

## SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

**SUBJECT:** Ordinance Amending Chapter 40, Part 2, Section 40.16, Seminole County Code, Providing for Contractor Licensing Boards in Accordance with State Statutes

**DEPARTMENT:** Planning and Development **DIVISION:** Building & Fire Inspection

**AUTHORIZED BY:** Donald S. Fisher **CONTACT:** Larry Goldman **EXT.** 7460  
Kent Cichon **EXT.** 7126

**Agenda Date** 11/26/02    **Regular** ☐    **Consent** ☐    **Work Session** ☐    **Briefing** ☐  
**Public Hearing – 1:30** ☐                      **Public Hearing – 7:00** ☐

### **MOTION/RECOMMENDATION:**

The Board may:

1. Adopt Ordinance A amending Chapter 40, Part 2, Section 40.16, altering the composition of the board by reducing the current five (5) licensed contractor members to three (3) licensed contractor members, and creating two (2) consumer representatives; or
2. Adopt Ordinance B amending Chapter 40, Part 2, Section 40.16, altering the composition of the board by reducing the current five (5) licensed contractor members to four (4) licensed contractor members, and creating three (3) consumer representatives; or
3. Continue until a date certain.

### **BACKGROUND:**

Chapter 40, Part 2, Section 40.16 of the Seminole County Code provides the framework for the County's Contractor Licensing Boards. This section currently states, "The following boards, each to be composed of five (5) licensed contractor members appointed by the Board of County Commissioners for terms of one year each and until their successors are appointed and qualified, are hereby established." This provision is not in compliance with Section 489.131(10), Florida Statutes which reads, "Each local board that licenses and disciplines contractors must have at least two consumer representatives on that board. If the board has seven or more members, at least three of those members must be consumer representatives."

Reviewed by:	<u>KEC</u>
Co Atty:	<u>KEC</u>
DFS:	<u>                    </u>
Other:	<u>                    </u>
DCM:	<u>                    </u>
CM:	<u>                    </u>
File No. <u>ph130pdb01</u>	

Two (2) Ordinances (Option A and Option B) are attached to this memorandum:

Option A alters the composition of the board by reducing the current five (5) licensed contractor members to three (3) licensed contractor members, and creating two (2) consumer representatives;

Option B alters the composition of the board by reducing the current five (5) licensed contractor members to four (4) licensed contractor members, and creating three (3) consumer representatives.

Each option also includes provisions for increasing the term of Board members and representatives from the current one (1) year term to staggered two (2) year terms; and requiring that meetings with a five (5) member board shall only be held if two (2) or more licensed contractor members are present or meetings with a seven (7) member board shall only be held if three (3) or more licensed contractor members are present.

**STAFF RECOMMENDS:**

The Board adopt either Ordinance A or B amending Chapter 40, Part 2, Section 40.16, as attached.

Attachments: Florida State Statute 489.131(10)  
Ordinance (Option A) Amending Chapter 40, Part 2, Section 40.16  
Ordinance (Option B) Amending Chapter 40, Part 2, Section 40.16

er's statewide license.

shall be construed to waive any claim, demand or resolution existing in and to the ward of county commission and no further work required to be performed.

3 to issue building or other  
issuing a permit, ascertain  
is certified or is registered  
uction is to take place.  
r county may require the  
pursuant to this part to  
thin the scope of such co

acting in the territorial area  
registered with the board.

agency that licenses contractors shall report to the board a report of any action taken against contractors and any action taken against any contractor including any criminal action pursuant to s. 489.13(2)(b) and s. 489.127(5).

state that the purpose of the ordinance is to be achieved by attaining compliance with state laws and regulations. Fines are imposed in order to ensure compliance with state laws and regulations. The intent of the ordinance is to be secondary to the purpose of the ordinance. The ordinance is not intended to be a notice of violation in which it is reasonable to expect that the violator was unaware of such violation. A violation of the ordinance is not a violation if it does not cause harm to a person's health, safety, or welfare. A "notice of violation" is a notice issued by the local jurisdiction regarding the ordinance, which is subject to the ordinance. The ordinance should not be accompanied by any penalty. It should identify the ordinance being violated, provide the violator with the ordinance, and allow the violator to comply with the ordinance. The ordinance should set a period of time within which the violator is to take action to comply with the ordinance. The ordinance should not be further disciplinary in nature.

body of a county or municipal body, is authorized in part as well as its local licensed or registered contractor in local jurisdiction enforcement disciplinary proceeding registered contractor and

may require restitution, impose a suspension or revocation of his or her local license, or a fine not to exceed \$5,000 or a combination thereof, against the locally licensed or registered contractor, according to ordinances which a local Jurisdiction may enact. In addition, the local Jurisdiction may assess reasonable investigative and legal costs for the prosecution of the violation against the violator, according to such ordinances as the local jurisdiction may enact.

(c) In addition to any action the local jurisdiction enforcement body may take against the individual's local license, and any fine the local jurisdiction may impose, the local jurisdiction enforcement body shall issue a recommended penalty for board action. This recommended penalty may include a recommendation for no further action, or a, recommendation for suspension, revocation, or restriction of the registration, or a fine to be levied by the board, or a combination thereof. The local jurisdiction enforcement body shall inform the disciplined contractor and the complainant of the local license penalty imposed, the board penalty recommended, his or her rights to appeal, and the consequences should he or she decide not to appeal. The local jurisdiction enforcement body shall, upon having reached adjudication or having accepted a Plea of nolo contendere, immediately inform the board of its action and the recommended board penalty.

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

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

(f) The department may investigate any complaint which is made with the department. However, the department may not initiate or pursue any complaint against a registered contractor who is not also a certified body. A contractor where a local jurisdiction enforcement body has jurisdiction over the complaint, unless summary Procedures are initiated by the secretary pursuant to s. 455.225(8), or unless the local jurisdiction enforcement body has failed to investigate and prosecute a complaint, or make a finding of no violation, within 6 months of receiving the complaint. The department shall refer the complaint to the local jurisdiction enforcement body for investigation, and if appropriate, prosecution. However, the department may investigate such complaints to the extent necessary to determine whether summary Procedures should be initiated.

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

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

(8) A local enforcement board may petition the ~~sec-~~  
retary of the department for issuance of a summary  
order against a certificateholder or registrant for any  
violation of this part.

(9) The right to create local boards in the future by any municipality or county is preserved.

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

(11) Any municipal or county government which enters or has in place a reciprocal agreement which accepts a certificate of competency or license issued by another municipal or county government in lieu of ~~its~~ own certificate of competency or license allowing contractors defined in s. 489.105(3)(a)-(o), shall file a ~~certified~~ copy of such agreement with the board not later than 60 days after July 1, 1993, or 30 days ~~after~~ the effective date of such agreement.

(12) Unless specifically provided, the provisions of this part shall not be construed to create a civil cause of action.

**History.**—ss. 10, 17, ch. 79-200; s. 372, ch. 81-259; ss. 2, 3, ch. 81-318; s. 1, ch. 87-152; ss. 15, 20, 21, ch. 88-156; s. 30, ch. 89-289; ss. 32, 49-374; s. 40, ch. 91-137; s. 4, ch. 91-429; s. 8, ch. 92-55; ss. 64, 70, ch. 95-189; s. 19, ch. 93-166; s. 265, ch. 94-119; s. 4, ch. 95-240; s. 10, ch. 96-298; s. 73, ch. 96-388; s. 51, ch. 97-98; s. 1130, ch. 97-103; s. 13, ch. 97-223; s. 24, ch. 98-287; s. 10, ch. 98-419; s. 125, ch. 2000-141; s. 38, ch. 2000-154; s. 35, ch. 2001-186.

489.132 Prohibited acts by unlicensed principals;  
investigation; hearing; penalties.-

(1) No uncertified or unregistered person associated with a contracting firm qualified by the licensee under this chapter shall:

(a) Conceal or cause to be concealed, or **assist in** concealing, from the primary qualifying agent, **any** material activities or information about the **contracting** firm;

(b) Exclude or facilitate the exclusion of any **aspect** of the contracting firm's financial or other **business** activities from the primary qualifying agent;

(c) Knowingly cause any part of the **contracting** firm's activities, financial or otherwise, to be **conducted** without the primary qualifying agent's supervision; or

Option A

ORDINANCE NO. 2002 - \_\_\_\_\_

SEMINOLE COUNTY, FLORIDA

AN ORDINANCE AMENDING CHAPTER 40, SEMINOLE COUNTY CODE; PROVIDING FOR THE ADDITION OF CONSUMER REPRESENTATIVES TO THE SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR STAGGERED TERMS OF THE MEMBERS OF THE SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 489.131(10), Florida Statutes requires the appointment of consumer representatives to the various contractor licensing boards of Seminole County; and

WHEREAS, the Board of County Commissioners deem it necessary to stagger the terms of members of the various Seminole County contractor licensing boards so that newly appointed members will serve with more experienced members and therefore efficient functioning of these boards will be promoted;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

SECTION 1. Amendment to Section 40.16, Seminole County Code.

Section 40.16, Seminole County Code, is hereby amended to read as follows:

Sec. 40.16 Generally.

(a) The following boards, ~~each to be composed of five (5) licensed contractor members appointed by the Board of County~~

~~Commissioners for terms of one year each and until their successors are appointed and qualified,~~ are hereby established:

(1) The board of building contractor examiners, which shall perform all functions delegated herein to a board which relate to building contractors or to any of the provisions of Part 4.

(2) The board of electrical examiners, which shall perform all functions delegated herein to a board which relate to electrical contractors or to master, journeymen, maintenance or apprentice electricians or to any of the provisions of Part 5.

(3) The board of examiners of mechanical contractors, which shall perform all functions delegated herein to which relate to mechanical contractors or to any of the provisions of Part 6.

(4) The board of examiners of plumbers, which shall perform all functions delegated herein to a board which relate to plumbing contractors or master, journeymen, maintenance or apprentice plumbers or to any of the provisions of Part 8.

(5) The board of examiners of swimming pool contractors, which shall perform all functions delegated herein to a board which related to swimming pool contractors or to any of the provisions of Part 9.

(6) The board of well drilling and pump installation or repair contractor examiners, which shall perform all functions delegated herein to a board which relate to pump installers or well drillers, pump installation or repair contractors or to any of the provisions of Part 10.

(b) Each board shall be composed of three (3) licensed contractor members and two (2) consumer representatives, all appointed by the Board of County Commissioners. Each member shall serve on their board for a term of two (2) years. Notwithstanding the foregoing, two (2) members of each board who are appointed to serve a membership term commencing on January 1, 2003 shall serve a one (1) year term during that appointment.

(c) The quorum of each of the above referenced boards must include at least two (2) licensed contractor members.

(ed) An individual may serve concurrently on more than one of ~~such~~ the above-named boards.

(be) ~~The provisions of subsection (a) notwithstanding, the~~ building official or his designee shall be an ex officio, nonvoting member of all ~~such~~ of the above-named boards.

(ef) The members of the above-referenced boards ~~created herein~~ shall receive no salaries for their services, but may receive travel and other expenses in accordance with the provisions of Section 112.061, Florida Statutes, as amended, when they are on official business outside the county, if funds

are available for this purpose and such expenses are approved by the Board of County Commissioners.

(dg) Each member of ~~such~~ the above-referenced boards shall, before entering upon the discharge of his/her duties of office, prepare and file with the county clerk an oath in writing to perform properly the duties of the office as a member of the board and to uphold the laws of the County, the constitution and laws of the State, and the constitution and laws of the United States.

(eh) Any member of the above-referenced ~~such-a~~ boards may be removed from office for failure to hold or attend meetings of ~~said~~ their appointed board without just cause, or for any other cause, by a three-fifths vote of the Board of County Commissioners after a hearing by the Board of County Commissioners.

(fi) Any vacancy on one of the above-referenced ~~such-a~~ boards occurring in an unexpired term shall be filled by the Board of County Commissioners for the remainder of the term within thirty (30) days after the vacancy occurs.

(gj) The membership of the boards as composed on the effective date of this Section shall continue in office until their current terms expire and a reappointment is made pursuant to this Section.

**SECTION 2. CODIFICATION.** It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Seminole County Code and the word "ordinance" may be changed to "section," "article," or other appropriate word or phase and the sections of this Ordinance may be renumbered or relettered to accomplish such intention; providing, however, that Sections 2, 3 and 4 shall not be codified.

**SECTION 3. SEVERABILITY.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall take effect upon filing a copy of this Ordinance with the Department of State by the Clerk of the Board of County Commissioners.

**ENACTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

By: \_\_\_\_\_  
DARYL G. MCLAIN, Chairman



OPTION B

ORDINANCE NO. 2002 - \_\_\_\_\_

SEMINOLE COUNTY, FLORIDA

AN ORDINANCE AMENDING CHAPTER 40, SEMINOLE COUNTY CODE; PROVIDING FOR THE ADDITION OF CONSUMER REPRESENTATIVES TO THE SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR STAGGERED TERMS OF THE MEMBERS OF THE SEMINOLE COUNTY CONTRACTOR LICENSING BOARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 489.131(10), Florida Statutes requires the appointment of consumer representatives to the various contractor licensing boards of Seminole County; and

WHEREAS, the Board of County Commissioners deem it necessary to stagger the terms of members of the various --- Seminole County contractor licensing boards so that newly appointed members will serve with more experienced members and therefore efficient functioning of these boards will be promoted;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

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Section 40.16, Seminole County Code, is hereby amended to read as follows:

Sec. 40.16 Generally.

(a) The following boards, ~~each to be composed of five (5) licensed contractor members appointed by the Board of County~~

~~Commissioners for terms of one year each and until their successors are appointed and qualified,~~ are hereby established:

(1) The board of building contractor examiners, which shall perform all functions delegated herein to a board which relate to building contractors or to any of the provisions of Part 4.

(2) The board of electrical examiners, which shall perform all functions delegated herein to a board which relate to electrical contractors or to master, journeymen, maintenance or apprentice electricians or to any of the provisions of Part 5.

(3) The board of examiners of mechanical contractors, which shall perform all functions delegated herein to which relate to mechanical contractors or to any of the provisions of Part 6.

(4) The board of examiners of plumbers, which shall perform all functions delegated herein to a board which relate to plumbing contractors or master, journeymen, maintenance or apprentice plumbers or to any of the provisions of Part 8.

(5) The board of examiners of swimming pool contractors, which shall perform all functions delegated herein to a board which related to swimming pool contractors or to any of the provisions of Part 9.

(6) The board of well drilling and pump installation or repair contractor examiners, which shall perform all functions delegated herein to a board which relate to pump installers or well drillers, pump installation or repair contractors or to any of the provisions of Part 10.

(b) Each board shall be composed of four (4) licensed contractor members and three (3) consumer representatives, all appointed by the Board of County Commissioners. Each member shall serve on their board for a term of two (2) years. Notwithstanding the foregoing, three (3) members of each board who are appointed to serve a membership term commencing on  
---January 1, 2003 shall serve a one (1) year term during that appointment.

(c) The quorum of each of the above-referenced boards must include at least three (3) licensed contractor members.

(d) An individual may serve concurrently on more than one of ~~such~~ the above-named boards.

(~~be~~) ~~The provisions of subsection (a) notwithstanding, the~~  
... building official or his designee shall be an ex officio,  
... nonvoting member of all ~~such~~ of the above-named boards.

(~~ef~~) The members of the above-referenced boards ~~created~~  
... ~~herein~~ shall receive no salaries for their services, but may  
... receive travel and other expenses in accordance with the  
provisions of Section 112.061, Florida Statutes, as amended,

when they are on official business outside the county, if funds are available for this purpose and such expenses are approved by the Board of County Commissioners.

(~~dg~~) Each member of ~~such~~ the above-referenced boards shall, before entering upon the discharge of his/her duties of office, prepare and file with the county clerk an oath in writing to perform properly the duties of the office as a member of the board and to uphold the laws of the County, the constitution and laws of the State, and the constitution and laws of the United States.

(~~eh~~) Any member of the above-referenced ~~such-a~~ boards may ---be removed from office for failure to hold or attend meetings of ~~said~~ their appointed board without just cause, or for any other cause, by a three-fifths vote of the Board of County Commissioners after a hearing by the Board of County Commissioners.

(~~fi~~) Any vacancy on one of the above-referenced ~~such-a~~ boards occurring in an unexpired term shall be filled by the Board of County Commissioners for the remainder of the term within thirty (30) days after the vacancy occurs.

(~~gj~~) The membership of the boards as composed on the effective date of this Section shall continue in office until their current terms expire and a reappointment is made pursuant to this Section.

**SECTION 2. CODIFICATION.** It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Seminole County Code and the word "ordinance" may be changed to "section," "article," or other appropriate word or phase and the sections of this Ordinance may be renumbered or relettered to accomplish such intention; providing, however, that Sections 2, 3 and 4 shall not be codified.

**SECTION 3. SEVERABILITY.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners --- that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall take effect upon filing a copy of this Ordinance with the Department of State by the Clerk of the Board of County Commissioners.

**ENACTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

By: \_\_\_\_\_  
DARYL G. MCLAIN, Chairman