

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: March 17, 2004 REVISED: 3/23/04 _____

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

I. Summary:

The bill changes the name of the Construction Industries Recovery Fund to the “Florida Homeowners' Recovery Fund.” The bill authorizes claims filed against Division I contractors and removes the authority to file a claim against Division II contractors. The bill increases the caps for individual claims from \$25,000 to \$50,000 and the aggregate amount that may be paid as a result of the actions of any one contractor from \$250,000 to \$500,000. The bill removes the current 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 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.

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.

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. 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., s. 489.140, F.S., creates the Construction Industries Recovery Fund (CIRF) as a separate account within the Professional Regulation Trust Fund. The CIRF 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 CIRF. 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 CIRF.³

An individual may make a claim under the fund if they have 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., where the contract was executed and the violation that is the basis for a claim occurred on or after July 1, 1993. 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 results 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.

Individual claims to the CIRF are limited to \$25,000 and the aggregate amount for claims against one contractor is \$250,000. There is an annual cap on claims per contractor of \$100,000. A contractor's license is automatically suspended upon payment from the CIRF to a claimant and not reinstated until the CIRF has been repaid.⁶

According to the department, the 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 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 CIRF is inconsistent and currently not required to have any supporting documentation or attestation.

III. Effect of Proposed Changes:

The bill changes the name of the fund to the "Florida Homeowners' Construction Recovery Fund." It limits access to the fund to victims of Division I licensed contractors, who are injured during home construction and improvement and eliminates access to victims of Division II licensed contractors.

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 interest in life 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.

The bill increases the caps for individual claims from \$25,000 to \$50,000 and the aggregate limit of claims against each contractor increases from \$250,000 to \$500,000. The annual limit of \$100,000 per contractor is deleted.

The fund would remain the last resort for injured consumers. However, the bill provides that the board would be 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.

⁵ Section 489.141, F.S.

⁶ Section 489.143, F.S.

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 DBPR 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 clarifies that only actual damages may be paid from the fund. The bill excludes payment for post-judgment interest, attorney's fees, court costs, medical and punitive damages. The bill creates 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.

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.

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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

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

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

B. Private Sector Impact:

Individuals who have civil judgments against Division II contractors or have a final order from the CILB against Division II contractors will no longer be able to collect from the fund.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.