

Legislative Analysis



SOL REVISION FOR ACTIONS AGAINST ARCHITECTS, ENGINEERS & CONTRACTORS

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Senate Bill 882 as passed by the Senate

Sponsor: Sen. Alan Sanborn

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 10-18-10

A SUMMARY OF SENATE BILL 882 AS REPORTED BY HOUSE COMMITTEE 6-30-10

The bill would revise the statute of limitations for bringing an action against an architect, professional engineer, land surveyor, or construction contractor.

Section 5805 of the Revised Judicature Act (RJA) 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 882 would revise Section 5839 of the RJA (MCL 600.5839). These revisions would take effect 90 days after enactment. First, the bill would add new language to specify that an action against a state licensed architect, professional engineer, contractor, or licensed surveyor would be subject to the applicable periods of limitation as provided in Chapter 58 (Limitations of Actions), but that Section 5839 would also apply to an action against one of the listed professions.

In addition, the current wording of Section 5839 would be revised to prohibit a person from maintaining an action to recover damages for injuries 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, against an architect or professional engineer who performed or furnished the design or supervision of

construction of the improvement, or against any contractor making the improvement, 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. However, 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 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 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.

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 882, as passed by the Senate, dated 10-28-09.)

Last session, Senate Bill 865, which is similar to the current bill, was passed by the Senate and reported from the House Judiciary Committee towards the close of the 2007-2008 legislative session. The bill failed to see House Floor action.

FISCAL IMPACT:

Senate Bill 882 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. There may also be costs to the state or other local entities by having certain causes of actions precluded. However, the number of causes of action brought by the state or local entities that would be precluded by the provisions of the bill is indeterminate.

POSITIONS:

AIA Michigan (American Institute of Architects) indicated support for the bill. (6-30-10)

ACEC Michigan (American Council of Engineering Companies) indicated support for the bill. (6-30-10)

Michigan Society of Professional Engineers (MSPE) indicated support for the bill. (6-30-10)

Michigan Infrastructure and Transportation Association indicated support for the bill. (6-30-10)

Associated General Contractors of Michigan indicated support for the bill. (6-30-10)

Construction Association of Michigan indicated support for the bill. (6-30-10)

Michigan Chapter – Sheet Metal and Air Conditioning Contractors’ National Association indicated support for the bill. (6-30-10)

Michigan Association for Justice opposes the bill. (6-30-10)

Michigan Health & Hospital Association indicated opposition to the bill. (6-30-10)

MidMichigan Health indicated opposition to the bill. (6-30-10)

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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.