

Bill No. CS for CS for SB 2336

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
---------------	----------------	--------------

1	.
2	.
3	.
4	.
5	.
6	.
7	.
8	.
9	.
10	.

11 Senator Clary moved the following amendment:

12
13 **Senate Amendment (with title amendment)**

14 On page 22, line 1, through page 25, line 26, delete
15 those lines

16
17 and insert:

18 Section 10. Subsections (2), (7) and (10) and
19 paragraphs (c) of subsection (6) of section 489.131, Florida
20 Statutes, are amended to read:

21 489.131 Applicability.--

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

28 (6)

29 (c) Each local board or agency that licenses
30 contractors must transmit quarterly ~~monthly~~ to the board a
31 report of any disciplinary action taken against contractors

Bill No. CS for CS for SB 2336

Amendment No. ____

1 and of any administrative or disciplinary action taken against
2 unlicensed persons for engaging in the business or acting in
3 the capacity of a contractor including any cease and desist
4 orders issued pursuant to s. 489.113(2)(b) and any fine issued
5 pursuant to s. 489.127(5).

6 (7)(a) It is the policy of the state that the purpose
7 of regulation is to protect the public by attaining compliance
8 with the policies established in law. Fines and other
9 penalties are provided in order to ensure compliance; however,
10 the collection of fines and the imposition of penalties are
11 intended to be secondary to the primary goal of attaining
12 compliance with state laws and local jurisdiction ordinances.
13 It is the intent of the Legislature that a local jurisdiction
14 agency charged with enforcing regulatory laws shall issue a
15 notice of noncompliance as its first response to a minor
16 violation of a regulatory law in any instance in which it is
17 reasonable to assume that the violator was unaware of such a
18 law or unclear as to how to comply with it. A violation of a
19 regulatory law is a "minor violation" if it does not result in
20 economic or physical harm to a person or adversely affect the
21 public health, safety, or welfare or create a significant
22 threat of such harm. A "notice of noncompliance" is a
23 notification by the local jurisdiction agency charged with
24 enforcing the ordinance, which is issued to the licensee that
25 is subject to the ordinance. A notice of noncompliance should
26 not be accompanied with a fine or other disciplinary penalty.
27 It should identify the specific ordinance that is being
28 violated, provide information on how to comply with the
29 ordinance, and specify a reasonable time for the violator to
30 comply with the ordinance. Failure of a licensee to take
31 action correcting the violation within a set period of time

Bill No. CS for CS for SB 2336

Amendment No. ____

1 would then result in the institution of further disciplinary
2 proceedings.

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

18 (c) In addition to any action the local jurisdiction
19 enforcement body may take against the individual's local
20 license, and any fine the local jurisdiction may impose, the
21 local jurisdiction enforcement body shall issue a recommended
22 penalty for board action. This recommended penalty may
23 include a recommendation for no further action, or a
24 recommendation for suspension, revocation, or restriction of
25 the registration, or a fine to be levied by the board, or a
26 combination thereof. The local jurisdiction enforcement body
27 shall inform the disciplined contractor and the complainant of
28 the local license penalty imposed, the board penalty
29 recommended, his or her rights to appeal, and the consequences
30 should he or she decide not to appeal. The local jurisdiction
31 enforcement body shall, upon having reached adjudication or

Bill No. CS for CS for SB 2336

Amendment No. ____

1 having accepted a plea of nolo contendere, immediately inform
2 the board of its action and the recommended board penalty.

3 (d) The department, the disciplined contractor, or the
4 complainant may challenge the local jurisdiction enforcement
5 body's recommended penalty for board action to the
6 Construction Industry Licensing Board. A challenge shall be
7 filed within 60 days after the issuance of the recommended
8 penalty to the board. If challenged, there is a presumptive
9 finding of probable cause and the case may proceed without the
10 need for a probable cause hearing.

11 (e) Failure of the department, the disciplined
12 contractor, or the complainant to challenge the local
13 jurisdiction's recommended penalty within the time period set
14 forth in this subsection shall constitute a waiver of the
15 right to a hearing before the board. A waiver of the right to
16 a hearing before the board shall be deemed an admission of the
17 violation, and the penalty recommended shall become a final
18 order according to procedures developed by board rule without
19 further board action. The disciplined contractor may appeal
20 this board action to the district court.

21 (f)1. The department may investigate any complaint
22 which is made with the department. However, the department
23 may not initiate or pursue any if the department determines
24 that the complaint against a registered contractor who is not
25 also a certified contractor where a local jurisdiction
26 enforcement body has jurisdiction over the complaint, unless
27 summary procedures are initiated by the secretary pursuant to
28 s. 455.225(8), or unless the local jurisdiction enforcement
29 body has failed to investigate and prosecute a complaint, or
30 make a finding of no violation, within 6 months of receiving
31 the complaint. The department shall refer the complaint to the

Bill No. CS for CS for SB 2336

Amendment No. ____

1 local jurisdiction enforcement body for investigation, and if
2 appropriate, prosecution. However, the department may
3 investigate such complaints to the extent necessary to
4 determine whether summary procedures should be initiated ~~is~~
5 ~~for an action which a local jurisdiction enforcement body has~~
6 ~~investigated and reached adjudication or accepted a plea of~~
7 ~~nolo contendere, including a recommended penalty to the board,~~
8 ~~the department shall not initiate prosecution for that action,~~
9 ~~unless the secretary has initiated summary procedures pursuant~~
10 ~~to s. 455.225(8).~~

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

15 (g) Nothing in this subsection shall be construed to
16 allow local jurisdictions to exercise disciplinary authority
17 over certified contractors.

18 (10) No municipal or county government may issue any
19 certificate of competency or license for any contractor
20 defined in s. 489.105(3)(a)-(o) after July 1, 1993, unless
21 such local government exercises disciplinary control and
22 oversight over such locally licensed contractors, including
23 forwarding a recommended order in each action to the board as
24 provided in subsection (7). Each local board that licenses and
25 disciplines contractors must have at least two consumer
26 representatives on that board. If the board has seven or more
27 members, at least three of those members must be consumer
28 representatives. The consumer representative may be any
29 resident of the local jurisdiction that is not, and has never
30 been, a member or practitioner of a profession regulated by
31 the board or a member of any closely related profession.

Bill No. CS for CS for SB 2336

Amendment No. ____

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

6
7 (Redesignate subsequent sections.)

8
9
10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 On page 1, lines 28-31, delete those lines

13
14 and insert:

15 amending s. 489.131, F.S.; requiring that bids
16 for public projects be accompanied by certain
17 evidence; requiring local boards or agencies
18 that license contractors to transmit quarterly
19 reports; clarifying the department's authority
20 to initiate disciplinary actions; providing
21 that local boards that license and discipline
22 contractors must have at least 2 consumer
23 representatives; amending s. 469.001, F.S.;

24
25
26
27
28
29
30
31