

SUPREME COURT COPY

SUPREME COURT
LODGED EXHIBITS

JUL 29 2016

No. S229762

IN THE SUPREME COURT
STATE OF CALIFORNIA

Deputy

McMILLIN ALBANY, LLC, et al.,
Petitioners
vs.

SUPERIOR COURT OF KERN COUNTY
Respondent

CARL & SANDRA VAN TASSEL, et al.,
Real Parties in Interest

After Decision By The Court of Appeal,
Fifth Appellate District, Case No. F069370

Kern County Superior Court Case No. S-1500-CV-279141
Honorable David R. Lampe, Presiding Judge, Dept. 11

**EXHIBITS TO CALIFORNIA BUILDING INDUSTRY
ASSOCIATION, BUILDING INDUSTRY LEGAL DEFENSE
FOUNDATION AND CALIFORNIA INFILL FEDERATION'S
REQUEST FOR JUDICIAL NOTICE
VOLUME 2 – EXHIBITS 1 & 2: BATES NOS. 000301-000428**

Attorneys for Proposed Amici Curiae
California Building Industry Association, Building Industry Legal
Defense Foundation, and California Infill Federation

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Exhibit 1
(Cont.)



**Silicon
Valley
Manufacturing
Group**

September 9, 2002

The Honorable Gray Davis
State of California
1st floor State Capitol Building
Sacramento, CA 95814

Dear Governor Davis:

I write on behalf of the Silicon Valley Manufacturing Group to express our support for SB 800 (Burton), a bill that reforms the way construction defects are resolved in California.

As you know, the Silicon Valley Manufacturing Group is a public policy trade organization formed 23 years ago by David Packard of Hewlett Packard. Today, the Manufacturing Group represents 190 of Silicon Valley's most respected employers who collectively provide 275,000 jobs—one out of four in the private sector.

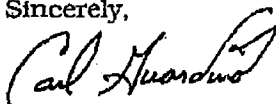
The Manufacturing Group strongly supports SB 800. As you know SB 800 is the long-awaited result of negotiations between California's trial attorneys and homebuilders. Specifically, the bill grants builders the right to repair defects before a homeowner can file suit. If the homeowner is dissatisfied with the repair, or the builder refuses to make the repair, the homeowner retains the right to sue for the cost of repairing the defect. The bill also defines construction defect by describing the standards to which components of a home—its roofs, windows, foundations, etcetera—are expected to perform.

We believe SB 800 will result in consumers getting their homes fixed quickly, without having to resort to expensive and lengthy litigation. By reducing the number of suits filed, the bill removes one of the major obstacles to the construction of attached homes by creating a more predictable environment for builders and insurance companies.

Bottom line, we believe this bill is a major win for consumers. It will expand protections for existing homeowner while increasing the construction of more affordable homes for would-be homeowners—particularly those in high cost areas such as ours.

For these reasons, we respectfully urge you to sign SB 800.

Sincerely,



Carl Guardino
President & CEO

224 Airport Parkway, Suite 620
San José, California 95110
(408)501-SVMG (7864) Fax (408)501-7861
<http://www.svmg.org>

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President & CEO

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KENNETH WILCOX

Silicon Valley Bank

DAVID WRIGHT

Legato Systems

JOANN ZIMMERMAN

Kaiser Permanente

Working Council Chair

ANDREA LEIDERMAN

Kaiser Permanente

Founded in 1977 by

DAVID PACKARD

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PE - 25



8301 EDGEWATER DRIVE, OAKLAND, CALIFORNIA 94621

TELEPHONE (510) 635-8800 FAX: (510) 569-ROOF (7663)

WEB SITE: WWW.ARCBAC.ORG E-MAIL: INFO@ARCAC.ORG

September 18, 2002

The Honorable Gray Davis
Governor of California
State Capitol
Sacramento, CA 95814

Re: SB 800 (Burton) – Support

Dear Governor Davis:

This Association represents union roofing contractors in 14 Metropolitan San Francisco Bay Area Counties. We are writing today to request that you sign SB 800 (Burton) into law.

Because of the costs associated with construction defect litigation, over the past decade union contractors in virtually all of the construction trades have abandoned the new residential construction market. The results have been detrimental to home builders and homeowners alike: a dearth of qualified contractors willing to perform residential work, an increasing shortage of affordable housing and diminished standards of quality in those residential structures that are constructed.

SB 800 represents a landmark accommodation between trial lawyers, homebuilders, homeowners and the insurance industry. It creates a parallel to the "Calderon process" within the single-family home construction arena for the amicable resolution of disputes between homeowners and homebuilders. Under SB 800, construction defects will be remedied, the number of lawsuits will decline, insurance costs will be reduced and builders of affordable housing will be attracted back into California housing market. It is truly a "win-win" bill for consumers and contractors alike. Accordingly, we respectfully urge you to sign SB 800 into law.

Sincerely,

William T. Callahan, Jr., Ph.D.
Executive Director

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UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 800
 TOPIC: Liability: construction defects.
 DATE: 08/31/02
 LOCATION: SEN. FLOOR
 MOTION: Unfinished Business SB800 Burton
 (AYES 33. NOES 0.) (PASS)

AYES

| | | | |
|--------------|------------|---------|-------------|
| Alarcon | Alpert | Battin | Bowen |
| Burton | Chesbro | Costa | Dunn |
| Escutia | Figueroa | Haynes | Johannessen |
| Karnette | Kuehl | Machado | Margett |
| McPherson | Monteith | Morrow | Murray |
| O'Connell | Ortiz | Peace | Perata |
| Polanco | Poochigian | Romero | Scott |
| Sher | Soto | Speier | Torlakson |
| Vasconcellos | | | |

NOES

ABSENT, ABSTAINING, OR NOT VOTING

| | | | |
|------------|--------|---------|--------|
| Ackerman | Brulte | Johnson | Knight |
| McClintock | Oller | Vincent | |

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UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 800
 TOPIC: Liability: construction defects.
 DATE: 08/29/02
 LOCATION: ASM. FLOOR
 MOTION: SB 800 Burton Senate Third Reading By Steinberg
 (AYES 80. NOES 0.) (PASS)

AYES

| | | | |
|----------------|---------------|----------------|-----------|
| Aanestad | Alquist | Aroner | Ashburn |
| Bates | Bogh | Briggs | Calderon |
| Bill Campbell | John Campbell | Canciamilla | Cardenas |
| Cardoza | Cedillo | Chan | Chavez |
| Chu | Cogdill | Cohn | Corbett |
| Correa | Cox | Daucher | Diaz |
| Dickerson | Dutra | Firebaugh | Florez |
| Frommer | Goldberg | Harman | Havice |
| Hertzberg | Hollingsworth | Horton | Jackson |
| Keeley | Kehoe | Kelley | Koretz |
| La Suer | Leach | Leonard | Leslie |
| Liu | Longville | Lowenthal | Maddox |
| Maldonado | Matthews | Migden | Mountjoy |
| Nakano | Nation | Negrete McLeod | Oropeza |
| Robert Pacheco | Rod Pacheco | Papan | Pavley |
| Pescetti | Reyes | Richman | Runner |
| Salinas | Shelley | Simitian | Steinberg |
| Strickland | Strom-Martin | Thomson | Vargas |
| Washington | Wayne | Wiggins | Wright |
| Wyland | Wyman | Zettel | Wesson |

NOES

ABSENT, ABSTAINING, OR NOT VOTING

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UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 800
 TOPIC: Liability: construction defects.
 DATE: 05/29/01
 LOCATION: SEN. FLOOR
 MOTION: Special Consent #12 SB800 Johannessen
 (AYES 39. NOES 0.) (PASS)

AYES

| | | | |
|------------|--------------|------------|----------|
| Ackerman | Alarcon | Alpert | Battin |
| Bowen | Brulte | Burton | Chesbro |
| Costa | Dunn | Escutia | Figueroa |
| Haynes | Johannessen | Johnson | Karnette |
| Knight | Kuehl | Machado | Margett |
| McClintock | McPherson | Monteith | Murray |
| O'Connell | Oller | Ortiz | Peace |
| Perata | Polanco | Poochigian | Romero |
| Scott | Sher | Soto | Speier |
| Torlakson | Vasconcellos | Vincent | |

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Morrow

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| CONFIDENTIAL-Government Code §6254(l) | | |
|--|--------------------------------------|--|
| Department: Housing and Community Development | Bill Number/Author: SB 800/Burton | Version: August 28, 2002 |
| Sponsor: Author <input type="checkbox"/> Admin Sponsored Proposal No. | Related Bills None. | Chaptering Order (if known) <input type="checkbox"/> Attachment |
| Subject: Construction Defect Litigation, Limits on Tort Actions | | |

SUMMARY

This bill would enact new limits on filing actions against builders alleging defects in residential construction. Under this bill, defects would only be actionable in tort if they meet a new set of performance-based building standards, which would exist only to govern tort law. This bill would also require plaintiffs and builders to undergo a pretrial negotiation process, whereby builders may make formal offers to repair and propose mediation to address any resulting disputes. These provisions would only apply to new housing intended to be sold as individual dwelling units and originally sold after January 1, 2003.

This bill would also provide immunity from liability actions by homeowners to qualified entities under contract with a builder to provide independent quality review of a residential construction project.

PURPOSE OF THE BILL

This bill is a consensus agreement among builders and consumer interests. The groups proposed this bill as a compromise between their divergent interests in construction defect tort reform. They have observed the need for legislation to address the issues raised in the 2000 case of *Aas v. Superior Court*. This key California Supreme Court ruling could significantly alter the legal climate of construction defect disputes. While builders have expressed support for this ruling as a bulwark against the high costs of construction defect lawsuits, many consumer groups fear that this ruling

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| | |
|--|--|
| Departments That May Be Affected | |
| <input type="checkbox"/> New / Increased Fee | <input type="checkbox"/> Governor's Appointment |
| <input type="checkbox"/> Legislative Appointment | <input type="checkbox"/> State Mandate |
| <input type="checkbox"/> Urgency Clause | |
| Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to: | Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to: |
| Director /Chair <i>Julie Bernstein</i> | Date <i>8-13-02</i> |
| Agency Secretary <i>Marisa Caldwell</i> | Date |

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would infringe on homeowners' ability to obtain redress for shoddy home construction. This bill is intended to strike a balance between these issues in a way that preempts the courts from effecting a different balance.

RECOMMENDATION AND SUPPORTING ARGUMENTS: SIGN

The Department of Housing and Community Development (Department) recommends a position of **SIGN** on SB 800.

The Department supports the prevailing argument that housing costs remain high in part because of construction defect litigation. When builders cannot reliably predict the frequency or extent to which they face construction defect suits, they remain reluctant to enter the residential market. Builders are particularly reluctant to build affordable housing, which limits their profits while exposing them to the same or greater risk of being sued as with market rate housing. A high risk of expensive lawsuits also leads insurers to raise premiums for builders. These factors all raise the cost of housing construction.

SB 800 in effect would make it more difficult to sue builders in tort. This bill would codify a stricter burden of proof for plaintiffs than exists in current statute. Before initiating litigation, plaintiffs would be required to show that construction defects violated a new set of performance-based building standards, rather than simply show that defects exist in their homes by fault of the builder. For example, plaintiffs could only file suit if they show that faulty foundations are structurally unsafe, rather than simply show minor cracks or failure to follow building plans. By limiting the allowed tort cases to more serious defects such as these, this bill would limit the number of construction defect cases reaching the courts. Builders would face fewer suits and thereby be better able to lower costs.

Builders would also face fewer suits as a result of this bill's mandatory pretrial process. This bill would require homeowners and builders to undergo a detailed prelitigation process, wherein builders would have an explicit right to offer repairs and dispute mediation. Under this process, homeowners would have an explicit right to inspect and copy a wide range of information maintained by builders on their homes' design and construction. The Department believes that this mandatory process would be a reasonable requirement for both sides.

Although this bill would strengthen the statutory burden of proof in tort actions, this standard would still fall short of the burden of proof established by recent case law. In the *Aas* case, the California Supreme Court ruled that construction defects must cause actual property damage or bodily injury before a tort case may be proven. This bill would in effect override the *Aas* ruling and replace it with a standard that is less strict, but still requiring a higher burden of proof than existed before the ruling. This bill's approach is thereby a compromise between the two standards.

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In overriding Aas and substituting this compromise standard, this bill would strike a reasonable balance between reducing housing costs and protecting homeowners' due process rights. Consumer interests have expressed concern that the Aas ruling left homeowners with inadequate avenues for redress under tort law. This reasonable balance is the product of consensus between builder and consumer interests, which have had a typically adverse relationship over construction defect issues. The existence of such a consensus suggests that the new standards for filing suit will be acceptable to both groups and likely to promote noticeable change in the legal environment in which they interact.

Consumer interests may argue that this bill would still make pursuing tort actions more difficult than is appropriate to protect homeowners' due process. The Department contends that this bill's provisions to protect homeowners' rights under contract law address this concern. If construction defects exist that do not meet this bill's performance-based threshold for tort actions, homeowners may still sue builders for breach of contract. This bill would not amend any statutory threshold for filing such actions. Actions under contract law would address minor and moderate defects, including cases where a defect exists only in the fact that a builder failed to follow the specifications established in the original contract. Although damages in these cases may not include punitive damages, homeowners may still obtain judgments against builders to pay for the costs of repair or diminished value. Under this bill, builders may even offer contractual avenues for redress that incorporate a higher standard than this bill's performance-based standards.

Whereas nothing in this bill would legally preempt the California Building Standards Code, it would likely have no effect on this Code's consistency and usefulness. However, the Department retains concerns that builders may emphasize compliance with this bill's performance-based standards at the expense of complying with the Building Standards Code. By creating a "competing" code, this bill could cause confusion among builders and hinder the efforts of State and local building inspectors.

The Department observes that the performance-based standards proposed by this bill would only serve to establish the threshold for tort actions. They would not govern the issuance of local building permits or occupancy permits, compliance with any State mandate, or the validity of any construction contract. These matters are clearly governed elsewhere in statute. To the extent that this bill is implemented or interpreted so as to cloud the authority of these statutes, the Department will recommend cleanup legislation to prevent any such trend.

The Department would also support cleanup legislation to correct vague and ambiguous language in this bill. The current bill language was adopted without the benefit of significant input from this Department.



ANALYSIS**This bill would:**Immunity for independent inspectors

Waive monetary liability for persons or entities under contract to provide independent quality review of a construction project where a residential building permit is sought.

Specifically apply this waiver to inspections of plans and specifications to determine compliance with all applicable requirements imposed by State Housing Law.

Specify that this waiver shall not apply to actions initiated by the builder that contracted for the independent review. This limitation would imply that the waiver of liability would primarily apply to actions by homeowners ultimately residing in the development being reviewed.

Condition this waiver upon the following:

1. The person or entity performing the inspection has at least five years of verifiable experience as a building inspector, combination inspector, or combination dwelling inspector certified by the International Conference of Building Officials, or at least five years verifiable experience as a registered professional engineer, licensed general contractor, or licensed architect rendering independent quality review.
2. The person or entity does not engage in any other work on the project being reviewed.
3. The person or entity shall maintain errors and omissions insurance coverage of at least \$2 million.
4. The person or entity does not cause damage solely by negligence or willful misconduct.

Prohibit introducing as evidence in construction defect litigation the fact that an independent review by a qualified person or entity has taken place.

Specify that this bill shall not be construed to alter the existing immunity granted to inspectors employed by the Department.

Limits on tort actions

Limit builders' liability to the cases where there has been a violation of the specific performance-based standards created by this bill.

Specify that this limit would apply only to original construction intended to be sold as individual dwelling units and originally sold after January 1, 2003.

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Prohibit tort actions alleging construction defects after 10 years from the date of substantial completion of a dwelling unit.

Excuse a builder's liability, if otherwise proven under this bill, based on the following affirmative defenses:

- Unforeseen acts of nature and manmade events such as war, terrorism, and vandalism.
- A homeowner's unreasonable failure to minimize or prevent damages.
- A homeowner's unreasonable failure to follow a builder's or manufacturer's recommendations.
- Ordinary wear and tear.
- Expiration of the 10-year statute of limitations.
- The builder's repair has corrected the alleged defect.

Definitions for actionable construction defects

Provide that any defect not listed in this bill shall be actionable in tort only if it causes actual property or bodily damage.

Obligate homeowners to follow all reasonable maintenance obligations in order to invoke this bill's standards for tort action. A homeowner's failure to meet these obligations may create an affirmative defense for the builder.

Authorize builders to enter into contracts with homebuyers to warranty homes at a higher standard than established by this bill's performance standards for initiating tort actions. These contracts would be defined as "enhanced protection agreements."

Provide that homeowners that have entered into an enhanced protection agreement with a builder may not initiate tort actions unless the alleged defects exceed the standards stated in that agreement.

Authorize homeowners to dispute provisions of enhanced protection agreements that they believe do not exceed this bill's performance-based standards and petition a court to enforce those standards in lieu of the agreement.

Clarify that enhanced protection agreements do not excuse builders from following this bill's mandatory prelitigation procedures.

Specific performance-based standards

List actionable standards according to the following broad categories:

- Water issues - 18 separate standards, generally governing the passage or unintended water (including condensation) past moisture barriers in windows, doors, PE - 34



decks, roofs, chimneys, ventilation systems, exterior stairs, foundation systems and slabs, irrigation and draining systems, exterior walls and siding, retaining walls, sewer lines, shower and bath enclosures, and ceramic countertops.

- Structural issues – 4 separate standards, generally governing resistance to cracks, vertical displacement, earthquakes, and winds, and applicable to foundations, load bearing components, and underlying soils.
- Soil issues – 3 separate standards, generally governing damage to a dwelling unit, safety of retaining walls, and overall effect on the suitability of land for residential purposes.
- Fire protection issues – 3 separate standards, generally governing compliance with building codes, containment of fire within fireplaces and chimneys, and proper installation of electrical and mechanical systems.
- Plumbing and sewer issues – 1 standard governing installation and operation of related systems.
- Electrical system issues - 1 standard governing proper operation of electrical systems and material impairment of a structure's usefulness.
- Other issues – 15 separate standards governing exterior pathways, exterior wall finishes and fixtures, miscellaneous installed products, heating capacity, air conditioning code compliance, noise transmission, landscaping drainage, wood posts, steel fences, paint and stains, falling roof materials, landscaping survival, tile detachment, dryer ducts, and public health hazards.

Establish deadlines for bringing tort actions shorter than the normal ten years for specific categories of defects, including:

- Plumbing and sewer systems
- Electrical systems
- Exterior pathways
- Wood posts
- Steel fences
- Pain and stains
- Landscaping survival
- Dryer ducts

Prelitigation procedures

Require that homeowner plaintiffs shall initiate the procedure established by this bill prior to initiating any tort action alleging construction defects. Homeowners shall notify builders of their intent to initiate this procedure in writing in sufficient detail to determine the nature, location, and extent of the alleged actionable defect.

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Clarify that initiating prelitigation procedures would not preclude a homeowner from seeking redress from any applicable customer service procedure such as a contractual warranty.

Upon receiving notice of a homeowner's intent to initiate prelitigation procedures, require a builder to provide a homeowner, at the homeowner's expense, copies of the following information:

- All relevant plans, specifications, public reports, and available engineering calculations pertaining to the dwelling unit in question.
- All maintenance recommendations that pertain to the dwelling unit.
- All relevant warranty information.

Require builders to do the following:

- Maintain the name and address of an agent for receiving notice.
- Record on title a notice of the existence of this bill's prelitigation procedures.
- Provide a written copy of the statute authorizing these procedures with original sales documentation.

Provide that failure to provide the information required under these procedures excuses the homeowner from further compliance and allows the homeowner to initiate a tort action. All subsequent tort actions must still prove a violation of the performance-based standards established by this bill.

Clarify that prelitigation procedures would be nonadversarial in nature.

Authorize a builder to inspect and test the alleged defect, at his or her own cost, if done within 14 days of acknowledging receipt of notice by a homeowner.

Authorize a builder to offer to repair the alleged defect, at his or her own cost, within 30 days of inspection. Any such offers shall detail the scope and nature of the repair, a completion date, and the identity of contractors performing the repair.

Require a homeowner, within 30 days of receiving an offer to repair, to do one of the following:

- Authorize the builder to proceed with the offered repair, or
- Request up to three alternative contractors to be selected by the builder, and authorize one of those contractors to proceed with the offered repair within 55 days.

Authorize a builder to offer mediation of a dispute over repairs if consented to by the homeowner.



Provide that if a builder has made a valid offer to repair and mediation fails to resolve the dispute, the homeowner shall allow the repair to be performed by the builder or an alternate contractor.

Require builders to make every effort to complete authorized repairs within 120 days.

Authorize a builder to make a cash offer to a homeowner in lieu of an offer to repair. Contrasted with offers to repair, homeowners would have the ability to affirmatively reject a cash offer.

Existing law:

- Provides that a construction defect action may be brought against any person who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property.
- Provides that an action based on latent defects (defects not apparent from a reasonable inspection) in construction must be brought within 4 years of discovery of the defect (if the action is based on breach of contract or warranty), but in no event may such an action be brought more than 10 years after the date of substantial completion of the development or improvement.
- In addition to rights of action under tort, construction defects may also be subject to actions under contract, implied warranty, and fraud. This authority is proscribed by several civil statutes, criminal statutes, common law, case law, and uniform model codes.
- Case law, as set forth in the California Supreme Court decision *Aas v. Superior Court*, (2000) 24 Cal. 4th 627, provides that builders may not be held liable in negligence for construction defects unless those defects have caused death, bodily injury, or property damage.

Comments:

The Department supports this bill with some reservations. The apparent compromise between builders and consumer advocates is notable and a vital component of any long-term strategy towards improving the business climate for home construction. However, the Department notices several opportunities for clarification in this bill.

The Department observes the following examples of ambiguity in this bill's building standards:

- **Structural issues** – The definitions of the terms "structure" and "improvement" are not universal and require elaboration as to whether they include manufactured housing and factory built housing units.



- **Water issues** – It is not clear whether “moisture barriers” refer to the inward or outward traverse of moisture, or perhaps both. When “damage to another building component” is referenced in this standard, it is not clear whether this term applies to non-building components such as carpets.
- **Other issues** – The standard references “manufacturer limitation requirements” for dryer ducts, but it is not clear whether this term applies to the ducts or to the dryer.

The Department generally notices an inconsistency among these standards in regard to the establishment of time limits for constituting an actionable defect. Time limits exist for plumbing and electrical systems, for example, but not for other defects whose validity may be affected by time. These include shower and bath leakage, diminished “useful life” in installed products and fixtures, falling roof materials, and tile detachment.

The Department is willing to consult with the sponsors to determine proper building standards to govern tort actions. It is possible that in some cases the best benchmark for allowing a case to proceed to trial is compliance or non-compliance with the Building Standards Code. Allowing the Department in conjunction with the Building Standards Commission to have input on developing these standards would inject greater accountability into the process of using them.

This bill would do nothing to address construction defects in rental housing. The Department notices the opportunity to address this issue in future legislative years. A discussion of this issue would likely be crucial to addressing California’s overall housing shortage.

This bill would provide immunity to licensed third-party inspectors that are certified by the International Conference of Building Officials, but not to inspectors certified by the International Association of Plumbing and Mechanical Officials or any other industry group. The Department is interested in expanding the number of eligible certifying entities in any cleanup legislation for this bill.

LEGISLATIVE HISTORY

AB 1700/Steinberg (Ch. 824/2001) revised the existing “Calderon Process” by which parties to construction defect litigation cases involving common interest developments engage in a specified mediation process before proceeding to trial. This process only applies to suits brought by common interest development homeowner associations, which are not covered by SB 800. AB 1700 made this process mandatory.

SB 1029/Calderon (Ch. 864/1995) established the Calderon Process. Prior to this legislation, there were no requirements that a homeowners association serve any notice to builders before pursuing construction defect litigation.

PROGRAM BACKGROUND

The Department promulgates regulations to ensure that hotels, motel, apartments, single-family dwellings, and other residential buildings are maintained in compliance



with the model building codes and other more restrictive provisions of State law. The Department reviews and proposes building standards for construction and rehabilitation of residential structures. These standards form the residential portion of the California Building Standards Code, which Title 24 of the California Code of Regulations. The Department also inspects mobilehome parks and employee housing to ensure compliance with these and other laws.

The Department provides technical assistance to housing advocates, community groups, and local governments on strategies to increase California's supply of housing.

OTHER STATES' INFORMATION

An increasing number of states allow for alternative dispute resolution in construction defect cases and other tort or breach of contract actions. Under this bill, California would be the only state to require a specified pre-trial procedure before initiating construction defect litigation.

FISCAL IMPACT

None.

ECONOMIC IMPACT

This bill would likely cause an undetermined increase in the supply of housing in California. The amount of this increase is unknown because insufficient information is available as to the impact the tort reform measures have on encouraging home builders and their insurers to do business in California. Although the *Aas* ruling would theoretically encourage greater home construction by making litigation more difficult, the recency of this ruling (2000) dictates that insufficient time has elapsed for its effects to be felt. Since that time, market forces and other governmental actions have had a substantially more significant effect on California's business climate for homebuilders.

LEGAL IMPACT

This bill would likely reduce the number of construction defect tort cases filed in California courts.

This bill would likely lead to scenarios where courts clarify the applicability of performance-based building standards to specific factual situations. The extent to which the establishment of this precedent either encourages or discourages future tort actions cannot be determined.

APPOINTMENTS

None.

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SUPPORT/OPPOSITION

Support: California Building Industry Association, Consumer Attorneys of California, Personal Insurance Federation of California, Consulting Engineers and Land Surveyors of California, California Nurses Association, Congress of California Seniors

Opposition: None received. The relevant versions of this bill received no votes in opposition on either the Assembly or Senate Floor. Senator Ackerman (R-Fullerton) cast the only vote against this bill in committee and cast no vote on the Senate floor.

ARGUMENTS

Pro:

This bill would override a ruling unpopular with consumer groups because it made filing construction defect tort actions excessively difficult.

This bill would strike a balance between consumer interests and home builder interests, which generally favor restricting access to tort actions so as to ease the costs of litigation.

This bill would provide an incremental "tort reform" measure sought by builders to lower the cost of housing construction and spur housing construction.

Con:

This bill would confuse builders by establishing separate standards to govern building permits and construction defect tort actionability.

This bill contains several vague and ambiguous terms which could require either subsequent legislation or caselaw to clarify, thereby risking an interpretation contrary to the author's intent.

VOTES

| Assembly Floor | | | Concurrent | Senate Floor | | | Concurrent |
|-----------------|-----|----|------------|--------------|-----|----|-----------------|
| DATE | AYE | NO | | DATE | AYE | NO | August 31, 2002 |
| August 29, 2002 | 80 | 0 | | May 29, 2001 | 39 | 0 | Passed 33/0 |

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SIGNING MESSAGE

SB 800/Burton

Construction Defect Litigation, Limits on Tort Actions

To the Members of the California Legislature:

I am signing Senate Bill 800, which would govern construction defect lawsuits by a new standard. Under this bill, homeowners and builders would be required to negotiate and consider offers to repair, possibly even by mediation, before an expensive lawsuit could be brought to trial. This bill would establish a workable set of common sense standards to govern these lawsuits. Only a violation of these standards by a builder would merit a trial. I applaud the homeowner and builder representatives that have produced this compromise approach to needed tort reform.

I urge the Legislature to present to me next year cleanup legislation to address the details of this bill. Primarily, I urge the Legislature to refine this bill's list of actionable defects that serve as the gatekeeper for allowable tort actions. This process of refinement should involve all relevant stakeholders and reflect adequate public involvement. This process should also clarify that California's building codes are distinct from the building standards governing tort actions and ought not be unintentionally diluted.

I look forward to watching this bill make a noticeable difference in the way California welcomes the business of home building.

Sincerely,

GRAY DAVIS

(800) 666-1917

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BUSINESS, TRANSPORTATION
AND HOUSING AGENCY

ENROLLED BILL
REPORT

CONFIDENTIAL-Government Code §6254(1)

| | | | |
|---|--|--|--|
| Department: California Housing Finance Agency | | Bill Number/Author: SB 800/Burton and Wesson | |
| Sponsor: <input type="checkbox"/> Admin Sponsored Proposal No. | | Related Bills | Chapering Order (if known) <input type="checkbox"/> Attachment |
| Subject: Construction Defects | | | |

SUMMARY

This bill would 1) establish specific liability standards for newly constructed housing, 2) create a pre-trial process that includes a builder's right to repair a defect, and 3) provide third-party inspectors with immunity from liability.

PURPOSE OF THE BILL

This bill is intended to respond to the affordable housing crisis by addressing concerns raised by builders and insurers about increased litigation costs related to alleged construction defects, and concerns raised by homeowners and consumer attorney's over the effects of a recent Supreme Court decision (Aas v. Superior Court, (2000), 24 Cal. 4th 627) which held that builders cannot be held liable for negligence for a construction defect unless actual damages (death, bodily injury, or property damage) have occurred.

RECOMMENDATION AND SUPPORTING ARGUMENTS

The California Housing Finance Agency recommends that the Governor **SIGN** SB 800.

There is a growing need for affordable housing in California. California currently rates 48th among the 50 states in homeownership, with only New York and Hawaii having lower homeownership rates. The California Association of Realtors recently reported that the percentage of households in California able to afford a median priced home has decreased to 28 percent, down by four percentage points (from 32 percent) from July 2001 to July 2002.

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| | | | |
|---|--|---|--|
| Departments That May Be Affected | | | |
| <input type="checkbox"/> New / Increased Fee | <input type="checkbox"/> Governor's Appointment | <input type="checkbox"/> Legislative Appointment | <input type="checkbox"/> State Mandate <input type="checkbox"/> Urgency Clause |
| Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to: | | Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to: | |
| Director /Chair Date <i>Theresa A. Parker</i> <i>9/9/02</i> | Agency Secretary Date <i>Marie Gaudet</i> _____ | | |

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It has become increasingly difficult for many builders to obtain reasonably priced liability insurance because of increased litigation related to construction defects. This is especially problematic for builders of condominiums or attached structures, where homeowner associations often encourage large numbers of owners to join class-action suits, even if only a limited number of owners have experienced problems. Existing law encourages disputes to be resolved by the courts. SB 800 will have a positive impact on the construction of housing by giving builders the ability to correct construction defects that do not meet specific performance or design standards, thereby eliminating the need to litigate these issues. This system adds additional consumer benefits by requiring a component that is not performing properly to be replaced or repaired, regardless of whether or not actual damages have occurred.

The California Housing Finance Agency has no concerns from a lenders prospective. The bill would establish performance standards for newly constructed single family housing that should not only have a positive impact on the cost of construction, but it would improve our ability to have defects repaired without the need for costly litigation in the event we are forced to foreclose on a property.

ANALYSIS

Under current law, any person involved in designing, specifying, surveying, planning, supervising or observing a construction project can be held responsible for any latent deficiency (a deficiency not apparent by reasonable inspection) for up to 10 years after the substantial completion of the project or improvement.

Immunity for third party inspectors

SB 800 would grant specific immunity to qualified third party inspectors under contract with an applicant for a residential building permit (generally a builder) to review plans and specifications for compliance with applicable laws and regulations. A qualified inspector/reviewer would be defined as a person 1) that has at least five years of verifiable experience in the appropriate field, and 2) that meets all licensure or certification requirements required for that profession. The immunity provided under this bill would not extend to any action that may be initiated between the permit applicant and the inspector/reviewer, particularly if damages are suffered by the applicant due to negligence or the willful misconduct of the inspector/reviewer. SB 800 would require the inspector/reviewer to maintain professional errors and omissions insurance coverage in the amount of at least \$2 million.

Specific Liability Standards

As stated above, under current law, an action can be brought for any "latent deficiency" in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to real property for up to 10 years following substantial completion of the work. That 10 year statute of limitation also applies to any action brought for any injury to real or personal property because of that deficiency.

SB 800 would establish specific performance or quality standards for determining liability. These standards would apply to original construction projects sold as individual residences

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after January 1, 2003, and would not apply to condominium conversions. Any action brought for a violation for one of these standards must be brought within 10 years of the close of escrow, unless otherwise specified. Any function or component not specifically spelled out in the bill would continue to be actionable if actual damages occur.

Water Standard

- Doors, windows, patio doors, and deck doors (including frames, flashings, trims, etc.), roofs, roofing systems, chimney caps and ventilation components cannot allow unintended water to pass beyond, around or through the door or any moisture barriers;
- Windows, patio doors, and deck doors (including frames, flashings, trims, etc.) cannot allow excessive condensation to enter the structure and damage any other component of the residence;
- Decks, deck systems, balconies, balcony systems, exterior stairs and stair systems cannot allow water to pass into adjacent structures or the systems (framing, flashing, sheathing, etc.) themselves;
- Foundation systems and slabs cannot allow water or vapor to enter the structure so as to damage another building component or to limit the use of flooring materials typically used for the particular application;
- Hardscape (paths, patios, irrigation, landscaping and drainage systems) installed as part of the original construction cannot be installed in such a way as to cause water or soil erosion to enter, come into contact with, or damage another building component;
- Stucco, exterior siding, exterior walls, and other exterior wall finishes and fixtures must be installed in such a way as to not allow water to pass into the structure or beyond moisture barriers, or excessive condensation to enter the structure and damage any other component of the building;
- Retaining walls and site walls, and their associated drainage systems, can only allow water to pass through designated areas;
- Lines and components for plumbing and sewer systems cannot leak or corrode in a manner that will impede the useful life of the systems;
- Sewer systems must be installed in such a way as to allow the designated amount of sewage to flow through the system;
- Shower and bath enclosures cannot leak water;
- Ceramic tile and tile countertops cannot allow water into interior walls, flooring systems or other components that will result in damage.

Structural Standard

- Foundations, load bearing components and slabs cannot contain significant cracks or significant vertical displacement or otherwise cause the structure to be structurally unsafe in any way;
- Foundations, load bearing components, slabs and underlying soils must be constructed in a manner that materially complies with design criteria established by various codes, regulations and ordinances governing chemical deterioration, corrosion resistance, earthquake and wind load resistance in effect at the time of the original construction.



Soil Standards

Soils and engineered retaining walls cannot cause, in whole or in part:

- Damage to the structure built up the soil or retaining wall;
- The structure to be structurally unsafe; or
- The land upon which the structure is located to become unusable for the purpose represented at the time of the original sale or for the purpose for which land is commonly used.

Fire Protection Standards

- The structure must be constructed so as to materially comply with the design criteria of all applicable building codes, regulations, and ordinances for fire protection in effect at the time of the original construction;
- Fireplaces and chimneys, chimney structures and chimney termination caps must be constructed and installed so as not to cause unreasonable risk of fire outside the fireplace;
- Electrical and mechanical systems must be constructed and installed so as not to cause unreasonable risk of fire.

Plumbing, Sewer and Electrical System Standards

Plumbing, sewer and electrical systems must be installed to operate properly and not materially impair the use of the structure by its inhabitants. Any action brought for a violation for one of these standards must be brought within FOUR YEARS of the close of escrow.

Miscellaneous Standards

1. Standards covered by the standard TEN YEAR warranty:
 - Stucco, exterior siding and other exterior wall finishes and fixtures cannot contain significant cracks or separations;
 - Heating, if any, must be installed in a manner that will maintain a minimum room temperature of at least 70 degrees three feet above the floor in any living space;
 - Air condition, if any, must be installed consistent with the size and efficiency design criteria specified in existing state regulations;
 - Roofing materials must be installed to avoid materials falling from the roof;
 - Ceramic tile and tile backing must be installed in a manner so that it does not detach.
2. Standards covered by a ONE YEAR warranty (action must be brought within one year of the close of escrow, unless otherwise specified):
 - All manufactured products (products completely manufactured offsite) not otherwise specified in this bill (i.e., windows, doors, roofs, plumbing products and fixtures, HVAC units, countertops, etc.) must be installed in a manner that does not interfere with the products useful life. The useful life is defined as the period of time the product is warranted or recommended to last by the manufacturer, including recommended required maintenance. If no warranty or representation is made, the useful life will be assumed to be at least one full year.
 - Irrigation systems and drainage must operate in a manner that does not damage landscaping or other external improvements.

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- Attached structures must meet all existing noise transmission standards in effect at the time of construction. Any action brought for a violation for one of these standards must be brought within one year of occupancy of the adjacent unit.
3. Standards covered by a TWO YEAR warranty(action must be brought within two years of the close of escrow):
- Untreated wood posts must be installed in a manner that will not lead to unreasonable decay of the wood.
 - Landscaping systems must be installed in a manner that will survive at least one year.
 - Dryer ducts must be installed and terminated in accordance with manufacturers installation requirements.
4. Standards covered by a FOUR YEAR warranty (action must be brought within four years of the close of escrow):
- Exterior pathways, driveways, hardscape, sidewalls, sidewalks and patios installed by the original builder cannot contain excessive cracks or cause significant vertical displacement.
 - Untreated steel fences must be installed in a manner that will prevent unreasonable corrosion.
5. Standards covered by a FIVE YEAR warranty(action must be brought within five years of the close of escrow) :
- Paint and stains must be applied in a manner that does not cause deterioration of the building surfaces for the length of time specified by the paint or stain manufacturer.

Health and Safety Standards

SB 800 specifically states that all structures must be constructed in a manner that complies with all health and safety standards. Damages caused by such a violation would not be limited by this bill.

Enhanced warranties

Under the terms of SB 800, a builder would be required to provide a minimum one-year limited warranty on all fit and finish items not covered above, including cabinets, mirrors, flooring, interior and exterior walls, counter tops, paint finishes and trim.

A builder would also be authorized to offer greater protection than those outlined above through an *enhanced protection agreement* with the homeowner. Under no circumstances can the protections offered in the enhanced protection agreement be less than those stated above. The builder would be required to provide the homeowner with a written copy of the minimum standards specified in this bill as well as a written copy of the enhanced protection agreement prior to the close of escrow. If a homeowner decides to enforce a statutory standard in lieu of the enhanced agreement, he or she must notify the builder in writing (discussed in greater detail below).



Subsequent (nonoriginal) homeowners are not entitled to the protections of the enhanced agreement unless the builder records the agreement on the title or provides actual notice to the nonoriginal owner. If the enhanced protection agreement does not apply, the nonoriginal owner would be entitled to the minimum protections contained in statute.

Prelitigation procedure and timeline

Prior to filing an action against a builder for violation of the minimum standards, a claimant would be required to provide written notice to the builder. The builder would have 14 days to provide the homeowner written acknowledgement of receipt of the claim. If requested by the homeowner or his/her legal representative, a builder would have 30 days to provide:

- Copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations that pertain to the homeowners residence specifically or as part of a larger development tract;
- All maintenance and preventative maintenance recommendations;
- All manufactured products maintenance, preventative maintenance and limited warranty information; and
- The builder's limited contractual warranties.

If the builder fails to provide the requested material within the specified timeframe, the remaining prelitigation procedures contained in this bill are not applicable and the homeowner may proceed with filing his/her action.

If the builder chooses to inspect the subject of the claim, he/she must complete an initial inspection within 14 days after acknowledging receipt of the notice. All costs for any such inspection must be borne by the builder, who must also provide written proof that he/she has sufficient liability insurance to cover any damages or injuries that may occur during that inspection. If the builder determines a second inspection or additional testing is reasonably necessary, he/she must provide the reason to the homeowner, in writing, within three days of the initial inspection. The second inspection must occur within 40 days of the initial inspection. Again, if the builder fails to adhere to these timelines, the homeowner is released to proceed with his/her action.

Within 30 days of completing the inspection/testing, the builder may submit a detailed written offer to repair the violation and compensate the homeowner for all applicable damages (or a cash only offer with no offer to repair). That offer must also advise the homeowner of his/her right to request information on up to three alternative contractors who can complete the repair, and must be accompanied by an offer to mediate the dispute.

Upon receipt of an offer to repair, the homeowner would have 30 days to either accept the builder's offer, or to request contact information for three alternative contractors. If the homeowner requests information on alternative contractors, that information must be provided by the builder within 35 days. Within 20 days of receiving that information, the homeowner must authorize either the original builder or the selected alternative contractor to perform the repair.

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Again, if the builder fails to meet the timelines specified above, the homeowner is released from continuing with the specified prelitigation process and is free to pursue his/her claim.

If this process results in the builder undertaking the repair, that work must be started within a specified period of time:

- If the homeowner has accepted the builder's offer, repairs must begin within 14 days unless another date is mutually agreed upon.
- If the repair is the result of mediation, work must begin within seven days of mediation.
- If a permit is needed, work must begin within five days after obtaining the permit.
- Every effort must be made to complete the repair within 120 days.

All other statutes of limitations providing remedy to the homeowner would be tolled until 100 days after the repair is completed. If the builder fails to comply with any of the specified timeframes, those remedies would be tolled for an additional 45 days after the builder's time has expired.

Timeline flexibility

Under the provisions of SB 800, the timelines provided can only be extended by mutual agreement. A builder would be required to obtain written confirmation that a homeowner has agreed to the extension. If a homeowner fails to meet the any of the requirements set forth in this bill, the builder would be authorized to bring a motion to stay any subsequent court action until the requirements have been met.

Compliance with the Calderon process

Existing law currently contains a mandatory pretrial process for construction defect actions involving larger condominium projects (20 or more units). This process, commonly known as the "Calderon process," requires parties to complete an extensive process for exchanging information and mediating disputes. SB 800 would establish an alternative process that is "substantially similar" to the Calderon process. As such, parties that complete the process contained in this bill would be excused for participating in the Calderon process.

Builder's affirmative defense

SB 800 would provide an affirmative defense to any builder from any obligation, damage, loss, or liability for:

- Unforeseen acts of nature (includes weather, earthquake, war, terrorism and vandalism) in excess of the design criteria by the applicable building code, regulations and ordinances in effect at the time of original construction;
- A homeowner's unreasonable failure to minimize or prevent damages in a timely manner;
- A homeowner's, or his/her agent or employee, to follow either the builder's/manufacturer's or commonly accepted homeowner maintenance obligations;
- Defects caused by the alternation, ordinary wear and tear, misuse, abuse, or neglect, or by using the structure for something other than its intended purpose;
- Defects barred by the statute of limitations;

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- Defects subject to a valid release; and
- To the extent that the builder's repair was successful in correcting the violation.

LEGISLATIVE HISTORY

Last year, the Governor signed AB 1700 (Ch. 824, Statutes 2001), which made several changes to the "Calderon process," a mandatory pretrial process for construction defect actions involving larger condominium projects (20 or more units). Specifically, that bill clarified the timeframes for the prelitigation process; required the exchange of information between affected parties; required parties to meet and confer to select a dispute resolution facilitator to preside over the process; to jointly develop a case management statement; and authorized a party to petition the superior court for an expedited hearing upon showing of good cause.

OTHER STATES' INFORMATION

According to the California Building Industry Association, California's current regime of strict liability, coupled with its 10-year statute of limitations, is the toughest in the nation. Members of that organization that build in other states report that although they only do 15% to 20% of their building in California, this state generates 85% to 95% of their litigation.

In recent years, several other states have enacted right-to-repair statutes (including Texas, Arizona, and Washington) but none are believed to be as comprehensive as that contained in SB 800.

FISCAL IMPACT

This bill would have no fiscal impact on the California Housing Finance Agency.

ECONOMIC IMPACT

The Construction Industry Board indicates that for residential single-family new construction, 21.52 jobs are created for every \$1 million of construction and for Multifamily, 19.81 jobs per million.

According to the National Association of Home Builders (NAHB), housing is a powerful force in the economy. Single-family and multifamily construction plus remodeling account for about four percent of the nation's total economic activity, or almost \$328 billion annually. During economic recoveries, NAHB contends that housing's impact on the economy is even greater, accounts for up to one-third of the change in the gross domestic product (GDP).

The NAHB has stated that housing is a vital sector of local, state and national economies, creating jobs and generating taxes and wages that positively influence the quality of life.

The NAHB contends that the construction of 1,000 single-family homes generates:

- 2,448 jobs in construction and construction related industries.
- Approximately \$79.4 million in wages, and more than \$42.5 million in federal,



state and local tax revenues and fees.

The construction of 1,000 multifamily homes generates:

- 1,030 jobs in construction and related industries.
- Approximately \$33.5 million in wages, and more than \$17.8 million in federal, state and local tax revenues and fees.

The NAHB contends that housing's economic impact does not end when the home is sold and the new owners move in, but that housing continues to be an economic force long after the sale is closed.

According to NAHB, in the first 12 months after purchasing a newly built home, owners spend an average of \$6,500 to furnish, decorate and improve their homes. Buyers of existing homes spend \$2,268 more than non-moving homeowners during the 12 months after purchasing the home.

New homebuyers are more likely to spend their money on improvement such as landscaping, decks, patios, fences and driveways. Existing homebuyers are more likely to spend money on remodeling rooms, plumbing repairs, and heating or air conditioning. Both spend on appliances, food/entertainment (mostly from eating out) and higher auto operating expenses as a result of shopping and visiting restaurants.

NAHB states that of the \$6,500 spent by new homebuyers, 70 percent is spent on home furnishings and property alterations. The most common furnishing purchases include household decorations, linens, furniture and mattresses.

LEGAL IMPACT

A recent Supreme Court decision (Ass v. Superior Court, (2000) 24 Cal. 4th 627) held that defects must cause actual damage or personal injury prior to being actionable in tort. SB 800 would overrule that decision by providing a remedy to homeowners if standards are violated, regardless of whether or not there are actual damages or injury.

SUPPORT/OPPOSITION

Support: California Building Industry Association (CBIA)
Consumer Attorneys of California
Personal Insurance Federation of California
Consulting Engineers and Land Surveyors of California
Congress of California Seniors

Opposition: No known recorded opposition.

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LEGISLATIVE INTENT SERVICE



ARGUMENTS

Pro:

- This bill would establish minimum performance based standards for construction.
- This bill will enhance a consumer's ability to obtain a remedy for faulty construction, regardless of whether actual damages have occurred.
- This bill would give builders the "right to repair" defects prior to litigation. This should reduce the number of cases that actually go to court, and should also reduce insurance costs that have escalated because of that litigation.

Con:

- Many of the terms used to define the performance standards are ambiguous or subjective (e.g. "excessive" condensation, "materially" comply, "unreasonable" risk, "substantially" comply with, etc.) and may create additional confusion.
- This bill may cause confusion by establishing performance standards that do not specifically comply with existing building standards. (REBUTTAL: CBIA responds that nothing in this bill exempts a builder from having to comply with applicable building codes. The standards contained in this bill are separate and distinct, and are intended to provide guidance for determining damages based function and performance.)

VOTES

Senate – 29 May 2002
 (Vote not relevant)

Assembly – 29 August 2002
 Ayes – 80
 Noes – 0

Concurrence – 30 August 2002
 Ayes – 33
 Noes – 0

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| | | |
|---|--------------------------------|---|
| CONFIDENTIAL-Government Code §6254(l) | | |
| Department/Board State and Consumer Services Agency | | Bill Number/Author: SB 800 (Burton and Wesson) |
| Sponsor: Consumer Attorneys of California | Related Bills SB 688 | Chapering Order (if known) <input type="checkbox"/> Attachment |
| <input type="checkbox"/> Admin Sponsored | Proposal No. | |
| Subject: Construction Defects | | |

SUMMARY

This bill establishes a scheme for homeowners and builders to resolve disputes involving residential construction defects by:


- 1) Providing definitions of construction defects;
- 2) Providing for a method of complaint resolution;
- 3) Giving builders a right to repair;
- 4) Preserving a homeowner's right to litigate if dissatisfied with the efforts of the builder to resolve complaints;
- 5) Giving successors in interest to residential property the same rights under these provisions as the original purchaser; and
- 6) Making a failure to meet the standards established by the bill actionable without a showing of additional causation or damage.

PURPOSE OF THE BILL

In a controversial decision, *Aas v. Superior Court* (2000) 24 Cal.4th 627, the California Supreme Court found that homeowners had no cause of action for negligence against the builders of their homes for latent defects under California's "economic loss rule." Essentially, the court held that since there had been no actual damage or injury to anyone from the defect, the plaintiff homeowners had no cause of action for negligence against builders. Chief Justice George registered a strong dissent in *Aas*, pointing out

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| Departments That May Be Affected | |
| <input type="checkbox"/> New / Increased Fee <input type="checkbox"/> Governor's Appointment <input type="checkbox"/> Legislative Appointment <input type="checkbox"/> State Mandate <input type="checkbox"/> Urgency Clause | |
| Dept/Board Position <input type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to: | Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to: |
| Director /Chair Date | Agency Secretary Date  9-16-02 |

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that it defied common sense to require that there actually be an injury from a fire before a homeowner could bring an action in negligence against a builder for a defective firewall. Both the majority of the Court and the Chief Justice urged the Legislature to revisit the economic loss rule.

This bill is intended to address the perceived inequity of the Aas decision and give homeowners the ability to have specified defects in the construction of their homes corrected before the defects cause actual harm or damage.

RECOMMENDATION AND SUPPORTING ARGUMENTS

ANALYSIS

This bill is the product of extensive discussion and compromise between the building industry and the Consumer Attorneys. The bill defines construction defects in the areas of:

- 1) Water issues;
- 2) Structural issues;
- 3) Soil;
- 4) Fire Protection;
- 5) Plumbing and Sewer;
- 6) Electrical Systems; and
- 7) Other areas of construction, such as heating, cooling and paint.

The bill defines the obligations of builders regarding warranties and complaint resolution. It establishes firm time-lines for resolving complaints while preserving the rights of homeowners to seek a judicial remedy if necessary.

The rights and remedies provided by the bill apply to original purchasers and their successors-in-interest.

Damages are limited to the reasonable value of repairing the violation of the standards established by the bill.

It is likely there will need to be some follow-up legislation if this bill becomes law in order to clarify terms and to resolve any ambiguity that may result from the apparent adoption of building standards outside the normal code adoption process. For example, the word "excessive" is used to describe an acceptable level of water or moisture penetration, but there is no definition of "excessive."

Though the phrase "government building codes" is used as a standard in the sections addressing structural issues and fire protection, there is no reference to "government building codes" as a standard for water issues, soil, plumbing and sewers, and electrical systems. Further, Title 24 of the California Code of Regulations (the building standards title) is specifically referenced as a standard for living space air conditioning, but for nothing else. The specific reference to the building code in one subsection of the bill injects ambiguity into the applicability of the building code as a standard for any other sections of the bill.

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LEGISLATIVE HISTORY

AB 1700 (Steinberg, Chapter 824, Statutes of 2001) revised the pre-litigation process for construction defect actions between builders and homeowners' association involving common interest developments with 20 or more units.

PROGRAM BACKGROUND

The California Building Standards Commission within the State and Consumer Services Agency is the entity responsible for reviewing and approving building standards for California. One of the primary concerns that the Buildings Standards Commission always expresses is that building standards should not be implemented via statute. The Commission was established for this very reason and any code changes that are proposed in this legislation may be more effectively addressed through the code adoption process within the Commission. While this bill does not in and of itself purport to establish building standards, it sets standards that a homeowner may use to seek repair of defects in construction.

OTHER STATES' INFORMATION

According to the sponsor, no other states have a comparable statute.

FISCAL IMPACT

No direct state fiscal impact.

ECONOMIC IMPACT

Increased costs may be incurred by the building industry as a result of making repairs mandated by this legislation.

LEGAL IMPACT

This bill will provide homeowners with enforceable rights to have enumerated defects in residential construction repaired. It will give builders the right to either undertake repair or compensate the homeowner for the reasonable value of the repair.

APPOINTMENTS

SUPPORT/OPPOSITION

Support:

- California Building Industry Association
- California Nurses Association
- Congress of California Seniors
- Consumer Attorneys of California
- Consumer Federation of California

Opposition:

None on file

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ARGUMENTS

Pro:

Provides homeowners with a method of having construction defects repaired by the builder prior to the defects causing actual harm or damage.

Con:

This bill seems to adopt building standards outside the normal building standard process and without the input of various building experts that usually participate in establishing building standards.

This bill may increase costs for residential developers, which in turn are passed on to consumer in higher housing prices.

It is not clear how the standards of this bill relate to other building standards.

VOTES

| | |
|----------------|--------|
| Assembly Floor | 80 - 0 |
| Senate Floor | 33 - 0 |

LEGISLATIVE STAFF CONTACT

Robert Van Der Volgen
State and Consumer Services Agency
653-2636

Happy Chastain
State and Consumer Services Agency
653-3111

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STATE AND CONSUMER SERVICES AGENCY

ENROLLED BILL
REPORT

| | | |
|--|---------------|---|
| CONFIDENTIAL-Government Code §6254(l) | | |
| Department:/Board Consumer Affairs | | Bill Number/Author: SB 800 (Burton & Wesson, et al) |
| Sponsor: Author | Related Bills | Chapering Order (if known) |
| <input type="checkbox"/> Admin Sponsored Proposal No. | | <input type="checkbox"/> Attachment |
| Subject: Construction Defects: Liability | | |

SUMMARY

This author-sponsored bill would specify a homeowner's rights and requirements with regard to bringing an action for construction defects, including applicable standards for home construction, statute of limitations, burden of proof, recoverable damages, and homeowners' obligations. The bill would also specify a detailed pre-litigation procedure and provide third-party inspectors with immunity from liability.

PURPOSE OF THE BILL

This bill is intended to make major changes to the laws governing the construction defect litigation process. The authors state that the problems of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial adverse consequences for the development of safe and affordable housing. Among other things, this bill seeks to respond to concerns expressed by builders and insurers over the costs associated with construction defect litigation, as well as concerns expressed by homeowners and their advocates over the effects of a recent Supreme Court decision that held that defects must cause actual damage prior to being actionable in tort [Aas v. Superior Court, (2000) 24 Cal. 4th 627].

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN. By limiting the amount of construction defect litigation and creating an alternative process for consumers to seek recourse and repair, this bill will benefit consumers by increasing the

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| | | | | |
|--|---|--|--|---|
| Departments That May Be Affected | | | | |
| <input type="checkbox"/> New / Increased Fee | <input type="checkbox"/> Governor's Appointment | <input type="checkbox"/> Legislative Appointment | <input type="checkbox"/> State Mandate | <input type="checkbox"/> Urgency Clause |
| Dept/Board Position | | Agency Secretary Position | | |
| <input checked="" type="checkbox"/> Sign | | <input checked="" type="checkbox"/> Sign | | |
| <input type="checkbox"/> Veto | | <input type="checkbox"/> Veto | | |
| <input type="checkbox"/> Defer to: | | <input type="checkbox"/> Defer to: | | |
| Director/Chair | Date | Agency Secretary | Date | |
| <i>Kathleen Hammett</i> | <i>9/11/02</i> | <i>[Signature]</i> | <i>9/11/02</i> | |

09/11/02

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availability of affordable housing in California.

ANALYSIS

Existing Law:

- Provides that a construction defect action may be brought against any person who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property.
- Provides that an action based on latent defects (defects not apparent from a reasonable inspection) in construction must be brought within four years of discovery of the defect (if the action is based on breach of contract or warranty), but in no event may such an action be brought more than ten years after the date of substantial completion of the development or improvement.
- Provides that builders may not be held liable in negligence for construction defects unless those defects have caused death, bodily injury, or property damage. (*Aas v. Superior Court*, (2000) 24 Cal. 4th 627.)

This bill would:

- Define construction defects to ensure performance with specified standards.
- Require claimants to provide notice to builders regarding alleged violations.
- Give builders an absolute right to repair alleged defects before a claimant may sue.
- Preserve the right of homeowners to pursue remedies if the repair is not made or is inadequate.

Comments:

According to the authors, this consensus bill represents groundbreaking reform for construction defect litigation. The authors state that the problem of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial adverse consequences for the development of safe and affordable housing. This bill reflects the product of three years of extensive negotiations between builder groups, insurers, the Consumer Attorneys of California, and key legislative leaders and committee staff.

A principal feature of the bill is the codification of a definition of construction defects. For the first time, California law would provide a uniform set of standards for the performance of residential building components and systems. Rather than focusing on the significance of technical deviations from building codes, the bill specifies the standards that building systems and components must meet. Significantly, these standards effectively end the debate over the controversial decision in the *Aas* case, which effectively precluded homeowners from recovering for construction defects unless and until those defects have caused death, bodily injury, or property damage, no matter how imminent those threats may be. Moreover, unlike some existing

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warranty programs, these standards cover all major systems for a substantial period, and are enforceable by subsequent purchasers, not just the original buyer. The bill sets out these standards in detail, organized under non-substantive headings for the benefit of the reader.

The bill provides a floor, but not a ceiling, for the performance of residential structures. In addition to the foregoing minimum standards, the bill provides that a builder may, but is not required to, offer greater protection or longer time periods in its express contract with the homeowners. If a builder offers an Enhanced Protection Agreement, the builder may choose to be subject to its own express contractual provisions.

The bill specifies one, two and four-year periods for the filing of claims for alleged violations of certain standards. Unless a shorter period is specified, no action may be brought to recover for alleged violations more than 10 years after substantial completion, as defined. These time limitations do not apply to any action by a claimant for a contract or express contractual provision.

In a significant departure from existing law, the bill imposes a procedure that a homeowner must follow before bringing suit against a builder. In summary, the homeowner must send a written notice to the builder setting out the nature of the claim. The builder must acknowledge the claim in writing. The builder may then elect to conduct inspection and testing of the alleged defect within a specified period, and must provide certain documentation to the homeowner on request regarding building plans and specifications. Most importantly, the builder may then offer to repair the alleged violation within a prescribed time period. Such an offer to repair must also compensate the homeowner for all applicable recoverable damages. Upon receipt of the offer to repair, the homeowner has a prescribed period in which to authorize the builder to proceed with the repair. The offer to repair must also be accompanied by an offer to mediate the dispute if the homeowner so chooses.

The homeowner is relieved from any further pre-litigation process if the builder fails to acknowledge the claim within the time specified, elects to not go through this statutory process, fails to request an inspection within the time specified, fails to make the offer to repair or otherwise strictly comply with the obligations of the statute within the times specified, or if the contractor performing the repair does not complete the repair in the time or manner specified.

This act is intended to apply to subcontractors and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers and design professionals caused, in whole or in part, a violation of a particular standard as a result of its negligent act or omission or a breach of contract. These persons may assert the affirmative defenses to liability set forth in the bill, as well as common law and contractual defenses as applicable. The bill does not modify current law pertaining to joint and several liability for subcontractors and design professionals that contribute to any specific violation of the construction defect standards set out in the bill.

LEGISLATIVE HISTORY

AB 1700 (Steinberg, Chapter 824, Statutes of 2001) revised the pre-litigation process for construction defect actions between builders and homeowners' associations involving common interest developments with 20 or more units (often referred to as the Calderon process).

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PROGRAM BACKGROUND

N/A

OTHER STATES' INFORMATION

Pending

FISCAL IMPACT

Unknown. The bill would not have a fiscal or programmatic impact on the Department of Consumer Affairs

ECONOMIC IMPACT (IF RELEVANT)

By establishing a mandatory process prior to the filing of a construction defect action, this bill would potentially reduce the costly construction defect litigation and the corresponding impact on California's housing costs.

LEGAL IMPACT (IF RELEVANT)

This bill would establish a mandatory process prior to the filing of a construction defect action. The major component of this process is the builder's absolute right to attempt a repair prior to a homeowner filing an action in court. Builders, insurers, and other business groups are hopeful that this right to repair will reduce litigation.

In addition, the bill would address concerns expressed by homeowners and the Consumer Attorneys of California over the consequences of Aas v. Superior Court, (2000) 24 Cal. 4th 627, which held that defects must cause actual damage or personal injury prior to being actionable in tort.

SB 800's interaction with "Calderon process:"

Existing law, contained in Civil Code Section 1375, provides for a mandatory pre-trial process for construction defect actions involving attached housing. [This process is commonly referred to as the "Calderon process," after its original author, and was substantially amended by AB 1700 of 2001 (Steinberg).]

The Calderon process is a minimum six-month process involving extensive information exchanges and alternative dispute resolution sessions. This bill creates an additional pre-trial process that, even without a repair offer, can last, at the builder's sole option, at least 101 days. The bill provides that to the extent that its provisions are "substantially similar" to the procedures in the Calderon process, compliance with that process is excused. In the near future, interested parties may want to consider giving further attention to the interaction between this bill's process and the Calderon process. This bill's provisions create considerable risk of uncertainty and litigation over what portions of the Calderon process are "substantially similar" to the procedures created by this bill.

APPOINTMENTS

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N/A

SUPPORT/OPPOSITION**Support:**

- Consumer Attorneys of California
- Home Ownership Advancement Foundation
- Personal Insurance Federation of California
- California Building Industry Association

Opposition:

None on record.

ARGUMENTS**Pro:**

According to the authors, this consensus bill represents groundbreaking reform for construction defect litigation. The authors state that the problem of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial consequences for the development of safe and affordable housing. This bill reflects three years of extensive negotiations between builder groups, insurers, the Consumer Attorneys of California, and key legislative leaders and committee staff.

Proponents of this bill argue that:

- This bill would reform construction defect law, thereby promoting safe and affordable residential housing for California.
- This bill would establish a mandatory process prior to the filing of a construction defect action, thereby potentially reducing costly litigation.
- By providing immunity from liability to third-party inspectors, this bill would significantly increase the pool of available inspectors. Supporters note that independent inspections are a useful tool in improving the quality of residential construction; however, there is currently a severe shortage of qualified individuals willing to conduct inspections because of the risk of liability.

Con:

It could be argued that:

- The broad immunity granted to third-party inspectors will reduce the incentives for inspectors to conduct rigorous inspections.

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- Inspector immunity could reduce a homeowner's ability to obtain full recovery as other responsible parties might seek to shift as much responsibility as possible to the immune inspector.

VOTES *Senate Floor: 39-0*

- Assembly Floor: 80-0
- Senate Floor: 33-0 (*Concurrent*)

LEGISLATIVE STAFF CONTACT

Robert Puleo
Department Analyst
324-0260

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| | |
|---------------------------------|------------|
| SENATE RULES COMMITTEE | SB 800 |
| Office of Senate Floor Analyses | |
| 1020 N Street, Suite 524 | |
| (916) 445-6614 | Fax: (916) |
| 327-4478 | |

UNFINISHED BUSINESS

Bill No: SB 800
 Author: Burton (D) and Wesson (D) et al
 Amended: 8/28/02
 Vote: 21

SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR: Not available

SUBJECT: Liability: construction defects

SOURCE: Author

DIGEST: Assembly Amendments delete the Senate version of this bill relating to collector motor vehicles.

The bill now specifies the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

This bill also provides that there is no personal monetary liability on the part of, and no cause of action for damages shall arise against, any person, in any of the specified categories, who is under contract with an

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applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed

CONTINUED

SB 800

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pursuant to the State Housing Law or any rules or regulations adopted pursuant to that law, or to inspect a work of improvement to determine compliance with these plans and specifications, except as specified.

Senate Floor Amendments of 5/21/01 remove the provision which would have excluded collector motor vehicles from the provision that limits the vehicle license fee to \$2.00 annually.

ANALYSIS : Existing law:

1. Provides that a construction defect action may be brought against any person who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property.
2. Provides that an action based on latent defects (defects not apparent from a reasonable inspection) in construction must be brought within four years of discovery of the defect (if the action is based on breach of contract or warranty), but in no event may such an action be brought more than ten years after the date of substantial completion of the development or improvement.
3. Provides that builders may not be held liable in negligence for construction defects unless those defects have caused death, bodily injury, or property damage. (Aas v. Superior Court, (2000) 24 Cal. 4th 627.)

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This bill reforms construction defect law in order to promote safe and affordable residential housing for California. Specifically, this bill:

- 1. Defines construction defects to ensure performance with specified standards.
- 2. Requires claimants to provide notice to builders regarding alleged violations.

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- 3. Gives builders an absolute right to repair alleged defects before a claimant may sue.
- 4. Preserves the right of homeowners to pursue remedies if the repair is not made or is inadequate.

Comments

According to the authors, this consensus bill represents groundbreaking reform for construction defect litigation. The problem of construction defects and associated litigation have vexed the Legislature for a number of years, with substantial consequences for the development of safe and affordable housing. This bill reflects extensive and serious negotiations between builder groups, insurers and the Consumer Attorneys of California, with the substantial assistance of Assemblymember Darrell Steinberg and key legislative leaders and committee staff over the past year, leading to an unusually broad and powerful consensus on ways to resolve these issues.

A principal feature of the bill is the codification of construction defects. For the first time, California law would provide a uniform set of standards for the performance of residential building components and systems.

Rather than requiring resort to contentions about the significance of technical deviations from building codes, the bill specifies the standards that building systems and

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components must meet. Significantly, these standards effectively end the debate over the controversial decision in the Aas case to the effect that homeowners may not recover for construction defects unless and until those defects have caused death, bodily injury, or property damage, no matter how imminent those threats may be. Moreover, unlike some existing warranty programs, these standards cover all major systems for a substantial period, and are enforceable by subsequent purchasers, not just the original buyer. The bill sets out these standards in detail, organized under non-substantive headings for the benefit of the reader.

The bill provides a floor, but not a ceiling, for the performance of residential structures. In addition to the

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foregoing minimum standards, the bill provides that a builder may, but is not required to, offer greater protection or longer time periods in its express contract with the homeowners. If a builder offers an Enhanced Protection Agreement, the builder may choose to be subject to its own express contractual provisions.

The bill specifies one, two- and four-year periods for the filing of claims for alleged violations of certain standards. Unless a shorter period is specified, no action may be brought to recover for alleged violations more than 10 years after substantial completion, as defined in Civil Code of Procedure Section 337.15(g)(2). These time limitations do not apply to any action by a claimant for a contract or express contractual provision.

In a significant departure from existing law, the bill imposes a procedure that a homeowner must follow before bringing suit against a builder. In summary, the homeowner must send a written notice to the builder setting out the nature of the claim. The builder must acknowledge the claim in writing. The builder may then elect to conduct inspection and testing of the alleged defect within a

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specified period, and must provide certain documentation to the homeowner on request regarding building plans and specifications. Most importantly, the builder may then offer to repair the alleged violation within a prescribed period. Such an offer to repair must also compensate the homeowner for all applicable damages recoverable. Upon receipt of the offer to repair, the homeowner has a prescribed period in which to authorize the builder to proceed with the repair. The offer to repair must also be accompanied by an offer to mediate the dispute if the homeowner so chooses.

The homeowner is relieved from any further pre-litigation process if the builder fails to acknowledge the claim within the time specified, elects to not go through this statutory process, fails to request an inspection within the time specified, fails to make the offer to repair or otherwise strictly comply with the obligations of the statute within the times specified, or if the contractor performing the repair does not complete the repair in the time or manner specified.

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This act is intended to apply to subcontractors and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers and design professionals caused, in whole or in part, a violation of a particular standard as a result of its negligent act or omission or a breach of contract. These persons may assert the affirmative defenses to liability set forth in the bill, as well as common law and contractual defenses as applicable. The bill does not modify current law pertaining to joint and several liability for subcontractors and design professionals that contribute to any specific violation of the construction defect standards set out in the bill.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No
Local: No

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8/31/2002

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SUPPORT : (Verified 8/29/02)

Consumer Attorneys of California
Home Ownership Advancement Foundation
Personal Insurance Federation of California
California Building Industry Association

RJG:kb 8/29/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

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SB 800 LEG. HIST. 000344

SB 800 (Burton)

None

File Item # 34

Assembly Floor: 80-0

(AYE: All Republicans)

Senate Judiciary: 5-1

(AYE: Haynes, NO: Ackerman)

Vote requirement: 21

Version Date: 8/28/02

Quick Summary

Sets detailed and specific liability standards for newly constructed housing, 2) establishes a pre-trial process that includes a builder's right to repair an alleged defect, and 3) grants third-party inspectors with immunity from liability.

Digest

Assembly amendments:

Apply to all original home construction the following provisions:

Governs any action against a builder, subcontractor, individual product manufacturer, or design professional, seeking recovery of damages arising out of, or related to deficiencies in, residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction.

Sets a ten-year statute of limitations for construction defect actions, with certain limited exceptions and tolling periods under certain circumstances.

Renders meaningless the court's opinion in Aas v. Superior Court, 24 Cal. 4th 627 (2000), which upheld the longstanding principle that a person can sue in tort if, and only if, he has suffered damages.

Require a builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish certain building components.

Requires certain procedures be followed before filing a construction defect lawsuit. This procedure would provide the builder with a right to attempt a repair of the defect prior to litigation, inspections and exchanges of

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documentation under certain circumstances, and mediation at various points, all pursuant to various timeframes set forth in the bill. The bill would provide that if the builder fails to follow any of the procedures, the homeowner is entitled to proceed with the filing of an action.

Establishes the statutory affirmative defenses, under the principles of comparative fault, for a) unforeseen acts of nature in excess of the design criteria expressed by the applicable building codes, b) a homeowner's unreasonable failure to minimize or prevent damages, c) a homeowner's, or his/her agent or employee, failure to follow recommended or commonly accepted maintenance obligations, d) defects caused by the alterations, ordinary wear and tear, misuse, abuse, or neglect, e) defects barred by the statute of limitations, f) defects subject to a valid release, and g) the extent that a builder's repair was successful in correcting the defect.

State the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

Declare that there is no personal monetary liability on the part of any person who is under contract with an applicant for a residential building permit to check the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law or any rules or regulations adopted pursuant to that law, or to inspect a work of improvement to determine compliance with these plans and specifications.

Require, at the time the sales agreement is executed, that the builder notify the homeowner whether the builder intends to engage in the non-adversarial procedure of this section or attempt to enforce alternative contractual procedures or remedies. If the builder elects to use alternative contractual procedures or remedies in lieu of this section, the election is binding, regardless of whether the builder's alternative contractual procedures or remedies are successful in resolving the ultimate dispute or are ultimately deemed enforceable. If an alternative procedure or remedy includes a right to repair and is deemed unenforceable, nothing in this section shall affect the enforcement of contractual rights to repair that are severable, otherwise enforceable, and no different in any respect from the right to repair contained in this section.

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Define "construction defect" for these purposes as a defect in design, materials, or workmanship that occurs during the original construction of the improvement or in connection with any warranty repair work, and in the case of a common interest development, includes construction or repair work in all common areas.

Background

In 1995, the Legislature enacted SB 1029 (Calderon). That bill set up a 90-day pre-litigation procedure for resolving construction defect claims prior to court action. (Civ. Sec. 1375 [b][2]). That process, referred to as the Calderon process, affects allegations of construction or design defects in common interest developments of 20 units or more. Many believe that this legislation did not have a substantial effect on the time expended in resolving construction defect disputes.

The construction dispute provisions are the result of protracted negotiations among attorneys, contractors, subcontractors and their insurers. All appear to agree that the present process is broken.

This bill proposes a new hybrid form of facilitated dispute resolution that deviates from core practice elements of mediation in general and is likely to significantly drive-up defense costs during the pre-litigation process.

Analysis

This bill would make major changes to the substance and process of the law governing construction defects. It is the product of extended negotiations between various interested parties. Among other things, the bill seeks to respond to concerns expressed by builders and insurers over the costs associated with construction defect litigation, as well as concerns expressed by homeowners and their advocates over the effects of a recent Supreme Court decision that held that defects must cause actual damage prior to being actionable in tort. Aas v. Superior Court, 24 Cal. 4th 627 (2000).

The Personal Insurance Federation argues that this bill will bring some degree of predictability to the dispute resolution process for new construction that occurs after January 1, 2003. Also it may reduce litigation.

Support & Opposition Received

Support: California Building Industry Association, Personal Insurance Federation, California Nurses Association, Congress of California Seniors, Consumer Attorneys of California, Consumer Federation of California.

Opposition: None received.

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Whip Comments

From the perspective of homeowners, it reduces the statute of limitations for various housing components below the 4-year limit for patent defects (defects apparent from a reasonable inspection), pursuant to existing statutory law.

May have some unintended consequences of unnecessarily extending the pre-litigation process that could otherwise be costly to builders, homeowners, subcontractors, and insurers.

From the perspective of builders, subcontractors and insurers, it appears to remove some of the limited immunity from actions for construction defect provided by the recent state supreme court ruling in *Aas v. Superior Court* (2000).





CRUZ M. BUSTAMANTE
Lieutenant Governor
State of California

September 9, 2002

The Honorable Gray Davis
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Davis:

I write to **REQUEST YOUR SIGNATURE** on **SB 800 (Burton, Wesson)**, which would simplify the process of resolving construction defect claims.

This compromise, involving builders, insurance companies and consumer attorneys, will provide homebuyers with a new level of protection, while simplifying and expediting the legal process for builders.

As California continues to grow, the need for reliable order in our building industry becomes increasingly important. SB 800 represents an important step towards accomplishing this goal.

I respectfully request that you sign SB 800 into law.

Sincerely,

CRUZ M. BUSTAMANTE
Lieutenant Governor

cc: The Honorable John Burton
The Honorable Herb Wesson
Mr. Michael D. Pattinson, President, California Building Industry Association
Mr. Robert E. Cartwright, Jr., President, Consumer Attorneys of California

CMB/KM:ms

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SB 800 LEG. HIST. 000349

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California Legislature



ED CHAVEZ
ASSEMBLYMAN, FIFTY-SEVENTH DISTRICT

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CALIFORNIA INDIAN NATIONS
CALIFORNIA WINE
SAN GABRIEL VALLEY
GROUNDWATER CONTAMINATION

September 9, 2002

Honorable Gray Davis
Governor
State of California
State Capitol, First Floor
Sacramento, CA 95814

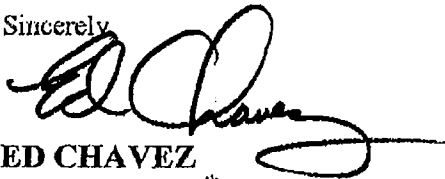
Dear Governor Davis:

I write to request your favorable consideration of Senate Bill (SB) 800 (Burton), which is currently before you. I supported this measure on the Assembly Floor and have heard from many of my constituents supporting this important measure.

SB 800 attempts to resolve some of the most difficult issues relating to construction defects and litigation relating to alleged construction defects. The housing market in Southern California has been very negatively affected by these simmering issues, leading to a virtual halt on construction of lower cost housing options like attached multiple family dwellings. Specifically, SB 800 outlines rights and responsibilities of both homebuilders and homeowners with respect to pursuing litigation related to construction defects.

I thank you in advance for your favorable consideration of my comments and of SB 800. I look forward to working with you in the years to come on other issues of mutual concern.

Sincerely,



ED CHAVEZ
Assemblyman, 57th District

EC:kb

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SB 800 LEG. HIST. 000350



Better Cities – A Better Life

League of California Cities

www.cacities.org

September 11, 2002

Governor Gray Davis
State of California
State Capitol
Sacramento, CA 95814

Attn: Legislative Secretary

RE: **SB 800 (Burton)** Construction Defect Reform,
REQUEST FOR SIGNATURE

Dear Governor Davis:

On behalf of the League of California Cities, I respectfully request that you sign **SB 800 (Burton)**

SB 800 contains a series of significant reforms to the construction defect issue. Due to significant litigation and high insurance premiums, the controversial construction defect issue has limited the construction of attached condominiums over the past decade. This bill enacts detailed and specific standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair defects, and provides third-party inspectors with immunity from liability.

The League has long supported a consensus-based resolution to these issues. The passage of this measure will hopefully increase the production of condominiums, a form of housing which offers the desirable combination of affordability, homeownership, and higher densities.

For these reasons, the League of California Cities respectfully requests that you **SIGN SB 800 (Burton)**.

Sincerely,

Daniel Carrigg
Legislative Representative

cc: Senator John Burton
Mike Gotch, Legislative Secretary, Governor's Office
Tim Coyle, Legislative Director, CBIA

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CALIFORNIA CHAMBER of COMMERCE

September 10, 2002

The Honorable Gray Davis
Governor, State of California
Capitol Building
Sacramento, California 95814

**SUBJECT: SB 800 (BURTON) CONSTRUCTION DISPUTE LITIGATION
REQUEST FOR SIGNATURE**

Dear Governor Davis:

The California Chamber of Commerce requests your **SIGNATURE** of **SB 800 (Burton)**, which reforms the current construction dispute litigation process in an effort to ease California's housing shortage.

California's Housing Shortage Has the Potential to Slow Our Economy.

The UCLA Anderson Forecast stated in September 2000 that California's slow pace of home building presents a growing danger to the state's economic prosperity. According to the Department of Finance, to meet the state's housing needs, between 230,000 and 250,000 units must be built every year - nearly twice the number that was built annually during the last decade. The housing shortage has resulted in California having eight of the ten least affordable housing markets in the nation. The median home sales price in California is over \$100,000 higher than the national median home sales price. In some areas of the state, average families are unable to buy a house. For example, fewer than one-third of families in the greater Santa Barbara metropolitan area can afford the median priced home, which is nearly \$450,000. The California Chamber is concerned that the current housing crisis poses a significant threat to California's economy.

One Of The Biggest Obstacles To Fulfilling California's Housing Needs Is Expensive Construction Dispute Litigation.

For every \$1 paid to homeowners in settlement of claims, insurers must pay \$2-\$5 in defense costs. These high defense costs for construction dispute litigation have driven many insurers from the California market. Construction insurance is 200 percent to 500 percent more expensive in California than the rest of the country. The high premiums for insurance prevent many builders from building new homes, and the homes that are being built must reflect the cost of these high premiums, resulting in higher prices. As a result, too few homes are being built to keep up with the demand, and the ones that are being built are out of reach for many hard working Californians.

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SB 800 (Burton)
September 10, 2002
Page 2

SB 800 Attempts To Ease California's Housing Shortage By Reforming The Current Construction Dispute Litigation Process.

SB 800 creates a new process for resolving disputes involving homeowners and homebuilders over problems that may arise as a result of home construction. SB 800 replaces California's current "sue first" process with one that calls for repairs to be made by the homebuilder. Specifically, SB 800 includes a definition of what constitutes a construction defect, gives homebuilders a right to repair problems or defects before the individual sues and provides for the mediation of disputes that may arise. Under the SB 800 reform, not only will problems be fixed but the number of lawsuits will decline, which will lower insurance costs and enable builders to build more affordable housing units in California.

For these reasons, the California Chamber of Commerce requests your **SIGNATURE** of SB 800 (Burton).

Sincerely,



Cher Gonzalez
Counsel and Legislative Advocate

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 77



CHAMBER OF
COMMERCE

September 9, 2002

The Honorable Gray Davis
Governor
State Capitol
Sacramento, CA 95814

Re: Request for Signature - SB 800 (Construction Dispute Resolution Reform)

Dear Governor Davis:

I am writing on behalf of the San Jose Silicon Valley Chamber of Commerce to support urgent changes to the construction defect litigation system so that quality condominium and town houses will be built and made available to the workforce in the Bay Area. We urge you to sign SB 800 to allow for an alternative dispute resolution system for construction defects, provide consumer protection for quality housing products, and provide builders and contractors with access to affordable insurance. The current construction defect litigation system has chilled the production of compact housing such as condominiums and townhouses.

Our urban based, regional Chamber is made up of nearly 2,000 Silicon Valley businesses employing some 250,000 people. These firms represent the entire supply chain of commerce that has resulted in the Silicon Valley's economic success. Our member companies tell us they need to operate in communities where affordable housing is available in order to effectively run their businesses, employ local people, and provide goods and services to the global marketplace.

The lack of affordable housing in the Bay Area close to employment centers is presenting an increasingly difficult challenge to the recruitment and retention of a qualified workforce. Lack of housing for vital community employees such as teachers, police, firefighters and other public safety workers is undermining the viability and structure of the community. The current housing crisis is a clear threat to sustaining long-term economic prosperity and quality of life.

Please sign SB 800 to encourage the construction of more affordable housing.

Sincerely,

Jim Cunneen
President & CEO

cc: Sunne McPeak, Bay Area Council

LEGISLATIVE INTENT SERVICE (800) 666-1917





California Building Industry Association

1215 K Street
Suite 1200
Sacramento, CA 95814
916/443-7933
fax 916/443-1960
www.cbia.org

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Building Industry Association of Central California
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Building Industry Association of the Delta
Stockton

Building Industry Association of Kern County
Bakersfield

Home Builders Association of Central Coast
San Luis Obispo

Home Builders Association of Northern California
San Ramon

Home Builders Association of Redwood Coast
Eureka

Building Industry Association of San Diego County
San Diego

Building Industry Association of San Joaquin Valley
Fresno

Building Industry Association of Southern California
Diamond Bar

Building Industry Association of Superior California
Sacramento

Building Industry Association of Tulare/Kings Counties
Visalia

September 3, 2002

Honorable Gray Davis
Governor, State of California
State Capitol
Sacramento, California 95814

RE: SB 800 (Burton) – Request for Signature

Dear Governor Davis:

California homebuilders, represented by the California Building Industry Association (CBIA), request your signature on SB 800 (Burton), a construction dispute resolution reform measure recently approved by the Legislature.

SB 800 creates a new process for resolving disputes involving homeowners and homebuilders over problems that may arise as a result of home construction. SB 800 replaces California's current "sue first" process with one that calls for repairs to be made by the homebuilder. Under the SB 800 reform, not only will problems be fixed but the number of lawsuits will decline, lowering insurance costs and attracting builders of affordable condominiums and townhomes back into California housing markets.

SB 800 includes the following key features:

- a definition of what constitutes a construction defect;
- a right of homebuilders to repair problems or defects;
- means to mediate disputes that may arise; and
- guaranteed protection for homeowners to take their grievances to court if they can't be resolved otherwise.

Indeed, SB 800 represents landmark reform and the cessation of a decade-long conflict between homebuilders and trial lawyers over the problem of construction dispute litigation. After months of negotiations that began earlier this year, SB 800 emerged late in the legislative session as a consensus measure – supported by homebuilders, consumer attorneys and the insurance industry – that was unanimously approved in the Assembly or the Senate just last week. CBIA respectfully requests that you sign SB 800.

Sincerely,

Kimberley Dellinger
Legislative Advocate

cc: Honorable John Burton
Ann Richardson, Office of the Governor

PE - 79

LEGISLATIVE INTENT SERVICE (800) 666-1917



MOY



1225 8th Street, Suite 415
Sacramento, CA 95814
Voice: 916.442.0753 x14
Facsimile: 916.442.7966

Christine Minnehan
Legislative Advocate
cminnehan@housingadvocates.org

17 September 2002

The Honorable Gray Davis
Governor of the State of California
State Capitol
Sacramento, California 95814

Re: Support for SB 800

Dear Governor Davis:

On behalf of our clients, we urge you to sign SB 800

The bill would provide liability standards for newly constructed housing, create a pre-trial process that includes a builder's right to repair an alleged defect, and provide third-party inspectors with immunity from liability.

We urge your signature on SB 800.

Sincerely,

Christine Minnehan

cc: Senator John Burton

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 80



BAY AREA COUNCIL

■ 200 Pine Street, Suite 300
San Francisco, CA 94104
(415) 981-6600
Fax (415) 981-6408
■ <http://www.bayareacouncil.org>

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LORA K. WATTS
President
Pacific Bell

ROBERT D. WORTH
Region President
San Francisco Bay Area
Wells Fargo & Company

Vice Office
SUNNE WRIGHT McPEAK
President & CEO
Bay Area Council

Founded in 1945,
the Bay Area Council
is a business-sponsored
regional public policy organization
which promotes economic prosperity
and quality of life in the Bay Area.

September 4, 2002

The Honorable Gray Davis
Governor
State Capitol
Sacramento, CA 95814

Dear Governor Davis:

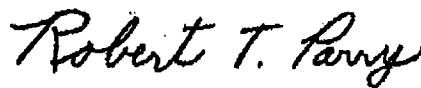
We urge you to sign SB 800 into California law. It's been 15 years since Californians have been able to look forward to affordable housing that is so sorely needed. SB 800 will enable urgent changes to the construction defect litigation system so that quality condominiums and townhomes can be built and made available to the workforce in the Bay Area and statewide, revitalizing the state's beleaguered affordable housing market.

Through giving quality builders the Right to Repair, SB 800 will reduce the need for lawsuits to resolve construction disputes with the particular goal of quickly addressing and fixing on the spot any problems that may arise in a new home. This Right to Repair approach is the correct way to reduce litigation and thereby lower insurance costs. This environment will finally allow quality builders to confidently re-enter the housing market and produce more affordable housing, specifically condominiums and townhomes, the production of which has been chilled because of their being targeted by excessive class-action lawsuits.

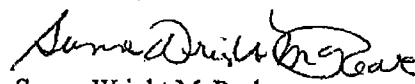
The lack of affordable housing in the Bay Area close to employment centers is presenting an increasingly difficult challenge to the recruitment and retention of a qualified workforce. Lack of housing for vital community employees such as teachers, police, firefighters and other public safety workers is undermining the viability and structure of the community. The current housing crisis is a clear threat to sustaining long-term economic prosperity and quality of life.

Signing this bill will be a major step toward encouraging the construction of more housing affordable to the workforce in California while protecting the homeowner and advancing Smart Growth.

Sincerely,



Robert T. Parry
Chairman



Sunne Wright McPeak
President and CEO

PE - 81

LEGISLATIVE INTENT SERVICE (800) 666-1917





RON ROBERTS

CHAIRMAN
SUPERVISOR, FOURTH DISTRICT
SAN DIEGO COUNTY BOARD OF SUPERVISORS

September 10, 2002

The Honorable Gray Davis
Governor of California
The State Capitol Building
Sacramento, CA 95814

RE: SB 800 (BURTON) - REQUEST FOR SIGNATURE

Dear Governor Davis:

The San Diego County Board of Supervisors respectfully urges you to sign SB 800 (Burton), which would aid in alleviating California's housing crisis by substantially improving existing construction defect law.

As you know, California is currently facing the effects of the state's enormous growth that began years ago and continues to this day. Counties throughout the state are grappling with traffic gridlock and a lack of affordable housing for their residents. San Diego County itself is experiencing an unmatched housing crisis, as new home construction cannot keep pace with its growing population.

The lack of affordable housing, in particular the sharp decline in condominium construction, can be partially attributed to the rise in construction defect litigation. The increased litigation has forced many homebuilders to stop building affordable condominiums and townhouses, which is often the only viable option for first time home buyers. SB 800 answers the overriding concerns expressed by builders, insurers and homeowner advocates and would pave the way for new condominium construction, which is often an integral part to a county's smart growth plan.

Groups often known to be adversaries, including the California Building Industry Association, Consumer Attorneys of California and Personal Insurance Federation have come together to support SB 800.

For these reasons, the San Diego County Board of Supervisors urges you to approve SB 800.

Sincerely,

RON ROBERTS
Chairman
Board of Supervisors

RR/sia

cc: California State Association of Counties
Urban Counties Caucus
San Diego Association of Governments

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 82

COUNTY ADMINISTRATION CENTER • 1600 PACIFIC HIGHWAY, ROOM 335 • SAN DIEGO, CALIFORNIA 92101-2470
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SAN FRANCISCO
TWO EMBARCADERO CENTER, SUITE 200
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TELEPHONE (415) 389-6800

FAX (415) 389-6874

September 10, 2002

The Honorable Gray Davis
Governor of California
State Capitol Building
Sacramento, CA 95814

Attn: Mr. Mike Gotch, Legislative Secretary
Ms. Ann Richardson, Deputy Legislative Secretary

Re: SB 800 (Burton) - Housing: Construction (Support)

Dear Governor Davis:

On behalf of the County of San Diego, I am writing to respectfully urge you to approve SB 800. As you know, this bill would aid in alleviating California's housing crisis by substantially improving existing construction defect law. San Diego County itself is experiencing an unmatched housing crisis, as new home construction cannot keep pace with its growing population.

The lack of affordable housing, in particular the sharp decline in condominium construction, can be partially attributed to the rise in construction defect litigation. The increased litigation has forced many homebuilders to stop building affordable condominiums and townhouses. SB 800 answers the overriding concerns expressed by builders, insurers and homeowner advocates and would pave a new way for new condominium construction, which is an integral part to San Diego County's growth.

For these reasons, the County of San Diego urges you to approve SB 800. Thank you for your consideration of this measure.

Sincerely,


James C. Gross

LEGISLATIVE INTENT SERVICE (800) 666-1917

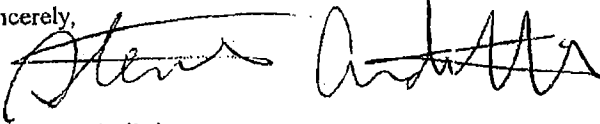


PE - 83

The Honorable Gray Davis
Page 2
September 10, 2002

Thank you for your consideration of our views, and please feel free to have your staff call Sandy Fried or me at (916) 445-9924, if we can provide further information.

Sincerely,



Stephen A. Arditti
Assistant Vice President and Director
State Governmental Relations

cc: Senator Dede Alpert
President Richard C. Atkinson
Senior Vice President Bruce B. Darling
Provost and Senior Vice President C. Judson King
Vice President Michael Drake
Secretary for Education Kerry Mazzoni
Director of Finance B. Timothy Gage

[j:01-02/ab1230.gov.p2.doc slf/cjs]

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 84



CONGRESS OF CALIFORNIA SENIORS

September 6, 2002

Honorable Gray Davis, Governor
State of California
State Capitol Building
Sacramento, CA 95814

Re: SB 800 (Burton/Wesson) – Support

Dear Governor Davis:

On behalf of the Congress of California Seniors, I urge you to sign SB 800 into law. This construction defects bill is the result of lengthy negotiations and enjoys strong bipartisan support. SB 800 passed on a 33-0 vote in the Senate and an 80-0 vote in the Assembly.

SB 800 serves consumers by ensuring that they can recover complete damages for construction defects. The bill specifically defines construction defects so that homeowners can recover for many defects that were barred by the California Supreme Court's Aas decision. Now homeowners will not have to wait for the house to burn down before they can get a defective electrical system repaired.

Second, the bill requires homeowners to comply with a new pre-litigation procedure that gives builders an opportunity to repair defects before a lawsuit is filed. If the defects are not repaired to the homeowner's satisfaction, the homeowner can go to court and retains all his legal rights. We hope you will sign this landmark legislation on construction defects.

Sincerely,

William Powers
Legislative Director

WP:ef

cc: Senator Burton
Assemblymember Wesson

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE - 85

Personal Insurance Federation of California

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS
Progressive • State Farm • Farmers • 21st Century Insurance Group • SAFECO

September 3, 2002

Honorable Gray Davis, Governor
State of California
State Capitol, Governor's Office
Sacramento, CA 95814

STAFF

Dan Dunmoyer
President

Diano Colborn
Vice President of Legislative
& Regulatory Affairs

Michael Gunning
Senior Legislative Advocate

Jerry Davies
Director of Communications

Re: Signature Request on SB 800 (Burton and Wesson)

Dear Governor Davis:

The Personal Insurance Federation of California (PIFC), which represents insurers who provide construction dispute resolution insurance to subcontractors throughout the state of California, **supports SB 800** co-authored by Senator Burton and Assemblyman Wesson.

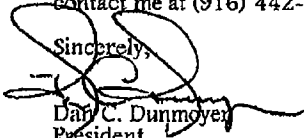
SB 800, among other things, provides for the right of a homebuilder to repair any alleged defects raised by the homeowner. This right to repair is provided as long as the homebuilder responds in a timely manner (120 days) to the homeowner's request for repairs. SB 800 also provides a number of definitions regarding construction defects and actionable items regarding the construction of residential property. Finally, SB 800 makes changes to the statute of limitation of various construction defects if a homebuilder complies with the obligations contained within SB 800.

PIFC supports SB 800, as it will bring some degree of predictability to the dispute resolution process for new construction that occurs after January 1, 2003. It is our hope that as a result of this measure there is less need to litigate construction defects and greater likelihood for homebuilders to respond to consumer complaints. It is also our hope that when a general contractor immediately addresses a homeowner's request, protracted and expensive litigation can be avoided by all parties.

Although SB 800 makes positive changes to California's construction dispute resolution process, PIFC has concerns that the problems surrounding the insuring of *subcontractors* is inadequately addressed by this measure. This concern is great because PIFC members have historically provided construction dispute resolution insurance for numerous subcontractors. This type of coverage has all but dried up in California as a result of California's complex, costly, and cumbersome litigation process. As a result of the fact that SB 800 does not adequately address these challenges, this measure may fail to provide the sufficient certainty and clarity for subcontractor insurers to want to assume greater risk in the construction dispute resolution process. For this reason, one of the goals of this measure -- to make insurance more available and affordable -- may not be achieved for subcontractors.

Notwithstanding these concerns, PIFC supports SB 800 because it is a positive step towards improving the construction dispute resolution process. We are committed to continue to work with all parties to further expand new reforms in this area to provide affordable insurance to subcontractors and affordable housing to California consumers. For this reason, **we urge your signature on SB 800**. If you have any questions regarding our position, please contact me at (916) 442-6646.

Sincerely,


Dan C. Dunmoyer
President

cc: The Honorable John Burton, Author
The Honorable Herb Wesson, Author
The Honorable Darrell Steinberg
Lynn Schenk, Chief of Staff
Mike Gotch, Legislative Affairs Secretary
Richard Figueroa, Deputy Legislative Secretary
Ann Richardson, Deputy Legislative Secretary
Karl Dohn, Policy Director

4.07600.000/02

PE - 86



PETER M. GORMAN
Vice President and Regional Manager
pgorman@allianceai.org

September 5, 2002

The Honorable Gray Davis
Governor
State Capitol Building
Sacramento, CA 95814

Senate Bill 800 (Burton)
Alliance Position: **Veto Requested**

Dear Governor Davis:

I am writing on behalf of the members of the Alliance of American Insurers to respectfully request your veto of SB 800. The Alliance is a national trade association of over 400 property and casualty insurance companies, a few of whom still write coverage for residential construction liability in California.

Despite assertions by the authors, we were **not** invited to participate nor were we involved in negotiations over this bill. The language in this bill first appeared during the last week of session, **giving the public no opportunity to discuss or debate this bill.**

SB 800 would mandate a home warranty program for all new residential construction. While we support this provision, we oppose other provisions in the bill:

1. **SB 800 creates a comprehensive list of actionable defects which go far beyond existing law and restore strict product liability.** By amending these new standards into statute, SB 800 overturns the Aas v. Superior Court (2000) 24th Cal 4th 627 decision limiting construction defect actions to personal injury or economic loss. This was the intent of SB 355 by Sen. Martha Escutia (co-author of SB 800) before it was amended late in the session. In its opinion, the majority of the Court said the Legislature may wish to consider establishing minimal safeguards for repair of life-threatening construction defects. Most of SB 800 is devoted strict standards for moisture barriers for retaining walls, sidewalks and decks, among other things, which will accelerate litigation over mold damage. Homeowners will be able to sue builders on speculative "injury," demanding compensation for cost of repairs and future loss of value. The courts will be flooded with many more lawsuits than will be resolved by the voluntary repair process in Chapter 4 of the bill.



2. **SB 800 fails to address excessive insurer defense costs and losses due to additional named insureds.** SB 800 does not address the need to limit insurers defense obligations imposed by case law on subcontractors to defend general contractors where subcontractors have no fault. This is a major cost driver in commercial general liability policies.
3. **The voluntary repair process is a sham, leaving the door wide open to individual and class action lawsuits following completion of repairs:**
 - Sec. 912(c) mandates builders to respond to written complaints from claimants within 30 days with copies of all plans, specifications grading plans, soils reports, public reports, etc. Not only is this an unreasonable time frame, it provides plaintiffs attorneys with all the ingredients for a "fishing expedition" for class actions against the builder.
 - Sec. 917. By participating in the voluntary process, a builder assumes liability for "**all violations**," even though there has not been any civil determination of liability. This opens up the builder and the insurer for subsequent class actions under the strict product liability doctrine.
 - Sec. 918. Offer to repair must be accompanied by an offer of mediation, giving the homeowner a chance to introduce new demands. This is self-defeating to the voluntary repair procedure.
 - Sec. 921. Repairs must be completed within 120 days of commencement. This is an unreasonably short timetable, designed to create failure. Any failure by the builder to stay on the statutory time schedule triggers tort remedy.
 - Sec. 922. Videotaping of repairs is designed to permit lawsuits over the repair process rather than results, as permitted under the strict liability doctrine.

Our strongest objection to this bill is contained in Section 916(e), which creates a statutory right for a builder to name an insurance carrier "responsible for its contribution to the unmet (construction) method." This leaves **no** authority under the policy contract between the policyholder (builder) and insurer to allow the insurer to conduct its own investigation of the claim to determine coverage.



Page 3 - The Honorable Gray Davis, September 5, 2002 (SB 800)

SB 800, if enacted, will do nothing to restore the insurance market for commercial property and liability coverages. For this reason, we urge you to VETO SB 800.

Sincerely,



Peter Gorman
Vice President and Regional Manager

Copy to Leora Fain, FAIN/PAHOS GOVERNMENTAL ADVOCATES, INC

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 89



**EMERALD
FUND**

The Honorable Gray Davis
Governor
State Capitol
Sacramento, CA 95814

501 Second Street, Suite 212
San Francisco, CA 94107
(415) 777-2914
September 11, 2002

Re: Support for Construction Dispute Resolution Reform – SB 800

Dear Governor Davis:

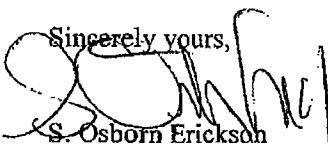
Emerald Fund, Inc., is writing to support urgent changes to the construction defect litigation system so that quality condominium and town houses will be built and made available to the workforce in the Bay Area. We recommend that SB 800 be signed to change policy to allow for an alternative dispute resolution system for construction defects, provide consumer protection for quality housing products, and provide builders and contractors with access to affordable insurance. The current construction defect litigation system has chilled the production of compact housing such as condominiums and townhouses.

The lack of affordable housing in the Bay Area close to employment centers is presenting an increasingly difficult challenge to the recruitment and retention of a qualified workforce. Lack of housing for vital community employees such as teachers, police, firefighters and other public safety workers is undermining the viability and structure of the community. The current housing crisis is a clear threat to sustaining long-term economic prosperity and quality of life.

In concert with other Bay Area Council member companies, Emerald Fund, Inc., has adopted a goal of achieving an adequate housing supply within the region affordable to the full population. Emerald Fund, Inc., actively supports Smart Growth and more efficient land use. However, in order to provide an adequate housing supply of sufficient affordability and to increase the efficiency of land use, the marketplace must encourage construction of higher density attached homes. Unfortunately, the proliferation of inappropriate and groundless construction defect litigation has driven quality builders out of the business. This situation must be remedied to meet the needs of all Californians and to promote a saner, smarter land use pattern.

Passage of these bills with the suggested approach will be a major step toward encouraging the construction of more housing affordable to the workforce in California while protecting the homeowner and advancing Smart Growth.

Sincerely yours,


S. Osborn Ericksen
President, Emerald Fund, Inc.

SOE:am

T:\soe\gd letter 9-11-02

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE - 90

SOLANO-NAPA BUILDERS EXCHANGE

135 CAMINO DORADO NAPA, CA 94558-6213
(707) 255-2515 FAX (707) 255-2749
www.snbe.com

September 9, 2002

The Honorable Gray Davis
Governor, State of California
State Capitol
Sacramento, CA 95814

Re: Support for Construction Dispute Resolution Reform – SB 800

Dear Governor Davis:

The Solano-Napa Builders Exchange is writing to support urgent changes to the construction defect litigation system so that quality condominium and town houses will be built and made available to the workforce in the Bay Area. We recommend that SB 800 be signed to change policy to allow for an alternative dispute resolution system for construction defects, provide consumer protection for quality housing products, and provide builders and contractors with access to affordable insurance. The current construction defect litigation system has chilled the production of compact housing such as condominiums and townhouses.

The lack of affordable housing in the Bay Area close to employment centers is presenting an increasingly difficult challenge to the recruitment and retention of a qualified workforce. Lack of housing for vital community employees such as teachers, police, firefighters and other public safety workers is undermining the viability and structure of the community. The current housing crisis is a clear threat to sustaining long-term economic prosperity and quality of life.

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Passage of these bills with the suggested approach will be a major step toward encouraging the construction of more housing affordable to the workforce in California while protecting the homeowner and advancing Smart Growth.

Very truly yours,,

SOLANO-NAPA BUILDERS EXCHANGE



Erna Stevenson
Executive Vice-President

"HELPING TO BUILD A BETTER TOMORROW SINCE 1948"

PE - 91





September 4, 2002

The Honorable Gray Davis
Governor
State Capitol
Sacramento, CA 95814

Re: Support for Construction Dispute Resolution Reform – SB 800

Dear Governor Davis:

Citation Homes Central is writing to support urgent changes to the construction defect litigation system so that quality condominium and town houses will be built and made available to the workforce in the Bay Area. We recommend that SB 800 be signed to change policy to allow for an alternative dispute resolution system for construction defects, provide consumer protection for quality housing products, and provide builders and contractors with access to affordable insurance. The current construction defect litigation system has chilled the production of compact housing such as condominiums and townhouses.

The lack of affordable housing in the Bay Area close to employment centers is presenting an increasingly difficult challenge to the recruitment and retention of a qualified workforce. Lack of housing for vital community employees such as teachers, police, firefighters and other public safety workers is undermining the viability and structure of the community. The current housing crisis is a clear threat to sustaining long-term economic prosperity and quality of life.

In concert with other Bay Area Council member companies, Citation Homes has adopted a goal of achieving an adequate housing supply within the region affordable to the full population. Citation Homes actively supports Smart Growth and more efficient land use. However, in order to provide an adequate housing supply of sufficient affordability and to increase the efficiency of land use, the marketplace must encourage construction of higher density attached homes. Unfortunately, the proliferation of inappropriate and groundless construction defect litigation has driven quality builders out of the business. This situation must be remedied to meet the needs of all Californians and to promote a saner, smarter land use pattern.

Passage of these bills with the suggested approach will be a major step toward encouraging the construction of more housing affordable to the workforce in California while protecting the homeowner and advancing Smart Growth.

Sincerely,


Peter Au
Chief Financial Officer

PA/lwl

CITATION HOMES
404 Saratoga Avenue, Suite 100
Santa Clara, CA 95050-7082
(408) 995-8000 Telefax: (408) 995-8050

Mailing Address:
P.O. Box 58171
Santa Clara, CA 95052-8171 PE - 92

SCS Development Co.

SB 800 LEG. HIST. 000368

LEGISLATIVE INTENT SERVICE (800) 666-1917





September 4, 2002

The Honorable Gray Davis
Governor
State Capitol
Sacramento, CA 95814

Re: Support for Construction Dispute Resolution Reform – SB 800

Dear Governor Davis:

Santa Clara Valley Housing Group ("SCVHG") is writing to support urgent changes to the construction defect litigation system so that quality condominium and town houses will be built and made available to the workforce in the Bay Area. We recommend that SB 800 be signed to change policy to allow for an alternative dispute resolution system for construction defects, provide consumer protection for quality housing products, and provide builders and contractors with access to affordable insurance. The current construction defect litigation system has chilled the production of compact housing such as condominiums and townhouses.

The lack of affordable housing in the Bay Area close to employment centers is presenting an increasingly difficult challenge to the recruitment and retention of a qualified workforce. Lack of housing for vital community employees such as teachers, police, firefighters and other public safety workers is undermining the viability and structure of the community. The current housing crisis is a clear threat to sustaining long-term economic prosperity and quality of life.

In concert with other Bay Area Council member companies, SCVHG has adopted a goal of achieving an adequate housing supply within the region affordable to the full population. SCVHG actively supports Smart Growth and more efficient land use. However, in order to provide an adequate housing supply of sufficient affordability and to increase the efficiency of land use, the marketplace must encourage construction of higher density attached homes. Unfortunately, the proliferation of inappropriate and groundless construction defect litigation has driven quality builders out of the business. This situation must be remedied to meet the needs of all Californians and to promote a saner, smarter land use pattern.

Passage of these bills with the suggested approach will be a major step toward encouraging the construction of more housing affordable to the workforce in California while protecting the homeowner and advancing Smart Growth.

Sincerely,


Cy Hotovec
Construction Manager

PA/lwl

404 Saratoga Avenue, Suite 100
Santa Clara, CA 95050-7062
Facsimile: 408/985-6050

Mailing Address:
P.O. Box 58171
Santa Clara, CA 95052-8171 ✓

SB 800 LEG. HIST. 000369

PE - 93

(800) 666-1917

LEGISLATIVE INTENT SERVICE





404 Saratoga Avenue, Suite 100
Santa Clara, CA 95050-7062
Fax: (408) 985-6050

September 4, 2002

The Honorable Gray Davis
Governor
State Capitol
Sacramento, CA 95814

Re: Support for Construction Dispute Resolution Reform – SB 800

Dear Governor Davis:

Award Homes Inc. is writing to support urgent changes to the construction defect litigation system so that quality condominium and town houses will be built and made available to the workforce in the Bay Area. We recommend that SB 800 be signed to change policy to allow for an alternative dispute resolution system for construction defects, provide consumer protection for quality housing products, and provide builders and contractors with access to affordable insurance. The current construction defect litigation system has chilled the production of compact housing such as condominiums and townhouses.

The lack of affordable housing in the Bay Area close to employment centers is presenting an increasingly difficult challenge to the recruitment and retention of a qualified workforce. Lack of housing for vital community employees such as teachers, police, firefighters and other public safety workers is undermining the viability and structure of the community. The current housing crisis is a clear threat to sustaining long-term economic prosperity and quality of life.

In concert with other Bay Area Council member companies, Award Homes has adopted a goal of achieving an adequate housing supply within the region affordable to the full population. Award Homes actively supports Smart Growth and more efficient land use. However, in order to provide an adequate housing supply of sufficient affordability and to increase the efficiency of land use, the marketplace must encourage construction of higher density attached homes. Unfortunately, the proliferation of inappropriate and groundless construction defect litigation has driven quality builders out of the business. This situation must be remedied to meet the needs of all Californians and to promote a saner, smarter land use pattern.

Passage of these bills with the suggested approach will be a major step toward encouraging the construction of more housing affordable to the workforce in California while protecting the homeowner and advancing Smart Growth.

Sincerely,

A handwritten signature in cursive script that reads "Stephen E. Schott".

Stephen E. Schott
President

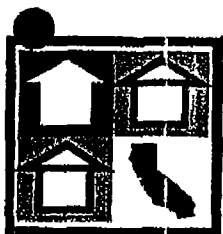
PA/lwl

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 94

September 6, 2002



California
APARTMENT
ASSOCIATION

The Honorable Gray Davis
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: SB 800 (D-Burton) – Construction Defects – Signature Requested

Dear Governor Davis:

On behalf of the members of the California Apartment Association, I am writing to request your signature on SB 800 (Burton), legislation that will change the way construction disputes are resolved in California.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number housing units it needs for its citizens.


By ensuring that construction problems in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes that have been the target of class-action lawsuits. SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing.

The California Apartment Association is an organization of 50,000 rental property owners and managers who are responsible for 2 million rental housing units in the State of California. They respectfully request your signature on this legislation.

Respectfully,

CALIFORNIA APARTMENT ASSOCIATION

By


Debra L. Carlton
Staff Vice President
Policy and Research

980 Ninth Street, Suite 2150 • Sacramento, California 95814-2741 • (916) 447-7881 • (916) 447-7903 FAX
(800) 967-4222 • www.caanet.org



SB 800 LEG. HIST. 000371 •

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE - 95



September 4, 2002

The Honorable Gray Davis
Governor
State Capitol
Sacramento, CA 95814

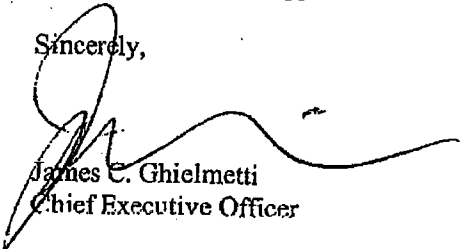
Re: *Construction Dispute Resolution Reform -- SB 800*

Dear Gray:

I am writing to urge you to sign the Construction Defect Senate Bill 800. The passage of this Bill will be a first step toward resolving the affordable housing issues in the State of California.

Thank you for your support.

Sincerely,


James C. Ghielmetti
Chief Executive Officer

/sb

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 96

FROM

(WED) 9.18'02 12:32/S 12:31/NO. 4862120830 P. 2

Window & Door Manufacturers Association
1400 E. Touhy Avenue, Suite 470
Des Plaines, Illinois 60018-3337

Phone 847.299.5200

Fax 847.299.1286

E-mail admin@wdma.com

www.wdma.com

September 18, 2002

Dear Governor Davis:

We are writing to you regarding SB 800 (Burton). Our associations have major concerns about this bill's negative impact on important parts of the building industry. Important interest groups within the building industry did not participate in the crafting of this bill. The actual impact of this legislation may have the opposite effect of its sponsors' intent.

The undersigned include the Window & Door Manufacturers Association and the American Architectural Manufacturers Association, industry associations which represent window and door manufacturers nationwide. Some of the provisions of SB 800 are of great concern to us and to many other leading manufacturers of building products.

Our associations' success depends, in part, upon increasing the supply of affordable housing and reducing the volume of construction defect litigation. Therefore, we share the sponsors' goal. For the reasons discussed below, however, we believe that the bill will have the opposite effect of its sponsors' intent--it will increase the costs of windows and doors in California and, ultimately, the cost of homes. Additionally, due to the vagueness of many of its provisions, we fear that the bill will increase the volume of litigation.

The provisions of the bill do not reflect a consensus within the building industry. The building groups that participated in negotiations which led to this bill were representatives of the home builders only and not representatives of other important segments of the industry that are involved in the home-building process--the subcontractors, suppliers, and manufacturers.

We have a number of concerns with SB 800. One major concern pertains to the "standards" contained in "Chapter 2. Actionable Defects," particularly those pertaining to doors and windows in Sections 896(a)(1), (2), and (3). For example, Section 896(a)(2), provides that a window system is defective if it allows "water to pass beyond, around, or through the window." This provision makes no exception for a window system which is designed in a way to allow water to harmlessly drain outside of the home. This could, potentially, make a window manufacturer liable for every one of its windows installed in California. Moreover, the "standards" set forth in SB 800 make no distinction between the performance of a window or door and the performance of an *installed* window or door. This could make window and door manufacturers responsible for installation defects even when the manufacturers are not involved in the product selection or installation process which is usually the case. All of this would result in a significant cost to California homeowners.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SEP 18 2002 10:30

PAGE 02

SB 800 LEG. HIST. 000373

Section 896 also does not take into account that windows and doors are designed and manufactured to specific performance levels. These products are rated and classified for particular uses. Different product applications require different levels of product performance. Windows and doors are rated by independent certification agencies to insure they meet their specific design specifications. Selecting the appropriate product for the application (which usually is not done by the manufacturer) is crucial. SB 800 ignores all of this and replaces the well-tested, long-standing industry standards with costly, broadly worded and virtually unattainable state-mandated performance standards.

By ignoring the fact that windows and doors are designed and manufactured to specific performance levels and holding manufacturers potentially responsible for the selection and assembly of products, SB 800 would force window and door manufacturers to sell in California only the most costly products with the highest performance levels. For example, windows designed for use in a climate such as Palm Desert would not be suitable in a home in Mendocino. Similarly, the performance level of windows designed for use in a climate such as Mendocino would not be needed in (and would add additional expenses to) a home in Palm Desert. Homeowners in California should not be required to pay for products which have performance levels not needed in their circumstances.


Our associations strongly believe that California law should contain specific statements of expected performance criteria for windows and doors (i.e., the products should meet or exceed the applicable level of performance set forth in industry standards or in the manufacturer's warranty, if greater). The bill should also define the scope of the separate responsibilities of builders, manufacturers, installers, etc. (i.e., product manufacturers should be not responsible for product selection and product installation unless they are directly involved in the process).

We understand that significant players in the construction defect litigation process were part of an agreement that is contained in SB 800. Unfortunately, significant segments of the industry were not--resulting in a bill that protects the economic interests of the builders at the expense of the manufacturers, subcontractors, suppliers and, ultimately, the California consumer.

We would appreciate the opportunity to meet with you to further discuss our concerns. Should you choose to sign SB 800, we urge you to consider the need for legislation next year to address these concerns.

Respectfully,


 AMERICAN ARCHITECTURAL
 MANUFACTURERS ASSOCIATION


 WINDOW & DOOR MANUFACTURERS
 ASSOCIATION

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 98

August 29, 2002



American Farmland Trust

California State Assembly
State Capitol
Sacramento, CA 95814

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically - down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,



JULIA BERRY
CA Legislative Manager

CALIFORNIA - DAVIS OFFICE
260 Russell Boulevard • Suite D • Davis, California 95616
Tel: (530) 753-1073 • Fax: (530) 753-1120
www.farmland.org

National Office 1200 18th Street, NW Suite 808 Washington, D.C. 20036 Tel: (202) 331-7300 Fax: (202) 659-8139

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE - 99

SB 800 LEG. HIST. 000375



**SAN DIEGO
REGIONAL
CHAMBER OF
COMMERCE**

EMERALD PLAZA

402 West Broadway, Suite 1000
San Diego, California 92101-3585
Tel 619.544.1300

www.sdchamber.org

August 29, 2002

RE: SB 800 (Burton) - SUPPORT

Dear Senator:

In May of this year, the average price of a home in San Diego County was \$467,000 and in June, the median price was \$329,000. As a member of the Job-Center Housing Coalition, I am writing to urge you to support Senate Bill 800 (Burton), which among other things defines construction defects, creates a right of homebuilders to repair problems and curbs frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It has been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically, down 84 percent since 1994.

Senate Bill 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems, Senate Bill 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits. In May of this year, the average price of a home in San Diego County was \$467,00 and in June, the median price was \$329,00. Senate Bill 800 is the first step to dealing with a decades-old problem and helping to increase the supply of affordable housing.

For these reasons the San Diego Regional Chamber of Commerce supports Senate Bill 800 and respectfully urges you to do the same.

Sincerely,

A handwritten signature in cursive that reads "Mitch Mitchell".

Eugene Mitchell

Vice President, Public Policy

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE - 100

SB 800 LEG. HIST. 000376



**ORANGE COUNTY
BUSINESS COUNCIL**

2 Park Plaza, Suite 100 • Irvine, California 92614-5904
phone: 949.476.2242 • fax: 949.476.9240 • [url:www.ocbc.org](http://www.ocbc.org)

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Disneyland Resort

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DEVELOPMENT &
INVESTOR RELATIONS**

Mike Noonan

**VICE PRESIDENT,
ECONOMIC &
WORKFORCE DEVELOPMENT**

Paul Garcia, Jr.

**VICE PRESIDENT,
FINANCE & ADMINISTRATION**

Danielle Parziale

August 29, 2002

Members of the Assembly
State Capitol
Sacramento, CA 95814

Re: **SB 800 (Burton) – SUPPORT**

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, the Orange County Business Council (OCBC/Business Council) urges your support of SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. SB 800 represents a breakthrough on this threat to affordable homeownership in California. By ensuring that new-home construction problems are addressed quickly and responsively, SB 800 will shorten wait times for repairs and reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into fewer hassles for homeowners and homebuilders, lower insurance costs all the way around, and more affordable housing.

Among other things, SB 800 will

- Define construction defects;
- Ensure that homebuilders have the opportunity to repair problems;
- Ensure that any "life safety" problems occurring in a home are properly addressed; and
- Curb frivolous claims while preserving the rights of consumers to sue-if builders fail to perform.

SB 800 is the right approach to this issue. Again, we urge your support. Thank you for your consideration.

Sincerely,

Stan Offelle
President & CEO

Julie Puentes
Executive V.P. Public Affairs

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 101

VENTURA AFFORDABLE HOMES, INC.

128 S. California Street, Suite C, Ventura CA 93001
(805)643-8269 • fax (805)643-5823

August 29, 2002

The Honorable Hannah-Beth Jackson
State Assemblymember
Sacramento, Ca.

Dear Hannah-Beth:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely



Lynn L. Jacobs
President

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 103

August 29, 2002



Senator Richard Alarcón
State Capitol
Sacramento, CA 95814

Dear Senator Alarcón:

As a member of the Job-Center Housing Coalition, the Valley Industry and Commerce Association (VICA) is writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

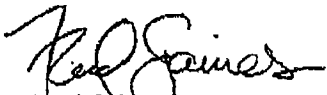
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Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. VICA urges your support for SB 800.

Sincerely,


Fred Gaines
VICA Chairman of the Board


Brad Rosenheim
VICA Land Use Co-Chairman

LEGISLATIVE INTENT SERVICE (916) 686-1571



CONSUMERS FIRST[®] INC.

Nexus between Consumers & Commerce

August 29, 2002

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

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- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,


Jim Conran
President

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 104

P.O. BOX 2346 ■ Orinda, CA 94563 ■ 925.253.1937 ■ 925.253.1359 (Fax)

SB 800 LEG. HIST. 000380

**AMERICAN ASSOCIATION OF
BUSINESS PERSONS WITH DISABILITIES**

Ira Schoenholtz
President

August 29, 2002

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

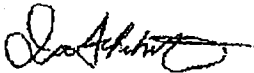
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- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,



Ira Schoenholtz
President

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 105

The **San Diego Group**

Political Strategies & Public Affairs

Phone: (619) 259-VOTE (8683)
Fax: (619) 299-3835
Email: SanDiegoGroup@aol.com
Campaigns.biz
P.O. Box 37404 - San Diego, CA 92137

John Paul Wainio
Director

August 29, 2002

Dear Senator:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically - down 84 percent since 1994.

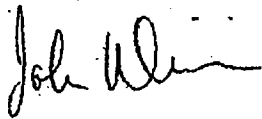
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- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,



John Wainio

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE - 106



Consumers Coalition of California
(a non-profit corporation)

August 28, 2002

The Honorable Senator Debra Bowen
Members of the California State Senate
Sacramento, California

Dear Debra:

Consumers Coalition of California (CCC) is writing to ask you to support the Senate Bill 800 (Burton), "The right to Repair." As we both come from a part of California which has accommodated condos and townhouses, namely Redondo Beach, we are both aware of the development of the area.

Unfortunately, due to the cost of liability insurance, and the eagerness of some attorneys to initiate suits over repairs, the cost of affordable housing no longer exists in the beach areas. CCC sees this as disservice for those in need of housing.

Even the present low interest rates on new home ownership cannot mitigate the problems incurred in a lawsuit. Not only is it time consuming to enter into litigation, it is costly to both parties. The homeowner does not get repairs, until more extensive damage is done by the delays. The builder has no opportunity to repair the problems which may ensue, but the cost to the homeowner and the builder, the time wasted in fighting, can lead to permanent and more expensive repairs, costing the builder and his insurance company unnecessary expense.

It is time to return to common sense, and CCC thanks Senator Burton for the awareness of the problem, and fervently hopes the bill will pass.

Sincerely,

Virginia
Virginia Jarrow, President

(800) 666-1917

LEGISLATIVE INTENT SERVICE



P.O. Box 5276 ♣ Torrance, CA 90510 ♣ Tel: 310/214-3494 or 512/918-1025

PE - 107

TOTAL P. 02



August 29, 2002

VIA FACSIMILE
916/442-3510

The Honorable Brandon Castillo
California State Assembly
State Capitol
Sacramento, CA 95814

RE: SUPPORT SB 800 (Burton)

Dear Assembly Member Castillo:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and town homes it needs, with construction over the last eight years dropping off dramatically -- down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and town homes which have been the target of class-action lawsuits.

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- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,

MICHAEL TOWBES

/bjr

LEGISLATIVE INTENT SERVICE (800) 666-1917





Commercial/Residential
Construction
Project Management
CA Lic# 613860

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

Past legislative efforts to accomplish construction dispute resolution reform have failed as California's housing crisis has worsened. It's been 15 years since California built the number of affordable condominiums and townhomes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction in litigation will translate into lower insurance costs and, thereby, more affordable housing, particularly condominiums and townhomes which have been the target of class-action lawsuits.

Among other things, SB 800 will

- define construction defects;
- create a right of homebuilders to repair problems;
- insure that any "life safety" problems occurring in a home are properly addressed; and
- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,

Gary Polltte 
President
CGC Builders Inc.

3248 Roblar Avenue
Santa Ynez, CA 93460
phone (805) 693/0132
fax (805) 693/0182

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Home Builders Association

OF THE CENTRAL COAST

providing quality housing and communities

August 29, 2002

RE: SB 800 (Burton)

Dear Assembly Member:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

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Sincerely,


Jennifer Phillip
Executive Director

P. O. Box 13010 805-546-0418 : *voice*
2078 Parker Street, Suite 210 805-546-0339 : *fax*
San Luis Obispo, California 93406-3010 www.hbacc.org : *internet*

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August 29, 2002.

Honorable Abel Maldonado
California State Assembly
State Capitol, Room 4015
Sacramento, CA 95814

Via Facsimile (916) 319-2133

Re: SUPPORT SB 800 (Burton)

Dear Mr. Maldonado:

As a member of the Job-Center Housing Coalition, I am writing to urge you to support SB 800 (Burton), a consensus bill to change the way construction disputes are resolved in California and revitalize the state's beleaguered condominium market.

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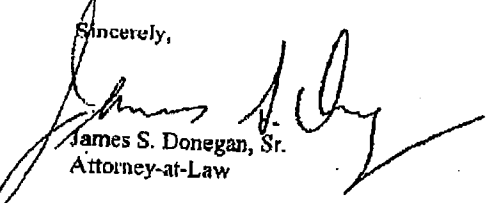
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- Curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

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Sincerely,


James S. Donegan, Sr.
Attorney-at-Law

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PE - 111

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September 10, 2002

Honorable Gray Davis
Governor of California
Sacramento, CA 95814

SENATE BILL NO. 800

Dear Governor Davis:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Burton and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Michael R. Kelly
Principal Deputy

MRK:dil

Two copies to Honorable John L. Burton,
pursuant to Joint Rule 34.

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Insurance Woes Plague Western Home Builders

By ROBERT GAVIN

March 6, 2002 -- Western home builders are curtailing construction plans because they can't find liability-insurance coverage, or are forced to pay hefty premiums, sometimes 10 times more than they paid in previous years.

From California to Colorado, a rise in homeowner lawsuits alleging construction defects has prompted nearly every standard, or regulated, insurer to stop writing policies for residential building. To avoid halting construction altogether, builders have turned to secondary, or largely unregulated, insurers that often charge more for less coverage. In turn, that's exacerbating housing shortages and driving up prices.

The cycle of alleged shoddy construction, lawsuits and then pullbacks by insurers started during the California condominium boom of the 1980s. A litigation boom followed in the 1990s, as trial attorneys and their clients filed claims before the state's 10-year-statute of limitations for construction defects expired. As condo production fell, lawyers filed suits against single-family homes, and looked to neighboring states to expand their practices, builders say. California lawyers say they just followed builders who also expanded to nearby states, and continued to make the same construction mistakes.

Builders largely blame their insurance problems and the slowdown in construction on the construction-defect lawsuits. They are pressing legislatures to make changes they hope will reduce the number of suits and bring insurers back to the contractor-liability market.

Indeed, Arizona and Washington lawmakers are considering proposals requiring homeowners and condo boards to give contractors a chance to fix problems, or offer a cash settlement, before going to court. California lawmakers passed a similar law in 1995, but builders say it has done little to ease their problems. They are backing a proposal that would require a 10-year-warranty on new homes, with repair disputes during the warranty period to go through mediation or arbitration.

Trial lawyers argue the problem isn't lawsuits, but shoddy construction, and that legislators should be cautious about limiting what is too often the only way for homeowners to get problems fixed. "What brings on a lawsuit is a history of problems, the developer is unresponsive, and the [condo] association gets fed up," says Richard Levin, a Seattle lawyer.

Builders concede that, as in any industry, there are bad practitioners. But they say aggressive lawyers have ensnared reputable builders, too, turning minor problems into major lawsuits. "The lawyers are on a massive shopping expedition," says Mick Pattinson, president of Barratt American Inc., a Carlsbad, Calif., builder.

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<http://homes.wsj.com/forms/printContent.asp?url=http%3A//homes.wsj.com/buysell/mortg...> 9/15/2002

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To be sure, lawsuits aren't the only causes of builders' insurance woes. Making the situation worse are the losses insurers absorbed after the Sept. 11 terrorist attacks, and a cyclical downturn in the insurance industry, which has seen investment income that helped keep premiums low fall with the stock market. These broader forces alone likely would have meant higher rates and tighter coverage. But the addition of construction claims has turned an insurance crunch into a crisis.

Whatever the cause, the effects have been dramatic. In California, where trial lawyers were among the first to establish law practices specializing in construction litigation, condo production plunged 84% to 2,945 units in 1999 from 18,691 in 1994, according to the Meyers Group, an Irvine, Calif., real-estate research and consulting firm. During that same period, the median condo price rose 11% to \$161,390, according to the California Association of Realtors in Los Angeles. As for the number of standard insurers in the state, says Marc Kaplan, president of Aspen Insurance Brokers Inc. of La Mesa, Calif., near San Diego, there were 20 to 30 insurers in the late 1980s; now there are no more than four.

According to the Building Industry Association of Washington, 17 insurers have pulled out of the state over the past year, leaving builders without access to a single standard insurer. (The policies of standard insurers are backed by state funds, which guarantee claims if a company goes out of business. Secondary insurers' policies aren't backed by state funds.)

Larry Sundquist, president of Sundquist Homes LLC in Lynwood, Wash., says his liability premiums for condo construction are 12 times higher than last year, although he is getting about a third less coverage -- \$2 million compared with \$3 million. And while condo construction once made up half his business, he says the two projects under way near Seattle will be his last. "You don't want to build something and have everything a lawsuit."

In Nevada, Clark County District Court in fast-growing Las Vegas has seen about 200 construction-defect cases over the past four years. Of those, nearly 170 were filed in the past two years, say court officials. Meantime, no more than three standard insurers are issuing residential-construction policies, compared with at least eight a few years ago, says Jim Wadhams, general counsel for the Las Vegas-based Southern Nevada Home Builders Association. "This is having a terrible effect on a boomtown that needs new housing," he says.

Fred Martin, president of Martin Roofing Co. of Lemon Grove, Calif., near San Diego, had to shut down 20 work sites and lay off 30 workers in October when two insurers suddenly decided not to issue his company liability policies. By the time he found coverage five days later -- at more than triple what he paid the year before -- he had lost a \$200,000 contract.

In Washington, 16 families in a "sweat equity" affordable housing program, in which they build most of their homes themselves, had to stop work for a month after the sponsor couldn't get its liability insurance renewed. Nancy Larsen-Kolakowski, executive director of Whatcom Self-Help Homes of Bellingham, says it contacted, through insurance agents and brokers, at least 60 firms before finding coverage more than four times the cost of the old policy.

Insurance-industry observers say the crisis is unlikely to ease soon, or stay confined to the West. In Florida, largely due to court cases that treated insurers more favorably, four standard insurers continue to write construction policies. But two have pulled out in the past year, and rates have risen much as 500%, says Jo Anne Sturdevant, president of the Florida Home Builders Insurance Agency, an affiliate of the Florida Home Builders Association in Tallahassee.

Jeffrey Masters, a Los Angeles lawyer who advises developers on insurance issues, says contractors could face a difficult insurance market for several years. Legislative changes might help ease the situation, he says, but builders need to take other steps, such as self-insuring and improving quality assurance. They also must get used to the idea that coverage, rather than land costs, will increasingly determine whether a project flies. "It used to be location, location, location," he says. "Now it's insurance, insurance, insurance."

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Legislation to Ease Housing Crisis Increased Production of Affordable Condos Likely to Result

August 31, 2002

SACRAMENTO – The Senate today passed and sent to the Governor landmark legislation overhauling the state's construction dispute laws, paving the way for increased production of affordable condominiums and townhouses and easing the state's chronic housing crisis.

The bill, SB 800 by Senator President Pro Tem John Burton, D-San Francisco, and Assembly Speaker Herb Wesson, D-Culver City, sets forth specific expectations on how new homes will be constructed, gives builders the right to fix any problems that develop before lawsuits can be filed, and protects homeowners by giving them recourse in the event real problems aren't addressed.

By establishing these guidelines and by sharply reducing the amount of frivolous lawsuits, the bill should serve to increase the availability and affordability of insurance to build condominiums and townhomes and thus increase the stock of new housing affordable to first-time homebuyers, said CBIA President Mick Pattinson.

"For more than a decade, it's been all but certain that homebuilders and subcontractors involved in the construction of condominiums and townhomes would be sued," Pattinson said. "As a result, insurance companies have taken a "leave of absence" when it comes to providing coverage for condo and townhome construction, sending production plummeting – down 84 percent in the past seven years.

"The passage of SB 800 will help restore order to the marketplace, encourage insurance companies to offer policies, and allow our industry to meet the need for quality housing that teachers, firefighters, police officers, and other hardworking people can afford to buy."

The language in SB 800 was finalized just this week after months of negotiations between CBIA, trial lawyers, and top legislative leaders, who all agreed that the state's growing housing affordability crisis would never be solved unless builders could resume widespread production of land-efficient and affordable condominium housing. For most of the past decade, state officials say homebuilders have built nearly 100,000 units a year fewer than needed to meet the state's growing population.

Given California's high land costs and a growing amount of land that's off-limits for development, higher-density development is the only way to produce housing that is affordable in many urban areas of the state.

The Senate passed the bill today on a vote of 33-0. It cleared the Assembly on Thursday by a vote of 74-0.

SB 800 includes the following key reforms:

- It gives homebuilders the absolute right to repair a problem. Today, homeowner associations typically file lawsuits without giving homebuilders an opportunity to inspect purported problems and make repairs, if necessary.
- By defining in statute how a newly built home should function, it sets a high standard of quality for homeowners and, for homebuilders, a guard against frivolous lawsuits.
- It assigns maintenance duties to homeowners and response and repair duties to homebuilders.
- And, while it allows homeowners to take unresolved grievances to court, SB 800 creates opportunities for mediating disputes with homebuilders first as a way to limit lawsuits.

"SB 800 protects both homeowners and homebuilders, and is one of the most significant housing reforms to make it through the Legislature in many years," Pattinson said. "Prospective homebuyers can thank Senator Burton, Speaker Wesson, Senator Joe Dunn, Assembly Member John Dutra, and

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Assembly Member Darrell Steinberg, who were the key legislative leaders in forging this historic compromise. I know my fellow builders and I are eager to roll up our sleeves and build more housing for the people of California."

The California Building Industry Association is a statewide trade association representing nearly 6,000 businesses – homebuilders, remodelers, subcontractors, architects, engineers, designers, and other industry professionals. The homebuilding industry is one of the leading segments of the state's economy and CBIA-member companies directly employ almost 500,000 people.

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This story is taken from [politics](#) at sacbee.com.

Financial-privacy bill hits major hurdle

But Davis gets a tougher measure on driver's licenses for immigrants.

By Kevin Yamamura and Jim Sanders -- Bee Staff Writers - (Published September 1, 2002)

On a whirlwind final night of session Saturday, state lawmakers blocked a high-profile financial-privacy proposal while they sent other measures on immigrant driver's licenses and housing construction defects to Gov. Gray Davis.

One of the most heavily lobbied bills of the two-year session, SB 773 would have blocked financial companies from sharing a consumer's personal information without permission in most cases.

The measure died last year on the final night of session, but a renewed effort this summer on the part of its author, Sen. Jackie Speier, D-Hillsborough, breathed new life into the proposal.

On Saturday, the Assembly treated SB 773 like a pingpong ball. In an initial vote, the bill fell short of passage. Then Assemblyman John Dutra, D-Fremont, hijacked the measure, inserting business-friendly amendments that allowed companies to share information with related affiliates without requiring a customer's permission.

Dutra and other Assembly lawmakers touted the amended version as still the strongest privacy measure in the nation, while consumer groups and liberal Democrats charged that the bill had been gutted.

The amended bill was on hold in the Assembly late Saturday.

"It's been a circus and a charade," said a disappointed Speier. "Consumers will continue to be vulnerable in this state."

On other key legislation Saturday:

* The Senate sent a compromise measure to Davis that would enable as many as one million undocumented immigrants to obtain California driver's licenses if they pass criminal background checks.

Lawmakers previously sent a separate proposal to Davis, but the Democratic governor demanded changes, including a battery of checks to ensure that license recipients are not criminals.

After days of negotiating with Davis, senators Saturday approved a second measure that would



require license applicants to submit fingerprints that would be used to determine any past criminal involvement.

The legislation applies only to undocumented immigrants who are not yet citizens or permanent residents but have filed citizenship papers with the federal government.

SB 804 would prohibit the state from issuing licenses to felons or those facing a conviction for serious crimes, such as large drug transactions or terrorist plots.

Proponents assert that issuing driver's licenses would make California streets safer because undocumented immigrants would be able to purchase insurance and receive training.

Some senators on Saturday anguished over SB 804. While they say it is discriminatory and unfair, they want undocumented immigrants to obtain licenses.

Sen. Deborah Ortiz, D-Sacramento, said SB 804 treats immigrants "as second-class citizens. But right now, they're not even second-class citizens."

The Senate passed the bill on a 25-8 vote to send it to Davis, who has no stated position on the bill.

* The Senate passed a last-minute measure exempting small-scale car dealers -- including the bill's author, Sen. Maurice Johannessen -- from a new law that requires dealers to post more expensive surety bonds.

The bill, SB 2073, previously set up a grant for short-line railroads. But Democratic lawmakers Wednesday waived deadline rules, allowing Johannessen to gut the bill and insert the exemption.

Johannessen provided the lone Republican vote for the budget in June.

The Redding lawmaker said the increased bond requirement was unfair to small-car hobbyists, such as himself, who collect and purchase limited numbers of vehicles each year. Critics called the last-minute move a special-interest exemption.

The Senate voted 24-5 in favor of the measure.

* A long-discussed bill that could spark housing construction went to Davis on Saturday.

SB 800 by Senate leader John Burton, D-San Francisco, and Wesson, D-Los Angeles, enables builders to fix construction defects before homeowners can sue.

The bill is intended to encourage more insurers to cover builders of apartments in California.

The Senate passed the measure on a 33-0 vote.

* Drivers who have carried insurance for at least three years would receive a policy discount under a bill sent to the governor, but consumer groups say that it would unfairly burden the poor.

State Insurance Commissioner Harry Low plans to implement rules that would let insurers consider a driver's insurance past -- dubbed "persistence" -- only when customers renew their policy with the same company.

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SB 689 would expand that policy by enabling drivers to receive a persistence discount from any insurer, not just their current one. Proponents say the measure would increase competition and lower prices for most drivers.

But Doug Heller, of the Foundation for Taxpayer and Consumer Rights, said it would create another barrier to low-income drivers seeking insurance for the first time. He said companies would offset discounts to long-term policyholders by charging higher rates for drivers who have never had coverage.

SB 689 passed the Senate 30-0.

* AB 669, allowing creation of a 311 non-emergency telephone system, was sent to the governor. The Assembly voted 68-7 to concur in amendments.

The measure, by Assemblyman Robert Hertzberg, D-Sherman Oaks, would permit local governments to operate such a phone system in hopes of reducing 911 calls for non-emergency police, fire and other services.

Hertzberg said 20 percent to 80 percent of calls received by 911 systems are not emergencies.

* AB 2240, giving courts greater latitude to overturn paternity judgments, was sent to the governor. The Assembly voted 46-16 to concur in amendments.

The bill sets conditions under which a man who did not initially challenge an allegation of paternity, but later discovered he did not father the child, could challenge a judge's paternity order and sue the biological father for financial relief.

Regardless of DNA results, however, a court would not be obligated to overturn a paternity judgment if doing so would not be in a child's best interest.

* AB 2747, proposing tax credits designed to encourage Hollywood studios to film in California, died Saturday in the Senate Appropriations Committee.

The measure would have given studios a tax credit of up to 15 percent for wages paid to film a motion picture, excluding salaries over \$200,000.

* AB 634, regarding mandatory kindergarten attendance, was sent to the governor. The Assembly concurred in amendments, 41-20.

The legislation would prohibit children between the ages of 5 and 6 from withdrawing from kindergarten if they have attended classes for at least 30 days during the school year.

Currently, children are not compelled to attend classes until the first grade. Many parents send their kindergarten-age children to school occasionally -- not daily -- which can confuse them and disrupt the pace of education, AB 634's supporters say.

About the Writer

The Bee's Kevin Yamamura can be reached at (916) 326-5542 or kyamamura@sacbee.com.

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<http://www.sacbee.com/content/politics/v-print/story/4224156p-5245087c.html>

9/15/2002

Oakland Tribune

Bill seeks to offer builders relief Legislation could cut home-defect lawsuits

Wednesday, September 04, 2002 - A bill aimed at spurring townhouse development by sharply reducing friction between contractors and homeowners awaits final approval by Gov. Davis this week after winning unanimous legislative support.

Davis spokesman Russ Lopez said the governor hasn't taken a position on the bill. Davis has until Sept. 30 to sign it.

The bill, SB 800, hands developers a major victory -- the right to repair construction defects before homeowners can file a lawsuit.

The legislation, which would take effect Jan. 1, is being hailed as a reasonable compromise by builders and the lawyers who sue them.

The bill would affect new homes sold after Jan 1, 2003. New homes would be covered for a period of 10 years. Builders still would be responsible to subsequent buyers within the first 10 years.

The construction industry maintains that many builders don't know homeowners are dissatisfied or having problems with their home until they are hit with legal papers. Attorneys representing homeowners typically discourage builder initiated repairs once a suit is under way.

But the bill also delivers significant safeguards for homeowners in the form of repair deadlines. Builders must respond to a written complaint within 14 days and have an additional 14 days to schedule and carry out an inspection. A set time line for concluding repairs was omitted. Lawmakers said the bill needed flexibility to allow for complex repairs without breaking a deadline.

"We didn't want this designed so that the process could be dragged out. This is designed to get problems fixed quickly," said Kimberley Dellinger, legislative advocate for the California Building Industry Association.

The bill, introduced by Senate President Pro-Tem John Burton, (D-San Francisco) incorporates some elements from a similar bill proposed by Assemblyman John Dutra (D-Fremont).

Dutra's legislation was more friendly to the building industry but was blocked by trial lawyers. Dutra, a former real estate investor, said he introduced the legislation four years ago.

Dutra said the current system -- one of lengthy construction defect lawsuits doesn't benefit consumers or builders.

"There's a good many projects where the lawsuit takes five years to resolve and the money doesn't reach the homeowners. ... At the end of the day, the money went to attorney's fees and lawyers pockets -- not into the repairs."

The building industry argues that attached housing -- typically condominiums and townhouses -- are particularly subject to litigation because homeowner associations inherit liability for defects from builders 10 years after construction. Builders accuse lawyers of trolling 9-year-old complexes for clients -- warning homeowner associations that they could be sued by members if they don't investigate all possible defects and sue.

The sheer volume of lawsuits has driven up the cost of insuring attached housing to the point where few such projects are being built in California.

<http://www.oaklandtribune.com/cda/article/print/0,1674,82%7E10834%7E837294,00.html> 9/15/2002

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"You've got a situation that virtually every development with shared walls results in litigation," said Candysse Miller, spokeswoman for the Insurance Information Network of California. "Ultimately, those costs will be borne by insurance. There is no way to offer that product in a way that makes fiscal sense."

Reports by the University of California, Berkeley's Fisher Center for Real Estate and the Harvard University Joint Center for Housing Studies mentioned demographics, consumer preference, changes to tax laws as well as the high cost of insurance as limiting multifamily construction.

The bill would require builders to repair defects. A homeowner could reject the builder's initial contractor and request a list of three alternate contractors to make repairs. Homeowners could also accept a cash settlement from the builder in lieu of repairs, but the developer would then be released from responsibility.

Marc Albert can be reached at (510) 208-6414 and malbert@angnewspapers.com.

NEWS ANALYSIS; Term Limits Hinder Legislative Diligence; Capitol: The session ends on a green note as lawmakers' inexperience and special interest money color the results.

The Los Angeles Times; Los Angeles, Calif.; Sep 2, 2002; DAN MORAIN;

Abstract:

Sometimes, the procedure was used to insert language that had been months in the works, as with SB 800, negotiated by Assemblyman Darrell Steinberg (D-Sacramento). The bill forged a compromise between builders and trial lawyers to establish new guidelines governing lawsuits over construction defects. Steinberg hopes the measure, once signed by Gov. [Gray Davis], will help spur construction of more affordable housing.

The Assembly initially approved Sher's version of the bill Tuesday night, then rescinded its action. Modesto-area lawmakers wanted to amend it to ensure that it would cover a trash-burning power plant in their hometown operated by Covanta Energy of New Jersey, even though garbage combustion does not typically fall within the definition of renewable energy. Once amended, the bill was sent on its way. Davis has said he will sign the measure.

[Dean Florez] presided over more than 100 hours of early summer hearings into the Davis administration's failed \$95-million computer software contract with Oracle Corp.--capped by a revelation that shortly after the deal was consummated, an Oracle lobbyist handed a \$25,000 check to a Davis aide who worked on the matter.

Full Text:

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In the building where the biggest issues facing California are weighed, inexperience was evident, campaign money was ever-present and decisions important and petty emerged from the chaos that marked the close of the Legislature's two-year term.

When all actions are tallied, the production of the session that ended Sunday shortly past midnight likely will match that of recent years. There were bills on vital issues ranging from school construction and renewable energy to water delivery, recycling and mass transit. But to Capitol veterans, the scene seemed haphazard, rushed, increasingly partisan and perhaps overly influenced by special interests.

"Everybody here is on a learning curve," said Assemblyman Bill Leonard (R-San Bernardino), serving out his 24th and final year in the Legislature.

Four years ago, lawmakers elected with Gov. Gray Davis reveled in a \$13-billion budget surplus. There was so much money that they were able to expand health care for poor people, give public school teachers big raises, provide college grants to all needy and deserving high school graduates, rebuild aging freeways and cut taxes.

As Davis and most of the Legislature run for reelection, lawmakers find themselves staggering, hit first by the energy crisis that dominated 2001, then by the constraints of a record budget shortfall this year of nearly \$24 billion.

"Liberals are frustrated. Conservatives are angry. Everybody is cranky," said outgoing Assemblyman Kevin Shelley (D-San Francisco).

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LIS - 20e

SB 800 LEG. HIST. 000399

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Times staff writers Carl Ingram and Nancy Vogel contributed to this report.

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Opinion EDITORIALS



Editorial: Fix, don't sue

New approach seeks construction defect cure

Sacramento
Published 2:11 a.m. PDT Wednesday, September 4, 2002

When it comes to finding a new townhouse, demand far outstrips supply. A survey in Los Angeles and Orange counties found a grand total of one new townhouse that buyers hadn't quickly snatched up.

Townhomes are affordable and appealing options for everyone from new couples to retirees -- or would be if any were being built. But few are, largely because of the high cost of insurance to cover potential lawsuits once buyers move in. Whether one thinks the root problem is shoddy construction or greedy lawyers, it's a problem that pushes the housing market ever further out of reach. Fortunately, this is one piece of the housing problem that may finally be answered.

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Today's system doesn't work for either side. Residents can't sue until the defect

Editorial: A lamentable two-fer

Editorial: Folsom and Mr. Fish

Editorial: Hot enough for you?

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Editorial Notebook: My favorite summer movie

Editorial: The Gray ski

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Contact: Nicole Mahrt
(916) 442-7617

**CONSUMERS WIN WITH CONSTRUCTION DEFECT BILL
But measure won't solve problems in construction liability market**

Sacramento, CA, August 28, 2002 - An historic accord reached to reduce the number of construction dispute lawsuits in California will give consumers new remedies but it will not attract more insurers into the state's construction liability market, says the American Insurance Association (AIA).

"After a year of intense negotiations, the plaintiff's bar and the building community have reached a compromise," said Mark Sektnan, AIA assistant vice president for state affairs. "This bill will establish uniform definitions of construction defects and give homeowners and builders the opportunity to fix any defects before lawsuits are filed."

SB 800, authored by Senate pro Tem John Burton (D-San Francisco) and Speaker Herb Wesson (D-Culver City) establishes specific definitions of construction defects. This reform will give homeowners a standard of expectations for the construction of their home. Builders, subcontractors, designers and insurers will have a specific standard to build and repair by. This bill requires homeowners to give notice to their builder if they discover defects. Once notified, builders will then have the right to repair any alleged defect within a specified amount of time. Homeowners will have the right to pursue litigation if the repairs are not made or are found inadequate.

"Giving developers the right to repair is a win for consumers," said Sektnan. "Homeowners will get what they want - a house that works."

Despite the new remedies for homeowners, SB 800 will not solve California's affordable housing problem or improve the state's construction liability market.

"While SB 800 will repair homes and potentially reduce litigation, this bill does not provide any direct incentives for insurers to return to this market," said Sektnan. "According to the California Department of Housing, we need to build 255,000 new houses every year. Many of those in need of housing are moderate-income Californians who cannot afford the \$300,000 median price of a home. In spite of this dramatic need, the construction of attached affordable housing has slowed. One of the deterrents to building affordable housing is higher liability insurance costs which can add up to \$7,000 to the price of a new home. Until the unpredictability of construction liability costs are solved, insurance for builders will continue to be scarce and expensive."

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http://www.aiadc.org/outbound/pubaffairs/PA_7833_5182.htm

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"We look forward to working with legislators when they return in January 2003 to address the major issues faced by insurers which continue to make insurance coverage unaffordable and inaccessible for contractors," concluded Sektan.

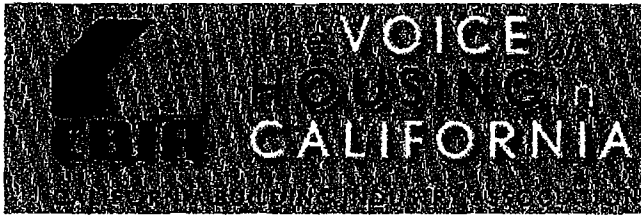
Yesterday, the Assembly Judiciary Committee approved SB 800 on a bi-partisan vote of 12 to 0. The bill now moves to the Assembly floor for a vote by all 80 members of the California State Assembly.

###

The American Insurance Association represents more than 412 major insurance companies that provide all lines of property and casualty insurance and write more than \$87 billion annually in premiums. The association is headquartered in Washington, D.C. and has representatives in every state. All AIA press releases are available at www.aiadc.org.

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Press Releases

**Legislation to Ease Housing Crisis
Increased Production of Affordable Condos Likely to Result**

August 31, 2002

SACRAMENTO – The Senate today passed and sent to the Governor landmark legislation overhauling the state’s construction dispute laws, paving the way for increased production of affordable condominiums and townhouses and easing the state’s chronic housing crisis.

The bill, SB 800 by Senator President Pro Tem John Burton, D-San Francisco, and Assembly Speaker Herb Wesson, D-Culver City, sets forth specific expectations on how new homes will be constructed, gives builders the right to fix any problems that develop before lawsuits can be filed, and protects homeowners by giving them recourse in the event real problems aren’t addressed.

By establishing these guidelines and by sharply reducing the amount of frivolous lawsuits, the bill should serve to increase the availability and affordability of insurance to build condominiums and townhomes and thus increase the stock of new housing affordable to first-time homebuyers, said CBIA President Mick Pattinson.

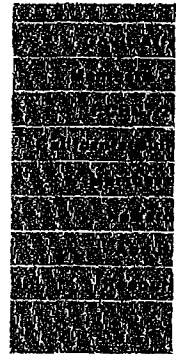
“For more than a decade, it’s been all but certain that homebuilders and subcontractors involved in the construction of condominiums and townhomes would be sued,” Pattinson said. “As a result, insurance companies have taken a “leave of absence” when it comes to providing coverage for condo and townhome construction, sending production plummeting – down 84 percent in the past seven years.

“The passage of SB 800 will help restore order to the marketplace, encourage insurance companies to offer policies, and allow our industry to meet the need for quality housing that teachers, firefighters, police officers, and other hardworking people can afford to buy.”

The language in SB 800 was finalized just this week after months of negotiations between CBIA, trial lawyers, and top legislative leaders, who all agreed that the state’s growing housing affordability crisis would never be solved unless builders could resume widespread production of land-efficient and affordable condominium housing. For most of the past decade, state officials say homebuilders have built nearly 100,000 units a year fewer than needed to meet the state’s growing population.

Given California’s high land costs and a growing amount of land that’s off-limits for development, higher-density development is the only way to produce housing that is affordable in many urban areas of the state.

The Senate passed the bill today on a vote of 33-0. It cleared the Assembly on Thursday by a vote of 74-0.



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LIS - 21b

SB 800 includes the following key reforms:

- It gives homebuilders the absolute right to repair a problem. Today, homeowner associations typically file lawsuits without giving homebuilders an opportunity to inspect purported problems and make repairs, if necessary.
- By defining in statute how a newly built home should function, it sets a high standard of quality for homeowners and, for homebuilders, a guard against frivolous lawsuits.
- It assigns maintenance duties to homeowners and response and repair duties to homebuilders.
- And, while it allows homeowners to take unresolved grievances to court, SB 800 creates opportunities for mediating disputes with homebuilders first as a way to limit lawsuits.

"SB 800 protects both homeowners and homebuilders, and is one of the most significant housing reforms to make it through the Legislature in many years," Pattinson said. "Prospective homebuyers can thank Senator Burton, Speaker Wesson, Senator Joe Dunn, Assembly Member John Dutra, and Assembly Member Darrell Steinberg, who were the key legislative leaders in forging this historic compromise. I know my fellow builders and I are eager to roll up our sleeves and build more housing for the people of California."

###

The California Building Industry Association is a statewide trade association representing nearly 6,000 businesses - homebuilders, remodelers, subcontractors, architects, engineers, designers, and other industry professionals. The homebuilding industry is one of the leading segments of the state's economy and CBIA-member companies directly employ almost 500,000 people.

[Helping Californians achieve the dream of homeownership since 1943]

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Modesto Bee

September 12, 2002, Thursday, ALL EDITION

SECTION: LOCAL NEWS; Pg. B6

LENGTH: 302 words

HEADLINE: SENATE BILL 800 PROVIDES BETTER APPROACH TO CURE CONSTRUCTION DEFECTS

BODY:

When it comes to finding a new townhouse or condominium, demand far outstrips supply. A recent survey in Los Angeles and Orange counties found a grand total of one new townhouse that buyers hadn't quickly snatched up. Townhomes are affordable and appealing options for everyone from new couples to retirees -- or would be if any were being built. But few are, largely because of the cost of insurance to cover potential lawsuits once buyers move in. Whether one thinks the root problem is shoddy construction or greedy lawyers, it's a problem that pushes the housing market ever further out of reach. Fortunately, this is one piece of the housing problem that may have finally been answered.

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Los Angeles Times

September 2, 2002 Monday Home Edition

SECTION: California Metro; Part 2; Page 1; Metro Desk

LENGTH: 1469 words

HEADLINE:

NEWS ANALYSIS;

Term Limits Hinder Legislative Diligence;

Capitol: The session ends on a green note as lawmakers' inexperience and special interest money color the results.

BYLINE: DAN MORAIN, TIMES STAFF WRITER

DATELINE: SACRAMENTO

BODY:

In the building where the biggest issues facing California are weighed, inexperience was evident, campaign money was ever-present and decisions important and petty emerged from the chaos that marked the close of the Legislature's two-year term.

When all actions are tallied, the production of the session that ended Sunday shortly past midnight likely will match that of recent years. There were bills on vital issues ranging from school construction and renewable energy to water delivery, recycling and mass transit. But to Capitol veterans, the scene seemed haphazard, rushed, increasingly partisan and perhaps overly influenced by special interests.

"Everybody here is on a learning curve," said Assemblyman Bill Leonard (R-San Bernardino), serving out his 24th and final year in the Legislature. Four years ago, lawmakers elected with Gov. Gray Davis reveled in a \$13-billion budget surplus. There was so much money that they were able to expand health care for poor people, give public school teachers big raises, provide college grants to all needy and deserving high school graduates, rebuild aging freeways and cut taxes.

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Times staff writers Carl Ingram and Nancy Vogel contributed to this report.

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August 30, 2002 Friday Home Edition

SECTION: California Metro; Part 2; Page 8; Metro Desk

LENGTH: 1126 words

HEADLINE: The State;

Ban Sought on Execution of Retarded;
Capitol: Senate OKs a bill to implement ruling by U.S. high court. Foes call it a clever attempt to ensure that the death penalty is never carried out in California.

BYLINE: CARL INGRAM and MIGUEL BUSTILLO, TIMES STAFF WRITERS

DATLINE: SACRAMENTO

BODY:

Rejecting charges that it would weaken the death penalty in California and set convicted killers free, the state Senate approved a bill Thursday that would carry out the U.S. Supreme Court's decision exempting mentally retarded murderers from execution.

Passage followed an impassioned debate in which supporters of the bill praised it as a sensible way to implement the court decision. But opponents alleged that the measure was a clever attempt by foes of capital punishment to ensure that the death penalty would never be applied in California again.

"I guarantee you that every single murderer ... is suddenly going to become mentally retarded, because it is a way to escape the ultimate penalty of death," warned Sen. Jim Battin (R-La Quinta). Senate President Pro Tem John L. Burton (D-San Francisco), a lifelong opponent of the death penalty, vigorously defended the bill, his voice filing the chamber with a thunderous roar that he had not used for years.

At one point, **Burton** scolded Republicans who said the bill would weaken capital punishment in the state, noting that two of his closest friends, former Mayor George Moscone of San Francisco and labor leader Dow Wilson were murdered.

"Don't tell me about revenge. Don't tell me about an eye for an eye. I know that stuff... I know what people feel," **Burton** boomed. Even so, he said, he still opposes the death penalty.

Under the bill, mentally retarded defendants no longer would be executed at San Quentin for first-degree murder with special circumstances; they would be locked behind bars for the rest of their lives with no parole.

Burton called the bill a workable response to the court ruling that would establish a judicial process to determine whether an adult accused of first-degree murder did, in fact, have the mental age of a child and was incapable of

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forming an intent to kill someone or of understanding the consequences.

In its June ruling, the Supreme Court said putting a mentally retarded defendant to death violated the Constitution's prohibition against cruel and unusual punishment. The court left it to the states to determine which criminals were mentally retarded, including murderers already on death rows.

Burton and Assemblywoman Dion Aroner, a liberal Democrat from Berkeley who introduced the bill (AB 557), said it was unknown how many people on California's death row might qualify as mentally retarded. But **Burton** said he believed it was no more than a few.

On a partisan 23-11 vote, two more than needed for approval, Democrats overwhelmed Republicans and sent the bill to the Assembly, where its outlook is murky, especially among conservative Democrats from marginal districts.

"It's going to be much more difficult to get the bill off our floor," Aroner said. "I'm hoping that members will listen to the policy discussion and whatever [election] fears they may have will be overcome by the facts of this bill: The Supreme Court has spoken."

A spokesman said Gov. Gray Davis, a supporter of the death penalty, had taken no position on the bill.

The high court said mentally retarded people do not act with the "moral culpability" characterized by the most serious of criminal conduct.

During Senate debate, opponents of the bill asserted that its definitions were so broad that it would apply to defendants with 20 times the intelligence level of mentally retarded people. They contended that the real motive of the bill's backers was to eliminate the death penalty in California.

But Sen. Jack Scott (D-Altadena), whose adult son was killed in a gun accident, appealed for compassion. "Please, let's not get so bloodthirsty that we think as a society that there is something wonderful about putting to death somebody who has an IQ of 65," he told Republican foes of the bill.

Meanwhile, as platoons of lobbyists armed with cell phones and extra batteries roamed the Capitol looking for last-minute deals, lawmakers hit the stretch drive toward the scheduled adjournment of the 2002 session at midnight Saturday. But because a settlement of the state budget stalemate continued to elude the Assembly, there was talk that the session would continue beyond the adjournment date.

In the Assembly, some deals came together Thursday.

After years of negotiations between home builders and lawyers, the lower chamber passed a compromise on construction-defect lawsuits that both sides hailed as a triumph. The legislation (**SB 800** by **Burton**) would provide specific definitions of what can be considered a construction defect in California, covering everything from plumbing to windows.

Most significantly for developers, it would grant an absolute right to repair a problem before they could be sued. And for homeowners, it would allow suits for prospective damages, thus preventing them from having to wait for, say, a roof to collapse before being able to take legal action.

"This bill represents all parties coming together," said Assemblyman Darrell Steinberg (D-Sacramento), who represented the lawyers in the talks. "We all know we have a huge shortage of housing in this state. Developers are simply not building single-owner-occupied multifamily housing in California" because they fear lawsuits, he said.

"It is a good bill that will bring about additional affordable housing construction," said Assemblyman John Dutra (D-Fremont), who had advocated for the other side, adding that the right to repair "is very important for the builders."

The Assembly also approved legislation that would extend the time that plaintiffs have to file wrongful death or personal injury lawsuits from one year to two. California is one of only four states with a one-year statute of limitations.

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The measure (SB 688), also by **Burton**, would additionally extend the time a legal opponent has to respond to a motion for summary judgment from 28 days to 75.

And in an abrupt switch of tactics, the United Farm Workers of America fashioned an alternative bill as a substitute for its embattled measure that would impose binding arbitration on growers and the union when contract talks get deadlocked. The latest plan would substitute nonbinding mediation for the enforced arbitration, a feature that aides to Davis have said gave him concerns.

Union spokesman Marc Grossman said the latest bill, which cleared its initial committee on the favorable votes of Democrats, included suggestions from aides to Davis. But growers called it perhaps even worse for farmers than the binding arbitration bill that is awaiting action by the governor.

"This bill is a farce. The sponsors have shamefully disguised binding arbitration in this bill by calling it mediation," charged Mike Webb, Western Growers Assn. lobbyist.

GRAPHIC: PHOTO: (no caption) **PHOTOGRAPHER:** Associated Press

LOAD-DATE: August 30, 2002

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August 31, 2002, Saturday

SECTION: BUSINESS;Pg. C-1

LENGTH: 712 words

HEADLINE: Condo bill goes to the Senate for vote today; Governor's support for measure called uncertain

BYLINE: Emmet Pierce; STAFF WRITER

BODY:

Last-minute legislation designed to increase California's supply of affordable, multifamily housing is scheduled to come before the state Senate today.

Described as "groundbreaking" by supporters, Senate Bill 800 cleared the state Assembly Thursday by a 73-0 vote. It must win Senate approval today, the final day of the regular legislative session, in order to reach the desk of Gov. Gray Davis.

Crafted as a compromise measure, the bill seeks to stem the flood of **construction-defect** lawsuits that brought condominium and townhome construction to a virtual halt throughout the state in the early 1990s. It would give builders an opportunity to repair alleged defects before homeowners file lawsuits. If the bill is approved and enacted, "we could see a heavy return in the production of attached units, the most affordable units we could build," said developer Steve Doyle, past president of the Building Industry Association of San Diego.

Passage of the bill also would mark a lull in the long-running war between builders and consumer attorneys. Attempts to reduce the risk of **construction-defect** lawsuits have languished in Sacramento for a dozen years, Doyle said.

Russ Lopez, a spokesman for Davis, last night said the governor hadn't given any indication of whether he would sign the bill.

Mitch Mitchell, vice president of public policy for the San Diego Regional Chamber of Commerce, said lingering opposition from trial attorneys makes Davis' support uncertain. "That makes everything a crap shoot," he said.

Construction litigation often is cited as a key factor in pushing housing costs beyond the reach of San Diego County's middle class. A study of 44 urban areas by real estate consultant John Burns recently found that only Boston residents spend a greater percentage of their income on housing needs.

The point was driven home in July, when home prices here increased faster than in any other Southern California county. According to DataQuick Information Systems, the county's median home price rose by 24.7 percent to \$333,000, compared with July 2001.

Local affordable-housing activists yesterday praised the legislation, which was authored by Senate President Pro Tem

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John Burton, D-San Francisco.

"To figure out a means by which we can deal with **construction-defect** litigation in a fair and equitable manner is going to be very important for San Diego and housing affordability," said Erik Bruvold of the San Diego Regional Economic Development Corp.

Bobbie Christensen, spokeswoman for the San Diego Housing Commission, said her agency also supported the measure. The goal of the legislation is to make it easier for builders to obtain liability insurance, said Marc Kaplan, an insurance broker who serves on a San Diego Building Industry Association **construction defect** reform task force.

Kim Dellinger, lobbyist for the California Building Industry Association, said reducing insurance costs is key to increasing the supply of affordable housing. For years, the only certainty about building a condominium project has been that someone will file a defect lawsuit against it, she said.

In part, Senate Bill 800 requires builders to address needs for repairs in a timely manner, Dellinger said. "The home builder has 14 days to respond once a homeowner makes a claim. From the time the builder acknowledges the claim, (the builder) has 14 days to inspect the problem. There is a provision for homeowners to seek alternate bids for repair."

As a concession to attorneys, the bill allows homeowners to file claims over alleged defects before damage actually occurs, said Thomas Miller, a veteran California litigator who has built a career on **construction defect** lawsuits. He called the bill a step in the right direction. Offers to repair must be accompanied by offers to have disputes mediated out of court, if homeowners so desire.

A principal feature of the bill is the definition of **construction defects**. "Right now attorneys allege anything and everything as a defect, so it is important to get clear standards in the law," Dellinger said.

Miller said builders have come to see that timely home repairs will make many of the problems go away.

Emmet Pierce: (619) 293-1372; emmet.pierce@uniontrib.com

LOAD-DATE: September 2, 2002

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San Francisco Chronicle

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AUGUST 30, 2002, FRIDAY, FINAL EDITION

SECTION: BAY AREA; Pg. A26

LENGTH: 664 words

HEADLINE: Building flaw bill gets OK;

Contractors given chance to fix defects

SOURCE: Sacramento Bureau Chief

BYLINE: Greg Lucas

DATELINE: Sacramento

BODY:

In a move backers say will jump-start construction of more condominiums and townhouses, the Assembly on Thursday unanimously passed a major overhaul of the **construction defect** law.

The product of two years of intense negotiations between insurers, builders and trial lawyers, the deal came together last Friday and could represent one of the bigger accomplishments of this legislative session.

"As a result of this compromise, thousands of units of affordable housing will be built in California," said Assemblyman Darrell Steinberg, D-Sacramento, who was involved in the talks.

Builders blame the current defect law for an 84 percent decline in the number of condominiums and townhouses built in the past seven years. The cause, builders and insurers say, are lawyers who solicit homeowners associations to sue builders before the 10-year statute of limitations on defects runs out.

As a result, insurers have either refused to cover builders of condominiums or placed the cost of insurance so high the builder can't afford it.

The main feature of the deal, SB800, by Senate President Pro Tem John **Burton**, D-San Francisco, and Assembly Speaker Herb Wesson, D-Los Angeles, is that homeowners must first give the builder a chance to fix what's wrong with a residence before filing a lawsuit.

The builder can decline to fix it, and then the homeowner can sue. If the builder does a poor job of fixing the problem, the homeowners can still sue.

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Builders have long sought the right to get a shot at fixing a defect, mainly to avoid later lawsuits but also under the belief that fixing a problem sooner may prevent a more expensive problem later.

For example, if after four years of ownership, a resident finds water seeping in through windows, a builder repairing the problem then can avoid a nasty mold problem down the road.

Burton's bill also tightens the definition of what a defect is and gives the right to sue to not just the initial owners of a residence but to subsequent owners up until the 10-year statute of limitations runs out.

The trial lawyers' generosity in their deal with builders did not come without a price, however.

They are backing another bill by Burton and Wesson that gives Californians a year longer to file personal injury and wrongful death lawsuits. It was narrowly approved by the Assembly on Thursday.

Democrats said the legislation would protect consumers and preserve the rights of victims of the Sept. 11 terrorist attacks to seek their day in court.

Republicans, however, blasted it as an end-of-session gift to trial lawyers who will use the extension to file more lawsuits. That, in turn, will drive up insurance costs and translate into higher consumer costs, they said.

"It serves no useful purpose other than lining the pockets of trial lawyers more than they already are. . . . This is one of the worst bills of the year," said Assemblyman Robert Pacheco, R-Walnut.

Under current law, residents have one year to file a personal injury lawsuit.

Supporters of the bill said that the full extent of injuries suffered by victims of accidents sometimes didn't become apparent in the first year. Others said injured parties who didn't know whether they planned to pursue a trial sometimes filed lawsuits at the end of a year simply to preserve their rights.

California would join 22 other states that have two-year statutes of limitations on personal injury claims under the bill, SB688.

The bill also would extend from 28 days to 75 days the length of time for a plaintiff to respond to a request for summary judgment.

Defendants seek summary judgment as a way to dispense with frivolous lawsuits. Trial lawyers often prefer to get their case before a jury, instead of only a judge.

Giving plaintiff lawyers more time to respond to summary judgment motions gives them a better chance at beating the motions.

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E-mail Greg Lucas at glucas@sfchronicle.com.

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The Associated Press State & Local Wire

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August 29, 2002, Thursday, BC cycle

SECTION: Business News; State and Regional

LENGTH: 372 words

HEADLINE: Assembly passes bill to spur condo construction

DATLINE: SACRAMENTO

BODY:

A bill aiming to jump start the condominium construction market for California home buyers cleared the state Assembly on Thursday, amid applause and hopes to end years of strife between state homebuilders and lawyers.

The bill, a result of intense negotiations between warring camps over the past year, sets new ground rules for fixing **construction defects** in single-family homes and attached condominiums.

Supporters called the vote a victory for affordable housing in a state with one of the nation's lowest homeowner rates. Legislators hope it will keep unhappy home buyers out of court and return insurers to a construction industry they have largely abandoned in the last decade. The Assembly voted 73-0 for the bill and sent it immediately to the Senate.

"For my area, Silicon Valley, this is probably one of the most important measures we can pass today," said Assemblyman Manny Diaz, D-San Jose. Diaz, like many legislators, lamented that condominium and town house construction peaked at 30,000 a year in California during the 1980s and slowed to about 6,000 this year.

While most home buyers still prefer a standard home with front and back yards, many first-time home buyers find condominiums more affordable.

Builders blamed the 1990s slowdown on lack of insurance, while insurers blamed lawyers and class-action lawsuits that cost them hundreds of millions of dollars for **construction defects**.

The new bill, SB800 by Sen. John **Burton**, D-San Francisco, gives homebuilders the chance to fix problems before lawsuits are filed. It also lets homeowners sue for problems such as sagging roofs and faulty chimneys before they cause damage instead of after.

Assemblyman Thomas Calderon, D-Montebello, praised the pressure that legislators put on builders and attorneys to resolve their differences.

"Members should be driving the process and when we do, we get resolutions," he said.

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Assemblyman Mark Wyland, R-Escondido, called the bill "very, very long overdue," but cautioned against expectations of immediate results.

"It will take time," he said. "Insurance companies will be eyeing this to see if it works."

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On the Net: Read the bill, SB800, at www.senate.ca.gov.

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The Associated Press State & Local Wire

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August 27, 2002, Tuesday, BC cycle

SECTION: Business News; State and Regional

LENGTH: 429 words

HEADLINE: Bill to spur condo building begins to move through Legislature

BYLINE: By JIM WASSERMAN, Associated Press Writer

DATELINE: SACRAMENTO

BODY:

A final-hour bill aiming to spur an explosion of condominium building in a state desperately short of affordable housing is headed to the Assembly floor after passing a key committee 13-0 on Tuesday.

Backers called the bill a "historic agreement in California," resolving decade-long differences between home builders and attorneys on how to fix construction defects. Nearly 20 years of class-action lawsuits and financial settlements running into hundreds of millions of dollars have brought condominium building nearly to a standstill compared to previous decades. California homebuilders say condominium and town house construction, which peaked at 30,000 units a year in the mid-1980s, fell to a 1999 low of 3,000 units. Even while climbing to roughly 6,000 this year, housing authorities say most are resort-style units priced above \$300,000 in a state where two-thirds of potential buyers can't afford them.

The last-minute bill, SB800 by Senate President Pro Tem John Burton, D-San Francisco, aims to bring back insurers who deserted the state by giving builders a chance to fix defects before homeowners can sue. If builders lag on that chance, homeowners can then file lawsuits.

That provision is a "huge advance," said Assemblyman Darrell Steinberg, D-Sacramento, who presented the bill to an Assembly Judiciary Committee. The committee has repeatedly squashed previous attempts by builders to fix the problem - because of opposition from attorneys.

Drafted during a furious round of meetings in recent days, the bill also lets homeowners for the first time demand fixes for problems such as inadequate firewalls and faulty chimneys, even if they haven't yet caused greater damage to the house.

Burton and other legislators pressured attorneys and builders to work out their differences to help a housing market where condominiums are viewed as a more affordable option for first-time home buyers.

Insurers testified Tuesday that their industry remains wary of a state where attorneys routinely grouped owners of

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townhouses and condominiums for collective settlements against builders, including a record \$35 million in 1986 for a 400-unit complex in San Diego.

"We don't know if the bill has the incentives to bring the insurers back," said Mark Sektan, assistant vice president of state affairs for the American Insurance Association. But he called it good for consumers.

The bill must pass the Assembly and Senate by Saturday night and be signed by Gov. Gray Davis to become law.

Read SB800 at www.sen.ca.gov.

LOAD-DATE: August 28, 2002

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The San Diego Union-Tribune

July 7, 2002, Sunday

SECTION: REAL ESTATE;Pg. 1-3

LENGTH: 848 words

HEADLINE: Affordable-housing prognosis takes a turn for the favorable

BYLINE: Lew Sichelman; Lew Sichelman is a nationally syndicated free-lance writer based in Maryland.

BODY:

SAN FRANCISCO -- For the first time in recent memory, state and national housing industry leaders are optimistic they can finally get their arms around the affordable-housing crisis.

At the state level, California's builders are pinning their hopes on legislation that would insulate them from lawsuits over **construction defects** until they have time to investigate complaints and make the necessary repairs.

The measure is far from a done deal. But if it passes, Michael Pattinson, president of the California Building Industry Association and president of Carlsbad-based home builder Barratt American, said builders will once again enter the affordable town house and condominium market and begin cutting into what has become a "chronic housing deficit." On the local level, the San Diego City Council is scheduled in early August to consider an affordable-ousing plan that would require home builders in the city to construct low-cost housing in conjunction with their market-rate projects. The concept, known as inclusionary housing, has won the support of a council committee.

And at the national level, builders say there has been "more of a focus" on housing in the last month than they've seen in years. "I'm encouraged," said Gary Garczynski, a builder from northern Virginia who is president of the 210,000-member National Association of Home Builders. Speaking to reporters at the Pacific Coast Builders Conference in San Francisco, Garczynski said the deepening chasm between America's haves and have-nots "still has to be addressed."

But, he added, the White House "is putting an emphasis on housing that hasn't been there in a while." In a single week recently, the Bush administration released a report outlining the barriers that prevent minorities from becoming owners and then announced an unprecedented public/private commitment to knock down those barriers.

The president then visited the Department of Housing and Urban Development, where he said, "I believe owning a home is an essential part of economic security." It was "the most exciting week" of his two-year tenure at HUD, said Housing Secretary Mel Martinez, "and maybe the most exciting week in the department's history."

Focus on housing

The president's June housing blitz was times to coincide with National Homeownership Month. According to the CBIA, the housing shortfall in California will reach about 100,000 units this year, meaning that builders will produce about

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100,000 units less than they could sell based on current demand.

For the most part, the deficiency is in the affordable price ranges, which builders have all but abandoned because, Pattinson charged, "a group of trial lawyers discovered that suing builders of attached for-sale housing was a veritable gold mine." Since the mid-1980s, the San Diego builder charged, practically every builder of every condo project built in the Golden State since the mid-1980s has been sued over "real or alleged **construction defects**."

And as a result, the insurance industry has "basically walked away from this part of our industry." But with legislation that would establish a builder's right to repair problems, Pattinson said he's "more optimistic" than he's been in the last 10 years that "at least a partial solution to the condo crisis is at hand."

In an attempt to define the difference between acceptable construction tolerances and defects, the bill would prescribe a set of "functionality standards" and guarantee that the home will meet those requirements. It would also detail what's expected of buyers in terms of maintenance.

If something should go wrong, owners would be required to notify their builders of the problems within a certain time frame. And builders would then have so many days in which to investigate the defect and make whatever repairs deemed necessary. If the two sides cannot agree on the problem and how to correct it, they would submit their dispute to a third-party arbitrator.

Promises, promises

If litigation was to be curtailed in this manner, the CBIA maintains, insurance would once again become available and housing production would increase sharply. "This is what the consumer wants," Pattinson said. "If he has a problem, he wants it fixed. He doesn't want to be dragged into litigation."

The state's builders are on track to build nearly 150,000 new units this year. That's about the same as last year and the year before, according to the California Construction Industry Research Board. But it's 100,000 short of production levels in the mid-1980s.

The bill is similar to measures passed or under consideration in Washington, Arizona, Virginia and a number of other states, according to the NAHB. It has the support of several California legislators, the CBIA says, including Senate President John **Burton**, D-San Francisco, who is working to gain the backing of other groups, including the insurance industry and trial lawyers.

"There's a lot of momentum behind the concept," said Pattinson. "It's a very fair set of circumstances for builders and consumers."

LOAD-DATE: July 8, 2002

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CALIFORNIA LEGISLATURE
2001-02 REGULAR SESSION

SENATE DAILY JOURNAL

TWO HUNDRED SIXTY-SECOND LEGISLATIVE DAY

IN SENATE

Senate Chamber, Sacramento
Saturday, August 31, 2002

The Senate met at 10:30 a.m.
Hon. John L. Burton, of the 3rd District, presiding.
Secretary Greg Schmidt at the Desk.
Assistant Secretary David Valverde reading.

QUORUM CALL OF THE SENATE

Without objection, a quorum call was placed upon the Senate.
The President directed the Sergeant at Arms to close the doors and to bring in the absent Members.

PROCEEDINGS UNDER QUORUM CALL OF THE SENATE
ROLL CALL

The roll was called and the following Senators answered to their names:
Ackerman, Alarcón, Alpert, Battin, Bowen, Brulte, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Haynes, Johannessen, Johnson, Karnette, Kuehl, Machado, Margett, McClintock, McPherson, Monteith, Morrow, Murray, O'Connell, Oller, Ortiz, Peace, Perata, Polanco, Poochigian, Romero, Scott, Sher, Soto, Speier, Torlakson, Vasconcellos, and Vincent—39.

Quorum present.

(NOTE: Senator Knight will be excused this day due to a family emergency.)

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Machado, McPherson, Murray, O'Connell, Ortiz, Peace, Perata, Polanco, Romero, Scott, Sher, Soto, Speier, and Vasconcellos.

NOES (8)—Senators Ackerman, Battin, Haynes, Margett, McClintock, Monteith, Morrow, and Oller.

UNFINISHED BUSINESS (RESUMED)

Consideration of Assembly Amendments

Senate Bill 800—An act to add Section 43.99 to , and to add Title 7 (commencing with Section 895) to Part 2 of Division 2 of, the Civil Code, relating to construction defects.

Bill presented by Senator Burton.

The question being: Shall the Senate concur in the Assembly amendments to SB 800?

Roll Call

The roll was called and the Senate concurred in Assembly amendments by the following vote:

AYES (33)—Senators Alarcón, Alpert, Battin, Bowen, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Haynes, Johannessen, Karnette, Kuehl, Machado, Margett, McPherson, Monteith, Morrow, Murray, O'Connell, Ortiz, Peace, Perata, Polanco, Poochigian, Romero, Scott, Sher, Soto, Speier, Torlakson, and Vasconcellos.

NOES (0)—None.

Above bill ordered enrolled.

MOTION TO PRINT IN JOURNAL

Senator Burton moved that the following letter be printed in the Journal.
Motion carried.

August 29, 2002

The Honorable Gregory P. Schmidt
Chief Executive Officer

Dear Greg:

There has been a request for clarification of Section 896(g)(3)(E) of SB 800. Under that section, if a homeowner brings a claim solely for a defect in a manufactured product and the homeowner includes the builder in the claim, the right to repair provisions apply to the claim against the builder. Otherwise, the statute does not apply in any action seeking recovery solely for a defect in a manufactured product located within or adjacent to a structure.

Peace and Friendship,

JOHN BURTON
President pro Tempore

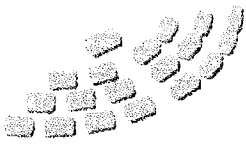
Senator Bowen Presiding

REQUEST FOR UNANIMOUS CONSENT (SB 689)

Senator Perata asked for, and was granted, unanimous consent to take up SB 689 at this time, without reference to file.



Exhibit 2



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DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain documents relevant to the enactment of Senate Bill 800 of 2002. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Senate Bill 800 was approved by the Legislature and was enacted as Chapter 722 of the Statutes of 2002.

The following list identifies all documents purchased on October 28, 2013, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Senate Bill 800 of 2002. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

SENATE BILL 800 OF 2002:

1. All versions of Senate Bill 800 (Burton-2002);
2. Procedural history of Senate Bill 800 from the 2001-02 *Senate Final History*;
3. Two analyses of Senate Bill 800 prepared for the Senate Committee on Transportation;
4. Material from the legislative bill file of the Senate Committee on Transportation on Senate Bill 800;
5. Analysis of Senate Bill 800 prepared by the Senate Committee on Judiciary;
6. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 800;
7. Two Third Reading analyses of Senate Bill 800 prepared by the Office of Senate Floor Analyses;

8. Material from the legislative bill of the Office of Senate Floor Analyses on Senate Bill 800;
9. Analysis of Senate Bill 800 prepared for the Assembly Committee on Transportation;
10. Material from the legislative bill file of the Assembly Committee on Transportation on Senate Bill 800;
11. Analysis of Senate Bill 800 prepared by the Assembly Committee on Judiciary on Senate Bill 800;
12. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 800;
13. Analysis of Senate Bill 800 prepared for the Assembly Committee on Appropriations;
14. Material from the legislative bill file of the Assembly Committee on Appropriations on Senate Bill 800;
15. Two Third Reading analyses of Senate Bill 800:
 - a. as prepared by the Assembly Committee on Transportation,
 - b. as prepared by the Assembly Committee on Judiciary;
16. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 800;
17. Unfinished Business analysis of Senate Bill 800 prepared by the Office of Senate Floor Analyses;
18. Material from the legislative bill file of Senator John Burton on Senate Bill 800;
19. Post-enrollment documents regarding Senate Bill 800;
20. Articles regarding Senate Bill 800, as follows:
 - a. "Insurance Woes Plague Western Home Builders" from the *Wall Street Journal*, March 6, 2002, <http://homes.wsj.com>;
 - b. "Legislation to Ease Housing Crisis" prepared by the California Building Industry Association, August 31, 2002, <http://www.cbia.org>;
 - c. "Financial-privacy bill hits major hurdle" from *The Sacramento Bee*, September 1, 2002, <http://www.sacbee.com>;
 - d. "Bill seeks to offer builders relief" from the *Oakland Tribune*, September 4, 2002, <http://www.oaklandtribune.com>;
 - e. "New Analysis: Term Limits Hinder Legislative Diligence", from the *Los Angeles Times*, September 2, 2002, <http://pqasb.pqarchiver.com>;
 - f. "Fix, don't sue, New Approach seeks construction defect cure", from *The Sacramento Bee*, September 4, 2002, <http://www.sacbee.com>;

21. Two Press Releases regarding Senate Bill 800, as follows:
 - a. "Consumers Win With Construction Defect Bill," from the American Insurance Association, August 28, 2002, <http://www.aiadc.org>;
 - b. "Legislation to Ease Housing Crisis" from the Voice of Housing in California, August 31, 2002, <http://www.cbia.org>;
22. Articles regarding Senate Bill 800, dated July through September, 2002 from Lexis-Nexis, <http://proxy.library.upenn.edu>;
23. Letter of clarification on Senate Bill 800, dated August 29, 2002 by Senator John Burton from the *Senate Daily Journal*, August 31, 2002.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of March, 2014 at Woodland, California.



MARIA A. SANDERS