

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 204

INTRODUCER: Judiciary Committee and Senator Passidomo

SUBJECT: Limitations on Actions other than for the Recovery of Real Property

DATE: April 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 204 clarifies when the completion of a construction contract occurs. This date, in some cases, determines when the applicable 4-or 10-year limitations periods begin for bringing a lawsuit for a construction defect or latent construction defect.

Under current law, the start date of the limitations periods begins when both parties to a construction contract complete their obligations. The bill provides that the limitations periods begin at the later of the date of final performance of all the contracted services or the date that final payment for those services is due., for causes of action that accrue on or after July 1, 2017.

The bill has no fiscal impact on state government. See Section V.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Florida law establishes a number of different time periods in which a person must file a lawsuit or is precluded from doing so.¹ Some of these time periods are governed by a statute of limitations, which precludes a person from filing a lawsuit after a specified time period after the

¹ See e.g., ch. 95, F.S.

cause of action otherwise accrues.² A cause of action typically accrues when a person sustains an injury or incurs damages.

Other time periods for filing a lawsuit are governed by a statute of repose, which precludes the filing of a lawsuit after a specified time after the occurrence of an event.³ The purpose for statutes of repose is to prevent a person from being subject to liability in perpetuity in a manner that is supportive of another public policy choice.⁴

Many of the statutes of repose, including a statute of repose for actions alleging a construction defect or latent construction defect, are set forth in s. 95.11, F.S. The statute provides a four-year statute of repose for actions alleging a construction defect based on the design, planning, or construction of an improvement to real property. A 10-year statute of repose is provided for actions alleging a latent construction defect. A latent defect is generally considered to be a hidden or concealed defect that is not discoverable by a reasonable and customary inspection, and of which the owner has no knowledge.⁵

In 2015, the Fifth District Court of Appeal determined in *Cypress Fairway Condominium Association v. Bergeron Construction Company, (Cypress)* when the 10-year limitations period, or statute of repose, for a lawsuit alleging a latent construction defect begins.⁶ The statute construed by the court, s. 95.11(3)(c), F.S., provides that the statute of repose for an action alleging a construction defect begins to run on the later of several events including the “date of completion . . . of the contract.”

In *Cypress*, the construction company argued that the contract was completed and the statute of repose began to run on January 31, 2001, when the Final Application for Payment was made.⁷ The condominium association argued that the contract was not completed until three days later, on February 2, 2001, when the final payment under the contract was made.⁸ This 3-day difference would determine whether the association could proceed with its \$15 million lawsuit,

² See *Kush v. Lloyd*, 616 So. 2d 415, 417-419 (Fla. 1992) (“A statute of limitation runs from the date the cause of action arises; that is, the date on which the final element (ordinarily, damages, but it may also be knowledge or notice) essential to the existence of a cause of action occurs.” (citing *Carr v. Broward County*, 505 So. 2d 568, 570 (Fla. 4th DCA 1987)).

³ See *Kush*, 616 So. 2d 415, at 419. (“The period of time established by a statute of repose commences to run from the date of an event specified in the statute, such as delivery of goods, closing on a real estate sale or the performance of a surgical operation. At the end of the time period the cause of action ceases to exist.” (citing *Carr v. Broward County*, 505 So. 2d 568, at 570 (Fla. 4th DCA 1987)).

⁴ See *Carr v. Broward County*, 541 So. 2d 92, at 95 (Fla. 1989). In *Carr*, the Supreme Court recognized the balancing of public interests that takes place when the Legislature enacts a statute of repose, stating: “[t]he legislature, in enacting this statute of repose, reasonably decided that perpetual liability places an undue burden on manufacturers, and it decided that twelve years from the date of sale is a reasonable time for exposure to liability for manufacturing of a product.” *Id.* at 95, (quoting *Pullum v. Cincinnati, Inc.*, 476 So. 2d 657, 659 (Fla. 1985)). See also *Damiano v. McDaniel*, 689 So. 2d 1059, 1061 (Fla. 1997) (stating that in a statute of repose governing medical malpractice actions, “the legislature attempted to balance the rights of injured persons against the exposure of health care providers to liability for endless periods of time.”).

⁵ See *Alexander v. Suncoast Builders*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2002).

⁶ *Cypress Fairway Condo. v. Bergeron Constr. Co.*, 164 So. 3d 706, 707 (Fla. 5th DCA 2015).

⁷ *Id.* at 707.

⁸ *Id.*

which was filed within the 10-year period that began February 2, 2001, but beyond the 10-year period that began January 31, 2001.⁹

The court found that the contract was not completed until the final payment was made under the contract, and explained:

Completion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.¹⁰

III. Effect of Proposed Changes:

The limitations period or statute of repose for bringing an action alleging a construction defect or latent construction defect is specified in existing s. 95.11(3)(c), F.S. These 4-year and 10-year time periods begin on the date of completion of a contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.”

The bill clarifies when a construction contract is complete and causes the limitations periods to begin. Specifically, the applicable 4-year statute of repose for construction defects and 10-year statute of repose for latent construction defects begins on the “later of the date of final performance of all the contracted services, or the date that final payment for those services becomes due.” As a result, the duration of a contractor’s liability will not be affected by the timing of a customer’s payments under a construction contract.

The bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ *Id.* at 707-708.

¹⁰ *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

CS/SB 204 provides more certainty in defining the duration of a contractor's liability for a construction defect. As a result, there may be less incentive to litigate whether the statute of repose bars particular construction defect lawsuits.

C. Government Sector Impact:

The Office of the State Courts Administrator anticipates that the bill may result in a small reduction in judicial workload by limiting the number of disputed matters before the courts.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

CS/SB 204 substantially amends section 95.11, Florida Statutes.

This bill re-enacts s. 627.441, F.S., to incorporate the amendment to s. 95.11, F.S., made by the bill.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 14, 2017:

The underlying bill defined the date of the completion of a construction contract as the date on which construction activities were completed, not including construction work to correct deficiencies. The committee substitute provides that the completion of a construction contract occurs on the later of the completion of construction activities or the date the final payment under the contract becomes due.

¹¹ Office of the State Courts Administrator, *2017 Judicial Impact Statement for SB 204* (Jan. 24, 2017).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
