

April 4, 2006

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Patricia Galvan
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to home construction (File No. SA2006RF0023, Amdt. #1-S).

Background

Residential Construction Defects. In cases when residential property has construction defects, California property owners generally have up to ten years from the time of construction to seek compensation. Due to recent legislative changes, the procedures for seeking compensation are different depending on when the residence was constructed.

- *Pre-2003 Construction.* For residential properties built prior to 2003, current law allows homeowners to sue builders in cases of property damage or personal injury.
- *Recent Construction.* For residential properties built in 2003 or later, current law establishes specific construction standards that homes must meet. Before a lawsuit is filed regarding construction defects, specific procedures regarding notifications, inspections, repairs, and mediation must be followed. Conversions of apartment complexes to condominiums, however, are not subject to these new rules.

Major Provisions

This statutory measure repeals the provisions of existing law pertaining to construction defects for residential properties built in 2003 or later. As a result, all properties would be subject to the provisions which currently apply to pre-2003

construction. In addition, the measure adds a number of new provisions regarding construction defects. Among the measure's changes are provisions related to:

- Providing various rights to homeowners.
- Increasing public access to construction-related records. If cities failed to comply with some of these provisions, the measure would hold them financially liable for any necessary repairs.
- Increasing the disclosure of information by builders.
- Making it easier for homeowners to recover attorney and expert costs in construction defect cases.
- Eliminating binding arbitration and mediation for construction defect matters.
- Requiring fingerprinting of all contractors.

Fiscal Effect

Increased Government Costs. The measure would increase costs for the state and local governments to implement and enforce the measure's provisions. For residential properties built in 2003 or later, this measure's elimination of prelitigation procedures and other provisions would likely increase the number of construction defect lawsuits filed. (While the court system does not track the number of construction defect lawsuits, such lawsuits generally are not a significant portion of courts' cases.) In addition, if an individual city failed to comply with the measure's requirement to provide access to construction records, it could result in increased government costs to pay for home repairs. Finally, some of the increased costs, such as for the fingerprinting of contractors, would be covered by fee revenues. The magnitude of state and local government implementation costs is unknown, but would probably be minor.

Potential Effect on Building Industry. The effect of the measure on the building industry would depend in part on future interpretations of the extent of the measure's requirements—particularly the interpretation of what constitutes homeowners' rights. By increasing the number of lawsuits filed and increasing other construction requirements, the measure could have some effect on the size and profitability of the building industry, potentially reducing related state and local tax revenues. The magnitude of any such effect, however, is unknown.

Fiscal Summary. This measure would have the following fiscal impact:

- Unknown, but potential reduction in state and local government revenues from impact on building industry.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance