

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1217 Florida Homeowners' Construction Recovery Fund

**SPONSOR(S):** Daniels

**TIED BILLS:** IDEN./SIM. BILLS: SB 414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Herrera	Anstead
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N	Helpling	Topp
3) Commerce Committee			

### SUMMARY ANALYSIS

The Florida Homeowners' Construction Recovery Fund (recovery fund) is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors. Homeowners file claims with the Department of Business and Professional Regulation (DBPR), which assesses completeness and eligibility before presenting them to the Construction Industry Licensing Board for review (CILB).

Contractors are required to notify customers of their rights under the recovery fund, with contracts for residential property work mandated to include a written statement detailing consumer rights under the fund, except for contracts under \$2,500 in labor and materials. The recovery fund provides compensation to eligible claimants, limited to the judgment, award, or \$25,000, whichever is less, based on actual damages suffered and subject to maximum per-claim and lifetime aggregate limits specified for Division I and Division II contracts. Regarding fiscal appropriations and license suspension, pending claims are carried over to the next fiscal year if the annual appropriation is depleted, and excess funds are distributed according to relevant statutes. Upon disbursement from the recovery fund to settle claims, a licensee's license is automatically suspended until full repayment plus interest is made.

The bill increases maximum claim amounts and total lifetime aggregate limits for claims made against contractors from the recovery fund over the next four fiscal years, up to Fiscal Year 2027-2028. For Division I licensees, such as general contractors, building contractors, and residential contractors, the maximum per-claim amount rises incrementally from \$50,000 to \$250,000, with corresponding increases in lifetime aggregate limits. For Division II licensees, such as roofing contractors, plumbing contractors, and solar contractors, the maximum amount per claim is set to increase from the current \$15,000. This increase will occur gradually over the next four fiscal years, starting from \$25,000 for Fiscal Year 2024-2025 and reaching \$65,000 for Fiscal Year 2027-2028. Additionally, the bill aims to raise the lifetime aggregate limits for each Division II licensee for contracts entered into after July 1, 2016. These aggregate limits will start at \$250,000 for Fiscal Year 2024-2025 and reach \$550,000 for Fiscal Year 2027-2028.

The bill may have an indeterminate fiscal impact on the private sector and state government expenditures. The bill has no fiscal impact on local governments. See Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Department of Business and Professional Regulation**

The Florida Department of Business and Professional Regulation, through 11 divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.<sup>1</sup>

#### **Construction Contractors**

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.<sup>2</sup>

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.<sup>3</sup>

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.

“Registered contractors” are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.<sup>4</sup>

#### **Florida Homeowners’ Construction Recovery Fund**

The Florida Homeowners’ Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed 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 for review.<sup>5</sup>

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<sup>1</sup> S. 20.165, F.S.

<sup>2</sup> S. 489.107, F.S.

<sup>3</sup> S. 489.105, F.S.

<sup>4</sup> S. 489.103, F.S.

<sup>5</sup> S. 489.1401(2), F.S.

Current law requires all local governments to assess and collect a 1 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.<sup>6</sup>

Current law also requires all local governments to assess and collect a separate 1.5 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.<sup>7</sup>

Local government are permitted to retain 10 percent of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.<sup>8</sup>

#### *Duty of Contractor to give Notice of Fund*

A contractor must provide notice to a customer of rights under the recovery fund.<sup>9</sup> 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, and must be substantially in the form required by statute.<sup>10</sup>

#### *Payment Limitations and Maximum Amounts from the Recovery Fund*

Payment from the recovery fund, provides that an eligible claimant may be paid an amount equal to the judgment, award, or restitution order or \$25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant, and subject to the maximum per-claim amount and a total lifetime per-licensee maximum.<sup>11</sup>

The maximum amounts payable for recovery fund claims and the total lifetime aggregate limits are set forth in s. 489.143, F.S.,<sup>12</sup> as follows:

- Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, recovery fund claims are limited to a \$50,000 maximum payment for each Division I claim, with a total lifetime aggregate limit of \$500,000 for each Division I licensee.
- Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), recovery fund claims are limited to a \$15,000 maximum payment for each Division II claim, with a total lifetime aggregate limit of \$150,000 for each Division II licensee.

Claims awarded to a claimant by the CILB are paid in the order that they are filed, up to the lifetime aggregate limits for each transaction and licensee, and to the limits of amounts appropriated to pay claims against the recovery fund.<sup>13</sup> Payments may not exceed the total claim limits or lifetime aggregate limits.<sup>14</sup>

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<sup>6</sup> S. 553.721, F.S.

<sup>7</sup> S. 468.631, F.S.

<sup>8</sup> Ss. 468.631, and 553.721, F.S.

<sup>9</sup> S. 489.1425, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> S. 489.143(2), F.S.

<sup>12</sup> For recovery fund claims for contracts entered into before July 1, 2004, see s. 489.143(6), F.S.

<sup>13</sup> S. 489.143(7), F.S.

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

## *Fiscal Appropriation and License Suspension*

Current law states that if the annual appropriation is depleted while claims are pending, those pending claims will be carried over to the next fiscal year.<sup>15</sup> Any excess funds will be disbursed according to s. 468.631, F.S., which pertains to the Building Code Administrators and Inspectors Fund.

Upon disbursement of any funds from the recovery fund to settle a claim or satisfy a judgment, award, or restitution order against a licensee, the licensee's license is automatically suspended without further administrative action.<sup>16</sup> This suspension takes effect on the date of payment from the recovery fund. Reinstatement of the license is contingent upon the licensee repaying the full amount received from the recovery fund, along with accrued interest.<sup>17</sup>

### **Effect of the bill**

The bill increases the maximum amounts payable to claimants for claims that may be made against contractors from the recovery fund for each of the next four fiscal years (through Fiscal Year 2027-2028), and to substantially increase the total lifetime aggregate limit for claim payments made against a single contractor for those same fiscal years.

For claims against general contractors, building contractors, and residential contractors (Division I licensees), contracts entered into after July 1, 2004, the maximum per-claim amount increases from \$50,000 in current law, as follows:

- \$75,000 for Fiscal Year 2024-2025;
- \$125,000 for Fiscal Year 2025-2026;
- \$175,000 for Fiscal Year 2026-2027; and
- \$250,000 for Fiscal Year 2027-2028.

Under the bill, the lifetime aggregate limits for each Division I licensee for Division I contracts entered into after July 1, 2004, are increased from \$500,000 in current law, as follows:

- \$700,000 for Fiscal Year 2024-2025;
- \$800,000 for Fiscal Year 2025-2026;
- \$900,000 for Fiscal Year 2026-2027; and
- \$1,000,000 for Fiscal Year 2027-2028;

For claims against roofing contractors, sheet metal 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, and pollutant storage systems contractors (Division II licensees), contracts entered into after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), the maximum amount per claim increases from \$15,000 in current law, as follows:

- \$25,000 for Fiscal Year 2024-2025;
- \$35,000 for Fiscal Year 2025-2026;
- \$45,000 for Fiscal Year 2026-2027; and
- \$65,000 for Fiscal Year 2027-2028.

Under the bill, the lifetime aggregate limits for each Division II licensee for Division II contracts entered into after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), are increased from \$150,000 in current law, as follows:

- \$250,000 for Fiscal Year 2024-2025;
- \$350,000 for Fiscal Year 2025-2026;
- \$450,000 for Fiscal Year 2026-2027; and
- \$550,000 for Fiscal Year 2027-2028;

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<sup>15</sup> S. 489.143(8), F.S.

<sup>16</sup> S. 489.143(9), F.S.

<sup>17</sup> *Id.*

The bill provides an effective date of July 1, 2024.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 483.143, F.S., relating to payment from the fund.

**Section 2:** Providing an effective date of July 1, 2024.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state government expenditures. As a result of increasing the aggregate cap per licensee, as well as the per-claim cap for each contract, the number of Recovery Fund claims awarded, as well as the amounts of claims awarded, will increase.<sup>18</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate impact on the private sector. With the increase in both the aggregate cap per licensee and the per-claim cap for each contract, the likelihood of more claimants receiving compensation from the Recovery Fund, as well as the total compensation amount, is expected to rise.<sup>19</sup>

**D. FISCAL COMMENTS:**

DBPR currently has an annual recurring appropriation of \$4.5 million to pay recovery fund claims. As of July 31, 2023, the Recovery Fund had a balance of \$23,235,064.00. Over the fiscal years 20/21, 21/22, and 22/23, the average annual revenue injection into the Recovery Fund through surcharges amounted to \$6,188,495.00. However, the average annual sum awarded in claims stood at \$2,882,184. Nevertheless, between FY 20/21 and FY 22/23, the annual number of presented and awarded claims more than doubled, reaching 232 claims awarded in FY 22/23, totaling \$4,449,552.00.<sup>20</sup>

The proposed elevation of claim caps within the bill could escalate expenditures, leading to a surge in the overall disbursement by the Division to approved claimants. The magnitude of this increase hinges on the frequency and cost of claims, which have exhibited a doubling trend over the last two fiscal years.<sup>21</sup>

These proposed claim cap adjustments could substantially inflate the annual volume of claims, potentially surpassing the annual revenues channeled into the Recovery Fund. This scenario would

<sup>18</sup> DBPR, Agency Analysis of 2024 SB 414, p. 4 (Nov. 20, 2023).

<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.* at 6

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

either deplete the fund's balance or necessitate General Revenue supplementation if revenue adjustments fail to align with the cap increments.<sup>22</sup>

While revenues have averaged \$6,118,496 over the past three years, they have exceeded \$6,500,000 for the last two years, while the cost of claims in the last fiscal year amounted to \$4,462,465. Projecting the proposed increases through the 2027/28 Fiscal Year based on the Fund's starting balance of \$23,235,064, the estimates are as follows<sup>23</sup>:

Fiscal Year	Estimated Fund Balance (July 1)	Estimated Revenues	% of Cap Increase from Prior Year for Division I	% of Cap Increase from Prior Year for Division II	Estimated Expenditures after Proposed Cap Increases	Estimated End Fund Balance (June 30)
23/24	\$23,235,064	\$6,014,764	-	-	\$ 4,981,181	<b>\$24,268,647</b>
24/25	\$25,235,064	\$6,158,696	50%	66.67%	\$ 7,617,696	<b>\$22,809,647</b>
25/26	\$24,610,064	\$6,238,878	66.67%	40%	\$11,424,110	<b>\$17,624,415</b>
26/27	\$20,185,064	\$6,339,727	40%	28.57%	\$15,177,893	<b>\$8,786,249</b>
27/28	\$12,014,350	\$6,167,422	42.86%	44.44%	\$21,567,992	<b>(\$6,614,320)</b>

These estimates are based on anticipated increases in claims due to corresponding rises in cap amounts, suggesting a potential deficit in the fund by the 2027/28 Fiscal Year. This estimation assumes consistent revenues and claim volumes annually. However, as aggregate caps increase each year per the Bill's provisions, the Division of Professions has indicated the likelihood of cases remaining open from year to year, as they cannot be closed due to hitting an increased aggregate cap the following year.<sup>24</sup>

Considering these factors, claims may begin to surpass revenues by FY 24-25, eventually leading to a negative cash balance in the Construction Recovery Fund.<sup>25</sup>

The bill proposes annual increases in maximum claim amounts for four years, potentially incentivizing delaying claim filings to maximize potential recovery fund payments. However, claimants must adhere to the statute of limitations, which allows one year after the conclusion of any civil, criminal, or administrative action or arbitration award based on a compensable violation.<sup>26</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

DBPR recommends that the bill clearly indicate that the proposed increases apply exclusively to contracts entered into after a specific date, such as July 1, 2024, and commencing January 1, 2025.

<sup>22</sup> *Id.*  
<sup>23</sup> *Id.*  
<sup>24</sup> *Id.*  
<sup>25</sup> *Id.*  
<sup>26</sup> S. 489.141(1)(f), F.S.  
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This specification would maintain consistency with past practices regarding cap adjustments. Without such specification, there's a risk of interpreting the bill as retroactively augmenting both per-claim and aggregate caps for all Division I claims arising from contracts initiated after July 1, 2004, and all Division II claims stemming from contracts entered into after July 1, 2016. This interpretation could encompass claims that have already been closed due to aggregate caps, as well as pending and settled claims.<sup>27</sup>

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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<sup>27</sup> DBPR, Agency Analysis of 2024 SB 414, p. 6 (Nov. 20, 2023).  
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