

Tort Reform: Construction Defect Claims 3-10-2015

The House Business & Professional Regulation Subcommittee met on Tuesday, March 10th to discuss HB 87 by Rep. Kathleen Passidomo (R-Naples). HB 87 and its companion SB 418 by Sen. Garrett Richter (R-Naples) amend s. 558.001, F.S., the alternative dispute resolution mechanism for construction defect claims.

As originally filed, the bills expand the statute's applicability, and require a claim to include the specific location of each defect, and the building code, plans, or other documentation that serve as the basis of the claim. Failure to include that information is prima facie evidence of a defective claim. The bills further allow defendants greater access to claimant's maintenance records and other documents, and allow defendants to obtain sanctions in the case of a frivolous claim. HB 87 was previously amended and passed by the House Civil Justice Subcommittee on February 4th by a unanimous vote.

At the March 10th hearing, Rep. Passidomo proposed Amendment 701693 to soften the specificity requirements, remove the language referring to prima facie evidence, and rewrite subsection 16 relating to sanctions for frivolous claims. Several members had questions regarding the specificity requirements and how claims might or might not qualify as frivolous.

The bill was supported by a broad array of construction and contracting interests. The Community Associations Institute and Community Associations Leadership Lobby expressed opposition but a willingness to work with the sponsor. Also opposing the bill solely on the issue of attorney's fees was the Association of Construction Consumers, represented by former State Senator Fred Dudley. He stated that the bill's provisions relating to attorney's fees and sanctions contravened the provisions of s. 57.105, F.S., which were preferable. Several committee members reiterated Dudley's concerns.

HB 87 passed the committee by a vote of 12-1, and now goes to the Senate Judiciary Committee. SB 418 has yet to be heard in any of its three committees of reference.

In recent related news, HB 501 by Rep. Jay Fant (R-Jacksonville) shortens the statute of repose for a construction defect claim. Current law provides that a claimant has 10 years to bring an action alleging a latent defect from the time the defect is discovered or should have been discovered. The bill shortens that period to 7 years. HB 501 previously passed the House Civil Justice Subcommittee on February 17th by a close vote of 7-6. HB 501 is waiting for a hearing in the House Judiciary Committee, its final committee of reference. The companion bill, SB 1158 by Sen. Kelli Stargel (Lakeland), has yet to be heard in any of its three committees of reference.