

Bill No. CS for SB 2076

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Clary moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 15, lines 17 and 18, delete those lines		
15			
16	and insert:		
17	Section 11. Paragraph (d) of subsection (1) of section		
18	489.129, Florida Statutes, is amended and subsection (12) is		
19	added to that section to read:		
20	489.129 Disciplinary proceedings.--		
21	(1) The board may take any of the following actions		
22	against any certificateholder or registrant: place on		
23	probation or reprimand the licensee, revoke, suspend, or deny		
24	the issuance or renewal of the certificate, registration, or		
25	certificate of authority, require financial restitution to a		
26	consumer for financial harm directly related to a violation of		
27	a provision of this part, impose an administrative fine not to		
28	exceed \$5,000 per violation, require continuing education, or		
29	assess costs associated with investigation and prosecution, if		
30	the contractor, financially responsible officer, or business		
31	organization for which the contractor is a primary qualifying		

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1 agent, a financially responsible officer, or a secondary  
2 qualifying agent responsible under s. 489.1195 is found guilty  
3 of any of the following acts:

4 ~~(d) Knowingly violating the applicable building codes~~  
5 ~~or laws of the state or of any municipalities or counties~~  
6 ~~thereof.~~

7 (12) When an investigation of a contractor is  
8 undertaken, the department shall promptly furnish to the  
9 contractor or the contractor's attorney a copy of the  
10 complaint or document that resulted in the initiation of the  
11 investigation. The department shall make the complaint and  
12 supporting documents available to the contractor. The  
13 complaint or supporting documents shall contain information  
14 regarding the specific facts that serve as the basis for the  
15 complaint. The contractor may submit a written response to the  
16 information contained in such complaint or document within 20  
17 days after service to the contractor of the complaint or  
18 document. The contractor's written response shall be  
19 considered by the probable cause panel. The right to respond  
20 does not prohibit the issuance of a summary emergency order if  
21 necessary to protect the public. However, if the secretary, or  
22 the secretary's designee, and the chair of the board or the  
23 chair of the probable cause panel agree in writing that such  
24 notification would be detrimental to the investigation, the  
25 department may withhold notification. The department may  
26 conduct an investigation without notification to a contractor  
27 if the act under investigation is a criminal offense.

28 Section 12. Subsections (2), (7) and (10) and  
29 paragraphs (c) of subsection (6) of section 489.131, Florida  
30 Statutes, are amended to read:

31 489.131 Applicability.--

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1           (2) The state or any county or municipality shall  
 2 require that bids submitted for construction, improvement,  
 3 remodeling, or repair on ~~of~~ public projects ~~buildings~~ be  
 4 accompanied by evidence that the bidder holds an appropriate  
 5 certificate or registration, unless the work to be performed  
 6 is exempt under s. 489.103.

7           (6)

8           (c) Each local board or agency that licenses  
 9 contractors must transmit quarterly ~~monthly~~ to the board a  
 10 report of any disciplinary action taken against contractors  
 11 and of any administrative or disciplinary action taken against  
 12 unlicensed persons for engaging in the business or acting in  
 13 the capacity of a contractor including any cease and desist  
 14 orders issued pursuant to s. 489.113(2)(b) and any fine issued  
 15 pursuant to s. 489.127(5).

16           (7)(a) It is the policy of the state that the purpose  
 17 of regulation is to protect the public by attaining compliance  
 18 with the policies established in law. Fines and other  
 19 penalties are provided in order to ensure compliance; however,  
 20 the collection of fines and the imposition of penalties are  
 21 intended to be secondary to the primary goal of attaining  
 22 compliance with state laws and local jurisdiction ordinances.  
 23 It is the intent of the Legislature that a local jurisdiction  
 24 agency charged with enforcing regulatory laws shall issue a  
 25 notice of noncompliance as its first response to a minor  
 26 violation of a regulatory law in any instance in which it is  
 27 reasonable to assume that the violator was unaware of such a  
 28 law or unclear as to how to comply with it. A violation of a  
 29 regulatory law is a "minor violation" if it does not result in  
 30 economic or physical harm to a person or adversely affect the  
 31 public health, safety, or welfare or create a significant

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1 threat of such harm. A "notice of noncompliance" is a  
2 notification by the local jurisdiction agency charged with  
3 enforcing the ordinance, which is issued to the licensee that  
4 is subject to the ordinance. A notice of noncompliance should  
5 not be accompanied with a fine or other disciplinary penalty.  
6 It should identify the specific ordinance that is being  
7 violated, provide information on how to comply with the  
8 ordinance, and specify a reasonable time for the violator to  
9 comply with the ordinance. Failure of a licensee to take  
10 action correcting the violation within a set period of time  
11 would then result in the institution of further disciplinary  
12 proceedings.

13 (b) The local governing body of a county or  
14 municipality, or its local enforcement body, is authorized to  
15 enforce the provisions of this part as well as its local  
16 ordinances against locally licensed or registered contractors,  
17 as appropriate. The local jurisdiction enforcement body may  
18 conduct disciplinary proceedings against a locally licensed or  
19 registered contractor and may require restitution, impose a  
20 suspension or revocation of his or her local license, or a  
21 fine not to exceed \$5,000, or a combination thereof, against  
22 the locally licensed or registered contractor, according to  
23 ordinances which a local jurisdiction may enact. In addition,  
24 the local jurisdiction may assess reasonable investigative and  
25 legal costs for the prosecution of the violation against the  
26 violator, according to such ordinances as the local  
27 jurisdiction may enact.

28 (c) In addition to any action the local jurisdiction  
29 enforcement body may take against the individual's local  
30 license, and any fine the local jurisdiction may impose, the  
31 local jurisdiction enforcement body shall issue a recommended

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1 penalty for board action. This recommended penalty may  
2 include a recommendation for no further action, or a  
3 recommendation for suspension, revocation, or restriction of  
4 the registration, or a fine to be levied by the board, or a  
5 combination thereof. The local jurisdiction enforcement body  
6 shall inform the disciplined contractor and the complainant of  
7 the local license penalty imposed, the board penalty  
8 recommended, his or her rights to appeal, and the consequences  
9 should he or she decide not to appeal. The local jurisdiction  
10 enforcement body shall, upon having reached adjudication or  
11 having accepted a plea of nolo contendere, immediately inform  
12 the board of its action and the recommended board penalty.

13 (d) The department, the disciplined contractor, or the  
14 complainant may challenge the local jurisdiction enforcement  
15 body's recommended penalty for board action to the  
16 Construction Industry Licensing Board. A challenge shall be  
17 filed within 60 days after the issuance of the recommended  
18 penalty to the board. If challenged, there is a presumptive  
19 finding of probable cause and the case may proceed without the  
20 need for a probable cause hearing.

21 (e) Failure of the department, the disciplined  
22 contractor, or the complainant to challenge the local  
23 jurisdiction's recommended penalty within the time period set  
24 forth in this subsection shall constitute a waiver of the  
25 right to a hearing before the board. A waiver of the right to  
26 a hearing before the board shall be deemed an admission of the  
27 violation, and the penalty recommended shall become a final  
28 order according to procedures developed by board rule without  
29 further board action. The disciplined contractor may appeal  
30 this board action to the district court.

31 (f) 1. The department may investigate any complaint

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1 which is made with the department. However, the department  
2 may not initiate or pursue any if the department determines  
3 that the complaint against a registered contractor who is not  
4 also a certified contractor where a local jurisdiction  
5 enforcement body has jurisdiction over the complaint, unless  
6 summary procedures are initiated by the secretary pursuant to  
7 s. 455.225(8), or unless the local jurisdiction enforcement  
8 body has failed to investigate and prosecute a complaint, or  
9 make a finding of no violation, within 6 months of receiving  
10 the complaint. The department shall refer the complaint to the  
11 local jurisdiction enforcement body for investigation, and if  
12 appropriate, prosecution. However, the department may  
13 investigate such complaints to the extent necessary to  
14 determine whether summary procedures should be initiated is  
15 for an action which a local jurisdiction enforcement body has  
16 investigated and reached adjudication or accepted a plea of  
17 nolo contendere, including a recommended penalty to the board,  
18 the department shall not initiate prosecution for that action,  
19 unless the secretary has initiated summary procedures pursuant  
20 to s. 455.225(8).

21 2. Upon a recommendation by the department, the board  
22 may make conditional, suspend, or rescind its determination of  
23 the adequacy of the local government enforcement body's  
24 disciplinary procedures granted under s. 489.117(2).

25 (g) Nothing in this subsection shall be construed to  
26 allow local jurisdictions to exercise disciplinary authority  
27 over certified contractors.

28 (10) No municipal or county government may issue any  
29 certificate of competency or license for any contractor  
30 defined in s. 489.105(3)(a)-(o) after July 1, 1993, unless  
31 such local government exercises disciplinary control and

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1 oversight over such locally licensed contractors, including  
 2 forwarding a recommended order in each action to the board as  
 3 provided in subsection (7). Each local board that licenses and  
 4 disciplines contractors must have at least two consumer  
 5 representatives on that board. If the board has seven or more  
 6 members, at least three of those members must be consumer  
 7 representatives. The consumer representative may be any  
 8 resident of the local jurisdiction that is not, and has never  
 9 been, a member or practitioner of a profession regulated by  
 10 the board or a member of any closely related profession.

11 Section 13. The amendments to paragraph (f) of  
 12 subsection (7) of section 489.131 of this act shall not affect  
 13 any investigative activities or administrative actions  
 14 commenced by the department as a result of complaints filed  
 15 prior to the effective date of this legislation.

16 Section 14. Except as otherwise provided herein, this  
 17 act shall take effect October 1, of the year in which enacted.  
 18  
 19

20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 On page 10, line 26

23  
 24 insert: after "circumstances;"

25 amending s. 489.129, F.S.; providing procedures  
 26 and responsibilities when the department  
 27 undertakes an investigation of a contractor;  
 28 deleting a ground for disciplinary action;  
 29 amending s. 489.131, F.S.; requiring that bids  
 30 for public projects be accompanied by certain  
 31 evidence; requiring local boards or agencies

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1           that license contractors to transmit quarterly  
2           reports; clarifying the department's authority  
3           to initiate disciplinary actions; providing  
4           that local boards that license and discipline  
5           contractors must have at least 2 consumer  
6           representatives;  
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