

SENATE BILL REPORT

SB 6627

As of February 02, 2006

Title: An act relating to tolling the statute of limitations for construction defect actions.

Brief Description: Concerning construction defect actions.

Sponsors: Senators Weinstein and Fairley.

Brief History:

Committee Activity: Financial Institutions, Housing & Consumer Protection: 2/2/06.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Staff: Jennifer Arnold (786-7471)

Background: A condominium consists of real property that has individually-owned units, along with commonly held elements, in which all the individual unit owners have an undivided common interest. In 2002, legislation was enacted regarding construction defect claims related to condominiums. The existing statutes provide that the builder, or substantial remodeler, of a residence must be given an opportunity to cure a construction defect before a lawsuit may be filed against the builder.

Statutes of limitations control the periods of time within which a lawsuit may be brought. The Condominium Act provides, in general, a four year statute of limitations to lawsuits relating to construction defects. Generally, the date the clock starts running on the statute of limitations for condominium defects is: (1) for individual condominium units, the date the purchaser takes possession, and (2) for common areas, the date the unit is occupied, or the date the common area is completed, whichever is later.

Under current law, a claimant's case for a condominium construction defect will be dismissed, without prejudice for failure to give notice and opportunity to cure, and cannot be recommenced until the statutory notice and opportunity to cure requirements are met.

Summary of Bill: The statute of limitations in construction defect cases, involving condominiums, is clarified. In the event a claimant's case is dismissed without prejudice for failure to give notice and opportunity to cure, the statute of limitations for the construction defect action will toll (i.e. the clock is stopped) from the earlier of: (1) commencement of the dismissed action or (2) service of summons. The action will remain tolled for 60 days, which are to be calculated from the date that any subsequent action (e.g. re-filing) is barred.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: This bill is necessary in order to fix a glitch in the existing law. The parties that worked on the 2002 legislation believed that the statute of limitations would not toll during a 60 day period while the notice and opportunity to cure requirements were being met. This clarification is necessary in order to give builders a chance to fix the problem, rather than having the case dismissed on a technicality; the ultimate effect of which is the same as having the case dismissed with prejudice, if the statute of limitations has tolled and that was not the original intent. These cases should not be barred forever, merely because of technicalities; this bill addresses unintended situations under the current law that arise due to ambiguities on when the tolling statute stops. The purpose of the existing statutes is to encourage these problems to be cured, which is what this bill clarifies.

Testimony Against: This bill is unnecessary. It rewards those who fail to file notice and follow proper procedures by allowing them to still be able to pursue their case beyond the existing statute of limitations. The statute of limitations provides certainty for all parties involved; this bill removes that certainty by extending the statute. This could cause actuaries to recalculate the risks involved as higher, which would ultimately result in increased insurance premiums. The existing law, passed in 2002, has made it easier for architects to get insurance for design work; there is no need for a change. The existing law should be given time to work.

Who Testified: PRO: Senator Weinstein, prime sponsor; Ryan Spiller, Washington Homeowners Coalition; Marlyn Hawkins, Washington Homeowners Coalition.

CON: Cliff Webster, Architects and Engineers Legislative Council; Timothy Harris, Building Industry Association of Washington.