

SOL REVISION FOR ACTIONS AGAINST ARCHITECTS, ENGINEERS & CONTRACTORS

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Senate Bill 77

Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 6-15-11

A SUMMARY OF SENATE BILL 77 AS PASSED BY THE SENATE 2-24-11

The bill would amend the Revised Judicature Act to make actions against an architect, engineer, or surveyor subject to the two-year period of limitation for an action charging malpractice and would make the period of limitation subject to the applicable period of repose established in Section 5839 of the act.

Section 5805 of the RJA currently establishes the statutory time limitations for a malpractice action as two years, and the period for an action to recover damages for the death of or injury to a person as three years. Section 5805 also specifies that the period of limitations for an action against a state-licensed architect, professional engineer, land surveyor, or contractor, based on an improvement to real property, is as provided in Section 5839.

Currently, Section 5839 allows an action against an licensed architect, licensed professional engineer, or contractor to recover damages for injuries (to a person or property) arising out of the defective and unsafe condition of an improvement to real property, or an action for contribution or indemnity for damages sustained as a result of such injury, to be filed up to six years after the time of occupancy of the completed improvement, or one year after the defect was discovered or should have been discovered if the defect constituted proximate cause of the injury. An action cannot be maintained more than 10 years after the time of occupancy of the completed improvement.

Senate Bill 77 would revise Sections 5805 and 5839 of the RJA (MCL 600.5805 and 600.5839). These revisions would take effect 90 days after enactment and would apply to causes of action that accrue on or after the bill's effective date.

Under the bill, Section 5805, described above, would be revised to instead specify that an action to recover damages for injuries to persons or property against a state licensed architect or professional engineer or a licensed professional surveyor would be an action charging malpractice subject to the period of limitation contained in subsection (6) – which sets the period of limitations as two years for an action charging malpractice. The bill would also specify that the periods of limitation under Section 5805 would be subject to the applicable period of repose established in Section 5839.

Section 5839 would be revised to prohibit an action to recover damages for injuries or death arising out of the defective or unsafe condition of an improvement to real property as described above, unless the action was begun within either of the following periods:

- Six years after the time of occupancy of the completed improvement, use, or acceptance of the improvement.
- If the defect constituted the proximate cause of the injury or damage and was the result of gross negligence on the part of the contractor or licensed architect or professional engineer, one year after the defect was discovered or should have been discovered. The bill would retain the current provision that specifies an action could not be maintained under this provision more than 10 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement.

The bill would also retain the current provision that limits a person from maintaining an action to recover damages based on error or negligence of a licensed land surveyor in the preparation of a survey or report more than six years after the delivery of the survey or the report to the person for whom it was made or the person's agent.

"Contractor" would be defined as an individual, corporation, partnership, or other business entity that makes an improvement to real property. Several references to a "land surveyor" would be changed to "licensed professional surveyor".

BACKGROUND INFORMATION:

For decades, and despite several attempts by the Legislature to clarify the issue, courts have differed in their interpretations of statutory time limitations for bringing a civil action against an architect, professional engineer, land surveyor, or construction contractor. (For a detailed discussion of the judicial and legislative history of the statute of limitations for bringing an action against any of these professionals, see the Senate Fiscal Agency analysis of Senate Bill 77, as passed by the Senate, dated 3-1-11.) At the close of the 2007-08 legislative session, Senate Bill 865 was passed by the Senate and reported from the House Judiciary Committee. The bill failed to see House Floor action. Last session, Senate Bill 882 was passed by the Senate, reported from the House Judiciary Committee, but also died on the floor.

FISCAL IMPACT:

Senate Bill 77 would have an indeterminate fiscal impact on state and local government, including the judicial branch. The judicial branch (local courts) may realize a positive fiscal impact by having certain causes of action precluded under the provisions of the bill. However, the number of causes of action that would be precluded by the provisions of the bill is indeterminate.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.