

SUBJECT: Shortening statutes of limitation and repose for certain construction claims

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton,
Moody, Schofield, Smith

0 nays

WITNESSES: For — Ben Westcott, AGC-TBB; Corbin Van Arsdale, AGC-Texas Building Branch; Brian Carroll, American Subcontractor Association; (*Registered, but did not testify:* Scott Stewart, American Council of Engineering Companies of Texas; Joey Bennett, Armko Industries, Inc.; Will McAdams, Associated Builders and Contractors of Texas; CJ Tredway, IEC of Texas; Lee Parsley, Texans for Lawsuit Reform; Raymond Risk, Texas Construction Association; Becky Walker, Texas Society of Architects)

Against — Max Thompson, Banquete ISD, TACS, and TREA; Barry Haenisch, Texas Association of Community Schools; Craig Eiland, Texas Trial Lawyers Association; (*Registered, but did not testify:* Brie Franco, City of Austin; Clifford Sparks, City of Dallas; TJ Patterson, City of Fort Worth; Jon Weist, City of Irving; Christine Wright, City of San Antonio; Bill Kelly, Mayor's Office, City of Houston; Grover Campbell, TASB; Colby Nichols, Texas Association of School Administrators and Fast Growth School Coalition; Monty Wynn, Texas Municipal League)

On — (*Registered, but did not testify:* Thomas Parkinson)

BACKGROUND: Under Civil Practice and Remedies Code secs. 16.008 and 16.009, a person must bring suit for damages for certain claims against a registered or licensed architect, engineer, interior designer, or landscape architect in Texas, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property - or against a person who constructed or repaired an improvement to real property - not later than 10 years after the substantial completion of the improvement or

the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment. If the claimant presents a written claim for damages, contribution, or indemnity to the design professional or the person performing or furnishing the construction repair within the 10-year limitations period, the period is extended for two years from the day the claim is presented.

DIGEST:

CSHB 3069 would shorten the limitations period under which a governmental entity could bring a suit for damages for certain claims against design professionals who designed, planned, or inspected the construction of an improvement to real property or equipment attached to real property, or against a person who constructed or repaired an improvement to real property, from not later than 10 years after the substantial completion of the improvement or the beginning of the operation of the equipment to not later than eight years after the completion or operation of the equipment.

The bill also would decrease the extension of the limitations period for governmental entity claimants that presented a written claim within the limitations period from two years from the date the claim was presented to one year from that date.

The bill would not apply to claims arising from a contract entered into by the Texas Department of Transportation, a project that received money from the state highway fund or a federal fund designated for highway and mass transit spending, or a civil works project.

The bill would apply only to a cause of action arising out of a design, plan, or inspection of the construction of an improvement to real property or equipment attached to real property, or arising out of construction or repair of real property, that commenced on or after that date. The bill would not apply to such a cause of action under a contract entered into before September 1, 2021.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS
SAY:

CSHB 3069 would address issues resulting from the lengthy statute of repose for certain claims against a person or design professional who constructs or repairs an improvement to real property by shortening the limitations period during which a governmental entity had to bring suit for damages related to such claims.

Currently in Texas, building owners have 10 years under the statute of repose to discover defects for beginning a construction defect claim, plus two years to file suit after the defect has been discovered if a written claim was presented within the initial 10-year period. By the end of this time period, the architects, interior designers, engineers, and contractors may no longer be in operation, relevant records could be lost, and witnesses could be difficult to locate. Further, there is often a significant amount of wear and tear over the course of a 10- or 12-year period of time, resulting in contractors having to distinguish between defects that existed at the time of completion and effects from use, poor maintenance, secondary repairs, or other issues. The circumstances associated with the lengthy 10- or 12-year period can lead to increased litigation costs ultimately costing taxpayers more money.

The bill would implement a modest shortening of the statute of repose only for certain governmental entities, ensuring that the parties subject to the new limitation still had adequate time to pursue a claim related to construction defects, while also limiting the parties affected by the bill to governmental entities that are often already equipped with the resources and expertise needed to deal with potential design defects soon after the completion of a project. By doing so, CSHB 3069 would provide the limited balance needed to ensure fairness regarding certain claims related to construction defects in Texas.

CRITICS
SAY:

CSHB 3069 would limit a governmental entity's ability to seek redress for deficiencies in public projects by reducing the statute of repose for certain governmental entities. The time afforded by the current statute is

necessary to ensure quality construction, as it is common for defects to remain undiscovered for years, especially for large projects, which governmental entities engage in regularly.