

Bill No. CS for SB 2084

Amendment No. \_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Lee moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 17, line 3, through page 18, line 12, delete

15 sections 11 and 12

16

17 and insert:

18 Section 11. Paragraph (d) of subsection (1) of section

19 489.129, Florida Statutes, is amended and subsection (12) is

20 added to that section to read:

21 489.129 Disciplinary proceedings.--

22 (1) The board may take any of the following actions

23 against any certificateholder or registrant: place on

24 probation or reprimand the licensee, revoke, suspend, or deny

25 the issuance or renewal of the certificate, registration, or

26 certificate of authority, require financial restitution to a

27 consumer for financial harm directly related to a violation of

28 a provision of this part, impose an administrative fine not to

29 exceed \$5,000 per violation, require continuing education, or

30 assess costs associated with investigation and prosecution, if

31 the contractor, financially responsible officer, or business

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

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

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

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

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1           489.131 Applicability.--

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

8           (6)

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

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

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

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

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

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

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

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

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

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

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

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

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

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13 (Redesignate subsequent sections.)

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

17 And the title is amended as follows:

18 On page 2, lines 2-7, delete those lines

19

20 and insert:

21 restrictions; amending s. 489.129, F.S.;

22 providing procedures and responsibilities when

23 the department undertakes an investigation of a

24 contractor; deleting a ground for disciplinary

25 action; amending s. 489.131, F.S.; requiring

26 that bids for public projects be accompanied by

27 certain evidence; requiring local boards or

28 agencies that license contractors to transmit

29 quarterly reports; clarifying the department's

30 authority to initiate disciplinary actions;

31 providing that local boards that license and

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discipline contractors must have at least 2  
consumer representatives; providing an  
effective date.