

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 57 Department of Business and Professional Regulation

**SPONSOR(S):** Government Operations Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Porter

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 802

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Morton	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N, As CS	Topp	Topp
3) Regulatory Affairs Committee	14 Y, 0 N	Morton	Hamon

### SUMMARY ANALYSIS

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 bill is not expected to have a fiscal impact.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Department of Business and Professional Regulation (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.

The Florida Homeowners' Construction Recovery Fund (recovery fund) is a separate account in the 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. The license is suspended even if the judgment was not against him or her personally. 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 he or she has been discharged in bankruptcy.

Section 468.605, F.S., creates the Florida Building Code Administrators and Inspectors Board (board) within the DBPR in the interest of public health and safety to regulate the practice of building code administration and inspection in the State of Florida. The board consists of nine members appointed by the Governor and subjected to confirmation by the Senate.

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 all revenues in the recovery fund were exhausted. In 2010, the Legislature amended the surcharge formula to attempt to improve consistency in its collection and applied it to all contractors. 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.

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.<sup>1</sup>

### Proposed 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.

## **B. SECTION DIRECTORY:**

Section 1 amends s. 489.140, F.S., to clarify funding requirements for the Florida Homeowners' Construction Recovery Fund.

Section 2 amends s. 468.631, F.S., to authorize the department to transfer excess cash from the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund. However, the DBPR 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 from the Florida Homeowners' Construction Recovery Fund.

Section 3 provides an effective date of October 1, 2013.

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

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

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<sup>1</sup> 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.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill is not expected to have a fiscal impact. The bill gives the DBPR discretion to transfer excess cash from the Building Code and Inspectors Board to the Florida Homeowners' Construction Recovery Fund. However, the DBPR 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 from the Florida Homeowners' Construction Recovery Fund.

### 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:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2013, the Business and Professional Regulation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed language giving the DBPR discretion to deny licensure or renewal on the basis of amounts owed under a disciplinary action or

failure to comply with or satisfy all terms and conditions of a final order. The amendment also included a clarifying change to s. 489.140, F.S., to remove an incorrect reference to the old surcharge formula that funds the recovery fund.

On March 7, 2013, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that the department may only transfer excess cash (from the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund) that would not exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission for the payment of claims from the Florida Homeowners' Construction Recovery Fund.