

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 Regulated Industries

BILL: SB 414

INTRODUCER: Senator Garcia

SUBJECT: Florida Homeowners' Construction Recovery Fund

DATE: January 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 414 amends s. 489.143, F.S., to increase the maximum amounts payable to claimants for claims that may be made against contractors from the Florida Homeowners' Construction Recovery Fund (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), the maximum amount per claim increases from \$50,000 to \$250,000 over the next four fiscal years, and the total lifetime aggregate limit increases from \$500,000 to \$1 million over the next four fiscal years.

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), the maximum amount per claim increases from \$50,000 to \$250,000 over the next four fiscal years, and the total lifetime aggregate limit increases from \$150,000 to \$550,000 over the next four fiscal years.

Under the bill, the increased amounts for Division I claims and the total lifetime aggregate limit of all claims against a Division I licensee, apply to contracts entered into after July 1, 2004. The increased amounts for Division II claims and the total lifetime aggregate limit of all claims against a Division II licensee apply to contracts entered into after July 1, 2016 (the date that claims against Division II licensees were first authorized to be filed).¹ Current law provides the

¹ See ch. 2016-129, Laws of Fla.

statute of limitations to make a claim under the recovery fund is one year after the conclusion of an action or award in arbitration based on a compensable claim.²

According to the Department of Business and Professional Regulation, the impact on state revenues and expenditures is indeterminate and there is no impact expected on local government revenues and expenditures.³ See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

The Legislature regulates the construction industry “in the interest of the public health, safety, and welfare,”⁴ and has enacted ch. 489, F.S., relating to contracting, to address requirements for construction contracting, electrical and alarm system contracting, and septic tank contracting, and requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade.⁵

Contractor Licensing Exemptions; Handyman Exemption

More than 20 categories of persons are exempt⁶ from the contractor licensing requirements of ch. 489, F.S., including work falling under the so-called handyman exemption, meaning the work is of a “casual, minor, or inconsequential nature,” and the total contract price for labor, materials, and all other items is less than \$2,500, subject to certain exceptions.⁷

Construction Professional Licenses

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.

² See s. 489.141(1)(f), F.S.

³ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 4 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).

⁴ See s. 489.101, F.S.

⁵ See parts I, II, and III, respectively, of ch. 489, F.S.

⁶ Exemptions provided in s. 489.103, F.S., include: contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the Construction Industry Licensing Board and the Florida Department of Transportation; employees of licensed contractors, if acting within the scope of the contractor’s license, with that licensee’s knowledge; certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances; certain public utilities, on construction, maintenance, and development work by employees; property owners, when acting as their own contractor and providing “direct, onsite supervision” of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000; work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.; registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.; work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements; certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements See s. 489.103, F.S., for additional exemptions.

⁷ See also s. 489.103(9), F.S., and Fla. Admin. Code R. 61G-12.011(2).

Construction contractors regulated under part I of ch. 489, F.S., and electrical and alarm contractors regulated under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.⁸ The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) and the Electrical Contractors' Licensing Board (ECLB) within the DBPR may deny a license application for any person found guilty of any of the grounds for discipline in s. 455.227(1), F.S., or in the profession's practice act.⁹

The CILB is responsible for licensing and regulating the construction industry in Florida under part I of ch. 489, F.S.,¹⁰ and is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.¹¹
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of 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.¹²

The ECLB is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.¹³ Master septic tank contractors and septic tank contractors are regulated by the Department of Environmental Protection under part III of ch. 489, F.S.¹⁴

Construction Contractor Licensing Categories

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by the 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.¹⁵

"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.¹⁶

⁸ See ss. 489.113 and 489.516, F.S., respectively.

⁹ Section 455.227(2), F.S.

¹⁰ See s. 489.107, F.S.

¹¹ See s. 489.105(3)(a)-(c), F.S.

¹² Section 489.105(3) (d) - (q), F.S.

¹³ Section 489.507, F.S.

¹⁴ See ss. 489.551-489.558, F.S. Prior to July 1, 2021, the Department of Health regulated septic tank contracting; See s. 50, ch. 2020-150, L.O.F.

¹⁵ See ss. 489.105(6)-(8) and (11), F.S.

¹⁶ See ss. 489.108, 489.113, 489.117, and 489.131, F.S.

“Registered contractors” are individuals who have paid the required fee, taken and passed a local competency examination and licensing requirements, if any, who may practice the specific category of contracting for which he or she is approved only in the local jurisdiction for which the license is issued.¹⁷

Florida Homeowners’ Construction Recovery Fund

The Florida Homeowner’s Construction Recovery Fund (recovery fund) was created by the Legislature in 1993 after Hurricane Andrew.¹⁸ The recovery 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 or related party.¹⁹ A homeowner must have engaged a contractor for construction or improvement of the homeowner’s Florida residence, and the damage must have been caused by a Division I licensee or a Division II licensee.²⁰

A claim must involve an act by a contractor under specific statutory provisions relating to mismanagement, abandonment of a project, and actions that give rise to disciplinary actions by the CILB against contractors, as follows:

- 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 the contractor fails to remove a valid lien after payment within 75 days of the recording of the lien, the contractor has abandoned the job and has been paid for more than is completed, and the customer is made to pay more than the contract price.
- Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, under certain conditions. A project is presumed abandoned after 90 days if the contractor terminates the project without just cause or without proper notice 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 false statement with respect to a project or contract indicating that the work is bonded, subcontractors have been paid for all work which results in a financial loss to the owner, purchaser, or contractor, or that workers’ compensation and public liability insurance are provided.

Section 713.35, F.S., provides for criminal penalties for any person who knowingly and intentionally makes an affidavit, a waiver or release of lien, or other document, whether or not under oath, with false information about the payment status of subcontractors, sub-subcontractors, or suppliers.

¹⁷ Section 489.117, F.S. *See also* s. 489.105(3)(a)-(o), F.S.

¹⁸ *See* ch. 93-166, s. 21, Laws of Fla. and *see* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 2 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).

¹⁹ *See* ss. 489.140-489.144, F.S.

²⁰ Section 489.1402, F.S., defines the term “residence” to mean “a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.”

If a final judgment, CILB-issued restitution order, or arbitration award is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must present to the CILB sufficient evidence to show that the contractor engaged in activity that is described in those subsections.²¹

The fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Florida Building Code.²² The local government that collects the permit fees retains 10 percent of the surcharge, and the net surcharge proceeds are then allocated equally to the recovery fund and the operations of the Building Code Administrators and Inspectors Board.²³

Duty of Contractor to give Notice of Fund

Section 489.1425, F.S., creates a duty for a contractor to provide notice to a customer of rights under the recovery fund. 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.

Requirements to Make a Claim

The claimant must have obtained a final judgment, arbitration award, or CILB-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 of an action or award in arbitration that is based on the misconduct.²⁴ Certain persons are not eligible to make a claim against the recovery fund.²⁵

Limits

Section 489.143, F.S., relating to 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.²⁶

²¹ Fla. Admin. Code R. 61G4-21.003.

²² Section 468.631(1), F.S.

²³ The DBPR has the authority to transfer excess cash to the recovery fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; the amount transferred cannot exceed the amount appropriated in the General Appropriations Act or approved by the Legislative Budget Commission for payment of claims from the recovery fund. *Id.*

²⁴ Section 489.141(1)(f), F.S.

²⁵ Section 489.141(2), F.S., provides certain persons are precluded from making a claim for recovery under the recovery fund, if: (a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse; (b) The claimant is a licensee who acted as the contractor in the transaction that is the subject of the claim; (c) The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee; (d) The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract; or (e) The claimant was associated in a business relationship with the licensee other than the contract at issue.

²⁶ Section 489.143(2), F.S.

The maximum amounts payable for recovery fund claims and the total lifetime aggregate limits are set forth in s. 489.143, F.S.,²⁷ 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.²⁸ Payments may not exceed the total claim limits or lifetime aggregate limits.²⁹

Appropriations; Excess Funds; License Suspension

Section 489.143(8), F.S., provides that if the annual appropriation is exhausted with claims pending, the pending claims must be carried over to the next fiscal year. Monies in excess of pending claims must be paid in accordance with s. 468.631, F.S., relating to the Building Code Administrators and Inspectors Fund.

Section 489.143(9), F.S., provides that, upon payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee, the license of such licensee is automatically suspended, without further administrative action, upon the date of payment from the recovery fund. The license may not be reinstated until the licensee has repaid in full the amount paid from the recovery fund, plus interest.

III. Effect of Proposed Changes:

The bill amends s. 489.143, F.S., to increase 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.

²⁷ For recovery fund claims for contracts entered into before July 1, 2004, see s. 489.143(6), F.S.

²⁸ Section 489.143(7), F.S.

²⁹ *Id.*

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;

The bill does not revise current law providing that the statute of limitations to make a claim under the recovery fund is one year after the conclusion of an action or award in arbitration based on a compensable claim.³⁰ Therefore, even with the increased maximum per-claim amounts and lifetime aggregate limits contemplated in the bill, claimants must continue to meet the statute of limitations deadline to pursue a claim against the recovery fund.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁰ See s. 489.141(1)(f), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DBPR indicates that increasing the per-claim maximum payment and the aggregate lifetime limit for licensees, the number of claimants who receive compensation from the recovery fund and the amount of compensation will increase, but the impact is indeterminate.³¹

C. Government Sector Impact:

According to the DBPR, approximately \$4.5 million is appropriated annually to pay recovery fund claims,³² and the recovery fund balances and revenues are as follows:³³

As of July 31, 2023, the overall Recovery Fund balance was \$23,235,064.00. For fiscal years 20/21, 21/22, and 22/23, the average amount of revenue going into the Recovery Fund from the surcharge per fiscal year was \$6,188,495.00, and the average amount of claims awarded was \$2,882,184 per fiscal year. However, between FY 20/21 and FY 22/23, the number of claims presented and awarded each year more than doubled. In FY 22/23, 232 claims were awarded for a total amount of \$4,449,552.00.³⁴

The increased claim cap amounts proposed in the bill will impact on expenditures as it would cause an increase to the overall amount disbursed by the Division to approved claimants. The extent of the increase will depend on the number of claims awarded and

³¹ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 4-5 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).

³² *Id.* at 2.

³³ *Id.*

³⁴ *Id.*

the cost of those claims, which can vary from year to year and has more than doubled over the last 2 fiscal years.³⁵

The proposed claim caps outlined within this bill could increase the overall number of claims by significant amounts from year to year and would have the potential to outpace annual revenues into the Recovery Fund. This would eat into the fund’s balance or require General Revenue to supplement if revenues were not adjusted to increase along with the cap increases.³⁶

Revenues have averaged \$6,118,496 over the past 3 years but have been at least \$6,500,000 for the last two years, and the cost of claims in the last fiscal year was \$4,462,465. If we take the Fund’s starting balance of \$23,235,064 and project for the proposed increases through the 2027/28 Fiscal Year, the estimates are as follows:³⁷

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	\$24,268,647
24/25	\$25,235,064	\$6,158,696	50%	66.67%	\$ 7,617,696	\$22,809,647
25/26	\$24,610,064	\$6,238,878	66.67%	40%	\$11,424,110	\$17,624,415
26/27	\$20,185,064	\$6,339,727	40%	28.57%	\$15,177,893	\$8,786,249
27/28	\$12,014,350	\$6,167,422	42.86%	44.44%	\$21,567,992	(\$6,614,320)

These are estimated claim increases based on a corresponding increase in the cap amounts, and preliminary estimates show a possible fund deficit by the 2027/28 Fiscal Year. This estimate assumes revenues and claims remain about the same from year to year. But it is also worth noting that as the aggregate caps also increase from year to year as outlined in the Bill, the Division [of Professions] has expressed the possibility for cases to remain open year to year as they would not be able to close them for hitting an aggregate cap due to that cap being increased the following year.³⁸

With all of this considered, preliminary estimates show that claims would start to outpace revenues in FY 24-25, which would eventually result in a negative cash balance in the Construction Recovery Fund.³⁹

Under the bill, the maximum claim amounts increase each fiscal year for four years, which may create an incentive to delay the filing of a claim to increase the potential payment amount from the recovery fund, provided the claimant complies with the statute of limitations to make a claim, which is one year after the conclusion of any civil,

³⁵ *Id.* at 6.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

criminal, or administrative action or award in arbitration based on a compensable violation.⁴⁰

The bill does not indicate whether the maximum per-claim and lifetime aggregate limits for Fiscal Year 2027-2028 continue to apply in subsequent fiscal years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DBPR has concerns about the impact of the bill on its operations in processing and paying claims based on the age of a claim, and the application of the increased maximum per-claim amounts and lifetime aggregate limits each fiscal year, as follows:

It is recommended that the bill specify that the increases only apply to contracts entered after a specific date (such as July 1, 2024) and beginning January 1, 2025) to be consistent with previous increases in the caps.⁴¹

It is also unclear what the per-claim and aggregate caps will be after fiscal year 2027/2028.⁴²

VIII. Statutes Affected:

This bill substantially amends section 489.143 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

⁴⁰ Section 489.141(1)(f), F.S.

⁴¹ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 5 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).

⁴² *Id.* at 6.