

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1169 Florida Construction Industries Recovery Fund  
**SPONSOR(S):** Representative Dean  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2132

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Trades, Professions, &amp; Reg. Business (Sub)</u>	<u>7 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>32 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
3) <u>Commerce &amp; Local Affairs App. (Sub)</u>	<u></u>	<u></u>	<u></u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Part I of chapter 489, F.S., provides for the regulation of construction contractors by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR). Division I construction contractors include general, building, and residential contractors. Division II contractors are made up of several categories of subcontractors, including roofing, plumbing, mechanical, sheet metal, air-conditioning, pool and spa, solar, pollutant storage systems, and underground utility contractors.

Consumers who suffer monetary damages because of improper actions by contractors have an avenue of recourse through the Construction Industries Recovery Fund (CIRF). The CIRF is funded through a one-half cent per square foot surcharge on building permits collected and distributed by local authorities through the Building Code Administrators and Inspectors Fund.

The bill changes the name of the Construction Industries Recovery Fund to the "Florida Homeowners' Recovery Fund." The bill limits access to recovery from the fund to persons who have been financially injured while contracting for home construction and improvement. 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 authorizes claims to be paid for Division I contractors and removes the authority to file a claim against Division II contractors. The one half cent surcharge that funds the operations of the Board of Building Code Administrators and Inspectors and the recovery fund remains the same.

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 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 specifies that the money transferred to the recovery fund shall not be subject to any limitation imposed by an appropriations act of the Legislature. The bill is not anticipated to have a significant fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1169c.br.doc  
**DATE:** March 30, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

Part I of chapter 489, F.S., provides for the regulation of construction contractors by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR). Construction contractors include general, building, and residential contractors, and several categories of subcontractors, including roofing, plumbing, mechanical, sheet metal, air-conditioning, pool and spa, solar, pollutant storage systems, and underground utility contractors.

To provide recourse for consumers who suffer monetary damages because of improper actions by contractors, 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 per square foot surcharge on building permits collected and distributed pursuant to s. 468.631, F.S., relating to the Building Code Administrators and Inspectors Fund.

Section 468.631, F.S., provides for the assessment of the surcharge by the appropriate local government, which may retain up to 10% of the money to fund projects intended to improve building code enforcement. Additional amounts are to be used to fund the regulation of building code administrators and inspectors by the Board of Building Code Administrators and Inspectors within the DBPR. After adequately funding this regulation, excess monies are transferred 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.

Section 489.141, F.S., provides that a person may recover from the CIRF based on a civil judgment against a contractor arising from a contract or based on a board order of restitution for a violation of part I of chapter 489, F.S., relating to building code violations, financial mismanagement, abandonment of a project, or certain false representations. The violation that is the basis for a claim must have occurred after July 1, 1993.

Section 489.143, F.S., provides the mechanism for and limitations on payment from the fund. Payments are capped at \$100,000 for a single claimant, or for a single transaction regardless of the number of claimants, and \$250,000 for multiple claims involving a single licensee. If claims pending against the fund exhaust the fund balance, the pending claims are carried over to the next fiscal year.

##### Effect of Proposed Changes

The bill changes the name of the fund to the "Florida Homeowners' Construction Recovery Fund" and access to the fund is limited to victims of Division I contractors who are injured during home construction and improvement.

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 annual limit of \$100,000 per contractor is repealed.

The bill authorizes claims to be paid for Division I contractors and removes the authority to file a claim against Division II contractors. The one half cent surcharge that funds the operations of the Board of Building Code Administrators and Inspectors and the recovery fund remains unchanged.

The CILB is authorized to waive the judgment requirement when there are complications arising from the death of the contractor or bankruptcy of the contractor. In addition to civil judgments and disciplinary final orders, claims are allowed to be based on criminal judgments and arbitration awards. Claims are also allowed when the contractor is convicted of making false statements regarding construction payment.

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 local agency responsible for collecting the permit fees is required to provide to the DBPR 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 DBPR. The official in charge of collecting the permit fees is required to sign the report.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 489.140, F.S., to change the name of the fund.

Section 2. Creates s. 489.1401, F.S., to specify legislative intent in relation to the operations of the fund.

Section 3. Creates s. 489.1402, F.S., to provide definitions.

Section 4. Amends s. 489.141, F.S., to specify conditions for recovery from the fund by an aggrieved consumer.

Section 5. Amends s. 489.142, F.S., to specify additional procedures for the conduct of hearings and service relating to filing claims for payment from the fund.

Section 6. Amends s. 489.1425, F.S., to correct references to the new name of the fund.

Section 7. Amends s. 489.143, F.S., to specify higher reimbursement caps on payments from the fund.

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

Section 8. Amends s. 489.144, F.S., to correct references.

Section 9. Amends s. 489.13, F.S., to correct a reference.

Section 10. Amends s. 489.131, F.S., to correct a reference.

Section 11. Amends s. 468.631, F.S., to require certain reporting by local governments.

Section 12. Effective date - July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

The DBPR states they anticipate the expected increase in disbursements for victims of Division I contractors would be substantially offset by the elimination of awards for the victims of Division II subcontractors, who do not contribute to the CIRF.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

### D. FISCAL COMMENTS:

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

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill requires the local agency responsible for collecting the permit fees provide to the DBPR 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 DBPR. The official in charge of collecting the permit fees is required to sign the report. As a result, the bill appears to constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution:

No county or municipality shall be bound by any general law requiring such County or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that

have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 ...the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature...

Article VII, Section 18(d) of the Florida Constitution, exempts laws having insignificant fiscal impacts from the requirements of the section. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents.

The bill does not provide an additional revenue source or an appropriation to fund compliance with its terms. However, under the bill's provisions the overall fiscal impact on counties and municipalities should be insignificant. As a result, the bill is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill authorizes the CILB to delegate to the DBPR rule authority to close any case when a claimant is not qualified to make a claim for recovery.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**