

HB 3746 B STAFF MEASURE SUMMARY
Senate Committee On Housing and Development

Carrier: Sen. Meek

Action Date: 05/21/25
Action: Do pass with amendments to the A-Eng bill. (Printed B-Eng.)
Vote: 4-1-0-0
Yeas: 4 - Anderson, Nash, Patterson, Pham
Nays: 1 - Broadman
Fiscal: Has minimal fiscal impact
Revenue: No revenue impact
Prepared By: Kaia Maclaren, LPRO Analyst
Meeting Dates: 5/5, 5/12, 5/21

WHAT THE MEASURE DOES:

The measure reforms the process for handling construction defect claims, particularly for homeowners associations (HOAs) and condominium associations. It sets time limits within which a homeowners or condominium associations may bring a tort claim for construction defects in condominiums for which the declaration has been first recorded after the effective date of the measure. The measure mandates independent inspections for moisture intrusion at two key milestones, two years and six years after substantial completion, and defines requirements for inspection and remediation of damage.

Detailed Summary:

Tort Action Limitations

- Defines “substantial completion” as the earliest of the following events:
 - the date when the contractee accepts that the construction, alteration, or repair of the improvement—or its designated part—has reached a state of completion when it may be used or occupied for its intended purpose;
 - the date a public body issues a certificate of occupancy for the improvement; or
 - the date when the owner begins to occupy or use the improvement for its intended purpose.
- Specifies the time limits within which a tort action claim must be initiated by a HOA or association of unit owners concerning defects on a structure as:
 - filed within seven years after either substantial completion, alteration, repair, or abandonment; or
 - if defect is discovered later—more than six but less than seven years after substantial completion or abandonment—one year from the date of discovery to initiate the action.
- Specifies that these time limits on tort actions for construction defects apply **only** to structures for which the declaration was first recorded on or after the effective date of this measure, and excludes condominiums for which each unit owner is responsible for the interior and exterior of their own unit.

Tort Action Processes

- Requires approval at a board of directors meeting before a homeowners or condominium association starts or intervenes in litigation concerning a defect. Specifies board of directors meeting requirements and the contents and timelines for sending a notice to each owner and every person it considers responsible for the defect.
- Specifies processes following a notice of defect, including:
 - Allows, after the notice of defect is delivered from the board of directors to the contractor, subcontractor, or supplier in question, the contractor, subcontractor, or supplier 30 days to send a written request to conduct an inspection of the residence in question, and allows that they may have a technical or construction expert attend this inspection.

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- Requires that, upon receipt of the notice of defect, the contractor, subcontractor, or supplier must send the owner a written response no later than 14 days after conduction the above inspection of the residence; or, if no inspection is conducted, 90 days after receiving the notice of defect or the secondary notice.
- Specifies that the offer for payment of monetary compensation to the owner for some or all of the acknowledged defects and any incidental damage, must be equal to cost of remediation.
- Allows the owner a choice between accepting the payment or allowing the contractor, subcontractor, or supplier to perform the remediation.
- Requires contractor, subcontractor, or supplier to offer, within 30 days of the initial response, a firm payment amount for consideration by the owner.
- Provides that if the owner wishes to accept the offer for payment, but disputes the amount, the parties may select a mediator to resolve the dispute; if no mediator can be agreed upon, the administrator of the Construction Contractors Board may direct a professional mediation association or service to select a mediator.
- Provides that if the owner selects the option of payment, the owner shall make a good faith effort to have a construction contractor complete the remediation.
- Allows the general contractor to perform remediation, or pay monetary compensation, if the contractor, subcontractor, or supplier fails to act in accordance with the accepted offer.
- Extends the right of the sender of secondary notice to commence a court action against the recipient of that notice until the owner's right to act against the sender expires.
- Applies only to notices of construction defect that are delivered by an owner on or after the effective date of the measure and to any resulting secondary notices.

Moisture Inspections

- Directs a board of directors to cause an independent inspection of the condominium for moisture intrusion before the end of the second year following the condominium's substantial completion (paid for from the reserve account for maintaining, repairing, and replacing common elements) and before the end of the sixth year following the condominium's substantial completion.
- Requires the results of the independent inspections, along with the name of the person who performed the inspection, to be delivered to the homeowners or condominium association.
- States that these independent inspections are required only in condominiums for which the declaration has been recorded on or after the effective date of this measure.

ISSUES DISCUSSED:

- Provisions of the measure

EFFECT OF AMENDMENT:

The amendment defines that the measure applies only to those condominiums whose declaration was filed after the effective date of the measure, and excludes those for which each unit owner is responsible for their own maintenance, both interior and exterior. It modifies the construction defect claims process for these properties, especially when initiated by homeowners associations (HOAs) or condominium associations, by extending inspection request timelines from 14 to 30 days, permitting expert participation in inspections, and requiring written responses within set deadlines. The amendment allows the owner of the condominium a choice to have the contractor, subcontractor, or supplier in question pay an amount equal to the cost of remediation rather than performing the remediation, and outlines mediation procedures for payment disputes. It also removes the bar on admissibility of unaccepted offers or replies in later legal proceedings, clarifies tolling provisions and new deadlines for secondary notice claims, and ensures that new requirements apply only to defect notices delivered on or after the effective date.

Detailed Summary:

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States that provisions of the measure defining the period of limitation for a tort claim to be filed after substantial completion applies **only** to those condominiums whose declaration was filed after the effective date of the measure. Excludes condominiums for which each unit owner is responsible for the interior and exterior of their own unit.

Defines procedures for actions following a notice of defect, including that the period following receipt of notice that a contractor, subcontract or supplier may send a written request to conduct an inspection of the residence in question is extended from 14 to 30 days; and that the contractor, subcontractor, or supplier may have a technical or construction expert attend an inspection.

Requires that, upon receipt of the notice of defect, the contractor, subcontractor, or supplier must send the owner a written response no later than 14 days after conduction the above inspection of the residence; or if no inspection is conducted, 90 days after receiving the notice of defect. Requires that the contractor, subcontractor, or supplier must:

- offer, in a written response, to pay an amount of monetary compensation to the owner for some or all of the acknowledged defects and any incidental damage; and
- send, within 30 days of the initial response, a firm payment amount for consideration by the owner; and
- must allow the owner a choice between accepting the payment or allowing the contractor, subcontractor, or supplier to perform the remediation.

Provides that if the owner wishes to accept the offer for payment, but disputes the amount, the parties may select a mediator to resolve the dispute; if no mediator can be agreed upon, the administrator of the Construction Contractors Board may inform a professional mediation association or service to select a mediator.

Provides that if the owner selects the payment, the owner shall make a good faith effort to have a construction contractor complete the remediation; this acceptance by the owner satisfies claims for remediation.

Retains the right of the owner to commence a court action against the contractor, subcontractor, or supplier, even as remediation is in process, up until the statute of limitations as defined in the measure.

States the moisture intrusion inspection provision applies only to condominiums with declarations filed on or after the effective date.

Adds special procedures for defect claims initiated by HOAs or condo associations. Clarifies when a rejected offer leads to legal action and removes the bar on admissibility of unaccepted offers or replies.

Clarifies that new notice provisions apply only to notices delivered on or after the effective date of the measure.

BACKGROUND:

In Oregon, condominiums are primarily governed by the Oregon Condominium Act, codified in Oregon Revised Statutes (ORS) Chapter 100. This comprehensive statute outlines the creation, ownership, and management of condominium properties within the state. To establish a condominium, a declaration must be recorded, detailing property descriptions, unit boundaries, common elements, and any restrictions. Upon forming a condominium, an Association of Unit Owners (AUO) is created to manage and operate the property. All unit owners automatically become members of this association. The AUO must adopt bylaws that govern its operations, including procedures for meetings, voting rights, and the election of a board of directors. Developers must provide purchasers with a condominium disclosure statement and a unit sales agreement, ensuring buyers are informed about the property and their rights. When existing buildings are converted into condominiums, developers must follow specific procedures to protect the rights of existing tenants, as outlined in the Oregon Condominium Act. Condominium unit owner associations are required to file Annual Reports with the Oregon Real Estate Agency.