

STORAGE NAME: h4073.brc
DATE: March 20, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4073
RELATING TO: Construction Industries Recovery Fund
SPONSOR(S): Representative Wasserman-Schultz
COMPANION BILL(S): SB 1976(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION AND CONSUMER AFFAIRS
(2) GENERAL GOVERNMENT APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

This bill changes the maximum aggregate amount of payments which can be paid out of the Construction Industries Recovery Fund, on account of the actions of a single licensee, from \$100,000 to \$250,000. It also provides that if any claims for recovery from the recovery fund since January 1, 1998, were denied "in whole or in part due solely to the aggregate cap of \$100,000," the board is ordered to pay such claims up to the limit of \$250,000.

The Construction Industries Recovery Fund is established in s. 489.140, F.S., and is funded from a ½ cent per-square-foot surcharge on building permits, collected pursuant to s. 468.631, F.S. That section establishes the surcharge and provides that the department shall estimate the amount needed to "fund the certification and regulation of building code administrators, plans examiners, and inspectors," and deposit all funds "in excess of that amount" into the recovery fund.

The fund is administered by the Construction Industry Licensing Board (CILB). Section 489.141, F.S., sets forth the conditions for recovery from the fund. Those conditions include requiring the existence of a civil judgment or order of restitution, and a diligent attempt to collect same.

The total amount of dollars transferred into the Construction Industries Recovery Fund since its creation in 1993 is \$4,878,597. To date, claim cases which have been approved by the CILB through March, 1998, amount to \$2,416, 556.01. This leaves a current balance for future claim cases in the amount of \$2,462,040.99.

The first claimant cases were received in 1995. The CILB has received 620 cases thus far: 126 cases in 1995; 214 cases in 1996; 225 cases in 1997; and 55 cases so far in 1998.

One hundred seventy-nine (179) claims have been approved for payment; 321 cases are pending awaiting additional information (judgments, asset searches, etc.) or they are cases being reviewed. The difference of 120 cases were either denied "with" or "without" prejudice by the Board or they did meet the legal sufficiency of s. 489.141, F.S. Cases denied "without" prejudice can be submitted when additional documentation and/or judgments are obtained.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Construction Industries Recovery Fund is established in s. 489.140, F.S., and is funded from a ½ cent per-square-foot surcharge on building permits, pursuant to s. 468.631, F.S. That section establishes the surcharge and provides that the department shall estimate the amount needed to “fund the certification and regulation of building code administrators, plans examiners, and inspectors,” and deposit all funds “in excess of that amount” into the recovery fund.

The fund is administered by the Construction Industry Licensing Board (CILB). Section 489.141, F.S., sets forth the conditions for recovery from the fund. A person may apply to the CILB for payment, and may receive funds from the recovery fund if:

- 1) The applicant has either received a civil judgment from a court of competent jurisdiction against a licensed contractor, or received a restitution order from the CILB pursuant to a disciplinary case against a licensed contractor;
- 2) The claim for recovery is made within two years of the act which caused the harm (or two years from discovery of the act); and
- 3) The applicant has attempted to execute any court-ordered judgment and/or made a diligent attempt to collect any CILB-ordered restitution.

Section 489.141, F.S., also sets forth several conditions under which the applicant is NOT eligible to access the recovery fund, including not allowing the spouse or business partner of the judgment debtor to recover from the fund.

Section 489.143, F.S., limits the amount which may be paid out on account of any single licensee to \$100,000, and from any single transaction to \$25,000. Also, the fund does not pay any post-judgment interest, punitive damages, or attorneys fees.

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The first claimant cases were received in 1995. The CILB has received 620 cases thus far: 126 cases in 1995; 214 cases in 1996; 225 cases in 1997; and 55 cases so far in 1998.

One hundred seventy-nine (179) claims have been approved for payment; 321 cases are pending awaiting additional information (judgments, asset searches, etc.) or they are cases being reviewed. The difference of 120 cases were either denied "with" or "without" prejudice by the Board or they did meet the legal sufficiency of s. 489.141, F.S.

In January, 1998, the CILB heard a case against a contractor where the claim amounts were totaled at \$215,254 for 12 instances of consumer harm, but were “pro-rated” because of the \$100,000 cap. This would mean that the amounts awarded would be

approximately 50% of what would have been awarded if the cap did not exist, or existed at a greater-than-\$200,000 limit.

B. EFFECT OF PROPOSED CHANGES:

The bill raises the maximum limit which can be paid out of the Construction Industries Recovery Fund, on account of the actions of a single licensee, from \$100,000 to \$250,000. It also provides a retroactive effect of claims, back to January 1, 1998. Such retroactivity would apply to a January, 1998 case against a contractor where the claim amounts were totaled at \$215,254 for 12 instances of consumer harm, but were "pro-rated" because of the \$100,000 cap.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

Yes. It allows a claimant to access a greater amount from the Construction Industries Recovery Fund than is presently available against a single licensee.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 489.143, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 489.143, F.S., providing that the maximum amount that can be paid out by the CILB from the Construction Industries Recovery Fund for the actions of a single licensee shall be increased from \$100,000 to \$200,000.

Section 2. Provides that if any claims for recovery from the recovery fund since January 1, 1998, were denied "in whole or in part due solely to the aggregate cap of \$100,000," the board is ordered to pay such claims up to the limit of \$250,000.

Section 3. Provides that the bill shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments section.

2. Recurring Effects:

See Fiscal Comments section.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments section.

4. Total Revenues and Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Consumers involved in attempting to access the Construction Industries Recovery Fund who might have their claims reduced on account of the present \$100,000 aggregate limit against any one contractor will be less likely to have that figure reduced under a \$250,000 limit.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

It appears that the change will not have a significant fiscal impact upon the recovery fund. One hundred seventy-nine (179) claims have been paid from the Fund against 130 contractors. Of that number, only two contractors have met the cap of \$100,000. One was adjudicated by the board in January, 1998, and would require an additional pay-out of \$115, 000, and the other has no additional pending cases.

Looking toward the foreseeable future, there are four additional contractors who are at, or who will come close to, the \$100,000 cap. Of the four, one contractor could possibly exceed the \$100,000 if all submitted information is in order.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The immediate effect of the passage of this bill would be to reopen claims in a recent case heard by the CILB's Recovery Fund Committee and the CILB. The contractor had fifteen claims originally considered by the Board which ultimately acted on twelve (three claimants withdrew from consideration).

The twelve claims exceeded \$100,000. The attorney on behalf of the claimants filed for and was awarded a "blanket" civil judgment against the contractor. He also sent all claims to the Board office at the same time. The usual procedure is that homeowners exhaust all civil remedies, pursuant to s. 489.141, F.S., including filing for and receiving a civil judgment and then file claim against the Fund. Claims are then considered as received.

Because the claims were sent to the Board at the same time, all claims were considered at the same time. With the claims exceeding \$100,000, the Committee and the Board's Legal Counsel decided to "pro-rate" the \$100,000 across the twelve claims. The attorney for the claimants participated in the Committee's deliberations by conference call. He indicated on the record at the conclusion of the Committee's vote that he would seek an increase of the cap. The Board ratified the Committee's vote in General Session.

One hundred seventy-nine (179) claims have been paid from the Fund against 130 contractors. Of that number, only two contractors have met the cap of \$100,000. One is referenced above; the other has no additional pending cases.

There are four additional contractors who are at, or who will come close to, the \$100,000 cap. Of the four, one contractor could possibly exceed the \$100,000 if all submitted information is in order.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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