



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill reduces the length of the statute of limitations and repose for actions founded on the design, planning, or construction of an improvement to real property.

Promote personal responsibility -- This bill requires that litigants commence their cause of action in a more timely fashion from when the cause of action has accrued.

#### B. EFFECT OF PROPOSED CHANGES:

##### Statute of Limitations and Repose for Construction Defects

A statute of limitations establishes a fixed time period within which lawsuits must be commenced after a cause of action has accrued.<sup>1</sup> Once a claim has been extinguished by the applicable statute of limitations, the claim cannot be revived because a constitutionally protected property right to be free from the claim has vested in the defendant.<sup>2</sup> The statutes of limitation are primarily governed by ch. 95, F.S., although statutes of limitation are found in other parts of the statutes as well. Statutes of limitation are designed to encourage plaintiffs to assert their causes of action with reasonable diligence when evidence is fresh and available.<sup>3</sup> Statutes of limitation protect defendants against claims asserted when evidence is lost and after the facts have become obscure from the lapse of time, defective memory, or death and removal of witnesses.<sup>4</sup>

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language imposing time limits within which legal proceedings on a cause of action must be commenced, a statute of repose is not a true statute of limitations because it begins to run not from accrual of the cause of action, but from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.<sup>5</sup> Moreover, unlike a statute of limitations, a statute of repose abolishes or completely eliminates the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the limitation period specified in the statute of repose.<sup>6</sup>

Section 95.11(3)(c), F.S. currently provides that actions founded on a deficiency in the design, planning, or construction of an improvement to real property, whether founded on contract or on negligence,<sup>7</sup> are subject to a 4-year statute of limitations. The 4-year time period of the statute of limitations begins to run from the latest date of the following events:

- Actual possession by the owner;
- The issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or

<sup>1</sup> Am. Jur. 2d, Limitation of Actions § 9.

<sup>2</sup> *Wood v. Eli Lilly & Co.*, 701 So. 2d 344 (Fla. 1997); *In re Estate of Smith*, 685 So. 2d 1206 (Fla. 1996); *Boyce v. Cluett*, 672 So. 2d 858 (Fla. 4th DCA 1996).

<sup>3</sup> *Thermo Air Contractors, Inc. v. Travelers Indem. Co.*, 277 So. 2d 47 (Fla. 3rd DCA 1973); *Foremost Properties, Inc. v. Gladman*, 100 So. 2d 669 (Fla. 1st DCA 1958).

<sup>4</sup> *Whaley v. Wotring*, 225 So. 2d 177 (Fla. Dist. Ct. App. 1st Dist. 1969).

<sup>5</sup> *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

<sup>6</sup> *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997)

<sup>7</sup> *Dubin v. Dow Corning Corp.*, 478 So. 2d 71 (Fla. 2nd DCA 1985).

- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

An exception to the 4-year statute of limitations is provided for when an action involves a latent defect. A latent defect is a hidden flaw, weakness or imperfection in an article which a seller knows about, but the buyer cannot discover by a reasonable inspection. Under these circumstances the 4-year statute of limitation does not begin to run until the defect is discovered or should have been discovered through due diligence. However, whether the action is based on a latent defect or not the statute of repose for an action founded on the design, planning, or construction of an improvement to real property provides that the action must be commenced within 15 years after the date of the following, whichever is latest:

- Date of actual possession by the owner;
- The date of the issuance of a certificate of occupancy;
- The date of abandonment of construction if not completed; or
- The date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

This bill amends s. 95.11(3)(c), F.S., to provide that the 4-year time period of the statute of limitations begins to run from the "earliest" of the following events (except when the action involves a latent defect):

- Actual possession by the owner;
- The issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

This bill also reduces the statute of repose from 15 years to 10 years for any action founded on the design, planning, or construction of an improvement to real property. The time will begin to run when the earliest of the following events occurs:

- Actual possession by the owner;
- The issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

#### Warranties of Fitness for Work and Materials Specified in a Condominium Construction Contract

Section 718.203, F.S. provides that the contractor, subcontractors, and suppliers grant to the developer and to the purchaser of each condominium unit an implied warranty of fitness as to the work performed or materials supplied by them.<sup>8</sup> Specifically, there is an implied warranty of fitness for three years from the completion of the construction of a building or improvement as to the roof and structural components of the building or improvement and as to mechanical and plumbing elements serving a building or an improvement, except for mechanical elements serving only one unit.<sup>9</sup> As to all other improvements and materials, there is an implied warranty of fitness for one year after all construction is completed.<sup>10</sup>

This bill amends s. 718.203(2), F.S., limiting the implied warranties of fitness that the contractor, subcontractors, and suppliers grant to the developer to only the work performed or materials supplied

<sup>8</sup> Section 718.203(2), F.S.

<sup>9</sup> Section 718.203(2)(a), F.S.

<sup>10</sup> Section 718.203(2)(b), F.S.

by them that are specified in their respective contracts. This bill also amends s. 718.203(6), F.S., to provide that the warranty provided in s. 718.203(2), F.S. applies only to a building or improvement that was designated as a condominium by the developer in its construction contract with the contractor or any amendment to the contract executed by the parties. This bill removes the language in current law which provides that nothing in this section affects condominiums where rights are established by contracts for the sale of 10% or more of the units in the condominium by the developer to prospective unit owners prior to July 1, 1974, or as to condominium buildings where construction has been commenced prior to July 1, 1974.

### Condominium Conversion Reserve Accounts

A developer may create a condominium by converting existing, previously occupied improvements to condominium ownership. The developer must disclose the condition of the improvements and certain components, as well as the current estimated replacement costs.<sup>11</sup> Section 718.618, F.S. provides that when existing improvements are converted to ownership as a residential condominium, the developer must establish reserve accounts for capital expenditures and deferred maintenance.

This bill amends s. 718.618, F.S., creating subsection (9), which provides that s. 718.618, F.S. applies only to the conversion of existing improvements where construction of the improvement was commenced prior to its designation by the developer as a condominium. Therefore, reserve accounts will only have to be established for the purposes of conversion, where construction of the improvement started before it was designated as a condominium. When this occurs s. 718.203, F.S., which pertains to warranties, is not applicable.

### Application of the Proposed Changes to s. 95.11(3)(c), F.S.

This bill provides that the proposed changes made by the bill to s. 95.11(3)(c), F.S. will apply to any action commenced on or after July 1, 2006, regardless of when the cause of action accrued. The changes made by this bill, shortening the statute of limitations for actions founded on the design, planning, or construction of an improvement to real property, would apply to any party whose action commenced on or after July 1, 2006, even if the cause of action accrued much earlier. Therefore, a party whose cause of action accrued prior to the changes in this bill, but the action commenced after July 1, 2006, could be barred from bringing the action by the shortening of the statute of repose from 15 years to 10 years. This bill does provide an exception, which deals with this issue, and provides that any action that would not have been barred under s. 95.11(3)(c), F.S., prior to the amendments made by this act may be commenced before July 1, 2007. If the action is not commenced by July 1, 2007 and is barred by the amendments to s. 95.11(3)(c), F.S., then the action will be barred. Therefore, people who would be barred from bringing a cause of action based on the new statute of limitations and repose, but not under the old statute have until July 1, 2007 to commence their cause of action or are forever barred.

#### C. SECTION DIRECTORY:

Section 1 amends s. 95.11(3)(c), F.S., shortening the statute of limitations and repose for actions founded on the design, planning, or construction of an improvement of real property.

Section 2 amends s. 718.203, F.S., to revise provisions related to when contractors, subcontractors, and suppliers must grant implied warranties of fitness to the developer and unit owners.

Section 3 amends s. 718.618(9), F.S., to provide for when provisions related to conversion reserve accounts and warranties are applicable.

Section 4 establishes specific provisions pertaining to the application of the changes to s. 95.11(3)(c), F.S. in this bill.

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<sup>11</sup> Section 718.614(1), (2), F.S.

Section 5 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Although the right to commence an action is a valid and protected property interest,<sup>12</sup> a plaintiff has no vested right in a statute of limitations in effect when his or her cause of action accrues.<sup>13</sup> Thus, the time allowed for a suit may be either initially imposed or reduced by legislation enacted after the cause of action arose, provided the litigant still has a reasonable time left in which to enforce his or her right.<sup>14</sup> The changes to s. 95.11(3)(c), F.S., made in this bill do reduce the time allowed for a suit, after the cause of action arose, but the bill appears to give a litigant reasonable time to enforce his or her right before being completely barred.

### B. RULE-MAKING AUTHORITY:

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<sup>12</sup> *Wiley v. Roof*, 641 So. 2d 66 (Fla. 1994).

<sup>13</sup> *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

<sup>14</sup> *McCloskey & Co. v. Eckart*, 164 F.2d 257 (C.C.A. 5th Cir. 1947); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.