

HOUSE BILL REPORT

SB 5080

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: Senators Padden and Pedersen.

Brief History:

Committee Activity:

Judiciary: 3/14/17, 3/23/17 [DPA].

Brief Summary of Bill (As Amended by Committee)

- Provides that any action for damage to real property resulting from construction, alteration, or repair on adjacent property against a public entity using funds approved by the voters of its jurisdiction for the construction of a transportation project must be commenced within the earlier of three years after the property owner first discovered the damage *or* three years after completion of the construction, alteration, or repair.
- Provides, in addition, that any such action which is known, or reasonably should have been known, as of the effective date, and is 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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

Staff: Cece Clynch (786-7195).

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.

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 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.

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 additionally subject to the statute of repose. This statute of repose 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.

Oja Case.

In the 1977 case of *Oja v. Washington Park Towers*, the Washington Supreme Court (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 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."

Summary of Amended Bill:

Statutes of Limitation.

Intent is expressed to limit Oja. An action for damage to real property resulting from construction, alteration, or repair on adjacent property, whether alleging negligence, strict liability, trespass, or any other cause of action against a public entity using funds approved by the registered voters of its jurisdiction for the construction of a transportation project must be commenced within the earlier of the following periods:

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

With respect to such 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 or barring a cause of action against a public entity for the operation and maintenance of the transportation project.

Amended Bill Compared to Original Bill:

The amended bill includes the following additions and changes:

- provides that the causes of actions subject to the new limitations period are those brought against a public entity using funds approved by the registered voters of its jurisdiction for the construction of a transportation project;
 - intent is expressed to limit, rather than overrule, the Oja case;
 - provides that suit must be brought three years after discovery of the damage or three years after completion of the project, and strikes that part of the limitations period aimed at when the owner should reasonably have discovered the damage; and
 - specifies that nothing in this new section may be construed to bar a cause of action against a public entity for the operation and maintenance of the transportation project.
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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) Some of these projects may go on for 10 years or more. It seems reasonable to have a three-year limit. An earlier version of the bill that was heard in a prior year included a two-year statute of limitation (SOL). Three years is fairer. This bill passed out of the Senate unanimously. The objective is to clarify the SOL, and to provide a way to fairly adjudicate claims for damage to adjacent property by ensuring there is not spoilage of evidence and also allow for problems to be remedied before the damage festers. There was an effort to put together some language to address concerns raised with respect to the House companion bill, but that did not end up going forward, and this is the original bill. It will not have a wide impact. Most construction projects are not horizontal projects that go on for a decade or more. This bill will not create an absolute bar to a cause of action alleging damage from the deep bore tunnel. There is language that can provide a remedy for the concerns expressed.

(Opposed) There is no disagreement with that part of the bill that imposes a three-year SOL after someone knows, or reasonably should know, of damage, but there is concern about the other aspect of the bill. It seems to conflate statutes of repose (SOR) and SOLs. By imposing this three-year SOL, it creates a SOR bar. If a person does not discover damage within three years of the end of construction, and only discovers the damage after that three-year period, they will be without a remedy. They will never get to the end of the existing SOR. For instance, assuming that this construction is complete in 2017, the three-year SOL will run out in 2020. If no damage is discovered by 2020, this SOL will become an absolute bar to an action, similar to a SOR. There is a diligence requirement already under current law. What is different here is that the three-year SOL begins running once construction ends. This will apply to all construction projects, not just long construction projects. The issue with the language is solvable.

Persons Testifying: (In support) Senator Padden, prime sponsor; and Alex Soldano, Sound Transit.

(Opposed) Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.