

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 57	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Porter	111 Y's	0 N's
COMPANION BILLS:	(CS/CS/SB 802)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 57 passed the House on April 24, 2013, and subsequently passed the Senate on May 2, 2013. The bill provides the Department of Business and Professional Regulation (DBPR) the authority to transfer cash it determines is not required to fund the Florida Building Code Administrators and Inspectors Board (board) to the Florida Homeowners' Construction Recovery Fund (recovery fund). However, the bill provides that the DPBR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission for the payment of claims.

In recent years revenues to the recovery fund have been insufficient to pay all claims. In FY 2011-12, \$1.8 million in claims were paid. As of January 2013, approximately 600 claims totaling \$13 million were awaiting review. However, during each of the last three fiscal years the board's revenues have remained nearly twice that of its expenditures – thus accumulating a cash reserve that could be transferred to the recovery fund to pay claims.

The General Appropriations Act provides an appropriation of \$5.5 million in nonrecurring funds, contingent upon passage of this bill for the payment of claims.

The bill was approved by the Governor on June 14, 2013, ch. 2013-187, L.O.F., and will become effective on October 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

The DBPR licenses and regulates businesses and professionals in Florida. It is structured to include separate divisions and various professional boards responsible for carrying out the DBPR's mission to license efficiently and regulate fairly.

Florida Homeowners' Construction Recovery Fund

The recovery fund is a separate account in DBPR's Professional Regulation Trust Fund. It is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board (CILB) for review.

Covered losses include contractor mismanagement or misconduct causing financial harm to a customer, job abandonment and certain false written statements. Recovery is limited to the lesser of actual damages, as determined by the final judgment, or \$50,000 per transaction regardless of the number of claimants. Attorney fees, court costs, interest, medical damages and punitive damages are not covered. Payments for claims against one licensee are limited to \$250,000 in the aggregate or \$100,000 per year.

Homeowners must take the following steps before filing a claim against the recovery fund:

1. Receive a final judgment from a court, an award in arbitration, or a final order from the Construction Industry Licensing Board directing a licensee to pay restitution. The award must specify actual damages.
2. Exhaust any alternative remedies, such as a surety bond, insurance policy or warranty.
3. Apply any recovered amounts to the damages awarded.
4. File the claim within one year after the conclusion of any civil, criminal or administrative action or award in arbitration based on the act.

If a claim is paid by the recovery fund, the contractor's license is automatically suspended. A contractor's license may be suspended if the judgment was against a corporation, if the licensee acted as its qualifying agent. The license will not be reinstated until the fund is repaid with interest – even if the licensee files bankruptcy.

The Florida Building Code Administrators and Inspectors Board (board), a nine-member board within the DBPR, regulates the practice of building code administration and inspection.

The board and the recovery fund are financed by a 1.5 percent surcharge on building permits collected by local building departments. The local departments forward surcharge revenues, less 10 percent, to the DBPR, where it is divided equally between the board and the recovery fund.

The recovery fund's solvency depends on new construction permits. During the recent construction slump, the recovery fund was exhausted. In 2010, the Legislature amended the surcharge formula to attempt to improve consistency in its collection and applied it to all contractors.¹ The Legislature also directed proceeds from the surcharge to be split evenly between the board and fund. Until then, proceeds had first funded the board, with any excess transferred to the recovery fund.

¹ Ch. 2010-176, L.O.F.

In recent years revenues to the recovery fund have been insufficient to pay all potential claims. In FY 2011-12, \$1.8 million in claims was paid. In FY 2010-11, only \$595,234 was paid for claims. The DBPR has received an average of 335 new claims annually for the last three years. It continues to process these claims, and, when funds are available, presents them to the Construction Industry Licensing Board for approval. As of January 2013, approximately 600 claims totaling more than \$13 million were waiting review by the CILB.

The estimated revenues to the recovery fund for FY 2012-13 are \$2.5 million. Under current law the department estimates that revenues will remain at approximately \$2.5 million for each of the next three fiscal years. Further, the DBPR estimates that, under the current funding scheme, it will take approximately 6.5 years to fund the current backlog.

During the last three fiscal years the board has received revenues of \$1.3 million in FY 2009-10, \$1.6 million in FY 2010-11 and \$2.1 million in FY 2011-12. In each of the last three fiscal years the board's expenditures ranged from \$777,504 to \$853,920 – leaving sufficient cash reserve. The cumulative totals over the last year three fiscal years indicate the board's revenues were \$5.0 million and expenditures \$2.3 million. The department's projections continue to show a growing cash reserve for the board in future years. Specifically, the department estimates that revenues will exceed the board's expenditures by \$2.5 million to \$888,708 in FY 2012-13 and \$2.6 million to \$891,419 in FY 2013-14.²

Effect of Changes

The bill gives the DBPR the authority to transfer cash it determines is not required to fund the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund. However, the bill provides that the DPBR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission for the payment of claims.

The DBPR projects it could transfer \$5 million from the board to the recovery fund in fiscal year 2013-14 and approximately \$1.2 million annually in subsequent years.

The bill has an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

² Department of Business and Professional Regulation, Florida Building Code Administrators and Inspectors Board, Operating Account, actual and projected revenues and expenditures for fiscal years ending June 30, 2007 through June 30, 2016, provided by the department and on file with the Government Operations Appropriations Subcommittee.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The General Appropriations Act provides an appropriation of \$5.5 million in nonrecurring funds, contingent upon passage of this bill for the payment of claims. These funds are projected to be excess funds in the Building Code Administrators and Inspectors Board within the Professional Regulation Trust Fund. The bill gives the DBPR discretion to transfer such excess cash from the board to the recovery fund. However, the DBPR may not transfer excess cash that would exceed the amount appropriated and any amount approved by the Legislative Budget Commission.