

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 Rules

BILL: CS/SB 360

INTRODUCER: Judiciary Committee and Senator Hutson

SUBJECT: Causes of Action Based on Improvements to Real Property

DATE: March 7, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Collazo</u>	<u>Twogood</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 360 amends existing law with respect to causes of action based on improvements to real property. The bill shortens the timeframes within which a property owner may bring a cause of action against a builder for alleged construction defects. It also narrows the scope of certain statutory civil actions against builders for Florida Building Code violations.

Specifically, the bill:

- Revises the commencement of the 4-year statute of limitations by changing the listed potential commencement dates and causing the statute to run based upon whichever date is earliest instead of latest;
- Shortens the 10-year statute of repose to 7 years;
- Revises the commencement of the 7-year (currently 10-year) statute of repose by changing the listed potential commencement dates and causing the statute to run based upon whichever date is earliest instead of latest;
- Provides that if a newly constructed single-dwelling residential building is used as a model home, the time to bring a construction defect action begins to run from the date that a deed is recorded first transferring title to another party;
- Provides that if a project involves the construction of multiple buildings, each individual building must be considered its own improvement for purposes of determining the limitations period in the bill;
- Provides a definition for “material violations” in connection with statutory civil actions against builders for alleged Florida Building Code violations, and amends existing law to limit recovery for material violations only; and

- Includes a savings clause to ensure that claimants having time remaining under the existing statute of limitations have at least 1 year from the effective date of the bill to initiate a construction defect action.

The bill takes effect upon becoming a law.

II. Present Situation:

Construction Defects

A construction defect, for purposes of bringing a construction defect action against a builder under chapter 558, F.S., is a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property resulting from:

- Defective material, products, or components used in the construction or remodeling;
- A violation of the applicable codes in effect at the time of construction or remodeling which gives rise to a cause of action pursuant to s. 553.84;¹
- A failure of the design of real property to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction.²

Statutes of Limitation and Repose

Legal actions must be brought within the timeframes authorized by law. A statute of limitations typically sets a time limit within which an action must be filed as measured from the accrual of the cause of action, after which time obtaining relief is barred.³ A statute of repose precludes a right of action after a specified time, instead of establishing a time period within which the action must be brought measured from the point in time when the cause of action accrued.⁴

With respect to construction defect actions, there are two timeframes that currently apply: a 4-year statute of limitations period and a 10-year statute of repose.⁵ Under the statute of limitations, a property owner may bring an action:

- In the case of patent⁶ construction defects, up to 4 years after the *latest* of the following dates:
 - The date of actual possession by the property owner;
 - The date of issuance of a certificate of occupancy;

¹ See Statutory Civil Actions, *infra*.

² Section 558.002(5), F.S.

³ *National Auto Service Centers, Inc., v. F/R 500, LLC*, 192 So. 3d 498, 509-10 (Fla. 2d DCA 2016) (citations omitted) (stating that the purpose of a statute of limitations is to “require that a plaintiff with a known cause of action prosecute that claim diligently and within a predictable time that will allow for finality of claims prior to the potential loss of available evidence over time”).

⁴ *Id.* at 509 (citing *Univ. of Miami v. Bogorff*, 583 So. 2d 1000, 1003 (Fla. 1991)).

⁵ Section 95.11(3)(c), F.S.

⁶ A patent defect is “either one about which the owner had actual knowledge or one about which the owner would have known had he or she made a reasonably careful inspection.” *U.S. Lodging of Jacksonville, Ltd., v H.B. Daniel Const. Co., Inc.*, 617 So. 2d 448, 449 (Fla. 1st DCA 1993).

- The date of abandonment of construction if not completed; or
- The date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.⁷
- In the case of latent⁸ construction defects, up to 4 years after the defect is discovered or should have been discovered with the exercise of due diligence.⁹

Under the statute of repose, a property owner may bring an action for a latent construction defect, regardless of when it is discovered or should have been discovered, no later than 10 years after the *latest* of the following dates:

- The date of actual possession by the property owner;
- The date of issuance of a certificate of occupancy;
- The date of abandonment of construction if not completed; or
- The date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.¹⁰

Florida Building Code

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act.” The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code, known as the Florida Building Code.¹¹

The Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.¹² It is adopted by rule¹³ and, except as otherwise provided in state law,¹⁴ must contain or incorporate by reference all laws and rules which pertain to and govern:

- The design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities in the state; and
- The enforcement of such laws and rules.

The Code includes all of the following volumes:

- 2020 Florida Building Code, Building, 7th Edition;
- 2020 Florida Building Code, Residential, 7th Edition;
- 2020 Florida Building Code, Test Protocols for High-Velocity Hurricane Zones, 7th Edition;
- 2020 Florida Building Code, Accessibility, 7th Edition;
- 2020 Florida Building Code, Energy Conservation, 7th Edition;
- 2020 Florida Building Code, Plumbing, 7th Edition;

⁷ Section 95.11(3)(c), F.S.

⁸ A latent defect is a defect that is not discernible by the exercise of reasonable care. *Kala Investments, Inc. v. Sklar*, 538 So. 2d 909, 914 (Fla. 3d DCA 1989) (citing *Maas Bros., Inc. v. Bishop*, 204 So. 2d 16 (Fla. 2d DCA 1967)).

⁹ Section 95.11(3)(c), F.S.

¹⁰ *Id.*

¹¹ *See* s. 553.72(1), F.S.

¹² *Id.*

¹³ Section 553.73(1)(a), F.S.; *see also* Fla. Admin. Code R. 61G20-1.001(1) (adopting The Florida Building Code, 7th Edition (2020), as updated by the Florida Building Commission on August 9, 2022, as the building code for the state of Florida).

¹⁴ *See* s. 553.73(1)(a), F.S. For example, the Florida Fire Prevention Code and the Life Safety Code, while referenced in the Code, are separately adopted and maintained by the Department of Financial Services. Section 553.73(1)(c), F.S.

- 2020 Florida Building Code, Mechanical, 7th Edition;
- 2020 Florida Building Code, Fuel Gas, 7th Edition; and
- 2020 Florida Building Code, Existing Building, 7th Edition.¹⁵

The Florida Building Commission was statutorily created to implement the Code.¹⁶ The Commission, which is housed within the Department of Business and Professional Regulation, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Code.¹⁷ The Commission reviews several International Codes published by the International Code Council,¹⁸ the National Electric Code, and other nationally adopted model codes to determine if the Code needs to be updated, and adopts an updated Code every 3 years.¹⁹

Enforcement

The Legislature intends that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions to protect the public's health, safety, and welfare.²⁰ Every local government must enforce the Code and issue building permits.²¹ A person, firm, or corporation may not construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government agency enforcing the Code, or from the persons as may be directed, by resolution or regulation, to issue the permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.²²

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Code. The Code requires certain building, electrical, plumbing, mechanical, and gas inspections.²³ Construction work may not be done beyond a certain point until it passes an inspection.²⁴

Certificates

According to the Code, a building or structure may not be used or occupied, and a change in the existing use or occupancy classification of a building or structure may not be made, until the appropriate local government official issues a certificate of occupancy, temporary certificate of occupancy, or a certificate of completion as described in the Code.²⁵

¹⁵ See International Code Council Digital Codes, *Florida Building Codes*, <https://codes.iccsafe.org/codes/florida> (last visited Feb. 14, 2023) (providing these volumes).

¹⁶ Sections 553.73(1)(a) and 553.74(1), F.S.

¹⁷ Section 553.74(1), F.S.

¹⁸ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited Feb. 14, 2023).

¹⁹ Sections 553.73(7)(a) and 553.74, F.S.

²⁰ Section 553.72(2), F.S.

²¹ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

²² See ss. 125.56(4)(a) and 553.79(1), F.S.

²³ See generally s. 110, Florida Building Code, Building, 7th Edition (2020), <https://codes.iccsafe.org/content/FLBC2020P1/chapter-1-scope-and-administration>.

²⁴ See *id.*

²⁵ See generally s. 111, Florida Building Code, Building, 7th Edition (2020), <https://codes.iccsafe.org/content/FLBC2020P1/chapter-1-scope-and-administration>.

- A certificate of occupancy must be issued before initial use or occupancy, or a change in the existing use or occupancy classification, of a building or structure.²⁶
- A temporary certificate of occupancy may be issued before the completion of an entire work covered by a permit, provided that such portion or portions can be occupied safely. It is valid only for a limited time.²⁷
- A certificate of completion is proof that a structure or system is complete and, for certain types of permits, is released for use and may be connected to a utility system. It does not grant authority to occupy a building, such as a shell building, before issuance of a certificate of occupancy.²⁸

Statutory Civil Actions

Notwithstanding other remedies available, a person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of the Florida Building Codes Act²⁹ or the Code, has a cause of action against the person or party who committed the violation.³⁰

However, unless the person or party who committed the violation knew or should have known that the violation existed, the cause of action is not available if:

- The person or party obtained the required building permits and the local government or public agency with authority to enforce the Code approved the plans;
- The construction project passed all required inspections under the Code; and
- There is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections.³¹

The existence of a contract between the property owner and the builder is not required for a person to bring an action for a Code violation. As such, the statutory civil action for a Code violation may be brought by a subsequent property owner or against subcontractors.

Administrative Penalties for Material Violations of the Code

If a local enforcing agency determines that a builder has committed a material violation of the Code and failed to correct the violation within a reasonable time, the enforcing authority is required to impose a fine of \$500 to \$5,000 per material violation.³² A material Code violation is a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.³³

²⁶ Subsection 111.1, Florida Building Code, Building, 7th Edition (2020), <https://codes.iccsafe.org/content/FLBC2020P1/chapter-1-scope-and-administration>.

²⁷ Subsection 111.3, Florida Building Code, Building, 7th Edition (2020), <https://codes.iccsafe.org/content/FLBC2020P1/chapter-1-scope-and-administration>.

²⁸ Subsection 111.5, Florida Building Code, Building, 7th Edition (2020), <https://codes.iccsafe.org/content/FLBC2020P1/chapter-1-scope-and-administration>.

²⁹ Part IV, Chapter 553, F.S.

³⁰ Section 553.84, F.S.

³¹ *Id.*

³² Section 553.781(2)(a), F.S.

³³ Section 553.781(4), F.S.

III. Effect of Proposed Changes:

Statutes of Limitation and Repose

The bill revises the commencement of the 4-year statute of limitations for patent construction defects by:

- Deleting “the date of actual possession by the owner” as a commencement date;
- Adding the date that “the authority having jurisdiction issues a temporary certificate of occupancy” as a commencement date;
- Adding the date that the authority having jurisdiction issues a “certificate of completion” as a commencement date; and
- Removing the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer as a commencement date.

The bill provides that the 4-year statute of limitations for patent construction defects begins to run on any of the listed commencement dates, whichever date is *earliest*.

Similarly, the bill revises the commencement of the 10-year statute of repose by:

- Shortening the statute of repose to 7 years;
- Deleting “the date of actual possession by the owner” as a commencement date;
- Adding the date that “the authority having jurisdiction issues a temporary certificate of occupancy” as a commencement date;
- Adding the date that the authority having jurisdiction issues a “certificate of completion” as a commencement date; and
- Removing the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer as a commencement date.

The bill provides that the 7-year statute of repose begins to run on any of the listed commencement dates, whichever date is *earliest*.

The bill replaces a reference in the statute to “a local enforcement agency, state enforcement agency, or special inspector,” with a reference to the “authority having jurisdiction.” The terminology is revised to be consistent with current practices for the issuance of certificates of occupancy or completion.

The bill provides that if a newly constructed single-dwelling residential building is used as a model home, the time for a construction defect action begins to run from the date that a deed is recorded first transferring title to another party.

The bill also provides that notwithstanding any provision of the statute to the contrary, if the improvement to real property consists of the design, planning, or construction of multiple buildings, each building must be considered its own improvement for purposes of determining the applicable limitations period in the bill.

Florida Building Code

With respect to that cause of action granted to persons damaged as a result of a violation of the Florida Building Codes Act or the Florida Building Code, the bill narrows the scope of the cause of action by:

- Amending the statute³⁴ to limit recovery for *material violations* only; and
- Defining the term “material violation” to mean a Florida Building Code violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.

This standard for material violation in the bill is the same standard in existing law that requires a local enforcing agency to impose a fine on a builder of \$500 to \$5,000 for failing to correct a material violation within a reasonable time.³⁵

Savings Clause

The bill provides that it applies to any construction defect action commenced on or after the effective date of the bill (July 1, 2023), regardless of when the cause of action accrued, except that any action that would not have been barred by the statute before that date must be commenced by July 1, 2024. Accordingly, the bill ensures that claimants having time remaining under the existing statute of limitations have at least 1 year from the effective date of the bill to initiate a construction defect action. However, if the action is not commenced by July 1, 2024, and is barred by the amendments made by the bill, then the action is barred.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

³⁴ Section 553.84, F.S.

³⁵ Section 553.781, F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the bill becomes law, it will reduce the time periods for property owners to discover potential construction defects and bring causes of action against builders for those construction defects.

By deleting the date that a property owner actually takes possession of an improvement to real estate as a commencement date, providing for additional and earlier commencement dates, and reducing the statute of repose from 10 to 7 years, the bill will provide property owners less time to sue builders for alleged construction defects under the statutes of limitation and repose.

Additionally, by narrowing the scope of violations for which one may bring a statutory civil action against builders under chapter 553, F.S., to “material” violations only (as defined in the bill), the bill will provide property owners fewer opportunities to sue builders.

On the other hand, the bill will benefit builders because they will be subject to construction defect actions for shorter periods of time. The shortened time periods that an improvement is outside of the builder’s observation and control may also aid in determining whether a problem with an improvement is a construction defect or a result of misuse or improper maintenance.

C. Government Sector Impact:

The bill may reduce costs of the judicial branch to the extent that the bill reduces litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 95.11 and 553.84.

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 February 21, 2023:

- Inserts references to the “authority having jurisdiction” in connection with the issuance of temporary certificates of occupancy and certificates of completion.
- Removes language in the bill that would have triggered the statute of repose based upon the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, which can refer to events that occur before the commencement of construction.
- Revises language in the bill to clarify that if a project has multiple buildings, each individual building (not each dwelling unit within a multi-dwelling building) must be considered its own improvement for purposes of determining the limitations period in the bill.
- Conforms the bill to the existing structure of s. 95.11(3)(c), F.S., by removing the subparagraph numbering in the bill.
- Inserts a savings clause to ensure that claimants having time remaining under the existing statute of limitations have at least 1 year from the effective date of the bill to initiate a construction defect action.
- Inserts language providing that if a newly constructed single-dwelling residential building is used as a model home, the time to bring a construction defect action begins to run from the date that a deed is recorded first transferring title to another party.

- B. **Amendments:**

None.