SFA BILL ANALYSIS

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Senate Bill 478 (as reported without amendment)
Sponsor: Senator Rudy J. Nichols
Committee: Judiciary
Date Completed: 10-21-87

RATIONALE

Separate panels of the Michigan Court of Appeals have held that the appropriate time limitation on a claim for damages for a deficiency in a physical improvement designed and/or constructed by a professional engineer or licensed architect is not the six-year period after the time of occupancy, use, or acceptance of the improvement specified in the special statute of limitations for engineers and architects (MCL 600.5839(1)). Rather, the court held in one case, the proper statute of limitations is the two-years-from-discovery provision for malpractice, found in the general statute of limitations (MCL 600.5805(4)). In another case, the court ruled that the appropriate statute of limitation was the six-years-from-discovery provision for breach of contract (MCL 600.5807(8)). The courts have stated that the special six-year statute of limitations applies only to a third-party suit in which there is an injury "arising out of the defect and unsafe condition" and not to a suit claiming damages for the defect itself. Some people feel, however, that the six-year period from occupancy, use, or acceptance of the improvement should apply to all claims for damages against professional engineers and licensed architects in order to relieve them of the burden of defending claims brought against them long after the completion of an improvement. (See BACKGROUND for a more complete discussion of the Court of Appeals decisions.)

CONTENT

The bill would amend the Revised Judicature Act (RJA) to specify that the period of limitations for an action against a State licensed architect, professional engineer, contractor, or land surveyor based on an improvement to real property would be as provided in Section 5839 of the RJA. Under that section, an action against an architect, engineer, or contractor for personal injury or property damage arising out of the defective and unsafe condition of an improvement to real property must be brought within six years after the occupancy, use, or acceptance of the improvement or one year after the defect was, or should have been, discovered, provided that the defect constituted the proximate cause of the injury or damage and was the result of gross negligence on the part of the architect, engineer, or contractor. No such action may be maintained more than 10 years after the time of occupancy. An action to recover damages based on error or negligence of a land surveyor in the preparation of a survey or report cannot be brought more than six years after the delivery of the report or survey to the person for whom it was made.

MCL 600.5805

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

BACKGROUND

Marysville v Pate, Hirn & Bogue (154 Mich App 655)

In the 1986 Marysville case, the Court of Appeals affirmed the lower court ruling that the special six-years-from-occupancy limitation did not apply. The City of Marysville had sued the firm of professional engineers for damages due to structural defects in a waste treatment facility built for the city by the firm. The firm's involvement with the project ended in 1975; the city became aware of the defects in 1981 and brought the action in 1983. The engineering firm argued for accelerated judgment claiming that expiration of the statute of limitation (MCL 600.5839(1)) barred a suit against professional engineers and licensed architects more than six years after acceptance, occupancy, or use of an improvement. The city, however, argued that the special statute of limitation applied only to injuries to third parties claiming damages "arising out of" deficiencies in the improvement, and that it was not intended to apply to defects in the improvement itself. Rather, the city claimed, the appropriate statute of limitation was the one applying to general malpractice — two years from the date of discovery (MCL 600.5805(4)). The trial court ruled in favor of the City of Marysville, and the firm of Pate, Hirn, & Bogue appealed.

In affirming the trial court's ruling, the Court of Appeals held that "the Legislature never intended this statute [MCL 600.5839(1)] to fix the period of limitation in which an owner of an improvement to real property must bring an action against the architect or engineer for professional malpractice committed in the planning or building of the improvement which results in deficiencies to the improvement itself". Rather, the court stated, "the statute simply applies when there is an injury '...arising out of the defect and unsafe condition...'". Finally, the court resolved that "where the suit is for deficiencies in the improvement itself, the injury is the defective condition, hence, the injury does not 'arise out of' the defective condition, but, rather, it is the condition. Therefore, claims for deficiencies in the improvement itself do not come within the scope of this special statute of limitation".

Burrows v Bidigare/Bublys (158 Mich App 175)

In the 1987 Burrows decision, the Court of Appeals held that the trial court improperly applied the special six-years-from-occupancy limitation, but held that the suit still was valid under the six-years-from-discovery limitation

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for breach of contract (MCL 600.5807(8)). The dispute involved alleged deficiencies in improvements to real property on which the defendant architectural firm performed services. The architects claimed that since the clinic they were commissioned to build was completed and occupied in late 1977 and the damage was discovered and repaired (by another firm) shortly thereafter, the suit (which was filed in 1983) was not valid because the claim was barred by either the two-year malpractice statute of limitation, or alternatively, the three-year negligence statute of limitation (MCL 600.5805). The circuit court, however, was not persuaded by that argument and held that the special six-years-from-occupancy limitation applied. The defendants appealed.

Citing the Marysville case discussed above, the Court of Appeals agreed with the defendants that the special six-years-from-occupancy limitation did not apply, because damages did not "arise out of" the defect. The court did not agree, however, that the appropriate limitation was the one governing malpractice or negligence (MCL 600.5805). Instead, the Court of Appeals held that the proper limitation, in this case, was the six-years-from-discovery provision for breach of contract (MCL 5807(8)).

In the Burrows case, one member of the Court of Appeals panel dissented from his colleagues' finding. In his dissenting opinion, Judge T.M. Burns asserted that the applicable statute of limitation was the special six-years-from-occupancy provision applied by the lower court. He claimed that "this statute of limitation is specifically applicable to architects and, thus, controls over the more general malpractice or negligence statutes of limitation". Further, Judge Burns disagreed with the holding of the appeals panel that "a distinction should be made between a suit for injuries 'arising out of' an architectural defect and a suit 'for the defect' itself". He contended that, since the statute specifies that it applies to recovery of damages for "any injury...arising out of" a defect, it "indicates the Legislature's intent to make the statute applicable to any action for damages when defective building design is involved". Further, the dissenting judge stated "that any harm to the improvement itself is harm which 'arises out of' the defective condition of the improvement".

ARGUMENTS

Supporting Argument

The bill would ensure that, in future claims against engineers, architects, and contractors, the interpretation of the dissenting judge in the Burrows case would prevail. Architects, engineers, and contractors should be protected from suits charging malpractice or negligence in building improvements after a significant time has passed since the actual performance of the work. It is unfair for these professionals to be vulnerable to lawsuits years after a project has been completed, and State law already offers protection against such vulnerability for injuries "arising out of the defect or unsafe condition of an improvement to real property". Reportedly, the Legislature meant that protection to include all suits brought against architects, engineers, and contractors for defects or unsafe conditions in an improvement to real property. The bill would ensure that such protection was extended to include suits claiming damages for defects in the improvement itself as well as those for damages "arising out of the defect".

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