



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5830 (Substitute H-1 as passed by the House)
House Bills 5831 through 5835 (as passed by the House)
Sponsor: Representative Richard Hammel (H.B. 5830 & 5835)
Representative Fred Durhal, Jr. (H.B. 5831-5834)
House Committee: Appropriations
Senate Committee: Appropriations

Date Completed: 6-30-10

CONTENT

The bills would amend a number of acts to do the following:

- Eliminate the Homeowner Construction Lien Recovery Fund, which is currently insolvent.
- Reduce contractor license fees by \$10 per year, the amount that under current law is deposited from each contractor license fee to the Homeowner Construction Lien Recovery Fund.
- Retain a mechanism for a homeowner to prevent a construction lien from attaching to a structure, by providing for the owner to file an affidavit, including evidence of payment, with the circuit court.
- Eliminate the felony penalty for submitting false information in order to receive a payment from the Homeowner Construction Lien Recovery Fund.

House Bill 5830 (H-1) would repeal provisions of the Construction Lien Act governing the insolvent Homeowner Construction Lien Recovery Fund. House Bills 5831, 5832, 5833, and 5834 would amend the Electrical Administrative Act, the Forbes Mechanical Contractors Act, the State Plumbing Act, and the Occupational Code, respectively, to eliminate fees paid by licensed contractors and builders to the Homeowner Construction Lien Recovery Fund. House Bill 5835 would amend the Code of Criminal Procedure to eliminate sentencing guidelines for providing false information to obtain a payment from the Homeowner Construction Lien Recovery Fund.

House Bill 5830 (H-1) is tie-barred to House Bills 5831 through 5835. Each of those bills is tie-barred to House Bill 5830.

MCL 570.1104 et al. (H.B. 5830)
338.883b et al. (H.B. 5831)
338.976 et al. (H.B. 5832)
338.3531 et al. (H.B. 5833)
339.2404 et al. (H.B. 5834)
777.15b (H.B. 5835)

FISCAL IMPACT

The Homeowner Construction Lien Recovery Fund (HCLRF) was statutorily created in 1982 to protect a homeowner against having to pay twice for construction work, should a contractor fail to pay its subcontractors, suppliers, and laborers. This fund has been used

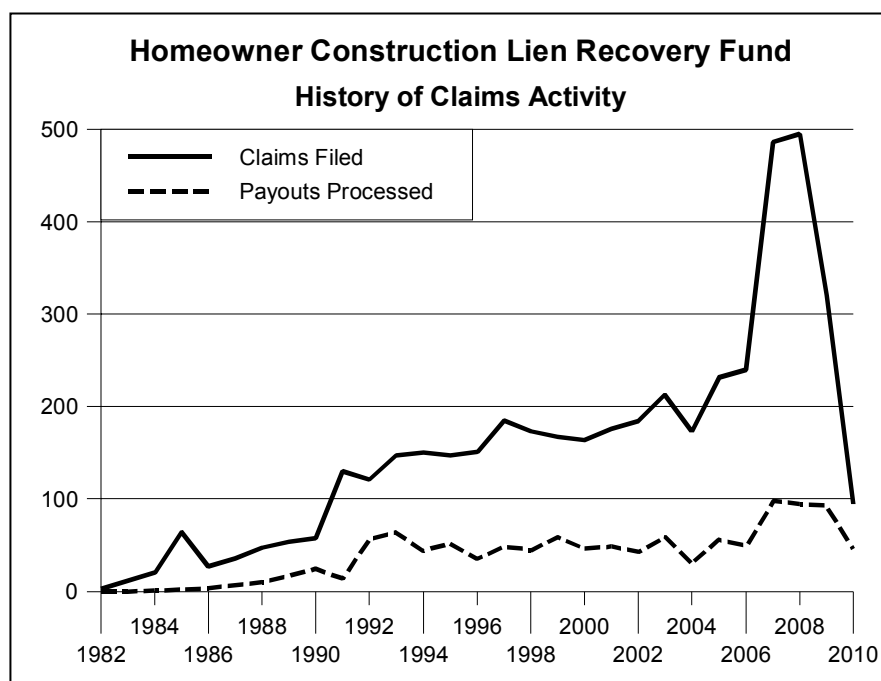
by subcontractors and suppliers as a reimbursement mechanism to pay these claims when a homeowner has properly paid for the work and can demonstrate payment with an affidavit filed in circuit court.

Under current law, the revenue to the HCRLF comes from a fee of \$10 applied to the initial license of electrical, plumbing, and mechanical contractors, residential builders, and residential maintenance and alteration contractors. Laborers are permitted to become members of the Fund for an initial fee of \$15. Suppliers also may become members of the Fund by paying a \$50 fee per retail location. All members are subject to a \$30 renewal fee every three years. The Fund is administered by the Bureau of Commercial Services in the Department of Energy, Labor, and Economic Growth (DELEG). The Attorney General is required to defend the Fund.

Prior to 2006, the Act contained a provision that allowed a special assessment to be levied on all licensees if the balance in the Fund fell below \$1.0 million. This assessment was imposed twice, the first time in 1999 and again in 2005. In 2006, amendments to the Act eliminated this special assessment and modified the fee structure to the one described above. By the end of 2009, the Fund was essentially insolvent as revenue lagged far below expenditures. Revenue to the Fund was \$1,151,900 for FY 2007-08 and \$753,238 for FY 2008-09. Expenditures for the same years were \$2,293,500 and \$2,403,000, respectively.

According to DELEG, one reason for the Fund imbalance is the increased number of claims against the Fund in recent years. As shown in [Figure 1](#), claims filed against the Fund from 1991 through 2002 ranged from 150 to 180 per year. Starting in 2005 claims began to increase, reaching 486 in 2007 and 495 in 2008. Although the 2006 changes to the fee structure had increased revenue, the number of claims eligible for a payout increased from 50 in 2006 to 100 in 2007. Currently, the outstanding balance of claims against the Fund is \$25.1 million, of which \$2.9 million is estimated to be the liability on these claims. (Historically, the Fund has paid out approximately 11.68% of the value of the claims filed.) The unobligated balance of the Fund was \$10,303 as of June 17, 2010, and is expected to be negative by the end of FY 2009-10 if the Fund is not eliminated.

Figure 1



Administrative costs for FY 2008-09 included \$981,500 for the Attorney General and \$151,000 for DELEG program costs. The elimination of the Fund would reduce the costs of both the Attorney General, who contracts with outside counsel on these cases, and DELEG.

Instead of being able to seek payment from the current Homeowner Construction Lien Recovery Fund, contractors and suppliers who were not properly paid would have to file a suit in circuit court against the nonpayer, probably a contractor or builder.

House Bill 5830 would retain the current process by which a homeowner can present an affidavit to the circuit court and evidence of payment, thus preventing a construction lien from attaching to a structure.

Fiscal Analyst: Elizabeth Pratt
Maria Tyszkiewicz

S0910\5830sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.