

By Senator Dean

5-01415-13

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1                   A bill to be entitled  
2           An act relating to the Homeowners' Construction  
3           Recovery Fund; amending s. 489.140, F.S.; revising the  
4           surcharge funding calculation; amending s. 489.1401,  
5           F.S.; requiring Division II contractors to participate  
6           in the fund; amending s. 489.1402, F.S.; revising  
7           definitions and removing obsolete definitions;  
8           amending s. 489.141, F.S.; revising the eligibility  
9           conditions for recovery; amending s. 489.1425, F.S.;  
10          revising the notice to residential property owners  
11          regarding recovery from the fund; amending s. 489.143,  
12          F.S.; revising the limits for payments for claims;  
13          providing limits for claims made for Division II  
14          claims; removing obsolete provisions; providing an  
15          effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19           Section 1. Section 489.140, Florida Statutes, is amended to  
20           read:

21           489.140 Florida Homeowners' Construction Recovery Fund.—  
22           There is created the Florida Homeowners' Construction Recovery  
23           Fund as a separate account in the Professional Regulation Trust  
24           Fund. The recovery fund is ~~shall be~~ funded out of the receipts  
25           deposited in the Professional Regulation Trust Fund from the  
26           ~~one-half cent per square foot~~ surcharge on building permits  
27           collected and disbursed pursuant to s. 468.631.

28           Section 2. Subsection (3) of section 489.1401, Florida  
29           Statutes, is amended to read:

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30 489.1401 Legislative intent.—

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

34 Section 3. Section 489.1402, Florida Statutes, is amended  
35 to read:

36 489.1402 Homeowners' Construction Recovery Fund;  
37 definitions.—

38 ~~(1)~~ The following definitions apply to ss. 489.140-489.144:

39 (1) ~~(a)~~ "Arbitration" means alternative dispute resolution  
40 entered into between a claimant and a contractor either pursuant  
41 to a construction contract that contains a mandatory arbitration  
42 clause or through ~~any~~ binding arbitration under the Florida  
43 Arbitration Code.

44 (2) ~~(b)~~ "Board" means the Construction Industry Licensing  
45 Board.

46 (3) ~~(c)~~ "Claimant" means a homeowner.

47 (4) ~~(d)~~ "Contractor" means a Division I or Division II  
48 contractor performing services described in s. 489.105(3)(a)-(q)  
49 ~~489.105(3)(a)-(e)~~.

50 (5) ~~(e)~~ "Court of competent jurisdiction" means a civil or  
51 criminal court in the State of Florida, or a bankruptcy court.

52 (6) ~~(f)~~ "Homeowner" means the owner of an owner-occupied  
53 residence, including a trustee based upon a trust instrument  
54 granting a person a beneficial interest for life in the  
55 residence.

56 (7) ~~(g)~~ "Licensee" means a contractor, financially  
57 responsible officer, or business organization licensed under  
58 this part at the time the violation was committed.

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59        (8)~~(h)~~ "Notice" means service as described in s. 455.275.

60        (9)~~(i)~~ "Residence" means a single-family residence or an  
61 individual residential condominium or cooperative unit or a  
62 residential building containing not more than two residential  
63 units in which the owner contracting for the improvement is  
64 residing or will reside 6 months or more each calendar year upon  
65 completion of the improvement.

66        (10)~~(j)~~ "Recovery fund" means the Florida Homeowners'  
67 Construction Recovery Fund.

68        (11)~~(k)~~ "Same transaction" means a contract, or a any  
69 series of contracts, between a claimant and a contractor or  
70 qualified business, when such contract or contracts involve the  
71 same property or contiguous properties and are entered into  
72 either at one time or serially.

73        (12)~~(l)~~ "Valid and current license," for the purpose of s.  
74 489.141(2)(d), means a any license issued pursuant to this part  
75 to a licensee, including a license in an active, inactive,  
76 delinquent, or suspended status.

77        ~~(2) The following definitions apply to claims made prior to~~  
78 ~~July 1, 2007, when the contract was executed and the violation~~  
79 ~~occurred on or before January 1, 2005.~~

80        ~~(a) "Claimant" means a natural person.~~

81        ~~(b) "Licensee" means a contractor, financially responsible~~  
82 ~~officer, or business organization licensed under this part at~~  
83 ~~the time the violation was committed.~~

84        Section 4. Subsection (2) of section 489.141, Florida  
85 Statutes, is amended to read:

86        489.141 Conditions for recovery; eligibility.—

87        (2) A claimant is not qualified to make a claim for

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88 recovery from the recovery fund, if:

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

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

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

96 (d) The claim is based upon a construction contract in  
 97 which the contractor did not hold a valid and current license at  
 98 the time of the construction contract; or

99 (e) The claimant was associated in a business relationship  
 100 with the licensee other than the contract at issue.†

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

104 ~~(g) The claimant has contracted with a licensee to perform~~  
 105 ~~a scope of work described in s. 489.105(3)(d)-(p).~~

106 Section 5. Section 489.1425, Florida Statutes, is amended  
 107 to read:

108 489.1425 Duty of contractor to notify residential property  
 109 owner of recovery fund.—

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

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FLORIDA HOMEOWNERS' CONSTRUCTION  
RECOVERY FUND  
(For contracts that exceed \$2,500)

PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR, WHERE THE VALUE OF ALL LABOR AND MATERIALS EXCEEDS \$2,500, AND WHERE A CLAIMANT HAS MET EACH OF THE CONDITIONS PRESCRIBED IN SECTION 489.141, FLORIDA STATUTES. PAYMENT CANNOT BE GUARANTEED. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

(contractor's signature and date)  
(homeowner's signature and date)

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

(2) (a) Upon finding a first violation of subsection (1), the board may fine the contractor up to \$500, and the moneys must be deposited into the recovery fund.

(b) Upon finding a second or subsequent violation of subsection (1), the board shall fine the contractor \$1,000 per violation, and the moneys must be deposited into the recovery fund.

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146 Section 6. Subsections (2) and (5) of section 489.143,  
 147 Florida Statutes, are amended to read:

148 489.143 Payment from the fund.—

149 (2) A ~~Any~~ claimant who meets all of the conditions  
 150 prescribed in s. 489.141 may apply to the board to cause payment  
 151 to be made to a claimant from the recovery fund in an amount  
 152 equal to the judgment, award, or restitution order or \$25,000,  
 153 whichever is less, or an amount equal to the unsatisfied portion  
 154 of such person's judgment, award, or restitution order, but only  
 155 to the extent and amount of actual damages suffered by the  
 156 claimant. Payment from the fund for other costs related to or  
 157 pursuant to civil proceedings such as postjudgment interest,  
 158 attorney ~~attorney's~~ fees, court costs, medical damages, and  
 159 punitive damages is prohibited. The recovery fund is not  
 160 obligated to pay a ~~any~~ judgment, award, or restitution order, or  
 161 any portion thereof, which is not expressly based on one of the  
 162 grounds for recovery set forth in s. 489.141. Beginning January  
 163 1, 2005, for each contract entered after July 1, 2004, payment  
 164 from the recovery fund is ~~shall be~~ subject to a \$50,000 maximum  
 165 payment for each Division I claim. Beginning January 1, 2014,  
 166 for each contract entered into on or after July 1, 2013, payment  
 167 from the recovery fund is subject to a \$25,000 maximum payment  
 168 for each Division II claim.

169 (5) Payments for claims against a ~~any one~~ licensee may  
 170 ~~shall~~ not exceed, in the aggregate, \$100,000 annually, up to a  
 171 total aggregate cap of \$500,000 for each Division I licensee and  
 172 up to a total aggregate cap of \$250,000 for each Division II  
 173 licensee. For a ~~any~~ claim approved by the board which is in  
 174 excess of the annual cap per licensee, the amount in excess of

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175 \$100,000 up to the total aggregate cap per licensee ~~of \$250,000~~  
176 is eligible for payment in the next and succeeding fiscal years,  
177 but only after all claims for the then-current calendar year  
178 have been paid. Payments may not exceed the aggregate annual or  
179 per claimant limits under law. ~~Beginning January 1, 2005, for~~  
180 ~~each contract entered into after July 1, 2004, payment from the~~  
181 ~~recovery fund is subject only to a total aggregate cap of~~  
182 ~~\$500,000.~~

183 Section 7. This act shall take effect July 1, 2013.