

Amendment No. 05 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Ogles offered the following:

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Amendment (with title amendment)

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On page 15, between lines 15-16

14

15

and insert in lieu thereof:

16

Section 12. Effective October 1, 1998, paragraph (d) of subsection (1) of section 489.129, Florida Statutes, is amended and subsection (12) is added to that section to read:

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19

489.129 Disciplinary proceedings.--

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(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate, registration, or certificate of authority, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed \$5,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business 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 13. Effective October 1, 1998, subsections
29 (2), (7) and (10) and paragraphs (c) of subsection (6) of
30 section 489.131, Florida Statutes, are amended to read:

31 489.131 Applicability.--

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

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 14. 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.

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

19 And the title is amended as follows:

20 On page 1, line 26

21
 22 insert: "after requirement;"
 23 amending s. 489.129, F.S.; providing procedures
 24 and responsibilities when the department
 25 undertakes an investigation of a contractor;
 26 deleting a ground for disciplinary action;
 27 amending s. 489.131, F.S.; requiring that bids
 28 for public projects be accompanied by certain
 29 evidence; requiring local boards or agencies
 30 that license contractors to transmit quarterly
 31 reports; clarifying the department's authority

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1 to initiate disciplinary actions; providing
2 that local boards that license and discipline
3 contractors must have at least 2 consumer
4 representatives;
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