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FISCAL IMPACT REPORT

ORIGINAL DATE 02/17/09

SPONSOR Lujan, B. LAST UPDATED _____ HB 733

SHORT TITLE Residential Construction Consumer Recovery SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|----------|-------------------------|--|
| FY12 | FY13 | | |
| \$150.0* | \$150.0* | Recurring | Residential Construction Consumer Recovery Fund |

(Parenthesis () Indicate Expenditure Decreases)

* RLD will need administrative funds to administer the Residential Construction Consumer Recovery Fund which will not be operational until FY12 or FY13. They will need some lead in time.

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Non-Rec | Fund Affected |
|-------------------|-----------|-----------|-------------------------|------------------|
| FY10 | FY11 | FY12 | | |
| (\$220.0) | (\$215.0) | (\$215.0) | Recurring | General Fund* |

(Parenthesis () Indicate Revenue Decreases)

*This \$650,000 estimate is from fees that are not currently assessed, but if they were it could go to the general fund. Instead the fees will go to the newly created Residential Construction Consumer Recovery Fund.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|----------------------|----------------------|----------------------|-------------------------|------------------|
| Total | | Unknown See Below | Unknown See Below | | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation & Licensing (RLD)

State Treasurer's Office (STO)

SUMMARY

Synopsis of Bill

House Bill 733 enacts the Residential Construction Consumer Recovery Fund Act (act) and creates the Residential Construction Consumer Recovery Fund (fund) for homeowners who have incurred damages caused by a licensee of the Construction Industries Division (CID) of RLD in the performance or breach of a contract for construction performed on the homeowner's primary residence.

CID and local building programs will be required to make an assessment of \$10 on each permit issued for residential construction, and these assessments will be deposited into the fund. \$1 of each assessment will be appropriated to local governments to cover the administrative costs of collecting the assessment.

The director of CID will be responsible for making annual adjustments to the permit assessment amount to keep the fund balance at approximately \$1,500,000. Claims against the fund will be processed by CID and the fund will be administered by the Department of Finance and Administration (DFA).

Payment out of the fund to a qualifying homeowner will be made pursuant to an order directing payment issued by the court. Such an order will be based on a judgment awarded to the homeowner and a verified claim on the fund. No payment from the fund to a single claimant will exceed \$25,000. The total amount recoverable against a single licensee in a fiscal year shall not exceed \$300,000.

Payments out of the fund must be repaid by the affected licensee within 180 days or pursuant to an approved payment schedule. Failure to repay the fund can result in the cancellation of the license, but the licensee can request a hearing before the Construction Industries Commission on the issue of repayment before cancellation becomes effective. A licensee will not be eligible to renew or re-apply for a license until the fund is repaid.

FISCAL IMPLICATIONS

Not more than \$150,000 of fund revenue will be appropriated, annually, to CID to cover the costs of processing claims against the fund.

No payment will be made out of the fund until the initial balance in the fund reaches \$650,000. RLD estimates it will take three years to reach this amount based on current permitting. The Residential Construction Consumer Recovery Fund will receive \$10 on every permit issued by the State and \$9 on every permit issued by a local government. RLD notes that if the economic situation gets worse it could take more than three years to reach \$650,000.

The fund balance will be capped at \$2,800,000.

If money in the fund is insufficient to make a payment, no payment shall be made until the fund balance reaches \$250,000. This refers to a situation after the fund has reached \$650,000 and the payouts have reduced the fund to less than \$250,000.

CID will be subrogated to a homeowner's rights to recover on the judgment after payment out of the fund. Revenue recovered by CID in asserting subrogated rights will be deposited into the fund.

RLD provided the following:

This fund will not affect the general fund. It will be funded by new money collected by State and local building programs through a modest initial assessment on residential building permits of \$10. That assessment will be adjusted annually, as needed, to keep the fund at a balance sufficient to respond to authorized claims.

The fund will be self-supporting and will pay for the administrative costs of collecting the assessments and CID's management of the claims process.

Based on input from other states which operate construction consumer recovery funds, new full time FTEs will be required to administer claims against the fund, examples have shown two FTEs managing these types of funds. The salaries and overhead costs of these FTEs is the basis for the proposed annual \$150,000 appropriation out of fund revenues to CID.

Repayment by licensees of amounts paid out of the fund is mandatory.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

Currently, the only recourse for a homeowner to recover damages caused by a licensee of the division is through litigation; but, even when a judgment is awarded, the homeowner is often unable to collect on it because the licensee has no money, or the process of collecting is too difficult and costly to be worth while. This fund would provide homeowners an alternative means of compensation for damages awarded in a judgment.

Based on information received from similar programs in other states, CID estimates that there will be approximately 200 open claims at any given time, and that payouts will occur between 4 and 6 times a month. The administration of this amount of activity is estimated to require new FTEs. Processing claims under the fund with additional staff could be problematic. CID estimates that, using the assessments provided in the bill, the minimum balance would be reached in approximately three years.

ADMINISTRATIVE IMPLICATIONS

This fund would create an entirely new process for CID, so rules and procedures will be required, and new staff will have to be hired and trained.

RLD will have some administrative responsibilities as a result of the provisions in this bill, but it is not clear how much staff time will be required before the fund reaches \$650,000.

The fund will be administered by DFA

The STO provided the following:

House Bill 733 creates in the state treasury the Residential Construction Consumer Recovery Fund. Under the Statewide Human Resource, Accounting and Management Reporting System (SHARE), such funds are established by the DFA in SHARE. Prior to SHARE, funds were created in the state treasury under the Treasury Reconciliation, Accounting and Cashiering System (TRACS). DFA notifies the STO when a fund created by statute has been established.

Although the SHARE system has modified the manner in which funds are created in the treasury, the STO has the same statutory responsibilities of oversight and monthly interest allocations if the fund is an interest-bearing fund. The Residential Construction Consumer Recovery Fund is not an interest-bearing fund.

Unless the creation of this fund creates an undue administrative burden to the STO Investment Division, HB 733 will not have a fiscal impact to the STO.

POSSIBLE QUESTIONS

Since the Residential Construction Consumer Recovery Fund cannot make any payouts until it reaches \$650,000 which could take three or four years will RLD accept claims and process and adjudicate them and hold them until the fund is ready to make payouts?

DW/svb