

S208173

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BEACON RESIDENTIAL)	Case No. S208173
COMMUNITY ASSOCIATION,)	
)	
Plaintiff and Appellant,)	District Court of Appeal Case No.
)	A134542
vs.)	
)	San Francisco Co. Case No. CGC-08-
SKIDMORE OWINGS MERRILL)	478453
LLP; HKS, INC., individually and)	
doing business as HKS)	
ARCHITECTS, INC.,)	
)	
Defendants and Respondents.)	

**PLAINTIFF AND APPELLANT'S SECOND MOTION FOR JUDICIAL
NOTICE (LEGISLATIVE HISTORY OF SB 800)**

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SUPREME COURT
FILED

AUG - 9 2013

Frank A. McGuire Clerk

Deputy

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Attorneys for Plaintiff and Appellant
BEACON RESIDENTIAL COMMUNITY ASSOCIATION

Plaintiff and Appellant Beacon Residential Community Association (“BRCA”) hereby submits this motion, and moves, in compliance with California Rules of Court, Rule 8.520(g) and Rule 8.252(a), for the Court to take judicial notice of the legislative history materials of SB 800. These materials are included in Exhibits A and B to this Motion.

Exhibit A to this Motion is a set of legislative history materials on SB 800 that counsel obtained from the California State Archive on May 6, 2011. Plaintiff and Appellant requests the Court to take judicial notice of the portion attached here as the 10th through the 14th pages of this material, which was attached as Appendix A to Plaintiff and Appellant’s Answer Brief on the Merits. It is a briefing on SB 800 prepared by the Office of Senate Floor Analyses on August 29, 2002. A tag showing the location where these materials were retrieved from the California State Archives is included as the first page of Exhibit A to this Motion.

Exhibit B to this Motion is a separate set of legislative history materials on SB 800 that counsel obtained from the California State Archive on May 6, 2011. Plaintiff and Appellant requests the Court to take judicial notice of the portion attached here as the 12th through the

14th pages of this material, which was attached as Attachment B to Plaintiff and Appellant's Answer Brief on the Merits. It is an analysis of SB 800 prepared by Kevin G. Baker, staff counsel to the Committee, for the briefing of the Assembly Committee on Judiciary, Ellen M. Corbett, Chair, on August 25, 2002, in connection with a hearing on August 26, 2002. A tag showing the location where these materials were retrieved from the California State Archives is included as the first page of Exhibit B to this Motion.

A. Why the Matter to Be Noticed is Relevant to the Appeal

The legislative history of the Right to Repair Act, Senate Bill 800, California Civil Code § 895, et seq., which Plaintiff and Appellant requests the Court to judicially notice, shows unequivocally that the Legislature believed that design professionals owe a duty of care to future owners of for-sale housing that design, and intended to impose liability for actionable defects in such housing that are caused by the design professional's negligence. This is an important disputed issue in this appeal. Accordingly, the legislative history materials of SB 800 are relevant to the legislative intent in passing the Act and may aid the Court in the interpretation of this statute.

B. Whether the Matter to be Noticed Was Presented to the Trial Court and, If So, Whether Judicial Notice Was Taken by That Court

These legislative history materials were not presented to the trial court, because at that time, the parties were not aware of the construction that the trial court would place on SB 800, rejecting the plain meaning of the statute. These materials were presented to the Court of Appeal herein, which took judicial notice of them.

C. If Judicial Notice of the Matter Was Not Taken by the Trial Court, Why the Matter is Subject to Judicial Notice Under Evidence Code Sections 451, 452, or 453

This Court has authority to take judicial notice under Evidence Code § 452(c). The legislative history of SB 800 constitutes an “official acts[] of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (Evid. Code § 452(c). This Court “will generally grant requests to legislative history documents” under § 452(c) even where the Court “may ultimately find some to be of little or not help in ascertaining legislative intent.” (*Jones v. The Lodge at Torrey Pines* (2008) 42 Cal.4th 1158, 1172 n.5.)

D. Whether the Matter to be Noticed Relates to Proceedings Occurring After the Order or Judgment That is the Subject of the Appeal.

The legislative history of SB 800 does not relate to proceedings occurring after the order of the trial court sustaining the demurrers that are the subject of this appeal, dated November 22, 2011, and the judgment issued thereon dismissing both Respondents dated December 15, 2011. The legislative history documents of SB 800 were created in 2002.

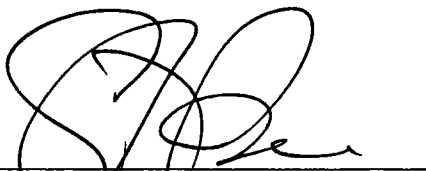
CONCLUSION

Based upon the foregoing, Appellant requests that the Court take judicial notice of the above referenced portions of the materials attached as Exhibits A and B.

Dated: August 9, 2013

LAW OFFICES OF ANN RANKIN
KATZOFF & RIGGS LLP

By:



Stephen G. Preonas

Counsel for Appellant BEACON
RESIDENTIAL COMMUNITY
ASSOCIATION

EXHIBIT A

EXHIBIT A

DATE OF REQUEST

5/6/11

CALIFORNIA STATE ARCHIVES

SECRETARY OF STATE
REFERENCE REQUEST

DATE RETURNED

REQUESTED BY

John M.

DEPARTMENT / AFFILIATION

REFILED BY

ADDRESS

PHONE NO.

PLEASE DO NOT REMOVE THIS TAG

RECORD TITLE OR INFORMATION REQUESTED

Burton

SB800

DATE OF MATERIAL

2002

LOCATION

2004-152

B8502P2

~~730503~~

COMMENTS

CSA-1 (1/84)

to KA 147

63008

MA

OSI 07 105371

Display 2001-2002 Bill History - INFORMATION

COMPLETE BILL HISTORY

10/04/02

BILL NUMBER : S.B. No. 800
 AUTHOR : Burton
 TOPIC : Liability: construction defects.
 TYPE OF BILL : INA NUR NAP MAJ NLO NFI NTA

BILL HISTORY

2002

Sept. 20 Chaptered by Secretary of State. Chapter 722, Statutes of 2002.
 Sept. 20 Approved by Governor.
 Sept. 10 Enrolled. To Governor at 1 p.m.
 Aug. 31 Senate concurs in Assembly amendments. (Ayes 33. Noes 0. Page 6086.) To enrollment.
 Aug. 30 From committee: That the Assembly amendments be concurred in. (Ayes 5. Noes 1. Page 6077.)
 Aug. 29 In Senate. To unfinished business. Action deferred pursuant to Senate Rule 29.10. Question referred to Com. on RLS. From committee: Be re-referred to Com. on JUD. pursuant to Senate Rule 29.10. (Ayes 3. Noes 0.) Re-referred to Com. on JUD.]
 Aug. 29 Read third time. Passed. (Ayes 80. Noes 0. Page 8444.) To Senate.
 Aug. 28 Read second time. Amended. To second reading. Read second time. To third reading. Read third time. Amended. To third reading.
 Aug. 27 From committee: Do pass as amended. (Ayes 12. Noes 0.)
 Aug. 26 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 Aug. 25 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
 Aug. 15 Read third time. Amended. Re-referred to Coms. on JUD. and APPR. pursuant to Assembly Rule 77.2.
 Aug. 15 Read second time. To third reading.
 Aug. 14 From committee: Do pass. (Ayes 16. Noes 7.)
 Aug. 12 From committee with author's amendments. Read second time. Amended. Re-referred to committee.

2001

Sept. 6 Set, second hearing. Held in committee and under submission.
 Aug. 30 Joint Rule 61(a) (10) & (11) suspended.]
 June 27 Placed on APPR. suspense file.
 June 19 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 15. Noes 0.) Re-referred to Com. on APPR. To Com. on TRANS.
 June 7 In Assembly. Read first time. Held at Desk.
 May 29 Read third time. Passed. (Ayes 39. Noes 0. Page 1249.) To Assembly.
 May 23 To Special Consent Calendar.
 May 22 Read second time. To third reading.
 May 21 Read third time. Amended. To second reading.
 May 15 Read second time. To third reading.

Display 2001-2002 Bill History - INFORMATION

COMPLETE BILL HISTORY

10/04/02

May 14 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.

May 7 Set for hearing May 14.

Apr. 25 Read second time. Amended. Re-referred to Com. on APPR.

Apr. 24 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 13. Noes 0. Page 661.)

Apr. 5 From committee with author's amendments. Read second time.
J

Amended. Re-referred to committee.

Mar. 27 Set, first hearing. Hearing canceled at the request of author. Set for hearing April 17.

Mar. 21 Set for hearing April 3.

Mar. 12 To Com. on TRANS.

Feb. 26 Read first time.

Feb. 25 From print. May be acted upon on or after March 27.

Feb. 23 Introduced. To Com. on RLS. for assignment. To print.

UNOFFICIAL BALLOT

Display 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	

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
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UNOFFICIAL BALLOT

Display 2001-2002 Votes - ROLL CALL

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

MEASURE: SB 800
 TOPIC: Liability: construction defects.
 DATE: 08/29/02
 LOCATION: SEN. JUD.
 MOTION: From committee: That the Assembly Amendments be concurred in.
 (AYES 5. NOES 1.) (PASS)

AYES

Escutia	Haynes	Kuehl	O'Connell
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Sher

NOES

UNOFFICIAL BALLOT

Display 2001-2002 Votes - ROLL CALL

Ackerman

ABSENT, ABSTAINING, OR NOT VOTING

Peace

MEASURE: SB 800
TOPIC: Liability: construction defects.
DATE: 08/27/02
LOCATION: ASM. JUD.
MOTION: Do pass as amended.
(AYES 12. NOES 0.) (PASS)

AYES

Corbett
Jackson
Steinberg

Harman
Longville
Vargas

Bates
Robert Pacheco
Wayne

Dutra
Shelley
Aroner

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Rod Pacheco

UNOFFICIAL BALLOT

Display 2001-2002 Votes - ROLL CALL

MEASURE: SB 800
TOPIC: Liability: construction defects.
DATE: 08/14/02
LOCATION: ASM. APPR.
MOTION: Do pass.
(AYES 16. NOES 7.) (PASS)

AYES

Steinberg Alquist Aroner Cohn
Corbett Correa Diaz Firebaugh
Goldberg Negrete McLeod Papan Pavley
Simitian Keeley Wiggins Wright

NOES

Bates Ashburn Daucher Maldonado
Robert Pacheco Runner Zettel

ABSENT, ABSTAINING, OR NOT VOTING

Vacancy

MEASURE: SB 800
TOPIC: Liability: construction defects.
DATE: 06/18/01
LOCATION: ASM. TRANS.
MOTION: Do pass and be re-referred to the Committee on Appropriations.
(AYES 15. NOES 0.) (PASS)

AYES

UNOFFICIAL BALLOT

Display 2001-2002 Votes - ROLL CALL

Dutra	Rod Pacheco	Bates	Firebaugh
Havice	Hollingsworth	Kehoe	La Suer
Leach	Leslie	Liu	Mountjoy
Nakano	Strom-Martin	Vargas	

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Florez	Longville	Oropeza	Simitian
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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

UNOFFICIAL BALLOT

Display 2001-2002 Votes - ROLL CALL
Torlakson Vasconcellos Vincent

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Morrow

MEASURE: SB 800
TOPIC: Liability: construction defects.
DATE: 04/17/01
LOCATION: SEN. TRANS.
MOTION: Do pass as amended, and re-refer to the Committee on Appropriations.
(AYES 13. NOES 0.) (PASS)

AYES

Murray	McClintock	Brulte	Costa
Dunn	Figueroa	Karnette	Monteith
Perata	Romero	Scott	Soto
Torlakson			

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Morrow Speier

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 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 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.

CONTINUED

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.)

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.
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

CONTINUED

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 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 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

CONTINUED

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 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.

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

SUPPORT: (Verified 8/29/02)

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

CONTINUED

RJG:kb 8/29/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

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

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.

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.

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).

SENATE THIRD READING
SB 800 (Burton and Wesson)
As Amended August 28, 2002
Majority vote

SENATE VOTE: Vote not relevant

JUDICIARY 12-0

Ayes: Corbett, Harman, Bates, Dutra,
Jackson, Longville, Robert Pacheco,
Shelley, Steinberg, Vargas, Wayne,
Aroner

SUMMARY: 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.
- 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.

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 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.
- 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.)

FISCAL EFFECT: None

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 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 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 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.

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.

Analysis Prepared by: . Kevin G. Baker/ JUD. / (916) 319-2334

FN: 0007685

Date of Hearing: August 27, 2002

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair

SB 800 (Burton and Wesson) - As Amended: August 26, 2002

SENATE VOTE: Not relevant.

SUBJECT: CONSTRUCTION DEFECTS LIABILITY AND PROCEDURE

KEY ISSUE: SHOULD CONSTRUCTION DEFECTS BE DEFINED BY SPECIFIC STANDARDS AND BUILDERS BE GIVEN AN OPPORTUNITY TO REPAIR ALLEGED VIOLATIONS BEFORE A HOMEOWNER MAY FILE A CIVIL ACTION IN ORDER TO PROMOTE SAFE AND AFFORDABLE HOUSING?

SYNOPSIS

This bill, the consensus product resulting from nearly a year of intense negotiations among the interested parties, proposes two significant reforms in the area of construction defect litigation. First, the bill would establish definitions of construction defects for the first time, in order to provide a measure of certainty and protection for homeowners, builders, subcontractors, design professionals and insurers. Secondly, the bill requires that claimants alleging a defect give builders notice of the claim, following which the builder would have an absolute right to repair before the homeowner could sue for violation of these standards. If the builder failed to acknowledge the claim within the time specified, elected not to go through the statutory process, failed to request an inspection within the time specified, or declined to make the offer to repair, or if the repair is inadequate, the homeowner is relieved from any further pre-litigation process.

SUMMARY: 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.
- 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.

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. (Code of Civil Procedure sections 337.1 and 337.15.)
- 2) 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. (Code of Civil Procedure sections 337 and 337.15. See, e.g., FNB Mortgage Corp. v. Pacific General Group (1999) 76 Cal.App.4th 1116; Liptak v. Diane Apartments, Inc. (1980) 109 Cal.App.3d 762.)
- 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.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: According to the author, this bill represents groundbreaking reform for construction defect litigation. As many prior bill analyses on this subject have noted, 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 key legislative leaders over the past year, leading to consensus on ways to resolve these issues.

Definition of Construction Defect. 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 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.

Optional Enhanced Protections. 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.

Time Periods for Filing Actions. 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 CCP Section 337.15(g)(2). These time limitations do not apply to any action by a claimant for a contract or express contractual provision.

Right to Repair. 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 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.

Subcontractors and Design Professionals. 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.

Author's Technical Amendments. The author proposes to take technical and clarifying amendments in the event there are chaptering out, typographical or other matters requiring correction.

Prior Related Legislation. AB 1700 (Steinberg), Ch. 824, Stats. 2001, substantially reformed the pre-litigation dispute resolution process for construction defect actions involving common interest developments.

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

None received

Analysis Prepared by: Kevin G. Baker/ JUD. / (916) 319-2334

Senate Floor Statement for SB 800 (Burton)

Before I introduce the bill, I would like to submit a letter to the Journal regarding SB 800. It has been agreed upon by all parties and cleared with the Republicans.

This bill makes significant changes to California law pertaining to construction defect. It is the product of over two years of negotiations between home builders and the attorneys who represent homeowners. The hope is that SB 800 will promote affordable housing by lowering the costs of doing business for home builders and by helping to bring insurers back in to the market. It should also offer relief to homeowners, by facilitating expedited repairs of defects in their homes and by allowing them to bring actions for more serious defects now barred under the *Aas* decision. The central provisions in the bill do the following.

First, the bill gives a builder an absolute right to repair construction defects before a homeowner may bring suit. In brief, when the homeowner believes that there is a construction defect in his or her home, the homeowner must notice the builder. The builder may then offer to repair the alleged violation within a prescribed period. 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.

Second, the bill codifies a uniform set of standards for the performance of residential homes. Rather than requiring parties to resort to contentions about the significance of technical deviations from building codes, the bill specifies the standards that homes must meet. Standards are supposed to end the debate over the *Aas* case, since under *Aas* homeowners may not recover for construction defects unless those defects have caused death, bodily injury, or property damage, no matter how imminent those threats may be. 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.

Builders have complained for many years that construction defect law suits are too easy for homeowners to bring, and that the costs of fighting these suits have added to the price of houses - particularly for condominiums and other entry level housing. At the same time, homeowners have taken issue with court decisions that prevent them from obtaining a remedy for construction defects until they cause serious personal injury or damage. This bill addresses both of those issues. It is a consensus bill which passed off the Assembly Floor with a vote of 73 – 0.

I urge an “aye” vote.

PK



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



RIVERSIDE CEMENT

Post Office Box 51479 • Ontario, California 91761-0079 • Ph. 909.635.1800 • www.txi.com

September 16, 2002

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

RE: SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects

Dear Governor Davis:

On behalf of TXI Riverside Cement, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,

Frank T. Sheets, III
Community & Government Affairs Manager

cc: Senator John Burton, President Pro Tempore



THE CITY OF SAN DIEGO

September 19, 2002

Governor Gray Davis
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (Burton): Construction Defects – REQUEST SIGNATURE

Dear Governor Davis:

The city of San Diego supports SB 800 (Burton) and requests your signature on the legislation. If enacted, this bill would aid in alleviating California's housing crisis by substantially improving existing construction defect law.

San Diego is one of the least affordable housing markets in California, and the state is home to 18 of the 25 least affordable housing markets in the nation. The lack of affordable housing, in particular attached housing, can be partially attributed to the rise in construction defect litigation.

SB 800 gives home builders the right to repair problems, defines in law the standards of quality that home buyers can expect, and introduces alternatives to litigation that will reduce costs and solve problems more quickly.

San Diego has been seeking legislation such as SB 800 for the past several years. The City's efforts toward smart growth and solving our housing crisis rely on the construction of more attached housing. Construction defect litigation reform is critical for that construction to occur.

Again, the city of San Diego supports SB 800 and requests your signature. If you have any questions or comments regarding the City's position, please contact me at 619.533.3990 or BEidson@sandiego.gov.

Sincerely,

J Brent Eidson
Deputy Director

cc: Honorable John Burton
Chris Kahn, Sloat Higgins Jensen & Associates
Gail Goldberg, Planning Department Director



Governmental Relations

1200 Third Avenue, Suite 224 • San Diego, CA 92101
Tel (619) 533-3990 Fax (619) 234-2915



401 B Street, Suite 800
San Diego, CA 92101-4231
(619) 595-5300
Fax (619) 595-5305
www.sandag.org

September 13, 2002

Honorable Gray Davis
Governor
State Capitol Building
Sacramento, CA 95814

RE: SB 800 (BURTON) – REQUEST SIGNATURE

Dear Governor Davis:

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

California is currently home to 18 of the 25 least affordable housing markets in the nation. The lack of affordable housing, in particular attached housing, can be partially attributed to the rise in construction defect litigation.

SB 800 gives home builders the right to repair problems, defines in law the standards of quality that home buyers can expect, and introduces alternatives to litigation that will reduce costs and solve problems more quickly.

SANDAG believes this is a constructive approach that is consistent with the policies of our Board of Directors. Our smart growth efforts and solving our housing crisis depend to a great extent on the construction of more attached housing. Construction defect litigation reform is one of SANDAG's top legislative priorities.

A diverse coalition of interests, including the California Building Association, Consumer Attorneys of California and the Personal Insurance Federation has come together to support this historic reform. This coalition recognizes that encouraging new condominium construction is key to providing affordable homes for our residents and stimulating the State's economy.

For these reasons, SANDAG urges your signature on SB 800.

Sincerely,


GARY L. GALLEGOS
Executive Director

cc: Hon. John Burton
Bob Wilson

GG/RD/jdk

MEMBER AGENCIES

- Cities of
- Carlsbad
- Chula Vista
- Coronado
- Del Mar
- El Cajon
- Encinitas
- Escondido
- Imperial Beach
- La Mesa
- Lemon Grove
- National City
- Oceanside
- Poway
- San Diego
- San Marcos
- Santee
- Solana Beach
- Vista
- and
- County of San Diego

ADVISORY MEMBERS

- California Department of Transportation
- Metropolitan Transit Development Board
- North San Diego County Transit Development Board
- United States Department of Defense
- San Diego Unified Port District
- San Diego County Water Authority
- Baja California/Mexico

PK



Concrete Contractors Association, Inc.

For the Betterment of the Concrete Industry

P.O. Box 5547, Napa, California 94581

Telephone: (707) 224-0222

September 13, 2002

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

RE: SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects

Dear Governor Davis:

On behalf of the California Concrete Contractors Association, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,

M.F. Clemmer
Executive Director

cc: Senator John Burton, President Pro Tempore

PIC



League of California Cities

www.cacities.org

Better Cities – A Better Life

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,

A handwritten signature in black ink, appearing to read "Daniel Carrigg".

Daniel Carrigg
Legislative Representative

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



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,

A handwritten signature in black ink that reads "Christine Minnehan". The signature is written in a cursive style.

Christine Minnehan

cc: Senator John Burton

California
Rural
Legal
Assistance
Foundation

1225 8th Street, Suite 425
Sacramento, CA 95814
Voice: 916.446.9241
Fax: 916.442.7966
www.housingadvocates.org

Marc Brown
Legislative Advocate
mbrown@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,



Marc Brown

cc: Senator John Burton

PK



CALIFORNIA CEMENT PROMOTION COUNCIL

DAVID F. HOLMAN, P.E.
263 West El Pintado Road ▪ Danville, CA 94526
Tel/Fax: 925-838-0701 ▪ e-mail: dfholman@earthlink.net

September 13, 2002

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

RE: SB 800 (Burton) - REQUEST FOR SIGNATURE - Liability: Construction Defects

Dear Governor Davis:

On behalf of the California Cement Promotion Council, I respectfully request your approval of the above-referenced legislation.

SB 800 would make changes to the law governing construction defects. Specifically, this bill would provide for detailed and specific liability standards for newly constructed housing, creates a pre-trial process that includes a builder's right to repair an alleged defect.

We believe that great change is needed in the laws governing construction defects. As California's population continues to grow, the state's need for affordable, available housing will increase rapidly. Improving the laws regarding construction defects will provide needed protection to consumers, homeowners and home builders.

We support SB 800 and believe the bill takes a positive step toward providing protection to all parties involved in home building. Additionally, we are of the opinion that further reform is needed to provide additional remedies for other types of construction. We hope to see legislation in the coming session that will address the construction industry as a whole.

Regards,


David F. Holman, P.E.
Executive Director

cc: Senator John Burton, President Pro Tempore

MEMBER COMPANIES

California Portland Cement Co.
Cemex
Hanson Permanente Cement

Lehigh Southwest Cement Co.
Mitsubishi Cement Corporation
National Cement Company

Nevada Cement Company
RMC Pacific Materials, Inc.
TXI Riverside Cement

HOME OWNERSHIP ADVANCEMENT FOUNDATION

A Council of the California Building Industry Association

PK

September 4, 2002

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

Re: Request for Signature of SB 800 (Burton), Construction Dispute Resolution

Dear Governor Davis:

The Home Ownership Advancement Foundation (HOAF), representing ten of California's largest and most active homebuilders (KB Home, Signature Properties, Lennar, Standard Pacific, Shea Homes, Centex, O'Brien Homes, Ponderosa Homes, Shapell and Greenbriar) respectfully requests that you sign SB 800. HOAF members participated actively over the last two years in efforts to reform the flawed construction defect liability laws. This bill makes monumental changes to the current construction defect liability scheme. These long sought changes will encourage homebuilders to once again enter the marketplace to build condominiums. It will also encourage insurers to reenter the marketplace and once again offer insurance to builders and subcontractors. This bill also applies this liability reform to single family homes that are now experiencing a marked increase in construction defect litigation.

SB 800 has many important features that benefit both homebuilders and homeowners:

- Defines in statute how a home should perform through functionality standards. This provides homeowners and homebuilders with clear standards of how the major components of a home should perform.
- Shortens the statute of limitations to less than 10 years for several functionality standards realistically reflecting how long those components can be expected to meet their standard.
- Requires a homebuilder be notified of any alleged breach of the functionality standard with an opportunity to inspect and discuss with the homeowner their concerns.
- Provides an absolute right of the homebuilder to repair an alleged violation of a functionality standard.
- Specifies timelines for inspections and repairs to take place.
- Requires mediation prior to litigation if a homeowner is dissatisfied with a repair.
- Specifies Affirmative Defenses to liability in statute.
- Limits liability of subcontractors to the particular functionality standard at issue. This means a landscaping contractor could not be named in a lawsuit over a defective roof.

SB 800 is a major step forward in overhauling the liability laws that have plagued homebuilders for so long. It concludes many years of a bi-partisan reform effort. Please sign SB 800 (Burton) into law.

Sincerely,


Edward P. Manning

cc: Senator Burton



PK

September 9, 2002

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

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

CARL GUARDINO
President & CEO

Dear Governor Davis:

BOARD OF DIRECTORS
JAMES N. WOODY, M.D., Ph.D.
Chair

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.

Roche Pharmaceuticals
AART J. DE GEUS
Vice Chair
Synopsis

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.

HELEN WILMOT
Secretary/Treasurer
Ehealthcontracts
CRAIG R. BARRETT
Intel Corporation
SUSAN BLACK
Mid-Peninsula Bank
ROBERT CARET
San José State University
WILLIAM T. COLEMAN III
BEA Systems, Inc.
MRC GREENWOOD
University of California, Santa Cruz

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.

ADAM R. GREGORY
Bank of America
BRIAN HALLA
National Semiconductor
BEATRIZ INFANTE
Aspect Communications
DAVID KLINGER
Lockheed Martin
JOE NATOLI
San José Mercury News
DEBORAH NEFF
Becton Dickinson
JOE NEMETH
IBM Corporation
KO NISHIMURA
Soletron Corporation
LEN PERHAM
Clear Logic

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.

ARTHUR L. ROBERTS
United Defense LP
ROBERT SHOFFNER
CITIBANK
GORDON R. SMITH
Pacific Gas & Electric Company
JOHN STEWART
General Dynamics Electronics Systems

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

JOYCE M. TAYLOR
Pacific Bell
BOB WAYMAN
Hewlett-Packard Company
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

Ralph A. Heim
Russell W. Noack
Anne Kelly
Leslie S. Spahn
John Caldwell
Erin I. O'Keefe

September 12, 2002

TO: The Honorable Gray Davis, Governor, State of California
The Honorable John Burton, President Pro Tem, California State Senate
The Honorable Herb Wesson, Speaker, California State Assembly
The Honorable Darrell Steinberg

FROM: Ralph Heim, Russell Noack, Anne Kelly, Les Spahn, John Caldwell and
Erin O'Keefe

RE: SB 800 (Burton and Wesson) – **SUPPORT**
Request for Signature

On behalf of our client, the American Insurance Association, we respectfully request your signature on SB 800 authored by Senator Burton and Assemblymember Wesson relating to construction disputes.

The American Insurance Association represents more than 400 major insurance companies that provide all lines of property and casualty insurance and write more than \$87 billion annually in premiums. In particular, AIA represents insurers who provide construction liability insurance to developers, general contractors and subcontractors.

SB 800 ensures that a homebuilder has an opportunity to repair any alleged defect in the home prior to the homeowner commencing legal action. This addresses one of the major concerns raised by builders – they often do not know about the alleged defect until they are noticed about impending litigation. This offers them the opportunity to “make it right.” This also gives the consumer what they want and need – a house that works with unnecessary litigation and delays. The bill further protects consumers by ensuring that the builder must respond to the homeowner’s concerns in an appropriate amount of time.

AIA believes that SB 800 will bring some degree of predictability to the dispute resolution process for new construction. AIA hopes that the processes outlined in SB 800 will solve the homeowner’s problems without the need for costly litigation.

SB 800 is a strong consumer bill but it does not address many of the problems insurers face in writing this line of insurance. In particular, this measure does not address the problems faced by contractors, including subcontractors, and their insurance carriers. Thus, the bill may not provide the predictability that insurers require before taking on greater risk and writing more insurance in this area. We appreciate the commitments of legislative leaders, particularly Assemblymember Steinberg, in working on these issues next year. If you have any questions regarding our position, please feel free to contact us.



PK

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.

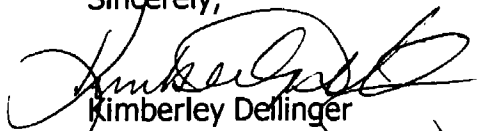
SB 800 creates a new process for resolving disputes involving homeowners and homebuilders over problems that may arise as a result of home construction. SB 800 replaces California's current "sue first" process with one that calls for repairs to be made by the homebuilder. Under the SB 800 reform, not 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

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 the Delta
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Building Industry Association of Kern County
Bakersfield

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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



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



PK

August 30, 2002

SENATE FLOOR ALERT

HOME OWNERSHIP ADVANCEMENT FOUNDATION (HOAF) SUPPORTS SB 800 (BURTON) – CONSTRUCTION DEFECT REFORM

The Home Ownership Advancement Foundation (HOAF), representing ten of California's largest and most active homebuilders, strongly supports SB 800. This bill makes monumental changes to the current liability scheme for construction defect claims. These long sought changes will encourage homebuilders to once again enter the marketplace to build condominiums. It will also encourage insurers to reenter the marketplace and once again offer insurance to builders and subcontractors. This bill also covers single family homes.

SB 800 has many important features that benefit both homebuilders and homeowners:

- Defines in statute how a home should perform through functionality standards. This provides homeowners and homebuilders with clear standards of how the major components of a home should perform
- SB 800 shortens the statute of limitations for several components of a home shorter than 10 years realistically reflecting how long those components can be expected to meet the standards
- Requires notice to a homebuilder of any alleged breach of the functionality standard with an opportunity to inspect and discuss with homeowners their concerns
- Provides an absolute right of the homebuilder to repair an alleged violation of a functionality standard
- Specifies timelines for inspections and repairs to take place
- Requires mediation prior to litigation if a homeowner is dissatisfied with a repair
- Specifies Affirmative Defenses in statute
- Limits liability of subcontractors to the particular functionality standard at issue. This means a landscaping contractor could not be named in a lawsuit over a defective roof.

SB 800 is a major step forward in overhauling the liability laws that have plagued homebuilders for so long. It concludes many years of a bi-partisan reform effort. Please vote Yes on SB 800 (Burton). Please contact Ed Manning if you have any questions at (916) 448-2162.

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

FLOOR ALERT

Date: August 28, 2002

To: Members of the California State Assembly

STAFF

Dan Dunmoyer
 President

Diane Colborn
 Vice President of Legislative
 & Regulatory Affairs

Michael Gunning
 Senior Legislative Advocate

Jerry Davies
 Director of Communications

From: Dan C. Dunmoyer, President
 G. Diane Colborn, Vice-President of Legislative and Regulatory Affairs
 Michael A. Gunning, Senior Legislative Advocate

Re: SB 800 (Burton and Wesson): Construction Dispute Resolution
 Assembly Third Reading File
PIFC Position: Support

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.

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 support of SB 800**. If you have any questions regarding our position, please contact Dan Dunmoyer at (916) 442-6646.

cc: Senator Burton, Author
 Assemblyman Wesson, Author
 Ann Richardson, Deputy Legislative Secretary, Governor's Office
 Kevin Baker, Assembly Judiciary Committee
 Mark Redmond, Assembly Republican Caucus



CRUZ M. BUSTAMANTE
Lieutenant Governor
State of California

August 28, 2002

The Honorable John Burton
The Honorable Herb Wesson
State Capitol
Sacramento, CA 95814

Dear Senator Burton and Speaker Wesson:

I am writing to express my **SUPPORT** for your **Senate Bill 800**, to 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 look forward to working with you to ensure passage of this legislation.

Sincerely,

A handwritten signature in cursive script that reads "Cruz M. Bustamante".

CRUZ M. BUSTAMANTE
Lieutenant Governor

cc: Michael D. Pattinson, President, California Building Industry Association
Robert E. Cartwright, Jr., President, Consumer Attorneys of California

CMB/KM trs

PK

California Building Industry Association

FLOOR ALERT

TO: All Senate Members

RE: SB 800 (Burton)

POSITION: SUPPORT

SB 800 represents a consensus developed over months of negotiations between the Consumer Attorneys of California, the California Building Industry Association and insurance industry representatives.

The bill contains much needed reform to the construction dispute resolution system in California. This bill will, for the first time, clearly define a "defect" and give homebuilders the right to repair problems when they arise in a home. SB 800 also helps consumers by addressing the concerns raised in the dissenting opinion of Justice George in the *Aas* decision.

California is suffering from a critical housing shortage and that shortage is most severe in the attached, for-sale sector. Builders are unable to obtain liability insurance for the construction of condominiums due to excessive litigation.

This bill will reduce the need for litigation and bring greater predictability, which is necessary if insurers are to return to the market.

CBIA urges an Aye vote on this important measure.

BAY AREA COUNCIL

PK

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

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SUNNE WRIGHT McPEAK
President & CEO
Bay Area Council

Founded in 1943,
the Bay Area Council
is a business-sponsored
regional public policy organization
which promotes economic prosperity
and quality of life in the Bay Area

August 29, 2002

California State Assembly
State Capitol
Sacramento, CA 95814

Dear Assembly Members:

The Bay Area Council, in partnership with the Job-Center Housing Coalition, 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 affordable housing 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 is a real breakthrough opportunity from which both homeowners and homebuyers can benefit. SB 800 will reduce the need for lawsuits to resolve disputes with the particular goal of quickly addressing and fixing on the spot any problems that may arise in a new home. A reduction in litigation will translate into lower insurance costs and, thereby, into more affordable housing, specifically 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.
- Curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

SB 800 is the right approach for a decades-old problem and will lead to an increase in the supply of affordable housing. We urge your support for SB 800.

Sincerely,

Robert T. Parry

Robert T. Parry
Chairman

Sunne Wright McPeak

Sunne Wright McPeak
President and CEO

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.

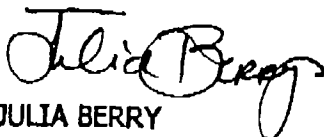
SB 800 represents a breakthrough and a real opportunity for both homeowners and homebuyers to benefit. By ensuring problems that may arise in a new home are addressed quickly and with the goal of fixing those problems on the spot, SB 800 will reduce the need for lawsuits to resolve disputes. A reduction 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 800 Washington, D.C. 20036 Tel: (202) 331-7300 Fax: (202) 659-8339



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 script that reads 'Mitch Mitchell'.

Eugene Mitchell

Vice President, Public Policy



**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

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Mike Noonan

**VICE PRESIDENT,
ECONOMIC &
WORKFORCE DEVELOPMENT**

Paul Garza, Jr

**VICE PRESIDENT,
FINANCE & ADMINISTRATION**

Danette Parrott

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 Offelie
President & CEO

Julie Puentes
Executive V.P. Public Affairs

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.

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. VICA urges your support for SB 800.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Gaines".

Fred Gaines
VICA Chairman of the Board

A handwritten signature in cursive script, appearing to read "Brad Rosenheim".

Brad Rosenheim
VICA Land Use Co-Chairman

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.

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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



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.

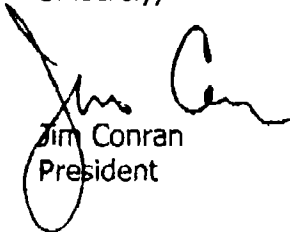
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SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,



Jim Conran
President

**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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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

The **San
Diego
Group**

Political Strategies & Public Affairs

Phone: (619) 299-VOTE (8683)
Fax: (619) 299-3835
Email: SanDiegoGroup@aol.com
Campaigns.biz
P.O. Box 371494 • 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.

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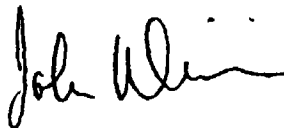
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SB 800 is the right approach to dealing with a decades-old problem and helping to increase the supply of affordable housing. I urge your support for SB 800.

Sincerely,



John Wainio



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 Jarrow, President



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.

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,

MICHAEL TOWBES

/bjr



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.

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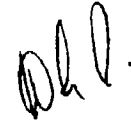
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- curb frivolous claims while preserving the rights of consumers to sue if builders fail to perform.

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Sincerely,



Gary Politte
President
CGC Builders Inc.

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



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*

JAMES S. DONEGAN, SR.
ATTORNEY-AT-LAW

JAMES S. DONEGAN, SR., Attorney
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1337-B BROAD STREET
SAN LUIS OBISPO, CALIFORNIA 93401-3909

805-783-2770 • 800-472-7773
Facsimile 805 783-2779
www.ford-donegan.com

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.

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 town homes it needs, with construction over the last eight years dropping off dramatically – down 84 percent since 1994.

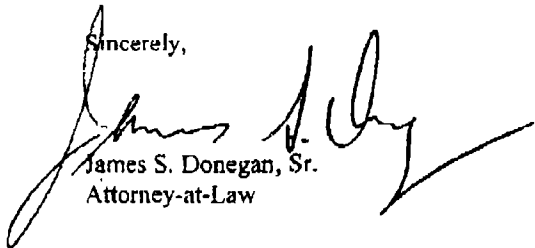
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Sincerely,


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

Contra Costa Times

09/23/2002

Sep. 22, 2002

Housing defect legislation made law

Lawmakers say the measure will help boost construction of affordable homes throughout the state

By Andrew LaMar, CONTRA COSTA TIMES

SACRAMENTO - Gov. Gray Davis has signed landmark legislation reforming housing defect laws that advocates say will spur much-needed construction of condominiums, town homes and other affordable housing.

But while lawmakers and proponents applauded the move, they said it represents only part of what needs to be done to combat California's housing crunch and provide enough affordable homes for communities across the state.

"This is a major step forward, but we're far from solving the problem," said state Sen. Tom Torlakson, D-Antioch. The next step is reorganizing local governments to better plan for housing, he said.

On Friday, the Davis administration announced the housing defects measure was one of seven housing bills the governor has signed. Another is Torlakson's SB423, which requires \$100 million of the \$2.1 billion housing bond on the November ballot to be used to encourage local agencies to balance housing and jobs in their areas and provide more affordable homes.

Torlakson's job-housing balance incentives, enacted in 2000, lost funding last year when the governor made budget cuts. The housing bond must be approved by a majority of statewide voters to take effect.

AB800, though, drew the most attention of the housing bills. Home builders, consumer attorneys and lawmakers hammered out the measure in the final weeks of this year's legislative session after a decade of similar talks had failed.

For years, home developers have complained about the high cost of building insurance produced by an uncertain legal environment. The law did not define a housing defect, and as a result, that often prompted homeowners to sue first, before seeking builder assistance.

That threat sent insurance rates skyrocketing for builders, said Tim Coyle, the senior vice president of the California Building Industry Association. Currently, insurance can run as high as \$20,000 per unit for a developer, and that's a cost passed on to the consumer.

"We literally can't insure some types of housing in California, such as condominiums and town homes," Coyle said.

AB800, by state Sen. John Burton, D-San Francisco, defines what constitutes a housing defect, gives the builder the right to repair it before a claim goes to court and allows consumers to sue for prospective damage, instead of waiting for the damage to actually occur, as current law requires.

According to the building industry association, California's condominium construction has dropped by 84 percent over the past seven years, even as the need for it has grown in regions like the Bay Area, where population density is high and housing prices exorbitant.

If building insurance rates drop as expected, the East Bay will see a broader variety of housing choices and an influx of condominiums, Coyle predicted.

"I'm confident it will lead to the building of thousands of additional affordable housing units that would not otherwise exist," said Assemblyman Darrell Steinberg, D-Sacramento, who helped write the bill.

The other housing bills Davis signed included:

- AB2787 by Assemblywoman Dion Aroner, D-Berkeley. The bill requires the state to develop a model ordinance that could be adopted by local governments that would spell out a "universal design" for housing to be built for the elderly and disabled.

- SB372 by state Sen. Joe Dunn, D-Santa Ana. The bill sets up a program to make loans to assisted housing developments, which offer rental assistance to tenants.

- AB1891 by Assemblyman Manny Diaz, D-San Jose. The bill sets the standards for local housing trust funds to receive matching funds from the \$2.1 billion housing bond, if it is passed.

Andrew LaMar covers state government. Reach him at 916-441-2101 or alamar@cctimes.com

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Diane F. Boyer-Vine

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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.

CONFLICT NOTIFICATION

August 29, 2002



S.B. 800

The above measure, introduced by Senator Burton, which was set for hearing in the

Senate Judiciary Committee

appears to be in conflict with

A.B. 1701 - Steinberg

A.B. 2870 - Harman

S.B. 355 - Escutia

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Section@lc.ca.gov or 916-445-0430 at your earliest convenience.

EXHIBIT B

EXHIBIT B

DATE OF REQUEST 5/6/11	CALIFORNIA STATE ARCHIVES SECRETARY OF STATE REFERENCE REQUEST	DATE RETURNED
REQUESTED BY John M.		DEPARTMENT / AFFILIATION
ADDRESS		PHONE NO.

PLEASE DO NOT REMOVE THIS TAG

RECORD TITLE OR INFORMATION REQUESTED	DATE OF MATERIAL	LOCATION
ARC SB800	2002 Ⓛ	LP316: 956 900-1053 07356 P x 12

COMMENTS

CSA-1 (1/84)

to RA



OSP 07 105371

SENATE THIRD READING
SB 800 (Burton and Wesson)
As Amended August 28, 2002
Majority vote

SENATE VOTE: Vote not relevant

JUDICIARY 12-0

Ayes: Corbett, Harman, Bates, Dutra,
Jackson, Longville, Robert Pacheco,
Shelley, Steinberg, Vargas, Wayne,
Aroner

SUMMARY: 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.
- 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.

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 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.
- 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.)

FISCAL EFFECT: None

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 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 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 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.

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.

Analysis Prepared by: . Kevin G. Baker/ JUD. / (916) 319-2334

FN: 0007685

**SB 800 (BURTON)
CIVIL ACTIONS.**

Version: 8/25/02 As Proposed to be Amended
Vote: Majority
OPPOSE***

Vice-Chair: Tom Harman
Tax or Fee Increase: No

Extends time for notice of motion for summary judgment from 28 to 90 days before hearing and statute of limitations in personal injury and wrongful death actions from 1 to 2 years, and applies to 9/11/01 victims.

NOTE: TREAT THIS ANALYSIS AS SB 688 (BURTON) UNTIL EITHER IT IS SUBSEQUENTLY SHIFTED INTO THE SB 688 SHELL OR OTHER SUBSEQUENT ACTION IS TAKEN AS LEG COUNSEL SENT BACK THE REVISED LANGUAGE ON THIS BILL AS SB 688 AND THE LANGUAGE FOR SB 688 AS SB 800.

NOTE: This was one of the bills used to negate Republican Opposition to the waiver of Joint Rule 61 -- in the specific case of SB 1698 (Romero), a spot bill on statute of limitations.

Policy Question

1. Should the long standing statute of limitations for personal injury and wrongful death actions be doubled and even applied retroactively to the long range detriment of business and consumers and to the otherwise benefit of the plaintiff bar lobby?
2. Should changes be made to the procedure for motions for summary judgment that include, among other things, that the time period for notice to respondents be more than triple to the current time allowed, also to the detriment of litigants and courts but to the benefit of the plaintiff bar lobby?

Summary

1. This bill: (1) Extends the statute of limitations in personal injury and wrongful death actions from one to two years and applies the change retroactively to victims of the September 11th terrorist attacks; (2) Increases the time for notice

of a motion for summary judgment from 28 days before the hearing on the motion to 90 days. (3) Allows an ex parte motion for continuance of the hearing on a motion for summary judgment in order to allow more time for discovery; 4) Mandates that the motion for summary judgment be denied if the moving party unreasonably fails to allow the discovery to be conducted after such a motion for continuance is granted; 5) Requires a reviewing court to allow the parties to submit supplemental briefs before affirming an order granting summary judgment on a ground not relied upon by the trial court; and 6) makes legislative findings to endorse the above changes, but in the last provision of the findings states that because the provisions of this act involve the resolution of competing considerations, dealing with problems facing both plaintiffs and defendants, the Legislature would find that the provisions of this act are not severable. The provision concludes that rather, it would be the intent of the Legislature that if, for any reason, any provision of this act is determined to be void or otherwise inoperative, then no provision of this act shall have any effect.

Senate Republican Floor Votes (22-12) 5/28/02 NOT RELEVANT AS LATER AMENDED

Ayes: None
Noes: All Republicans, except

Abs. / NV: Johnson, McPherson

Assembly Republican Judiciary Votes (0-0) 8/26/02

Ayes: None
Noes: None

Support

Consumer Attorneys of California (Sponsor) [See Comment #2 for potential other support.].

Opposition

NOTE: TREAT THIS ANALYSIS AS SB 688 (BUTON) UNTIL EITHER IT IS SUBSEQUENTLY SHIFTED INTO THE SB 688 SHELL OR OTHER SUBSEQUENT ACTION IS TAKEN AS LEG COUNSEL SENT BACK THE REVISED LANGUAGE ON THIS BILL AS SB 688 AND THE LANGUAGE FOR SB 688 AS SB 800.

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Noes: All Republicans, except

Abs. / NV: Johnson, McPherson

Assembly Republican Judiciary Votes (0-0) 8/26/02

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/01

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/01

Ayes: None

Noes: None

Abs. / NV: None

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Support

Consumer Attorneys of California (Sponsor) [See Comment #2 for potential other support.].

Opposition

California Employment Law Council; Personal Insurance Federation of California (Not verified); [See Comment #2 for potential other opposition.].

Arguments In Support of the Bill

1. The author and proponent state their general points of support in the legislative declarations and findings which include: (1) The California system for the administration of justice is one

of the fairest in the world, but certain procedures and standards should be amended to ensure fairness to all parties; (2) Provides that many personal injury and wrongful death actions would be resolved without need to resort to litigation if California's statute of limitations permitted such actions be extended to two years, as is provided in other states; (3) Declares that California residents who are victims of the terrorist actions of September 11, 2001 must prematurely choose between litigation and federal remedies, in contrast with states that allow longer time to pursue their choice of remedies; and (4) Declares that summary judgment is a drastic procedure and should only be granted when an action is without merit and both sides have a fair opportunity to address the merits of an action or when an action lacks a triable issue of fact.

2. Proponents assert the following breakdown of the statute of limitations laws for personal injury actions in the United States: 1) 7 states have at least a 4-year statute; 2) 16 states and the District of Columbia have a 3-year statute; 3) 23 states have a 2-year statute; and 4 states (which includes California) have a one-year statute.
3. Proponents contend that California victims (family survivors of wrongful death) of the September 11th terrorist attacks have less than one month left to decide whether to bring an action against the airline or otherwise accept the compensation offered by the federal Restitution Fund where the full extent of damage they have suffered has not yet been fully determined. The retroactive extension to two years would be in keeping with the majority of other states that allow more than one year for their residents to make such election after more time to weigh the adequacy of compensation offered by the federal Restitution Fund versus an action against the airline. **HOWEVER it could be argued that the plaintiff bar handling such claims on a 40 percent contingency fee has had up to a year to pursue civil discovery against the airlines and this would get such attorneys more time to leverage the airline for a higher settlement fee than they might otherwise get from their clients accepting the federal Restitution fund to those who would be truly entitled to a recovery.**
4. Proponents argue that the 76 days added to the length of time between the filing of a motion for a summary judgment and until the hearing on

surprise to the plaintiff's counsel who likely is conducting a wide ranging discovery that anticipates such motion for a period well before the 28 day timeframe that includes depositions and follow-up interrogatories. Second, the plaintiff's counsel could ask and be granted a continuance by reasonable demonstrating that he or she needs more time to respond to the motion for summary judgement. Third, as Judicial Council contends, such a change could unnecessarily protract trial court delay reduction program enacted at the end of the 1980's because there was too much litigation game playing on such motions and other procedures that delayed justice for the party litigants (as long as five years on the average in civil case resolution in Los Angeles County in the mid 1980s.

5. Consumer attorneys contend that the plaintiff's counsel should have the right to brief the appellate court on the grounds that the appellate court might decide for a summary judgment motion when they bring it up on appeal on other grounds than those that the appellate court uses to grant a defendant's motion for summary judgment. **HOWEVER, as opponents to SB 476 (Escutia) have pointed out, the language of this proposed change would allow supplemental briefing even if the issue had been argued below, but was not relied upon by the trial court in its decision. In such cases the appellate court would have, as part of the record, the briefing below, and that no supplemental briefing is necessary. It then would come down to whether it was necessary to take more precious time and cost at the appellate court for the litigants as well as the appellate court to allow the plaintiff's counsel to argue their unsuccessful points again or fish for new ones.**

Arguments In Opposition to the Bill

1. **At a time when California's economy is slumping and the state budget is in its worst post Great Depression and World War II crisis, the twin attacks on business (as well as local and state government agency targets) to double the statute of limitations and triple discovery game-playing on summary judgment motions could only further exacerbate any growth in business, any restraint on consumer price increases to**

- ... summary judgment between litigation and federal remedies, in contrast with states that allow longer time to pursue their choice of remedies; and (4) Declares that summary judgment is a drastic procedure and should only be granted when an action is without merit and both sides have a fair opportunity to address the merits of an action or when an action lacks a triable issue of fact.
2. Proponents assert the following breakdown of the statute of limitations laws for personal injury actions in the United States: 1) 7 states have at least a 4-year statute; 2) 16 states and the District of Columbia have a 3-year statute; 3) 23 states have a 2-year statute; and 4 states (which includes California) have a one-year statute.
 3. Proponents contend that California victims (family survivors of wrongful death) of the September 11th terrorist attacks have less than one month left to decide whether to bring an action against the airline or otherwise accept the compensation offered by the federal Restitution Fund where the full extent of damage they have suffered has not yet been fully determined. The retroactive extension to two years would be in keeping with the majority of other states that allow more than one year for their residents to make such election after more time to weigh the adequacy of compensation offered by the federal Restitution Fund versus an action against the airline. **HOWEVER it could be argued that the plaintiff bar handling such claims on a 40 percent contingency fee has had up to a year to pursue civil discovery against the airlines and this would get such attorneys more time to leverage the airline for a higher settlement fee than they might otherwise get from their clients accepting the federal Restitution fund to those who would be truly entitled to a recovery.**
 4. Proponents argue that the 76 days added to the length of time between the filing of a motion for a summary judgment and until the hearing on the motion would give them enough time to conduct discovery that includes depositions and follow up interrogatories that they claim would otherwise be impractical within the current 14 day response time from a notice for motion filed within 28 days prior to the hearing. **HOWEVER the other side to this argument includes that (1) Motions for summary judgment are common enough to not be a**

contents, such a change could unnecessarily protract trial court delay reduction program enacted at the end of the 1980's because there was too much litigation game playing on such motions and other procedures that delayed justice for the party litigants (as long as five years on the average in civil case resolution in Los Angeles County in the mid 1980s.

5. Consumer attorneys contend that the plaintiff's counsel should have the right to brief the appellate court on the grounds that the appellate court might decide for a summary judgment motion when they bring it up on appeal on other grounds than those that the appellate court uses to grant a defendant's motion for summary judgment. **HOWEVER, as opponents to SB 476 (Escutia) have pointed out, the language of this proposed change would allow supplemental briefing even if the issue had been argued below, but was not relied upon by the trial court in its decision. In such cases the appellate court would have, as part of the record, the briefing below, and that no supplemental briefing is necessary. It then would come down to whether it was necessary to take more precious time and cost at the appellate court for the litigants as well as the appellate court to allow the plaintiff's counsel to argue their unsuccessful points again or fish for new ones.**

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1. At a time when California's economy is slumping and the state budget is in its worst post Great Depression and World War II crisis, the twin attacks on business (as well as local and state government agency targets) to double the statute of limitations and triple discovery game-playing on summary judgment motions could only further exacerbate any growth in business, any restraint on consumer price increases to cover added liability, and any budding encouragement to otherwise stimulate new private sector jobs. The real beneficiaries, no matter how they attempt to dress up or exploit the California 9/11 victims, are the contingency fee attorneys who would expect to line their pockets with their 40 percent or greater contingency fee cut through such added settlement leverage tools and otherwise added expense to their clients,

business defendants and the courts to play out their further costly and protracted litigation scenarios.

2. **Personal Insurance Federation of California on August 16th, 2002, recently addressed the two major changes now sought by the plaintiff bar lobby stating the following points under the following bolded headings: “[1] Revisions to the procedure for summary judgment motions that will severely impede the ability of parties to bring summary judgment motions and have unmeritorious cases dismissed prior to trial.** Characterized as a ‘simple 90-day notice requirement,’ the effect of the proposed changes is to so constrain the time period in which a defendant would have to conduct discovery and prepare a summary judgment motion, that the practical effect would be to all but eliminate the option of summary judgment. Summary judgments are infrequently granted under the current rules, which were clarified by a unanimous California Supreme Court decision written by the late Justice Stanley Mosk last year. This issue was debated last year in the Senate in SB 476, but has sat in the Assembly for over a year without any action or debate until now, at the eleventh hour, when new amendments are being proposed as a ‘done deal’ prior to any policy committee hearing or analysis. [2] **Doubling of the time period within which to file a lawsuit for personal injury from the current one year to two years.** This change will have a major impact on the tort litigation system, significantly increase the number of lawsuits filed, give personal injury attorneys a longer time to build up damages, inflate claims management costs, and increase insurance fraud. Statutes of limitations serve the important public policy of encouraging prompt resolution of disputes, while memories are fresh, witnesses are still available, and issues of causation and damages can more readily be determined. Doubling the statute of limitations will lead to more stale claims being litigated, prolonging of the claims settlement process, and an increase in the number of fraudulent claims. Absolutely no showing has been made that the current statute of limitations is inadequate. This is a major change to the tort system which has not been analyzed or heard in any policy committee and has not even been in print in any bill this year.
3. **The California Employment Council (CEC)**

earliest) 210 days after an action is served (90 plus 120), and ironically SB 800 creates potential discovery disputes that under the bill would become severely sanctionable..., because the motion very often would have to be filed before a discovery cutoff had passed. Existing law guarantees parties have ample time to oppose such motions by providing that the court ‘SHALL’ deny motion or grant a continuance upon a party’s showing that further discovery is needed (CCP 437c(h)).”

4. **The Law Offices of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP also emphasize that lengthening the notice “will unduly restrict the time for discovery preceding a motion for summary judgment [bold emphasis added].** That will make summary judgment motions harder to bring, lead to more unnecessary trials and drive up the settlement value of otherwise frivolous litigation. ... The current 28-day notice is much longer than other major states (Florida (18 days), Texas (14 days), Federal Rules (10 days)).
5. **Judicial Council has expressed serious concern with the 90-day notice period for summary judgment motions.** Judicial Council contends: “The proposed increase of the notice period in CCP section 437c(a) from 28 to 90 days would pose serious problems for effective case management and timely disposition of civil cases. ... A purpose of the amendments appears to be to decrease the frequency and impact of summary judgment motions. However, the proposal may have unintended consequences. The result of extending the length of the summary judgment motion process may be to proliferate the number of ancillary disputes over discovery, the right to file supplemental papers, requests for continuances of hearings and trial dates.”
6. The forerunner bill, SB 1698 (Romero) to which the language has been placed into this bill, a spot bill almost up to the day of its scheduled hearing in the last policy committee of the second house of the Legislature. As noted in the Senate Republican Whip analysis at the earlier but still late stage in the legislative process of that bill -- for action on the Senate Floor -- “...Legislators should not be asked to vote on a bill by this stage in the process that will become something totally different. This is a total abuse of power, and begs the question, what is the

the ability of parties to bring summary judgment motions and have unmeritorious cases dismissed prior to trial. Characterized as a 'simple 90-day notice requirement,' the effect of the proposed changes is to so constrain the time period in which a defendant would have to conduct discovery and prepare a summary judgment motion, that the practical effect would be to all but eliminate the option of summary judgment. Summary judgments are infrequently granted under the current rules, which were clarified by a unanimous California Supreme Court decision written by the late Justice Stanley Mosk last year. This issue was debated last year in the Senate in SB 476, but has sat in the Assembly for over a year without any action or debate until now, at the eleventh hour, when new amendments are being proposed as a 'done deal' prior to any policy committee hearing or analysis. [2] **Doubling of the time period within which to file a lawsuit for personal injury from the current one year to two years.** This change will have a major impact on the tort litigation system, significantly increase the number of lawsuits filed, give personal injury attorneys a longer time to build up damages, inflate claims management costs, and increase insurance fraud. Statutes of limitations serve the important public policy of encouraging prompt resolution of disputes, while memories are fresh, witnesses are still available, and issues of causation and damages can more readily be determined. Doubling the statute of limitations will lead to more stale claims being litigated, prolonging of the claims settlement process, and an increase in the number of fraudulent claims. Absolutely no showing has been made that the current statute of limitations is inadequate. This is a major change to the tort system which has not been analyzed or heard in any policy committee and has not even been in print in any bill this year.

3. **The California Employment Council (CELC) opposed the expanded time between filing a summary judgment notice and hearing.** CELC asserts that: "The timing restrictions are very onerous and are inconsistent with the notion that summary judgments should be used to quickly rid the system of nonmeritorious cases. SB 800 created a very narrow time window in which the motion can be brought, pushes way out the time to resolution to (at the

...)

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Fiscal Effect

Unknown.

Comments

1. **EXISTING LAW.** Current statutory law: (1) Limits to one year the time for commencing an

action for personal injury or wrongful death. (Code of Civil Procedure section 340.) (2) Sets forth the standards and procedures for an action to be resolved through summary judgment, without trial, if the action has no merit or if there is no defense to the action. (Code of Civil Procedure section 437c.) (3) Provides that notice of a motion for summary judgment shall be served on all other parties to the action at least 28 days before the time appointed for hearing, with the time increased by specified amounts when notice is by specified methods. (Code of Civil Procedure section 437c (a).) (4) Provides that opposition to a motion for summary judgment must be filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise, and that any reply to the opposition must be served and filed not less than 5 days before the hearing, unless the court for good cause orders otherwise. (Code of Civil Procedure section 437c (b).) (5) Provides that if it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion or order a continuance to permit discovery. (Code of Civil Procedure section 437c (h).) (6) Provides that a summary judgment is an appealable judgment, and sets forth procedures for appellate review. (Code of Civil Procedure section 437c, subdivision (l).) (7) Provides that a defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if he or she has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that action.

2. **Potential supporters of this measure may likely include the following groups that endorsed the somewhat similar summary judgment reform in SB 476 (Escutia):** Association of California Life and Health Insurance Companies; California Conference Board of the Amalgamated Transit Union; California Conference of Machinists; California

Employment Lawyers Association; California Teamsters Public Affairs Council; Consumer Attorneys of California; Hotel Employees, Restaurant Employees International Union; Engineers and Scientists of California; Older Women's League of California; Region 8 States Council of the United Food & Commercial Workers; and numerous individual letters.

3. **Potential opposition of this measure may likely include the following groups that opposed somewhat similar summary judgment reform in SB 476 (Escutia):** Agouron Pharmaceuticals, Inc.; Alliance of American Insurers; Alliance of Automobile Manufacturers; American International Group; Association of California Insurance Companies; BP Amoco; Baxter Healthcare Corporation; California Association of Health Facilities; California Chamber of Commerce; California Employment Law Council; California Grocers Association; California Manufacturers and Technology Association; California Retailers Association; Californians Allied for Patient Protection; Consulting Engineers and Land Surveyors of California; Chevron Corporation; Civil Justice Association of California; Citizens Against Lawsuit Abuse; Corio; Cubic Corporation; Del Monte Foods; The Dentists Insurance Company; Doctors' Company; ITLA Capital Corporation; Kaiser Permanente; Motion Picture Association of America; National Association of Independent Insurers; Pacific Bell; Personal Insurance Federation; Pharmaceutical Research and Manufacturers of America; PlastiColor Molded Products, Inc.; Orange County Citizens Against Lawsuit Abuse; Professional Liability Insurers; Robinson; State Farm Insurance Companies; and W D Machine & Engineering.
4. **Senator John Burton and Assembly Member Herb Wesson replace Senator Romero as the lead authors.**

Date of Hearing: August 26, 2002

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 800 (Burton) – As Amended: August 25, 2002

As Proposed to Be Amended

SENATE VOTE: Not relevant.

SUBJECT: CONSTRUCTION DEFECTS LIABILITY AND PROCEDURE

KEY ISSUE: SHOULD CONSTRUCTION DEFECTS BE DEFINED BY SPECIFIC STANDARDS AND BUILDERS BE GIVEN AN OPPORTUNITY TO REPAIR ALLEGED VIOLATIONS BEFORE A HOMEOWNER MAY FILE A CIVIL ACTION IN ORDER TO PROMOTE SAFE AND AFFORDABLE HOUSING?

SYNOPSIS

This bill, the consensus product resulting from nearly a year of intense negotiations among the interested parties, proposes two significant reforms in the area of construction defect litigation. First, the bill would establish definitions of construction defects for the first time, in order to provide a measure of certainty and protection for homeowners, builders, subcontractors, design professionals and insurers. Secondly, the bill requires that claimants alleging a defect give builders notice of the claim, following which the builder would have an absolute right to repair before the homeowner could sue for violation of these standards. If the builder failed to acknowledge the claim within the time specified, elected not to go through the statutory process, failed to request an inspection within the time specified, or declined to make the offer to repair, or if the repair is inadequate, the homeowner is relieved from any further pre-litigation process.

SUMMARY: 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.
- 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.

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. (Code of Civil Procedure sections 337.1 and 337.15.)

- 2) 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. (Code of Civil Procedure sections 337 and 337.15. *See, e.g., FNB Mortgage Corp. v. Pacific General Group* (1999) 76 Cal.App.4th 1116; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762.)
- 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.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: According to the author, this bill represents groundbreaking reform for construction defect litigation. As many prior bill analyses on this subject have noted, 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 key legislative leaders over the past year, leading to consensus on ways to resolve these issues.

Definition of Construction Defect. 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 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.

Optional Enhanced Protections. 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 in place of the provisions set forth in this Section.

Time Periods for Filing Actions. 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 CCP Section 337.15(g)(2). These time limitations do not apply to any action by a claimant for a contract or express contractual provision.

Right to Repair. 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 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.

Subcontractors and Design Professionals. 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.

Prior Related Legislation. AB 1700 (Steinberg), Ch. 824, Stats. 2001, substantially reformed the pre-litigation dispute resolution process for construction defect actions involving common interest developments.

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

None received

Analysis Prepared by: Kevin G. Baker/ JUD. / (916) 319-2334

SB 800 (Johannessen)**Support**

File Item #

Senate Transportation: 13-0

(AYE: McClintock, Brulte, Monteith; ABS: Morrow)

Senate Appropriations: (Senate Rule 28.8)

Vote requirement: 21

Version Date: 5/21/01

Quick Summary

Creates a new motor vehicle designation for collector motor vehicles, and exempts these vehicles from biennial smog inspection.

Fiscal Effect

MINOR STATE COSTS. Less than \$100,000 for system upgrades for the DMV to reclassify all historical vehicles and horseless carriages, not just those who apply for special license plates, as vehicles requiring a \$2 annual fee, instead of an annual VLF fee.

Fiscal Consultant: Alex Alanis

Digest

Defines a vehicle that is 25 or more model-years old and is not used as a primary source of transportation but is instead used for purposes of display at events as a "collector motor vehicle."

Requires owners of collector vehicles to submit a written statement or policy from an insurance agent indicating that the vehicle is primarily a display vehicle.

Exempts collector motor vehicles, as defines, from the biennial smog inspection program.

Background

Existing law permits owners of vehicles that are operated or moved primarily for the purpose of historical exhibition or similar reasons, to be issued special identification plates.

This provision in law applies to motor vehicles with engines of 16 or more cylinders that were manufactured prior to 1965, motor vehicles manufactured in the year 1922 or prior, and vehicles of historical interest that were manufactured at least 25 years ago.

These display vehicles are exempted from paying VLF and are instead eligible to pay a \$2 in lieu VLF.

Rowley vs. DMV

A recent court case brought against the DMV by the owner of a vehicle of historic interest found that a vehicle owner that qualifies for either a horseless carriage plate or a historic vehicle plate, but does not apply for one of these special plates still qualifies for the \$2 in lieu VLF fee.

As a result of this decision, all vehicles that qualify for the special plates qualify for the \$2 in lieu VLF fee.

Analysis

The collector vehicles that would be affected by this bill comprise a small fraction of the vehicle fleet and are considered classic cars. SB 800 provides a specific classification for these vehicles that are used primarily for display and not for transportation, exempting them from biennial smog inspection.

In addition, the definition of a collector vehicle is added to VC 5004, which provides the requirements for eligibility to pay the \$2 in lieu VLF.

Transportation Committee amendments that would have specifically precluded these vehicles from the \$2 in lieu VLF, have been removed from the bill.

Support & Opposition Received

None received

Consultant: *Edward Morley*

Whip Comments

Current law allows for historic vehicles to pay a \$2 registration fee rather than the full vehicle license fee. Cars meeting the definition of 'historic vehicle' are allowed to display special 'historic' license plates.

A recent court ruling stated that in order to qualify for the simple \$2 registration fee, the vehicle need only qualify as an historic vehicle – it need not

display the historic plates. DMV has long contended that in order to qualify for the \$2 fee, these vehicles must first have the plates.

This bill seeks to exempt 'collector' cars from biennial smog inspection requirements. It also sought to broaden the definition of 'collector vehicle' to allow collector cars to display historic license plates. Because of the recent court ruling, this bill will thus allow collector cars to pay only the \$2 registration fee and **NOT** the full VLF.

Passing this bill means passing on a significant tax break to owners of collector vehicles.

PROOF OF SERVICE

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen (18) years and not a party to the within action or proceeding. I am employed in the County of Alameda, State of California. My business address is 1500 Park Avenue, Suite 300, Emeryville, CA 94608. I am familiar with the regular mail collection and processing practices of Katzoff & Riggs for correspondence deposited for mailing with the United States Postal Service. On August 9, 2013, I caused to be served the following document(s):

**PLAINTIFF AND APPELLANT'S SECOND MOTION FOR
JUDICIAL NOTICE (LEGISLATIVE HISTORY OF SB 800)**

addressed to each such addressee respectively as follows:

[SEE ATTACHED SERVICE LIST]

I then caused the addressee(s) to be served in the following manner:

- [X] **VIA THE UNITED STATES POSTAL SERVICE** by causing a true copy and/or the original thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail.

I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on August 9 at Emeryville, California.



Nicole Campbell

SERVICE LIST

Peter Abrahams Peder K. Batalden Horvitz & Levy LLP 15760 Ventura Boulevard, 18 th Floor Encino, CA 91436-3000	Attorneys for Defendants and Respondents Skidmore, Owings & Merrill LLP and HKS, Inc.
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