

Bill No. HB 4119, 1st Eng.

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 to amendment		
12	(974800):		
13			
14	Senate Amendment (with title amendment)		
15	On page 14, lines 16 and 17, delete those lines		
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		

Bill No. HB 4119, 1st Eng.

Amendment No. ____

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:

Bill No. HB 4119, 1st Eng.

Amendment No. ____

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

Bill No. HB 4119, 1st Eng.

Amendment No. ____

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

Bill No. HB 4119, 1st Eng.

Amendment No. ____

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.

Bill No. HB 4119, 1st Eng.

Amendment No. ____

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

Bill No. HB 4119, 1st Eng.

Amendment No. ____

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.

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

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

19
 20
 21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 15, line 16, after the semicolon

24
 25 insert:

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

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 evidence; requiring local boards or agencies
2 that license contractors to transmit quarterly
3 reports; clarifying the department's authority
4 to initiate disciplinary actions; providing
5 that local boards that license and discipline
6 contractors must have at least 2 consumer
7 representatives;
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31