

HB 1089

2006

1 A bill to be entitled

2 An act relating to construction contracting; amending s.  
3 95.11, F.S.; revising commencement periods for actions  
4 founded on the design, planning, or construction of  
5 improvements to real property; providing application;  
6 amending s. 718.203, F.S.; requiring implied warranties of  
7 fitness for certain materials and work with respect to  
8 condominiums to be specified by contract; providing that  
9 the warranty applies only to certain buildings or  
10 improvements; amending s. 718.618, F.S., relating to  
11 converter reserve accounts and warranties; limiting  
12 applicability to certain improvements; providing an  
13 effective date.

14  
15 WHEREAS, architects, engineers, and contractors of an  
16 improvement to real property may find themselves named as  
17 defendants in a damage suit many years after the improvement was  
18 completed and occupied, and

19 WHEREAS, to permit the bringing of such actions without an  
20 appropriate limitation as to time places the defendant in an  
21 unreasonable, if not impossible, position with respect to  
22 asserting a defense, and

23 WHEREAS, architects, engineers, and contractors have no  
24 control over an owner whose neglect in maintaining an  
25 improvement may cause dangerous or unsafe conditions to develop  
26 over a period of years, who uses an improvement for purposes for  
27 which it was not designed, or who makes alterations or changes  
28 that, years afterward, may be determined to be unsafe or

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1089-00

HB 1089

2006

29 defective and that may appear to be a part of the original  
30 improvement, and

31 WHEREAS, liability insurance for the engineer, architect,  
32 or contractor is more difficult and more expensive to obtain the  
33 longer he or she is exposed to potential liability after an  
34 improvement to real property has been completed, and

35 WHEREAS, Florida currently limits the liability exposure of  
36 architects, engineers, and contractors to a period of 15 years  
37 after completion of an improvement to real property, and

38 WHEREAS, liability insurance coverage is increasingly  
39 difficult and more expensive to acquire to cover a period of  
40 more than 10 years after an improvement to real property is  
41 completed, especially for small and medium-sized architecture,  
42 engineering, and construction firms, and

43 WHEREAS, liability insurance coverage for work on  
44 residential construction projects, such as condominiums, is  
45 generally not available to cover a period of more than 10 years  
46 after the improvement to real property is completed, and

47 WHEREAS, the increased cost of such insurance coverage and  
48 liability exposure adds to the total cost of construction and is  
49 ultimately borne by residential and commercial property owners,  
50 and

51 WHEREAS, Florida's current 15-year limit on liability is  
52 considerably longer than most other states, some of which have  
53 adopted limits as low as 5 years and most of which have adopted  
54 a 10-year limit, and

55 WHEREAS, the best interest of the people of the state will  
56 be served by reducing the period of time an engineer, architect,

57 | or contractor may be exposed to potential liability after an  
 58 | improvement has been completed, and

59 |         WHEREAS, a recent increase in the conversion of completed  
 60 | or partially completed buildings to condominiums has caused  
 61 | confusion regarding the scope of the warranties specified in  
 62 | sections 718.203 and 718.618, Florida Statutes, and necessitates  
 63 | the clarification of these statutes, NOW, THEREFORE,

64 |  
 65 | Be It Enacted by the Legislature of the State of Florida:

66 |  
 67 |         Section 1. Paragraph (c) of subsection (3) of section  
 68 | 95.11, Florida Statutes, is amended to read:

69 |         95.11 Limitations other than for the recovery of real  
 70 | property.--Actions other than for recovery of real property  
 71 | shall be commenced as follows:

72 |         (3) WITHIN FOUR YEARS.--

73 |         (c) An action founded on the design, planning, or  
 74 | construction of an improvement to real property, with the time  
 75 | running from the date of actual possession by the owner, the  
 76 | date of the issuance of a certificate of occupancy, the date of  
 77 | abandonment of construction if not completed, or the date of  
 78 | completion or termination of the contract between the  
 79 | professional engineer, registered architect, or licensed  
 80 | contractor and his or her employer, whichever date is earliest  
 81 | ~~latest~~; except that, when the action involves a latent defect,  
 82 | the time runs from the time the defect is discovered or should  
 83 | have been discovered with the exercise of due diligence. In any  
 84 | event, the action must be commenced within 10 ~~15~~ years after the

85 date of actual possession by the owner, the date of the issuance  
 86 of a certificate of occupancy, the date of abandonment of  
 87 construction if not completed, or the date of completion or  
 88 termination of the contract between the professional engineer,  
 89 registered architect, or licensed contractor and his or her  
 90 employer, whichever date is earliest ~~latest~~.

91 Section 2. Subsections (2) and (6) of section 718.203,  
 92 Florida Statutes, are amended to read:

93 718.203 Warranties.--

94 (2) The contractor, and all subcontractors and suppliers,  
 95 grant to the developer and to the purchaser of each unit implied  
 96 warranties of fitness as to the work performed or materials  
 97 supplied by them, as such work or materials are specified in  
 98 their respective contracts and any amendments thereto, as  
 99 follows:

100 (a) For a period of 3 years from the date of completion of  
 101 construction of a building or improvement, a warranty as to the  
 102 roof and structural components of the building or improvement  
 103 and mechanical and plumbing elements serving a building or an  
 104 improvement, except mechanical elements serving only one unit.

105 (b) For a period of 1 year after completion of all  
 106 construction, a warranty as to all other improvements and  
 107 materials.

108 (6) The warranty provided for in subsection (2) applies  
 109 only to a building or improvement that was designated as a  
 110 condominium by the developer in its construction contract with  
 111 the contractor or any amendment thereto executed by the parties.  
 112 ~~Nothing in this section affects a condominium as to which rights~~

HB 1089

2006

113 ~~are established by contracts for sale of 10 percent or more of~~  
114 ~~the units in the condominium by the developer to prospective~~  
115 ~~unit owners prior to July 1, 1974, or as to condominium~~  
116 ~~buildings on which construction has been commenced prior to July~~  
117 ~~1, 1974.~~

118 Section 3. Subsection (9) is added to section 718.618,  
119 Florida Statutes, to read:

120 718.618 Converter reserve accounts; warranties.--

121 (9) This section applies only to the conversion of  
122 existing improvements where construction of the improvement was  
123 commenced prior to its designation by the developer as a  
124 condominium. In such circumstances, s. 718.203 does not apply.

125 Section 4. The amendments to s. 95.11(3)(c), Florida  
126 Statutes, made by this act shall apply to any action commenced  
127 on or after July 1, 2006, regardless of when the cause of action  
128 accrued, except that any action that would not have been barred  
129 under s. 95.11(3)(c), Florida Statutes, prior to the amendments  
130 made by this act may be commenced before July 1, 2007, and if it  
131 is not commenced by that date and is barred by the amendments to  
132 s. 95.11(3)(c), Florida Statutes, made by this act, it shall be  
133 barred.

134 Section 5. This act shall take effect July 1, 2006.