

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Judiciary Committee

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BILL: CS/SB 1940

INTRODUCER: Regulated Industries Committee and Senator Clary

SUBJECT: Construction Contracting

DATE: April 24, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill decreases the period within which an action based on design, planning, or construction of an improvement to real property may be filed from 15 years to 10 years. It provides that warranties of the developer under s. 718.618, F.S., apply to the conversion of a condominium if construction of the improvement started before it was designated by the developer as a condominium. It provides that s. 718.203, F.S., does not apply to such a conversion.

This bill substantially amends sections 95.11 and 718.618, Florida Statutes.

## II. Present Situation:

### Limitations Other Than for the Recovery of Real Property

Section 95.11(3)(c), F.S., provides that an action, other than for the recovery of real property, shall be commenced within four years when the cause of action is founded on the design, planning, or construction of an improvement to real property. The four years begin running from the latest of the following:

- The date of actual possession of the real property by the owner;
- The date of the issuance of the certificate of occupancy;
- The date of abandonment of the construction if not completed; or
- The date of completion or termination of the contract with an engineer, architect, or contractor and his or her employer.

If the action involves a latent defect, however, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, an action for a latent defect must be commenced within 15 years after the latest of the following:

- The date of actual possession of the real property by the owner;
- The date of the issuance of the certificate of occupancy;
- The date of abandonment of the construction if not completed; or
- The date of completion or termination of the contract with an engineer, architect, or contractor and his or her employer.

According to a representative for the Florida A.G.C. Council, Inc., a trade organization representing commercial general contractors, Florida's 15-year time period for bringing a cause of action for latent defects is considerably longer than the period permitted in other states. The Council represents that most states have adopted a 10-year time limit. The national average for time limits in these actions is 9.2 years.

### **Warranties on New Construction**

Section 718.203(2), F.S., provides that the contractor, subcontractors, and suppliers, grant to the developer and to the purchaser of each condominium unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

- For three years from the date of completion of construction of a building or improvement, a warranty for the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit; and
- For one year after completion of all construction, a warranty as to all other improvements and materials.

Section 718.203(6), F.S., provides that nothing in the section affects a condominium as to which rights are established by contracts for sale of 10 percent 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 on which construction has been commenced prior to July 1, 1974.

### **Converter Reserve Accounts; Warranties on Converted Property**

Section 718.618(1), F.S., provides that when existing improvements to real property are converted to ownership as a residential condominium (e.g., apartments converted to condominiums), the developer shall establish reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7).

Section 718.618(6), F.S. provides, in part, that a developer makes no implied warranties when existing improvements are converted to ownership as a residential condominium. Reserve accounts are also required under this section. These accounts are established by the developer and include funding for items such as air conditioner units, plumbing, a roof, and other accounts required under s. 718.112(2), F.S., which provides for annual budgeting of condominium

associations. As an alternative to establishing reserve accounts, or when a developer fails to establish the reserve accounts, the developer shall be deemed to grant a unit owner an implied warranty of fitness and merchantability for purposes or uses intended for items provided in s. 718.618(6), F.S.

### **III. Effect of Proposed Changes:**

#### **Limitations Other Than for the Recovery of Real Property**

The bill decreases the amount of time within which an action for a latent defect must be commenced from 15 years to 10 years after the latest of the following:

- The date of actual possession of the real property by the owner;
- The date of the issuance of the certificate of occupancy;
- The date of abandonment of the construction if not completed; or
- The date of completion or termination of the contract with an engineer, architect, or contractor and his or her employer.

#### **Converter Reserve Accounts; Warranties on Converted Property**

The bill provides that s. 718.618, F.S., relating to warranties on converted property, applies to the conversion of an existing improvement where construction of the improvement started before it was designated by the developer as a condominium. It provides that s. 718.203, F.S., relating to new construction, does not apply to such a conversion.

This provision would mean that only the warranties from the developer (i.e., not contractors, subcontractors, and suppliers) would apply when a building is commenced for some purpose other than a condominium.

#### **Applicability of Act**

The bill provides that s. 95.11(3)(c), F.S., as amended by this act, applies to any action commenced on or after July 1, 2006, regardless of when the cause of action accrued. However, an action that would not have been barred by that section before July 1, 2006, may be commenced before July 1, 2007. If such action is not commenced by that date and it is barred by s. 95.11(3)(c), F.S., as amended by this act, it is forever barred.

The bill provides an effective date of July 1, 2006.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

**Causes of Action for Latent Defect**

The bill decreases the amount of time within which the action for a latent defect must be commenced from 15 to 10 years. This change would foreclose actions for recovery where a latent defect is discovered after 10 years, and it is not known how many owners this might affect in the future.

The reduction in time for which a developer must insure property for actions founded on a latent defect (also known as “Residential Wrap Up Coverage” or “Completed Operations Coverage”) may increase the number of insurers offering this type of coverage in the Florida insurance market. An increase in providers of insurance and a decrease in the length of time covered by policies may result more competitive rates for developers purchasing this insurance. Thus, developers would likely save on construction costs.

**Warranties**

The bill provides that only the warranties from the developer (i.e., not contractors, subcontractors, and suppliers) would apply when a building is commenced for some purpose other than a condominium. The fiscal impact on condominium owners based upon this revision is indeterminate.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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