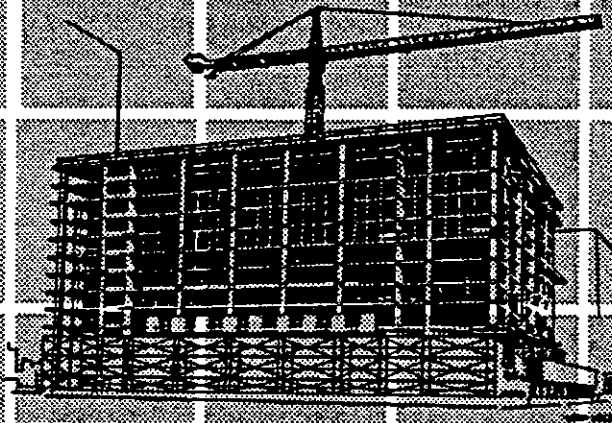


**TECHNICAL PUBLICATION 121
A STUDY OF FLORIDA'S LICENSING
SYSTEM FOR CONSTRUCTION CONTRACTORS:
PHASE 2**

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



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1997

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GRANT 95-18

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ACKNOWLEDGMENTS

The study team would be remiss if it did not acknowledge the support of the professional staff of the Construction Industry Licensing Board in the preparation of this report. During the period that it took to compile the data the position of Executive Director changed hands, from Richard Hicock to Rodney Hurst. Both of these individuals provided of their time and knowledge in support of this effort.

Although most of the professional staff of the Board were burdened with providing data, Ruth Ann Spooner was particularly instrumental in providing the monetary costs and reports that were utilized throughout. She bears no responsibility for the use that we made of her labor, but does deserve our appreciation for her patience and the additional work effort that we thrust upon her.

We would also be remiss if we did not note that Pat Doyle, a long time member of the professional staff and the institutional memory for the Board, decided to retire and left the staff in December of 1996. Her service to the Board and the Construction Industry, as well as her personal kindness to the Project Director and the Department of Construction Management at Florida International University, will be missed. We wish her well.

Two other individuals have either departed or are departing from the Board for whom the industry as a whole owes a tremendous debt that can never be repaid. Sam Bloom left the Board in the Fall of 1996. His service to the construction industry is near legendary. Warren Sutton leaves the Board in the Spring of 1997. He has been both a stalwart champion of the profession and industry as well as a friend to those of us at the University. These two individuals, both volunteers, represent the highest ideals that contractors and public servants should aim for. Their actions while serving on the Board, and for their community, have benefitted all of the citizens of this State.

The authors need to acknowledge that the bulk of the work in the reduction of the data to useable form was done by Christopher Husbands. The use made of the data, and the opinions, conclusions, and recommendations contained in the report are the sole responsibility of the Project Director.

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. Executive Summary	1
II. Findings, Conclusions, and Recommendations	
A. Findings & Conclusions	4
B. Recommendations	5
III. Introduction	8
IV. A Review of the Operations of the Florida Construction Industry Licensing Board	11
V. An Analysis of the Construction Industry Study Committee Report	44

LIST OF FIGURES

<u>Figure</u>	<u>Title</u>	<u>Page</u>
1	Organization of the Department	12A
2	CILB Revenues and Operating Costs	13
3	Operating Costs Per License	16
4-5	CILB Administrative Costs	17
6	CILB Authorized Full Time Employees	18
7-8	CILB Office Admin Cost Per Employee	18
9-10	Department Admin Support Costs	19
10A	Department Admin Burden	20
11	Number of Examinations Administered	23
12	Cost Per Exam Administered	24
13	Examination Statistics	25
14	Distribution of Licenses	26
15	CILB Total Licenses	27
16	Construction Licenses Per 1,000 People	38
17	DBPR Expenses for CILB Licensure	29
18-19	DBPR Licensure Cost Per License	29
20	License Applications and Costs	30
21	Construction Industry Complaints	32
22-23	Total Disciplinary Costs for CILB	33
23A	Disciplinary Costs and Board Revenues	34
24	Disciplinary Costs by Categories	35
25	Construction Industry Complaints	35
26	Disciplinary Costs Per PC Complaint	36
27	Investigative and Legal Costs Per PC Complaint	37
28A	Board Disciplinary Actions	38
28B	Unlicensed Contractor Complaints	39

<u>Figure</u>	<u>Title</u>	<u>Page</u>
29	Composition of CILB and ECLB	47

APPENDICES

A	Report of Construction Industry Study Committee	
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I. EXECUTIVE SUMMARY

The project reported on in this document is the second done by a study team from the Department of Construction Management at Florida International University covering the functioning of the Construction Industry Licensing Board (CILB), referred to as the Board throughout this report. The report centers on the fiscal relationship of the Board with the Department of Business and Professional Regulation (DBPR), its parent Department. Like the first report, this one has been supported by the Building Construction Industry Advisory Committee (BCIAC) under a grant from the State's Department of Education. The first report was completed in 1993 and not only examined the CILB but also compared it to the operations of the similar regulatory board in California.¹ The current study effort concentrates solely on the CILB.

The study team was tasked to:

- update the data from the first study;
- examine the revenues and expenses of the Board;
- review legislatively mandated changes affecting the Board that have occurred since the previous report;
- provide insight on the report of the Construction Industry Study Committee (CISC).

The last of these four tasks was added after the study was initiated when the Legislature established the CISC to study and review statutes "relating to the licensing and regulation of construction, electrical, and alarm system contracting and recommend changes in statute, process and procedure" which would result in more efficient accomplishment of the goals of the pertinent laws and regulations.² This report satisfies the tasking.

The report utilizes the same graph and chart numbers with respect to the same data that was utilized in the first study. The subject matter of Figure 3 in this report is the same as Figure 3 in the previous report. In order that direct comparisons can be made, the new fiscal data were reduced to constant dollars for the same base year, 1991. Additionally, the convention of developing Work Load Indicators (WLI's) for various functions of the Board is continued so that individuals familiar with the work done previously can utilize the new report without having to

develop an entirely new frame of reference. The structuring of the report and the factors developed were derived to:

- eliminate the influence of inflation or escalation for monetary data;
- reduce the data to fundamental building blocks for the CILB's work;
- allow for the preparation of analysis and trends;
- provide appropriate tools from which to establish findings, conclusions, and recommendations concerning the functioning of the Board and its relationship with the Department.

A recurring theme throughout the report is the fact that all contractors in the State do not come under the aegis of the Board. First, electrical contractors are currently licensed under a different part of the Florida Statutes and have a separate regulatory board. Second, contractors may either be state *certified*, state *registered*, or hold only a local certificate of competency. Individuals who have been examined by the Board, who have passed that exam, and who are otherwise qualified are licensed as state certified contractors. Contractors so licensed may contract within any jurisdiction within the State without further testing or contractor licensing requirements. They are also not bound by local laws placing restrictions on contracting other than those found in the Building Code for that jurisdiction. Contractors who have been examined by a local jurisdiction in one of the categories of contracting recognized by the Board and who hold a certificate of competency in their field from the local jurisdiction, must register their local license with the Board. Peculiarly enough, is the act of registration that allows them to engage in contracting. If they do not register their local license, it is a violation of the State's contracting law for them to be engaged in a contracting business. Registered license holders may engage in contracting only in the jurisdiction from which they received their certificate of competency. Unlike state certified contractors, they are subject to local contracting rules and laws. Contractors that hold a certificate of competency from a local jurisdiction in a category not recognized by the Board are neither certified or registered. Like the registered contractors, they may engage in contracting only within the jurisdiction that established the category for the license that they hold. Also, like the registered contractor, they are subject to local contracting laws and rules.

The Board is required by the legislature to recognize 20 categories or sub-categories of

contractors. However, throughout the various local jurisdictions in the State there are well over a hundred different contracting categories that have been established by local jurisdictions.³ Consequently, while the State's licensing system is often termed "two tier," it is in reality "three tier:" certified; registered; and other.

Like almost all State agencies, the Board is a creature of the Legislature. It has been assigned responsibilities for the licensing of contractors and the setting of construction industry rules consistent with the underlying law; for examination content and for ultimate disciplinary authority over state certified contractors. However, while the Board has the responsibility for these, it has little actual authority. There is a legislative limit on the amount that the Board may charge for application, examination, licensure, and licensure renewal fees. The licensure and examination functions are, for the most part, administered by the parent Department. The investigative and hearing portions, as well as the routine, day to day administration of the disciplinary functions are performed by other agencies. The Board retains the ultimate authority in establishment of rules implementing the contracting law, and the final action for discipline of state certified contractors.

II. FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

A. FINDINGS AND CONCLUSIONS

Using data from Fiscal Years 1984 through 1995, the study team reached the following findings and conclusions with respect to the operation of the Board, its interface with the Department, and the report of the Construction Industry Study Committee:

Administration

- the revenue that the Board derives from examination and licensure fees and all other sources during the period have been historically insufficient to cover the annual direct and indirect costs associated with the operation of the Board.
- the Board's administrative costs are essentially stagnant, neither significantly increasing or decreasing over the study period;
- the number of full time employees for the professional staff of the Board was essentially unchanged throughout;
- the constant dollar overhead cost per professional staff employee, which includes personnel salaries, has declined over the period by approximately 13%;
- the Departmental overhead burden during the same period has increased by approximately 51%;
- the Legislature has assigned significant new functions for the Board without the provision of revenue or other resources to accomplish these tasks;
- there are no data to measure the impact or utility of the continuing education program.

Licensure

- the number of contracting licenses reported by the Department and the Board are inflated as the result of the failure of the cognizant agencies to purge the files of individuals that have not renewed their licenses;

Discipline and Enforcement

- contractor licenses account for slightly less than 11% of all of those regulated by the Department. Complaints against licensed contractors regulated by the Board

- account for over 40% of the total complaints received;
- while decreasing slightly over the period, the investigative and disciplinary functions of the Board, and the Department on behalf of the Board, averaged approximately 45% of the Board's total revenue;
- less than 3% of the complaints against licensed contractors lead to significant disciplinary action, such as probation or the suspension or revocation of a license;
- the number of complaints concerning unlicensed activity is relatively small.

Construction Industry Study Committee Report

- the CISC effort was incomplete to the extent that it did not address the following issues as requested by the Legislature:
 - a. regulatory board authority;
 - b. examination procedures;
 - c. revenue for operations of the regulatory boards;
 - d. budgeting issues.
- adoption of the CISC recommendation concerning the establishment of a single tier licensing system would have limited effect in the near term on the current operations of the Board and local jurisdictions that are licensing contractors;
- the CISC recommendation for a merger of the CILB and the Electrical Contractors Licensing Board (ECLB) is reasonable.
- the CISC recommendation for local discipline of state certified contractors is a marked departure from the underlying legislative intent in the establishment of a state wide certification system.

B. RECOMMENDATIONS

The study team identified the following items that they recommend for consideration to the Legislature, the Department, and the Board:

Administration

- the persistent under funding of the Board's operations should be remedied as soon as possible;

a study should be undertaken to determine the true requirements of the Board professional staff in terms of tasks, and requisite positions and salaries. Based upon the outcome of that study the

Legislature, together with the Department and the Board, should adopt a reasonable procedure for the setting of licensing and examination fees that will maintain the fiscal integrity of the Board and allow it to properly and efficiently perform the functions and tasks it is assigned.

- the cause for the upward trend in Departmental overhead costs should be examined, understood, and, if appropriate, halted;

The Departmental overhead is exclusive of the functions performed by the Department for the Board, such as investigations, legal, examinations, and licensure. There is no rationale to assume that the growth in the Department's overhead has any impact on efficiency or an increase in the well-being or safety of the public.

Licensure

- the Department and the Board should expeditiously purge the files of individuals who do not apply for renewal within a specified time period;

The number of contractor licenses reported by the Board and the Department is inflated. The use of these data to determine overhead costs, as well as to monitor the operation of the Board, results in specious results.

Discipline and Enforcement

- the Board and the Department should review the penalties that are imposed on licensed contractors to ensure that they are reasonable and have the desired deterrent effect against future violations of the law or rules;

Approximately half of the Board's revenues are expended for investigations and legal costs while less than 3% of the contractors alleged to have violated the law or the Board's rules are meted serious discipline.

- the Board and the Department should make a concerted effort to expose and document the amount of unlicensed contracting activity that is occurring throughout the State;

Construction Industry Study Committee Report

- the legislature should adopt the recommendation for the merger of the Electrical Contractors Board and the Construction Industry Licensing Board;

Other than 'turf' protection, there is no cogent reason for having separate Boards. The membership of the merged Board should be representative of the industry as a whole with heightened regard for consumer advocacy.

- the proposal of the Committee for changes to the two tier licensing system in the state merits further study;

- the proposal of the Committee to allow local jurisdictions to institute and process disciplinary proceedings against state certified contractors should be rejected.

The proposal is contrary to one of the primary reasons for the establishment of the state wide certification system and presages a return to the chaotic regulatory and licensing situation existing prior to the creation of the CILB.

III. INTRODUCTION

In 1993 a study group from the Department of Construction Management at Florida International University reviewed and reported on the licensing system for contractors in Florida. Subsequent to the completion of the report several actions have been taken by the legislature and other government agencies that have impacted on the Construction Industry Licensing Board (CILB), the governmental organization charged with the regulation of licensure for the construction industry:

- the Department of Business Regulation and the Department of Professional Regulation have been combined into the Department of Business and Professional Regulation (the Department);

The CILB is one of the independent advisory and regulatory boards that was under the Department of Professional Regulation that was affected by the combining of the two departments.

- the legislature provided the Department with authority to discipline unlicensed contractors:

Prior to this the only action that could be taken in instances of work by unlicensed contractors was referral to the Attorney General's office for possible prosecution.

- the legislature has relieved the CILB of the requirement to register and discipline locally licensed contractors in trades not licensed by the state;

Florida operates under a tiered contracting licensing system in which local jurisdictions can require licenses in trades not regulated by the state. Prior to this change all locally licensed contractors, regardless of trade, were required to register with the CILB. In certain instances the Board also had to administer the disciplinary functions for these trades.

- the number of registered and certified contractors whose licenses are tracked by the Department has increased by 24% in 3 years;

Subsequent to 1992 the CILB undertook the task of eliminating from its rolls contractors that did not renew their licenses. This effort, combined with the fact that certain locally licensed contractors are no longer registered, should have led

to a significant reduction in the number of licenses.

- there is concern that the funding for the Board is inadequate for the tasks involved.
The funding for the CILB and its activities comes almost exclusively from licensing fees. The fees collected are now at the legislatively approved ceiling.

As a consequence of the legislative changes and departmental consolidation since the last report on the functioning of the Board, the Building Construction Industry Advisory Committee (BCIAC) requested that the last study effort be updated. Specifically, the Committee requested that the team examine the relationship of the Board to the Department, to provide recommendations for improved functioning of the board, and to provide recommendations to ensure its financial integrity.

Subsequent to the time that the Committee requested that the study be updated the Legislature established a Construction Industry Study Committee (CISC) to review statutes relating to the licensing and regulation of construction, electrical, and alarm system contracting.⁴ The CISC was charged to recommend changes in statute, process, and procedure which would more efficiently accomplish the goals set forth in the basic Construction law, and specifically to examine:

- current regulatory board structure and authority;
- examination and licensure processes and procedures;
- regulatory and disciplinary jurisdiction and procedures;
- revenue and budgeting issues.

With the concurrence of the BCIAC the study group amended its original tasking to include a review of the CISC report. A copy of this latter document is included as Appendix A.

The study team has followed the format of the previous report to aid interested readers in tracking of the data. Excepting the portions of the first report concerning the California Construction Board, the graphs and charts in this report are direct extensions of those previously provided. In certain cases, advancement in computer software technology has allowed the team to plot the data that was previously spread over several charts on to a single chart. Where this results in clarity, as for example the plotting of a regression on the same chart as the raw data, the

team has elected to do so. In order to preserve the numbering system and to allow direct comparisons between reports, the newer graphs carry a dual number. For example, Figure 4 of the first report displayed the data concerning the administrative costs of the Board, and Figure 5 was a linear regression of that data. In the new report, these are combined in to Figure 4-5.

Unfortunately, different software packages are not totally compatible. This fact has resulted in the plotting of the non-linear regressions performed as a series of connected straight lines rather than a smooth curve. The authors have accepted this limitation with the belief that these computed trend lines, although approximations, lead to clarity and an increased level of understanding.

The report also tends to be repetitious at times, but as a matter of choice, not for lack of writing style or editing. The authors intended that each major discussion area would be a 'stand alone' package. This was done so that readers interested in only one specific section will not be required to read all of the others for background information. The result is that certain items are repeated, sometimes several times. For example, the concept of the tiered licensing system is explained more than once, albeit briefly. Similarly, readers may find it bothersome that they are frequently reminded that the fiscal data have been reduced to constant 1991 dollars. While style suffers, it is hoped the usefulness of the report is increased.

A final explanation. The authors have used the word 'slack' in several instances throughout the report. They have done so using the word in its economic sense, i.e., where it denotes or describes resources that may be used more beneficially doing a different task. It is not intended as a denigration of the offices or agencies involved.

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

Background

The State of Florida Construction Industry Licensing Board (CILB) was established by the legislature in 1967 and commenced licensure of contractors in 1968. There were originally only three categories of state certified licenses: residential, building, and general contractors. The number has changed through the years and at present stands at twenty.⁵ These contractors are regulated under Sec 489 of the Florida Statutes.

The CILB operates in a two fold manner. First, it is an advisory organization to the Secretary of the Department of Business and Professional Regulation concerning the construction industry. As such it represents one of the 27 different professions regulated by the Department.

The second function of the Board is as a regulatory agency. In this guise the Board is responsible for the following:

- the application process for individuals seeking to become contractors;
- for the approval of licensing;
- the determination of application, licensure, and renewal fees (subject to a legislatively imposed limit);
- ensuring that the contractors have the proper types of insurance and are financially responsible;
- approval of disbursements from the Construction Industry Recovery Fund;
- approval of providers for the continuing education program;
- the final action on disciplinary matters, including the revocation, suspension, or denial of licensure as well as lesser penalties.

The current membership of the Board consists of 18 members who are appointed by the Governor. The membership is comprised of individuals representing major segments of the construction industry as well as representatives of the general public. The membership representation, required by the legislative act, is as follows:

- 4 members are to be general contractors;
- 3 members are to be building or residential contractors;

2 members are to be building officials;

1 member from each of the following:

roofing contractors;

sheet metal contractors;

air conditioning contractors;

mechanical contractors;

pool contractors;

plumbing contractors;

underground utilities contractors;

2 public service members.

These latter can have no ties to the contracting industry. Figure 1, on the following page, depicts the organization of the DBPR. The CILB is located under the Division of Professions. It should be noted that at the present time, the electrical contractors and the building officials have separate boards and are not under the CILB.

Work Load Indicators

In the previous report the study team developed Work Load Indicators (WLI's) that were considered representative of work accomplished by the Department and the Board and for which financial data were available for analysis. The current report continues that format with an extension of the budgetary data to the end of Fiscal Year (FY) 1995. Complete data beyond that point were not available at the time that the information was being accumulated. The WLI's are examined in four areas: Administration; Examinations; Licensure; and Disciplinary Actions. Within each of these areas the WLI's allow comparisons of the work load handled by the Board across time. In order to be consistent and to allow comparisons with previous work as well as year to year changes, the budgetary data are reported in constant 1991 dollars. Consequently the reader is cautioned against comparing data with that either reported by the Department or other state agencies which may not have been reduced to constant dollars for the same base year.

THE ADMINISTRATIVE WLI's

Overall Cost of Operations

One of the continuing areas of concern for both Board members and the professional staff



DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION

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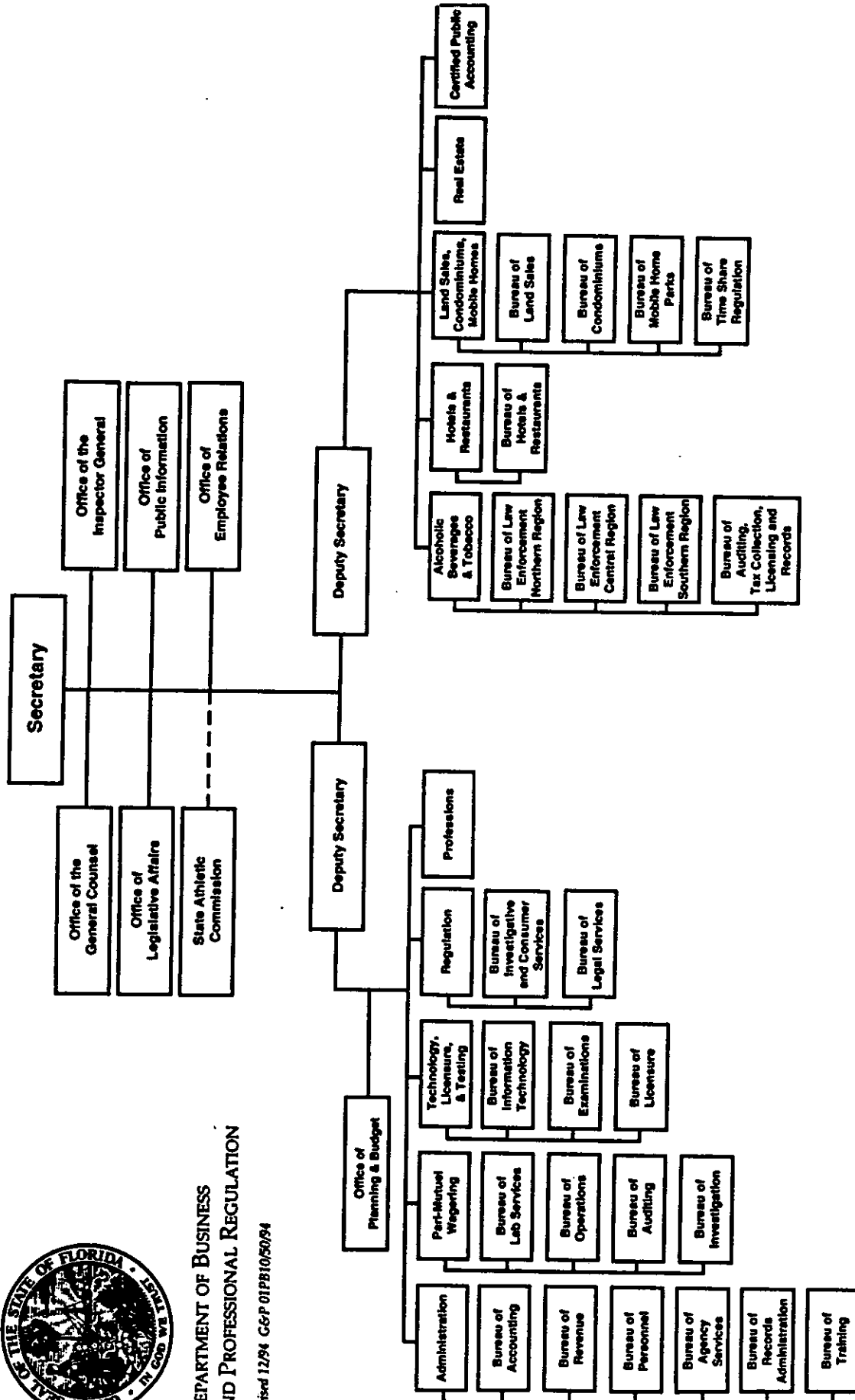


Figure 1

is the overall level of funding that is available. Funds for operations are derived, almost exclusively, from licensing fees collected. There are other miscellaneous sources, such as interest, fines, and the fees charged sponsors of continuing education courses. The enabling legislation provides that funds generated by the Board over and above those required for operation are to revert to the general revenue at the end of a fiscal year. However, running a surplus is not the norm. At the current time the fees collected by or on behalf of the Board are pooled at the Departmental level with those that are collected by other regulatory agencies. The entire Department is primarily funded through the use of these fees and assessments.

One of the difficulties noted in previous work was the lack of continuity of data. From year to year, items show in accounting reports under different names, complicating the task of establishing a clear tracking system and complete definitions. It almost seems as if items which come under scrutiny one year as their costs seem to be climbing, level off and are no longer of concern; except that there has been a name change and the function continues growing under the new name. This is certainly true for the first WLI examined, the cost of operations of the Board. In the tracking of this indicator, an attempt was made to ensure consistency by removing from the data those items not related directly to the Board, such as legislatively directed funding transfers to other agencies and repayments for these. However, the WLI does include in the cost of operations all of the work done for the Board by the Department or other state agencies.

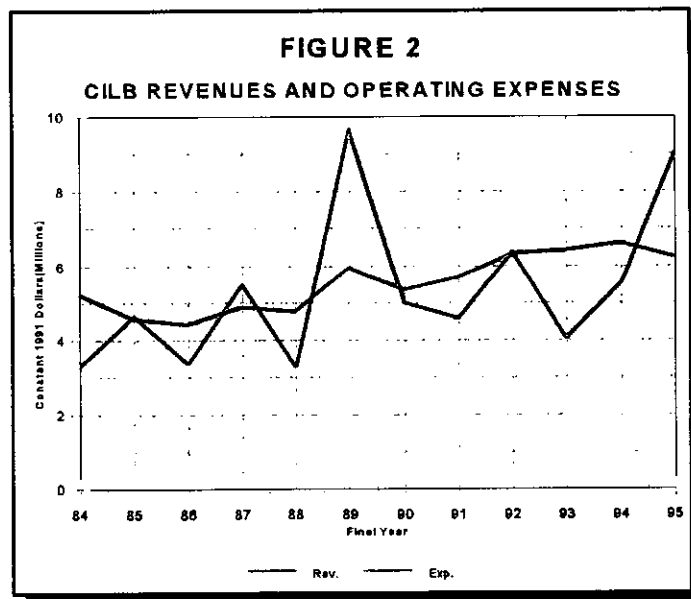


Figure 2 shows the revenues and operating expenses of the Board since 1984 (in constant 1991 dollars). A line representation was specifically chosen instead of the more traditional bar graph to highlight the cyclic nature of the revenues. These cycles are caused primarily by the staggered renewal periods for certified and

registered contractors. The graph also reveals that, during the reporting period, with three exceptions revenues have generally lagged expenditures. What cannot be revealed from an examination of the data is whether or not the Board and the professional staff require additional resources to adequately perform their assigned tasks.

Revenues are primarily controlled by two factors: the number of new applicants and the number of renewals. In each of these, the maximum fees that can be assessed by the Board is prescribed by the legislature. The current assessments for application, licensure, and licensure renewal are the maximum allowable. If additional funding is required to more adequately perform the functions that are assigned, either by the legislature or the Department, the Board must be allowed to gain additional revenues through higher user fees. The only other alternative would be to provide a portion of the Board's expenses by appropriations from the general revenue.

Given that there is no 'slack', mandates to perform work other than that which is currently being accomplished require the assignment of additional funds or the transfer of assets to support the new function. If no funds or additional assets are made available, then one (or a combination) of three things must occur: the new work will not be accomplished; existing work will no longer be done; or things will be done but not very efficiently. Two examples of additional requirements without additional funding, both of which are treated in greater detail elsewhere in this report, are continuing education and the Recovery Fund. In each case, the legislature mandated an additional work load without providing either the additional resources or the ability to generate significant additional resources.

If the Board and the professional staff are chronically under funded the ideal solution would be to remove the legislatively imposed cap and to allow the Board to establish the fees required for proper functioning and execution of assigned responsibilities. This could be done in a manner analogous to the restrictions placed on jurisdictions that establish building departments where fees collected in connection with the permitting process cannot be used to augment the general revenue. Fees could only be used for the operations of the Board, its professional staff, and a 'fair share' of the overhead of the Department. Other reasonable alternatives would be:

- selective increases in the maximum allowable fees, such as that for renewal of inactive licenses;

- a graduated scale for licensure based upon capacity or dollar volume of revenue;
- legislative assignment of funding sources for increased responsibility or changed functions.

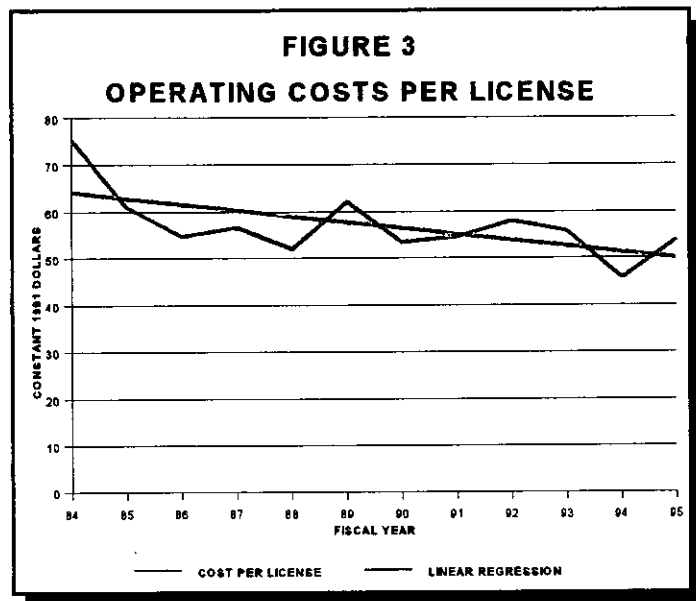
The idea of raising fees for inactive licenses to the level of those for active licenses has been proposed in the past but has not been assented to by the Legislature. Currently they are capped at about one fifth of the active fee. However, the actual out of pocket expense to the Board, other than for disciplines and enforcement, are essentially the same. There are no data to support any assumption on the elasticity of license renewal versus cost. However, if fees for inactive licenses were raised to the level of active licenses, there would certainly be a substantial number of individuals that would opt not to renew. Assuming a 50% drop out, the additional revenue generated by such an increase would be approximately \$2 million every renewal period. A lower level of increase would generate a different amount. If, for example, the inactive license renewal fee were set in proportion to the cost of the Board's operations less the disciplinary and enforcement functions, then it would be at about 50% of the active license renewal fee. Under the same set of assumptions used above, the increase in the revenue for the Board would be approximately \$1 million every two years.

A graduated scale license fee, based upon an individual's or firm's annual contracting revenues, could also be utilized produce additional revenue. Conceptually this would have a lesser impact on individuals than raising the fees for inactive licenses. The idea is not new. The State of Virginia currently utilizes a similar system for the licensing of home builders. From one point of view the practice of equal cost licenses for firms or individuals at the \$100,000 a year level as opposed to those at the \$1 billion a year level is perfectly fair. Both require the same services from the Board, both cost the Board and the professional staff about the same amount of expenditures. However, the philosophy of requiring more of those that have greater resources is also not a stranger when considering how to raise revenue.

Costs per Licensee

The constant dollar operating costs for the Board were normalized as a function of the number of licenses reported, both active and inactive, registered and certified for the period 1984 through 1995. The data are displayed in Figure 3, together with a least squares regression superimposed as a trend line. This latter indicates a continuing decrease in the operating cost per outstanding license. From this snapshot, one cannot conclude what actions have been taken to cause the continued downward trend.

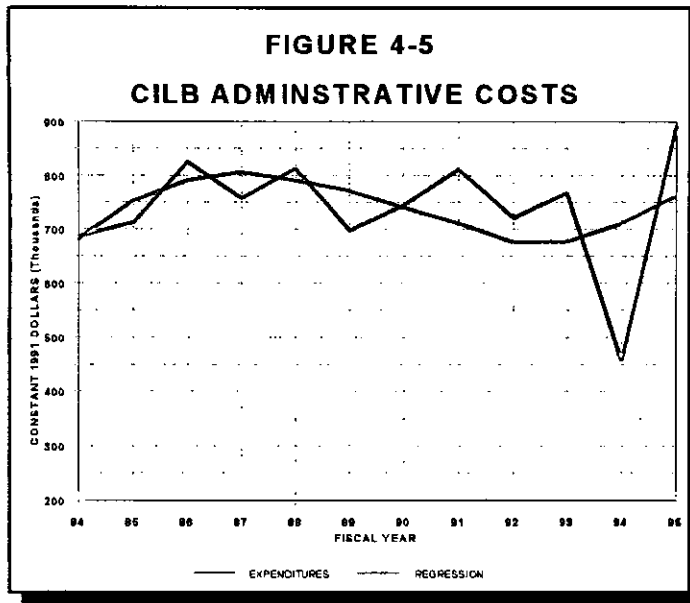
However, it is safe to conclude that actions have taken place within the professional staff of the Department and the Board that have resulted in efficiencies or economies in the manner that the overall operations of the Board are conducted. It is also too early to measure the impact of certain additional functions that the professional staff have assumed, such as the establishment and monitoring of the continuing education program and the recovery fund.



Board Administrative Expenses

The study team defined the administrative costs of the Board as personnel salaries and benefits, other personnel expenses, expenses such as office supplies and rent, and capital outlays for equipment. It should be recognized that tracking these costs is not totally clean and free from error. However, an analysis of the available data provided a path which was used to calculate a third order polynomial regression which shows the trend for administrative expenditures. The data are plotted in in Figure 4 - 5. The team spent considerable time in trying to determine the cause for the dip in reported expenditures for 1994, and the sharp increase in 1995. The cause

appears to be a deferment in expenditures at the end of one fiscal year, coupled with recoupment



in the next. This obviously skews the regression. Still, it is possible to say that the smoothing function exhibited by the regression analysis indicates that planning for the administrative budget should be approximately \$650,000, annually (in constant 1991 dollars). The result differs from the previously reported analysis where a linear regression indicated an ever increasing administrative cost.

The reader should also understand that the results of the

regression and the data that are presented do not present a picture of what the administrative costs of the Board should be. Rather, they are historical data showing what they have been, represented in constant dollars to take out the effect of inflation and changes in pay scales. When one considers that the income of the Board has been capped for several years and that income changes, primarily, with the number of licenses issued and the number of applications for examination, then it is pretty much business as usual. If new functions are introduced without additional resources, either the older functions are discontinued, or efficiencies are found, or things are done less well. To some extent, data presented in the report indicate that efficiencies have been found and the cost of doing business for certain functions has decreased. This has provided the 'slack' to accommodate a new task without additional administrative personnel. There comes a point, however, when greater efficiency is no longer reasonable and the overall effort suffers.

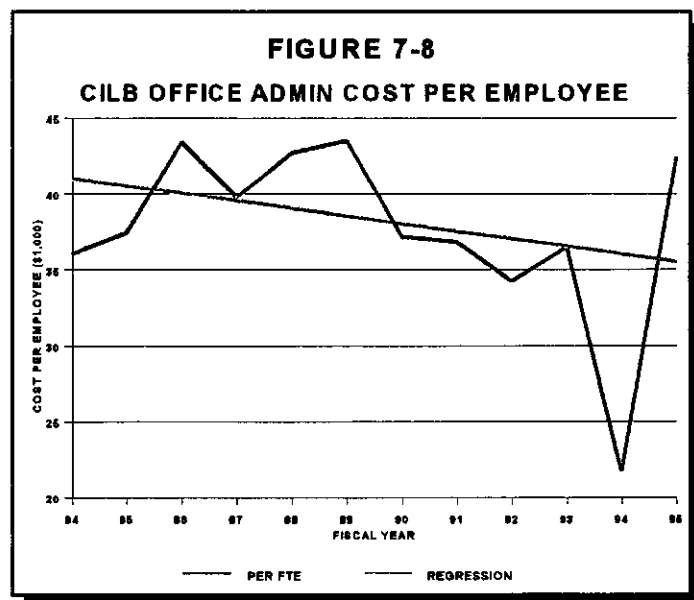
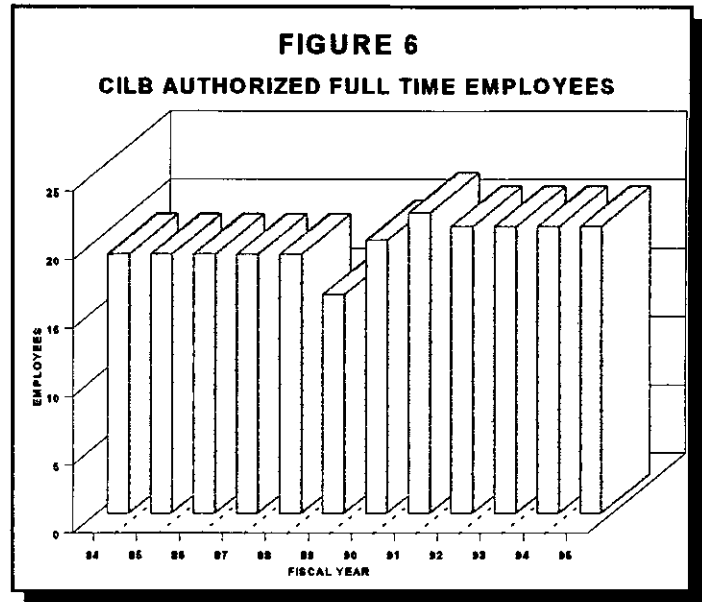
Personnel

The number of full time employees of the professional staff that have been authorized since 1984 is presented in graphical form in Figure 6. The data actually represent full time equivalents,

which is salaried man years rather than the number of people that may be in the office on any one day. It does not include temporary help that may be hired for a particular project and for which no position is authorized. It does include positions which are not necessarily manned on a full time basis but which, when aggregated, amount to the equivalent of a man year.

The data of this chart are tied directly to the previous discussion concerning the absorption of additional functions with no additional resources. Efficiencies which come through increased productivity may allow the near constant manning level to accomplish more. For example, productivity gains may come through a better computer system and a better understanding for the use of the system. The Department has introduced both newer hardware and software during the period since the last report, and training has been provided for the individuals utilizing the system. However, whether the manning level is suitable is not something that is revealed by the data.

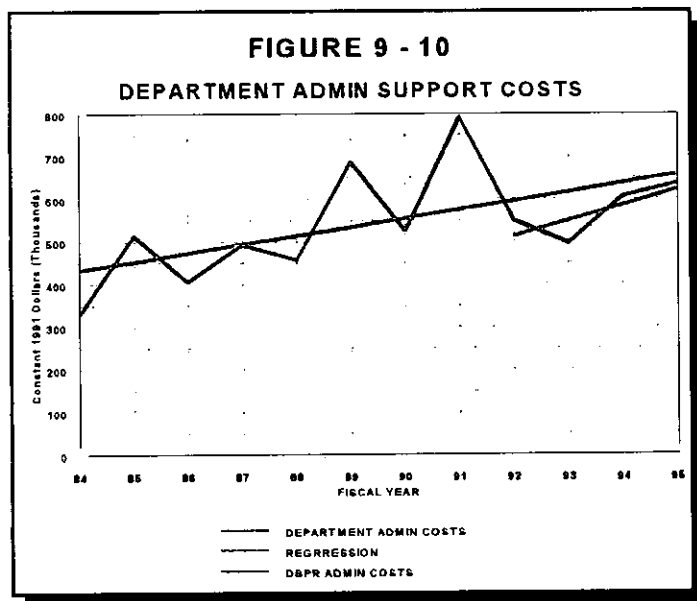
If the manning level for the professional staff is essentially static it should be expected that the statistic that shows the administrative expenditures per staff member will reveal whether or not there has been salary creep. Figure 7-8 provides a



means of displaying this statistic. The data are displayed for the administrative costs per full time employee and then a trend line, in this case a linear regression, is superimposed. The trend line shows a downward slope, indicating that in constant dollars, less and less is being spent per full time employee on the professional staff. Again, this is a different result from that obtained by a similar analysis in the previous report. At that time, the trend line was slightly positive over a longer period through 1991. The team also ran a second order regression on the data plotted in Figure 7-8. As would be expected of a second order regression, it was possible to pinpoint a maximum point for the per individual spending curve, which occurred in 1988. From that point forward, the second order trend is also downward.

Departmental Administrative Support

The Department of Business and Professional Regulation provides administrative support to the Board that is not reflected in the data presented thus far. The Board pays a 'fair share' of the support provided by the Office of the Secretary, the Assistant Secretaries, and all other functions of the Department that provide service to the Board. Graphs and data prepared previously through 1991 showed that the administrative cost charged to the Board by the Department of Professional Regulation had doubled over the interval investigated. Subsequently, departments have been merged, changed, and since 1993 the Board has come under the aegis of the newly constituted Department of Business and Professional Regulation. A plot of the administrative burden of the Department paid by the Board is shown in Figure 9-10, together with a linear trend line analysis. The trend remains positive in the sense that the overhead burden is

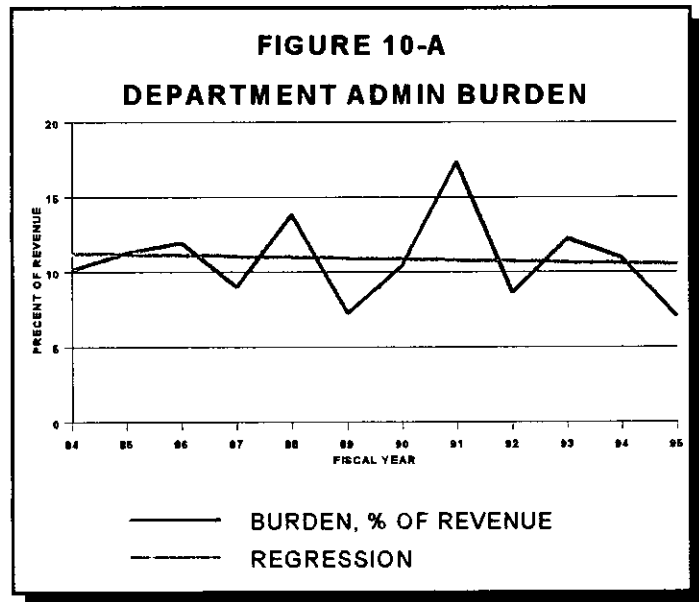


increasing. In fairness it should be pointed out that the basic data show a decrease at the time that the new department was formed. However, if a similar linear (least squares) regression is performed on the data from 1992 through 1995, the trend in Departmental administrative burden is still positive (increasing) but at a higher rate than for the overall period. This has been plotted on the graph as the DBPR regression.

The team also conducted an analysis of Departmental administrative burden as a component of the revenue incoming to the Board. Again, in fairness it must be noted that there were changes made in the operations and that the newly constituted Department was not the operating authority during the entire period covered by the analysis. The statistic chosen was the percentage of the Board's revenue that was utilized

by the Departmental administrative burden. The results of the analysis are shown in Figure 10-A and indicate a slightly declining trend in the share of the revenue dedicated to the administrative burden over the period. The team also ran a second order regression on the data in order to validate the trend that is shown by the first order regression. That analyses provided consistent results, showing a maximum of the upward trend during the 1989-90 time frame and a decreasing trend thereafter.

There are two interpretations that may be made of the trend. The first is that there is no increasing 'squeeze' on the Board due to Departmental administrative burden as the regression shows a slightly declining percentage of the Board's revenue. The second is that, no matter the additional tasking given the Board, there are no slack funds available from efficiencies or productivity improvements with respect to the Departmental overhead burden. Slack resources that must be uncovered to take care of new tasking must come from within the internal operations



of the Board. Put another way, approximately 11% of the Board's revenue will be used to support the administrative functions of the Department regardless of the need for resources elsewhere.

EXAMINATION WLI's

The necessity to take and to pass an examination to become a licensed contractor is one of the hallmarks of a licensing system for contractors. Of the 36 states that license contractors, in some form or another, all require an examination. The requirement to examine candidates for contracting licenses in this state originated with the initial statutes setting up the CILB and continues to this date.

The method for administering and the content of the examinations has changed over time. Originally the Board was responsible for both the content and the administration. Subsequently the legislature directed that a professional examination firm be retained to prepare and administer the tests. When the Board was placed under the control of the Department of Professional and Occupational Regulation and its successors (now after three reorganizations and mergers known as the Department of Business and Professional regulation) a Departmental agency absorbed the actual examination function. Board members still:

- provide guidance for the pool of questions to be used in examinations;
- actively participate in decisions concerning contracts with testing firms;
- handle appeals of the grading of examinations.

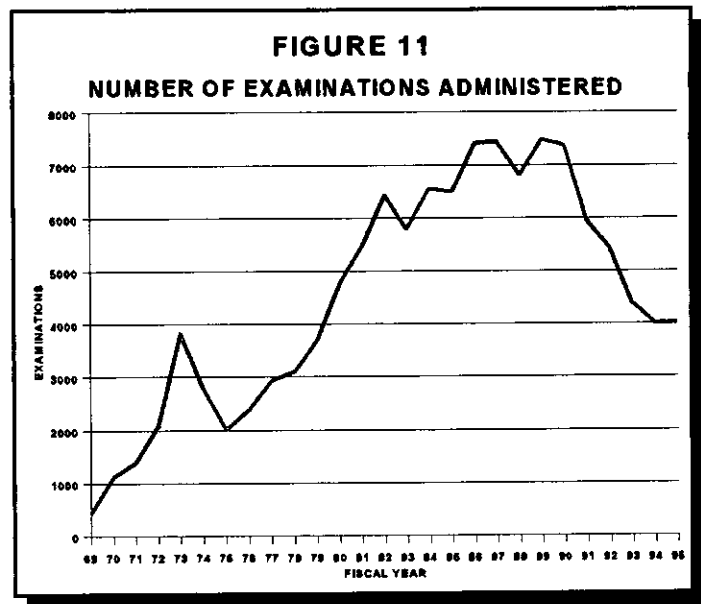
When the previous report was written recommendations were included that stated, in part, that the Board and the Department should "...continue revision and updating of the contractor examination system."⁶ At that time the Board and the Department were moving away from the "mass" examination concept, where literally hundreds of candidates were tested at the same site once or twice a year, to the concept of individual examinations that were administered electronically at diverse times and places throughout the state. In 1993, such a system was implemented on a trial basis and individual candidates were able to schedule and take the contracting examination in relatively small testing facilities. Subsequently this forward progress was halted due to contractual problems with vendors and the Department has returned, once more, to the mass examinations. Current plans are to return to the more individually administered examinations as soon as possible.

The total number of examinations administered for all categories of state certified contractors is shown in Figure 11. Unlike the majority of other graphs and charts included in this report, the data are displayed for all years, commencing with 1969 when the first of the examinations were administered. Despite the fact that the responsibility for the actual administration of examinations has been shifted to the Department, the Board professional staff both receives the applications and checks them for form and content.

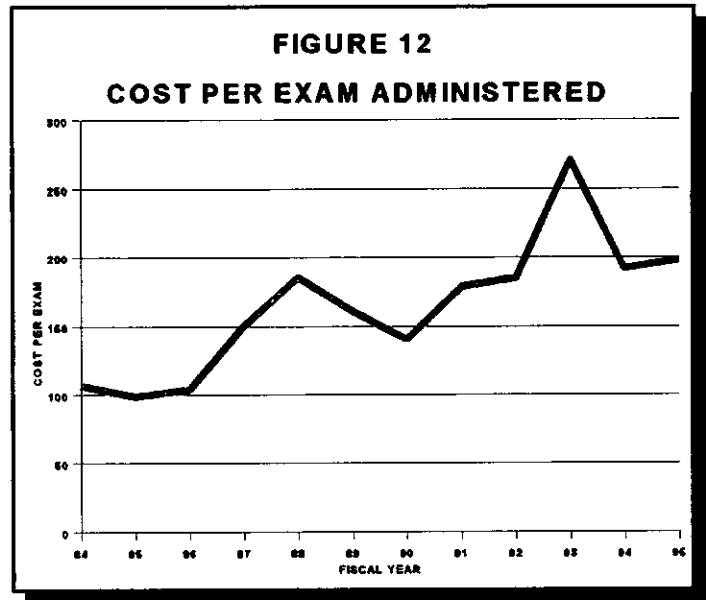
The processing of the applications is an area that provides an excellent example of how an increasing work load can be handled without increasing resources. There is only one full time employee on the professional staff that normally handles the applications for examination. Prior to

the decentralized, individualized examination system, many applications would be received immediately prior to an examination period. When the inevitable back log developed, the Board would be required to provide additional, temporary, resources in this area.

The smoothing function of the decentralized, individual examination system precluded this flood of applicants during a short period and allowed a more even work load. Generally, the previous work force augmentation was not required. Consequently, the 'slack' personnel resource developed through the more efficient use of manpower was available to be used to solve other problem areas. However, as is noted in several places throughout this report, there is a point at which increasing efficiency no longer provides the necessary slack to assume new functions. Unfortunately, this does not become apparent until there is a problem that can not be solved or a function that is neglected or completely ignored because there are no resources available to do the work that is required.



The upward trend visible until the 1991-92 time frame was a result of two factors: an increasing population of contractors; and an increasing number of categories in which contractors could apply for licensing. Initially the Board only certified three categories: general contractors, building contractors, and residential contractors.



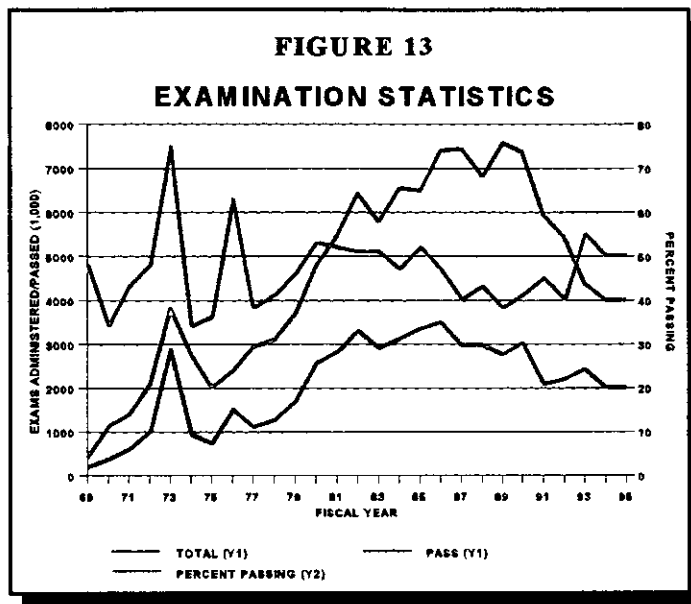
The study team studied the annual reports for the expenditures of the Department on behalf of the Board that are associated with examinations. Figure 12 depicts that data with the following caveats: like all other monetary data in the report, the annual costs have been reduced to constant dollars so that trends can be spotted free from inflation or escalation; secondly, there are functions in the Board's office which relate to examinations but which costs are not included. The expenses for 1992 and 1993 include rather substantive charges for the Orlando Testing Center (\$168,637 in 1992 and \$132,267 in 1993) as compared to that for 1994 and 1995 (\$12,697 and \$10,328, respectively). This inflates the costs in approximately \$20 per examination for the earlier years and explains a part of the increase that is apparent. Another cause for the spike in 1993 is a 19% drop in the number examinations administered accompanied with a 19% rise in the cost of the examination function. The trend is obviously upward.

The question that arises is whether or not the current application and examination fee cover the full cost of this part of the operation of the Board. The current legislatively mandated maximum amount for the initial examination and licensing fee is set at \$350. Examination costs, alone, in 1993 were \$271. A little arithmetic shows that the examination function was 19% of the Board's cost of operations for that year. If one adds in 19% of the administrative overhead of the Board per exam (\$30) and the Department overhead per exam (\$28) for that year, one can arrive at a rough estimate of \$329 as a cost of the examination function. However, this is in constant

1991 dollars. Bringing it up to 1993 dollars gives an amount of \$351. In other words, at that time the cost of doing business exceeded the legislatively permitted income for the function. While it is admitted that these kinds of calculations are only approximations, the results are indicative of the typical under funding of the Board for its assigned responsibilities.

Figure 13 presents the pass-fail rate for the examinations. It is presented here more for completeness than to make a statement as to what should be a satisfactory passing rate. The

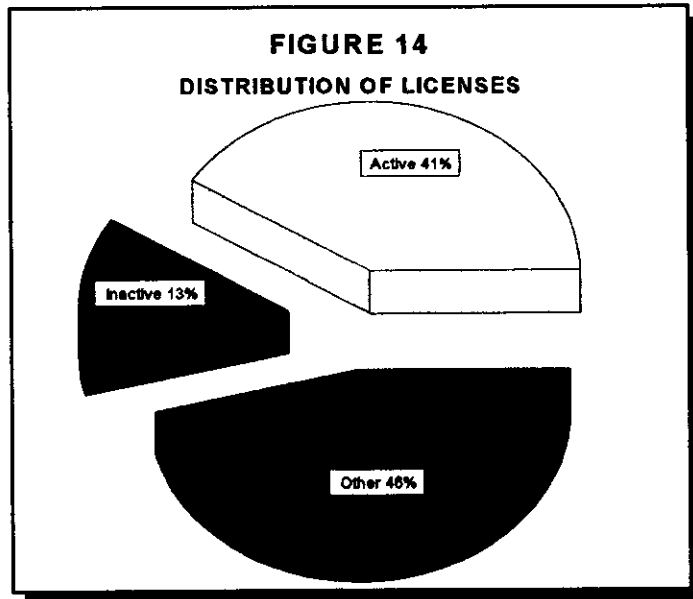
percentage passing in any one year is also shown on the chart.



LICENSURE WLI's

The Board provides licenses for both certified and registered contractors. (As described elsewhere, certified contractors are those who have taken a contracting examination at the state level, registered contractors are those that have taken locally administered examinations.) Licensure occurs after passing a contracting examination and providing the other documentation that is required.

In the previous report on the CILB the research team noted that number of licenses reported by the Department consisted of those who held an 'active' license, those who held an 'inactive' license and 'others'. The 'other' category includes those who have held a license at some point in time but not renewed it, and those who have applied for a license and hold a temporary one pending issuance of the permanent certificate. In 1992 while gather facts for the earlier report, the study team was informed that the staff of the Department had started to purge from the files those contractors that had not renewed their licences for two consecutive renewal periods. The program was to have been completed by the end of August of 1994. The data show that, in fact, that this has not been accomplished. In 1991, approximately 42% of the total number of contractors in the State fell into the 'other' category. Current data, plotted in Figure 14,



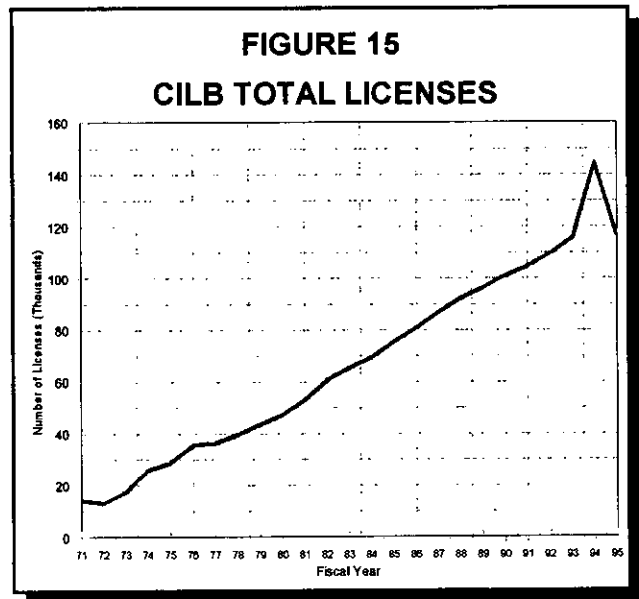
indicate that the percentage of active licenses has not changed significantly since that time. The percentage of 'other' has increased, while the number of inactive licenses has decreased.

There is a compelling reason that the work should be done in an expeditious manner. Departmental overhead is apportioned amongst the various regulatory boards and agencies in proportion to the size of the

population that is served. By reporting a larger than actual population, the fair share assigned to the Board is disproportionately large. The more accurate reporting would not affect the cost of services, such as legal or the actual printing of certificates. In general these 'user' fees are calculated in an acceptable manner and are paid out of Board funds for costs actually incurred.

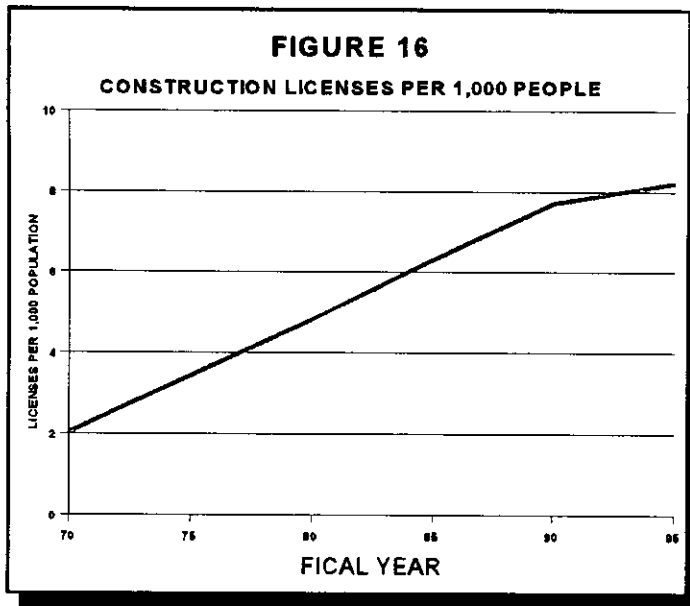
The number of licenses for all categories recognized by the state, both certified and registered, is shown in Figure 15. The data include active, inactive, and 'other'. They do not include those contractors that are licensed only at the local level in categories not regulated by the Board.

The data for 1993-94 are inconsistent with the rather smooth upward trend shown elsewhere on the chart. They were checked with independent reports and apparently are correct. The cause of the spike is the increase in the number of contractors with state certificates or registration issued subsequent to the hurricanes and storms in 1992-93. Because of the structuring of reporting periods, these show as an



increase between 93-94. The study team considers that this actually masks what was expected. As a consequence of no longer registering contractors in categories not regulated by the Board, the rate of increase in licenses should have slowed. This was a change instituted with the renewal periods subsequent to 1993 as a result of legislative action.

One interesting statistic that results from the data is that shown in Figure 16, below. All things being equal, it should be expected that the total number of licensed contractors will increase in about the same proportion as the increase in population for the state. The graph depicts the

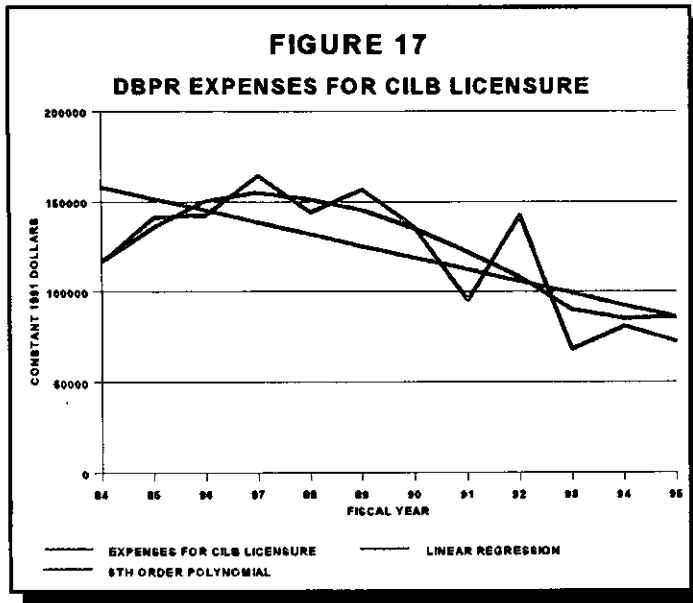


data for the total number of licenses divided by the State's population, giving the number of contractors per thousand citizens. Instead of a flat line, showing that the increase was proportional to the population, there was an increasing proportion of individuals who were state certified and registered contractors up till 1990. Subsequent to 1990 the trend

appears to have leveled. However, the reader should be aware that this may be caused by the fact that the state is no longer registering individuals with contracting licenses in categories not regulated by the Board. The reader should also note that the data were only plotted for five year intervals. Consequently the spike that occurred in the number of outstanding licenses in 1993-4, and shown in Figure 15, does not affect this particular chart.

Departmental Costs for Licensing Functions

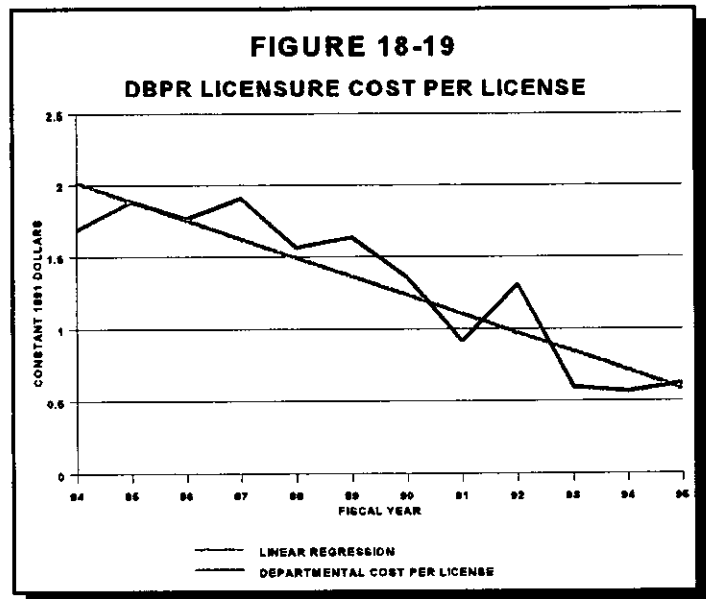
Other than the work that is done by the professional staff of the Board applications for new licenses, the actual issuance of a license and the renewal of licenses is a service that is provided to the Board by the Department. The function is currently accomplished within the Division of Technology, Licensure, and Testing. The constant dollar costs incurred by the Board for this function are depicted in Figure 17. In addition to the basic data, a linear and a 6th order regression have been shown on the chart. The trend line represented by the linear regression is plainly negative, showing that a smaller and smaller portion of the Board's income are being



utilized by the Department for the issuance of the licenses. The smoothing function represented by the polynomial regression suggests that there is some reasonable limit as to the lowering of the costs, and that the Department is arriving at that point. Barring new technology or greatly reduced numbers of licenses, the Board should not anticipate much change in the cost

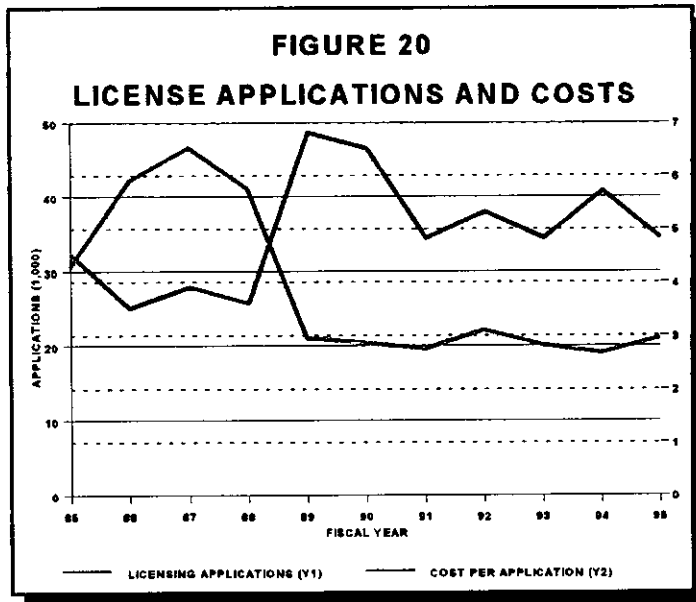
of support for this function. Unfortunately, this beneficial downward trend in expenditures occurs in an area which does not have great costs associated with it.

The decline in direct licensure costs is magnified when normalized as a function of the number of licenses. This has been done in Figure 18-19. Decreasing overall costs combined with an increasing number of licenses creates a rapidly decreasing cost per license. The constant dollar costs are so small that there is little advantage to be gained by pursuing efficiencies in this area.



The final statistic in this section concerning the licensure WLI's is depicted in Figure 20. The data show the total number of license applications that have been received during the

period, including applications for new licenses and renewals on the Y_1 (left) axis. The constant dollar cost of the licensure function has been divided by the number of applications, and that cost is shown on the Y_2 (right) axis. The data reinforce the previous statement that the constant dollar cost of the licensure function charged to the CILB by the Department are minimal. The opposing trend, (decreasing license application, increasing cost per application) are the sign of a relatively constant overhead with small variable cost.



DISCIPLINE AND ENFORCEMENT WLI's

The fourth of the functional areas for which WLI's were developed is discipline and enforcement. The Board is the ultimate authority for revoking, suspending, or denying the issuance or renewal of a contracting license for certified contractors. The Board may also: impose administrative fines; place contractors on probation; require additional training or education; assess the costs of investigations in to violations of construction law; or issue letters of reprimand, censure, or guidance. One change in the law since the last assessment was made of the Board's activities is that there is now authority for the Department to investigate and prosecute cases involving unlicensed activity.

Disciplinary proceedings are normally instituted when a complaint is received by either the Department or the Board. The Board does not have the capability of searching out violations of the law or regulation other than casual notice of such by one of the members or one of the professional staff. Complaints may initially be received orally, in person, electronically, by telephone, or they may be received in writing. No matter how received, no action is taken with respect to complaints, other than providing preliminary information as to the manner in which complaints may be filed, until they are received in writing.

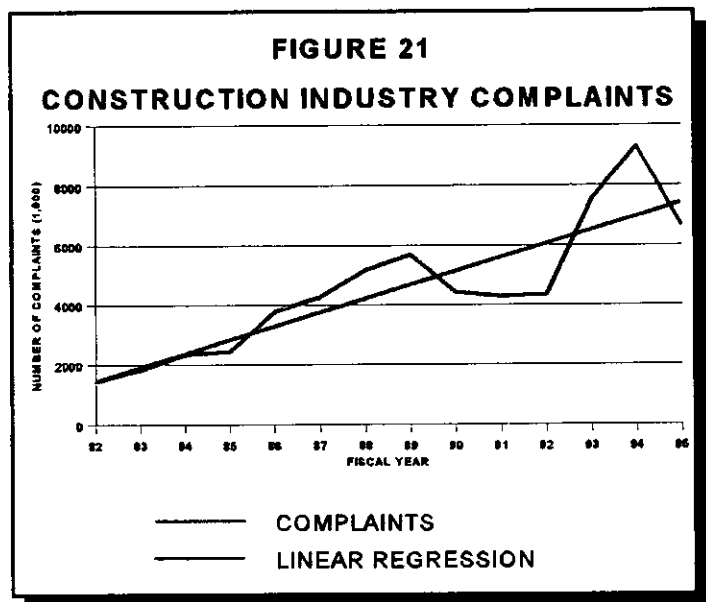
Generally speaking, individuals or firms may not seek a redress of a grievance against a contractor from the Board involving inferior workmanship, deviation from schedules, or other business related matters. While these are areas of concern, they are normally not a violation of the contracting law and must be dealt with in civil proceedings. For a complaint to be considered by the Board for disciplinary action it must concern one or more of the following:

- fraud in obtaining a license;
- being convicted or found guilty of a crime involving contracting;
- wilfully or deliberately violating applicable parts of the building code for the jurisdiction wherein the work was being performed;
- aiding an unlicensed contractor to perform contracts, such as providing a license for a firm over which the license holder has no real control;
- financial mismanagement or misconduct in the execution of a contract which causes financial harm to a customer;

- improper abandonment of a construction project;
- being found guilty of fraud, deceit, gross negligence, or incompetence in the execution of a construction project.

Upon receipt of a written complaint an initial screening is made by the legal section of the Department to determine two things; is the complaint about a matter over which the Board has jurisdiction; and does there appear to be legally probable cause for the matter to be investigated further. If both of these are answered in the affirmative, the complaint is forwarded to the Department's Bureau of Investigative Services for appropriate action. If, after conducting the investigation, it is determined that the offense was minor, then the legal section of the Department has the authority to issue a letter of guidance to the contractor. This is reported to the Board, which will normally accept the action, and the matter is closed. If the investigation reveals a serious infraction of contracting law or the Board's rules has occurred, the Department may recommend punishment up to, and including, the revocation or a license and administrative fines. In this case there may be administrative hearings, conducted in accordance with State's administrative code, before a final recommendation is made to the Board for action.

The data depicted in Figure 21 show the complaints, received concerning certified or registered contractors, which the legal staff of the Department have determined that the Board has jurisdiction. It should be noted that complaints against registered contractors operating in a jurisdiction which has established a disciplinary unit are not included. A trend line in the form of a linear regression indicates that there is no slackening in the number of complaints being processed against contractors. At the time that the original report was written the data for the post-Hurricane Andrew' years were not available. Consequently the comforting declining trend exhibited in 1990 and 1991 gave

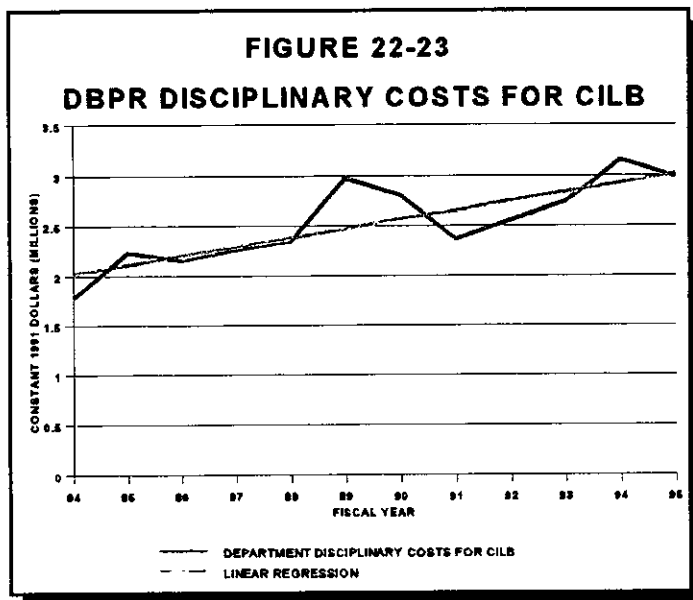


hope that the examination, education, and disciplinary measures being undertaken by the Board were having a positive affect. As the chart depicts, the result of Andrew and subsequent hurricanes and storms more than doubled the number of complaints received on an annual basis. It is of interest that construction accounted for only 10.45% of the licenses under the purview of the DBPR in 1995, but the industry accounted for 40.26% of the complaints received.

While the Board has overall responsibility for disciplinary procedures, in reality it has almost no control over the investigative, administrative, or legal functions which are involved. With the exception of the final Board action, approving or modifying the results of the investigation and necessary hearings, the work is performed by other agencies, both within the Department and elsewhere in the State government. The Board is "charged" for these services and transfer payments are made from the revenues collected. This is another area where, as noted earlier, tracking of the costs involved is difficult since functions and costs in the data for one year are reported under a different name the following year. A chart depicting the total of the reimbursement for the investigative work, the administrative hearings, and for the legal staff work is provided in Figure 22 -23.

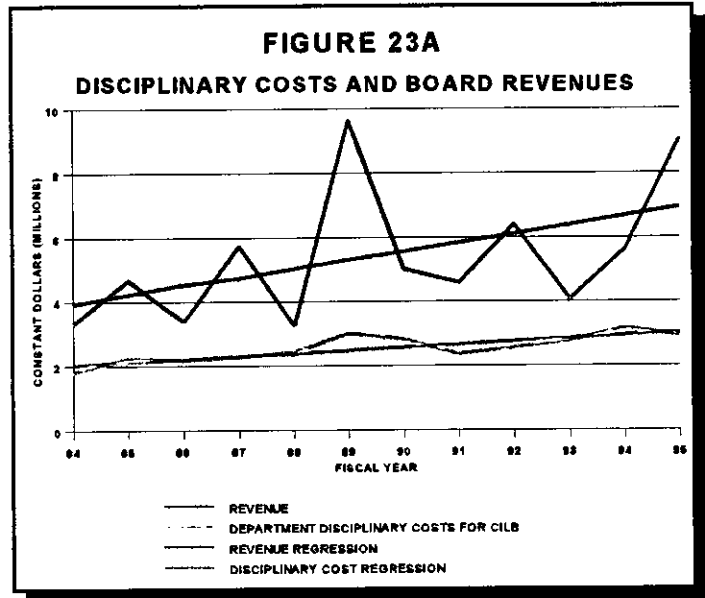
The raw data in Figure 22-23 were analyzed further. Both a first order (linear trend line) and a second order polynomial regression were performed. The results of the linear regression are plotted on the figure, those of the second order are not. The reason for not plotting the 2nd

order regression was that it almost overlaid the linear and the presentation was confusing. The analysis showed two things, one of which is not apparent from an examination of the raw data. The first, which is apparent, is that the trend of disciplinary expenditures continues to grow. Second, as shown by the higher order regression, the rate of change in



the growth is essentially a linear function, i.e., there is not much change in the rate from year to year, and there is no trend towards a slowing of the growth.

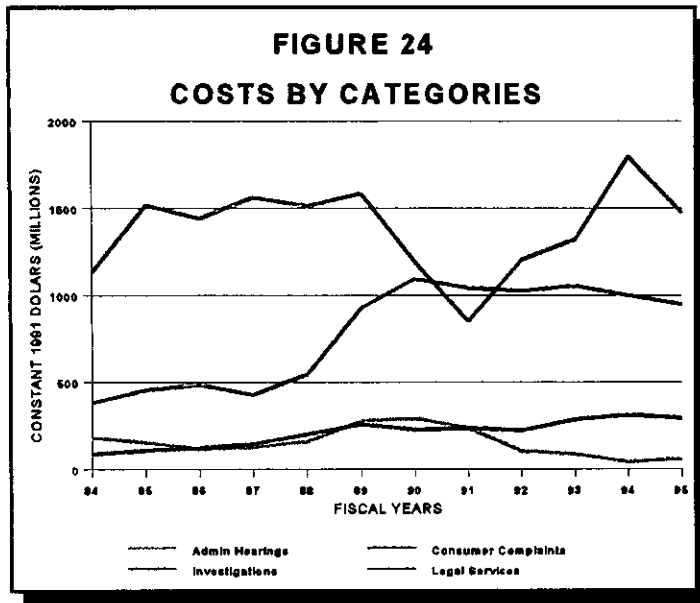
The study team examined the cost of the Department's disciplinary activities for the Board in relationship to the total funding of the Board. A chart of the statistics developed is presented in Figure 23A. The linear trends of the two show a divergence between the rate of increase in revenues and the funds spent by the Department on behalf of the Board for disciplinary functions. Second order regressions were performed but not plotted on the chart depicted in the report. These showed that, while the rate of increase



of the disciplinary costs was less than the rate of increase of revenue, in neither case did the increase in the rate reach a maximum point during the period reported.

What the trend analysis does not reveal is why the trends are occurring. The decreasing portion of the total revenue devoted to disciplinary problems may be due to any of the following: a decreasing work load; greater efficiency; or lack of interest on the part of the Board to pursue such matters. It may also be the fact that, with a limited income and an increasing number of tasks, the "fair share" available for the enforcement effort is declining.

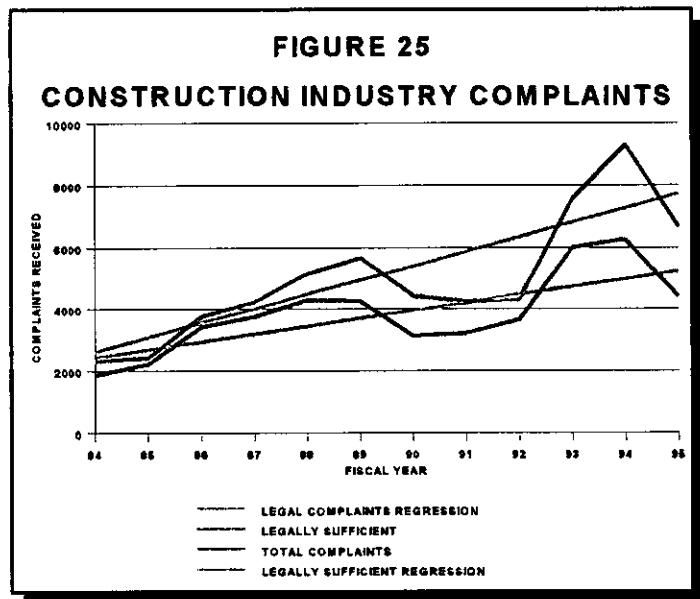
There are four functional areas in which the Board provides funding for the enforcement and disciplinary effort: (1) administrative hearings, which are held outside of the Department and in accordance with the State's administrative code; (2) internally within the Department for the Office of Investigations; (3) for the staff that receives and handles the consumer complaints; (4) and for legal services provided by the Department's legal staff. The funds are a direct function of the number of man hours consumed by these agencies in handling the Board's affairs. The constant dollar costs of these expenditures are plotted in Figure 24. What is readily apparent from



the data is that the costs of the investigative and legal work make up the bulk of the expenditures for discipline and enforcement. Secondly, expenditures on legal services were greatly increased in the period 1989-1990 and have remained relatively constant since then, coupled initially with a decrease for investigative expenditures. The increase in one area, decrease in the other has been attributed to an effort

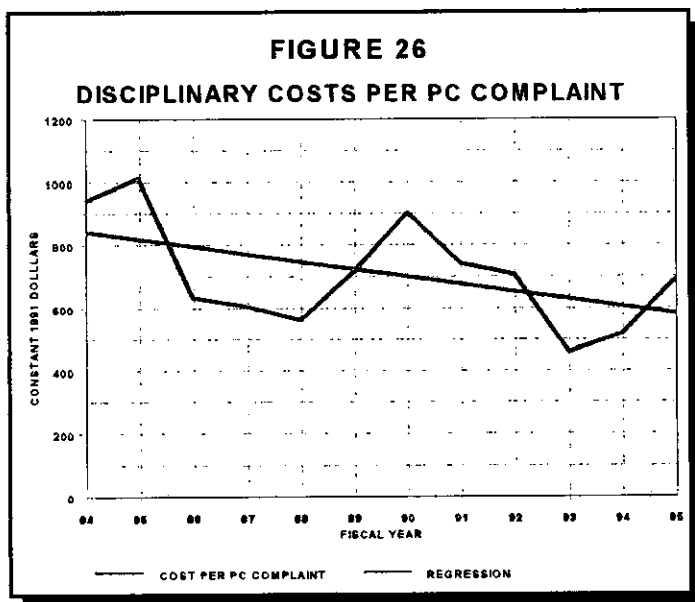
to more thoroughly examine complaints before sending them to the field for investigation. The third, and not surprising fact, is the post Andrew and subsequent storms spike in the investigative costs associated with the disciplinary effort.

Some portion of the effort in the total work load associated with the disciplinary function goes into the decision as to whether or not there is probable cause to continue the investigation of a complaint. The monetary data are not available to allow the study team to examine this particular facet of the costs directly. However, Figure 25 shows the level of effort involved by plotting the total annual complaints received during the period as compared to those for which probable cause was found to continue an investigation. The trends, shown as linear regressions, indicate that there is a divergence in the rate of complaints



and the rate at which these complaints are found to be legally sufficient for additional investigation. This can be caused by several different factors. First, the increased scrutiny given the complaints to determine if they are legally sufficient. This is an ongoing process. Second, an increased number of complaints which are not legally sufficient. This can happen as the general public becomes more aware of the possibility of filing complaints. Additionally, this may also be a reflection of additional unwarranted complaints from individuals who have become aware of the Recovery Fund. As a matter of interest, 2nd order regressions were performed to determine if the rate of divergence had peaked, and the data indicated that it had not.

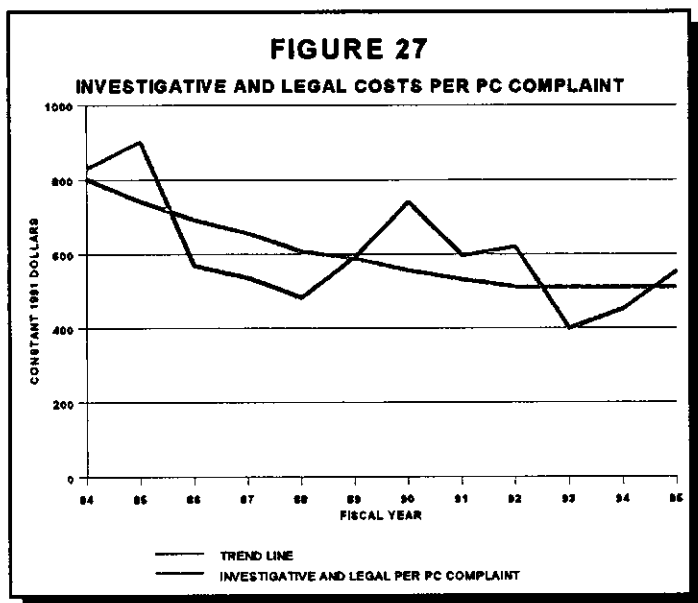
The bulk of the work for the disciplinary effort is for those complaints for which the legal staff has determined that there probably has been a violation of the contracting law. These are the cases that are referred to the investigative staff for further work, and subsequently to the Department of Administrative Hearings when required. All of the transfer of funds external to the Department, and most of the inner-departmental transfer of funds, are expended on these cases. Figure 26 shows the total of the disciplinary costs as a function of the



probable cause complaints for each year, together with a linear trend line. In the previous report on this subject the authors noted that the changes in procedures, entailing more research on the part of the legal staff and a centralization of 'desk top' investigations, had been instituted in the 1991 time frame, and that perhaps these were the cause of the decrease in the cost per complaint during the period 1992-93. In order to determine if this could be substantiated, a second linear regression was run on the data from 1991 through 1995. The results of the second regression essentially overlaid the one shown on the chart. This allows a conclusion that the trend towards

lower costs per complaint was well established and essentially unchanged as a result of the internal procedural changes adopted by the Department.

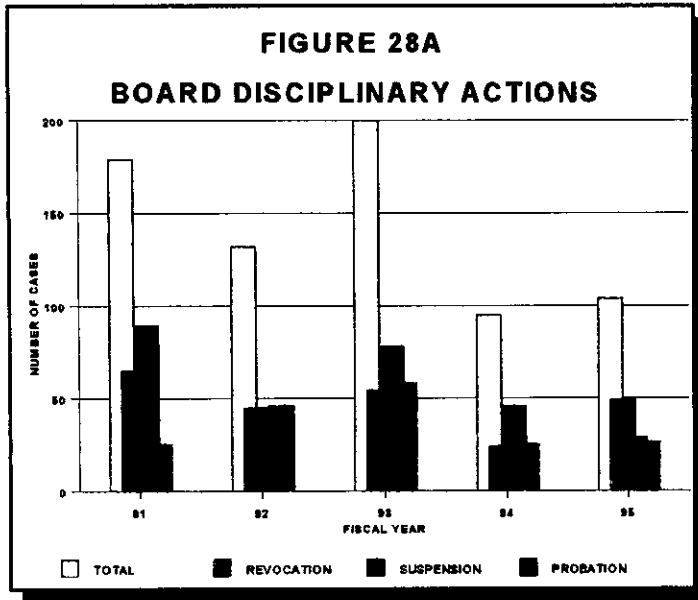
The data from Figure 24, above, showed that the major portion of the costs involved in



the disciplinary and enforcement area were for investigative and legal services reimbursement within the Department. Further, and as stated elsewhere, the major portion of these expenditures are for complaints that a preliminary review has indicated that there is probable cause to consider that there has been a violation of the contracting law or rules of the Board. The team isolated these

costs, then normalized them on the number of probable cause complaints during each period. The data, together with a 2nd order regression, are displayed in Figure 27. The 2nd order trend line indicates a 'bottoming out' of the decreasing costs per complaint occurred in the 1993-1994 time period. This is indicative of two things: a relatively constant level of overhead for these functions regardless of the number of probable cause complaints; and, barring some radical changes in procedures or the number of cases handled, that the Board can expect that the costs for these services will remain at about the same level in the near future.

The final action on any complaint can result in dismissal of the complaint, or punitive action by the Department (in the name of the Board) or action by the Board. These latter two can include letters of guidance or other warnings, or Board action to suspend or revoke a contracting license, reprimand, fine, or place a licensee on probation. Figure 21 and Figure 25 both documented an increase in the overall number of complaints, both in total and for those that were found to be legally sufficient to warrant additional investigation. Figure 28A displays data for

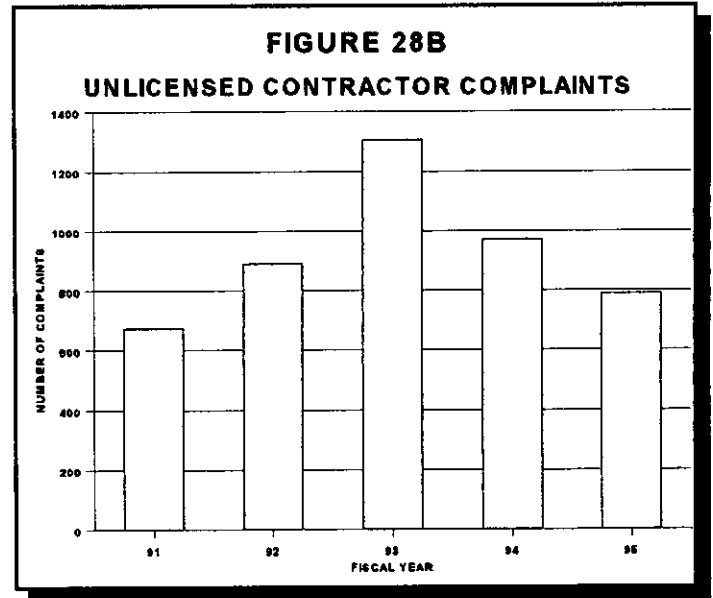


actions of the Board which have resulted in the revocation of licenses, contractors placed on probation, and contractors that have had their license suspended for inappropriate actions. In the event that a license holder received more than one such punishment for the same complaint(s), the data reduction treats it as a single incident. A total for the three statistics is also displayed.

The average number of such actions during the five year period is 140. During the same period, an average of 4,674 complaints were received for which there was probable cause for further investigation. Simple arithmetic shows that somewhat under 3% of the complaints for which there was probable cause to believe that a violation of law or rule had occurred resulted in severe disciplinary action. While it is beyond the scope of this study, one has to consider whether or not there is a deterrent effect for inappropriate action when the chances of a harsh penalty are so rare. In fairness it must be pointed out that, generally speaking, the Board acts on recommendations forwarded by others after extensive administrative hearings. Still, one can conclude that there should be a thorough examination of the disciplinary functions of the board for efficiency and effectiveness. Using an analogy with traffic violations, if only 3% of those ticketed were eventually fined, one would find little credibility or deterrence in the enforcement of the speed limits.

As a final statistic in this section, the team looked at the number of complaints that have been received against unlicensed contractors. The data are displayed in Figure 28B. The Department has the authority to both issue stop work orders, fine, and to seek prosecution of individuals found to be contracting without a license. This is relatively new, occurring since the previous report. Prior to this legislative change the only action that the Department could take

with respect to unlicensed individuals involved in contracting was to refer the matter to the Attorney General's office for prosecution. The rise in complaints subsequent to Andrew and the other storms in that period is to be expected. However, with an average of only 926 complaints per year it appears that this should be a fertile area in which additional resources should be dedicated. If there are valid reasons for a contracting law, and if there are valid reasons for requiring licensure, then there are valid reasons to preclude those without the license from practicing the profession. Unlicensed activity goes to the heart of the regulatory process. Allowing it to continue undermines the public's perception of the necessity for examination and licensure for their protection.



CONTINUING EDUCATION

Subsequent to the first study that the team made concerning the Board the Legislature amended the contracting law to provide for mandatory continuing education.⁷ The law now requires that each certified or registered contractor complete fourteen hours of continuing education during each renewal period. The original amendment was later changed to include a requirement for mandatory instruction in safety and worker's compensation as a part of the training. The act also provides that the Board was to establish, as a part of its rule making authority, the criteria for the course work. There is a provision that the Board could accept non-classroom course work, such as self study programs, however the Board has not chosen to exercise that alternative. Nothing in the legislation provided for additional assets for the Board to carry out this new function.

As a consequence of the act the Board established the requisite rules and regulations for the approval of courses offered. Individuals or organizations desiring to provide course work are required to submit both the content of the courses and to provide names of the instructor. The fee that the Board established included a provider fee and a course approval fee. These currently stand at \$250 per individual or organization and \$25 per course credit hour, but not more than \$150 per course. Funds generated are included in the Board's revenue. Courses and providers are approved for two years and must be re-certified at the end of the time. Currently there are 419 providers, however this is a statistic that changes monthly.⁸

The Board also established that individuals would not have to provide positive proof that they had completed the continuing education unless specifically asked to do so. When applying for license renewal, individuals certify that they have met all of the Board's requirements, which includes the requirement for continuing education. The Board has conducted an audit of renewals which indicates 27% of the licensees are not completing the requirement.

The Board has almost no control over course content other than a review of the material submitted by the requesting sponsor. At the time that Board professional staff members were interviewed for this report, only one applicant has had their request denied, indicating near perfect applications or a lack of capacity to effectively screen the material provided. There is even less control over the qualification of the instructors. No audit has ever been performed to ascertain

if the facts set forth in an applicant's request and list of instructors is valid. Similarly, the effort to determine if individuals are complying with the law and rules has been minimal. The one audit performed touched less than 2% of the total of licenses, albeit that this latter is an inflated number.

The primary problem in establishing and maintaining the program has been the lack of assets available, both in personnel and equipment. The Board's professional staff was not augmented and the individuals tasked with setting up and monitoring the continuing education program came "out of hide," utilizing a vacant position already authorized. No effort was made to provide a common, computer based reporting system by which sponsors could submit training data. Consequently, there has been little oversight capability for the quality of instruction or the usefulness of the program.

Other than administrative problems, the education requirement appears to suffer from a lack of understanding as to what it is to accomplish. No standards were established by which to determine success or failure. It can reasonably be argued that a successful program would lead to a diminution of the complaints against contractors; a slackening of the contractor business failure rates; or an increase in the public safety and welfare. However, no effort has been made to determine if any of these indicators have been affected.

Construction Industry Recovery Fund

In 1993 the Legislature established the Construction Industries Recovery fund as a separate trust fund.⁹ The purpose of the fund is to provide restitution to individuals or organizations who have suffered a financial loss due to a contractor's action and restitution for which has been ordered by a court, but for which there are no funds available from the contractor. The source of the funds is a one half cent per square foot (or equivalent) surcharge on building permits.

Individuals or organizations applying for relief must have exhausted every other means available for restitution, including bonds and warranties. They also must apply within two years of the event that triggered the claim. The act requires that contractors must notify residential property owners of the existence of the Recovery Fund. There is no such requirement for non-residential construction. The maximum payment allowed under the fund is \$25,000 regardless of

the number of parties to the claim. If a payment is made from the fund in settlement of a claim, the license of the contractor involved is automatically suspended. The suspension cannot be lifted unless the certificate holder repays the fund the full amount of the payment, including interest.

At the time that the report was written, \$ 2.9 million had accumulated in the fund over and above the payments that have been made. The trend in payments, at that time, was approximately \$50,000 per month, however, the data for this were for a limited period. Consequently the trend may not be valid. The primary cause of disapproval of claims has been applications for damages for events that occurred prior to the institution of the fund. As in the case of continuing education, no additional assets were provided by the Legislature or approved by the Department to deal with the increased work load of the professional staff of the Board.

The Recovery Fund essentially serves the same purpose as a surety bond, excepting that the funds come from assessments on all of the citizens of the state (higher building construction permit fees) rather than as increased costs for the owner. Whether or not this was the intent, it most certainly is the fact as added costs to the contractor are eventually passed through rather than absorbed. In examining data from other states and jurisdictions, it appears that 15 states require that contractors be bonded; 6 states require bonding under particular circumstances; and 6 other states require mandatory contributions from contractors to a recovery fund. Florida contracting law also allows local jurisdictions to require a single bond from a contractor, in an amount not to exceed \$5,000. Reciprocity between jurisdictions is mandated so that the certificate holder or registered contractor cannot be required to have more than the one bond. There are a great many variations as to when bonding is required, whether or not the contractor is a resident of the jurisdiction or from outside of the state's borders, and the amount of the bond. However, none of the other states or jurisdictions had instituted the same method of funding as has Florida.

It is not obvious why a publicly supported Recovery Fund is required for contractors when it is not necessarily required for other professional groups. An argument can be made that all contractors are not capable of being bonded, therefore to require a bond would force certain individuals or firms out of business. The counter argument, that individuals or firms not capable of being bonded shouldn't be engaged in construction work, may be equally valid. Since the fund has only been existence for three years, it is too early to judge the success in solving problems or

in providing the funding that is required. Should the subject be re-visited by the Legislature, it would seem that normal bonding may be a preferable alternative to an additional government program.

V. Construction Industry Study Committee

During the 1996 legislative session the Florida Legislature established the Construction Industry Study Committee (CISC). The purpose of the CISC was to review the state statutes concerning the regulation of the construction industry and to recommend such changes as the CISC considered appropriate. The CISC consisted of 15 members representing the various construction categories, such as general contractors, mechanical contractors, and electrical contractors; a single member representing labor unions, and two public service members. During the initial meeting of the CISC the Chairwoman appointed three sub-committees to examine specific areas of concern: Regulatory and Disciplinary Functions, Current Regulatory Board Structure and Authority, and Licensure and Examination.

The Committee was requested to address the following issues:

- regulatory board structure;
- *regulatory board authority*;
- *examination procedures*;
- licensing procedures;
- disciplinary jurisdiction;
- *revenue for operations of the regulatory boards*;
- *budgeting issues*.¹⁰

The items italicized in the listing given above were not addressed in the final report by either the entire committee or any of the subcommittees. The report is included in its entirety as Appendix A. Similarly, the CISC final report provided no rationale for any of the recommendations that were presented. The major findings and recommendations are discussed below.

SINGLE TIER LICENSURE SYSTEM

The construction industry in the State of Florida operates under a two tier contracting licensing system: state wide and local. At the state level, the CILB recognizes contractors operating in 19 different work categories. Contractors that are **certified** by the CILB in one or more of these categories may contract for the appropriate type of work in any jurisdiction within the state without further examination, qualification, or adherence to locally imposed contracting

restrictions other than those contained in the building code. Contractors that are registered by the CILB hold a certificate of competency in one of the 20 categories recognized by the state but the certificate has been granted by a specific jurisdiction or country. Registered contractors may only contract for work within the jurisdiction which granted the certificate of competency. Some, but not all, jurisdictions have reciprocity agreements for registered contractors. There is actually a third tier of contractors not generally considered; those which hold a specialty license (certificate of competency) in a category not recognized by the CILB. Like registered contractors, these can only operate in the specific jurisdiction that granted their certificate, but there is no registration, licensing, or tracking of these contractors at the state level.¹¹

The CISC recommended that the state establish "a uniform, single tier licensing system" where licensure, examination, and competency standards are determined by the State regulatory boards. However, the recommendation applied only to those contractors in categories currently certified by the CILB. Contractors in specialty trades, currently licensed by local jurisdictions but neither certified or registered at the State level would not be effected and local licensing for these contractors would still be permitted. The recommendation carries a phase in period (one year) after which local jurisdictions would no longer issue new certificates of competency in the construction contracting categories regulated by the CILB. The CISC specifically did not recommend that currently registered contractors be automatically subsumed in the new, single tier certified contractor system but rather that local jurisdictions continue to be responsible for matters concerning these individuals. Consequently, there is an almost indefinite continuation of the two tier registration/certification system for contractors already in the "registered" category. At some point in the future, when all of these licensed holders have surrendered their licenses or have died, the registered system would disappear.

The practical effect of the recommendation is extremely limited. New applicants desiring a contracting license in one of the categories recognized by the CILB would be required to take the state-wide examination rather than a locally administered one. This requires an additional capacity to administer examinations on the part of the State with some diminution of the requirement on the part of the local jurisdictions. Additionally:

- local jurisdictions would still be required to maintain an examination section to

handle those contractors not in categories licensed by the state;

- local jurisdictions would be required to maintain a licensing function indefinitely for those currently registered contractors not subsumed into the new state wide system;
- the total number of license transactions handled by the state would remain the same.

Currently, the expiration periods for certified and registered contractors do not coincide. In either case the expiration date is 31 August, but those for contractors in the certified pool expire in the odd number years, and those for the registered in even numbered years. If the CISC proposal to eliminate this part of the two tier system is adopted the number of registered contractors will slowly decline over a period while the number certified contractors will increase. The work load of the DBPR and CILB would increasingly spike during the renewal period for certified contractors. This possible problem area could be eliminated by adopting a staggered renewal system based, for example, on the license holder's birth date or initial licensure date. The practical effect would be a smoothing function which would level the licensure and renewal workload.

MERGE THE CONSTRUCTION INDUSTRY LICENSING BOARD AND THE ELECTRICAL CONTRACTORS LICENSING BOARD

The CISC recommended the merger of the CILB and the Electrical Contractors Licensing Board (ECLB) with a combined membership of 15 members. The structure proposed, compared to that existing, is presented in Figure 29. The recommendation carried with it a minority position that the merger should not take place based upon the premise that the ECLB is a smoothly functioning entity, fiscally sound, and without administrative problem areas. During the public hearing conducted at the time that this recommendation was adopted by the CISC, members of the electrical contracting industry provided additional objections to the elimination of the separate ECLB. The rationale for the objections was that electrical contractors deal with an area of construction which is more directly related to public safety than the other sub-trades. Consequently, these electrical contractors considered that a separate board was justified. No data

were provided to indicate that maintaining the separate status would improve public safety, and no data were presented to indicate that merging the boards would, in any way, decrease public safety.

**FIGURE 29
COMPOSITION OF CILB AND ECLB**

CURRENT CILB (18 members)	CURRENT ECLB (11 members)	PROPOSED MERGED BOARD (15 members)
(4) General Contractors (3) Building or Residential Contractors (2) Building Officials (1) Roofing Contractor (1) Sheet Metal Contractor (1) Air Conditioning Contractor (1) Mechanical Contractor (1) Pool Contractor (1) Underground Utilities Contractor (1) Plumbing Contractor (2) Consumer Members	(7) Certified Electrical Contractors (2) Consumer Members (2) Alarm system Contractors	(1) General Contractor (1) Building Contractor (1) Residential Contractor (7) Sub-trade contractors (1) Electrical Contractor (1) Alarm Contractor (1) Building Official (2) Consumer Members

Curiously, no data were presented at the hearing to indicate the savings, both in manpower and other resources, that might accrue if the boards were combined. Given that the merged board would maintain approximately the same costs per individual Board member for transportation and other expenses the savings that would accrue to the State by combining and revising the membership as proposed by the CISC would amount to 44% of that currently spent, or approximately \$60,000 on an annual basis. When considered in the context of the overall state budget, the savings is small. However, when considered with respect to the total available for expenditure by the CILB and ECLB and that these are public funds, any savings is worthwhile.

The research team considered that the recommendation should be taken at least one step further. In 1993 the legislature created the Building Officials Board (BOB). The function of this board, located within the DBPR, is substantially the same as those of the CILB and ECLB: to

examine and license individuals associated with some part of the construction industry. At the present time the building officials are represented on the CILB. Combining all three boards in to one Construction Industry Board would have the obvious benefit of making better use scarce resources. The positions currently used for the professional staff of the CILB, ECLB and BOB should properly migrate to a combined staff along with the functions of these boards. Efficiencies in the combined board may allow a smaller total permanent staff however such an analysis is beyond the scope of this work. Given the current paucity of the staffing level and the penchant of the legislature to add additional responsibilities without additional resources, there may well not be any savings to realize other than increased capability and efficiency.

One troubling aspect of the CISC recommendation for the combining of the CILB and ECLB was the proposed distribution of board members amongst the categories of contractors licensed. Including the electrical as a single category, there would be 21 categories, represented by 12 individuals licensed in at least one of the categories. The CISC proposal allocates 2 of these, or 16%, to the electrical trade. Proportional representation based upon the number of outstanding licenses (certified and registered) does not support that allocation. In addition, no other subcontractor category is singled out for mandatory representation for the proposed board. One solution would be to limit representatives of the various categories of licensees to a single term and to rotate between the categories as vacancies. However, this could deprive the combined board of the service of a truly outstanding individual as terms expire. Yet another solution would be to expand the combined board to include a representative from each category. This latter option is not appealing from the standpoint of efficiency and cost reduction.

DISCIPLINE OF STATE CERTIFIED CONTRACTORS

The CISC recommended sweeping changes in the manner in which disciplinary matters concerning state certified contractors be handled. Specifically:

- local jurisdictions would be empowered to discipline all construction contractor licensees for violations the state's construction law, of rules promulgated by the state board(s), and violations of the building code. The empowerment would not be mandatory, and jurisdictions could opt to have the disciplinary function retained

at the state level for state certified contractors;

- local jurisdictions that choose to provide the disciplinary function would be allowed to retain all fines collected, the reimbursement for investigative costs if such are imposed, and receive a percentage (not specified) of the state's licensure revenue;
- local jurisdictions choosing to provide the disciplinary function would have to meet certain state imposed accreditation requirements;
- certified contractors would retain the right to appeal local findings and penalties to the state regulatory board(s).

As currently written, Florida contracting law precludes local jurisdictions from holding disciplinary hearings or administering discipline to state certified contractors for violations of the contracting law. As a corollary, state certified contractors are also exempt from local contracting laws. This prescription was included in the original legislative act for the statewide licensure of contractors and remains a cardinal point of difference between individuals who are certified under the act as compared to other, locally licensed, contractors throughout the state. The only punitive action the law permits local jurisdictions with respect to state certified contractors violating a section of the state contracting law or the building code is to withhold the issuance of a building permit. They can, of course, prosecute with respect to any violation of the criminal code. Likewise, civil action is not precluded.

A recent study found that there were 6 counties within the state that had attempted to circumvent the prohibition against requiring certified contractors to be subject to local contracting regulations. The methodology employed was to place local contracting regulations within their building codes. While still precluded from enforcing fines and other disciplinary acts, these jurisdictions could then refuse building permits for those state certified contractors that violated that portion of the local contracting law since it was now a part of the building code. Judicial rulings have found this to be contrary to state law and those counties that had actively pursued the matter were enjoined from enforcement.

This particular judicial finding speaks of the very essence of exactly that which the enactment of the statewide contractor certification law was meant to, and apparently does; free

the industry from unwarranted governmental intrusion. As noted elsewhere, "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."¹²

To ameliorate the specter of a return to contractors being subject to differing interpretations and standards between jurisdictions the CISC provided suggested guidelines for the establishment and accreditation of local disciplinary boards:

- boards are to be separate from building departments;
- violations for which licensees can be disciplined must either be in statute or established by a state regulatory board;
- fines are to be uniform throughout the state for similar offenses
- there is to be an accreditation process for the local boards and a periodic review of this accreditation.

As noted previously, the CISC report did not contain a rationale for their suggested actions and the shifting of disciplinary matters concerning certified contractors to local jurisdictions. In the case of registered contractors and those contractors in categories not recognized by the CILB, there would not be any change in the responsibility or authority of the local jurisdictions with respect to disciplinary matters.

JOURNEYMAN LICENSURE

The CISC did not make a recommendation as to the necessity or desirability of requiring the presence of journeymen on construction sites. There was no discussion of the matter of a specified ratio of journeymen to less skilled workers, of the duty of the contractor to supervise, or of the requirement to license journeymen at the State level. The CISC did recommend the following:

- mandatory reciprocity for the licensed journeymen between jurisdictions that require licensure given that the individuals meet a specified standard;
- a minimum acceptable standard for reciprocity, consisting of (1) an acceptable score on an examination "approved by the state licensing board(s)," and (2) either completion of an approved apprenticeship program and four years of verifiable practical experience or 6 years of verifiable practical experience.

It is of interest to note that the CISC recommended an involvement of the "state board(s)" in the determination of the suitability of the examination and score requirements for journeymen licensure when, at the present time, the Boards have no statutory basis for such. Contracting law in the State does not place a requirement on the contractor to employ journeymen, and there is no state licensure for these individuals.

UNLICENSED ACTIVITY

The CISC recommended increasing the severity of sanctions that may be imposed upon individuals who are found guilty of participating in contracting activities without the appropriate licenses. In general, the level of sanction was raised from a first degree misdemeanor (punishable by a fine of no more than \$1,000 and 1 year in prison) to a third degree felony (punishable by a fine of no more than \$5,000 or five years in prison). However, the committee made no recommendation on increased staffing for the DBPR to accommodate a more vigorous enforcement policy. If the problem is one of leniency for violators that are caught, convicted, and punished, the recommendation may be appropriate. If the problem is that there are insufficient assets within the DBPR to adequately monitor and prosecute an enforcement program, then the recommendation would have little affect. In criminal justice administration, the adage is that deterrence is, partly, a function of the certainty of being caught and punished. Lacking the capability of ensuring that alleged violators of the contracting law will, in fact, be apprehended, then a great part of the deterrence value of the increased sanctions is lost.

END-NOTES

1. Mitrani, J. D., Dye, J. M., & Ahmad, I. (1993). A Study of Florida's Licensing System for Construction Contractors, Technical Publication 109. Department of Construction Management, Florida International University: Miami.
2. "Report of Construction Industry Study Committee," pg iv, (undated). State of Florida Department of Business and Professional Regulation; Northwood Centre, 1940 N Monroe Street, Tallahassee, FL 32399-0750. A copy of the document is included as Appendix A.
3. Morad, A. A., & Mitrani, J. D. ((1992). Local Licensing in the State of Florida, Technical Publication 106. Department of Construction Management, Florida International University: Miami.
4. CS/HB 793, Section 15, 1996 Legislative Session..
5. §489.105 Fla. Stat. (1995)
6. Op. Cit. pg 7.
7. § 489.115(3)(b)1.FS (1993)
8. data were current as of 02/24/97.
9. § 489.140 FS (1993)
10. CS/HB 793, Section 15.
11. A portion of this discussion is taken from Dye, J. M., Stroop, W. T., & Valdini, D. J. (1996). A Study of the Need for a Journeyman on Small Construction Projects: Technical Report 120. Florida International University, Department of Construction Management: Miami. See also: Morad, A. A. & Mitrani, J. D. (1992). Local Licensing in the State of Florida: Technical Report 106. Florida International University, Department of Construction Management: Miami.
12. Mitrani, J. D., Dye, J. M., Ahmad, I. (1993). A Study of Florida's Licensing System for Contractors: Technical Report 109 p. 16. Florida International University, Department of Construction Management: Miami.

APPENDIX A

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION



*REPORT OF
CONSTRUCTION
INDUSTRY
STUDY COMMITTEE*

Submitted By:

Andrea Serraes, Chair

Construction Industry Study Committee

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William B. Parker
David Deberry
Saul Rentz
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REGULATORY & DISCIPLINARY FUNCTIONS SUBCOMMITTEE

William F. Brod, Jr., Chair
Joe Aponte
Larry Campbell
Michael J. Silvers
Robert E. Watts, Jr.
Jay D. Zuckerman

INTRODUCTION

During the 1996 session, the Legislature of the State of Florida passed CS/HB 793, Section 15 of which established a Construction Industry Study Committee to review statutes relating to the licensing and regulation of construction, electrical, and alarm system contracting and recommend changes in statute, process and procedure which will more efficiently accomplish the goals as set forth in Section 489.101, Florida Statutes.

Specifically, the statute creating the Study Committee asked that the following issues be addressed: current regulatory board structure and authority; examination and licensure processes and procedures; regulatory and disciplinary jurisdiction and procedures; and revenue and budgeting issues.

The 18-member Study Committee was appointed by Secretary Richard T. Farrell on June 21, 1996, with 15 members representing various segments of the contracting community, one representative of construction labor unions, and two consumer members. The Committee held six public meetings over the course of a five-month period. In order to accomplish its tasks, the Committee established three subcommittees: Current Regulatory Board Structure and Authority, Licensure and Examination, and Regulatory and Disciplinary Functions.

The Study Committee is pleased to offer its recommendations to the Governor, the Legislature, the Secretary of Business and Professional Regulation, local governments, persons licensed under Chapter 489, Florida Statutes, related professions and industries, and the public of Florida. The Committee recognizes that many of its recommendations will require statutory changes; however, some of them can be accomplished by existing regulatory Boards or the Department of Business and Professional Regulation. The members of the Study Committee would be pleased to work with all parties to develop and enact legislative proposals, make rule changes, and implement changes to existing policies and processes which will accomplish the recommendations enclosed.

STATEMENT OF PURPOSE

The Construction Industry Study Committee began its deliberations with unanimous concern about the regulatory system in the state for the construction industry and a unanimous sense of purpose to make improvements to that system. The Committee shared a purpose of trying to improve the protection of the health, safety, and welfare of the public while also trying to ensure that the regulatory system does not burden licensees and the construction industry with unnecessary regulation which impedes compliance or raises the cost of doing business.

At its first meeting, the Committee approved by a unanimous vote a recommendation to adopt a uniform, single tier licensing system in the State of Florida. The state would license all contractors currently licensed under Chapter 489, Florida Statutes. This uniform, single tier licensing system would supplant the bifurcated system currently in place in which the state licenses certified contractors and local jurisdictions license registered contractors. The Committee believes that uniform licensure at a state level would enhance public protection and simplify the system for both construction licensees and the public. Standards for the licensure of individuals would be uniform across the state, and the public would have greater assurance of the standards and a single place to turn when questions or issues arise. The single tier of licensure would also make it easier for licensees to work in multiple jurisdictions.

The Committee also agreed unanimously that local governments and the state should work together to ensure that compliance with the laws is achieved. The enforcement of codes and the enforcement of select violations should occur at a local level, while discipline against a licensee's license should occur at the state level. The goal of the Committee's recommendations is also to ensure that the disciplinary system in place is uniform across the state. The Committee believes that protection of the public will be enhanced if standards for licensees can be raised and regulated on a state-wide basis. Compliance will be enhanced if the state and local governments can share responsibility and work cooperatively to enforce a uniform set of laws and rules.

Uniform state-wide licensure and an enforcement and compliance system with shared responsibility between the state and local governments is the common purpose which guided the Committee's deliberations and is embedded in its recommendations.

RECOMMENDATIONS OF THE CONSTRUCTION INDUSTRY STUDY COMMITTEE

LICENSING AND EXAMINATION PROCESSES AND PROCEDURES

- **Single-Tier Licensure** - Establish a uniform, single tier licensing system which provides for the following:
 - ✓ The state licensing board(s) will determine licensure, examination and competency standards;
 - ✓ Existing registered contractors may remain as registered contractors and may renew licenses indefinitely for the local jurisdictions in which they held licenses previously;
 - ✓ Effective one year after date of enactment, all local jurisdictions will cease issuing new licenses;
 - A uniform system of disciplinary guidelines shall be established;
 - The local jurisdictions may investigate complaints against contractors; and adhering to the established disciplinary guidelines and procedures, may hold disciplinary proceedings;
 - The state licensing board(s) will act as an appellate body for such disciplinary proceedings;
 - This proposal applies only to those contractors currently licensed under Chapter 489, Parts I and II, Florida Statutes.

- **Initial Licensure:**
 - Require applicants to provide a credit report which complies with Board rule.
 - Delete the \$10,000 net worth financial responsibility requirement and require that applicants provide a current, compiled financial statement prepared by an accountant.

- **Bonding Requirement** - Broaden the bonding requirement for licensure under Chapter 489, Florida Statutes, to encompass the violations addressed in Section 489.141(1)(a), Florida Statutes, with bond made payable to the Recovery Fund.

- **Financially Responsible Officer** - Eliminate the Financially Responsible Officer license and develop an adequate system for licensing of businesses.

- **Reciprocity** - Support the concept of reciprocity from state to state for licenses authorized by Chapter 489, Florida Statutes.

- **Occupational License:**
 - Differentiate between "Occupational License" and competency certificate.
 - Amend appropriate Florida Statutes (Chapter 205, Florida Statutes) to delete the reference to "license" from the term "occupational license" and replace with occupational "certificate" or some other reference.

REGULATORY BOARD STRUCTURE AND AUTHORITY

- **Construction Industry Licensing Board/Electrical Contractors Licensing Board Composition** - Merge the Construction Industry Licensing Board (CILB) and the Electrical Contractors Licensing Board (ECLB) into one Board composed of 15 members - 1 general contractor, 1 building contractor, 1 residential contractor, 7 sub-trades or specialty contractors identified in Division II of the CILB, 1 electrical contractor, 1 alarm contractor, 1 building official and 2 consumer members.

Minority Position - Opposed to merger of CILB and ECLB for the following reasons: The ECLB is fiscally sound, and the Board has processed its caseload in a timely manner with very few problems.
- **CILB Board Office Location** - Relocate Board office to Tallahassee. (Takes into consideration, the proposed merger of CILB and ECLB).
- **CILB/ECLB Meeting Frequency** - Reduce the length and frequency of Board meetings when possible.
- **Privatization**- Privatize any and all ministerial functions of Department of Business and Professional Regulation which will lead to increased efficiency, lower costs or improved service or capability to the State of Florida with the exception of those functions related to receiving of complaints, complaint analysis, determination of legal sufficiency and any other activities related to the police powers of Department of Business and Professional Regulation.
- **Continuing Education** - Support continuation of continuing education and request enhancement of the program; specifically, more emphasis on core courses and quality of providers.
- **Computer Based Testing** - Endorse the concept of computer based testing.

REGULATORY AND DISCIPLINARY JURISDICTION AND FUNCTIONS

- *Uniform Disciplinary Model* - Establish a uniform disciplinary model which provides for the following:
 - Local governments may discipline all construction licensees for violations defined by Rules 61G4-19.001, F.A.C., 61G6-11.001, F.A.C., and knowing violations of the building code. Penalties shall be limited to notices of non-compliance; suspension of permitting privileges; imposition of fines in compliance with guidelines established by the state licensing board(s) or a commission appointed by either the Department of Business and Professional Regulation or the Governor; and probation for permitting privileges.
 - The enforcement authority of the local government must meet the accreditation requirements for uniform discipline established by the state licensing board(s) or a commission appointed by either the Department of Business and Professional Regulation or the Governor. If it doesn't meet the accreditation requirements, the local government shall file a complaint for the state to investigate.
 - Local governments may establish their own enforcement authority. The Department of Business & Professional Regulation and the state licensing board(s) shall assume disciplinary responsibility in the absence of a local authority. The state shall retain the authority to open a case in any jurisdiction at any time.
 - Governments opting to discipline contractors in accordance with the accreditation requirements would receive a percentage of the state licensure revenue and retain all fines collected and investigative costs imposed.
 - Contractors disciplined by a local authority will have the right to appeal to the state licensing board(s); and, if appealed, all penalties except those related to local permitting privileges will be suspended until action by the state licensing board(s). If appealed, the state licensing board(s) shall retain final authority to modify, amend, or dismiss any locally imposed disciplinary action at its sole discretion.
 - If, during the investigation of a case, a local entity discovers potential violations which are outside the scope of its jurisdiction as defined in paragraph one above, the case shall be remanded to the state licensing board(s) for further action.

- ***Accreditation Requirements*** - The state licensing board(s) or the Commission established to develop accreditation requirements should consider the following elements as guidelines in establishing accreditation criteria:
 - The local government shall establish a governing body with the authority to discipline licensees. This governing body shall be organized separately from the building department of the local government and shall include, whenever practical, representation by a person or persons licensed under Chapter 489, Florida Statutes.
 - If a local government chooses to discipline licensees, the local governing body shall provide due process protections in any disciplinary action to all licensees which are consistent with the Florida and United States Constitutions. These due process protections shall include: notice of charges against a licensee by personal service, certified mail, or notice by publication; notice of any action against the licensee, notice of an opportunity for the complainant and the licensee to present evidence and testimony on his/her behalf; and maintenance and retention of pertinent records, evidence, and testimony in any disciplinary action.
 - The violations for which licensees can be disciplined by a local government authority shall be specified in either statute or the rules of the state licensing board(s). The fines for the violations shall also be specified by statute or rule and shall be uniform across the State.
 - Orders imposing discipline by a local governing body shall include the following: a clear identification of the statute or rule violated; a clear statement of the factual basis for the charges; evidence that notice of the charges and notice of an opportunity to appear were given; findings of fact by the disciplinary authority; conclusions of law which demonstrate a violation of statute or rule; a statement of the penalty and any reasonable investigative and legal costs imposed; and a clear statement informing the licensee of the right to appeal the disciplinary action.
 - The accreditation process shall include an accreditation review process. Accredited local governing bodies shall be reviewed periodically to ensure compliance with uniform standards. The accreditation review process shall be supported by sufficient resources and authority to ensure that local governing bodies are complying with minimum standards.
 - The accreditation committee shall develop guidelines for an alternative dispute resolution procedure which shall be adopted for use by both the local regulatory authority as well as the state licensing board(s).

- *Building Code Enforcement* - The Construction Industry Study Committee supports a uniform building code.
- *Qualifying Agent/Qualified Business* - The business and the qualifying agent shall be held liable for application of Chapter 489, Florida Statutes.
- *Confidentiality:*
 - Retain confidentiality provisions now in place and extend them to include local disciplinary authorities.
 - Amend Section 455.225, Florida Statutes, relating to disciplinary procedures and confidentiality of complaints to clarify that it applies to licensees only.
- *Access to Information* - Continue facilitating public access to information in the Department of Business and Professional Regulation through the Internet; continue streamlining and expediting the complaint process; and provide adequate funding for resources within DBPR's annual budget to expedite the complaint process.

CONSTRUCTION INDUSTRY RECOVERY FUND

- Amend Section 489.140, Florida Statutes, to eliminate Board-ordered restitution as a means to access the Construction Industry Recovery Fund. Civil judgments shall be the only basis for accessing the Fund.

JOURNEYMAN LICENSURE

- *Reciprocity:*
 - Mandatory reciprocity by local jurisdictions that have journeyman licensure requirements and who meet minimum standards.
 - Mandatory reciprocity and adoption of minimum standards by local jurisdictions that have electrical, plumbing/pipefitting, mechanical and HVAC journeyman licensure requirements. Minimum standards shall include:
 - 70% passing score on Block examination or equivalent examination approved by the state licensing board(s);
 - 75% passing score subsequent to October 1, 1997, on Block examination or equivalent examination approved by the state licensing board(s);

- Completion of an approved apprenticeship program (registered with FDLES) and four (4) years verifiable practical experience; or
 - Six (6) years verifiable practical experience;
 - Journeyman shall not have had suspension or revocation of license in last five (5) years.
- *Registration Fee* - Local governments' reciprocity registration fee shall not exceed \$25.00.

UNLICENSED ACTIVITY

- Amend Sections 489.127 and 489.531, Florida Statutes, to increase penalties for unlicensed activity from a first degree misdemeanor (maximum of 1 year in prison or \$1,000 fine) to a third degree felony (maximum of 5 years in prison or \$5,000 fine).

The following will be subject to a third degree felony:

- work valued at more than \$1,000;
- second offense regardless of the value;
- any work during the existence of a state of emergency.

The following will not be subject to a third degree felony:

- work valued at less than \$1,000 (no penalty - handyman exemption);
- work *willfully* performed out of the geographical scope of one's license (This is proposed to be a first degree misdemeanor);
- any work outside the licensee's scope of license (This is proposed to be a first degree misdemeanor).