

# HOUSE BILL REPORT

## HB 2120

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to actions for damage to real property resulting from construction, alteration, or repair on adjacent property.

**Brief Description:** Concerning actions for damage to real property resulting from construction, alteration, or repair on adjacent property.

**Sponsors:** Representatives Habib, Rodne, Goodman, Ryu and Fitzgibbon.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/14/14, 1/30/14 [DPS].

#### **Brief Summary of Substitute Bill**

- Provides that any action for damage to real property resulting from construction, alteration, or repair on adjacent property must be commenced within the earlier of three years after the property owner first discovered or reasonably should have discovered the damage *or* three years after completion of the construction, alteration, or repair.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

**Staff:** Cece Clynch (786-7195).

#### **Background:**

##### Statutes of Limitation.

The goal or policy behind statutes of limitation is to require claims to be brought when the evidence is still available and while witnesses can still recall the events. There are numerous

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statutes of limitations. Which one applies depends upon the cause of action. For instance, with respect to damage to real property:

- Actions for waste and trespass on real property must be commenced within three years.
- Actions for relief for which there is not a specific statute of limitations provided must be commenced within two years. Courts have held that this two-year limitations period applies to nuisance and strict liability actions.

Generally, a limitations period begins to run when the cause of action "accrues," which is such time as all elements of the cause of action are susceptible of proof and the injured party has a right to apply to a court for relief. A cause of action may be subject to what is known as the "discovery rule." This rule provides that the limitations period does not begin to run until the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the facts that give rise to his or her cause of action.

In *Oja v. Washington Park Towers*, 89 Wn. 2d 72, 569 P.2d 1141 (1977), the court held that an action for damage to real property arising out of construction on adjacent property accrues when the adjacent construction is complete, or as soon thereafter as substantial injury is sustained. In that case, construction of a building on adjacent property involved pile driving, which took place in the Fall of 1966 and again from the Fall of 1967 until April of 1968. The building was completed in 1969, and the action by the adjacent property owner, for damages from pile driving, was not brought until March of 1971. A jury verdict was entered against the defendant property owner in which the jury attributed 70 percent of the damage to the pile driving which occurred in 1966 and 30 percent to that which occurred between November 1967 and April 1968.

On appeal, the defendant property owner maintained that the cause of action accrued when the first substantial damage was done in September of 1966, thus barring all or at least most of the claim for damages. The Supreme Court determined, however, that the damages flowed from the pile driving as a whole and that the cause of action did not accrue until completion of the building in 1969. In so holding, the court said that the adjacent property owner "was entitled to wait until the completion of the construction project before filing a cause of action so that it might determine the full extent of the damages... A different rule would force a plaintiff to seek damages in installments in order to comply with the statute of limitations."

#### Statute of Repose for Improvements to Real Property.

Claims arising from the construction, alteration, or repair of improvements to real property, as well as those arising out of a variety of related services such as design and engineering, are also subject to the statute of repose, which provides that claims accrue, and the applicable statute of limitations begins to run, only during the period within six years after substantial completion of construction, or during the period within six years after the termination of the services, whichever is later. Any cause of action which has not accrued within this period of time is barred.

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#### **Summary of Substitute Bill:**

### Statutes of Limitation.

Legislative intent is expressed to overrule the *Oja* case which held that claims for damage to real property resulting from construction activities on adjacent property do not accrue until the construction project on the adjacent property is complete.

An action for damage to real property resulting from construction, alteration, or repair on adjacent property must be commenced within the earlier of the following periods:

- within three years after the property owner first discovered or reasonably should have discovered the damage; or
- within three years after completion of the construction, alteration, or repair.

This limitations period applies regardless of whether negligence, strict liability, trespass, or any other cause of action is alleged.

With respect to an action for damages that are: (1) known or reasonably should have been known as of the effective date; and (2) caused by a construction, alteration, or repair project that is not complete as of the effective date, any such action must be commenced within three years of the effective date.

### Statute of Repose for Improvements to Real Property.

It is further provided that nothing in this new section may be construed as extending the period for bringing a claim beyond the six year statute of repose for improvements to real property.

### **Substitute Bill Compared to Original Bill:**

The substitute bill provides that actions for damage to real property resulting from construction, alteration, or repair on an adjacent property must be commenced within the earlier of three years after the owner discovered or reasonably should have discovered the damage *or* three years after completion of the construction, alteration, or repair, rather than providing that all such actions must be commenced within three years after the damage is discovered or should have been discovered.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) This bill serves two purposes. First, it will see that claims are brought in a reasonable amount of time while the evidence is still preserved. This is particularly important with respect to projects that are ongoing for many years. Second, it provides predictability and reliability. Most property owners are not lawyers. With this bill, it won't

be necessary to figure out what is meant by completion or whether the project is complete and it will also make clear that it is a three-year time period, and not a two-year time period, that applies. The bill does not create a new cause of action. Rather, it provides a statute of limitations within which a cause of action must be commenced. This will prevent spoliation of evidence. For instance, in one case that went to the Court of Appeals, an owner was permitted to bring suit for damage that occurred 11 years prior. The experts in that case had to opine on what happened to the soil 11 years ago, which is difficult to do and may not be much more than a guess after that much time has passed. With construction of a rail line that is 10 or 15 miles long, the construction project may not be completed until 10 years after the project begins. It doesn't make sense to allow a property owner who sustains and discovers damage in the first year and first mile of the project to wait until after the project comes to completion. This will also help persons whose property is damaged by private construction on adjacent property, because they may have no way of knowing when a project is complete.

(Opposed) New construction starts are currently at 1981 levels. The industry is trying to get back in business. This may be an appropriate fix for a long-term public project, but not for residential home building. The latter already has clarity and has for 40 years. This will create an ambiguous time frame with respect to residential construction that will create uncertainty and higher insurance premiums.

**Persons Testifying:** (In support) Representative Habib, prime sponsor; and Loren Armstrong, Sound Transit.

(Opposed) Bill Stauffacher, Building Industry Association of Washington.

**Persons Signed In To Testify But Not Testifying:** None.