

SENATE BILL REPORT

SB 5080

As Passed Senate, March 1, 2017

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: Law & Justice: 1/18/17, 2/01/17 [DP].

Floor Activity:

Passed Senate: 3/01/17, 47-2.

Brief Summary of Bill

- Requires action for damages to real property resulting from construction, alteration, or repair be commenced within three years after discovery or completion, whichever comes first.
- Grants, if construction is not complete by the effective date of the bill and the property owner knows or should know of the damage, an action for damages must be commenced within three years after the effective date.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille and Wilson.

Staff: Tim Ford (786-7423)

Background: The statute of limitations for an action regarding waste or trespass upon real property or for injuring personal property is three years. The Supreme Court of Washington held in *Vern J. Oja and Assoc. v. Washington Park Towers, Inc.* that the cause of action for damages caused by pile driving activity on an adjacent property accrued when the building was completed. The court found that the person claiming damages was entitled to wait until

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the completion of the construction project before commencing an action so that the full extent of the damages could be determined.

Summary of Bill: An action for damage to real property resulting from construction, alteration, or repair on an adjacent property, whether alleging negligence, strict liability, trespass, or any other cause of action, must be commenced within the earlier of the following periods:

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

An exception is provided if the construction is not complete by the effective date of the bill. Under the exception, where damages are known or should have been known as of the effective date, any action must be commenced within three years of the effective date of the bill.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Currently the clock on these claims doesn't start ticking until substantial completion. Big projects may take 15 to 20 years to complete and some of the project partners may no longer be around, or some of the evidence may no longer exist. In large residential developments with hundreds of homes being built, the project is not complete until the last house is built. It takes a long time and it may not be able to determine the cause of damages many years later.

OTHER: The bill will create unintended adverse consequences for innocent property owners. The new standard starts the clock on the statute of limitations upon the earlier of the two described circumstances. It will undermine adverse possession law. In a hypothetical, Fred runs a water line across Martha's property. Five years later Martha receives a permit and discovers Fred's underground line. Based on this bill, Martha would have to bring a claim for trespass within three years and it would already be too late so she would be time-barred. If any owner discovers the damage, the owner would be forced to file litigation within three years of discovery and that may be before the construction is complete. The bill is too broad and sweeping. The known or should have known standard is problematic for an innocent owner. The standard should be whichever is later because if it is the earlier, then an owner might not discover damages until more than three years after the completion of the project. An innocent owner may not have any remedy.

Persons Testifying: PRO: Alex Soldano, Sound Transit.

OTHER: Annie Fitzsimmons, WA State Bar Association, Real Property, Probate, and Trust Section; Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: No one.