

Statute of repose for engineers and architects to be designated responsible third parties

SB 2141 by Wentworth (Hughes)

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DIGEST: SB 2141 would have prevented an engineer or an architect from being designated as a responsible third party or joined in a lawsuit once 10 years had passed from the date of substantial completion of an improvement or the beginning of operation of equipment that allegedly was in a defective or unsafe condition.

GOVERNOR'S REASON FOR VETO:

“Senate Bill No. 2141 clarifies the statute of repose that holds that lawsuits against engineers and architects must be filed within 10 years of substantial completion of a project. However, this bill would prohibit engineers and architects from being designated responsible third parties in litigation if the statute of repose has lapsed. Current law allows all potential responsible third parties to be designated as such, and juries are required to apportion fault among all potential parties at fault, including designated responsible third parties. This bill would distort the method of apportioning fault by not allowing potentially responsible architects and engineers to be included in the charge submitted to the jury, potentially allowing other defendants to be held accountable for faults that were not their own.”

RESPONSE:

Sen. Jeff Wentworth, the bill’s author, said: “This bill was thoroughly vetted by two legislative committees in public hearings where arguments both in favor of and opposed to the bill were heard, and the bill passed the Senate by a vote of 31-0 and the House of Representatives by a vote of 147-1. Whoever on the governor’s staff recommended that he veto it is less knowledgeable about the bill than the 181 members of the Legislature, and the governor should not have vetoed it.

“The purpose of the statute of repose is to bring finality to claims; however, a recent court case by the Fourth Court of Appeals in San Antonio undermined this purpose by interpreting current law as to allow for the extension of the 10-year limitation when a responsible third party is designated. SB 2141 was intended to restore the fairness of finality to the statute of repose for architects and engineers who should not be held indefinitely liable.

“By allowing architects and engineers to be designated as responsible third parties after the statute of repose has lapsed, thus allowing such parties to be joined where such joinder would otherwise be barred by limitations, current law renders the statute of repose meaningless in these situations.

“As originally drafted, SB 2141 would have disallowed only the joinder of such parties. It would have still allowed a defendant to designate a responsible third party, thereby leaving a plaintiff with no recourse for a percentage of the liability. By disallowing both joinder and designation of a responsible third party, I believe the

enrolled version of SB 2141 remedied this problem in the fairest and most equitable manner, while restoring the purpose of the statute of repose.”

“Subsequent to the governor’s veto, the Texas Supreme Court issued an opinion reversing the San Antonio Court of Appeals’ decision. The court held that allowing a party to be joined after the 10-year period would defeat the recognized purpose for statutes of repose.

Rep. Bryan Hughes, the House sponsor, was unavailable for comment.

NOTES:

SB 2141 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.