

DISPUTE RESOLUTION ALERT

2006 Florida Legislative Update: Pending Bills Affecting The Construction Industry

by Jeffrey S. Wertman, Esq.

Currently pending before the Florida Legislature are several bills which will have a significant impact upon the construction industry. Here is an overview of the proposed legislation.

CONSTRUCTION DEFECTS/PROPERTY (House Bill 1139)

Florida's notice and right to cure statute (Chapter 558, Florida Statutes) currently requires that residential property owners, including subsequent purchasers and associations, provide contractors, subcontractors, suppliers and design professionals with written notice of defects and an opportunity to cure such defects before they file a lawsuit for construction or design defects. This bill will expand the applicability of the statute to commercial properties.

The stated purpose of the notice and right to cure statute and the amendments proposed by this bill is to an alternative remedy to resolve construction disputes that would reduce the need for litigation and protect the rights of property owners. Subject to the Governor's veto powers, the effective date of this bill is October 1, 2006.

Statute of Limitations and Statute of Repose for Improvement to Real Property (House Bill 1089)

These bills seek to reduce the length of the statute of limitations and statute of repose for actions founded on the design, planning, or construction of an improvement to real property. The bills would amend Section 95.11(3)(c), Florida Statutes.

A statute of limitations is a law which places a time limit on pursuing a legal remedy in relation to wrongful conduct. After the expiration of the statutory period, unless a legal exception applies, the injured person loses the right to file a lawsuit seeking money damages or other relief. A statute of repose establishes a time frame after which a lawsuit is absolutely barred even if the damage occurs after that time.

These bills reduce the 4-year statute of limitations for actions founded on the design, planning, or construction of an improvement to real property, with the time running from the earliest (instead of the latest) occurrence of specified events. As for latent defects (hidden or dormant defects), the 4-year statute will not start to run until the defect is discovered or

should have been discovered by the owner.

These bills also reduce the absolute time limit for commencing an action (statute of repose) on the design, planning, or construction of an improvement to real property from 15 years to 10 years after the date of actual possession by the owner, the date of issuance of a certificate of occupancy, the date of abandonment of construction, if not completed, or the date of completion or termination of the contract between the engineer, architect, or contractor and his or her employer, whichever date is the "earliest."

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2006.

NEW PROPOSED LEGISLATION WILL HAVE A SIGNIFICANT EFFECT ON THE CONSTRUCTION INDUSTRY - HOW WILL IT AFFECT YOU?

CONSTRUCTION - LIEN LAW (House Bill 1443)

This bill would amend Section 713.13(1)(c), Florida Statutes, to provide that any payments made by the owner before the recordation of or after expiration of the notice of commencement are considered improper payments. The recording of a notice of commencement gives constructive notice that claims of lien may be recorded and may take priority.

This bill would also amend Section 713.135, to, among other things:

- Allow for the local building department to electronically deliver a summary of the construction lien law to the property owner.
- Provide that, in addition to a building permit issuing authority, a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files a certified copy of the recorded notice of commencement.
- Increase the threshold amount for a notice of commencement from \$5,000 to \$7,500 on direct contracts to repair or replace an existing heating or air-conditioning system.
- Provide that an issuing authority or a building official may not require a notice of commencement to be recorded as a condition of the application, processing, or issuance of a building permit.
- Authorize authorities issuing building permits to accept permit applications electronically.

The bill would also amend Section 713.35, Florida Statutes, by revising a list of legal documents to include a waiver or release of lien or other documents in which it is a crime to knowingly and intentionally include certain false information about the payment status of subcontractors,

sub-subcontractors, or suppliers in connection with the improvement of real property, knowing that the one to whom it was furnished will part with draw payments or final payment relying on the truth of such statements.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2006.

CONTRACTING (House Bill 1351)

The provisions of this bill are designed to allow a contractor to be exempt from certain construction licensure requirements, and therefore, would not be considered unlicensed, when contracting with an owner of property and the owner is acting in the capacity of the lawful supervisor of the project. This is important because penalties for unlicensed constructing contracting include that a contract can be rendered unenforceable if work is performed by an unlicensed person and a claim against a bond or lien does not exist for the unlicensed contractor for any labor, services or materials that have been provided under the contract.

Current law provides "an individual is unlicensed if the individual does not have a license required by this part [construction, electrical, alarm system] concerning the scope of work to be performed under the contract."

This bill adds "if no state or local license is required for the scope of work to be performed under the contract, the individual performing that work shall not be considered unlicensed."

This bill specifies that a business organization entering into a construction contract may not be considered an unlicensed business organization if the construction contractor is licensed for the scope of the work to be performed under a contract, the licensed contractor has submitted an application for a certificate of authority designating the contractor as qualifying agent for the business organization, and the application was not acted upon by the DBPR within the applicable time limitations.

The bill exempts national testing laboratories that OSHA has recognized as in compliance with federal law from state electrical and alarm system licensure requirements.

Subject to the Governor's veto powers, this effective date of this bill is July 1, 2006. ■

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BERGER SINGERMAN

attorneys at law

PENDING LEGISLATION WILL AFFECT CONSTRUCTION INDUSTRY

- ✓ **HOW YOU ARE LIKELY TO BE AFFECTED BY PROPOSED LEGISLATION?**
- ✓ **ARE YOU READY FOR THE CHANGES?**
- ✓ **WHAT CAN YOU CAN DO TO PREPARE?**

Berger Singerman is available to consult with you or your company about the new proposed legislation or other construction related issues. Please contact Jeffrey S. Wertman at (954) 627-9912 for more information or to schedule a consultation.

in accordance with The Florida Bar Rule 4-7.4, this is an advertisement.

200 South Biscayne Blvd., Suite 1000
Miami, Florida 33131

BERGER SINGERMAN
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Jeffrey S. Wertman

Jeffrey Wertman focuses his practice in the areas of construction law, construction litigation, and general civil, corporate, commercial and complex litigation in state, federal and appellate courts.

Mr. Wertman's construction law and construction litigation practice includes the representation of owners, developers, general contractors, trade contractors, suppliers and sureties. He provides clients with legal advice on many and varied issues such as preparation and negotiation of construction contracts and documents, and represents clients in dispute resolution during the construction projects for the early identification and resolution of potential conflicts and disputes. Mr. Wertman also represents construction clients in mediation, arbitration and litigation of construction contract claims, construction and design defect claims, construction liens, terminations, payment disputes, change orders, delay damages, insurance claims, performance and payment bonds, and related matters.

Mr. Wertman's general litigation practice includes real estate litigation, contract disputes, partnership disputes, business torts, employment, unfair competition, intellectual property and trade secret matters, and condominium and homeowner's association disputes.

Mr. Wertman is admitted to practice before all state courts in Florida, New York and the District of Columbia, the United States District Court for the Southern District of Florida, and the United States Court of Appeals for the Eleventh Circuit. He is a member of the Construction Law Committee and the Trial Practice and Appellate Law Sections of the Broward County Bar Association.

Mr. Wertman received his undergraduate degree, *Magna Cum Laude*, from the State University of New York at Albany and his law degree from The Washington College of Law, The American University. At The Washington College of Law, Mr. Wertman was a Member of the *International Law Review*.

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BERGER SINGERMAN

attorneys at law

DISPUTE RESOLUTION TEAM

MITCHELL W. BERGER	(954) 627-9900
ANTHONY J. CARRIUOLO	(954) 627-9906
JODI N. COHEN	(954) 627-9903
LIZ CONSUEGRA	(305) 714-4381
JAMES C. CUNNINGHAM, JR.	(305) 714-4379
FRED O. GOLDBERG	(305) 714-4381
J.M. GRANT	(954) 713-7506
RENE D. HARROD	(954) 627-9916
MELANIE ANN HINES	(850) 561-3010
THOMAS M. KARR	(305) 603-0808
CHARLES H. LICHTMAN	(954) 627-9913
KELLY O'KEEFE	(850) 561-3010
THOMAS SADAKA	(954) 712-5103
LEONARD K. SAMUELS	(954) 627-9902
JACK SHAWDE	(305) 603-0879
BRUCE UDOLF	(954) 712-5113
JEFFREY S. WERTMAN	(954) 627-9912