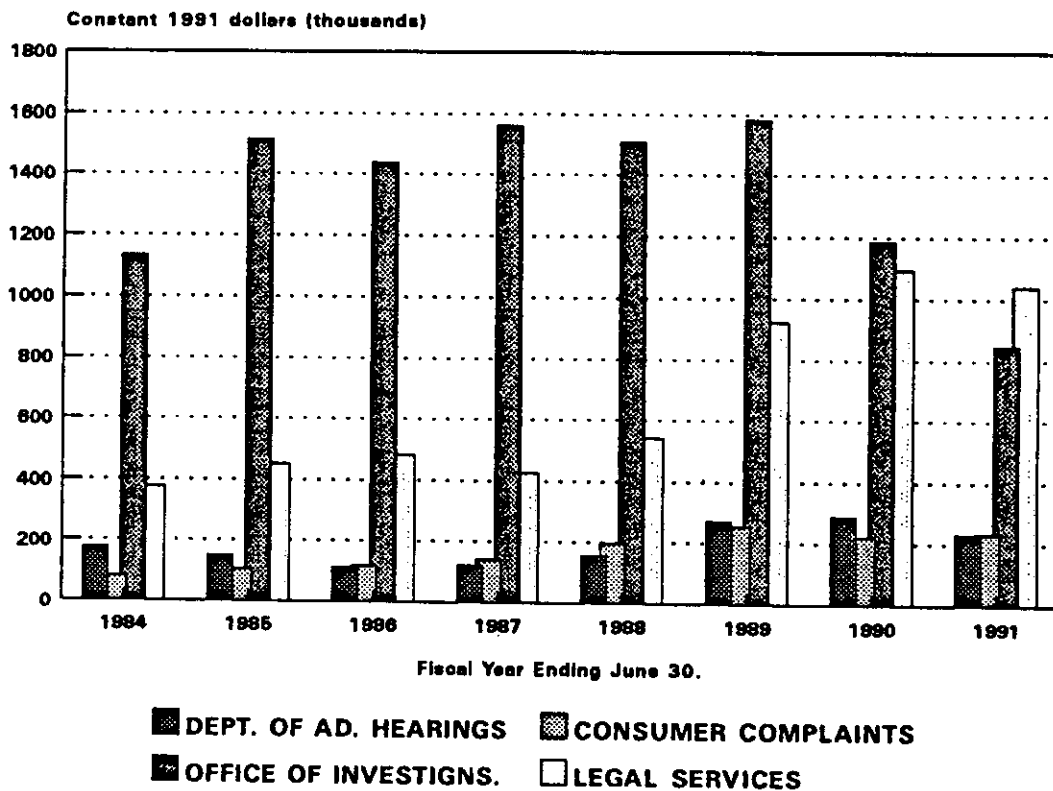


FIGURE 24

A plot of the data showing the total construction industry related complaints received versus those for which the DPR found that there was legally sufficient cause to start an investigation is shown in Figure 25. The chart shows that about the same percentage of the total complaints were considered legally sufficient for the fiscal years 1982 through 1987. Commencing in the latter year a growing divergence between the lines is apparent.

CONSTRUCTION INDUSTRY COMPLAINTS RECEIVED BY DPR

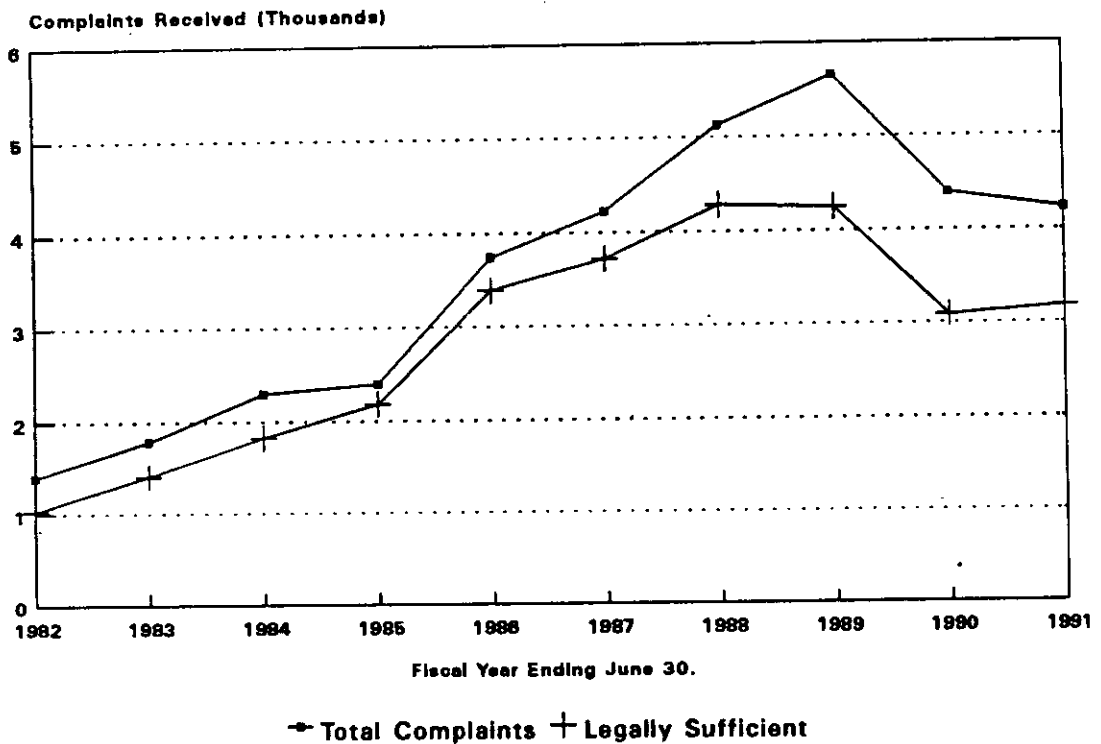


FIGURE 25

If reference is made to Figure 24, there is an upward trend in legal charges and a downward trend in investigative billings from 1987 forward. Interviews with members of the DPR revealed

that a change in the procedure for staffing the complaints occurred in the 1986 time frame. It was decided that there would be a more thorough investigation of the complaint before deciding if it was legally sufficient. This had the affect of reducing the number of complaints to be investigated by field personnel with a commensurate reduction in investigative costs. The reason for the simultaneous increase in legal costs is not known.

There are a small number of complaints for which legally sufficient cause for further investigation is found but for which the investigation reveals that disciplinary action is not warranted. The remainder of the case load, those for which the probable cause for disciplinary action exists, are those for which the greatest operating costs occur. All of the transfer of funds to DOAH and most of the inner-departmental disciplinary costs are expended on these. The average of these total expenses for each probable cause complaint is shown in Figure 26.

The data for Figure 26 suggest a lowering of the disciplinary costs to the CILB in the years subsequent to 1982 without allowing the researchers to determine why the trend occurs. Procedures within the department for handling complaints continue to change and no one factor seems to have lead to the decrease. During the period, "desk top" investigations, those done by correspondence, were originally done at the field office, then centralized at the capitol, and are now done at both levels. The ability of the field offices to issue citations, and thus terminating the disciplinary proceedings at an earlier time, is just now coming in to play. There have been changes in the administration of the Department and, logically, in the emphasis placed on various parts of the system.

TOTAL DPR DISCIPLINARY EXPENSES FOR CILB PER PC COMPLAINT

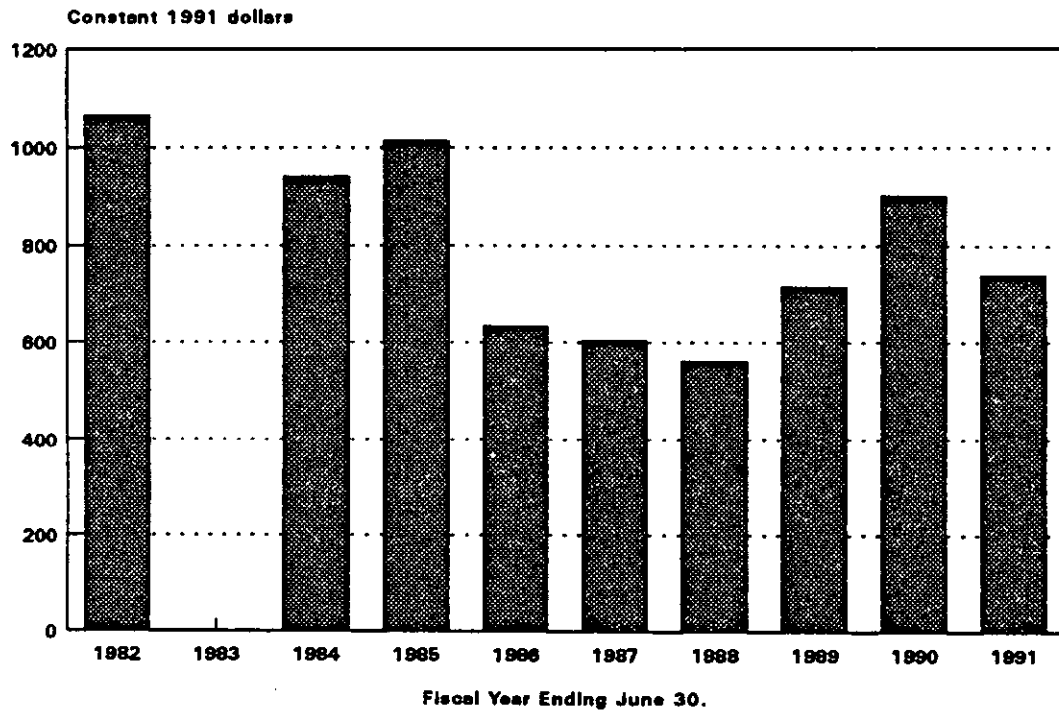


FIGURE 26

The researchers isolated the costs for each probable cause complaint into investigative costs and legal costs. The data are shown in Figure 27. In constant dollars, while the investigative costs associated with each probable cause complaint decreases through the period, the trend is for the legal costs to increase. The latter finding is not consistent with the trends and actions previously discussed. If, as stated, a more thorough screening for legal sufficiency is taking place when the complaint is first registered, this action is done prior to the complaint reaching the Bureau of Legal

Services. Thus the investigative costs are decreased. To be consistent, the costs of the Legal Services per case should also either decrease (Legal Services no longer has to "weed" out superfluous cases with the "overhead" being attributed to the remaining cases) or stay about the same. An increasing Legal Services cost per complaint serviced may indicate an increasing work load per complaint, an increase in salaries not accounted for by a transformation to constant dollars, a change in functions not otherwise accounted for, or a relatively static total overhead cost with a reducing work load.

DPR INVESTIGATIVE & LEGAL COSTS PER PROBABLE CAUSE COMPLAINT

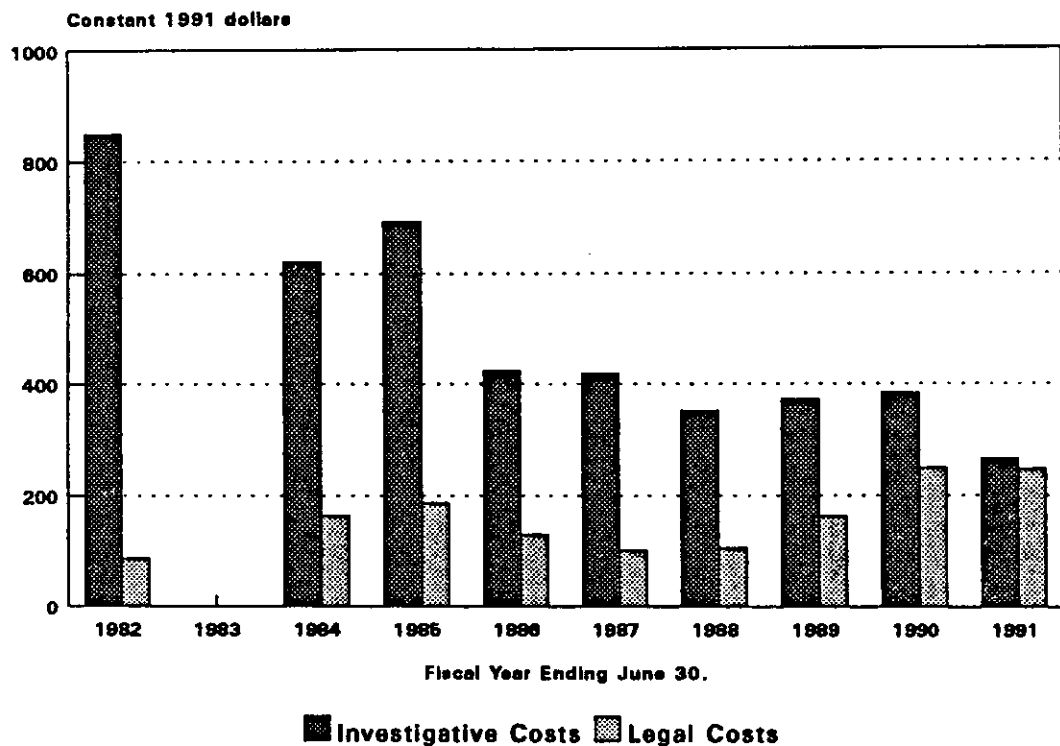
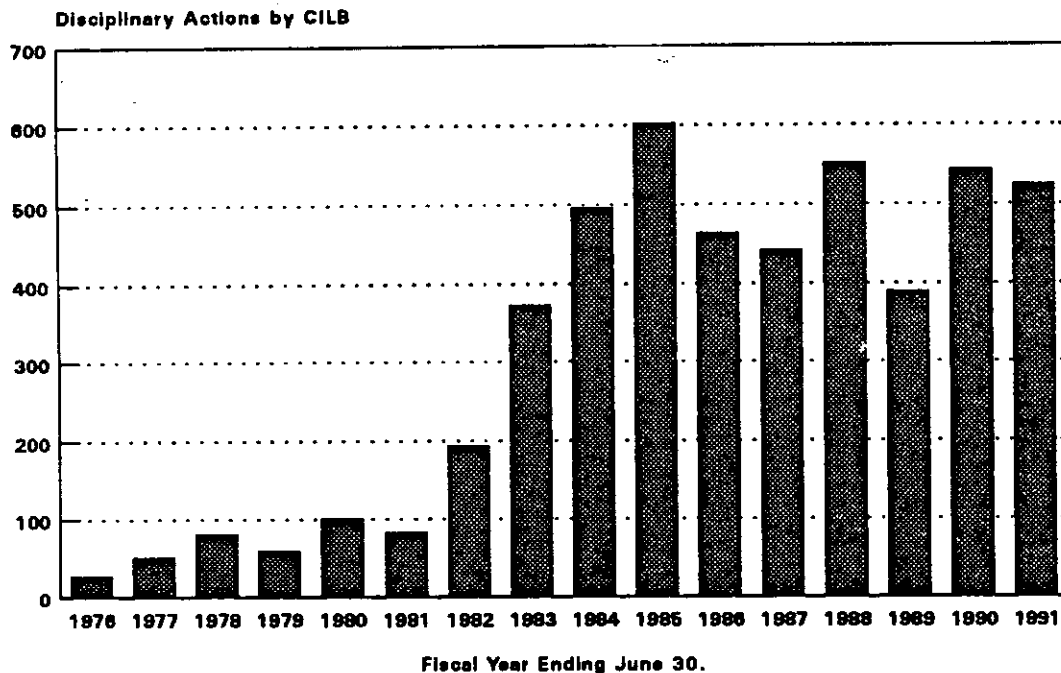


FIGURE 27

Final action on disciplinary cases may take the form of letters of guidance or other warnings issued by the DPR or punitive actions such as suspension or forfeiture of a license, requiring monetary restitution to a consumer, or the levying of an administrative fine. These latter, more serious punishments are voted on by the Board and represent a significant portion of the Board's work load. If one considers that each case represents several hours of investigative and legal effort, review and voting by the Probable Cause Committee, and review and voting by the appropriate members of the Board, fully two thirds of the actual Board meetings (and all of the Probable Cause Committee meetings) is occupied by this function.

The case load data, plotted in Figure 28, show a dramatic increase in the number of such hearings handled by the Board since consolidation under the DPR. Given that there was no real change in the regulatory tasks of the Board, but rather a change in the administrative detail, it is apparent that a major shift in emphasis occurred at the time of consolidation.

DISCIPLINARY ACTIONS COMPLETED BY CILB



Includes Lic. revoked, surrendered,
suspended; probation; fines; reprimands

FIGURE 28

The data that are displayed in Figure 29 normalize the number of construction industry related complaints handled by DPR against the number of outstanding licenses. Previous charts and data presented in this report have shown both an increase in complaints and an increase in the number of licenses. The normalization process allows an answer to the question of whether the increase in complaints is merely a function of increased construction licensees or are complaints increasing faster than the number of practitioners. Unfortunately, the data show an increasing trend through the years. Considered

alone the trend indicates a growing dissatisfaction of the consumer with the construction industry in the state. There may be mitigating factors such as increased consumer awareness of complaint procedures. However, the trend is sufficiently pronounced that it should be of concern to members of the Board and the construction industry as a whole .

FLORIDA CONSTRUCTION INDUSTRY COMPLAINTS PER 100 LICENSEES

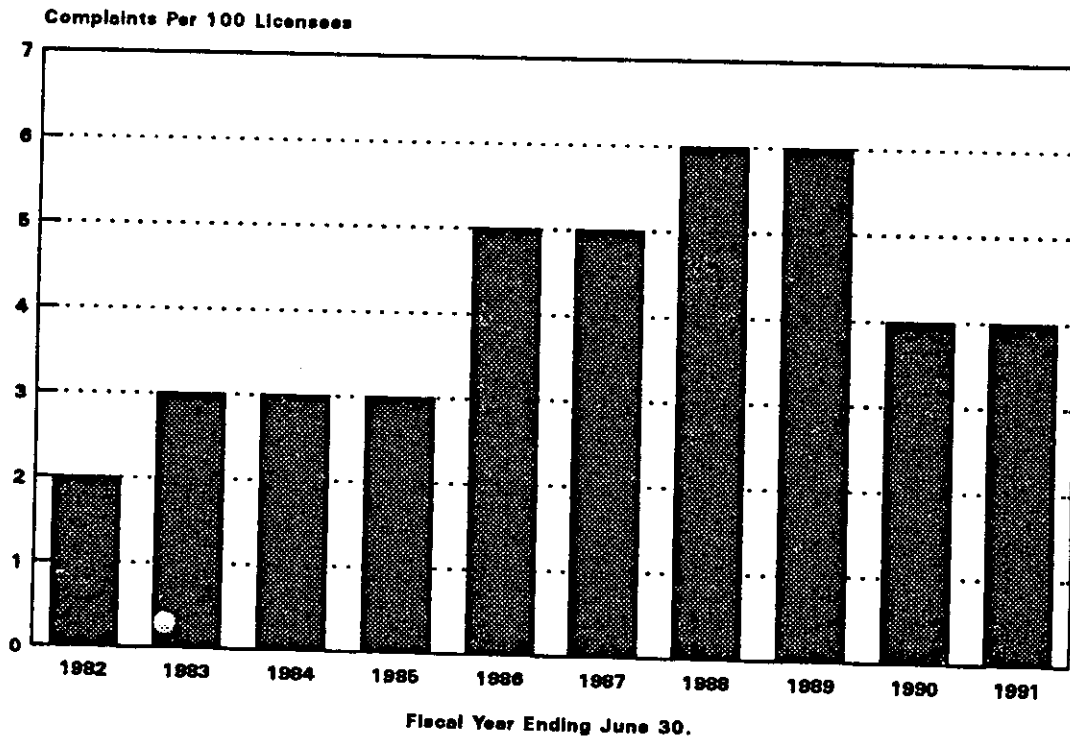


FIGURE 29

Interviews with members of the Board and DPR revealed a particular concern with the length of time taken to resolve enforcement actions. As previously mentioned in the literature

survey, the Florida House of Representatives Committee on Regulatory Reform documented 354 days as the average time for adjudication, with 180 days being utilized in the investigative phase and 174 days required for the legal processing.¹⁴ There was general agreement by those interviewed that the process should, somehow, be made more responsive and less time consuming. However, there was no agreement as to the methodology for affecting this.

In general, Board members felt that one of the reasons for the lengthy time required to resolve enforcement matters was their lack of control over the investigative and legal staff. Currently, the investigators and attorneys work for DPR and are assigned cases for all of the agencies regulated by the Department. The line of reasoning is that if the investigators were responsible only to the Board, their work would be prioritized by the Board and be related only to the construction industry. Without having to do the non-construction related investigations, the process would be expedited. While there may be merit in the idea of separate staffs for the construction industry there are no data existing and no studies were found that support the reasoning. The data do not exist simply because the Board began contracting out for a portion of the investigative and legal work as early as 1973. The heavy case load now carried by the Board is a more recent phenomena and has apparently existed only since consolidation under DPR.

In addition to the perceived problem of not controlling the priorities and actions of the investigative and legal staff, under current law the Board is also burdened by being the ultimate authority for discipline and enforcement of not only

¹⁴ op. cit. Draft Report of the Florida House of Representatives Committee on Regulatory Reform, "Construction Contractor Discipline..."

state licensed and certified contractors but also for locally licensed and registered contractors. This is true of all licensees and all categories, whether or not the state examines and certifies contractors in that category. "It is important to remember that it is the presence of the registration -- not the local license -- that allows the individual to lawfully engage in contracting."¹⁵

If a locally licensed contractor is disciplined at the local level and the local license suspended or revoked, that jurisdiction may refuse to issue new permits to the individual. However, if that licensee has local licenses in other jurisdictions, he/she may continue to engage in contracting under these licenses unless there are local reciprocal agreements in place which prevent this. On the other hand, if the registration is revoked or suspended by the CILB, then the licensee is precluded from contracting in any part of the State of Florida.

Local jurisdictions can, and some do, provide an enforcement and disciplinary function with respect to their locally licensed contractors. State certified contractors are exempt from these local procedures. Since the local authorities do not have to abide by the State regulations and laws concerning administrative hearings, they are generally able to handle their case work more expeditiously than is DPR. However, all local jurisdictions have the option of referring complaints directly to the DPR and the Board, regardless of whether or not the alleged offender is state certified or locally licensed and state registered. Consequently the Department often finds itself investigating alleged misconduct by a contractor for which no state regulations exist, and the Board participating in enforcement and discipline for a contractor for which no state

¹⁵ *ibid.*

examination or certification is provided. During the period commencing 1 January, 1989, through September 3, 1991, thirty-eight percent of the disciplinary cases investigated by DPR for which probable cause for further action was found were for locally licensed, non-state-certified contractors. Short of sifting through every case to determine the costs and time consumed for each, the data are not available to state with certainty that this equates to thirty-eight percent of the Boards disciplinary offense expenditures and time were spent on un-certified contractors. However, it is a reasonable assumption that the figures would be close.

The primary purpose for the CILB is the protection of the consumer from acts of negligence, fraud, or abuse from contractors. Thus it cannot be reasonably argued that the Board should disregard close to forty percent of the cases of such misconduct because the individuals are locally licensed. It does seem reasonable, however, to require jurisdictions that locally license contractors to be the first in line to investigate and take appropriate action in cases of misconduct. In such cases the Board could establish guidelines or set thresholds at which it would reserve action to itself, such as suspension of registration or denial of renewal of a license. All other local matters would be handled locally.

As previously mentioned, state law requires individuals and firm qualifiers to be registered or certified by the CILB before they may solicit business as a contractor. This is true even if the individual or qualifier holds a local license. To preclude the proliferation of contracting categories it is conceivable that the Board could simply decline to register those for which a state recognized category does not exist. This would effectively stop such locally licensed individuals from engaging in construction contracting.

H. Growth Projection

Projections of growth and change based upon historical data are replete with assumptions which bear with them the strong possibility of error. The first assumption in this section is that the forecast change in population will occur substantially as predicted. The second is that the changes in the numbers of contractors will essentially be the same as has occurred with the population growth already experienced. The third is that the dollar expense for items such as licensure, examinations, and enforcement or disciplinary actions will follow the trends already graphed.

Figure 30 depicts the growth in population for the State of Florida since 1950. Data for 1990 and prior years are from the Florida Statistical Abstract, published annually by the University of Florida, and are taken from the U.S. Census figures for the decennial census.¹⁶ The projected population for the year 2000 is from state government data.¹⁷

¹⁶ Florida Statistical Abstract 1990, University Presses of Florida, Gainesville, Florida.

¹⁷ "Population Estimates January 1, 1992," Florida Department of Health and Rehabilitative Services, Office of Community Health Services and Facilities, Tallahassee, Florida.

POPULATION OF THE STATE OF FLORIDA ACTUAL AND PROJECTED

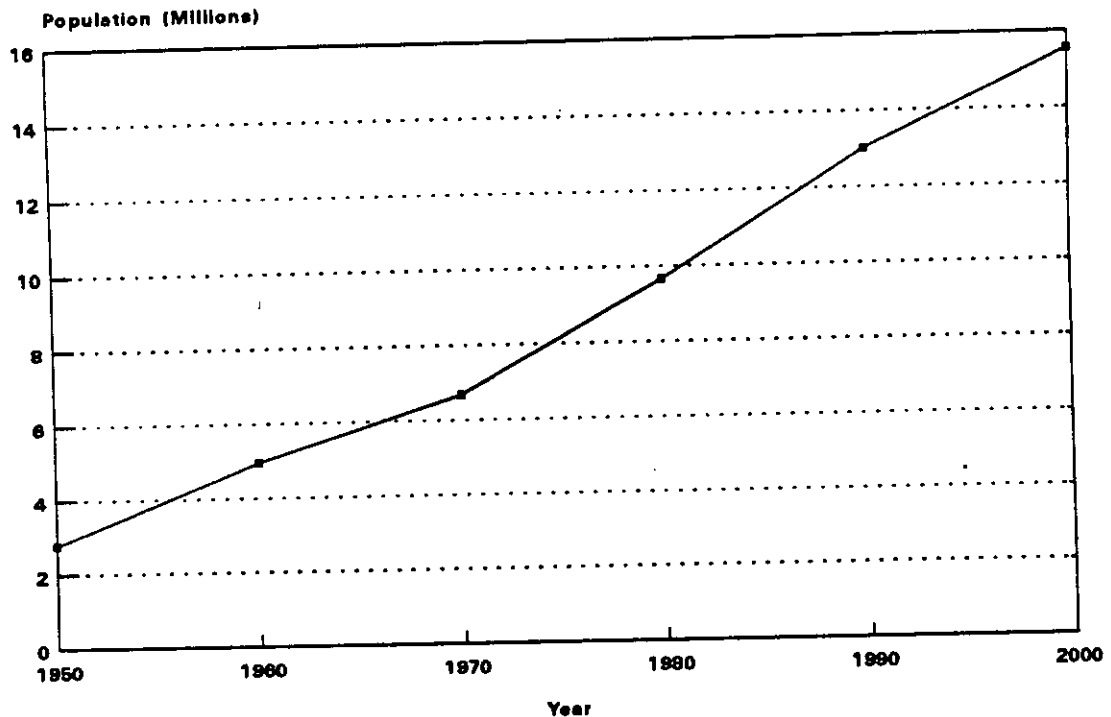


FIGURE 30

Data previously developed and depicted in this report have been extrapolated through the year 2000 and are tabulated below. As previously stated, the underlying assumption is that there will be no changes in the trends, either due to efficiencies, legislation, or other changes in current methods of operations within the Department of Professional Regulation or the Construction Industry Licensing Board.

TABLE/CHART 3
 FORECAST OF CHANGES DUE TO POPULATION GROWTH
 (CONSTANT 1991 DOLLARS WHERE APPLICABLE)

<u>ITEM</u>	<u>CURRENT</u> <u>1990</u>	<u>FORECAST</u> <u>2000</u>
LICENSES, ALL CATEGORIES (ACTIVE & INACTIVE)	100,415	163,771
REVENUE (MILLION \$)	5.0	6.5
OPERATING EXPENSE (MILLION \$)	5.3	8.8 (NOTE 1)
DPR ADMINISTRATIVE COSTS (MILLION \$)	0.52	1.2 (NOTE 2)
EXAMINATIONS ADMINISTERED	7,361	6,550
EXAMINATION COSTS (MILLION \$)	1.0	1.3
DISCIPLINARY EXPENSES (MILLION \$)	2.8	4.5

- Notes: 1. CILB only without DPR Admin Overhead.
 2. Additive to CILB operating expense.

The data in Table/Chart 3 forecast several areas that need to be monitored. The complete implementation of DPR's program to purge the files of totally inactive licenses will reduce the number of licenses forecast for the year 2000. Since the other data in the chart, as well as elsewhere in this report, are in part derived using the trend in the number of licenses as a predictor, future computations will have to account for the change.

The forecast shortfall in revenue as compared to operating expenses is of concern as long as the CILB is expected to be funded solely by its own operations. Since contractor license renewal occurs biannually and on the same day for all categories of licensees there are spikes and low points in the actual data and a year to year comparison is not useful. The predicted

shortfall should be viewed as an expanding wedge, starting with only a small negative balance in 1990, but expanding to an "average" of \$1,500,000 by the year 2000. The cumulative shortfall from 1990 through 2000 is forecast to be \$6,300,000. Unless there is a change in fees, method of funding, or there is a programmed diminution of services, the lack of revenues will have to be made up from other agencies under DPR.

The data also forecast a doubling of the DPR administrative burden. The researchers feel obligated to once again point out that this particular expense is purely the overhead cost of supporting the Departmental organization. To the extent that there are efficiencies realized by the growing expense, or that the public is being better protected, the growth in cost may be palatable. Otherwise it appears to be an area that should be carefully examined.

V. A REVIEW OF THE OPERATIONS OF THE CALIFORNIA CONTRACTORS
STATE LICENSE BOARD

A. Background

The State of California Contractor State License Board (CSLB) was established by the legislature in 1929 as a part of the Department of Professional Regulation. The legislative intent is codified in the mission statement for the Board: "...objectively promote the health and general welfare of the public in matters relating to building construction by: (1) ensuring that all construction is performed in a safe, competent and professional manner; (2) providing resolution to disputes which arise from building construction activities; (3) providing information so that the public can make informed choices."¹⁸ Currently the Board is a semi-autonomous regulatory agency under the Department of Consumer Affairs.

The California Board consists of thirteen members, eleven of which are appointed by the governor and two of which are appointed by the legislature. Terms are for four years and members can be removed by the governor for misconduct, incompetency, or neglect of duty. The law provides that there shall be 5 members that are contractors holding active licenses with the Board, one labor member, and 7 public members that cannot be associated with the construction industry.

The Board, with the approval of the Director of the Department of Consumer Affairs, appoints the head of its professional and office staff who is titled the Registrar of Contractors. He has under his direction approximately 400

¹⁸ "California Contractors License Law and Reference Book, 1992 Edition," California Contractors State License Board, State of California Documents Section, P. O. Box 1015, North Highlands, CA.

employees who are in the central office in Sacramento, in three regional offices, fifteen district offices, and five branch offices spread throughout the state.

The central office in Sacramento receives and processes applications for new licenses, for additional licenses and classifications, for changes in license records, and for renewals. The central office staff also reviews and maintains records of disciplinary actions that are initiated by the subordinate offices and provides centralized support services. The regional offices, second in the chain, direct the activities of the district and branch offices as well as initiate all disciplinary actions resulting from investigations. Staff members of the district offices and branch offices conduct investigations of consumer complaints against licensed and unlicensed contractors. The CSLB currently examines and licenses 42 categories or classifications of licensees.

B. Data Collection

Data concerning the recent operation of the California CSLB were obtained from personal interviews with members of the professional staff at the headquarters for the Board in Sacramento. In addition, the researchers used the reference book published by the Board for those seeking licenses as well as data provided to the California legislature by the Department of Consumer Affairs and the Board. Demographic data was obtained from census records.

The researchers were able to develop data for most of the same work load areas and utilize similar work load indicators that were discussed previously (page 11). The work load areas for the California Board are: Administration and Examinations; Licensure; and Disciplinary Actions.

C. Administration and Examination

The funding for the California CSLB comes solely from license fees and fines resulting from disciplinary actions. There are no general revenue fees provided. Until recently the CSLB retained those fees in excess of expenditures but a recent action of the legislature removed the excess funds and returned them to the control of the legislature.

Figure 31 depicts the total revenues and expenditures of the California Licensing Board during the period from fiscal year 1982 through 1991, plotted in constant 1991 dollars. It should be noted that during the period, the revenues exceeded the cost of operations in all but two years, and that the surplus was in excess of \$27,300,000.

CALIFORNIA LICENSING BOARD REVENUES AND EXPENSES

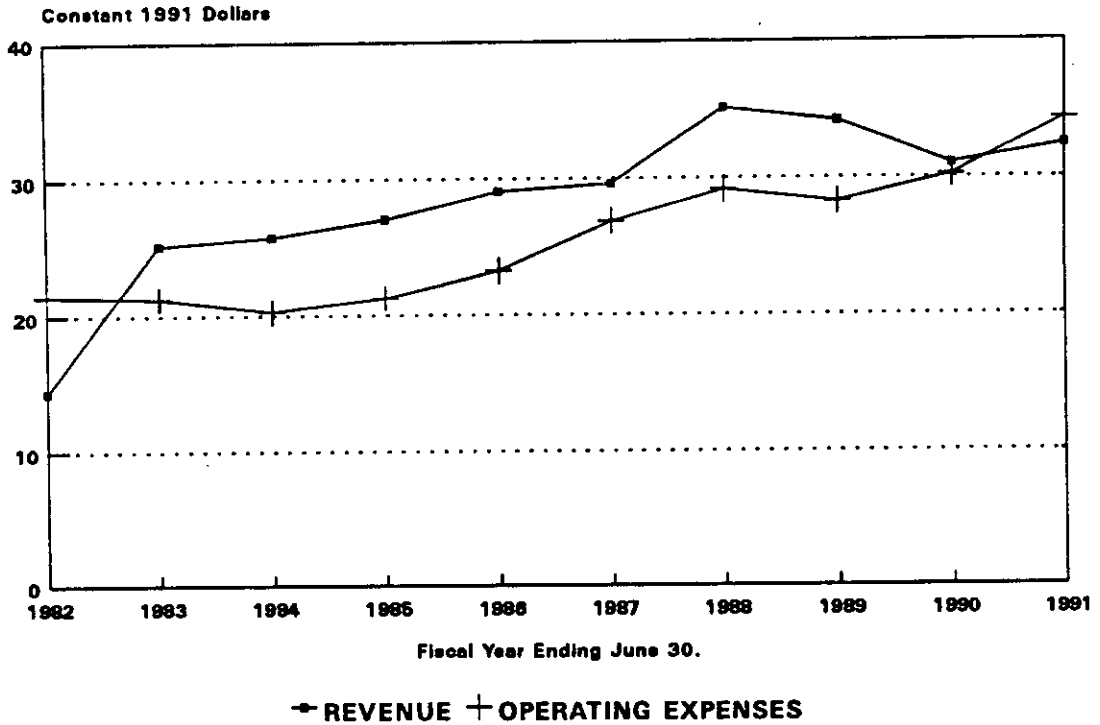


FIGURE 31

The constant dollar operating costs developed for Figure 31 were normalized as a function of the number of licensees for each of the years. The data are presented in Figure 32. Unlike the data for Florida, which until recently did not track active, inactive, and "dead" licenses, that for California is relatively clean since they have had an active program of purging the files of contractors that do not re-new their license.

CALIFORNIA LICENSE BOARD EXPENSES PER LICENSEE

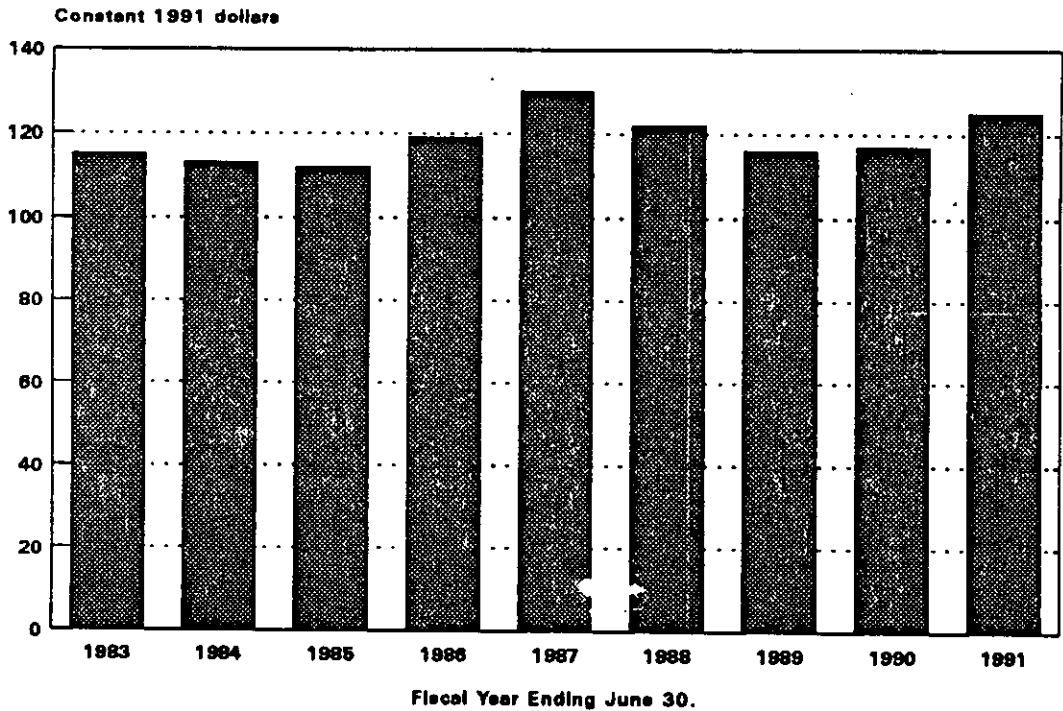


FIGURE 32

A linear regression of the California data of operating cost per licensee during the period 1983 through 1991 indicates a slight upward trend in costs. The regression line is shown in Figure 33. It shows that while the annual average expenditure per licensee for the period is slightly below \$119 a better predictor for current and near future costs is \$121.

CALIFORNIA LICENSE BOARD EXPENSES PER LICENSEE

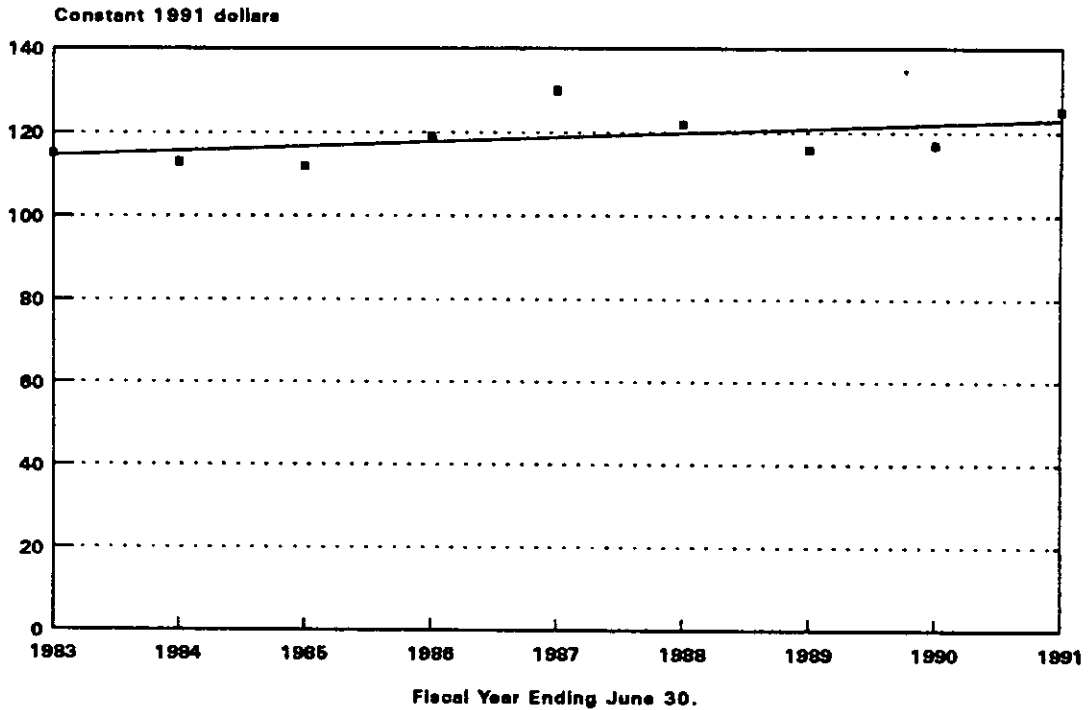


FIGURE 33

The CSLB administrative staff is not directly comparable to the permanent staff of the CILB for Florida. Similar to that for the Florida Board, it consists of those personnel at the central office who oversee the functioning of the other offices throughout the state. However, unlike the Florida Board, it also includes the personnel positions of those who provide for the examination functions of the CSLB. Yet another factor that prevents a more direct comparison is the fact that during the period for which data are available there have been changes in the definition of the personnel positions reported as belonging

to administration and examination instead of licensing or enforcement. Additionally, these changes have been made over a period of years with changes piled on top of changes. Consequently the data are not clean nor were the researchers able to sift through the changes to their satisfaction. Consequently the data for authorized personnel billets for the CSLB, presented in Figure 34, provide only a relative "feel" for what has happened during the period.

CALIFORNIA STATE LICENSING BOARD PERSONNEL POSITIONS

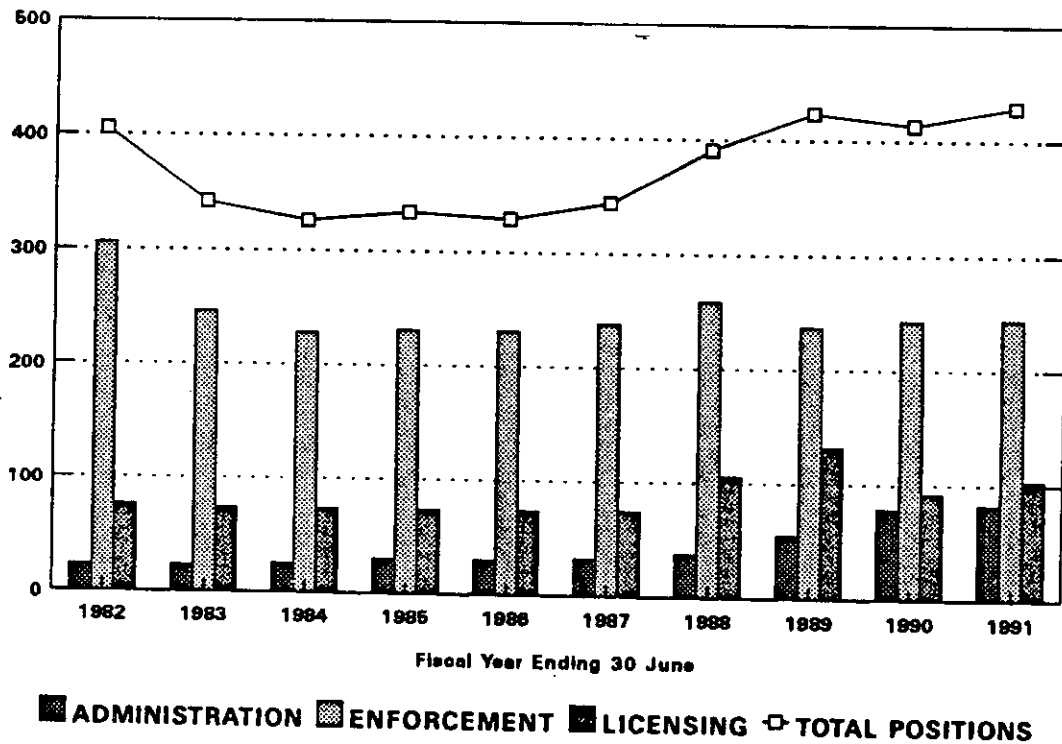


FIGURE 34

An examination of Figure 34 reveals a rapid decline in the total work force for the Board during the period 1982-87 then a return to a level above that in 1982 commencing in 1988. It also shows that the majority of the 1982-87 reduction was in the area of enforcement personnel, while the administrative and examination overhead has continued to expand throughout the entire period graphed.

Unlike Florida, the examination procedure for the CSLB is almost totally automated and controlled by the central staff rather than contracted out. Examinations are held on a daily basis at several different sites throughout the state. Individuals seeking a license apply to the central office. When all of the required data are submitted and found to be acceptable, the application fee paid (currently \$150 for all classes of licenses), the applicant is issued a Notice to Appear for Examination approximately three weeks before the scheduled test date. The test location is scheduled through the use of ZIP codes and the prospective licensee will be instructed to report to the testing location nearest to the business or personal address provided to the CSLB.

A duplicate of the Notice to Appear for Examination is provided to the testing site and on the specified day the individual need only to bring the original Notice, two forms of identification, a ruler, and a non-programmable battery or light powered calculator. No other materials or references are allowed or required.

The CSLB examinations consist of two parts: technical and law/business administration. The technical portion is specific to the field for which the applicant desires a license. The law/business portion covers money management, employee relations, safety, personnel codes, contract, and the contractor's licensing law. Each examination takes

approximately two and a half hours and almost always is administered by computer assisted testing (CAT).

The CAT system utilized by the CSLB is controlled from the central office at Sacramento. Examinations for the various disciplines are drawn from a data bank and can be, and are, changed frequently. Currently the only non-computerized part of the test is a set of plans for the technical examinations and these are the only part of the examination held by the field office. The actual examinations, both technical and law/business, currently are provided by program disk to the testing sites. The CSLB expects to be able to provide the tests by modem from Sacramento within a year. Computer literacy, other than the use of the space bar and the four arrow keys, is not required and the test monitor guides all test takers through a short exercise to ensure that they understand how to take the exam. The CSLB personnel that designed, control, and monitor the program indicate that the use of the CAT system speeds the examination process and probably eliminates "careless" errors.

At the completion of an examination it is automatically scored and the individual knows if they passed or failed either part prior to leaving the testing site. A failing grade on one part requires re-testing only for that part. California law provides that it is a misdemeanor, punishable by a fine of up to \$500, a \$10,000 restitution payment, and possible jail time for willfully compromising the examination.

The total number of examinations administered by the CSLB for all disciplines for the period 1982 through 1991 is shown in Figure 35. The data show a general increase in the annual total of examinations with a "spike" centered at 1989.

NUMBER OF EXAMS ADMINISTERED CALIFORNIA STATE LICENSING BOARD

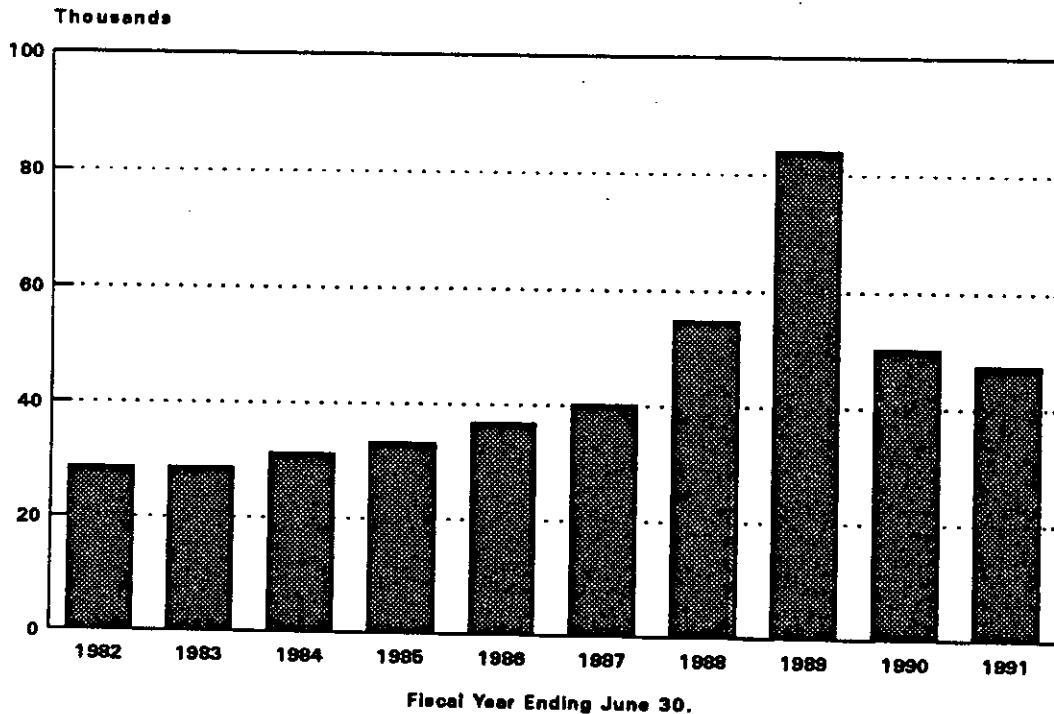
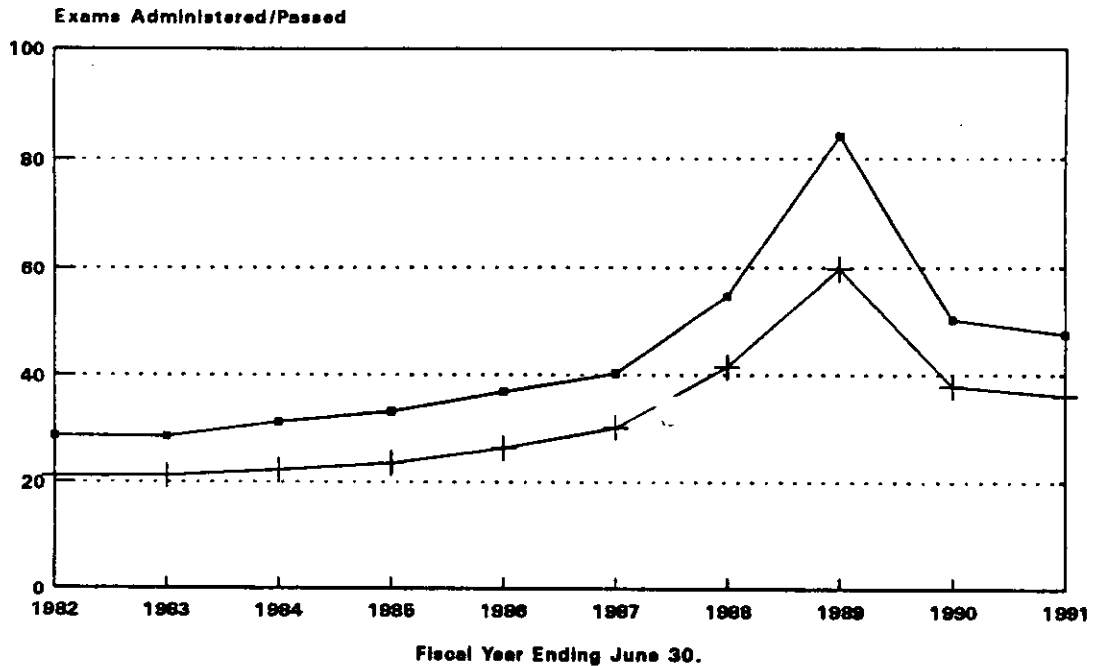


FIGURE 35

The examinations statistics for the CSLB testing during the same period as shown above indicate a relatively constant pass fail ratio, with an average over the period of 73.45%. This compares with a Florida CILB passing percentage of 42.94% during the same period. Interviews with members of both the Florida and the California Board indicate that the difference is intentional and reflects a difference in the philosophy of the Boards as to the purpose of the examinations. Data showing the number of examinations administered and the number of passing scores for the California examinations are presented below.

EXAMINATION STATISTICS CALIFORNIA STATE LICENSING BOARD



• EXAMS ADMINISTERED + NUMBER PASSED

FIGURE 36

Constant dollar personnel costs related to administration and examinations were developed by factoring the total personnel costs of the Board by the percentage of those assigned to the administration and examination functions. This methodology introduces some error into the results since it assumes an average salary and benefit cost per person, when in fact those

in the administration and examination sections may or may not represent an average of the pay scale. Alternative solutions were discussed with the head of the fiscal department of the California Board who agreed that it was the most realistic approach and the same as would be used if the Board were to produce the information without recourse to actual pay records.

Figure 37 utilizes the factored data to show the growth in administrative and examination personnel more clearly.

CALIFORNIA STATE LICENSING BOARD ADMINISTRATION AND EXAMINATION PERSONNEL COSTS IN CONSTANT DOLLARS

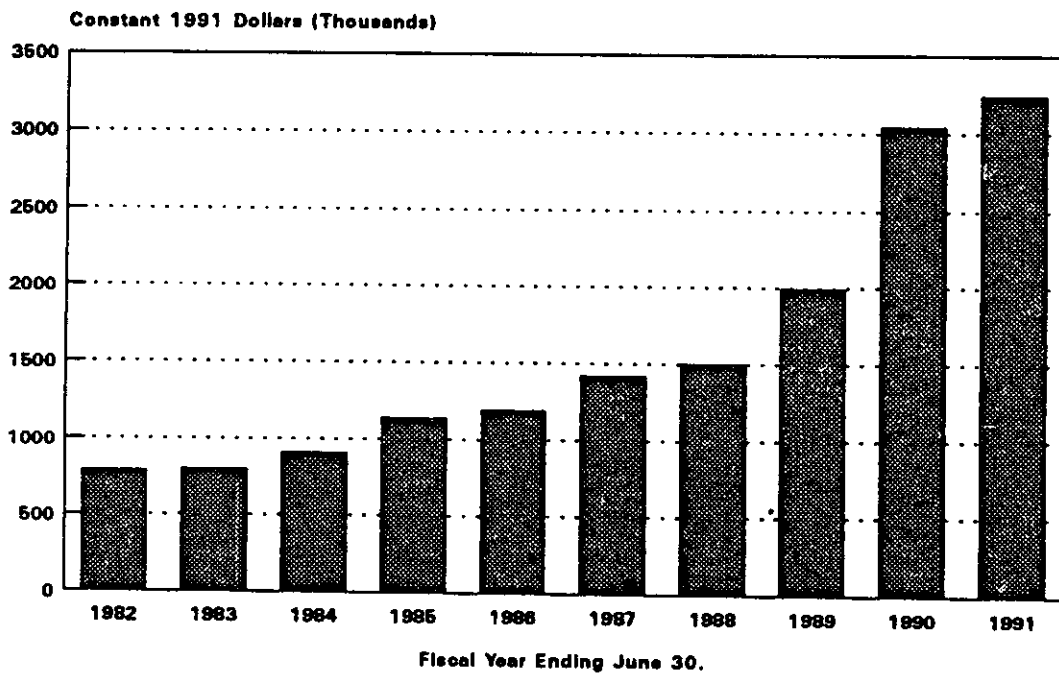


FIGURE 37

inefficiency. The data for the personnel costs in administration and examination were normalized against the number of examinations given to determine if there was a pattern which would define what was occurring. That statistic was chosen with the knowledge that the administrative functions of the Board are spread across all functional areas, including licensure and enforcement. Consequently, inclusion of the full administrative burden will inflate the WLI for examinations. However, it was considered that, all other things being equal, that this inflater would be essentially constant during the period. Therefore, if there was a direct relationship between the increase in costs and an increase in work load the statistic should be essentially linear and with negligible slope.

The normalized data, plotted in Figure 38, bear out this assumption. A graph of the total number of examinations administered, super imposed on the cost per examination graph, indicates a reasonably constant cost per examination during the period 1982-1989 despite the fact that personnel costs were increasing. The increase in the number of examinations administered was such that one can assume there was a reasonably constant level of productivity for the administration and examination personnel work force. However, it appears that the build up in the work force, caused by the growth in the examination functions, continued during 1990 when the number of examinations declined rapidly. A head count, similar personnel costs, and similar examination data for the current (1992) and future years would be required to absolutely validate these findings.

CALIFORNIA STATE LICENSING BOARD ADMINISTRATION AND EXAMINATION PERSONNEL COSTS PER EXAMINATION GIVEN

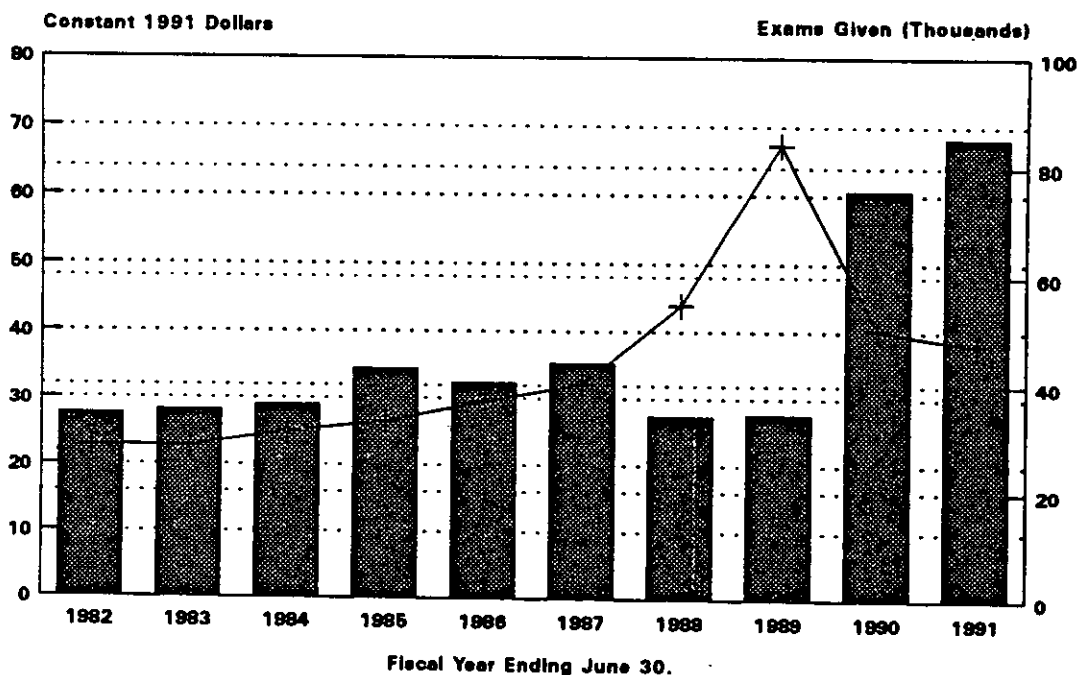


FIGURE 38

D. Licensure

The CSLB issues licenses to contractors in 42 categories on a state wide basis. There is no provision in California law for locally licensed individuals. Initial licensure occurs subsequent to examination and after providing the Board the required financial statements, proof of insurance, and bonds. Licensees may hold an active or inactive license. Those with inactive licenses may not contract for projects until such time as they have updated the financial, insurance, personnel

information, and bond requirements and paid the appropriate activation fees.

Active licenses are valid for a period of two years, expiring at the end of the anniversary month that they were originally issued. Inactive licenses are valid for a period of 4 years, again expiring at the end of the anniversary month. There is no limit to the number of times that a license may be renewed on inactive status.

Applications for renewal of both active and inactive licenses are sent automatically by the Board to the last known address of the firm, corporation, or individual. As in Florida, given that the information requested is correctly provided in a timely manner, fees are paid, and that there are no outstanding disciplinary problems, the renewal is automatic. Unlike Florida, the Board currently requires completion of an open book examination on asbestos hazards for all classes of licenses.

Data depicting the total number of outstanding licenses issued by the California Board for the last 10 years are displayed in Figure 39. The data are for all fields and all categories, active and inactive. Unlike similar data for the Florida CILB, electrical contractors are included since California does not have a separate electrical contractors board.

CALIFORNIA STATE LICENSING BOARD LICENSEES

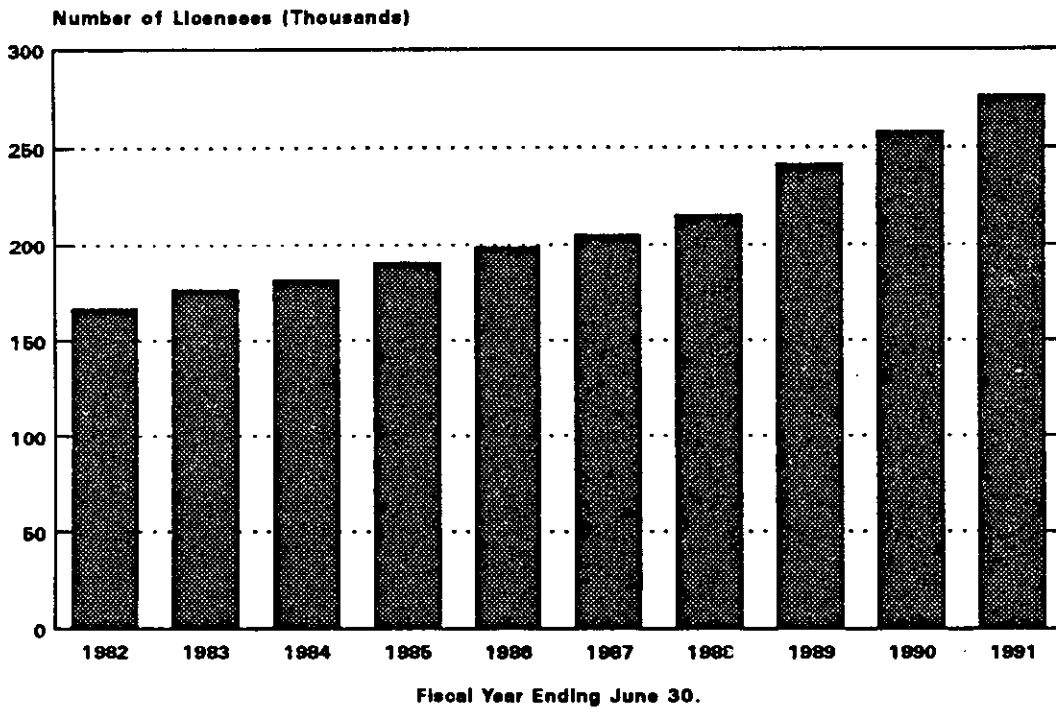


FIGURE 39

Based upon the number of licenses outstanding at the end of fiscal year 1982 the data in Figure 39 show a 66% increase in licensed contractors over the 10 year period.

The constant dollar costs of the licensure function in California were developed from data provided by the Board's fiscal department to the California legislature. As in the case of the administration and examination data, personnel costs attributed to the this field are factored from the total

personnel budget. The data are displayed in Figure 40 and the trend is an increase in costs throughout the period.

ESTIMATED COST OF LICENSURE FUNCTIONS CALIFORNIA STATE LICENSING BOARD

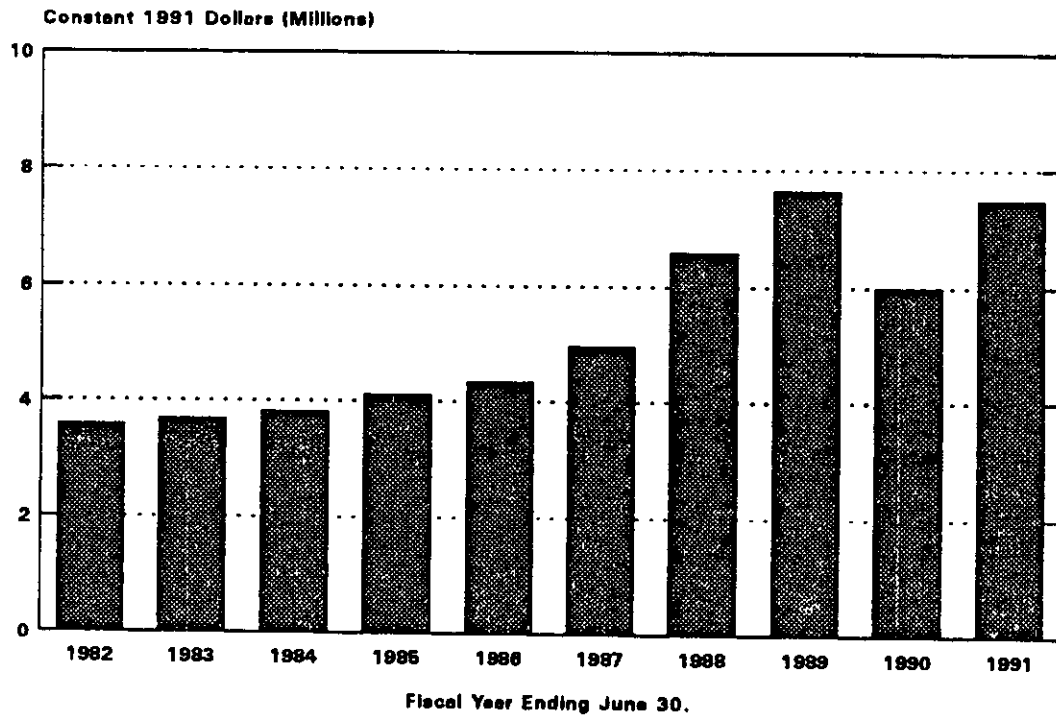


FIGURE 40

The data in Figure 40 show a jump in the cost of licensure in fiscal year 1988 and oscillations thereafter. This is readily explainable from the information provided by the Board. Personnel assigned licensing functions increased from an average of 74 employees for the previous six years to one hundred and thirty two by 1989, then back to one hundred and three by 1991.

The total number of applications for initial licensure or change in qualifiers received by the California Board is depicted in Figure 41. The data do not include renewals. The spike in fiscal year 1988 is the result of an amnesty program wherein individuals engaged in the trade but with expired or no license were allowed to apply and be examined or re-examined without penalty.

CALIFORNIA STATE LICENSING BOARD LICENSE APPLICATIONS TOTAL APPLICATIONS AND COST FOR EACH

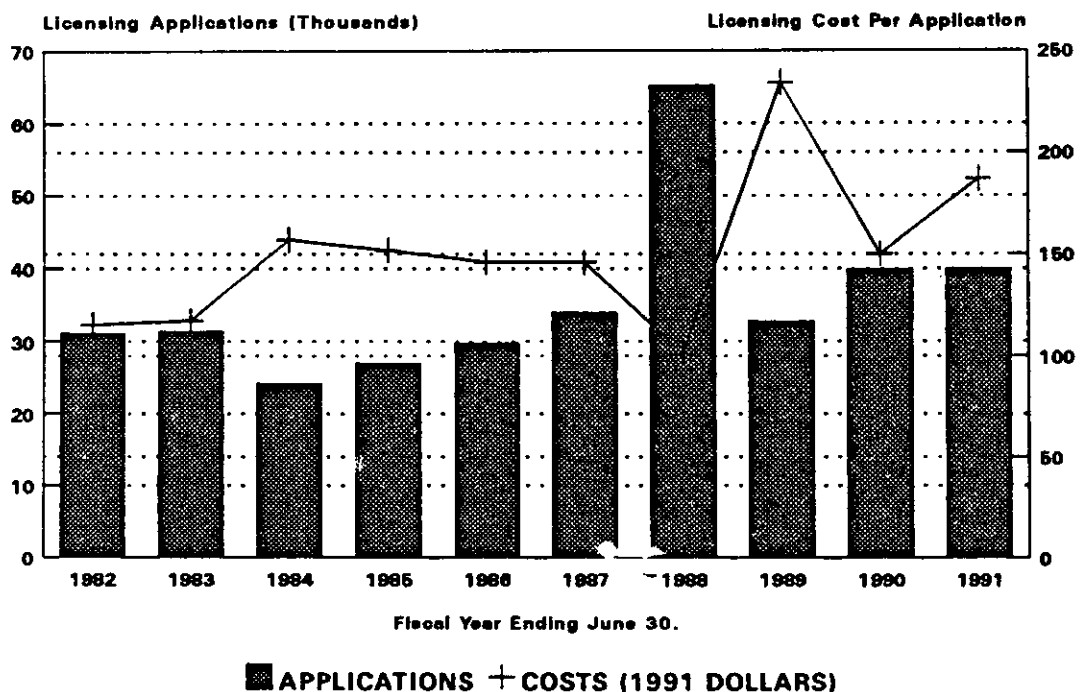


FIGURE 41

Superimposed on the graph in Figure 41 is a line showing the constant dollar cost of the licensing function normalized upon the number of applications reported. The data are consistent with previous charts and show the effect of the large

number of license applications in 1988 as well as the personnel changes previously discussed. The trend of the data shows an increasing cost per application over the period.

E. Discipline and Enforcement

Under existing California law the CSLB has the authority and responsibility to receive and investigate complaints against licensed and unlicensed contractors. The CSLB district office nearest the site of the alleged violation either receives the complaint directly or it may be forwarded from one of the other offices.

Complaints against licensed contractors will be reviewed by a Consumer Services Representative (CSR) who will contact both parties to the complaint in order to obtain information, including copies of any contract, payments made, work done to date, etc. After initial review, the CSR will attempt to mediate the complaint. If this is unsuccessful, in certain cases mandatory and binding arbitration may be ordered. In those cases where mandatory arbitration is not appropriate, where non-mandatory but binding arbitration is not agreed to by the opposing parties, or where the CSR decides it is appropriate, the matter is referred to a Deputy Registrar (DR) for investigation.

Complaints against licensed contractors referred to a DR are investigated to determine if there have been violations of the licensing law or rules and regulation established by the Board. If the DR decides that such a violation has occurred there are a range of options available. If the violation is of sufficient magnitude, the CSLB may ask a court to issue an injunction to immediately stop to work and preclude additional offenses. Additionally, if the matter appeared to involve

criminal activity, the Board could seek action from the local district attorney's office.

A serious but less than life threatening or criminal case may result in the issuance of a citation from the DR. Citations may include an order to correct the work in dispute and/or make restitution to the offended party. The DR may also assess a civil monetary penalty up to \$2,000. Given that the licensed contractor accepts and complies with the citation, the matter is closed. On the other hand, if the contractor takes exception to any or all parts of the citation, then the matter is set for hearing before an administrative law judge. If the judge finds for the contractor, the matter is closed. If the judge finds for the Board, the contractor must comply or face revocation or suspension of the license.

If the DR finds that the offense is minor and appears to be an isolated incident, he or she may issue a letter of warning without further action contemplated. The letter becomes a matter of record so that the contractor is on notice that the Department is aware of the incident and that future complaints of the same nature may lead to one of the more punitive types of action described above.

If the DR feels that the allegation involves a serious breach of the law then the Department may move to suspend or revoke the contractor's license. Unless the contractor stipulates to the action and proposes no defense, the license may not be revoked or suspended without a hearing before an administrative law judge. At such a hearing the contractor is allowed to be represented by counsel and to present a defense. The Board is represented by the Attorney General's office. At the conclusion of the hearing, the judge will provide a recommendation to the Registrar.

If the complaint is against an unlicensed contractor the Board may issue a citation if there appears to be probable cause that the person is engaged in contracting without having a valid license. The citation will include an order to cease the activity and may have a civil penalty of not more than \$4,500. Given that the unlicensed individual complies with the citation, the matter is ended. However, the individual may appeal the citation and the matter will then be heard by an administrative law judge who will recommend appropriate action to the Board. Since engaging in contracting without a valid license is a criminal offense under California law, the Board may elect to file a criminal complaint at the same time as issuing the citation or it may decide to go with the criminal charges alone. If there are only criminal charges, the case is decided in court. If the individual is found guilty, the judge may assess fines, probation, restitution, or jail, either separately or in any combination. In any event, as far the Board is concerned the judge's decision is final.

Figure 42 shows the total number of complaints against licensed and unlicensed contractors received by the CSLB during fiscal years 1982 through 1991. The average for the ten year period is 27,400.

CALIFORNIA STATE LICENSING BOARD CONSTRUCTION INDUSTRY COMPLAINTS RECEIVED

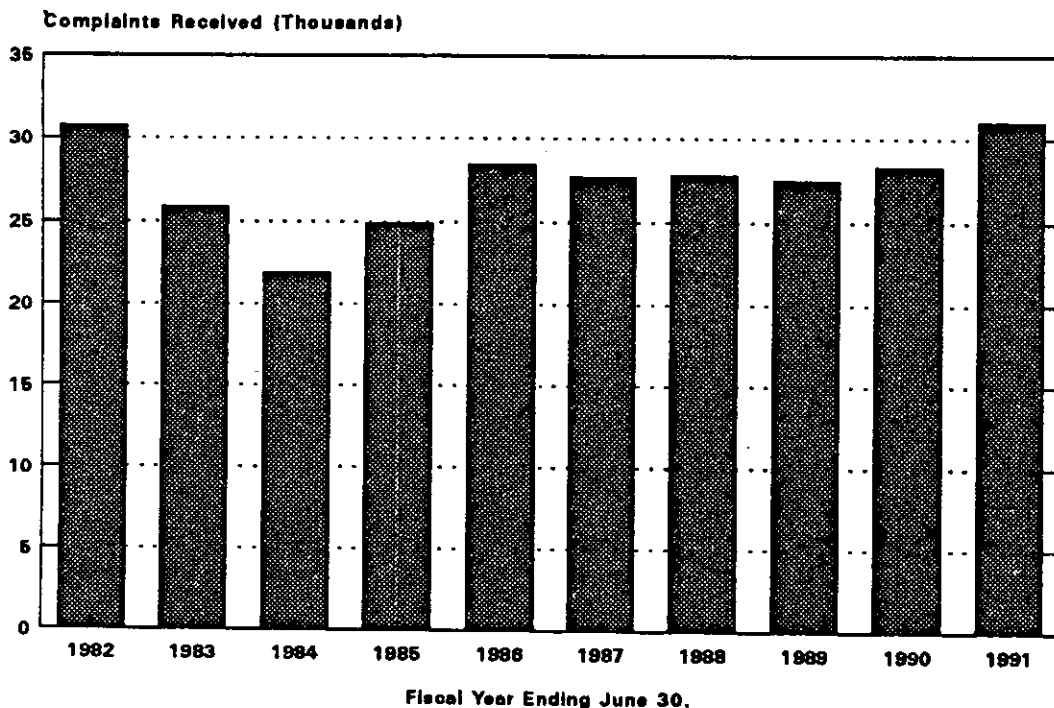


FIGURE 42

The data displayed in Figure 43 normalize the number of annual complaints against licensed and unlicensed contractors with the total number of construction related licensees in the State of California. The general trend of the data show a decrease in the construction related complaints per licensee. When compared to the previous chart of California construction related complaints, it is apparent that the decrease is a function of a relatively constant volume of complaints divided by an increasing number of licensees. An argument could be made that this result is caused by more effective policing of the

industry by the CSLB. To be complete, such a discussion would have to consider the volume of business per license as well as the number of jobs undertaken by the average licensee. Such work is beyond the scope of this report.

CALIFORNIA STATE LICENSING BOARD COMPLAINTS PER LICENSEE

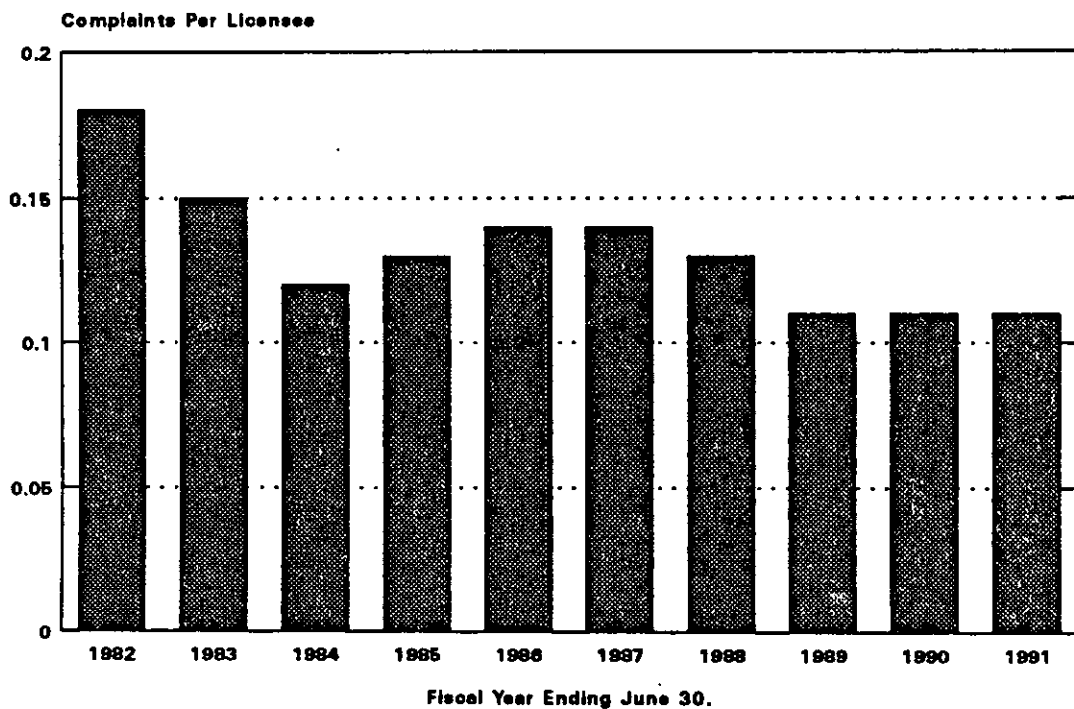


FIGURE 43

Since the CSLB is essentially an autonomous regulatory agency most of the cost of enforcement of the licensing program is reflected in the Board's internal budget. However, there are outside agencies that assist, such as the Attorney General's office and the Office of Administrative Hearings. The annual cost of their work for construction related activities, added to

the Board's internal disciplinary program costs, provides an estimate of the total expenditures for enforcement. Salaries of top administrative officials, certain secretarial and departmental support are not captured in this estimate and are instead gathered together under the administrative WLI. Additionally, the total personnel support costs of the Board (including tax contributions, benefits, etc.) was factored to determine that fraction devoted to enforcement. In as much as the salary distribution of those classified was working in enforcement may be different from the salary distribution of the Board staff as a whole, some error may be introduced by this methodology.

The estimated cost of the CSLB enforcement program is depicted in Figure 44. The data have been reduced to constant 1991 dollars to obviate the effect of inflation. The primary costs of the program are the personnel salaries, benefits, and other personnel support services. The data are arranged to reflect this with the personnel support graphed separately and the total cost of the enforcement program being the sum of personnel, Attorney General, Administrative Hearings, and an expert witness program.

CALIFORNIA STATE LICENSING BOARD COST OF ENFORCEMENT PROGRAM

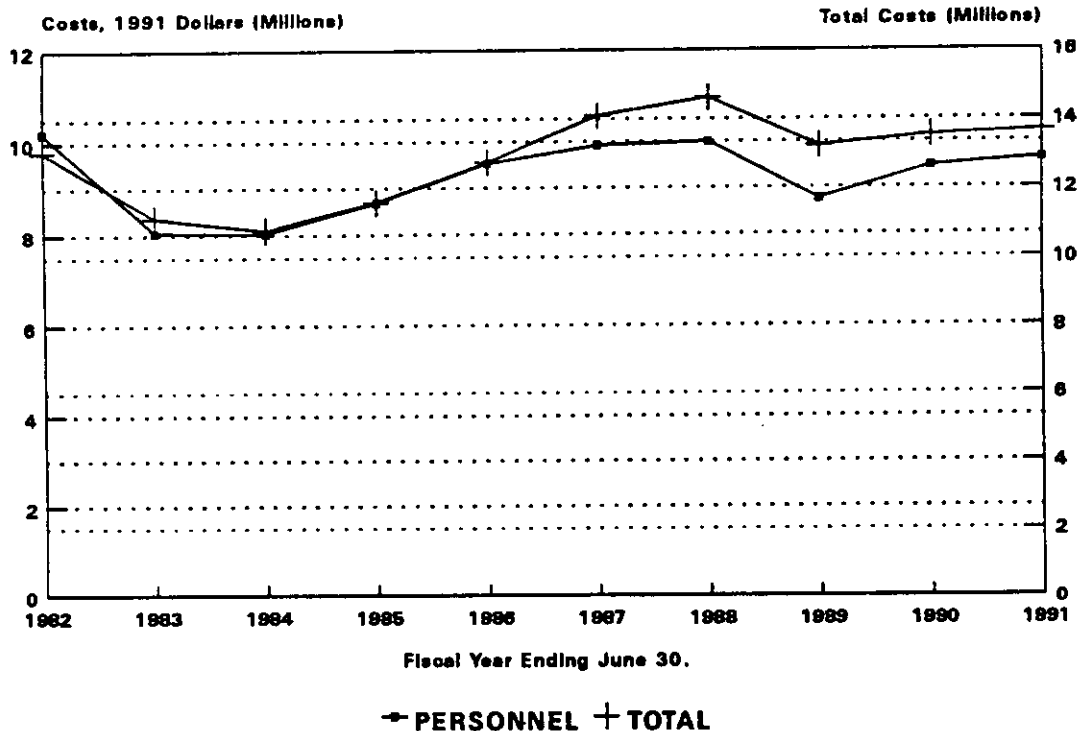


FIGURE 44

The figure shows that the constant dollar costs associated with enforcement of the construction industry licensing laws in California generally trend upwards during the years depicted. However, when these costs are compared with the total expenditures of the California Board they show a decline in the percentage of the total resources expended for enforcement. Absent further research for other factors it is apparent that the primary cause for this decline is the decreased percentage of the total Board staff working on disciplinary matters, from

a high of 75.5% of all employees in 1982 to a current (1991) of 56.8%. Consequently, while personnel costs were generally flat, the total budgeted for enforcement increased due to increases in payments to the Attorney General's Office and a program that uses expert witnesses from the industry to determine potential damages suffered by those making complaints.

VI. A COMPARISON OF THE FLORIDA AND CALIFORNIA CONTRACTOR LICENSING BOARDS

The researchers compared the Florida and the California contractor licensing boards in two ways: mode of operation and cost of operations. The enabling legislation for both Boards make it abundantly clear that the primary concern leading to the regulation of the construction industry is the safety and general well being of the public. This includes not only protection from unsafe structures or other work but also protection from monetary loss caused by unscrupulous contractors. However the two states methodology for accomplishing the goals diverge immediately, making direct comparisons difficult in most cases and impossible in others.

A. Mode of Operation

Administrative Functioning. The composition of the actual construction licensing boards for the two states points up one of the most immediate differences in the philosophy behind the programs. The California Board is consumer oriented with only 5 of the thirteen members being contractors. The Florida Board is technically oriented and populated primarily by contractors. Of the 18 members of the CILB, only 4 are not contractors and two of those are building officials, thus directly involved with the construction industry. The consequences of the difference is that the California Board is primarily concerned with establishing overall policies and goals while the Florida Board is more of a "hands on" organization.

No where is this difference more apparent than in the professional staff performing the day to day functions of the Board. Both California and Florida have their construction licensing functions under the aegis of a larger department.

However, the Florida Board staff is relatively small (22 personnel) and performs mainly clerical work. The actual examination, licensure, investigative, and legal work for the Board are done by personnel in other agencies of the larger Department. The Executive Director is the head of this small staff as well as the primary liaison with the outside agencies performing work for the Board.

On the other hand, the California Board professional staff consists of approximately 429 personnel. These individuals take care of all of the functions of the Board except hearings held before an administrative law judge, legal work done by the attorney general's office, and a portion of the data processing. The examination, licensure, investigative, and most legal functions are done in house. The staff is headed by the Registrar of Contractors. A comparison of these organizational differences is found in the following table.

Table/Chart 4

**A Comparison of the Administrative Set-up
Between the CILB and the CSLB**

Item	Florida CILB	California CSLB
Board Members (Total)	18	13
Contractors	14	5
Labor Members	0	1
Building Officials	2	0
Consumer Members	2	7
Professional Staff Size (1991)	22	429
In House Licensure	No	Yes
In House Examination	No	Yes
In House Investigations	No	Yes

The difference in administrative modes of operations between the two Boards goes even further than Table/Chart4

indicates. Both Boards retain the authority to make such rules as are necessary to accomplish the intent of the legislation which established them. However, the Florida legislation establishing the position of Executive Director for the Board does not provide that official with the authority to do other than administer the office staff. On the other hand, the California Registrar of Contractors is empowered to act for the Board in all but the rule/policy making function. Consequently, in Florida the Board members are still involved with routine matters of licensure, examination, investigation, and discipline whereas in California all of these matters are handled by the professional staff under the Registrar.

B. Licensure

The process of issuing licenses to qualified individuals is essentially the same for both Boards. The differences in requirements for qualifications are a function of the laws governing construction, bonding, insurance, etc., not interpretation by the Boards or the professional staffs. There are, however, two areas in which the California Board has established differences from the mode of operation in Florida. The first of these is to have the contractor's license expire on the anniversary date of the license rather than, as in Florida, all licenses expiring on the same day. The renewal period in California is two years and by having the licenses expire on a random basis, rather than all at once, the licensure and renewal work load is spread over the entire year.

The second area of difference in licensure, and one now being addressed within the Florida Department of Professional regulation, is the purging of the files of those who do not renew their license within a timely period. In Florida, there are "ghost" licenses that have been on the books for years but

not renewed. We pointed out earlier in the discussion of the Florida CILB operations that the Department is now removing licenses for which no renewal has been received for two consecutive renewal periods. The program will not be fully effective until 1994. This process was started in California in the 1930's and has been an on-going process since that time.

C. Examination

The second most striking dissimilarity between California and Florida operations is in the area of examinations. The Florida legislature has mandated that the examination functions be contracted out while the California Board has adopted a centralized system directly controlled by the Board. Additionally, until quite recently the Florida examinations were held twice or three times a year, depending upon the license, and at centralized locations. The California examinations are held daily at locations all over the state. The Florida CILB has established a trial program, currently at three sites in the state, for Class I (General, Building, & Residential) contractors. Examinations at these sites are conducted every other week. If the program is successful (and funds available) the Board intends to expand this diversified site/time system of exams to all contracting disciplines.

Even in the new trial system, the Florida examinations are classically structured, with mark-sense sheets collected and scored while the California examinations are generally computer assisted. Interviews with Board members indicated that Florida was pursuing the computer assisted testing and scoring, but the first priority was the diversification of sites and test dates.

A comparison of the strictly monetary costs of the two systems of examinations cannot be made directly since the

California examination costs are not clearly separable in the budgetary data provided to their legislature. However, it is possible to gain a "feel" for costs by re-working the Florida CILB data, adding together the costs of examination and administration to provide a measure more consistent with the California accounting methods. This has been done and the results depicted in Figure 45.

A COMPARISON OF FLORIDA AND CALIFORNIA EXAMINATION COSTS PER EXAMINATION ADMINISTERED

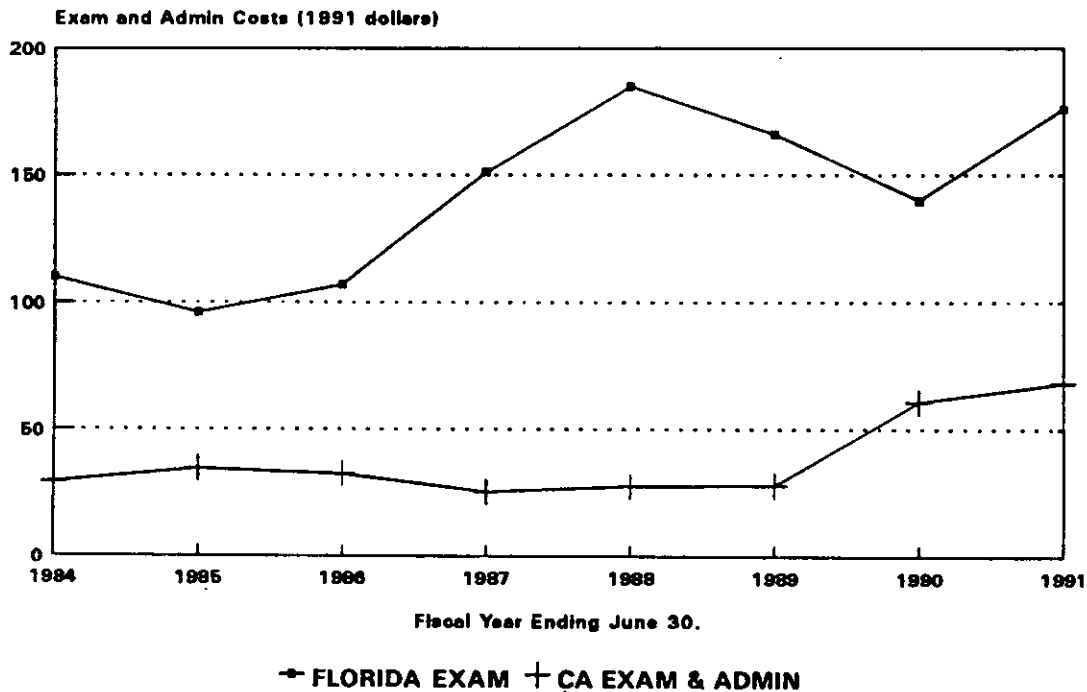


FIGURE 45

The data of Figure 45 clearly indicate that the California program for administering construction licensing examinations is less expensive, per examination administered, than the Florida program. However, the cost data for the diversified sites and

test dates for Florida are not yet meaningful since the sample is so small. Additionally, the true cost differential is greater than shown since at least some portion of the Florida CILB administrative costs should be added to the examination costs incurred by the DPR in order to more closely match the California data. If one adds the consideration of convenience to the applicant and centralized test material and data retrieval through an on line computer system, it is obvious that the California program is far superior to that currently utilized by the Florida CILB.

D. Discipline and Enforcement

Both the Florida CILB and the California CSLB have certain powers, granted by the legislature, to police the construction industry. There are two primary differences: California law provides that their licensing board has the authority to seek out and deal with unlicensed firms or individuals engaged in construction contracting while Florida law does not allow this; California law provides for the administrative head of the Board (Registrar of Contractor) and the professional staff to handle the enforcement and disciplinary actions while Florida law generally does not. At least one reason for the difference is that the Florida Board, per se, is composed primarily of contractors with both the technical and the business expertise to adequately review alleged violations. As previously discussed and shown in Table/Chart 4, the majority of the California Board members are specifically chosen from non-construction related fields.

Having a larger base of contractors as well as a greater population, it is expected that the California system would garner a greater number of complaints, if for no other reason than size alone. However, the data of Figure 46, depicting the

number of complaints per license also reveal that the number of construction contracting related complaints per licensee in California is significantly above that of Florida.

A COMPARISON OF FLORIDA AND CALIFORNIA COMPLAINTS PER LICENSEES

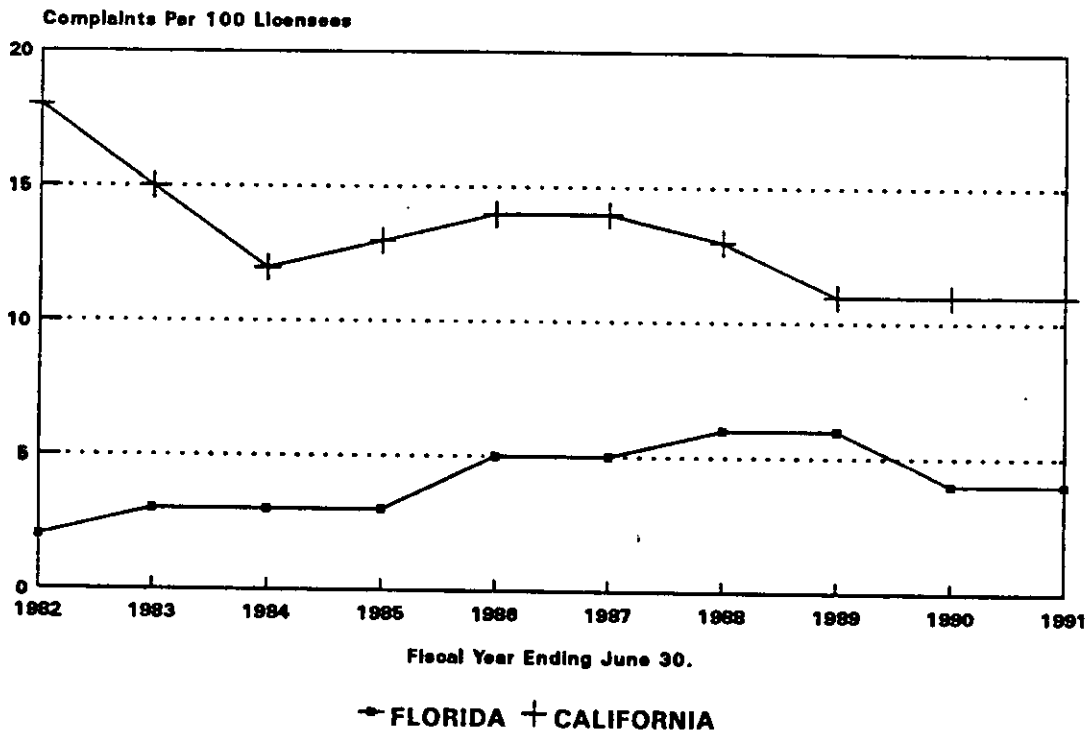


FIGURE 46

The researchers propose that there are at least three causes for the disparity in complaints per license. First, the data for Florida may be deflated since the number of licensees includes all categories, active, inactive, and the "other" statistic that has been discussed previously. When the Florida files are purged of the majority of these "other" licensees the data may tend to coincide. Second, the California data include

complaints concerning unlicensed activity while the Florida data do not. Third, the philosophy behind the structure of the examinations and tests for the two Boards is such that you would expect a higher level of complaints in California. The prevailing attitude in California is to license as many as possible in order to be able to monitor the entire system more adequately. In Florida, the general intent is to exclude those who do not meet a rigid and moderately demanding set of criteria, thus eliminating unqualified contracting firms which would be more likely to bring in complaints.

Further comparison of the two systems, costs associated with enforcement or discipline as a function of the number of complaints handled, is shown in Figure 47. The graph shows that Florida, both historically and currently, generally pays more for resolving each case than does California. A portion of the differential can be attributed to the fact that for the last four years California has provided funding and a directive requiring mandatory arbitration for small claims as a test for one geographic area of the state. Consequently the California costs for legal fees are lower than they would be without the arbitration. In part compensating for this, one of the reasons that the Florida costs are not higher is that Board members devote a great deal of pro bono time to the disciplinary effort for which there is no charge shown.

A COMPARISON OF FLORIDA AND CALIFORNIA ENFORCEMENT COST PER COMPLAINT

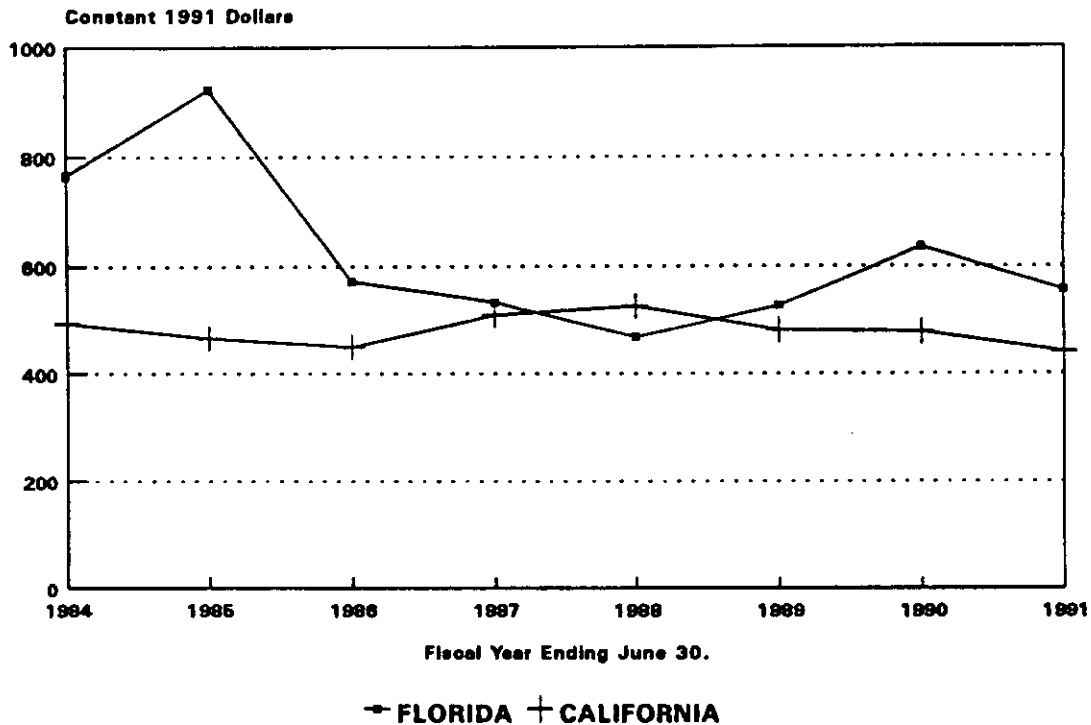


FIGURE 47

Yet another reason for lower California costs per action is that fact that the California Board, through its consumer representatives at the field offices, tries to mediate the complaint before a great deal of time and effort is spent on investigation. The presumption is that it is better to get the parties to agree than it is assess fault. No such mechanism exists within the Florida system and interviews with both Board members and members of the professional staff indicate support for adopting a similar approach in Florida.

VII. A REVIEW OF PROPOSED LEGISLATION

The Department of Professional Regulation is proposing to change the status of the CILB within the Department. The researchers have reviewed succeeding drafts of proposed legislation, primarily concentrating on those areas that are addressed within this study. The latest draft, dated the 2nd of December, 1992, contains changes to the current law that fall well outside of the scope of this report. The remarks concerning the proposals that follow in this section are not intended as a complete review of the document.

Currently all non-health related professions are administered under a Division of Professions. The proposal creates a Division of Construction and Design which would administer contractors, architects, interior designers, professional engineers, geologists, surveyors, and landscape architects. Within this new division the CILB would be replaced by a Unified Construction Industries Board (UCIB). The new Board would regulate all of the current contractors under the CILB and add electrical contractors and certain other specialty contractors now administered by other agencies.

The proposed UCIB consists of 15 members. As with the current CILB, the orientation of the new agency would remain heavily contractor oriented. Table/Chart 5 shows a comparison of the current CILB and the proposed UCIB.

TABLE/CHART 5
A COMPARISON OF THE MEMBERSHIP OF THE
PROPOSED UCIB AND CURRENT CILB

ITEM	CILB	UCIB
TOTAL NUMBER OF MEMBERS	18	15
General/Building/Residential	7	5 (Note 1)
Air Conditioning Contractors	1	3 (Note 2)
Mechanical/Pool/Underground/ Plumbing	4	3 (Note 3)
Sheet Metal/Roofing	2	3 (Note 4)
Consumer Members	2	4
Building Official Members	2	0

Notes:

1. New UCIB Group I
2. New UCIB Group II includes HVAC, Alarm systems, and Electrical contractors.
3. New UCIB Group III also includes septic tank and solar contractors.
4. New UCIB Group IV also includes mobile home, framing, steel erector, concrete, marine, pollutant storage contractors.

The wording of the proposed legislation is such that there may be some variation in the numbers of members of the proposed UCIB from each contracting group. For example, the number of members that are either general, building, or residential contractors shall not be more than five. It may be less. The only membership category that is given a definite number is consumers, of which there shall be four. Because of the allowable variations, if you add the numbers under the UCIB column in Table/Chart 5 the total will exceed 15. The proposal states that the members are to be appointed by the governor, confirmed by the legislature.

Under the current law the CILB regulates contractors that, by examination and filing of appropriate insurance and financial data, are certified by the State and therefore hold a statewide

license in their particular field. The CILB also registers contractors that are locally licensed, the registration process being the establishment and maintenance of a centralized data base with respect to this category of contractors. The proposed legislation would partially abolish this two tier system, making more contractors state certified. Those that are currently registered and restricted to work in the local jurisdictions issuing their license (usually called a certificate of competency) would be given certified status, if their license is in a category regulated by the State. They would be required to meet the financial responsibility requirements currently in place. No additional testing would be required.

The proposal increases the number of categories for which contractor status is certified from the current 18 to 28. The legislation would continue to allow local jurisdictions to license specialty fields not covered by state certification. Consequently, while the intent of a part of the legislation appears to be to do away with the two tier system, it actually perpetuates it by continuing the registration, for tracking purposes, of locally licensed contractors. Table/Chart 6 provides a list of the current and new categories of contractors eligible for state certification.

TABLE/CHART 6

Categories of State Contractors

CILB	UCIB
Current Legislation	Proposed Legislation
General	General
Building	Building
Residential	Residential
Class A Air Conditioning	Class A Air Conditioning
Class B Air Conditioning	Class B Air Conditioning
Class C Air Conditioning	Class C Air Conditioning
Alarm System I (Note)	Alarm System I
Alarm System II (Note)	Alarm System II
Electrical (Note)	Electrical
	Residential Alarm System
Mechanical	Mechanical
Commercial Pool/Spa	Commercial Pool/Spa
Residential Pool/Spa	Residential Pool/Spa
Swimming Pool/Spa Service (Note)	Swimming Pool/Spa Service
Plumbing	Plumbing
Underground Utility	Underground Utility
	Septic Tank
Solar	Solar
Sheet Metal	Sheet Metal
Roofing	Roofing
	Mobile Home
	Framing
	Structural Steel Erection
	Reinforced Concrete
	Marine
Pollutant Storage System (Note)	Pollutant Storage Systems
	Precision Tank Tester
	Internal Pollutant Storage
	Tank Lining Applicator
Asbestos Abatement	
Specialty Structure	
Gypsum Drywall	
Elevator Electrical (Note)	
Residential Electrical (Note)	
Electrical Outdoor Sign (Note)	
Lighting Maintenance (Note)	

Note: Not currently under CILB.

A study by Morad and Mitrani of the Department of Construction Management at Florida International University has identified 105 building related categories of licenses utilized

by local jurisdictions.¹⁹ Not all jurisdictions utilize all of these, which run the gamut from general contractor to such specialized licenses as that for the installation of a manufactured fire place. A study of which of the local licenses would be absorbed by one of the UCIB categories, which would remain, and the number of individual local licensees is beyond the scope of this report. However, an examination of the definitions for each of the license categories in the proposed legislation indicates that there will be more than 70 categories of contractors which will remain locally licensed. It is arguable that the reduction from 105 to 70 plus locally license categories is not particularly meaningful in trying to bring order into the system.

There are three areas where the Department contemplates substantive change in the contracting law. The first of these is the establishment of a recovery fund. A fee (\$7.50 is proposed) will be added to each new or renewal licensing fee and the funds will be kept in trust. If an individual or firm is financially harmed by a state certified contractor, has a court awarded judgement, but cannot recover the monetary damages because the contractor has insufficient assets, the Board may award damages up to \$25,000 per incident.

The second important change is that the Board may establish binding arbitration rules which the Department will administer. Finally, the Board may issue stop work orders on projects undertaken by unlicensed firms or individuals.

The current proposal from the Department adds an entirely new section to the contracting law entitled "Building Code

¹⁹ "Local Licensing in the State of Florida," Morad, Ayman A., and Mitrani, Jose D., Technical Publication 106, BCIAC Grant No. 90-7, Florida International University, November, 1992.

Administrators and Inspectors." If adopted, this section:

establishes a Building Officials Advisory Council, consisting of 5 members (a licensed architect or engineer, two building officials, and two consumer members), to advise the department on rules and regulations concerning building officials;

authorizes the Department to determine standards for the certification of building code administrators and inspectors, and to provide this certification;

requires that all code administrators and inspectors employed by any state or local governmental agency hold state certification.

There is no "grandfather" clause in the proposal. Those currently employed in code enforcement and who wish to continue in the field would be required to apply for a temporary certificate, then complete in service training before a permanent certificate is issued. The type and level of in service training is to be established by the Department.

A primary concern with the proposed legislation is that the proposed UCIB would continue to function in a manner similar to the current CILB. Few of the problems cited in this report: increases in DPR administrative overhead; an examination system that is outmoded; burgeoning disciplinary and enforcement cases; lack of definition as to the proper role of the Board--- responsibility without authority--- are adequately addressed in the proposal. In fact, administrative burden would probably increase and the two tier system would be perpetuated.

Equal cause for concern is the proliferation of the number of state recognized contracting fields. While the primary

reason for regulation and licensure is protection of the public, a very strong effect of licensure is increased cost to the consumer. Classical economic theory is that licensure precludes some entering field for which they are qualified and would be willing to work at a lower cost than those already licensed. In addition, for those that are willing to go through the licensure procedure, there are costs which are passed on to the consumer. The researchers know of no study made which justifies the increase in state regulated categories of contractors.