

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee
 3 Representative Eagle offered the following:

Amendment (with title amendment)

Between lines 38 and 39, insert:

Section 1. Subsections (2) and (3) of section 489.1401,
 Florida Statutes, are amended to read:

489.1401 Legislative intent.—

(2) It is the intent of the Legislature that the sole
 purpose of the Florida Homeowners' Construction Recovery Fund is
 to compensate an ~~any~~ aggrieved claimant who contracted for the
 construction or improvement of the homeowner's residence located
 within this state and who has obtained a final judgment in a ~~any~~
 court of competent jurisdiction, was awarded restitution by the
 Construction Industry Licensing Board, or received an award in
 arbitration against a licensee on grounds of financial

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18 mismanagement or misconduct, abandoning a construction project,
19 or making a false statement with respect to a project. Such
20 grievance must arise ~~and arising~~ directly out of a any
21 transaction conducted when the judgment debtor was licensed and
22 must involve an act performed ~~any of the activities~~ enumerated
23 under s. 489.129(1)(g), (j) or (k) ~~on the homeowner's residence~~.

24 (3) It is the intent of the Legislature that Division I
25 and Division II contractors set apart funds for the specific
26 objective of participating in the fund.

27 Section 2. Paragraphs (d), (i), (k), and (l) of subsection
28 (1) of section 489.1402, Florida Statutes, are amended to read:

29 489.1402 Homeowners' Construction Recovery Fund;
30 definitions.-

31 (1) The following definitions apply to ss. 489.140-
32 489.144:

33 (d) "Contractor" means a Division I or a Division II
34 contractor performing his or her respective services described
35 in s. 489.105(3)(a)-(q) ~~489.105(3)(a)-(e)~~.

36 (i) "Residence" means a single-family residence, an
37 individual residential condominium or cooperative unit or a
38 residential building containing not more than two residential
39 units in which the owner contracting for the improvement is
40 residing or will reside 6 months or more each calendar year upon
41 completion of the improvement.

42 (k) "Same transaction" means a contract, or a any series
43 of contracts, between a claimant and a contractor or qualified

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44 business, when such contract or contracts involve the same
45 property or contiguous properties and are entered into either at
46 one time or serially.

47 (1) "Valid and current license," for the purpose of s.
48 489.141(2)(d), means a ~~any~~ license issued pursuant to this part
49 to a licensee, including a license in an active, inactive,
50 delinquent, or suspended status.

51 Section 3. Subsections (1) and (2) of section 489.141,
52 Florida Statutes, are amended to read:

53 489.141 Conditions for recovery; eligibility.-

54 (1) A ~~Any~~ claimant is eligible to seek recovery from the
55 recovery fund after making ~~having made~~ a claim and exhausting
56 the limits of any available bond, cash bond, surety, guarantee,
57 warranty, letter of credit, or policy of insurance, if provided
58 ~~that~~ each of the following conditions is satisfied:

59 (a) The claimant has received a final judgment in a court
60 of competent jurisdiction in this state or has received an award
61 in arbitration or the Construction Industry Licensing Board has
62 issued a final order directing the licensee to pay restitution
63 to the claimant. The board may waive this requirement if:

64 1. The claimant is unable to secure a final judgment
65 against the licensee due to the death of the licensee; or

66 2. The claimant has sought to have assets involving the
67 transaction that gave rise to the claim removed from the
68 bankruptcy proceedings so that the matter might be heard in a
69 court of competent jurisdiction in this state and, after due

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70 diligence, the claimant is precluded by action of the bankruptcy
71 court from securing a final judgment against the licensee.

72 (b) The judgment, award, or restitution is based upon a
73 violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

74 (c) The violation was committed by a licensee.

75 (d) The judgment, award, or restitution order specifies
76 the actual damages suffered as a consequence of such violation.

77 (e) The contract was executed and the violation occurred
78 on or after July 1, 1993, and provided that:

79 1. The claimant has caused to be issued a writ of
80 execution upon such judgment, and the officer executing the writ
81 has made a return showing that no personal or real property of
82 the judgment debtor or licensee liable to be levied upon in
83 satisfaction of the judgment can be found or that the amount
84 realized on the sale of the judgment debtor's or licensee's
85 property pursuant to such execution was insufficient to satisfy
86 the judgment;

87 2. If the claimant is unable to comply with subparagraph
88 1. for a valid reason to be determined by the board, the
89 claimant has made all reasonable searches and inquiries to
90 ascertain whether the judgment debtor or licensee is possessed
91 of real or personal property or other assets subject to being
92 sold or applied in satisfaction of the judgment and by his or
93 her search has discovered no property or assets or has
94 discovered property and assets and has taken all necessary
95 action and proceedings for the application thereof to the

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96 judgment but the amount thereby realized was insufficient to
97 satisfy the judgment; and

98 3. The claimant has made a diligent attempt, as defined by
99 board rule, to collect the restitution awarded by the board.

100 (f) A claim for recovery is made within 1 year after the
101 conclusion of any civil, criminal, or administrative action or
102 award in arbitration based on the act. This paragraph applies to
103 any claim filed with the board after October 1, 1998.

104 (g) Any amounts recovered by the claimant from the
105 judgment debtor or licensee, or from any other source, have been
106 applied to the damages awarded by the court or the amount of
107 restitution ordered by the board.

108 (h) The claimant is not a person who is precluded by this
109 act from making a claim for recovery.

110 (2) A claimant is not qualified to make a claim for
111 recovery from the recovery fund, if:

112 (a) The claimant is the spouse of the judgment debtor or
113 licensee or a personal representative of such spouse;

114 (b) The claimant is a licensee who acted as the contractor
115 in the transaction that ~~which~~ is the subject of the claim;

116 (c) The claim is based upon a construction contract in
117 which the licensee was acting with respect to the property owned
118 or controlled by the licensee;

119 (d) The claim is based upon a construction contract in
120 which the contractor did not hold a valid and current license at
121 the time of the construction contract;

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122 (e) The claimant was associated in a business relationship
123 with the licensee other than the contract at issue;

124 ~~(f) The claimant has suffered damages as the result of~~
125 ~~making improper payments to a contractor as defined in part I of~~
126 ~~chapter 713; or~~

127 ~~(g)~~ The claimant has contracted with a licensee to perform
128 a scope of work described in s. 489.105(3) (d) ~~-(p)~~ (q) on
129 contracts entered into before July 1, 2015.

130 Section 4. Subsection (1) of section 489.1425, Florida
131 Statutes, is amended to read:

132 489.1425 Duty of contractor to notify residential property
133 owner of recovery fund.—

134 (1) Each ~~Any~~ agreement or contract for repair,
135 restoration, improvement, or construction to residential real
136 property must contain a written statement explaining the
137 consumer's rights under the recovery fund, except where the
138 value of all labor and materials does not exceed \$2,500. The
139 written statement must be substantially in the following form:

140 FLORIDA HOMEOWNERS' CONSTRUCTION
141 RECOVERY FUND

142 PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE
143 FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY
144 ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS
145 FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED
146 CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A

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147 CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD
148 AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

149 The statement must ~~shall~~ be immediately followed by the board's
150 address and telephone number as established by board rule.

151 Section 5. Section 489.143, Florida Statutes, is amended
152 to read:

153 489.143 Payment from the fund.—

154 (1) The fund shall be disbursed as provided in s. 489.141
155 on a final order of the board.

156 (2) A ~~Any~~ claimant who meets all of the conditions
157 prescribed in s. 489.141 may apply to the board to cause payment
158 to be made to a claimant from the recovery fund in an amount
159 equal to the judgment, award, or restitution order or \$25,000,
160 whichever is less, or an amount equal to the unsatisfied portion
161 of such person's judgment, award, or restitution order, but only
162 to the extent and amount of actual damages suffered by the
163 claimant, and only up to the maximum payment allowed for each
164 respective Division I and Division II claim. Payment from the
165 fund for other costs related to or pursuant to civil proceedings
166 such as postjudgment interest, attorney ~~attorney's~~ fees, court
167 costs, medical damages, and punitive damages is prohibited. The
168 recovery fund is not obligated to pay a ~~any~~ judgment, an award,
169 or a restitution order, or any portion thereof, which is not
170 expressly based on one of the grounds for recovery set forth in
171 s. 489.141.

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172 (3) Beginning January 1, 2005, for each Division I
173 contract entered into after July 1, 2004, payment from the
174 recovery fund shall be subject to a \$50,000 maximum payment for
175 each Division I claim. Beginning January 1, 2016, for each
176 Division II contract entered into on or after July 1, 2015,
177 payment from the recovery fund shall be subject to a \$15,000
178 maximum payment for each Division II claim.

179 (4)~~(3)~~ Upon receipt by a claimant under subsection (2) of
180 payment from the recovery fund, the claimant shall assign his or
181 her additional right, title, and interest in the judgment,
182 award, or restitution order, to the extent of such payment, to
183 the board, and thereupon the board shall be subrogated to the
184 right, title, and interest of the claimant; and any amount
185 subsequently recovered on the judgment, award, or restitution
186 order, to the extent of the right, title, and interest of the
187 board therein, shall be for the purpose of reimbursing the
188 recovery fund.

189 (5)~~(4)~~ Payments for claims arising out of the same
190 transaction shall be limited, in the aggregate, to the lesser of
191 the judgment, award, or restitution order or the maximum payment
192 allowed, for a Division I claim or a Division II claim,
193 regardless of the number of claimants involved in the
194 transaction.

195 (6)~~(5)~~ For contracts entered into before July 1, 2004,
196 payments ~~Payments~~ for claims against any one licensee may ~~shall~~
197 not exceed, in the aggregate, \$100,000 annually, up to a total

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198 aggregate of \$250,000. For any claim approved by the board which
199 is in excess of the annual cap, the amount in excess of \$100,000
200 up to the total aggregate cap of \$250,000 is eligible for
201 payment in the next and succeeding fiscal years, but only after
202 all claims for the then-current calendar year have been paid.
203 Payments may not exceed the aggregate annual or per claimant
204 limits under law. Beginning January 1, 2005, for each Division I
205 contract entered into after July 1, 2004, payment from the
206 recovery fund is subject only to a total aggregate cap of
207 \$500,000 for each Division I licensee. Beginning January 1,
208 2016, for each Division II contract entered into on or after
209 July 1, 2015, payment from the recovery fund is subject only to
210 a total aggregate cap of \$150,000 for each Division II licensee.

211 (7)(6) Claims shall be paid in the order filed, up to the
212 aggregate limits for each transaction and licensee and to the
213 limits of the amount appropriated to pay claims against the fund
214 ~~for the fiscal year in which the claims were filed.~~ Payments may
215 not exceed the total aggregate cap per license or per claimant
216 limits under this section.

217 (8)(7) If the annual appropriation is exhausted with
218 claims pending, such claims shall be carried forward to the next
219 fiscal year. Any moneys in excess of pending claims remaining in
220 the recovery fund at the end of the fiscal year shall be paid as
221 provided in s. 468.631.

222 (9)(8) Upon the payment of any amount from the recovery
223 fund in settlement of a claim in satisfaction of a judgment,

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224 award, or restitution order against a licensee as described in
225 s. 489.141, the license of such licensee shall be automatically
226 suspended, without further administrative action, upon the date
227 of payment from the fund. The license of such licensee may ~~shall~~
228 not be reinstated until he or she has repaid in full, plus
229 interest, the amount paid from the fund. A discharge of
230 bankruptcy does not relieve a person from the penalties and
231 disabilities provided in this section.

232 ~~(10)-(9)~~ A ~~Any~~ firm, a corporation, a partnership, or an
233 association, or a ~~any~~ person acting in his or her individual
234 capacity, who aids, abets, solicits, or conspires with another
235 ~~any~~ person to knowingly present or cause to be presented a ~~any~~
236 false or fraudulent claim for the payment of a loss under this
237 act is guilty of a third-degree felony, punishable as provided
238 in s. 775.082 or s. 775.084 and by a fine of up to ~~not exceeding~~
239 \$30,000~~7~~, unless the value of the fraud exceeds that amount,
240 ~~\$30,000~~ in which event the fine may not exceed double the value
241 of the fraud.

242 ~~(11)-(10)~~ Payments ~~All payments~~ and disbursements from the
243 recovery fund shall be made by the Chief Financial Officer upon
244 a voucher signed by the secretary of the department or the
245 secretary's designee.

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249 **T I T L E A M E N D M E N T**

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250 Between lines 2 and 3, insert:
251 489.1401, F.S.; providing legislative intent that Division II
252 contractors set apart funds for Florida Homeowners' Construction
253 Recovery Fund; amending s. 489.1402, F.S.; amending definitions
254 of "contractor" and "residence"; amending s. 489.141, F.S.;
255 providing that a claimant is not qualified to make a claim from
256 the Florida Homeowners' Construction Recovery Fund if the
257 claimant has contracted with a licensee to perform work before
258 July 1, 2015; amending s. 489.1425, F.S.; revising a statement
259 to notify residential property owners of the recovery fund
260 specifying that a payment from the fund will have a limit;
261 amending s. 489.143, F.S.; providing specifications of payments
262 from the Florida Homeowners' Construction Recovery Fund;
263 limiting claims for contracts entered into on specified dates;
264 amending s.