

SENATE BILL REPORT

ESHB 2565

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, February 28, 2002

Title: An act relating to construction defect claims asserting property loss and damage.

Brief Description: Requiring an opportunity for a cure before an action on a construction defect may be filed.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Fromhold, Benson, Miloscia, Quall, Carrell, Eickmeyer, Morell, Barlean, Chase, Rockefeller, Lantz, Simpson, Kessler and Haigh).

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 2/26/02, 2/28/02 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Keiser, Vice Chair; Benton, Deccio, Fairley, Franklin, Gardner, Hochstatter, Honeyford, Rasmussen, Regala and Winsley.

Staff: Jack Brummel (786-7428)

Background: In most instances, a lawsuit may be commenced by filing a complaint or serving the defendant with a summons within the period of the applicable statute of limitations. Generally, a plaintiff is not required to take other specific steps prior to commencing the suit and the complaint that commences a lawsuit need only contain a "short and plain statement of the claim" and a showing that the plaintiff is entitled to the relief sought.

A statute of repose applies to claims against building contractors. It provides that a cause of action must accrue within six years after substantial completion of a project, or no lawsuit can be brought. If the period of repose has expired, the statute of limitations never even begins to run. If a cause of action does accrue within those six years, however, then the statute of limitations that applies begins to run from the time of the accrual.

Summary of Amended Bill: At least 45 days before a lawsuit can be filed alleging a defect in the construction of a residence, the homeowner must serve notice on the construction professional alleged to be responsible for the defect and describe the claim in detail.

The construction professional must respond within 21 days of receiving the notice and may offer to remedy the defect, pay for it, or dispute the homeowner's claim.

The serving of notices required by the act tolls any applicable statute of limitations or repose until 60 days after the end of the period during which bringing a lawsuit is barred under this act.

If a lawsuit is filed, within 30 days the homeowner must list the alleged construction defects and specify the construction professional responsible for each alleged defect. A defect discovered after suit has been filed may be added to the suit after notice to the contractor is given and 21 days for response is allowed.

Before the board of directors of a condominium or homeowners' association may sue a construction professional on behalf of two or more owners, the board must notify all residents regarding the intended suit. The notice must state the nature of the suit and the expected expenses and fees to be incurred in bringing the suit. The time that an action may be brought for construction defects in condominiums is extended.

Amended Bill Compared to Substitute Bill: The committee amendment extends the time that an action may be brought for construction defects in condominiums, requires that a construction professional provide a report on any inspection to a claimant, and clarifies that a defect discovered after suit has been filed may be added to the suit after notice to the contractor is given and 21 days for response is allowed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill seeks to mitigate the litigation occurring over defects. The homeowners' rights are retained; they can amend their claims and can refuse any offer. This is a measured step toward providing additional predictability in defect litigation.

Testimony Against: The bill harms consumers. It does not address construction quality problems. The bill does not address insurance issues; it will not make contractors' insurance more affordable. The bill would require the cure process for each defect.

Testified: PRO: Representative Fromhold; Jody Slavik, BIAW; Mel Sorensen, National Assoc. of Independent Insurers; Steve Stuart, 1,000 Friends of WA; CON: Marion Morgenstern, Community Association Institute; Chris Casey; Marlin Hawkins; David Keller.