

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/CS/HB 87	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Judiciary Committee; Business & Professions Subcommittee; Civil Justice Subcommittee; Passidomo and others	112 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/SB 418	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/CS/HB 87 passed the House on April 16, 2015, and subsequently passed the Senate on April 24, 2015. The bill changes the current procedures for filing a notice of construction defect claim.

Current law requires that a person who intends to sue regarding a construction defect must notify the contractor of the claim to provide the contractor an opportunity to fix the problem before suit is filed.

The bill includes a "temporary" certificate of occupancy in the definition of "completion of a building or improvement."

The bill requires that the notice of claim identify the location of each defect, based upon at least a visual inspection, sufficient to enable the responding party to locate the alleged defect without undue burden. A claimant is not required to perform destructive or other testing before providing a notice of claim.

The bill requires that the contractor's response to a notice of claim indicate whether he or she is willing to make repairs, settle the claim with a monetary offer, or both, whether the contractor disputes the claim, or whether the contractor's insurer will cover the claim.

The bill provides that furnishing a copy of the notice of claim to an insurance company does not constitute a claim for insurance purposes unless provided for under the terms of the contractor's insurance policy.

The bill adds "maintenance records" and other documents to those records to be exchanged by the claimant with the contractor related to the defect claim. However, a party does not have to disclose privileged documents or records.

The bill does not appear have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 16, 2015, ch. 2015-165, L.O.F., and will become effective on October 1, 2015.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

Chapter 558, F.S., provides a method for resolving construction defect disputes before filing a lawsuit. In short, it provides for notice and an opportunity to cure. Before the property owner may file a complaint against a contractor, the property owner is required to serve the contractor with a notice of claim that provides the contractor with information about the alleged defect, gives the contractor the opportunity to examine the defect, and, if the contractor agrees that the defect exists, gives the contractor a reasonable opportunity to repair the defect or make some other offer of settlement. If the parties do not resolve the dispute through this process, the claimant may still bring an action against the contractor in court. Similar methods for presuit notice and resolution are required in other areas, including medical negligence, claims against nursing homes, and eminent domain.<sup>1</sup>

#### Legislative Findings and Declaration

Section 558.001, F.S., provides legislative findings that it is beneficial to have an effective alternative dispute mechanism for construction defect disputes in which the claimant provides the contractor, subcontractor, supplier, or designer responsible for the alleged defect sufficient notice and an opportunity to cure the defect without having to resort to litigation.

The bill amends s. 558.001, F.S., to include a finding that the insurer of the contractor, subcontractor, supplier, or designer responsible for the alleged defect should also be provided an opportunity to resolve a claim “through confidential settlement negotiations.”

#### Applicability; Temporary Certificate of Occupancy

Current law only requires a notice of claim to be filed after a project has reached completion. “Completion of a building or improvement” is currently defined in s. 558.002(4), F.S., as the

issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization to occupy or use the improvement, issued by the governmental body having jurisdiction and, in jurisdictions where no certificate of occupancy or the equivalent authorization is issued, means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

The bill amends the definition of “completion of a building or improvement” in s. 558.002(4), F.S., to provide that the issuance of a temporary certificate of occupancy qualifies as “completion of a building or improvement.” The bill also amends the definition of “completion of a building or improvement” in ss. 718.203(3) and 719.203(3), F.S., related to warranties for condominiums and cooperatives, to make those definitions consistent with the amended definition in s. 558.002(4), F.S.

#### Notice

Section 558.004(1), F.S., requires a claimant to provide a notice of claim of an alleged construction defect to the contractor, subcontractor, supplier, or designer, at least 60 days before filing any action, or at least 120 days before filing an action involving an association

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<sup>1</sup> See s. 720.311, F.S., related to homeowners association disputes; ch. 766., F.S., related to medical negligence claims; s. 429.293(3), F.S., related to assisted care communities; s. 400.0233(3), F.S., related to nursing homes; and, s. 73.015, F.S., related to eminent domain.

representing more than 20 parcels. “The notice of claim must describe the claim in reasonable detail sufficient to determine the general nature of each alleged construction defect and a description of the damage or loss resulting from the defect, if known.”

The bill amends s. 558.004(1), F.S., to require that the notice of claim also identify the location of each construction defect, based upon at least a visual inspection, sufficient to enable the responding party to locate the alleged defect without undue burden. A claimant is not required to perform destructive testing or other testing before providing a notice of claim.

### Response to Notice

Section 558.004(4), F.S., requires a contractor, subcontractor, supplier, or designer who has received a notice of claim to respond to the notice within 15 days, or within 30 days for an action involving an association representing more than 20 parcels. The response must include reports and inspections, a statement of whether the contractor is willing to make repairs to the property, whether the claim is disputed, a description of any repairs they are willing to make, and a timetable for the completion of such repairs.

The bill amends s. 558.004(4), F.S., to provide that the contractor’s response must be in writing and must include at least one of the responses already provided for in s. 558.004(5)(a)-(e), F.S., whether he or she is willing to make repairs, settle the claim with a monetary offer, or both, whether the contractor disputes the claim, or whether the contractor’s insurer will cover the claim.

### Insurance Claims

Section 558.004(13), F.S., provides that nothing in s. 558.004, F.S., relieves a contractor, subcontractor, supplier, or designer’s from complying with all the provisions of a liability insurance policy with regard to coverage of a construction defect claim and provides that providing a copy of the presuit notice to the contractor’s insurer does not constitute a claim for insurance purposes.

The bill amends s. 558.004(13), F.S., to provide that if the terms of the contractor’s insurance policy permit a claim to be made by providing a copy of the presuit notice to the insurer, the notice may constitute a claim under the policy.

### Information Exchange

Section 558.004(15), F.S., provides that any party may, during the ch. 558, F.S., presuit process, request an exchange of the following information relating to the claimed construction defects:

- Design plans, specifications, and as-built plans;
- Any documents detailing the design drawings or specifications;
- Photographs, videos, and expert reports that describe any defect upon which the claim is made;
- Subcontracts; and
- Purchase orders for the work that is claimed defective or any part of such materials.

The requesting party must offer to pay the reasonable costs of reproduction.

The bill amends s. 558.004(15), F.S., to require a party to also exchange “the maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of claim and any resulting damages.” The bill also provides that photographs and videos provided pursuant to a request must be “of the alleged construction defect identified in the notice of claim.” However, a party does not have to disclose privileged documents, records, and information.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.