

HB 1089

2006  
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## CHAMBER ACTION

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1 The Justice Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to construction contracting; amending s.  
7 95.11, F.S.; revising commencement periods for actions  
8 founded on the design, planning, or construction of  
9 improvements to real property; amending s. 718.203, F.S.;  
10 requiring implied warranties of fitness for certain  
11 materials and work with respect to condominiums to be  
12 specified by contract; providing that the warranty applies  
13 only to certain buildings or improvements; amending s.  
14 718.618, F.S., relating to converter reserve accounts and  
15 warranties; limiting applicability to certain  
16 improvements; providing an effective date.

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

22 WHEREAS, to permit the bringing of such actions without an  
23 appropriate limitation as to time places the defendant in an

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24 | unreasonable, if not impossible, position with respect to  
25 | asserting a defense, and

26 |       WHEREAS, architects, engineers, and contractors have no  
27 | control over an owner whose neglect in maintaining an  
28 | improvement may cause dangerous or unsafe conditions to develop  
29 | over a period of years, who uses an improvement for purposes for  
30 | which it was not designed, or who makes alterations or changes  
31 | that, years afterward, may be determined to be unsafe or  
32 | defective and that may appear to be a part of the original  
33 | improvement, and

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

38 |       WHEREAS, Florida currently limits the liability exposure of  
39 | architects, engineers, and contractors to a period of 15 years  
40 | after completion of an improvement to real property, and

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

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

50 |       WHEREAS, the increased cost of such insurance coverage and  
51 | liability exposure adds to the total cost of construction and is

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52 ultimately borne by residential and commercial property owners,  
53 and

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

58 WHEREAS, the best interest of the people of the state will  
59 be served by reducing the period of time an engineer, architect,  
60 or contractor may be exposed to potential liability after an  
61 improvement has been completed, and

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

67

68 Be It Enacted by the Legislature of the State of Florida:

69

70 Section 1. Paragraph (c) of subsection (3) of section  
71 95.11, Florida Statutes, is amended to read:

72 95.11 Limitations other than for the recovery of real  
73 property.--Actions other than for recovery of real property  
74 shall be commenced as follows:

75 (3) WITHIN FOUR YEARS.--

76 (c) An action founded on the design, planning, or  
77 construction of an improvement to real property, with the time  
78 running from the date of actual possession by the owner, the  
79 date of the issuance of a certificate of occupancy, the date of

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80 abandonment of construction if not completed, or the date of  
81 completion or termination of the contract between the  
82 professional engineer, registered architect, or licensed  
83 contractor and his or her employer, whichever date is latest;  
84 except that, when the action involves a latent defect, the time  
85 runs from the time the defect is discovered or should have been  
86 discovered with the exercise of due diligence. In any event, the  
87 action must be commenced within 10 ~~15~~ years after the date of  
88 actual possession by the owner, the date of the issuance of a  
89 certificate of occupancy, the date of abandonment of  
90 construction if not completed, or the date of completion or  
91 termination of the contract between the professional engineer,  
92 registered architect, or licensed contractor and his or her  
93 employer, whichever date is latest.

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

96 718.203 Warranties.--

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

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

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108 (b) For a period of 1 year after completion of all  
109 construction, a warranty as to all other improvements and  
110 materials.

111 (6) The warranty provided for in subsection (2) applies  
112 only to a building or improvement that was designated as a  
113 condominium by the developer in its construction contract with  
114 the contractor or any amendment thereto executed by the parties.  
115 ~~Nothing in this section affects a condominium as to which rights~~  
116 ~~are established by contracts for sale of 10 percent or more of~~  
117 ~~the units in the condominium by the developer to prospective~~  
118 ~~unit owners prior to July 1, 1974, or as to condominium~~  
119 ~~buildings on which construction has been commenced prior to July~~  
120 ~~1, 1974.~~

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

123 718.618 Converter reserve accounts; warranties.--

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

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

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135 | s. 95.11(3)(c), Florida Statutes, made by this act, it shall be  
136 | barred.

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