HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1271 Construction Defect Claims
SPONSOR(S): Civil Justice & Claims Subcommittee; Trumbull
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N, As CS	MacNamara	Bond
2) Careers & Competition Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Where a property owner alleges that there is a defect in construction or design work performed on the property, current law requires the owner to notify the contractor or design professional of the defect. The property owner must allow the contractor or design professional to inspect the alleged defect. After inspection, the contractor or design professional has the opportunity to offer to fix the problem, or pay damages, before suit is filed. The owner may not file suit until this pre-suit process is complete. The statute of limitations is tolled while the parties comply with these pre-suit requirements.

The bill:

- Requires the property owner to personally sign any notice of claim to be served on a party and any notice of acceptance or rejection of a settlement offer.
- Requires a contractor or design professional recipient of a notice of claim to serve notice on any contractor, subcontractor or other party that he or she reasonably believes is responsible for each defect specified in the notice of claim.
- Requires any experts retained by the property owner for a construction defect claim to be physically present during any inspection to identify the location of the construction defect.
- Requires a property owner to serve a written request for mediation prior to rejecting any settlement offer.
- Provides that the statute of limitations for construction defect claims may be tolled in some instances for up to thirty days after mediation is concluded, terminated, or an impasse is declared.

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

The bill has an effective of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 558, F.S., provides a method for resolving construction defect disputes before filing a lawsuit. In short, it provides for notice and an opportunity to repair. Before a property owner may sue a contractor alleging a construction defect, the property owner is required to notify the contractor of the defect and to give the contractor the opportunity to examine the defect. If the contractor agrees that the defect exists, the contractor is given a reasonable opportunity to repair the defect or make some other offer in settlement. If the parties are still in disagreement after the notice period, the matter may proceed to court. Similar methods for pre-suit notice with an opportunity for resolution are required in other areas, including medical negligence, claims against nursing homes, and eminent domain.[1]

Moreover, pursuant to s. 558.004(12), F.S., and except as specifically provided in ch. 558, F.S., the chapter does not:

- Bar or limit any rights, including the right of specific performance to the extent available in the absence of the chapter, any causes of action, or any theories on which liability may be based;
- Bar or limit any defense, or create any new defense; or
- Create any new rights, causes of action, or theories on which liability may be based.

The construction defect procedure applies to each alleged construction defect, but multiple defects may be included in one notice of claim. In addition, the initial list of defects may be amended by the claimant to identify additional or new construction defects as they become known. Only alleged construction defects that are noticed and for which the claimant has complied with the construction defect procedure may be addressed in a trial. Similar to other disputes arising under state law, construction defect lawsuits often require the retention of an expert witness to assist parties with technical issues or issues concerning standard practices within the construction industry.

Current Law and Effect of Bill

Notice of Claim

Section 558.004(1), F.S., requires a claimant to provide pre-suit notice of an alleged construction defect to the contractor, subcontractor, supplier, or designer, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels. The notice of claim must describe in reasonable detail the nature of each construction defect and, if known, the damage or loss resulting from the defect. This requires the claimant, based upon at least a visual inspection, to identify the location of each defect in the notice.[2]

If the construction defect claim arises from work performed under a contract, the written notice of claim must be served on the person with whom the claimant contracted. The claimant must try to serve the notice of claim within 15 days after discovery of an alleged defect, but the failure to do so does not bar the filing of an action.[3]

[1] *See* s. 720.311, F.S., related to homeowners association disputes; ch. 766., F.S., related to medical negligence claims; s. 429.293(3), F.S., related to assisted care communities; s. 400.0233(3), related to nursing homes; and, s. 73.015, F.S., related to eminent domain.
[2] s. 558.004(1)(b), F.S.
[3] s. 558.004(1)(c), F.S.

Under s. 558.004(3), F.S., within 10 days after service of the notice of claim (within 30 days for a claim involving an association claimant), the claim recipient *has the option* to serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom the claim recipient reasonably believes is responsible for each defect specified in the notice of claim (the subsequent claim recipient). The claim recipient must then identify the specific defect for which it believes the particular subsequent claim recipient is responsible.

The bill requires a claimant to personally sign any notice of claim served on a contractor, subcontractor, supplier, or design professional.

The bill also removes claim recipient's discretion with respect to subsequently serving the notice of claim to additional parties. Rather, claim recipients are required to serve such notices on any contractor, subcontractor, supplier, or design professional that he or she reasonably believes is responsible for each defect specified in the notice of claim.

Reasonable Inspection

Under s. 558.004(2), F.S., within 30 days after service of the notice of claim (or within 50 days for a claim involving an association claimant), the person served with the notice of claim may inspect the property or each unit subject to the claim to assess each alleged construction defect. The claimant is also required to provide the claim recipient, its contractors, or its agents reasonable access to the property during normal working hours to inspect the property, to determine the nature and cause of each alleged construction defect, and determine the nature and extent of any repairs or replacements necessary to remedy each defect.

Claim recipients are required to reasonably coordinate the timing and manner of any and all inspections with the claimant to minimize the number of inspections. If mutually agreed, the inspection may include destructive testing under the terms as provided under s. 558.004(2), F.S.

The bill provides that the claimant and any experts retained by the claimant with respect to the claim must be physically present during the inspection to identify the location of any alleged construction defects.

Settlement Offers

Under s. 558.004(7), F.S., a claimant who receives a timely settlement offer must accept or reject the offer by serving written notice of acceptance or rejection on the person making the offer within 45 days after receiving the settlement offer. If a claimant initiates an action without first accepting or rejecting the offer, the court is required to stay the action upon timely motion until the claimant serves the required written response.

The bill provides that prior to rejecting a settlement offer, the claimant must serve a written demand for mediation on the party making the offer explaining why the claimant considers the offer inadequate. The 45 day time limit to respond to settlement offers under s. 558.004(7)(a), F.S., is tolled until the mediation is concluded, terminated, or an impasse is declared.

Moreover, unless mediation is waived in writing by the party making the offer, the bill requires that the parties meet with a mutually selected, certified circuit court mediator within 20 days after service of the demand for mediation. A mediator may extend mediation under the bill for good cause or upon stipulation of both parties. The party making the offer is responsible for the costs of mediation.

Lastly, the bill provides that a written notice of acceptance or rejection of the offer must be personally signed by the claimant.

Statute of Limitations

Service of a written notice of claim tolls the applicable statute of limitations for those persons covered by the construction defect procedure in ch. 558, F.S., (and any bond surety) until the later of:

- In most cases, ninety days after service of the notice of claim (120 days if an association); or
- Thirty days after the end of the repair period or payment period stated in the offer, if the claimant has accepted the offer. This time period may be extended by stipulation of the parties.

The bill provides that the applicable statute of limitations is tolled until the later of 90 (or 120) days after the notice of claim, 30 days after the repair period, or 30 days after the mediation is concluded or terminated by settlement or impasse.

B. SECTION DIRECTORY:

Section 1 amends s. 558.004, F.S., relating to notice and opportunity to repair.

Section 2 provides an effective date of July 1, 2017.

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 government revenues.

2. Expenditures:

   The bill does not appear to have any impact on state government 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:

The bill does not appear to have a direct economic impact on the private sector.

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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that the party making the settlement offer is responsible for the costs of mediation. This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.