

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2132

SPONSOR: Senator Argenziano

SUBJECT: Construction Industry Recovery Fund

DATE: April 2, 2004

REVISED: 04/13/04

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/1 amendment</u>
3.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill renames the Construction Industries Recovery Fund as the “Florida Homeowners’ Recovery Fund.” The bill limits the persons eligible to receive payments from the recovery fund to persons who have incurred damages resulting from certain violations of ch. 489, F.S., by licensed general contractors, building contractors, and residential contractors. For contracts entered into after July 1, 2004, the bill increases the cap for individual claims from \$25,000 to \$50,000. Beginning on January 1, 2005, for contracts entered into after July 1, 2004, the bill increases the aggregate amount that may be paid as a result of the actions of any one contractor from \$250,000 to \$500,000 and removes the annual limit on claims against any one contractor.

The bill clarifies the statute of limitation provisions for filing claims, allows recovery for criminal judgments and arbitration awards, creates additional administrative procedures, establishes felony and fine provisions for fraudulent claims, and requires permit fee information relating to the one half cent assessment to be reported by local building permit authorities. The bill specifies that the Construction Industry Licensing Board may by rule delegate authority to the Department of Business and Professional Regulation to terminate proceedings on a claim when: a claimant is not qualified to make a claim for recovery from the recovery fund; after notice the claimant has failed to provide documentation in support of the claim; or the licensee has reached the aggregate limit.

The bill provides that the money transferred to the recovery fund shall not be subject to any limitation imposed by an appropriation act of the Legislature.

This bill substantially amends the following sections of the Florida Statutes: 489.140, 489.141, 489.142, 489.1425, 489.143, 489.144, 489.13, 489.131, and 468.631. The bill creates sections 489.1401, F.S. and 489.1402, Florida Statutes.

II. Present Situation:

Part I of ch. 489, F.S., provides for the regulation of contractors by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (department). Contractors are subdivided into two divisions, Division I, consisting of general, building and residential contractors, and Division II consisting of sheet metal, roofing, air-conditioning, mechanical, commercial and residential pool and spa, swimming pool, plumbing, underground utility, solar, pollutant storage systems, and specialty contractors.¹

To provide recourse for consumers who suffer monetary damages because of improper actions by Division I and Division II contractors licensed under part I of ch. 489, F.S. Section 489.140, F.S., creates the Construction Industries Recovery Fund as a separate account within the Professional Regulation Trust Fund. The recovery fund is funded through a one-half cent surcharge per square foot paid by Division I contractors on building permits for under-roof construction on new construction, renovations, alteration, and additions. These funds are collected by local building departments and forwarded to the department on a quarterly basis pursuant to s. 468.631, F.S. After depositing funds required for the operation of the Florida Building Code Administrators and Inspectors Board (BCAIB) the balance is forwarded to the recovery fund. Any money remaining after the CIRF is sufficiently funded is applied to the costs of the regulation of contractors by the CILB.² If the CILB has any additional funds left over, these funds may also be transferred back to the recovery fund.³

An individual may make a claim under the fund if he or she has received a final judgment in a court of competent jurisdiction in this state in any action where the cause of action was based on a construction contract or the CILB has issued a final order directing the licensee to pay restitution to the claimant based on a violation s. 489.129(g), (j) or (k), F.S. These violations encompass issues involving:

- financial mismanagement that causes financial harm to a customer;
- abandonment of a project; and
- signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made to all subcontracted work, labor and materials that result in a financial loss to the owner, purchaser or contractor; or falsely indicating that workers compensation and public liability insurance are provided.

In addition, the person must have either caused to be issued a writ of execution or made a diligent attempt to collect the judgment.⁴ Disqualifying factors include claims made by spouses, contracts with contractors who do not have a valid and current license, having business associations with the contractor, and making improper payments to a contractor as defined in part I of ch. 713, F.S.⁵

¹ Section 489.105(3), F.S.

² Section 468.631, F.S.

³ In FY 02-03 \$1,774,948 was transferred from BCAIB and \$1,200,000 was transferred from CILB; for FY 01-02 \$1,592,434 was transferred from BCAIB. The spending authority for \$1.2 million was appropriated for FY 01-02; for FY 02-03 \$3.9 million; for FY 03-04 \$4 million; and for FY 05-06 \$4 million is recommended.

⁴ Section 489.141(1)(a)1.a., F.S.

⁵ Section 489.141, F.S.

Individual claims to the recovery fund are limited to \$25,000 and the aggregate amount for claims against one contractor is \$250,000. Claims that may be paid as the result of the conduct of a contractor are subject to an annual cap of \$100,000. A contractor's license is automatically suspended upon payment from the recovery fund.⁶

According to the department, the recovery fund has been criticized as difficult to navigate and unresponsive to those who have sustained the greatest financial losses. Processing delays result from the volume of claims and the procedural requirements of the recovery fund. Criminal judgments against licensed contractors that contain restitution orders for victims are not eligible for recovery. The surcharge forwarded by some local jurisdictions to fund the BCAIB and the recovery fund is inconsistent and currently not required to have any supporting documentation or attestation.

III. Effect of Proposed Changes:

Florida Homeowners' Construction Recovery Fund

The bill renames the Construction Industries Recovery Fund as the "Florida Homeowners' Construction Recovery Fund." The bill limits the persons eligible to receive payments from the recovery fund to persons who have incurred damages resulting from certain violations of ch. 489, F.S., by licensed general contractors, building contractors, and residential contractors. Persons who incur damages as the result of violations of ch. 489, F.S., by Division II licensed contractors are no longer eligible to make claims against the recovery fund.

Definitions

The bill provides definitions for "arbitration," "board," "claimant," "court of competent jurisdiction," "notice," "recovery fund," and "same transaction." It provides that a "homeowner" is defined as the owner of an owner-occupied residence and that it includes a trustee based upon a trust instrument granting a person a beneficial life interest in the residence. A "licensee" is defined as a contractor, financially responsible officer, or business organization licensed under part I of ch. 489, F.S. at the time the violation was committed. A valid and current license includes an active, inactive, delinquent, or suspended license. "Residence" is defined as:

an individual residential condominium or cooperative unit or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.

Claim Payments

For construction contracts entered into after July 1, 2004, the bill increases the cap for individual claims from \$25,000 to \$50,000. Beginning on January 1, 2005, for contracts entered into after July 1, 2004, the bill increases the aggregate amount that may be paid as a result of the actions of any one contractor from \$250,000 to \$500,000 and removes the annual limit on claims against any one contractor. The bill clarifies that only actual damages may be paid from the fund. The

⁶ Section 489.143, F.S.

bill excludes payment for post-judgment interest, attorney's fees, court costs, medical and punitive damages.

Eligible Claims

The fund will remain the last resort for injured consumers. However, the bill provides that the board is authorized to waive the judgment requirement when there are complications arising from the death of the licensee or bankruptcy. In addition to civil judgments and disciplinary final order, claims could also be based on criminal judgments and arbitrations awards. Claims would be allowed where the contractor is convicted of violating s. 713.35, F.S., for making a false statement regarding construction payment.

Statute of Limitations

The bill amends the statute of limitations for filing claims by requiring a claim to be filed within one year after the conclusion of any civil, criminal, administrative action, or award in arbitration. The bill specifies that the CILB may by rule delegate authority to the Department of Business and Professional Regulation (department) to terminate proceedings on a claim when: a claimant is not qualified to make a claim for recovery from the recovery fund; after notice the claimant has failed to provide documentation in support of the claim; or the licensee has reached the aggregate limit.

Criminal Penalties

The bill makes it a third degree felony⁷ and includes a fine not exceeding \$30,000 for persons or entities that conspire to present false or fraudulent claims to the fund. However, if the value of the fraud exceeds \$30,000, the fine may not exceed double the value of the fraud.

Funding the Recovery Fund

The unit of government responsible for collecting the permit fees is required to provide to the department a quarterly report to reflect the total number of permits for under-roof floor space, the square footage for those permits, and the calculation of the amount of funds being remitted to the department. The official in charge of collecting the permit fees is required to attest the report.

Appropriation Limitation

The bill provides that the money transferred to the recovery fund shall not be subject to any limitation imposed by an appropriations act of the Legislature. The intent or the limitations to which this provision is designed to apply is unclear.

Effective Date

The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷ Punishable as provided in s. 775.082, F.S. or s. 775.084, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides that the money transferred to the recovery fund shall not be subject to any limitation imposed by an appropriations act of the Legislature. The intent or the limitations to which this provision is designed to apply is unclear. Accordingly, committee staff is unable to determine whether the provision at issue violates the Legislature's constitutional authority to make appropriations.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

According to the Department of Business and Professional Regulation, the existing fees and disbursements will be processed through the renamed Florida Homeowners Construction Recovery Fund within the Professional Regulation Trust Fund.

B. Private Sector Impact:

Individuals who have civil judgments against Division II contractors or have a final order from the Construction Industry Licensing Board against Division II contractors will no longer be able to collect from the fund. Individuals with claims resulting from misconduct of Division I contractors will be eligible for increased payments from the recovery fund.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

Page 4, lines 9-11, of the bill state, "It is the intent of the Legislature that Division I contractors set apart funds for the specific objective of participating in the fund." The bill, however, does not contain any requirements for Division I contractors to set apart funds. The intent of the provision may mean that the moneys in the Florida Homeowners' Construction Recovery Fund should be used to pay claims resulting from damages caused by Division I Contractors.

Page 5, lines 24-26, of the bill state, "The following definitions apply to claims made prior to July 1, 2007, *when the contract was executed* and the violation occurred before January 1, 2005." The phrase "when the contract was executed" appears to be unnecessary and makes the provision confusing. That phrase probably should be deleted.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:

Deletes a provision that would have exempted amounts transferred to the Florida Homeowners' Recovery Fund from limitations imposed by an appropriations act.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
