

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 37
Committee Substitute Favorable 5/2/91

Short Title: Homeowners Recovery Fund.

(Public)

Sponsors:

Referred to:

February 11, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A HOMEOWNERS RECOVERY FUND UNDER THE
3 SUPERVISION OF THE GENERAL CONTRACTORS LICENSING BOARD.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 87 of the General Statutes is amended by adding the
6 following new Article to read:

7 **"ARTICLE 1A.**

8 **"HOMEOWNERS RECOVERY FUND.**

9 **"§ 87-15.5. Definitions.**

10 As used in this Article, unless the context clearly requires otherwise:

- 11 (1) 'Applicant' means the owner of a single-family residential dwelling
12 unit who has suffered a reimbursable loss because of the dishonest or
13 incompetent conduct of a general contractor in constructing or altering
14 the residential dwelling unit and has filed an application for
15 reimbursement from the Homeowners Recovery Fund.
16 (2) 'Board' means the General Contractors Licensing Board.
17 (3) 'Fund' means the Homeowners Recovery Fund.
18 (4) 'Dishonest conduct' means fraud or deceit in obtaining a license under
19 Article 1 of Chapter 87 of the General Statutes, or fraud or deceit by a
20 general contractor in the practice of general contracting.
21 (5) 'General contractor' means a person or entity who:

- 1 a. Is licensed under Article 1 of Chapter 87 of the General
2 Statutes; or
3 b. Fraudulently procures any building permit by presenting the
4 license certificate of another; or
5 c. Fraudulently procures any building permit by falsely
6 impersonating a licensed contractor.
- 7 (6) 'Incompetent conduct' means incompetency or gross negligence by a
8 general contractor in the practice of his profession.
- 9 (7) 'Reimbursable losses' are only those losses of money which:
10 a. Result from the dishonest or incompetent conduct of a general
11 contractor which conduct occurred on or after October 1, 1991;
12 b. Are not paid by or on behalf of, in whole or in part, the
13 contractor whose conduct caused the loss; and
14 c. Are not covered by any bond, surety agreement, or insurance
15 contract.

16 **"§ 87-15.6. Homeowners Recovery Fund.**

17 (a) There is established the Homeowners Recovery Fund. The Fund shall be
18 administered by the General Contractors Licensing Board under rules and regulations
19 adopted by it. The purpose of the Fund is to reimburse homeowners who have suffered
20 financial loss as a result of the dishonest or incompetent conduct in North Carolina of a
21 general contractor.

22 (b) The Board shall have authority to impose a surcharge of not more than fifty
23 dollars (\$50.00) annually on each license application or renewal, which surcharge shall
24 be deposited by the Board into the Fund. For the first year of operation of the Fund the
25 Board shall assess a surcharge in an amount sufficient to yield one hundred fifty
26 thousand dollars (\$150,000). Thereafter the Board shall maintain a minimum level of
27 one hundred fifty thousand dollars (\$150,000) in the Fund for recovery and guaranty
28 purposes. The Board may suspend the surcharge for any year for which the Fund
29 balance is at least one hundred fifty thousand dollars (\$150,000) and the Board
30 determines that sufficient funds are available to meet likely disbursements for that year
31 and that an adequate reserve will remain after such disbursements. The Board shall
32 receive, manage, and disburse funds as may from time to time be appropriated or
33 voluntarily contributed to it, or otherwise received by it, as provided in this Article.
34 G.S. 87-7 shall not apply to the Homeowners Recovery Fund.

35 **"§ 87-15.7. Fund administration.**

36 (a) All sums received by the Board pursuant to this Article shall be held in a
37 separate account known as the Homeowners Recovery Fund. Deposits to and
38 disbursements from the Fund account shall be subject to the written direction of the
39 Board under rules established by it.

40 (b) The Board shall adopt regulations and rules of procedure governing
41 management of the Fund account, presentation and processing of applications for
42 reimbursement, processing of reimbursable claims, and subrogation or assignment of
43 the rights of any reimbursed applicant.

1 (c) The Board may use or otherwise expend monies in the Fund for the following
2 purposes:

3 (1) To make reimbursements on approved applications;

4 (2) To purchase insurance to cover such losses, in whole or in part,
5 deemed appropriate by the Board and not inconsistent with the
6 purposes of the Fund;

7 (3) To invest such portions of the Fund as are not currently needed to
8 reimburse losses and maintain adequate reserves, and as are permitted
9 to be made by fiduciaries under State law; and

10 (4) To pay the expenses of the Board to administrate the Fund, including
11 employment of counsel to prosecute subrogation claims.

12 (d) The Board shall submit annually a report to the State Treasurer accounting for
13 all monies collected and expended in the administration of the Homeowners Recovery
14 Fund.

15 **"§ 87-15.8. Application for reimbursement.**

16 (a) An application for reimbursement from the Homeowners Recovery Fund may
17 be filed by any person who has suffered a monetary loss as the result of dishonest or
18 incompetent conduct by a general contractor in the construction, alteration, or repair of
19 a single-family residential dwelling unit owned by such person.

20 (b) The Board shall prepare a form of application for reimbursement from the
21 Homeowners Recovery Fund. Effective October 1, 1991, the Board may consider
22 applications for reimbursement of losses that arise after that date and which are caused
23 by the dishonest or incompetent conduct of any general contractor committed on or after
24 that date; provided, however, that such reimbursement shall be made only to the extent
25 to which such losses are not bonded or otherwise covered, protected, or reimbursed, and
26 provided further that the applicant for reimbursement has exhausted all civil remedies
27 against the contractor or his or her estate, has obtained a judgment in his favor in such
28 action which judgment has been unsatisfied, and has complied with other applicable
29 rules of the Board. If the applicant is prevented from filing suit or obtaining a judgment
30 against the contractor due to the automatic stay provision of Section 362 of the U.S.
31 Bankruptcy Code, the requirement of exhaustion of civil remedies and the obtaining of a
32 judgment against the contractor shall be waived. The Board shall have authority to find
33 that all other requirements of this Article have been met by the applicant.

34 (c) The Board shall investigate all applications made and may reject or allow
35 such claims in whole or in part based on and to the extent that monies are available in
36 the Homeowners Recovery Fund. The Board shall have complete discretion to
37 determine the order, amount and manner of payment of approved applications. All such
38 payments shall be a matter of privilege and not of right and no person shall have any
39 right in the Homeowners Recovery Fund as a third party beneficiary or otherwise. No
40 attorney shall be compensated by the Board for prosecuting an application before it.

41 **"§ 87-15.9. Subrogation for reimbursement made.**

42 In the event reimbursement is made to an applicant under this Article, the Board
43 shall be subrogated in the reimbursed amount and may bring such action as deemed
44 advisable against the contractor, his assets or his estate. The Board may enforce any

1 claims it may have for restitution or otherwise, and may employ and compensate
2 consultants, agents, legal counsel, and other such employees as it deems necessary and
3 appropriate to carry out its authority under this section."

4 Sec. 2. This act is effective upon ratification.