

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 Appropriations

BILL: CS/CS/SB 802

INTRODUCER: Appropriations Committee; Regulated Industries Committee and Senator Hays

SUBJECT: Department of Business and Professional Regulation

DATE: April 22, 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>	Favorable
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 802 deletes an obsolete reference to the fees associated with enforcement of the Florida Building Code. In addition, the bill authorizes the Department of Business and Professional Regulation (department or DBPR) to transfer any excess cash not needed 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 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 for the payment of claims.

In recent years, revenues to the Recovery Fund have been insufficient to pay all claims. In FY 2011-2012, \$1.8 million in claims were paid. As of January 2013, approximately 600 claims totaling \$13 million were awaiting review. During each of the last three fiscal years, the Board's revenues have remained nearly twice its expenditures – thus accumulating a cash reserve that could be transferred to the Recovery Fund to pay claims.

This bill is not expected to have a fiscal impact to the department.

This bill amends sections 468.631 and 489.140, Florida Statutes.

II. Present Situation:

The 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.

Section 468.631, F.S., provides for the shared allocation of a surcharge on Building Code enforcement fees (permit fees) between two trust funds administered by DBPR. 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. 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.

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.¹ 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,² abandoning a construction project,³ or making a false statement with respect to a project and arising directly out of certain activities listed in the law.⁴ 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 lesser of up to \$25,000 per claim, \$25,000 per transaction, or \$250,000 per contractor.⁵

Homeowners must take the following steps before filing a claim against the recovery fund:

- 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.
- Exhaust any alternative remedies, such as a surety bond, insurance policy or warranty.
- Apply any recovered amounts to the damages awarded.
- File the claim within one year after the conclusion of any civil, criminal or administrative action or award in arbitration based on the act.

¹See s. 489.1401(2), F.S.

² 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.

³ 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.

⁴ 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.

⁵ 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.

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)⁶ 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, 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.⁷ However, the reference to the square footage surcharge that remains in s. 489.140, F.S., was not similarly revised. In addition, the surcharge collections were changed to be deposited equally into the Florida Homeowners’ Construction Recovery 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.⁸ The ability of the department to transfer funds between trust funds was also eliminated.⁹

Section 468.605, F.S., creates the Florida Building Code Administrators and Inspectors Board within the DBPR 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 subject to confirmation by the Senate.

Pursuant to s. 468.631, F.S., the Board 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 Board and the Recovery Fund for operation of the respective programs.¹⁰

According to the department,¹¹ the Recovery Fund received insufficient funds for several years to keep pace with consumer claims for recovery, and the resulting backlog has caused a wait of

⁶See s. 489.105(3), F.S.

⁷See ch. 2010-176, L.O.F.

⁸*Id.*

⁹*Id.*

¹⁰ The Board 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.

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

several years before funds are available for approved distributions.¹² In FY 2011-2012, \$1.8 million in claims was paid. In FY 2010-2011, 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.

Current law does not permit the transfer of excess funds from one fund to the other. Therefore, excess funds build up in the fund that supports the operations of the Board after operational expenses are fully funded. The Board has received revenues of \$1.3 million in Fiscal Year 2009-2010, \$1.6 million in Fiscal Year 2010-2011 and \$2.1 million in Fiscal Year 2011-2012. In each of the last three fiscal years, the Board's expenditures ranged from \$777,504 to \$853,920 – leaving a sufficient cash reserve. The cumulative totals over the last year three fiscal years indicate the Board's revenues were \$5.0 million and expenditures were \$2.3 million.

The department's projections show a growing cash reserve for the board in future years.¹³ The department, anticipates that approximately \$5 million could be transferred from the Board to the Recovery Fund in Fiscal Year 2013-2014, and approximately \$1.2 million also could be transferred in subsequent years, which would resolve the current backlog of Recovery Fund claims within approximately 2.5 years.¹⁴

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.¹⁵

The bill authorizes the department to transfer cash in excess of those funds needed for the operations of the Florida Building Code Administrators and Inspectors Board to the Recovery Fund 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 the department may not transfer excess cash 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., for the payment of claims.

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

¹²2013 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.

¹³ 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 Appropriations Subcommittee on General Government.

¹⁴*Supra* at n. 12, at p. 3.

¹⁵*See* s. 6, ch. 2010-176, L.O.F.

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 the transfer of funds to permit those not needed for the operation of the Board 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 Board 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. The additional administrative workload associated with these claims will require additional staffing time, but can be handled within current staffing and departmental resources.¹⁶ The bill is not expected to have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁶*Supra* at n. 12, at p. 4.

VIII. Additional Information:

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

CS/CS by Appropriations on April 18, 2013:

The committee substitute makes stylistic changes due to bill drafting differences between this bill and the House companion. The substance of the committee substitute remains the same.

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 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.