HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 583 Limitations of actions other than for the recovery of real property
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Brackett	Anstead

SUMMARY ANALYSIS

Florida law sets forth time periods within which claims must be made based on deficiencies in construction or flaws in materials used during construction, known as construction defects. If a lawsuit is not filed related to a defect within the given time frames, any claims regarding the defect will be barred. Chapter 95, F.S., provides guidelines for how property owners and contractors should handle cases where a suspected defect is involved.

In Florida, a lawsuit for construction defects must be brought to court within **four years** from the end of the project. Specifically, the clock for the statute of limitations for construction defects typically **begins to run** from the latest date of:

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

If the defect is **latent,** hidden, or unable to be ascertained, the time frame for the statute of limitations begins on the date the defect was discovered or should have reasonably been discovered with due diligence.

However, under no circumstances may a lawsuit be brought after ten years. Under the **ten-year statute of repose,** actions must be commenced within ten years after the latest of the above listed events. The bill **repeals** the 10-year statute of repose.

The bill revises the statute of limitations for actions founded on the design, planning, or construction of an improvement to real property. The bill provides that the four-year time period for the statute of limitations **begins to run 45 days after** the date of:

- Completion of the improvement, which is defined to include the date of issuance of the certificate of completion or occupancy, or the closing of the building permit; or
- Abandonment of the improvement, if the improvement is not completed.

The bill provides that if an action involves a **latent defect** the action must be commenced within **seven years,** instead of four years, with the time beginning 45 days after completion or abandonment, and **repeals** the provision that allowed the time to begin on date the defect was discovered or should have reasonably been discovered with due diligence.

If an action alleges a **material violation** and the person alleging the material violation can show by clear and convincing evidence that the engineer, architect, or contractor or his or her employer knew of the material violation at the time of construction, the action must be commenced within **15 years**, with the time beginning 45 days after completion or abandonment.

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

The bill provides for an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Statutes of Limitations and Repose

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. A law creating a statute of limitations specifies when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled. A statute of limitations usually begins to run when a cause of action accrues, which is generally when the harm occurs.

Current law provides that actions founded on the **design, planning, or construction of an improvement to real property** are subject to a **four-year statute of limitations**. The four-year time period of the statute of limitations begins to run from the latest date of:[1]

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

In actions involving a **latent defect**, the four-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.[2]

A patent defect is a defect that would have been obvious to the owner had the owner exercised reasonable care.[3] A latent defect is a hidden flaw or imperfection that cannot be discovered by reasonable and customary inspection, and of which the owner has no knowledge.[4]

Statute of Repose

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, a statute of repose is not a true statute of limitations because it begins to run 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, discovery of the defect or when harm occurs.[5]

Unlike a statute of limitations, a statute of repose eliminates the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute.[6] 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 to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.[7]

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[1] S. 95.11(3)(c), F.S.
[2] *Id.*
[3] *McIntosh v. Progressive Design and Engineering, Inc.*, 166 So. 3d 823, 828-29 (Fla. 4th DCA 2015); *Florida Dept. of Transp. v. Capeletti Bros., Inc.*, 743 So. 2d 150, 152 (Fla. 3rd DCA 1999); *Brady v. State Paving Corp.*, 693 SO. 2d 612, 613 (Fla. 4th DCA 1997).
[4] *Alexander v. Suncoast Builders, Inc.,* 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).
[5] *Kush v. Lloyd*, 616 So.2d 415 (Fla. 1992).
[6] *Beach v. Great Western Bank*, 692 So.2d 146 (Fla. 1997)
[7] *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).

In addition to the four-year statute of limitations, there is a **10-year statute of repose** for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, **regardless of the time the cause of action accrued**, within 10 years after latest date of:[8]

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation (DBPR), implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.[9]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act," which provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[10] The Building Code is adopted, updated, and interpreted by the Commission, and is enforced by local governments.[11]

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[12] The Building Code sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of buildings, structures, and facilities in the state.

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[13] Every local government must enforce the Building Code and issue building permits.[14]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a **building permit** from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[15]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[16] A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review,

[8] S. 95.11(3)(c), F.S.
[9] S. 553.73(7), F.S.
[10] *See* s. 553.72(1), F.S.
[11] Ss. 553.72, & 553.73, F.S.
[12] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 4, 2022).
[13] S. 553.72, F.S.
[14] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[15] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[16] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).

enforcement, and inspection.[17] Any construction work that requires a building permit also requires plan reviews and inspections by the building official to ensure the work complies with the Building Code.[18] A permit for construction work that passes the required inspections and meets the requirements of the permit receives a **certificate of completion** or is considered **closed**.[19]

After a new building or structure[20] is completed and passes the required inspections and permit requirements, the local building official will issue a **certificate of occupancy**. A new building or structure may not be used or occupied until the local building official issues a certificate of occupancy for the building or structure.[21]

Construction and Electrical Contractors

The Legislature has determined that it is "necessary in the interest of the public health, safety, and welfare" to regulate the construction, electrical, and alarm system industry.[22]

Construction contractors are either certified by or registered with the Construction Industry Licensing Board (CILB). The CILB is housed in DBPR and consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB is responsible for licensing, regulating, and disciplining certified construction contractors. Electrical contractors and alarm system contractors are certified by or registered with the Electrical Contractors' Licensing Board (ECLB). The ECLB is also housed in DBPR consists of 11 members who are appointed by the Governor and confirmed by the Senate. The ECLB is responsible for licensing, regulating, and disciplining certified electrical and alarm system contractors.[23]

The CILB and the ECLB may take action[24] against a certified contractor if they find the contractor is guilty of violating the contractor's practice act. Violations include:[25]

- Abandoning a construction project;
- Committing financial mismanagement that causes financial harm to a customer;
- Failing to perform any statutory or legal obligation placed upon a licensee;
- Falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor;
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting; or
- Proceeding on a job without obtaining applicable local building department permits and inspections.

In addition to the CILB or ECLB disciplining a contractor, any licensee responsible for a material Florida Building Code violation who failed to correct the violation within a reasonable time may be fined by a

[17] S. 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).
[18] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building (Building).
[19] S. 553.79(17)(a), F.S.; section 5-110.4, Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Feb. 3, 2022).
[20] This includes an existing building or structure that is changing its occupancy classification.
[21] S. 111 of the Seventh edition of the Florida Building (Building).
[22] s. 489.101, F.S.
[23] *See generally* Ch. 489, F.S.
[24] The CILB and the ECLB may place a contractor on probation, reprimand him or her, revoke or suspend the contractor's certificate or registration, or deny the issuance of a renewal certificate or registration. The CILB and the ECLB may also require financial restitution to a consumer for financial harm directly related to a violation, require continuing education, or assess costs associated with investigation and prosecution. Ss. 489.129(1), 489.533(1), F.S.
[25] Ss. 455.227(1)(k), 489.129(1)(o), and 489.533(1), F.S.

local jurisdiction at least $500 but no more than $5,000. A failure to pay the fine will result in a suspension of the licensee's ability to pull building permits.[26]

A "material violation" is a violation existing within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.[27]

Professional Engineers

The practice of engineering is regulated by ch. 471, F.S., and by the Florida Board of Professional Engineers (FBPE). DBPR contracts with the Florida Engineers Management Corporation to provide the administrative, investigative, and prosecutorial services for FBPE.[28]

Architects

Chapter 481, Part I, F.S., governs the licensing and regulation of architects and related business organizations. The Board of Architecture and Interior Design (Board) housed within DBPR. The Board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

Effect of the Bill

The bill revises the statute of limitations for actions founded on the design, planning, or construction of an improvement to real property, which are subject to a four-year statute of limitations. The bill provides that the four-year time period of the statute of limitations begins to run from **45 days after** the date of:

- Completion of the improvement (as defined in the bill); or
- Abandonment of the improvement if the improvement is not completed.

The bill provides that if an action involves a **latent defect** the action must be commenced within **seven years** after 45 days of the completion of the improvement or abandonment of the improvement if the improvement is not completed. The bill **repeals** the provision that allowed the time to begin on date the defect was discovered or should have reasonably been discovered with due diligence.

The bill also provides that if an action alleges a **material violation** and the person alleging the material violation can show by **clear and convincing evidence**[29] that the engineer, architect, or contractor or his or her employer **had actual knowledge** of the material violation at the time of construction, the action must be commenced within **15 years** after 45 days of the completion of the improvement or abandonment of the improvement if the improvement is not completed.

The bill **repeals** the 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property.

[26] S. 553.781, F.S.
[27] *Id.*
[28] S. 471.038(3), F.S.
[29] Clear and convincing is "an intermediate standard of proof between the 'preponderance of the evidence' standard used in most civil cases, and the 'beyond a reasonable doubt standard' of criminal cases, requiring the evidence "[to] be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. *Reid v. Estate of Sonder*, 63 So.3d 7, 10 (Fla. 3rd DCA 2011).

The bill provides definitions for the following terms:

- "**Completion of the improvement"** means the issuance of the certificate of occupancy or certificate of completion for the improvement, or closing of the building permit for the improvement if the improvement is not required to have a certificate of occupancy or certificate of completion.
- "**Material violation"** means a violation of the Building Code that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in death or personal injury to a person or significant damage to the building, structure, facility, its systems or to the performance of a building, structure, facility, or its system.
- **"Performance**" means that the building, structure, facility or system functions as it is intended and is able to be used for its designed purpose.
- "**Significant damage**" means a level of adverse impact to a building, structure, facility, or its system that results or could reasonably result in economic damage or loss that exceeds the common expectations, and the cost of restoring the damage or preventing such damage to the building, structure, facility, or its system would equal or exceed 25 percent of the market value of the building, structure, facility, or its system if built in accordance with the Building Code.
    - It does not include Building Code violations that are cosmetic, minimal, or inconsequential to the overall performance of a building, structure, facility, or its systems.

The bill's provisions apply to any action commenced on or after July 1, 2022, regardless of when the cause of action accrued. Any action that would not have been barred prior to the bill's enactment may be commenced before July 1, 2023. However, such action is barred if the action is not commenced by July 1, 2023, and the action is barred by the bill's provisions.

B. SECTION DIRECTORY:

Section 1. Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2. Providing applicability.

Section 3. Providing an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown. It is unclear what the economic impact will be from revising the statute of limitations for actions founded on the design, planning, or construction of an improvement to real property. While some consumers may not be able to bring a claim based on the shortening of some time periods, other consumers under different circumstances may be able to bring a claim based on the changes made to the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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,[30] a plaintiff has no vested right in a statute of repose in effect when his or her cause of action accrues.[31] 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.[32] The amendment to s. 95.11(3)(c), F.S., made in this bill may 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[30] *See Polk Cty. BOCC v. Special Disability Trust Fund*, 791 So. 2d 581, 583 (Fla. 1st DCA 2001).
[31] *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).
[32] *Bauld v. J.A. Jones Const. Co*., 357 So. 2d 401, 403 (Fla. 1978), quoting *Hart v. Bostick*, 14 Fla. 162, 181 (1872); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).