

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 Appropriations Subcommittee on General Government

BILL: CS/SB 1098

INTRODUCER: Regulated Industries Committee and Senator Dean

SUBJECT: Florida Homeowners' Construction Recovery Fund

DATE: April 1, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1098 permits claims against Division II contractors to be eligible for compensation from the Florida Homeowners' Construction Recovery Fund (fund) in the Department of Business and Professional Regulation. The bill revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2015, for any contract entered into after July 1, 2014. The bill also limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee.

The bill removes the prohibition against paying claims to consumers who made improper payments to the contractor in violation of Florida's Construction Lien law on contracts entered into after July 1, 2014. The bill revises the required recovery fund notification statement that contractors must give to homeowners informing them of their rights under the recovery fund to include language stating that claimants' recovery payments are limited to a specific amount.

This bill will result in additional claims being paid out of the fund. However, the total amount of additional claims to be paid is indeterminate as the number of eligible claims and the amount of each claim will vary. Consequently, the fiscal impact of the bill is indeterminate. See Section V.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Contractors

Division I contractors are described under s. 489.105, F.S., as general contractors, building contractors and residential contractors. *Division II contractors* are described under s. 489.105, F.S., as sheet metal contractors, roofing contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, pollutant storage systems contractors, and specialty contractors.

Construction Industry Licensing Board

The Construction Industry Licensing Board (board), within the Department of Business and Professional Regulation (department), is responsible for licensing and regulating the construction industry in this state.¹ The board meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.² The board engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.³

The board is divided into Division I and Division II members based on the definitions of Division I and Division II contractors. The jurisdiction falls to each division relative to their scope,⁴ and five members constitute a quorum for each division.

Section 489.129, F.S., grants the board the authority to take actions against any certificate holder or registrant if the contractor, financially responsible officer or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195, F.S., is found guilty of specific acts, including the acts that may qualify a claim to the fund, which is discussed below. These acts are described under s. 489.129(1)(g), (j), and (k), F.S.

Violations Creating a Valid Claim

Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

- Valid liens have been recorded against the customer's property by the contractor for supplies or services ordered by the contractor for which the customer has paid the contractor, but the contractor has not removed the liens within 75 days of such liens;
- The contractor has abandoned a job and the percentage of completion is less than the percentage of the contract price received by the contractor, unless the contractor is entitled to

¹ See s. 489.107, F.S.

² Florida Department of Business and Professional Regulation, Construction Industry Licensing Board, available at <http://www.myfloridalicense.com/DBPR/pro/cilb/index.html> (Last visited March 18, 2014).

³ Section 489.108, F.S., grants rulemaking authority.

⁴ See *supra* note 2 and see s. 489.107(4), F.S.

retain such funds under the terms of the contract or refunds the excess funds within 30 days after abandonment; or

- The contractor's job has been completed, and the customer has been made to pay more than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the contractor's control, was caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project. Abandonment is presumed after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a statement with respect to a project or contract:

- Falsely indicating that the work is bonded;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or
- Falsely indicating that workers' compensation and public liability insurance are provided.

Section 489.129, F.S., allows the board to take the following actions given the circumstances above:

- Place on probation or reprimand the licensee;
- Revoke, suspend, or deny the issuance or renewal of the certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation of a provision of ch. 489, F.S.;
- Impose an administrative fine not to exceed \$10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.

Florida Homeowner's Construction Recovery Fund

The Florida Homeowner's Construction Recovery Fund (fund) was created by the Legislature in 1993 after Hurricane Andrew. The fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor, financially responsible officer, or business organization licensed under ch. 489, F.S. A claimant must be a homeowner and the damage must have been caused by a Division I contractor. Claims are filed with the department, which reviews them for completeness and statutory eligibility. The department then presents the claim to the board for review. The board makes the determination for an award.

Duty of Contractor to give Notice of Fund

Section 489.1425, F.S., provides that any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and

materials does not exceed \$2,500. The written statement must be substantially in the form provided for by this statute.

Requirements to Collect

The claimant must have obtained a final judgment, arbitration award, or board issued restitution order against the contractor for damages that are a direct result of a compensable violation. The statute of limitations to make a claim is one year after the conclusion an action or award in arbitration that is based on the misconduct.⁵

Completed claim forms must be submitted with:⁶

- A copy of the complaint that initiated action against the contractor;
- A certified copy of the underlying judgment, order of restitution, or award in arbitration, together with the judgment;⁷
- A copy of any contract between the claimant and the contractor, including change orders;
- Proof of payment to the contractor and/or subcontractors;
- Copies of any liens and releases filed against the property, together with the Notice of Claim and Notice to Owner; copies of applicable bonds, sureties, guarantees, warranties, letters of credit and/or policies of insurance; and
- Certified copies of levy and execution documents, and proof of all efforts and inability to collect the judgment or restitution order, and other documentation as may be required by the Board to determine causation of injury or specific actual damages.

No claimant eligible for, or receiving, restitution shall be eligible to recover from the fund until two or more payments have been missed.⁸ Prior to receiving any payments, such a claimant shall provide the board with a written statement indicating any amount received to date under such an order or plan, the date and amount of the last payment, and how much is still due and owing under such an order or plan.⁹

Limits

Pursuant to s. 489.143, F.S., each recovery claim is limited to both a per-claim maximum amount and a total life time per-contractor maximum.¹⁰ For contracts entered prior to July 1, 2004, the fund claims are limited to \$25,000.00 per claimant with a total life time aggregate limit of \$250,000.00 per licensee.¹¹ For contracts entered after July 1, 2004, the per-claim payment limits are increased to \$50,000.00 with a total life time aggregate of \$500,000.00 per licensee.¹² The fund does not require a minimum contract amount for eligible claims.¹³

⁵ Section 61G4-21.003(5), F.A.C.

⁶ Rule 61G4-21.003(2), F.A.C.

⁷ Pursuant to rule 61G4-21.003(3), F.A.C., if it is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must demonstrate that the contractor engaged in activity that is described in those sections.

⁸ Section 61G4-21.005(3), F.A.C.

⁹ *Id.*

¹⁰ *2014 Legislative Bill Analysis for SB1098*, Department of Business and Professional Regulation (March 11, 2014).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Pursuant to s. 489.1425, F.S., any contract for the repair, improvement or construction of Florida residential real property must contain a statutorily mandated notification statement informing the consumer of their rights under the fund, unless the total contract price is less than \$2,500.00.¹⁴

The fund is not permitted to compensate consumers who contracted with Division II contractors for types of work set forth in s. 489.105(3)(d)-(p), F.S., or to compensate consumers who have suffered damages as a result of payments made in violation of Florida Construction Lien Law under pt. I, ch. 713, F.S.

Funding and Payouts

The fund is financed by a 1.5 percent surcharge on all building permits issued for the enforcement of the Florida Building Code.¹⁵ The proceeds from the surcharge are allocated equally to fund the Florida Homeowner's Construction Recovery Fund and the operations of the Building Code Administrators and Inspectors Board. The department may transfer excess cash to the Florida Homeowner's Construction Recovery Fund if it is determined that the excess cash is not needed to fund the operation of the Building Code Administrators and Inspectors Board. However, the department 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 pursuant to s. 216.181, F.S.¹⁶

In the Fiscal Year 2013-2014 General Appropriations Act, \$8,000,000 (\$2,500,000 recurring and \$5,500,000 nonrecurring) was provided in the Claims Payments From Construction Recovery Fund appropriation category. Beginning in the 2013-2014 fiscal year, there were 589 claims valued at \$13,153,267 in anticipated recovery payments.¹⁷ According to the department, as of March 1, 2013, the Construction Industry Recovery Fund currently has approved 283 consumer recovery claims for a total of \$5,779,353.40 in recovery payments. The fund currently has a backlog of 253 claims representing \$5,636,599.43 in anticipated payments, which are awaiting approval by the board.¹⁸

The estimated revenues to the fund for Fiscal Year 2014-2015 are \$3 million. The department estimates that revenues will remain at approximately \$3 million over the next three years, assuming building construction maintains its current levels.¹⁹ Additionally, the department projects that \$2,500,000 in Fiscal Year 2014-2015 and \$2,000,000 in the following three fiscal years could be transferred to the fund from the Building Code Administrators and Inspectors Board.²⁰ This would allow for \$5,500,000 in claims payments to be made in Fiscal Year 2014-2015 and \$5,000,000 the following three fiscal years.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 438.631, F.S.

¹⁷ *Legislative Budget Request FY 2014-15, Proposed New Issues*, Department of Business and Professional Regulation (received November 18, 2013), on file with the Appropriations Subcommittee on General Government.

¹⁸ *See supra* note 10.

¹⁹ *See supra* note 17.

²⁰ *See supra* note 17.

III. Effect of Proposed Changes:

Section 1 amends s. 489.1401, F.S., to revise legislative intent to include both Division I and Division II contractors within the fund.

Section 2 amends s. 489.1402, F.S., to expand the definition of “contractor” to include Division II contractors and the scope of work set forth in s. 489.105(3)(a)-(q), F.S. The section further amends the definition of “residence” to specifically include the term “single family residence.”

Section 3 amends the conditions for recovery under s. 489.141, F.S., permitting the payment of claims for consumers who contracted after July 1, 2014, with Division II contractors for services that fall within s. 489.105(3)(d)-(q), F.S. In addition, the bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of Florida’s Construction Lien Law for contracts entered into after July 1, 2014.

Section 4 amends s. 489.1425, F.S., revising the required recovery fund notification statement to include language stating that claimants’ recovery payments are “up to a limited amount.”

Section 5 amends s. 489.143, F.S., to specify the maximum fund disbursements for each Division I claim. In addition, the bill amends the statutory limits on recovery payments to reflect the inclusion of Division II contracts beginning January 1, 2015, for any contract entered after July 1, 2014. The bill limits Division II claims to \$15,000 per claim with a \$150,000 lifetime maximum per licensee.

Section 6 establishes an effective date of July 1, 2014.

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:

CS/SB 1098 may increase restitution payments required of licensed Division II contractors against whom a recovery claim is paid.²¹ Licensees must repay the fund for any amount of recovery paid to a consumer or have their license suspended until the payment is made.²²

C. Government Sector Impact:

This bill will result in additional claims being paid out of the recovery fund. The total amount of additional claims to be paid is indeterminate as the number of eligible claims and the amount of each claim will vary based on the circumstances of the contract.²³

During the five fiscal years prior to removal of Division II licensees from the fund eligibility (Fiscal Years 2002-2003 through 2006-2007), Division II contractor claims constituted approximately 23.3 percent of all claims paid by the recovery fund.²⁴ The average payment amount for each Division II claim was approximately \$8,200. Applying the percentage of Division II contractor claims paid during Fiscal Years 2002-2003 to 2006-2007 and the average payment per claim, the department estimates additional claims of \$852,800 per year.²⁵ However, the total number of claims can vary year to year and the amount of each claim can vary widely based on the circumstances of the contract.²⁶

According to the department, the fund currently has a backlog of 253 claims representing \$5,636,599 in anticipated payments, which are awaiting approval by the board. The amount of yearly recovery fund payments is limited by the amount of funding received from the 1.5 percent surcharge. Therefore, the total amount of claims paid each year will not increase as a result of receiving additional claims. However, the inclusion of additional claims may extend the amount of time it takes to pay each individual claim.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²¹ 2014 Legislative Bill Analysis for SB1098, Department of Business and Professional Regulation (March 11, 2014).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.1401, 489.1402, 489.141, 489.1425, and 489.143.

IX. 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 20, 2014:

The CS provides that payments for claims for contracts entered into before July 1, 2004, may not exceed \$100,000 annual aggregate and \$250,000 total aggregate. A claim approved by the board in excess of the annual cap, an amount in excess of \$100,000 up to \$250,000 is eligible for payment in the next and succeeding fiscal years, but only after all that current calendar year's claims have been paid.

- B. **Amendments:**

None.