

# HOUSE BILL REPORT

## SSB 5031

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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:** Senate Committee on Law & Justice (originally sponsored by Senator Padden).

#### **Brief History:**

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

Judiciary: 3/28/13, 4/2/13 [DPA].

#### **Brief Summary of Substitute Bill (As Amended by Committee)**

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

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 12 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

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

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### 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 statutes of limitations. Which 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 2 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 adopted a different rule with respect to a cause of action for damage to real property arising out of construction on adjacent property, holding that such an action 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 the 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.

Actions arising from the construction, alteration, or repair of improvements to real property, as well as actions arising out of a variety of related services such as design and engineering, are subject to the statute of repose. Under these statutes, 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.

**Summary of Amended Bill:**

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 three years after the property owner first discovered or reasonably should have discovered the damage. 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.

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.

**Amended Bill Compared to Substitute Bill:**

A provision is added regarding actions 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, specifying that any such action must be commenced within three years of the effective date.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended 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 is brought forward as a matter of fairness. As it stands now, the subcontractor could be long gone by the time a suit is brought, leaving the general contractor holding the bag. Some of these projects may go on for 10 years or more. For instance, the Lynnwood station will not be completed until the 2020s. The original bill had a two-year statute of limitations but the Senate amended that to three years. The striking amendment seems reasonable and provides a good fix. The rule from the *Oja* case does not make sense in the context of horizontal construction such as tunnels, highways, and sewers. That work may appear to be finished when it is not. There is first a civil construction contractor on the job and when that is finished, there is a follow-on systems contractor. The key issue here is

the preservation of evidence. Timely claims allow for the defendant's evaluation of evidence. If Sound Transit caused damage, Sound Transit wants to pay for that damage. There is always a balancing with any statute of limitations. The addition of a "substantial damage" standard would add uncertainty and create issues for litigation.

(Opposed) There has been no problem created by the 1977 case. As the court noted in that case, a different rule than the one the court imposed would force a plaintiff to seek damages in installment. If this bill moves forward, it is requested that it be amended so that the statute of limitations runs from the time the plaintiff first had knowledge of "substantial" damage. Small cracks and such would not put someone on notice.

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

(Opposed) Jeremy Stillwell, Washington State Community Association Institute.

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