

Bill No. HB 4439, 1st Eng.

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Clary moved the following amendment to amendment		
12	(902392):		
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14	Senate Amendment (with title amendment)		
15	On page 14, line 7, through		
16	page 17, line 31, delete those lines		
17			
18	and insert:		
19	Section 10. Subsections (2), (7) and (10) and		
20	paragraphs (c) of subsection (6) of section 489.131, Florida		
21	Statutes, are amended to read:		
22	489.131 Applicability.--		
23	(2) The state or any county or municipality shall		
24	require that bids submitted for construction, improvement,		
25	remodeling, or repair <u>on</u> of public <u>projects</u> buildings be		
26	accompanied by evidence that the bidder holds an appropriate		
27	certificate or registration, unless the work to be performed		
28	is exempt under s. 489.103.		
29	(6)		
30	(c) Each local board or agency that licenses		
31	contractors must transmit <u>quarterly</u> monthly to the board a		

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

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

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1 action correcting the violation within a set period of time
2 would then result in the institution of further disciplinary
3 proceedings.

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

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

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1 enforcement body shall, upon having reached adjudication or
2 having accepted a plea of nolo contendere, immediately inform
3 the board of its action and the recommended board penalty.

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

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

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

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

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

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

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

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1 the board or a member of any closely related profession.

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

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8 (Redesignate subsequent sections.)

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

12 And the title is amended as follows:

13 On page 107, lines 15-18, delete those lines

14

15 and insert:

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

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