

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 802

INTRODUCER: Regulated Industries Committee and Senator Hays

SUBJECT: Department of Business and Professional Regulation

DATE: March 26, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 802 deletes an obsolete reference to the fees associated with enforcement of the Florida Building Code. The bill authorizes any excess funds not needed to fund the Florida Building Code Administrators and Inspectors Board in the Department of Business and Professional Regulation (department) to be transferred by the department to the Florida Homeowners' Construction Recovery Fund (Recovery Fund). The bill provides that the department may not transfer excess cash to the Recovery Fund for the payment of claims if the excess cash exceeds the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.

This bill amends sections 468.631 and 489.140, Florida Statutes.

II. Present Situation:

The law currently provides for the shared allocation of a surcharge on Building Code enforcement fees (permit fees) between two trust funds administered by the Department of

Business and Professional Regulation.¹ One of the trust funds, the Florida Homeowners' Construction Recovery Fund, is dedicated to payment of validated claims for sub-standard work on Florida residences by certain contractors.

The stated intent of the Legislature is that the sole purpose of the Recovery Fund is to compensate any aggrieved homeowner who contracted with a licensed residential, building or general contractor (Division I Contractors) for the construction or improvement of her or his residence.² Payment of claims is considered only after issuance of a court judgment, an award of restitution by the Construction Industry Licensing Board, or an arbitration award, on grounds of financial mismanagement or misconduct,³ abandoning a construction project,⁴ or making a false statement with respect to a project and arising directly out of certain activities listed in the law.⁵ The Recovery Fund does not pay post-judgment interest, punitive damages, or attorney fees. It only pays what an aggrieved claimant has not yet collected for actual or compensatory damages. The Fund pays the less of up to \$25,000 per claim, \$25,000 per transaction, or \$250,000 per contractor.⁶

Prior to 2004, surcharges for work by both Division I (general, building and residential contractors) and Division II contractors (roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, underground utility/excavation, solar, pollutant storage, and specialty contractors)⁷ were included in the Recovery Fund. The Recovery Fund was previously identified as the "Construction Industries Recovery Fund," but was renamed as the "Florida Homeowners' Construction Recovery Fund" by ch. 2004-84, Laws of Florida (L.O.F.).

The Recovery Fund was supported at that time by a surcharge based on one-half cent per square foot of "under roof floor space" for the new construction, renovation, alteration or addition being undertaken. Only the Division I contractors were assessed this fee because the Division II contractors (e.g., plumbers or swimming pool contractors) did not have any "under roof floor space" on which to calculate the surcharge. The funds were used to regulate building administrators and inspectors, and the funds not needed for that regulation were used to reimburse homeowners for wrongdoing by both Division I and II contractors.

In 2010, the surcharge provision in s. 468.631, F.S., was amended to assess a 1.5 percent surcharge on all permit fees associated with the enforcement of the Florida Building Code.⁸

¹See s. 468.631, F.S.

²See s. 489.1401(2), F.S.

³ This occurs when there were valid liens filed that were not satisfied by the contractor; the contractor abandoned the job and the percentage of completion is less than the percentage paid; or the job was completed and the customer pays more than what was contracted for as a result of circumstances beyond the control of the contractor.

⁴ Here the contractor has done nothing for 90 days, termination was without cause or notice to the owner, or the contractor failed to perform without cause.

⁵ The contractor signs a statement falsely indicating that the work is bonded, or falsely stating that all subcontracted work, labor and materials has been paid for, or falsely stating that workers' compensation or public liability insurance is provided.

⁶ See s. 489.143, F.S., and Department of Business and Professional Regulation, *Florida Homeowners' Construction Recovery Fund*, available at <http://www.myfloridalicense.com/dbpr/pro/cilb/> (last visited Mar. 26, 2013). Fund caps differ for claims arising after January 1, 2005.

⁷See s. 489.105(3), F.S.

⁸See ch. 2010-176. L.O.F.

However, the reference to the square footage surcharge that remains in s. 489.140, F.S., was not similarly revised.

The surcharge collections were changed to be deposited equally into the Florida Homeowners' Construction Trust Fund established by s. 489.140, F.S., and the Building Code Administrators and Inspectors Fund to be used to regulate building code administrators and inspectors.⁹ The ability of the department to transfer funds between trust funds was also eliminated.¹⁰ According to the department,¹¹ the fund received insufficient funds for several years to keep pace with consumer claims for recovery, and the resulting backlog has caused a wait of several years before funds are available for approved distributions.¹²

Pursuant to Section 468.631, F.S., the Florida Building Code Administrators and Inspectors Board (BCAIB) and the Recovery Fund are funded through a 1.5 percent surcharge on all permitting fees associated with enforcement of the Florida Building Code. Surcharge proceeds received by the department are allocated equally between the BCAIB and the Recovery Fund for operation of the respective programs.¹³ The Recovery Fund currently has a backlog of approximately 600 claims pending approval totaling over \$13,000,000 in requested recovery payments.¹⁴ In addition, there are approved claims for which no funds are available for payment.

According to the department, in 2012-2013, twenty-four claims have been paid to date, totaling \$468,694.64, with an additional thirty claims totaling \$410,905.73 still awaiting payment.¹⁵ Several claims awarded in 2011-2012 remain pending, awaiting appeal or documentation from claimants.¹⁶ In 2011-2012, ninety-seven claims totaling \$1,503,781.99 were paid, and in 2010-2011, thirty-two claims totaling \$576,382.33 were paid.¹⁷

Current law does not permit the transfer of excess funds from one fund to the other. Therefore, as excess funds build up in the fund that supports the operations of the BCAIB after those operational expenses are fully funded, the unused remainder continues to accumulate. According to the department, it is anticipated that approximately \$5,000,000 could be transferred from BCAIB to the Fund in Fiscal Year 2013-14, and approximately \$1,200,000 could be transferred in subsequent years, with resolution of the current backlog of claims anticipated within approximately 2.5 years.¹⁸

⁹*Id.*

¹⁰*Id.*

¹¹Email from Department of Business and Professional Regulation, Office of Legislative Affairs, dated January 25, 2013, on file with Senate Regulated Industries.

¹²*2013 Legislative Analysis for HB 57*, Office of Legislative Affairs, Department of Business and Professional Regulation, January 10, 2013, available at <http://abar.laspbs.state.fl.us/ABAR/ABAR.aspx?chamber=S> (last visited Mar. 26, 2013). HB 57 is the companion bill for SB 802 by Senator Hays.

¹³The BCAIB is responsible for licensing and regulating building code administrators and inspectors. The board meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings relating to licensure and discipline.

¹⁴*Supra* at n. 12.

¹⁵*Supra* at n. 11.

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Supra* at n. 12, at p. 3.

III. Effect of Proposed Changes:

The bill deletes an outdated reference to a square foot surcharge in s. 489.140, F.S., to conform to the surcharge revision adopted in the 2010 amendment to s. 468.631, F.S.¹⁹

The bill allows the transfer of funds in excess of that needed for the operations of the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund in order to pay pending approved claims that could not be paid due to lack of funding, and to pay a greater number of approved claims in the future. The bill provides that the department may not transfer excess cash to the Recovery Fund for the payment of claims if the excess cash exceeds the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will allow a change in funding to permit funds not needed for operation of the BCAIB to be used in processing and addressing the backlog of approved but unpaid claims from the Florida Homeowners' Construction Recovery Fund, and paying future approved claims as funding allows. Aggrieved homeowners will have a greater likelihood of receiving approved claims as a result of the bill.

C. Government Sector Impact:

The bill will allow a change in funding to permit funds not needed for operation of the BCAIB to be used in processing and addressing the backlog of approved but unpaid

¹⁹See s. 6, ch. 2010-176, L.O.F.

claims from the Florida Homeowners' Construction Recovery Fund, and paying future approved claims as funding allows. The additional administrative workload associated with these claims will require additional staffing time, within current staffing and departmental resources.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 14, 2013:

The committee substitute amends s. 468.631, F.S., to limit the authority of the department to transfer excess cash from the board's account in the Professional Regulation Trust Fund. The committee substitute provides that the department may not transfer excess cash to the Florida Homeowners' Construction Recovery Fund for the payment of claims if the excess cash exceeds the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, F.S.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁰*Supra* at n. 12, at p. 4.