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BILL



ANALYSIS

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Senate Bill 77 (as introduced 1-27-11)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 2-7-11

CONTENT

The bill would amend the Revised Judicature Act to establish a two-year statute of limitations on actions against architects and professional engineers, and a three-year statute of limitations on actions against contractors, to recover for property damage or personal injury.

Specifically, the bill would amend Sections 5805 and 5839 of the Act, which impose a statute of limitations and a period of repose, respectively, on actions to recover for property damage or personal injury. (A statute of limitations limits the period of time an action may be brought after an injury or damage occurs or is discovered. A period of repose sets a fixed time following an event, other than the injury or damage, after which a person cannot be held liable. When the period of repose expires, an action may not be brought even if the injury or damage has not yet occurred.)

Section 5805 includes a two-year statute of limitations on a malpractice action, as well as a three-year statute of limitations on an action to recover damages for the death of or injury to a person (a general negligence action). Section 5805 also specifies that the period of limitations on 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.

Under Section 5839, as a rule, a person may not bring an action arising out of the defective and unsafe condition of an improvement to real property, against an architect, professional engineer, or contractor later than six years after the time of occupancy or acceptance of the completed improvement. (If the defect constitutes the proximate cause of the injury or damage and is the result of gross negligence, the action must be brought within one year after the defect is or should have been discovered, but may not be brought more than 10 years after the time of occupancy, use, or acceptance.) For an action against a land surveyor, the period of repose is six years after delivery of a survey or report.

Under the bill, the period of limitations on an action against an architect, professional engineer, land surveyor, or contractor, based on an improvement to real property, would be as provided in Section 5805, but the action could not be begun later than the applicable period established in Section 5839. The bill also specifies that an action to recover damages for injuries to people or property against a State-licensed architect or professional engineer would be an action charging malpractice.

MCL 600.5805 & 600.5839

BACKGROUND

Traditionally, lawsuits against architects and engineers were subject to the two-year statute of limitations on malpractice actions under Section 5805, and suits against contractors were subject to the section's three-year statute of limitations on general negligence actions. A 1988 amendment to Section 5805, however, added the statement that the period of limitations on an action against an architect, professional engineer, or contractor, based on an improvement to real property, is as provided in Section 5839.

The interaction between the two sections was first addressed by the Michigan Court of Appeals in January 1994, in *Witherspoon v Guilford* (203 Mich App 240). In that case, the Court essentially held that the periods of limitations in Section 5805 continued to bar actions that were not brought within those time frames, even if the six-year period of repose under Section 5839 had not expired.

In July 1994, a separate panel of the Court of Appeals reached the opposite conclusion in *Ostroth v Warren Regency* (263 Mich App 1). The Court stated that *Witherspoon* was wrongly decided and held, "[T]he special six-year statute of limitations in § 5839(1) applies to all negligence actions against architects, contractors, and engineers."

The Michigan Supreme Court affirmed the *Ostroth* decision in 2006, holding that Section 5839 functions as *both* a statute of limitations and a period of repose. As a result, injured parties have six years after the completion of an improvement to real property to bring an action against an architect, professional engineer, or contractor, regardless of whether the two- or three-year period of limitations under Section 5805 otherwise would have barred the action.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate impact on the State and local units of government. The extent to which the bill could preclude an action brought by or against the State or a local unit of government in the future is not determinable.

Fiscal Analyst: Matthew Grabowski

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