

**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.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 1098

INTRODUCER: Regulated Industries Committee and Senator Dean

SUBJECT: Florida Homeowners' Construction Recovery Fund

DATE: March 20, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Niles	Imhof	RI	<b>Fav/CS</b>
2.			AGG	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1098 amends the Florida Homeowners' Construction Recovery Fund (fund) to include the payment from the fund for claims arising from construction work provided by Division II contractors.

The bill removes the prohibition from paying claims to consumers who made improper payments to the contractor in violation of Florida's Construction Lien law on contracts entered into before July 1, 2014.

The bill 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. For a claim approved by the board in excess of the annual, the 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.

The bill revises the required recovery fund notification statement to include language stating that claimants' recovery payments are limited to a specific amount, providing for a maximum of \$15,000 per Division II claim with a \$150,000 lifetime maximum per licensee.

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 air-conditioning contractors, class B air-conditioning contractors, class 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.<sup>1</sup> The board meets regularly to consider applications for licensure, to review disciplinary cases, and to conduct informal hearings related to licensure and discipline.<sup>2</sup> The board engages in rulemaking to implement the provisions set forth in its statutes and conducts other general business, as necessary.<sup>3</sup>

The board is divided into Division I and Division II members following the definitions of Division I and Division II contractors respectively, jurisdiction falling to each division relative to their scope.<sup>4</sup> 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 to the Fund*

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;

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<sup>1</sup> See s. 489.107, F.S.

<sup>2</sup> 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).

<sup>3</sup> Section 489.108, F.S., grants rulemaking authority.

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

- 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 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, which 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.

### **The Florida Homeowner's Construction Recovery Fund**

The fund is a last resort for a claimant to seek compensation for monetary loss due to specific acts by a contractor, financially responsible officer, or business organization licensed under ch. 489, F.S. Its scope is limited and very specific to damages caused by financial mismanagement or misconduct, abandonment of a project, or false statement with respect to a project and arising directly out activities under s. 489.129(1)(g), (j), and (k), F.S. A claimant must be a homeowner and the damage must have been caused by a Division I contractor. The Construction Industry Licensing 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.<sup>5</sup>

Completed claim forms must be submitted with:<sup>6</sup>

- 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;<sup>7</sup>
- 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;
- 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.<sup>8</sup> 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.<sup>9</sup>

### ***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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> The fund does not require a minimum contract amount for eligible claims.<sup>13</sup>

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<sup>5</sup> Section 61G4-21.003(5), F.A.C.

<sup>6</sup> Rule 61G4-21.003(2), F.A.C.

<sup>7</sup> 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.

<sup>8</sup> Section 61G4-21.005(3), F.A.C.

<sup>9</sup> *Id.*

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

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *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.<sup>14</sup>

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% surcharge on all building permits issued for the enforcement of the Florida Building Code.<sup>15</sup> 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 the department determines it 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.<sup>16</sup>

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.<sup>17</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 489.1401, F.S., 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 contract after July 1, 2014 with Division II contractors for services that fall within s. 489.105(3)(d)-(q), F.S. In addition, the proposed 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."

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<sup>14</sup>*Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 438.631, F.S.

<sup>17</sup> See *supra* note 10.

**Section 5** amends s. 489.143, F.S., providing that payments for claims for contracts entered into before July 1, 2004, may not exceed \$100,000 annual aggregate and \$250,000 total aggregate. For a claim approved by the board in excess of the annual cap, the 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

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 amendment limits Division II claims to \$15,000.00 per claim with a \$150,000.00 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:

The bill may increase restitution payments required of licensed Division II contractors against whom a recovery claim is paid.<sup>18</sup> Licensees must repay the fund for any amount of recovery paid to a consumer or have their license suspended until the payment is made.<sup>19</sup>

C. Government Sector Impact:

Indeterminate.

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<sup>18</sup> 2014 Legislative Bill Analysis for SB1098, Department of Business and Professional Regulation (March 11, 2014).

<sup>19</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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.<sup>20</sup> During the five fiscal years prior to removal of Division II licensees from the fund eligibility (FY 2002 through 2006), Division II contractor claims constituted approximately 23.3% of all claims paid by the Recovery Fund.<sup>21</sup> The average payment amount for each Division II claim was approximately \$8,200.00. Applying the percentage of Division II contractor claims paid during FY 2002 to 2006 and the average payment per claim, the department estimates additional claims of \$852,800 per year.<sup>22</sup> 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.<sup>23</sup>

**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.

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

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*