

A Review of the Public Works Contractor Licensing Function in Idaho

November 2001

Office of Performance Evaluations
Idaho State Legislature



Report 01-05

Created in 1994, the Legislative Office of Performance Evaluations operates under the authority of Idaho Code § 67-457 through 67-464. Its mission is to promote confidence and accountability in state government through professional and independent assessment of state agencies and activities, consistent with Legislative intent.

The eight-member, bipartisan Joint Legislative Oversight Committee approves evaluation topics and receives completed reports. Evaluations are conducted by Office of Performance Evaluations staff. The findings, conclusions, and recommendations in the reports do not necessarily reflect the views of the committee or its individual members.

Joint Legislative Oversight Committee
(through date of publication)

Senate

Betsy D. Dunklin, *Co-chair*
Stan Hawkins
Grant R. Ipsen
Bert C. Marley

House of Representatives

Debbie Field, *Co-chair*
Maxine T. Bell
Margaret Henbest
Donna Boe



Office of Performance Evaluations Idaho State Legislature

Joe R. Williams Building
Lower Level, Suite 10
P.O. Box 83720
Boise, Idaho 83720-0055
(208) 334-3880
FAX (208) 334-3871
<http://www.state.id.us/ope/>

Nancy Van Maren
Director

**Joint Legislative
Oversight Committee**

Senators
Lin Whitworth, Co-chair
Stan Hawkins
Grant R. Ipsen
Betsy D. Dunklin

Representatives
Debbie Field, Co-chair
Maxine T. Bell
Margaret Henbest
Donna H. Boe

October 29, 2001

Members, Joint Legislative Oversight Committee
Idaho State Legislature

At the direction of the Joint Legislative Oversight Committee, we have completed an evaluation of the public works contractor licensing function in Idaho. Interest in this evaluation stemmed from a recent shift of this responsibility from a licensing board to within the Division of Building Safety. I respectfully submit our completed evaluation for your review and consideration.

We found that contractor licensing has been timely and the time needed to process licenses will likely decline due to recent statutory changes. In addition, clear standards have been developed and applied to assess applicants' financial qualifications for licensure.

On the other hand, when the board made licensing decisions, it relied on its collective judgment rather than clear criteria to determine the adequacy of applicant work experience. Lack of uniform standards sometimes led to inconsistencies in licensing decisions and will be inadequate in the future for licensing staff to make decisions. In addition, the board had not taken steps to address possible conflicts of interest when making licensing decisions. We make several recommendations to remedy these deficiencies.

We also found that the Division of Building Safety's authority over *unlicensed* practice is unclear and we recommend the Legislature consider modifying Idaho Code to grant clear authority. Further, we make several recommendations for improvement of the board's efforts to enforce licensing provisions, which have been weak and inefficient. Finally, the consolidation of board functions into the Division of Building Safety has led to savings of about \$32,000 per year to date, with further savings possible with additional review.

We appreciate that we received the full cooperation of the Division of Building Safety's licensing and administrative staff. This report was written and researched by Ned Parrish (lead), with the assistance of Patty Burke and other Office of Performance Evaluations staff.

Sincerely,


Nancy Van Maren

Table of Contents

	Page
A Review of the Public Works Contractor Licensing Function in Idaho	Summary of Report Findings and Recommendations ix
	Summary Conclusions and Recommendations..... 2
	Background 3
	Issuance of Contractor Licenses Has Been Timely 5
	Clear Standards Have Been Developed to Assess Applicants’ Financial Qualifications for Licensure..... 6
	Lack of Formal Standards and Verification When Reviewing Applicant Work Experience Has Led to Inconsistencies..... 7
	The Board Has Not Taken Steps to Address Possible Conflicts of Interest 11
	The Division Administrator’s Authority Over Unlicensed Practice Is Unclear and Efforts to Enforce Licensing Provisions Have Been Weak and Inefficient 13
	The Initial Steps to Implement 2001 Statutory Changes Have Led to Efficiencies, But Further Actions Are Needed 19
	Response to the Evaluation
Division of Building Safety 23	

List of Figures and Tables

	Page
Figure 1 Financial Requirements for Licensure, by License Class	7
Table 1 Licensed Public Works Contractors, by License Class, 1997–2001	4
Table 2 Public Works Contractor Licensing Complaints, Fiscal Years 1999–2001.....	14

Summary of Report Findings and Recommendations

1. The Public Works Contractors License Board was generally timely in its processing of license applications received in fiscal year 2001. *Page 5.*
2. The Public Works Contractors License Board has established objective criteria for assessing applicants' financial positions, and has consistently applied these standards in making licensing decisions. *Page 6.*
3. The Public Works Contractors License Board has not established clear criteria for judging contractor work experience, relying instead on the collective judgment of its members in this area. *Page 6.*
 - **We recommend the Public Works Contractors License Board adopt clear standards for judging applicant work experience in its rules.** *Page 9.*
 - **We recommend the administrator of the Division of Building Safety consider requiring direct construction supervision experience for future staff hires.** *Page 9.*
4. Work history information obtained from license applicants was often limited, and board staff did little to verify its accuracy. *Page 9.*
 - **We recommend the administrator of the Division of Building Safety take steps to obtain more detailed work history information and verify its accuracy.** *Page 11.*
5. The Public Works Contractor License Board has not established a conflict of interest policy, and has not maintained information needed to demonstrate whether board members recused themselves from board deliberations and action when potential conflicts of interest arose. *Page 11.*
6. The administrator of the Division of Building Safety continued to take some cases to the board after July 1, 2001, although statutes no longer provided for board involvement in license and complaint review. *Page 12.*
 - **We recommend the administrator of the Division of Building Safety discontinue taking any contractor licensing and complaint cases to the board unless authorized to do so by statute.** *Page 12.*

- **We recommend the Public Works Contractors License Board adopt a formal conflict of interest policy and maintain a record of how board members vote and board member recusals in appeals brought to them beginning in fiscal year 2003.** *Page 13.*
7. The administrator of the Division of Building Safety lacks clear authority to take action on complaints of unlicensed practice of public works contracting. *Page 13.*
- **The Legislature could consider modifying Idaho Code to grant the administrator of the Division of Building Safety clear authority to respond to complaints of unlicensed practice of public works contracting.** *Page 15.*
8. The Public Works Contractors License Board’s processes for enforcing licensing requirements have been weak and inefficient, and have seldom resulted in disciplinary or legal actions against licensees or others who have violated licensing laws. *Page 15.*
- **We recommend the administrator of the Division of Building Safety take steps to strengthen the complaint handling process.** *Page 18.*
 - **We recommend the administrator of the Division of Building Safety adopt more efficient and effective methods of educating local agencies and assessing compliance with licensing requirements.** *Page 18.*
9. The Public Works Contractors License Board and the Division of Building Safety’s initial steps to address required changes may have resulted in efficiencies, but more remains to be done. *Page 19.*

A Review of the Public Works Contractor Licensing Function in Idaho

In June 2001, the Joint Legislative Oversight Committee requested an evaluation of the Public Works Contractors License Board. The evaluation was requested in response to questions regarding the board's consistency in making licensing decisions and the potential for conflicts of interest in the license-granting process. Questions were also raised concerning the effectiveness and efficiency of the licensing staff's processes and systems, and the status of efforts to implement recent statutory changes moving the board and its five authorized staff to within the Division of Building Safety.

To address these questions, we asked:

- What standards have guided public works contractor licensing decisions? To what extent has the board been consistent in applying these standards in making licensing decisions? Have licenses been issued in a timely fashion?
- Have complaints received by the board been appropriately investigated and resolved? Has the board and its staff effectively monitored compliance with contractor licensing requirements? Could compliance tracking be done more efficiently?
- To what extent have the Division of Building Safety and Public Works Contractors License Board implemented changes mandated by Idaho Code revisions in 2001? With what effect?

We looked at the issuance of public works contractor licenses and enforcement of licensing requirements.

To answer these questions, we focused our review on the board's two primary functions: contractor licensing and license enforcement.¹ We reviewed Idaho Code, administrative rules, legislative committee meeting minutes, and budget information.

¹ Since 1998, the board has also licensed public works construction managers. As of July 2001, there were 26 licensed construction managers in Idaho. Given the questions posed, we focused our work on the contractor licensing function.

We examined a sample of 60 cases the board considered for new or modified licenses in fiscal years 1999 through 2001 to assess the board's consistency in making licensing decisions. We also reviewed a sample of 90 license applications processed by the board in fiscal year 2001 to assess the timeliness of the licensing process. We looked at information on complaints received by the board in the past three fiscal years, field trips taken by board staff in the past four fiscal years, and revenue and expenditure data from the Statewide Accounting and Reporting System. We also consulted with an attorney regarding the statutory requirements for complaint handling. In addition, we interviewed Division of Building Safety staff and board members, and gathered information about licensing efforts in other states.

SUMMARY CONCLUSIONS AND RECOMMENDATIONS

Overall, we conclude:

- **The Public Works Contractors License Board has been timely in issuing contractor licenses.** Less time will be needed in the future because of recent law changes that shift responsibility for licensing to the administrator of the Division of Building Safety, who can issue licenses when applications are complete rather than waiting for decisions to be made at monthly board meetings.
- **To date, the board has relied on informal standards and its own judgment to determine if applicants had adequate work experience for licensure, which, at times, has led to inconsistencies in decision-making.** While the board has established objective criteria for judging applicant financial qualifications for licensure, it has not adopted clear standards for assessing applicant work experience. We recommend the board establish clear criteria for evaluating applicant work experience, especially now that licensing decisions will be made by staff with less contracting experience.
- **The board has not established a policy to address potential conflicts of interest in the licensing and complaint handling process.** The board is comprised of contractors who may compete at times with those they regulate, and we identified at least two incidents in which it appeared board members did not properly recuse themselves in licensing deliberations. However, records were not

maintained to enable us to make an overall determination of how frequently conflicts arose and how they were handled. Although recent statutory changes have substantially reduced the board's involvement in licensing and complaint handling, the board should adopt a formal policy to govern any future conflicts of interest.

- **The board's processes for enforcing licensing requirements have been weak and have seldom resulted in disciplinary or legal action.** We recommend establishing investigation standards and adopting a range of disciplinary options for use when licensees violate licensing laws. We also recommend the Legislature consider clarifying the board's authority to respond to complaints of unlicensed practice. Further, we suggest several alternative methods to more effectively and efficiently monitor contractor compliance with licensing laws and educate agencies about licensing requirements.
- **Initial steps to implement recent statutory changes appear to have resulted in efficiencies, but more remains to be done.** Administrative functions have been consolidated, resulting in annual savings of about \$32,000 from a position that will no longer be needed. However, the board is just beginning the process of making needed changes to the rules.

BACKGROUND

Statutes require all contractors and subcontractors working on public works to be licensed for projects valued at \$10,000 or more. Public works projects include construction undertaken by state agencies, counties, cities, school districts, and other special districts.²

Licenses specify the maximum dollar amount contractors can bid on public works projects. Bid limits range from \$50,000 per project for contractors with a Class D license to \$3 million per project for contractors with a Class AA license. Contractors with a Class AAA license may bid on any size project. Licenses also specify the type of construction work contractors may perform.

Statutes require contractors to be licensed when working on public works projects valued at \$10,000 or more.

² Projects undertaken by public utilities and irrigation districts are exempt from these requirements, as are solid waste facility projects and projects funded solely with federal funds. Idaho Code § 54-1903 (2000).

Contractors may be licensed to perform in 4 general types of construction and nearly 190 construction specialties.

Contractors may be licensed in one or more of four general types of construction: heavy construction, highway construction, building construction, and specialty construction. Within the specialty construction area, there are nearly 190 different categories of work for which contractors may be licensed. Categories range from excavation and grading to instrumentation and temperature control installation.

The number of licensed public works contractors in Idaho declined somewhat over the past five years. As shown in Table 1, the total number of licensed contractors declined seven percent from 2,927 in 1997 to 2,718 in 2001. The number of contractors within most license classes changed significantly during this period. For instance, the number of licensed AAA contractors in Idaho declined 30 percent, from 1,033 in 1997 to 726 in 2001. In contrast, class C license holders increased 77 percent, from 391 to 693, during this time period.³

³ Based on our review, changes in the number and class of licensees appear to be due, in part, to changes in the bid limits and financial requirements for the various classes of licenses that went into effect in 1999.

Table 1: Licensed Public Works Contractors, by License Class, 1997–2001

License Class	Bid Limit	1997	1998	1999	2000	2001	Overall Percent Change
AAA	Unlimited	1,033	1,110	926	803	726	-30%
AA	\$3,000,000	323	322	365	206	175	-46%
A	\$1,000,000	352	350	301	364	350	-1%
B	\$500,000	499	559	597	522	498	0%
C	\$100,000	391	396	366	662	693	77%
D	\$50,000	329	316	304	317	276	-16%
Total		2,927	3,053	2,859	2,874	2,718	-7%

Source: Public Works Contractors License Board licensing statistics, typically counted July 1 each year.

ISSUANCE OF CONTRACTOR LICENSES HAS BEEN TIMELY

A contractor applying for a public works license is required to submit an application and other supporting information, along with their application fee.⁴ Applications are reviewed by licensing staff, who check them for completeness and notify applicants if additional information is needed. Once applications are complete, licensing decisions are made. Until recently, the Public Works Contractors License Board was charged with making licensing decisions. However, recent statutory changes have shifted licensing responsibilities to the administrator of the Division of Building Safety, effective July 2001.

During our initial scoping work for this evaluation, questions were raised concerning the board's timeliness in issuing licenses. To assess how long it has taken the board to issue licenses, we reviewed a sample of 90 applications processed by the board and its staff in the past fiscal year. We found:

- **The Public Works Contractors License Board was generally timely in its processing of license applications received in fiscal year 2001.**

For the cases we reviewed, it took an average of 27 days from application receipt to license issuance, with renewals taking slightly less time to process than new applications and those requesting changes to an existing license. On average, staff reviewed license applications within one day of receipt, and promptly notified applicants if the application materials submitted were incomplete or did not satisfy licensing requirements. Discrepancies identified by staff were resolved in an average of 13 days.

Based on our review of sample cases, much of the time involved in issuing licenses was attributable to the time lag between board meetings. For the 43 cases in our sample that came before the board at its monthly meetings, the average time from the date the application was complete until the board's initial review was 16

Recent statutory changes have shifted responsibility for licensing decisions from the board to the DBS administrator.

The time needed to process applications should decline since the board will no longer review license applications.

⁴ The license fee amount depends on the class of license requested. Those applying for class A, AA, or AAA licenses must pay a fee of \$150, while applicants for the lower license classes pay a fee of \$75. Licenses must be renewed annually.

Applicants must demonstrate that they are financially responsible and have sufficient work experience to obtain a license.

The board has set specific financial requirements for licensure, and has applied them consistently.

days.⁵ However, the recent statutory changes that shifted the authority to the administrator of the Division of Building Safety should significantly reduce the time needed to issue licenses by allowing the division administrator to issue licenses as soon as applications are complete.

CLEAR STANDARDS HAVE BEEN DEVELOPED TO ASSESS APPLICANTS' FINANCIAL QUALIFICATIONS FOR LICENSURE

To obtain a public works contractor license, an applicant must satisfy certain financial requirements and demonstrate sufficient work experience in the areas for which they are seeking a license. We reviewed application requirements and standards used in reviewing applications, and examined whether the board consistently applied these standards in 60 cases it considered during fiscal years 1999 through 2001. We found:

- **The Public Works Contractors License Board has established objective criteria for assessing applicants' financial positions, and has consistently applied these standards in making licensing decisions.**

The board has adopted clear and specific standards for determining financial qualifications for licensure. As shown in Figure 1, the board has adopted rules specifying the minimum net worth and working capital needed to obtain each of the six license classes established in statute. In addition, the board has specified the type of financial statement applicants must submit with their applications.

Based on our review of case files, the board has applied these standards consistently in making licensing decisions. In each of the cases reviewed, the financial statement submitted was consistent with the class of license issued. In addition, each applicant had sufficient net worth and working capital to qualify for the class of license issued.

⁵ The other cases in our sample, such as standard renewal applications, were handled by the board's licensing staff.

Figure 1: Financial Requirements for Licensure, by License Class

<u>License Class</u>	<u>Financial Statement Required</u>	<u>Net Worth Required</u>	<u>Working Capital Required</u>
AAA	Audited or reviewed ^a	\$600,000	\$200,000
AA	Audited or reviewed ^a	\$450,000	\$150,000
A	Compiled ^a	\$300,000	\$100,000
B	Compiled ^a	\$150,000	\$50,000
C	Dept. form	\$25,000	\$7,500
D	Dept. form	\$10,000	\$3,000

^a Compiled, reviewed, and audited statements must each be prepared by a CPA or LPA. However, the level of work performed varies in each case. A compiled statement presents company information in the form of an Annual Statement, while an audited statement involves work sufficient to express an opinion of the company's financial condition.

Source: Office of Performance Evaluations' review of Public Works Contractors License Board statutes, rules, and licensing materials.

LACK OF FORMAL STANDARDS AND VERIFICATION WHEN REVIEWING APPLICANT WORK EXPERIENCE HAS LED TO INCONSISTENCIES

We found:

- **The Public Works Contractors License Board has not established clear criteria for judging contractor work experience, relying instead on the collective judgment of its members in this area.**

As noted above, license applicants must submit information about their work experience. This information includes a summary of work history and references from three individuals who are knowledgeable of an applicant's work experience and qualifications. An applicant must also complete a self-administered license examination and submit it with the application package.

The board has not established specific requirements for work experience, relying instead on informal standards and its own judgment.

Despite these uniform application requirements, the board has not developed specific and objective standards to guide review of applicant work experience. For instance, there have been no formal standards for the number of years of experience required to perform different types of construction work, or for whether the experience must be in a supervisory or project management capacity.

Instead, the board appears to have used several informal standards and its collective judgment and knowledge of the contracting industry to make licensing decisions—leading, at times, to inconsistencies. For example, licensing staff indicated that, as a general rule, the board has required contractors to demonstrate experience building structures “from the ground up” to receive a general building construction license. Yet, we found some cases in which the board issued general building construction licenses to a number of contractors who appeared to work primarily in specialty areas, such as plumbing and heating and mechanical contracting. Also, board staff told us board members generally have required applicants to demonstrate they have done construction projects in the dollar range of the class of license requested. However, at a recent board meeting, the board approved an applicant’s request for an upgrade to a AAA license, although the company had done few projects of that magnitude. In this case, the board issued a AAA license despite the lack of work history because it judged the company had sufficient net worth and working capital for a AAA license and had been in business 37 years.

The informality of the requirements has led, at times, to inconsistencies in licensing decisions.

The informal standards the board has followed likely will be inadequate to ensure appropriate and consistent decisions now that these decisions are to be made by staff rather than the board. For example, in one of the first cases decided after statutory changes went into effect July 1, licensing staff decided to approve an upgrade of a contractor’s license to class AAA. When the board reviewed this action at its July meeting, several members indicated that the staff’s decision was inconsistent with the board’s informal standards because the contractor had not done many projects valued above the bid limit for a class A license.

Also, contractor licensing staff in the Division of Building Safety do not have the same level of construction expertise as board members. While current licensing staff have each served the board a minimum of 12 years and are each knowledgeable of the licensing process, they lack recent direct experience in the construction industry. In addition, because the minimum

qualifications for the positions do not specifically require this type of experience, there is no assurance that future staff will be qualified to judge applicant work experience. The board has recognized the need to adopt clearer standards for assessing contractor qualifications and experience and has preliminarily discussed how to address this in the upcoming rule revision process.

Other states have established more clear and specific requirements for licensure and taken other steps to help ensure applicants are qualified for the work they are licensed to perform. For example:

- Contractor licensing agencies in Arizona, Nevada, and Utah specify the number of years of experience various licenses require.
- Many states have established testing and/or education requirements for those seeking licensure to help assess applicants' qualifications for licensure.
- Arizona requires that licensing staff responsible for reviewing applicant work experience have experience supervising construction projects and certification by the International Conference of Building Officials.

Given apparent inconsistencies in previous licensing decisions and the recent statutory shift of responsibilities to staff, additional guidance is needed to ensure consistent and appropriate decisions regarding applicant qualifications for licensure. Therefore:

We recommend the Public Works Contractors License Board adopt clear standards for judging applicant work experience in its rules.

Also:

We recommend the administrator of the Division of Building Safety consider requiring direct construction supervision experience for future staff hires.

We also found:

- **Work history information obtained from license applicants was often limited, and board staff did little to verify its accuracy.**

More formal standards will be needed to guide licensing staff in reviewing applicant work experience.

Other states have taken steps to better ensure consistent and appropriate review of applicants' qualifications for license.

Work history information obtained from applicants was sometimes sketchy.

In a number of the cases we reviewed, the work history information submitted was sketchy, leaving it unclear whether the applicant qualified for the types of work for which licensure was requested. The license application form requests a specific description of the work performed on all projects listed in the applicant's work history. However, the form provides little space to provide this information, and an applicant's response often contained little information about the work performed and their role on the project(s). For example:

- In one case we reviewed, the description of work provided by the applicant for the projects listed said only "Simple Cycle GT," "Simple Cycle," or "Combined Cycle." Licensing staff was unable to explain to us what these terms meant and suggested that board members may have been familiar with the terms. The references submitted in this case were not obtained from contractors familiar with the applicant's work, and provided no additional detail of the type of work performed by the contractor. Although licensing staff requested three additional references from contractors familiar with the applicant's work, there was no evidence the additional information was ever received. Nonetheless, the board issued the contractor a AAA license in heavy construction, highway construction, and building construction.
- In another case, the applicant listed a number of projects, but did not specify the types of work performed. The reference letters submitted, which were signed by an architect, commercial electrician, and a large-scale earth mover, were all identical and indicated only that the contractor was qualified in "all commercial contracting trades." In this case, the board issued the applicant a AAA license in building construction.

Little was done to verify work history information provided by applicants.

Furthermore, staff has done little to verify the accuracy of the information provided. We noted a number of cases (14 of 50 for which the applicant was required to submit work history information) in which staff contacted the applicant to request further information about the experience reported. However, there was no evidence that staff contacted individuals or organizations for whom the applicant had performed work or references provided by the applicant to verify the accuracy of the information provided.

Other states have taken steps to help ensure more complete and accurate information is obtained from applicants for contractor licenses. The application form used by the Nevada State Contractors' Board provided significantly more space for applicants to describe work experience. Arizona's Registrar of Contractors uses standard letters and telephone calls to verify information provided by applicants in approximately a quarter of all cases. These additional steps increase assurance that information used to assess applicant work experience is detailed and accurate. Given the opportunity for ambiguous licensing decisions:

We recommend the administrator of the Division of Building Safety take steps to obtain more detailed work history information and verify its accuracy.

THE BOARD HAS NOT TAKEN STEPS TO ADDRESS POSSIBLE CONFLICTS OF INTEREST

In requesting this evaluation, questions were raised concerning the potential for conflicts of interest when board members, who are by law members of the contracting industry, make licensing decisions. We reviewed board minutes, attended board meetings, and interviewed board members and staff about the decision-making process. We found:

- **The Public Works Contractor License Board has not established a conflict of interest policy, and has not maintained information needed to demonstrate whether board members recused themselves from board deliberations and action when potential conflicts of interest arose.**

By statute, the board is comprised of seven contractors. As contractors, they and their firms may compete with other licensees for public works projects in the state. Despite this potential for conflicts of interest in the decision-making process, the board has not had a policy to govern board member involvement in these situations. In addition, board meeting minutes do not include information about how members voted in licensing and complaint cases, or indicate whether board members recused themselves in deliberations and decision-making when conflicts arose. However, we became aware of at least two instances in which board members did not recuse themselves when there appeared to be conflicts of interest.

Concerns were raised about the potential for conflicts of interest when board members, drawn from the contracting industry, made licensing decisions.

We learned of two instances in which board members did not recuse themselves when there were apparent conflicts of interest.

- In one case, a board member indicated he held stock in a company that was seeking an extension for license renewal. This board member indicated that he was recusing himself in this case and did not vote on the extension. However, he participated in the board's deliberation of the matter.
- In another case, a board member participated in the discussion of a complaint that had been filed by the board member's company against a competitor.

The potential for conflicts of interest should diminish as staff begins making licensing decisions. Under recent changes, no role in licensing and complaint resolution is specified for board members. However, we found:

- **The administrator of the Division of Building Safety continued to take some cases to the board after July 1, 2001, although statutes no longer provided for board involvement in license and complaint review.**

As noted, statutory changes in 2001 shifted review responsibility from the board to the staff, apparently done, in part, to address conflict of interest concerns. Yet, at its July and August 2001 meetings, the board reviewed and acted upon 15 licensing cases. In addition, the board heard and/or acted on 6 complaints at these meetings. The division administrator told us he continued to take some cases to the board after statutory changes went into effect to encourage a smooth transition from the old process to the new one. The division administrator has not taken any licensing cases or complaints to the board since its August meeting. However, to ensure future compliance with new statutory provisions:

The board will begin hearing appeals of the DBS administrator's licensing decisions in July 2002.

We recommend the administrator of the Division of Building Safety discontinue taking any contractor licensing and complaint cases to the board unless authorized to do so by statute.

Statutory changes approved in 2001 do provide for the board to play a role in resolving licensing disputes beginning in fiscal year 2003. House Bill 305 (2001) specified that the Public Works Contractors License Board would hear appeals of the division administrator's licensing decisions beginning in July 2002. In these cases, the board will again have a role in making contractor licensing decisions. Therefore:

We recommend the Public Works Contractors License Board adopt a formal conflict of interest policy and maintain a record of how board members vote and board member recusals in appeals brought to them beginning in fiscal year 2003.

The Board of Medicine's new policy could serve as a model for the board's efforts in this area. In response to our recommendations in June 2001, the board has developed a policy and conflict of interest statement. Also, the board's minutes include information about votes taken and board member recusal.

THE DIVISION ADMINISTRATOR'S AUTHORITY OVER UNLICENSED PRACTICE IS UNCLEAR AND EFFORTS TO ENFORCE LICENSE REQUIREMENTS HAVE BEEN WEAK AND INEFFICIENT

As part of our review of the board's key processes and systems, we examined the board's efforts to enforce compliance with licensing laws. Statutes have charged the board and, more recently, the division administrator with investigating complaints and disciplining those who violate licensing requirements. We reviewed complaints received by the board in fiscal years 1999 through 2001, Idaho Code provisions, information about the licensing staff's efforts to monitor compliance with licensing requirements, and consulted with an attorney about applicable Idaho Code provisions. We found:

- **The administrator of the Division of Building Safety lacks clear authority to take action on complaints of unlicensed practice of public works contracting.**

Statutes give the Division of Building Safety administrator authority to investigate complaints about licensed contractors and take disciplinary action when needed, but do not clearly spell out the administrator's authority over unlicensed contractors. Idaho Code § 54-1914 authorizes the administrator to take a variety of disciplinary actions, including suspending or revoking contractor licenses, when *licensed* contractors violate licensing laws.⁶

⁶ Licensed contractors may be disciplined for a variety of reasons, including bidding on work for which they are not licensed, employing unlicensed subcontractors, disregarding plans and specifications, and failing to make payments when due.

Following the lead of another Idaho licensing board could help ensure proper handling of future conflicts of interest.

The administrator's role in enforcing unlicensed practice of public works contracting is vague.

However, while the Public Works Contractor Licensing Act generally prohibits unlicensed practice of public work contracting, it does not specify the administrator’s role in investigating these complaints and enforcing the licensing requirements.⁷

Other boards have more clear-cut authority to address unlicensed practice issues.

In contrast, statutes provide the board somewhat greater authority over the unlicensed practice of construction management. Idaho Code § 54-4514 authorizes the Public Works Contractors License Board to seek an injunction to stop construction work when instances of unlicensed practice of construction management are identified. Furthermore, other licensing agencies have been given clearer authority to regulate unlicensed practice. For example, statutes authorize the Board of Accountancy to seek an injunction when individuals are found to be practicing without a license. Statutes also provide clear authority for county prosecutors to prosecute these cases. The Board of Veterinary Medicine can impose criminal sanctions for unauthorized practice as well as civil penalties. Also, statutes authorize the Plumbing Board to prosecute actions through the Office of the Attorney General or prosecuting attorney.

Over the past three years, almost two-thirds of the complaints received by licensing staff alleged that contractors practiced public works contracting without a license. As shown in Table 2,

⁷ IDAHO CODE § 54-1902 (Supp. 2001).

Table 2: Public Works Contractor Licensing Complaints, Fiscal Years 1999–2001

<u>Type of Complaint</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>Total</u>	<u>Percent of Total</u>
Unlicensed contractor/subcontractor	14	13	2	29	62%
Violations of licensing law ^a	5	5	2	12	26%
Agency bidding practices ^b	<u>1</u>	<u>1</u>	<u>4</u>	<u>6</u>	<u>13%</u>
Total	20	19	8	47	100%

^a Includes alleged violations of licensing laws by licensees specified in Idaho Code § 54-1902, § 54-1904, § 54-1914, and IDAPA 07.05.01.204.04.

^b Includes allegations that agencies put projects out for bid improperly.

Source: Office of Performance Evaluations' review of Public Works Contractors License Board complaint files.

the board received a total of 47 complaints during fiscal years 1999 through 2001. Of these, 29 (62 percent) alleged unlicensed practice. Of the remaining complaints, just 12 alleged violations of licensing laws by licensed contractors.

Therefore:

The Legislature could consider modifying Idaho Code to grant the administrator of the Division of Building Safety clear authority to respond to complaints of unlicensed practice of public works contracting.

Specifically, the Legislature could consider:

- Requiring the administrator of the Division of Building Safety to investigate allegations of unlicensed practice;
- Authorizing the administrator to seek injunctive relief when instances of unlicensed practice are identified;
- Specifying whether county prosecutors or the Office of the Attorney General has authority to prosecute cases of unlicensed practice; and
- Requiring the division administrator to refer cases to the appropriate authority when violations are identified.

We also found:

- **The Public Works Contractors License Board’s processes for enforcing licensing requirements have been weak and inefficient, and have seldom resulted in disciplinary or legal actions against licensees or others who have violated licensing laws.**

In our review of the licensing staff’s complaint files for fiscal years 1999 through 2001, we identified a number of problems with the complaint handling process. Specifically:

- Information recorded about the complaints was often sketchy and incomplete. In several cases, basic information identifying the complainant and respondent was lacking, and it was sometimes difficult to determine the nature of the complaint based on the available information.

Nearly two-thirds of all complaints filed in the past three years alleged unlicensed practice.

The board’s complaint handling process needs significant improvement.

The board's records about complaints were often sketchy or incomplete.

In at least two cases, complaints alleging violations of licensing laws were not pursued.

- Documentation of any review or investigative work that licensing staff may have performed was absent in some cases. For example, licensing staff received a number of bid protests from contractors alleging that other contractors bidding on projects were unlicensed. In at least six of these cases, there was no evidence of any investigative action by staff.
- Evidence of supervisory review, and the date and rationale for closing cases, were seldom recorded in the files. The bureau chief who oversees licensing staff indicated that she had reviewed all cases and discussed them with the board's contract attorney to determine if further action was needed, but acknowledged that this was generally not noted in the files.
- In a few cases, licensed contractors received no disciplinary action even after acknowledging violations of license requirements. In one case we reviewed, a contractor acknowledged using an unlicensed subcontractor and then hired the individual as an employee to complete the project when licensing staff made him aware of the violation (a violation of Idaho Code § 54-1914). However, this case was not taken to the board, and no formal or informal disciplinary action was taken.
- In at least two instances, complaints that appeared to fall within the grounds for disciplining a licensee were deemed to be "contract disputes" and were not pursued further. In one of these cases, the complainant, a subcontractor, alleged that a licensed contractor failed to pay for work performed, used an unlicensed subcontractor, and disregarded plans and specifications. Each of these allegations, if true, would have constituted a violation of the contractor licensing laws. However, the board's contract attorney advised the board that the matter was a "contract dispute," and disciplinary action was not considered.
- In most cases, the licensing staff prepared no written correspondence to communicate complaint findings and actions to the respondent and complainant. The bureau chief for the licensing staff acknowledged that they seldom put findings and actions in writing, preferring to handle these matters informally with a phone call. However, without such a paper trail it is not possible to verify actions taken and notifications made, if any.

- Licensing staff did not give each complaint a unique identification number or maintain a complaint log, making it difficult to determine if all complaints received were included in the files.

To date, the board has not taken disciplinary action in any of the complaint cases received in fiscal years 1999 through 2001. The board has not taken formal disciplinary action, such as license suspension or revocation, against a licensee in response to a complaint since 1994. In 1997, the board suspended a contractor's license for failure to demonstrate financial responsibility when the contractor lost the personal indemnification he needed to meet the financial requirements for licensure.

As part of our review of the board's enforcement efforts, we also reviewed information about the licensing staff's field trips. According to the licensing staff, the purpose of these trips has been to: (1) monitor compliance with contractor licensing requirements; and (2) educate agencies that may undertake public works projects of contractor licensing requirements.

Agency records indicate that board staff have taken a total of 24 field trips around the state over the past four years.⁸ According to reports licensing staff filed for these trips, most of the emphasis was on educating city, county, and school district officials about licensing requirements. In total, licensing staff made 678 stops to these local agencies during the 24 trips for which there were records. Licensing staff appeared to spend about 15 to 20 minutes at each stop reviewing licensing requirements.

In contrast, licensing staff appeared to place little emphasis on monitoring compliance with contractor licensing requirements. Only 23 visits to public works jobsites were recorded in the field trip reports prepared by licensing staff, an average of just under one visit per field trip. In addition, the field trip reports rarely indicated that staff solicited information about public works projects underway when visiting local agency offices; the reports contained only a few instances of licensing staff obtaining information on the contractors being used so that compliance with licensing requirements could be verified.

The board has not taken disciplinary action regarding any complaints received in the past three years.

Although field trips were to educate local agencies of licensing requirements and monitor compliance, little emphasis was placed on compliance monitoring.

⁸ Our review of expenditure information from the Statewide Accounting and Reporting System revealed that licensing staff may have made two other field trips for which there were no reports.

The licensing staff's current efforts to investigate complaints and monitor public works contracting work are insufficient to ensure compliance with licensing requirements. Therefore:

We recommend the administrator of the Division of Building Safety take steps to strengthen the complaint handling process.

Specifically, the administrator should:

- Identify required investigative steps and tasks;
- Specify documentation standards for complaint investigations;
- Establish a process for determining when complaints should be closed without pursuing disciplinary action;
- Specify a range of informal and formal disciplinary actions that can be taken when violations of licensing requirements are identified; and
- Establish a system for logging and tracking complaints and recording information about disciplinary actions taken in licensees' files and the division's automated licensing database.

Field trips are not the most effective or efficient means to achieve staff goals.

In addition, field trips do not appear to be the most efficient means of educating agencies about the licensing function, or the most effective way to monitor compliance with licensing requirements. Therefore:

We recommend the administrator of the Division of Building Safety adopt more efficient and effective methods of educating local agencies and assessing compliance with licensing requirements.

The administrator should consider:

- Adopting alternative, less costly approaches to educate local agencies of licensing requirements, such as mailings, email, and the division's website.
- Directing inspectors working in other bureaus within the Division of Building Safety to obtain contractor lists at public works projects they visit so that licensing staff can monitor compliance with licensing laws.

- Taking steps to obtain information about contractors working on public works projects from the Idaho Tax Commission.⁹

THE INITIAL STEPS TO IMPLEMENT 2001 STATUTORY CHANGES HAVE LED TO EFFICIENCIES, BUT FURTHER ACTIONS ARE NEEDED

As note previously, statutes pertaining to the Public Works Contractors License Board were significantly revised in the 2001 legislative session.¹⁰ The changes moved the board and its staff to within the Division of Building Safety, and transferred responsibility for licensing and disciplining public works contractors from the board to the administrator of the Division of Building Safety.

We reviewed the efforts of the board and the Division of Building Safety to implement the required changes. We found:

- **The Public Works Contractors License Board and the Division of Building Safety’s initial steps to address required changes may have resulted in efficiencies, but more remains to be done.**

A number of steps have been taken to merge the public works contractor licensing function into the Division of Building Safety. The board staff relocated to the division’s new offices in Meridian and now report to the division administrator. Also, the board’s licensing database has been added to the division’s information systems, allowing information sharing between licensing staff and other bureaus within the division. Finally, the division administrator and his staff have also taken over budgeting, human resource, and other administrative responsibilities for the board and licensing staff.

Merging the board with DBS has eliminated the need for one position, with savings estimated at \$32,000 annually.

⁹ Statutes require agencies undertaking public works projects to submit a list of all contractors working on the project to the Idaho Tax Commission. A deputy attorney general representing the Tax Commission indicated that Idaho Code § 63-3076, which prohibits tax commissioners and staff from divulging tax information, would need to be amended to authorize the commission to transmit this information to the Division of Building Safety.

¹⁰ The initial steps to move the Public Works Contractors License Board within the Division of Building Safety were taken in the 2000 legislative session.

Further review is needed to determine whether other staffing changes are possible.

The merger of the licensing staff with the division has resulted in some efficiencies, although further adjustments may be needed. For example, the division administrator has not filled one of the board's five authorized positions, which has been vacant since June 2001. Based on our review, many of the duties assigned to this position are now conducted by the division. In addition, our review of the licensing process indicated that the staff has been able to process applications in a timely manner despite this vacancy. As a result, we believe this position will no longer be needed. This should result in an estimated savings of approximately \$32,000 per year.¹¹

Efforts to make needed rule revisions should begin in November 2001.

Although questions were posed as to the appropriateness of staffing levels, it was not clear whether further adjustments were needed. Our review was conducted at a time of transition, when the licensing staff was taking on responsibilities for making licensing decisions and, for additional reasons, experiencing a temporary backlog in application processing. Also, recommended improvements may affect the future workload of the unit. As a result, staffing levels will require further review in the future.

Finally, the board has yet to revise its rules to reflect recent statutory changes. The board briefly discussed needed rule revisions at its July and August 2001 meetings. However, according to the licensing bureau chief, it won't begin the rule revision process in earnest until November.

¹¹ This is the fully loaded salary for the position at policy level.

Response to the Evaluation



State of Idaho
DIVISION OF BUILDING SAFETY
ADMINISTRATION

DIRK KEMPTHORNE
Governor
DAVE MUNROE
Administrator

1090 East Watertower Street
Meridian, ID 83642

P.O. Box 83720
Boise, ID 83720-0048

(208) 334-3951 FAX (208) 855-2164

October 18, 2001

Nancy Van Maren, Director
Office of Performance Evaluations
P.O. Box 83720
Boise, Idaho 83720-0055

Dear Ms. Van Maren:

The Division of Building Safety would like to thank your office, namely Ned Parrish and Patty Burke, for the time spent evaluating the Public Works Contractors License Bureau.

After reading the evaluation, I have found it to be very straightforward and concise. I believe it will help me address the issues that will ultimately make the Public Works Contractors License Bureau more efficient. As a result, the Division of Building Safety will be better able to provide quality services to the constituents of Idaho.

Thank you again and if I may be of assistance to your office in the future, please feel free to call me at 332-3951.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Munroe".

Dave Munroe
Administrator

DM:slw

cc: Joint Legislative Oversight Committee

Performance Evaluations Completed 1997–Present

<u>Pub. Number</u>	<u>Report Title</u>	<u>Date Released</u>
97-01	License Plate Design Royalties Paid to the Idaho Heritage Trust	May 1997
97-02	The Bishop's House Historic Site	July 1997
97-03	Alternatives to Incarceration: Opportunities and Costs	December 1997
98-01	Public School Use of Tobacco Tax Funds	January 1998
98-02	Medicaid Reimbursement for Outpatient Occupational and Speech Therapy	June 1998
98-03	Management of State Agency Passenger Vehicles	October 1998
98-04	Management Review of the Idaho Commission for the Blind and Visually Impaired	October 1998
99-01	The State Board of Pharmacy's Regulation of Prescription Controlled Substances	June 1999
99-02	The State Board of Medicine's Resolution of Complaints Against Physicians and Physician Assistants	October 1999
99-03	Employee Morale and Turnover at the Department of Correction	October 1999
00-01	A Limited Scope Evaluation of Issues Related to the Department of Fish and Game	March 2000
00-02	The Department of Fish and Game's Automated Licensing System Acquisition and Oversight	June 2000
00-03	Passenger Vehicle Purchase Authority and Practice in Selected State Agencies, Fiscal Years 1999–2000	September 2000
00-04	A Review of Selected Wildlife Programs at the Department of Fish and Game	November 2000
00-05	Idaho's Medicaid Program: The Department of Health and Welfare Has Many Opportunities for Cost Savings	November 2000
01-01	Inmate Collect Call Rates and Telephone Access: Opportunities to Address High Phone Rates	January 2001
01-02	Idaho Department of Fish and Game: Opportunities Exist to Improve Lands Program and Strengthen Public Participation Efforts	January 2001
01-03	Improvements in Data Management Needed at the Commission of Pardons and Parole: Collaboration With the Department of Correction Could Significantly Advance Efforts	May 2001
01-04	The State Board of Medicine: A Review of Complaint Investigation and Adjudication	June 2001
01-05	A Review of the Public Works Contractor Licensing Function in Idaho	November 2001
01-06	A Descriptive Summary of State Agency Fees	November 2001

Performance evaluations may be obtained free of charge from the
Office of Performance Evaluations • P.O. Box 83720 • Boise, ID 83720-0055
Phone: (208) 334-3880 • Fax: (208) 334-3871
or visit our web site at www.state.id.us/ope

Desktop Publishing by Margaret Campbell