



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 882 (as introduced 9-30-09)
Sponsor: Senator Alan Sanborn
Committee: Judiciary

Date Completed: 10-27-09

CONTENT

The bill would amend Section 5839 of the Revised Judicature Act to provide that an action against a State-licensed architect, professional engineer, contractor, or licensed surveyor would be subject to the applicable period of limitations as provided in Chapter 58 (Limitation of Actions), but Section 5839 also would apply to an action against a State-licensed architect, professional engineer, contractor, or licensed surveyor as an additional limitation.

(Section 5839 establishes a period of repose on actions against architects, professional engineers, contractors, and surveyors. (A period, or statute, of repose sets a fixed time following an event, other than the injury or damage, after which a person cannot be held liable for injury or damage. When the period of repose expires, an action may not be brought even if the injury or damage has not yet occurred.) As a rule, under Section 5839, 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.)

The bill would take effect 90 days after the date it was enacted.

MCL 600.5839

BACKGROUND

Section 5805 of the Revised Judicature Act establishes periods of limitations on various types of actions. (A period, or statute, of limitations limits the period of time an action may be brought after an injury or damage occurs or is discovered.) Section 5805 includes a two-year period of limitations for a malpractice action, and a three-year period of limitations for an action to recover damages for the death of or injury to a person (a general negligence action).

Traditionally, suits against architects and engineers have been subject to the two-year period of limitations on malpractice actions, and actions against contractors have been subject to the three-year period of limitations on general negligence actions. As amended in 1988, 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.

Under Section 5839, a person may not maintain an action to recover damages for injury to real or personal property, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, against any State-licensed

architect or professional engineer performing or furnishing the design or supervision of construction of the improvement, or against any contractor making the improvement, later than either of the following: 1) six years after the time of occupancy of the completed improvement, use, or acceptance of the improvement; or 2) one year after the defect is discovered or should have been discovered, if the defect constitutes the proximate cause of the injury or damage for which the action is brought and is the result of gross negligence, but not more than 10 years after the time of occupancy. Also, a person may not maintain an action to recover damages based on error or negligence of a State-licensed land surveyor in the preparation of a survey or report more than six years after its delivery.

The interaction of Sections 5805 and 5839 has been the subject of several decisions of the Michigan Court of Appeals and the Michigan Supreme Court. In 1994, the Court of Appeals found 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 (*Witherspoon v Guilford*, 203 Mich App 240).

In 2006, however, the Supreme Court stated that the six-year period of repose in Section 5839 operates as *both* a period of limitations and a period of repose (*Ostroth v Warren Regency, GP, LLC*, 474 Mich 36). 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 run.

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 the State or local unit of government in the future is not determinable.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.