

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 501 Limitation of Actions
SPONSOR(S): Civil Justice Subcommittee; Fant and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	7 Y, 6 N, As CS	Robinson	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

A statute of repose terminates the right to bring an action after the lapse of a specified period of time, even if this period ends before the plaintiff has suffered any injury. The statute of repose for an action founded on the design, planning, or construction of an improvement to real property provides that such action must be commenced within 10 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 reduces the statute of repose for actions founded on the design, planning, or construction of an improvement to real property from 10 years to 7 years with the time running from the latest occurrence of the specified events. The 7 year statute of repose applies to any action commenced on or after July 1, 2015 except that any action that would otherwise be barred by reducing the statute of repose from 10 years to 7 years may be commenced within one year after the effective date of the bill.

This bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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.¹ 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.² Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed and intended to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and ultimately foster certainty and finality in liability.³

Section 95.11(3)(c), F.S., currently provides that actions founded on the design, planning, or construction of an improvement to real property, 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:

- 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.

An exception to the 4-year statute of limitations is provided for when an action involves a latent defect.⁴ Under those circumstances, the 4-year statute of limitations does not begin to run until the defect is discovered or should have been discovered with the exercise of due diligence.

However, notwithstanding 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 such action must be commenced within 10 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.

The Legislature reduced the statute of repose from 15 years to 10 years in 2006.⁵ Florida is one of 32 states with a statute of repose 10 years or longer for construction defect claims.

Statute of Repose for Construction Defects in all 50 States⁶

¹ *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

² *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997)

³ *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988)

⁴ Latent defects are generally considered to be hidden or concealed defects which are not discoverable by reasonable and customary inspection, and of which the owner has no knowledge. *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).

⁵ Ch. 2006-145 Laws of Fla.

States	Years
Iowa, Maryland ⁷ , Vermont, New York ⁸	15 or more
Alaska, California ⁹ , District of Columbia, Florida, Hawaii, Illinois, Indiana, Kansas, Maine, Maryland ¹⁰ , Minnesota, Michigan ¹¹ , Missouri, Montana, Nebraska, New Jersey, New Mexico, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, West Virginia, Wisconsin, Wyoming	10 -14
Arizona, Georgia, New Hampshire, South Carolina, Utah	8-9
Alabama, Arkansas, Colorado, Connecticut, California ¹² , Delaware, Idaho, Kentucky, Louisiana, Massachusetts, Mississippi, Michigan ¹³ , North Carolina, Tennessee, Virginia, Washington	7 or less

Effect of Proposed Changes

This bill amends s. 95.11(3)(c), F.S., to reduce the statute of repose from 10 years to 7 years for any action founded on a deficiency in the design, planning, or construction of an improvement to real property.

The amendment to s. 95.11(3)(c), F.S. applies to any action commenced on or after July 1, 2015, regardless of when the cause of action accrued. Therefore, a party whose cause of action accrued prior to the changes in this bill, but who commences the action after July 1, 2015, could be barred from bringing the action by the shortening of the statute of repose from 10 years to 7 years. The bill provides that in such circumstances, if the action would not have been barred under the 10-year statute of repose the action may be commenced before July 1, 2016. If the action is not commenced by July 1, 2016 and is barred by shortening the statute of repose from 10 years to 7 years, then the action will be forever barred.

B. SECTION DIRECTORY:

Section 1 amends s. 95.11(3)(c), F.S., relating to limitations other than for the recovery of real property.

Section 2 provides for applicability.

Section 3 reenacts s. 627.441(2), F.S., relating to commercial general liability policies; coverage to contractors for completed operations.

Section 4 provides an effective date of July 1, 2015.

⁶ Matthiesen, Wickert & Lehrer, S.C., *Statutes of Limitations for All 50 States*, (December 22, 2014), <http://www.mwl-law.com/wp-content/uploads/2013/03/statute-of-limitations-for-all-50-states.pdf>.

⁷ 20 Years for improvement to real property. 10 Years for actions against architect, professional engineer or contractor related to improvement to real property. Md. Code Ann., Cts. & Jud. Proc. § 5-108 (LexisNexis 2014).

⁸ No Statute of Repose, but after 10 years, notice of suit must be given to party responsible for professional performance. N.Y. C.P.L.R. § 214-d.

⁹ Limited to claims based upon latent defects, otherwise 4 years from substantial completion of construction or construction of improvement to real property for patent defects. Cal. Civ. Proc. Code § 337.1; Cal Civ. Proc. Code § 337.15.

¹⁰ *Supra* note 7.

¹¹ 10 years for actions based upon gross negligence of a contractor, architect, or engineer, otherwise 6 years after the time of occupancy, use, or acceptance of the improvement. Mich. Comp. Laws. § 600.5839 (2014).

¹² *Supra* note 9.

¹³ *Supra* note 11.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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,¹⁴ a plaintiff has no vested right in a statute of repose in effect when his or her cause of action accrues.¹⁵ 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.¹⁶ The amendment to s. 95.11(3)(c), F.S., made in this bill does 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

¹⁴ *Wiley v. Roof*, 641 So. 2d 66 (Fla. 1994).

¹⁵ *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).

¹⁶ *Hart v. Bostick*, 14 Fla. 162, 181 (1872), quoted in *Bauld v. J.A. Jones Const. Co.*, 357 So. 2d 401, 403 (Fla. 1978); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).

The shortening of the statute of repose from 10 years to 7 years may affect the ability of cooperative or condominium associations to bring suit for construction defects due to the current time limitations for developer "turnover." "Turnover" is the process in which the right to control an association shifts from the developer to the unit owners. Upon turnover from the developer to the unit owners, the condominium or cooperative association may sue for matters affecting the common elements or matters of common interest to the unit owners,¹⁷ including construction defects and certain statutory implied warranties owed to the unit owners by the developer.¹⁸ However, a developer may turnover an association as late as 7 years after creation of a cooperative association,¹⁹ or 7 years after the date of the recording of the certificate of a surveyor and mapper of a condominium project or certain instruments that transfer title to a condominium, as applicable. Although the statute of limitations for actions in law or equity which a cooperative or condominium association may have do not begin to run until turnover has occurred,²⁰ the tolling of the statute of limitations does not extend the statute of repose.²¹ By shortening the statute of repose to 7 years, if a developer retains control over an association up to the statutory maximum of 7 years before turnover to the unit owners, potential claims and/or causes of action which the unit owners might otherwise have been ready, willing, and able to pursue may be barred and those liable on such claims may avoid legal action.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that any action that would otherwise be barred by reducing the statute of repose from 10 years to 7 years may be commenced within one year after the effective date of the act. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

¹⁷ Section 718.111(3), F.S.; Section 719.104 (10), F.S.

¹⁸ Section 718.203, F.S.; Section 719.203, F.S.

¹⁹ Section 719.301(1)(e), F.S.

²⁰ Section 718.124, F.S.

²¹ *Sabal Chase Homeowners Ass'n v. Walt Disney World, Co.*, 726 So. 2d 796, 799 (Fla. 3d DCA 1999)