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FISCAL IMPACT REPORT

SPONSOR: Rawson DATE TYPED: 2/14/03 HB _____
 SHORT TITLE: Actions Against Construction Professionals SB 445
 ANALYST: Maloy

REVENUE

Revenue		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	Unknown		Unknown	Recurring	General Fund

SOURCES OF INFORMATION

No Response Received From

The Construction Industries Division, Regulation and Licensing Department

SUMMARY

Synopsis of Bill

Senate Bill 445 creates a new Act, the Construction Defect Claims Act. This act establishes the civil process through which residential construction disputes may be addressed in the courts.

PROCESS / PROCEDURES:

- This new act requires that in every potential action against a construction professional, a homeowner shall serve written notice of claim no later than 45 days before filing an action in court, stating that the homeowner asserts the existence of a construction defect.
- Within 14 days of receipt of the notice of claim of construction defect from the homeowner, the construction professional shall submit a written response to the homeowner which states:
 1. an offer to inspect the residence within a specified time frame, and dependent upon the outcome of the inspection, a statement of intent to remedy the defect, compromise the claim by payment, or dispute the claim; or

2. an offer to compromise and settle the claim without inspection through monetary payment, or purchase of the residence that is the subject of the claim plus payment of the homeowner's reasonable relocation costs; or
 3. a statement that the construction professional disputes the claim and will neither remedy the alleged construction defect nor compromise and settle the claim.
- If a construction professional disputes the legitimacy of a claim, or does not respond to a homeowner's notice of claim within the statutory time frame (14 days), the homeowner may proceed with initiating a civil action without further notice to the construction professional.
 - If the construction professional offers to inspect and correct, or a monetary or repurchase settlement, but the homeowner rejects the offer or proposal, the homeowner *should* serve written notice of his or her rejection. However, regardless of whether a homeowner provides such written notice, the homeowner retains the right to proceed with a civil action.
 - If within 30 days of receipt of the construction professional's response, the construction professional has not received the notice of the homeowner's acceptance or rejection, the construction professional **may** terminate the offer / proposal by serving written notice on the homeowner, and the homeowner may, thereafter, proceed with a civil action.
 - If, pursuant to an offer to inspect and correct and/or settle monetarily, the homeowner elects to allow the construction professional to inspect the residence, the homeowner must allow reasonable access to inspect the premises. Thereafter, within 14 days of the inspection, the construction professional must serve the homeowner with his written proposal for correction of the defect, or offer for compromise through monetary compensation or repurchase, or a written statement that the alleged defect is challenged.
 - If the homeowner wishes to accept the construction professional's proposal or offer, the homeowner must provide written notice to that effect within 30 days of receipt of the construction professional's proposal or offer. The homeowner must allow reasonable access to the premises for the construction professional to carry out the commitments in the proposal or offer within the timelines stated in the proposal or offer.
 - If the construction professional does not meet the stated proposal or offer obligations, nothing shall prohibit the homeowner from proceeding with the right to pursue a civil action.
 - Any action pursued by a homeowner after first complying with the Construction Defect claims Act shall be dismissed without prejudice, and shall not (re)commence until the homeowner has complied with the Act.

- Both prior to initiation of an action, and/or after the dismissal of an action without prejudice, if the homeowner seeks to amend the notice of claim to include new construction defects discovered after services of the original claim, the homeowner may do so. However, the homeowner must still comply with all elements of the Construction Defects Act claims for the newly identified defects.
- Similarly, claims for defects discovered after initiation of an action may be added to the action only after providing notice of the defect to the construction professional and allowing for a response as required under the Construction Defect Claims Act.

INITIAL CONTRACTING NOTICE REQUIREMENTS:

- Upon entering into a contract for sale, construction or remodel, a construction professional shall provide written notice to each homeowner of the construction professional's right to offer to cure a defect before a homeowner may initiate an action. This notice shall be conspicuous, and shall be included in the underlying contract document.
- A failure to provide this notice to the homeowner will result in the Construction Defect Claims Act being inapplicable to the agreement and claims arising out of it.

Significant Issues

- The Construction Defect Claims Act may give rise to confusion with, and even conflict with, the Construction Industries Licensing Act (CILA). The Construction Industries Division and its enabling act, the CILA, relate solely to the licensure of the Contractor. Civil claims are not resolved through the Construction Industries Division.

Yet, concerns remain on how the two Acts will work together:

For instance, a construction professional can monetarily pay-off a homeowner and avoid civil liability (but leave a defect /code violation /unsafe condition existing). In such instance, is the compensation to the homeowner, as permitted under the Construction Defect Claims Act, intended to be the end of the matter? Or, should the homeowner be able to (having been made economically whole) turn around and file a "code violation" complaint with the Construction Industries Division. The result of such a complaint could possibly be revocation or suspension of the construction professional's license, ordered corrective action, or more fines and penalties. Seemingly, the homeowner could double-dip. The homeowner may receive full monetary compensation from a construction professional for any needed corrective action to cure a defect, but then go to CID and, pursuant to division policy, force the construction professional to take corrective action.

It is the policy of CID that the payment of defect costs does not alleviate the code jurisdiction of the division and the requirement that it use a contractor's licensure status to force corrective action and ensure safety for the current, or future owner.

Should a homeowner have such extensive, two-fold remedies against the construction professional?

What if the construction professional repurchases the house with the defect from the homeowner under the Construction Defect Claims Act. . . is the homeowner, now lacking ownership interest, barred from action against the construction professional through CID?

What if the construction professional turns around and resells a home that he repurchased from a homeowner because of a defect, does not correct the defect, and the secondary owner is unaware of the defect? This is a real safety concern for secondary buyers.

- This legislation is balanced on the side of the homeowner. However, it should be noted that there are good contractors and bad contractors--- and, similarly, there are good homeowners and bad homeowners. Frequently, homeowners stand in the way of a construction professional's ability to perform good work at the onset, or to correct work that is later found to be problematic.
- What makes "construction defect claims" significantly different from other civil litigation such that they require a unique process?

FISCAL IMPLICATIONS

The bill will likely result in an increase in filed and litigated cases. This may mean more in revenue to the general fund through court fees. This may also mean additional administrative impact on already overburdened courts.

Depending on the interpretation regarding how the Construction Defect Claims Act works with the Construction Industries Licensing Act, there may be a reduction in revenue to the general fund through CID.

TECHNICAL ISSUES

It is not clear how Section 6 (c), p.9, lines 5-8, supports the intent of the bill. Does this section not allow the construction professional a mechanism to avoid the intended process?

SJM/njw