Date of Hearing: April 21, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1903 (Wicks) – As Amended March 19, 2026

As Proposed to be Amended

SUBJECT: CONSTRUCTION DEFECTS

KEY ISSUE: SHOULD SIGNIFICANT REFORMS BE ENACTED TO CALIFORNIA'S TWENTY-FIVE YEAR OLD CONSTRUCTION DEFECT LAWS WITH THE GOAL OF REDUCING LIITGATION AND SPURRING INCREASED CONDOMINIUM DEVELOPMENT?

SYNOPSIS

Despite years of legislative reforms, California's housing crisis continues to be a persistent problem for policy makers in this state. While NIMBY opposition and local government's recalcitrance to permit new housing is a large driver of this crisis, financial factors also play a role. Based on a report to the Terner Center at the University of California, Berkeley, one potential factor driving up housing costs is construction defect litigation. That report blames homeowner associations and overzealous attorneys for many of the woes plaguing the home construction industry in California.

Building on the recommendations in that report, this bill substantially amends the existing "right to repair" framework that has governed construction defects for the past 25 years. The bill enhances the notices that must be provided to builders should a defect occur, eliminates insurance barriers that deter timely repair work, improves the builder's ability to seek a post-repair waiver of liability, requires a plaintiff to demonstrate actual damage in order to seek recovery – even if the defect is to a health or safety system in a building, limits a plaintiff's ability to recover the cost of inspecting their property for defects, and modifies a homeowner association's ability to advocate on behalf of its residents. This bill also introduces a new legal framework whereby a builder can have their building "certified" and then bypass the entire existing law's process for repairing a property.

This bill is co-sponsored by the California Building Industry Association and Habitat for Humanity. The bill is also supported by a coalition of local governments and the business community overall. The proponents of the bill argue, much like the report to the Terner Center, that greedy trial lawyers have duped unsuspecting homeowner associations into filing frivolous construction defect lawsuits that in turn have raised costs to builders and crushed housing development in California. This bill is stridently opposed by consumer organizations, homeowner associations, and several law firms who contend that this bill represents a massive transfer of costs and risks from developers onto everyday California homeowners.

This author is proposing several amendments to the bill that, due to timing constraints, will be adopted in Committee. It should be noted that the amendments do not address the concerns raised by the opposition.

SUMMARY: Revises the right to repair process and litigation procedures for alleged construction defects. Specifically, **this bill**:

1) Requires the notice to a builder regarding a construction defect that violates the performance standards set in existing law to be signed by the claimant and include the address of the home, a description of the observable evidence of the damage believed to result from a violation, copies of any reasonably available photographs, estimates, or reports relating to the damage to the extent they exist at the time the notice is provided, and the room within the home or unit in which that evidence may be found.

2) Requires a notice of a construction defect for properties within a homeowner association to be signed by each affected homeowner and include the same information required for an individual notice.

3) Provides that a builder may not obtain a release or waiver of any kind in exchange for repairing a construction defect until one year after the conclusion of the repair.

4) Requires a release of liability in exchange for either a cash payment or repair, including a full and general release which may be negotiated by the builder.

5) Provides that if a claimant does not conform to the existing right to repair statute when filing a construction defect claim the builder may bring a motion to dismiss the action and such a motion must be granted by the courts.

6) Provides that in order to make a claim for a violation of the performance standards related to construction defects the claimant must affirmatively demonstrate all of the following, in accordance with the applicable evidentiary standards:

    a) There is a violation of the applicable standard;

    b) The violation caused appreciable, nonspeculative, present physical damage to another component part of the building, consistent with *Aas v. Superior Court* (2000), 24 Cal.4th 627;

    c) The violation is caused by the original construction;

    d) The claim is not subject to an affirmative defense.

7) Provides that the procedures provided in the Civil Code Title relating to construction defect is the exclusive remedy to a defect whether based on statute, common law, or express or implied contract for any claim or action seeking recovery of damages arising out of, pertaining to, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction.

8) Prohibits an insurer from asserting repairs as a voluntary payment or as a payment made without the insurer's consent, or deny counting the costs associated with those repairs, whether pursuant to a warranty or not, against a deductible or self-insured retention.

9) Prohibits a cause of action for construction defect to be filed unless the conditions for filing an action have been met for each claimed violation.

10) Prohibits a homeowner from recovering investigative costs in a construction defect action and that *Stearman v. Centex Homes* (2000) 78 Cal.App.4th 611 is abrogated.

11) Prohibits the extrapolation of construction defect claims.

12) Limits testing of building components in advance of a construction defect claim to conditions that would realistically be expected in the location of the component part of the building.

13) Exempts from liability a common interest development association and its officers and directors for breach of fiduciary duty for deciding not to file a claim or action for construction defect.

14) Limits a homeowner association's standing to file a construction defect claim to issues impacting the common area.

15) Requires a homeowner association, prior to filing a construction defect claim on behalf of the association to submit the following notice to homeowners:

> THE FILING OF A CIVIL ACTION MAY AFFECT THE VALUE OF YOUR RESIDENCE, YOUR ABILITY TO SELL YOUR RESIDENCE, OR YOUR ABILITY TO REFINANCE YOUR MORTGAGE. IT MAY ALSO REQUIRE YOU TO PROVIDE ACCESS TO YOUR RESIDENCE, PARTICIPATE IN DEPOSITIONS OR RESPONDING TO DISCOVERY REQUESTS, AND TO MAKE OTHER DISCLOSURES TO FUTURE POTENTIAL BUYERS.

16) Requires a homeowner association to provide homeowners a copy of each notice to the builder specified in 1).

17) Permits a builder to have a newly constructed condominium builder deemed a certified building by undergoing private inspection, repairs, and reinspection during construction in addition to any inspections conducted by the local public agency.

18) Provides that a building may obtain certified building status by undergoing private inspection, repairs, and reinspection during construction in addition to any inspections conducted by the local public agency that must examine all of the following:

    a) Grading;

    b) Foundations;

    c) Framing, flashing, windows, and drywall;

    d) Plumbing

    e) Exterior applications such as stucco, siding, and roofs; and

    f) Mandatory health and safety features, including but not limited to seismic safety and fire suppression features.

19) Provides that once inspections and repairs, if appropriate, during construction are conducted and approved by the inspector, the inspector must certify that the building is a certified building and such status cannot be challenged.

20) Permits the builder of a certified building to establish its own process for handling postconstruction claims.

21) Provides that a builder has the complete and unrestricted right to inspect and repair a certified building at times mutually agreed upon by the claimant and the builder within time frames established by the builder's process, and that if the claimant refuses the offer of repair or prevents, restricts, delays, or frustrates access for more than seven days from the mutually agreed upon day, then the repairs are deemed completed and the builder is deemed to have received the release specified in 22).

22) Provides that if a claimant makes a claim relating to a certified building and the builder responds by performing repairs that are inspected and approved by the inspector, the claimant is be deemed to have granted a full and general release.

23) Prohibits filing an action for construction defect against the builder of a certified building unless all of the following are satisfied:

    a) A notice of claim is presented before the filing of the action;

    b) Observable evidence of the alleged violation and damage has been provided to the builder; and

    c) The repair does not receive an approval by the inspector, as specified.

24) Provides that an inspector hired to certify a building must meet the following criteria:

    a) Be a private licensed architect, engineer, or general contractor;

    b) Not have a direct or indirect financial interest in the builder, the developer, or any entity affiliated with the builder or developer.

    c) Not have received, in the aggregate, more than ten percent of the inspector's gross professional revenue from the builder, the builder's affiliates, or the builder's subcontractors during the two calendar years preceding the first inspection;

    d) Not be, and not have been within the preceding five years, an employee, agent of the builder, the developer, or any subcontractor that performed work on the project and shall not have been an officer or director of the builder, the developer, or any subcontractor that performed work on the project.

25) Requires an inspector to certify in writing, to the Department of Real Estate, that the conditions of 24) are met.

26) Requires the Department of Real Estate, on or before July 1, 2028, to post on its website a list of inspectors eligible to perform certified building inspections.

27) Provides that the provisions of 17) though 26) apply only to condominiums constructed on or after January 1, 2027.

EXISTING LAW:

1) Provides that in any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, is generally liable for, and the claimant's claims or causes of action are to be limited to violations of the building performance standards articulated in law. (Civil Code Section 896.)

2) Requires a homeowner to follow all reasonable maintenance obligations and schedules communicated in writing to the homeowner by the builder and product manufacturers, as well as commonly accepted maintenance practice. (Civil Code Section 907.)

3) Requires, prior to filing any action for construction defect, a claimant or their legal representative to provide written notice via certified mail, overnight mail, or personal delivery to the builder of the claimant's claims that the construction of their property violates any of the performance standards specified in 1).

4) Requires the notice in 3) to include the claimant's name, address, and preferred method of contact, and to state that the claimant alleges a violation against the builder, and to describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation unless the claimant is within a homeowner association in which case the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences.

5) Requires a builder to acknowledge the receipt of a notice of a construction defect within 14 days after receipt of the notice of the claim, and if the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder must include the attorney in all subsequent substantive communications, including, without limitation, all written communications and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any. (Civil Code Section 913.)

6) Permits a builder, within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. (Civil Code Section 917.)

7) Provides that if the builder fails to complete the repair within the time specified in a repair plan, the claimant may proceed with the filing of an action. (Civil Code Section 925.)

8) Prohibits a builder from obtaining a release or waiver of any kind in exchange for the repair work mandated by law, and that at the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both. (Civil Code Section 927.)

9) Provides that if the applicable statute of limitations has otherwise run during repair process, the time period for filing a complaint or other legal remedies for construction defect claim, or for a claim of inadequate repair, is extended from the time of the original claim by the

claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. (Civil Code Section 927.)

10) Provides that a builder may make a cash offer and not repair a defect and that a reasonable release of claims may be obtained in exchange for the cash payment. (Civil Code Section 929.)

11) Requires, in order to make a claim for violation of the performance standards of 1), a homeowner need only demonstrate, in accordance with the applicable evidentiary standard, that the home does not meet the applicable standard, subject to the affirmative defenses set forth in law. (Civil Code Section 942.)

12) Provides that a construction defect action is the exclusive remedy for failure to adhere to the performance standards of 1), except as specified.

13) Provides that if a claim for damages is made relating to construction defect, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards, the reasonable cost of repairing any damages caused by the repair efforts, the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards, the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute. (Civil Code Section 944.)

14) Provides that the provisions of 1) though 13) applies only to new residential units where the purchase agreement with the buyer was signed by the seller on or after January 1, 2003.

15) Authorizes a homeowner association to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following:

    a) Enforcement of the governing documents;

    b) Damage to the common area;

    c) Damage to a separate interest that the association is obligated to maintain or repair; and

    d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair. (Civil Code Section 5980.)

16) Requires a homeowner association, no later than 30 days before filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board to provide a written notice to each member of the association who appears on the records of the association when the notice is provided. (Civil Code Section 6150.)

17) Defines the following terms:

a) "Structure" means any residential dwelling, other building, or improvement located upon a lot or within a common area; and

b) "Claimant" or "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association. (Civil Code Section 895.)

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

COMMENTS: In order to address California's ongoing housing crisis, new housing units must be developed at a significantly higher rate than California's construction industry is presently producing. Although a myriad of factors deter housing construction in this state, including local opposition, high labor and material costs, regulatory hurdles, the federal administration's tariff regime, and lending difficulties, the proponents of this measure contend that reforming construction defect law will be a panacea to developing new housing. The proponents of the bill particularly believe that construction defect reform will spur new condominium development. To that end, this bill significantly modifies California's longstanding "right to repair" framework that governs construction defects. In support of the bill, the author states:

> In our country, homeownership is the single most reliable pathway to intergenerational wealth and stability. But that pathway is currently only available to the wealthiest Californians. The production of condominiums, which have traditionally provided one of the most affordable homeownership options, has plummeted since the creation of our current construction defect liability laws in 2002 (SB 800, Burton). This is because the current law is skewed to reward unscrupulous litigants to the detriment of existing and future homeowners. The purpose of this bill is to establish a balanced system that facilitates timely repair of any defects in homeownership housing, and only results in litigation in those instances where the homebuilder fails to repair damage.

California's existing "right to repair" framework governs construction defects. Following years of extreme acrimony in both California's courthouses and the Legislature regarding the flood of construction defect litigation in this state in the late 1990s, in 2002, the Legislature enacted SB 800 (Burton) Chap. 722, Stats. 2022. That landmark measure, the product of nearly two years of negotiations between builders, real estate interests, the plaintiff's bar, and homeowner associations, resulted in the existing law's "right to repair" framework for construction defect issues.

The SB 800 framework was premised on the notion that instead of immediately litigating construction defect claims, the builder should be given the right to repair their work. The framework sought to provide builders guidance in constructing properties to meet "performance standards" for the various components of a property. Essentially, so long as a component of a building is performing in a manner consistent with the standard so as to avoid damage to the structure, the builder could generally avoid liability. In the event a component of a building was not performing to the standard, a homeowner would be required to notify the builder who then had the right to repair the work. A homeowner association could submit such notices on behalf of all residents with similar issues. Upon receiving notice of a potential defect, the builder is entitled to inspect the property and commence repairs or pay the homeowner for the cost of the repair and enable them to do the work themselves.

Only in the event a repair failed, or a builder refused to do the work, can a homeowner or homeowner association then proceed to filing a construction defect action in court. Seeking to promote repairs, the existing law even tolls applicable statute of limitations to provide time for the work to commence. The existing law primarily focuses on "defects," essentially issues that do not meet the performance standards, and less on actual property damage caused by the defect. In addition to the cost of the repair work, the homeowner is entitled to recover costs associated with inspecting the property to determine if a defect was present. The entire process is designed to promote cooperation between builders and homeowners to address issues before significant damage occurs to the property in order to reduce costs and the likelihood of litigation.

Most stakeholders involved in this measure appear to agree that this system has largely worked for single-family homes, even those under the governance of a homeowner association. For a single-family home, the homeowner typically contacts the developer (now many developers provide homeowners with a smartphone app or website to submit the notice) and the developer can then commence the inspection and repair process. The process appears to work in large part because construction issues are limited to the lone building that represents the homeowner's separate interest.

The process appears to be less successful at mitigating issues in condominiums and townhomes as multiple separate interests share some building components (roofs, plumbing, hallway corridors, etc…) and the homeowner association is required to handle construction issues occurring in common areas. The repair provisions of existing law also struggle to address problems in condominium developments, as an issue is far more likely to exist in multiple units in one building than be isolated to a one-off failure in a single-family home. This is why the existing law permits homeowner associations to extrapolate that problems in one unit may be found elsewhere.

A report generated for UC Berkeley argues that construction defect law is an impediment to condominium development. This bill is largely based on a report prepared for the Terner Center for Housing Innovation at UC Berkeley and the San Francisco Bay Area Planning and Urban Research Association. (Gonzales & Moody, *The Financial Impacts of Construction Defect Liability on Housing Development in California*, Economic and Planning Systems [Prepared for the Terner Center] (May 2025) available at: https://ternercenter.berkeley.edu/research-and-policy/the-financial-impacts-of-construction-defect-liability-on-housing-development-in-california/.) While the report does provide statistical analysis on the lack of condominium developments in the state and the higher cost for general liability insurance for condominium developments compared to apartments (*Id.* at p. 20), the report also notes that while, "construction defect liability and related costs are certainly not the *sole or even primary cause* of relatively tepid condominium development in California, it is an important contributing factor among many others [emphasis added]." (*Id.* at p. 3.) The report notes these costs tend to only impact projects "on the margins." (*Ibid.*)

Furthermore, while the data regarding insurance rates is empirical, most of the rest of the report tying these rates to construction defect litigation is based on subjective interviews with unnamed "experts." (*Id.* at p. 5.) The interviews with these "experts" then repeatedly make statements blaming law firms specializing in construction defect law for the rate of construction defect litigation in condominiums. The report is especially critical of the fact that that attorneys working on a contingency basis end up "taking up to 33 percent of any final settlement amount." (*Id.* at 8.) Other than blaming attorneys, the report makes no attempt to provide an empirical

analysis as to why condominiums are three times more likely to face construction defect claims than townhomes or single-family developments. (*Ibid.)*

Despite the fact that many advocates enjoy scapegoating the plaintiff's bar for most of the state's ills, attorneys were not the only target of the "experts" interviewed for the report. Notably, the report also blames homeowner associations and condo boards for the high rates of construction defect litigation involving condominium projects, despite the fact that most new single-family home developments built in the state in the past 25 years are also part of a homeowner association. This point is wholly glossed over when discussing the different rates of litigation for different property types. The report then contends that existing law makes it too easy to sue builders because "defect investigation and claim process with a simple majority vote of the board." (*Id.* at p. 9.) The report omits the fact that these boards, which are duly elected by their neighbors, hold a fiduciary responsibility to look out for the best interests of the community.

The report also makes interesting statistical comparisons. When examining the insurance rates between condominiums and apartments, the report examines the insurance rates of condominiums built in the Bay Area versus apartments in Sacramento. While the condominium developer's insurance premiums are indeed more expensive, the report does not make any mention (or appear to account for) the fact that most real estate related costs are significantly higher in the Bay Area than Sacramento. (*Id.* at pp. 20-22.) Even when comparing the cost in a single jurisdiction, Los Angeles County, the report notes that the most expensive insurance provided to condominium developers still only accounts for four percent of a unit's overall cost. (*Id* at p. 23.)

Despite some of the issues with the report to the Terner Center, the analysis makes several valid points, including the fact that the current structure of property-casualty insurance for developers disincentivizes repairs outside of litigation. Interestingly, the report also notes that several experts stated that the SB 800 framework, "functions to safeguard consumers from those developers who cut costs at the expense of quality" and mentioned that while, "legislative reform is needed, some emphasized the need to balance any changes to the current system against the legitimate need to protect homeowners against shoddy construction." (*Id.* at p. 25.)

This bill reforms the prelitigation notice provisions of the right to repair law. The first reform to the SB 800 framework in this measure aims at modernizing the pre-litigation notice homeowners must transmit to builders. Many of the reforms proposed by this aspect of the bill appear to codify the best practices utilized in the single-family construction defect litigation space. The bill would require homeowners to provide the developer the "address of the home, a description of the observable evidence of the damage believed to result from a violation, copies of any reasonably available photographs, estimates, or reports relating to the damage to the extent they exist at the time the notice is provided, and the room within the home or unit in which that evidence may be found." Presently it appears that most of this information is already being provided to developers, especially those who utilize websites and smart phone applications for claim intake. Indeed, it does not appear terribly onerous or anti-consumer to ask a homeowner to snap a picture on their smartphone of a potential defect.

However, when a homeowner association seeks to file a notice of a construction defect issue, the bill requires both the association president and *every* impacted homeowner to sign onto the notice. Given people's busy lives this may be exceedingly difficult for a homeowner association to accomplish. Accordingly, should a homeowner association have even one difficult to reach

member, perhaps a person who frequently travels for work, the bill in print would frustrate the association's ability to even notify the developer of potential construction issues. Given that the board and president of a homeowner association are elected to serve their neighbors and maintain a fiduciary duty to do so, and in light of the realities of life, permitting the homeowner association board president to sign the notice of behalf of their neighbors appears reasonable. *The author may wish to amend this bill to simply permit the homeowner association president to sign a notice for the association*, while retaining the remaining helpful additions to the notice requirements of existing law.

This bill seeks to give builders clarity in obtaining liability releases and ensure that commencing repair work will not undermine insurance coverage. As noted in the report to the Terner Center, a major problem in the existing construction defect scheme is that builders are frequently unable to conduct a repair without facing adverse consequences from their insurer. Indeed, nothing in existing law prohibits an insurer from deeming a repair made by a builder to be a "voluntary payment" to the homeowner and not covered by insurance. This bill remedies this massive deterrence to quickly repairing defects by adding Section 942.2 to the Civil Code to read, "an insurer may not assert repairs as a voluntary payment or as a payment made without the insurer's consent, or deny counting the costs associated with those repairs, whether pursuant to a warranty or not, against a deductible or self-insured retention."

This provision should assuage concerns of builders that their attempt to "do the right thing" will adversely impact their insurance coverage. Indeed, and while admittedly as anecdotal as many of the interviews in the report to the Terner Center, several stakeholders have told Committee staff that builders are sometimes forced to ask a homeowner to pursue litigation just to ensure that a repair can be covered by insurance. To the extent that this provision of the bill eliminates this deterrence to quick repairs, this provision is a critical enhancement to the existing law.

This provision is joined in the bill with an equally important proposal to change the waiver of liability provisions currently in the SB 800 framework. The existing law prohibits a builder from obtaining a release of liability after attempting a repair. While the existing law, understandably, was designed to provide homeowners a remedy should a repair fail, it also serves as a massive deterrence to builders to conduct repair work. Under the existing law, no matter how hard a builder tries to fix a problem in good faith they may be sued anyway. The bill in print would entirely do away with the prohibition on the release of liability language. However, the author astutely notes that it may take time to fully analyze the effectiveness of a given repair. Not wanting to artificially cut off a homeowner's ability to seek additional repairs, the author proposes to amend the bill to trigger the liability release one year after the repair is conducted should the first attempt be unsuccessful. This approach appears to rightfully balance the builder's need for legal certainty with the homeowner's need to ensure that a repaired defect is properly corrected. Accordingly, the existing Civil Code Section 926 will be amended to read:

> The builder may ~~**not**~~ obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter ***one year after the conclusion of the repair.*** . ~~**At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944**~~.

This bill requires actual damage to occur before a lawsuit can be filed, even if the defect is known to exist. Of the several questionable appellate decisions that inspired all stakeholders in

the construction defect space to sit down and negotiate the proposal that eventually became the SB 800 framework was the California Supreme Court's decision in *Aas v. Superior Court* (2000), 24 Cal.4th 627. That decision, in large part, requires appreciable and nonspeculative damage to occur before a construction defect claim could proceed, even if the developer did not necessarily comply with state building code. The decision was rooted in the then-existing law that deemed a construction defect lawsuit a tort action that required a showing of actual harm. The SB 800 framework then superseded that holding recognizing that some construction defects may be able to be remedied before true harm occurs. For example, the SB 800 framework provides that even if no water damage has occurred, a construction defect is present if a window sealing is eroding and defective. The notion here being that it is better to remedy the defect before more expensive damage and repairs are incurred. Returning to the window seal example, the existing law essentially states that should the window seal issues be discovered during the summer, it makes no sense to wait until the winter rainy season to repair the problem after water damage has occurred.

This bill would return California, generally, the state of construction defect law to the pre-*Aas* era. Notably, however, the bill does not return to the prior law's reliance on the developer's ability to meet strict building standards or building material manufacturer's specifications. The bill would essentially create a hybrid of the pre-2002 law. Under this bill, a claim cannot proceed absent actual damage to a property but the more amorphous performance standards, designed to override strict adherence to building code, would remain. The co-sponsors of this measure argue this change to existing law is needed to prevent plaintiffs' lawyers from artificially finding minor deviations from the existing performance standards and using those deviations to file lawsuits for significant sums of money absent actual harms.

However, the performance standards imposed by SB 800 are not necessarily limited to minor or purely cosmetic issues. Indeed, many of these standards relate to critical human health and safety systems. The performance standards address issues like seismic safety, fire safety, and the long-term integrity of a building's foundation. Nonetheless, the bill in print would not allow a homeowner to pursue a construction defect claim in the event one of these critical life safety features was improperly built into a building. For example, should a proper fire wall or seismic safety joint not be installed on a building, the bill in print would require the building to burn or collapse to the ground before a construction defect action could be sustained.

In response to these claims, one co-sponsor of the bill contends that greedy trial lawyers exploit the fact that these critical safety systems are missing, while still presumably in violation of existing law, to bait unsophisticated homeowners to file lawsuits for costly repairs. While there is anecdotal evidence that some home inspectors (allegedly hired by plaintiff's lawyers) conduct over-zealous inspections in search of technical defects, the reality remains that in a state like California ensuring that a property is designed, and actually built, to protect inhabitants from fire and earthquake risks is critical. Nonetheless, builders believe the existing law exposes them to too much liability for problems that do not immediately damage a property or harm human life.

Ironically, the bill sponsors' insistence that the *Aas* decision once again become meaningful law may actually expose those very builders to greater liability than the current SB 800 framework. Returning to the window seal example mentioned above, under existing law, should a window seal appear suspect to the homeowner, they would only need to file a notice to the builder seeking a repair and then the builder could remedy any issues before serious water damage occurred. This approach, presumably, saves the developer money and the homeowner headache.

However, under this measure needing to prove actual damages may incentivize a would-be plaintiff to increase cost recovery by attempting to prove as much damage as possible. That would mean that a homeowner would not report an issue prior to actual damage occurring, or remedy the damage from the water intrusion in the near-term, but instead wait until the near-expiration of the statute of limitations before seeking a more costly repair and filing a lawsuit. While it is understandable that builders do not want to pay for repairs to defects that are not immediately undermining their consumer's well-being, the strict reintroduction of the *Aas* rule may also not be in their best interest.

The opposition to this measure has indicated to Committee staff a strong willingness to revisit the issue of construction defects that do not immediately cause property damages; however, these very stakeholders do not believe that unequivocally readopting the *Aas* holding is in the best interests of homeowners or builders. These stakeholders' points are well taken. The builders who are sponsoring this measure, however, do not appear willing to engage on the issue. Nonetheless, given the risk that reinstating *Aas* in its entirety may actually be counterproductive, the builders sponsoring this measure may wish to reconsider if their hardline position would actually produce the reduction in costly litigation they desire.

This bill limits a homeowner's ability to recover costs related to discovering and inspecting construction defects. Related to the reinstatement of the *Aas* decision, this bill also prohibits a homeowner from seeking recovery from a builder for any costs associated with inspecting their property for potential defects. The proponents of this measure contend these provisions are designed to eliminate plaintiff's attorneys directing homeowners and homeowner associations to conduct needless inspections to find minor defects at significant expense. Going one step further, this section of the bill also prohibits homeowner associations from extrapolating inspection results from one unit across an entire development. The opposition to the bill rightfully notes that prohibiting extrapolation will only serve to further increase inspection costs for homeowners. The opposition also notes that in light of the heightened notice requirements discussed above, the bill now requires inspections for potential defects to go into significantly greater detail than presently required under existing law. They contend this provision will require more costly inspections and transfer even more costs onto homeowners.

While the proponent's position is understandable (after all, why should a builder be forced to pay for an inspection that will ultimately lead to a costly lawsuit against the builder) the reality is these provisions represent a massive cost shift away from the builder that (presumably) profited from the construction of a property onto average California homeowners. The proponents counter this point by claiming the enhanced inspections protect consumers by ensuring that homeowners are fully aware of the claims they are making. Nonetheless, the stakeholders supporting this measure may wish to consider whether a massive transfer of costs onto consumers is truly offset by giving homeowners supposedly greater knowledge of a construction defect.

This bill significantly curtails a homeowner association's ability to advocate for its residents. As noted, the report to the Terner Center also lays blame for the construction defect issues related to condominiums on homeowner associations and their governing boards. Accordingly, this bill seeks to implement several of the homeowner association-specific recommendations of the report. First, the bill requires a homeowner association to provide a notice to all homeowners, prior to commencing litigation, warning homeowners of the risks associated with litigation. This notice focuses on the fact that litigation may undermine a homeowner's ability to sell their

property, refinance their mortgage, and participate in the legal process. Notably, this notice omits any references to the risks associated with *not* seeking legal redress for a construction defect. These risks include increased homeowner association dues and large special assessments to pay for repairs, the fact that a homeowner may be forced to provide significant financial credits to a buyer should they seek to sell the property, and the inability to obtain homeowner insurance due to the risks associated with insuring defective property. If the goal of these provisions is to ensure that homeowners are fully appraised of the risks associated with filing a construction defect claim, *the author may wish to consider broadening these disclosures to ensure that homeowners are also aware of the risks of not seeking legal redress for a defective property.*

This measure also holds that the officers and directors of a homeowner association are not liable for breach of fiduciary duty for not filing a construction defect lawsuit. This appears aimed at ensuring that boards cannot be pressured by attorneys into filing lawsuits. For more established homeowner associations these provisions may be reasonable. However, for new homeowner associations, in which representatives of the builder may serve on the board during the early days of the development, this may remove liability for potential conflicts of interest. If a board member owed their seat to the developer, under existing law, the fiduciary duty to the association helps ensure that the board member evaluates a decision regarding the filing of a construction defect lawsuit evenhandedly. However, absent that fiduciary duty there would be little incentive for the builder's representative to vote in favor of pursuing litigation against the builder. Given that the co-sponsor of this bill contends this bill is a pro-homeowner measure, it is not entirely clear what benefit homeowners have in removing their homeowner association board's fiduciary obligations to serve the homeowners within the association.

Finally, the bill in print requires 75 percent of the members of the homeowner association to vote in favor of pursuing litigation. As this Committee is well aware, in recent years legislation has been proposed to lower vote thresholds for all actions taken by homeowner associations given the broad antipathy many homeowners have toward participating in association affairs. Recognizing that it is difficult to get 75 percent of a homeowner association's members to vote at all, much less vote in favor of an action, the author is proposing to remove that provision from the bill.

This measure adopts a new condominium-specific process for a builder to "certify" their buildings and evade the existing right to repair framework. In addition to the modifications to existing law discussed above, this bill adopts an entirely new legal framework permitting a builder to have the property "certified." The certification process would have the builder hire a third-party inspector to examine aspects of the construction and then certify the building is, presumably, defect-free. The bill in print provides no criteria as to how the inspector must conduct these inspections. Once a building is certified, a builder is free to ignore the SB 800 process and develop their own procedures for fixing defects, which presumably should not occur if the building is properly certified.

Should a defect be identified, despite the certification of the building, the builder would then be free to remedy the defect in any way they see fit. So long as an inspector signs off on that repair work a homeowner would have no legal recourse against the builder should the repair work not remedy the problem. In such circumstances, the homeowner would be financially responsible for remedying the defect on their own or living with a potentially unsafe condition should they not be able to afford the repair work.

Beyond the requirement that the inspector be a licensed architect, engineer, or general contractor there are no standards for who can be an inspector. Indeed, it is not entirely clear from the bill in print if the inspector even needs to be licensed by the state of California or if a license from any jurisdiction will suffice. There is also no requirement in the bill in print that the inspector be entirely independent from the builder. Unfortunately, this may permit the establishment of a cottage industry of pro-builder inspectors who simply sign off on work for financial gain with the hope of obtaining repeat business from the builder. Given that the bill permits the inspector to serve as the judge and jury should any construction defect issues arise, the bill in print presents the opportunity for troubling conflicts of interest. Seeking to remedy some of these issues the author proposes the following amendments to the new Civil Code chapter proposed by this bill:

939. Compliance with this chapter is optional in the sole discretion of the builder. This chapter may be used in connection with Chapter 4 (commencing with Section 910), on its own, or with alternative nonadversarial contractual provisions pursuant to Section 914.

939.1. A building may obtain a certified building status by undergoing private inspection, repairs, and reinspection during construction in addition to any inspections conducted by the local public agency. ~~**For purposes of this chapter, the inspector shall be a private licensed architect, engineer, or general contractor and shall not have a direct financial interest in the builder.**~~ The inspections shall take place at least once relating to ***all of*** the following:
(a) Grading
(b) Foundations.
(c) Framing, flashing, windows, and drywall.
(d) Plumbing.
(e) Exterior applications such as stucco, siding, and roofs.
(f)Mandatory health and safety features, including but not limited to seismic safety and fire suppression features.
939.2. Once inspections and repairs, if appropriate, during construction are conducted and approved by the inspector, the inspector shall certify that the building is a certified building. Once certified, there shall not be future challenges to the status of the building as a certified building.

939.3. (a) The builder of a certified building may establish its own process for handling postconstruction claims made pursuant to this title that includes a notice provided by the claimant, inspections, and repairs by the builder. The builder may include some, none, or all of the provisions in Chapter 4 (commencing with Section 910) in the builder's process pursuant to this chapter.
(b) The builder shall pay for its own costs to determine necessary repairs. A builder shall have the complete and unrestricted right to inspect and repair a certified building at times mutually agreed upon by the claimant and the builder within time frames established by the builder's process. If the claimant refuses the offer of repair or prevents, restricts, delays, or frustrates access for more than seven days from the mutually agreed upon day, then the repairs are deemed completed and the builder shall be deemed to have received the release described in subdivision (c).
(c) If the claimant makes a claim relating to a certified building and the builder responds by performing repairs that are inspected and approved by the inspector, the claimant shall be deemed to have granted a full and general release, including a waiver of Section 1542, related to the claims asserted in the written notice pursuant to Section 910 or as otherwise

required by the builder's process established under subdivision (a). The release applies to the builder and all other parties identified in Section 936 relating to the certified building.
(d) No action may be filed unless all of the following are satisfied:
(1) A notice of claim is presented before the filing of the action.
(2) Observable evidence of the alleged violation and damage has been provided to the builder.
(3) The repair does not receive an approval by the inspector pursuant to subdivision (c) after full compliance with this chapter has been achieved.
(e) The builder may elect to use this chapter with or without a warranty. If the builder elects to provide a warranty, the warranty shall be provided to the homeowner no later than the close of escrow.
Section 939.4 is added to the Civil Code to read:
(a) For purposes of this chapter, the inspector shall meet all of the following criteria:
(1) Be a private licensed architect, engineer, or general contractor.
(2) ***The inspector shall not have a direct or indirect financial interest in the builder, the developer, or any entity affiliated with the builder or developer.***
(3) The inspector shall not have received, in the aggregate, more than 10 percent of the inspector's gross professional revenue from the builder, the builder's affiliates, or the builder's subcontractors during the two calendar years preceding the first inspection performed under this chapter.
(4) The inspector shall not be, and shall not have been within the preceding 5 years, an employee, agent of the builder, the developer, or any subcontractor that performed work on the project and shall not have been an officer or director of the builder, the developer, or any subcontractor that performed work on the project.
(b) The inspector shall certify in writing, to the Department of Real Estate, that the inspector meets the requirements of paragraphs (1) though (4) of subdivision (a).
(c) On or before July 1, 2028, the Department of Real Estate shall post on its website a list of inspectors eligible to perform inspection under this chapter.
Section 939.5 is added to the Civil Code to read:
This chapter shall only apply to condominium project, as defined in Section 4125, or a townhouse development constructed on or after January 1, 2027.

ARGUMENTS IN SUPPORT*:* This bill is co-sponsored by the California Building Industry Association and Habitat for Humanity. The bill enjoys support from several local governments and the broader business community. In support of the bill the California Building Industry Association states:

> CBIA was a supporter of SB 800 (Burton) in 2002. SB 800 is known as California homebuilder's "Right to Repair Act." It was enacted based on consumers' desire to have their homes fixed when they have a problem; they don't want 2-5 years of litigation.
>
> Since that time, it has become anything but a homebuilder's right to repair. Claimants are steered towards litigation at every step of the process. As a result, most claims result in a highly antagonistic process in which, even if the builder makes repairs, the builder is sued because a release for repairs is prohibited.
>
> Once in litigation, the cost of repairs is inflated, frequently meeting or exceeding the cost of building the homes from scratch. It is no longer economically feasible to build this type of housing. As a result, in recent years, homebuilders have ceased building owner-occupied

> housing (condominiums) – the very kind of housing the Legislature has been incentivizing. This has left California homebuyers without a crucial housing choice, one that is more affordable and better for the environment.

Additionally, the City of Folsom writes:

> Across the state, including in Folsom, the current construction defect liability environment has contributed to a near absence of condominium and for-sale multifamily development. This has significantly limited homeownership opportunities for working families and middle-income households.
>
> We recognize that this proposal is being actively debated. It is important that the Legislature hear from cities that are directly responsible for implementing housing policy and meeting state-mandated housing goals.

ARGUMENTS IN OPPOSITION*:* This bill is strongly opposed by consumer advocates and homeowner associations. The coalition opposing this measure jointly write:

> We respectfully oppose AB 1903 because it fundamentally dismantles California's carefully balanced Right to Repair Act (Civ. Code § 895 et seq.), which was designed to ensure that residential construction meets minimum safety and performance standards and that defects are corrected before they cause injury or significant property damage.
>
> For more than two decades, California law has promoted early detection and repair of construction defects in exchange for limited timelines within which claims must be brought. AB 1903 upends this framework by requiring homeowners to wait until physical damage occurs before seeking relief, while preserving short statutes of repose that will bar many claims before defects become visible. This approach undermines California's longstanding commitment to safe housing and shifts the risk of unsafe construction from builders to homeowners.
>
> Housing is often the largest financial investment Californians will ever make. AB 1903 shifts the cost of defective construction onto homeowners who cannot afford to pay for builders' mistakes, weakens accountability for unsafe building practices, and reduces incentives to construct housing that complies with basic safety standards.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association (co-sponsor)
Habitat for Humanity (co-sponsor)
Abundant Housing Los Angeles
American Planning Association, California Chapter
Associated General Contractors
Bay Area Council
Brian Barnacle - Councilmember, Petaluma
Calasian Chamber of Commerce
California Business Properties Association
California Business Roundtable

California Chamber of Commerce
California Conference of Carpenters
California Council for Affordable Housing
California Hotel & Lodging Association
California Housing Consortium
California YIMBY
Casita Coalition
Chris Ricci - Modesto City Councilmember
Civil Justice Association of California (if amended)
Circulate Planning & Policy
City of Berkeley Councilmember Rashi Kesarwani
City of Folsom
City of Gilroy Council Member Zach Hilton
City of Mountain View
City of Petaluma
City of Riverside
City of Sacramento
Claremont City Councilmember, Jed Leano
Council of Infill Builders
End Poverty in California
Fieldstead and Company, Inc.
Greenbelt Alliance
Gregorio Gomez - Councilmember, Farmersville
Housing Action Coalition
Lucas Ramirez - Councilmember, Mountain View
Matthew Solomon, Councilmember - Emeryville
Mayor Matt Mahan, City of San Jose
Monterey Bay Economic Partnership
Monterey Park Councilmember Thomas Wong
Neighborhood Partnership Housing Services, Inc.
New California Coalition
New Way Homes
Phoebe Shin Venkat - Councilmember, Foster City
Sacramento Area Council of Governments
San Diego Regional Chamber of Commerce
San Francisco Bay Area Planning and Urban Research Association (SPUR)
Southern California Leadership Council
Spur
Student Homes Coalition
The Two Hundred for Homeownership
Zach Hilton - Councilmember, Gilroy
Zillow Group

Opposition

Action Property Management
Avalon @ Eagles' Crossing Hoa
Avenue One Condos
Berding Weil

Blackstone Master Association / Firstservice Residential
Broadband Agreements by MFC
California Association of Community Managers
Chapman & Intrieri, LLP
Community Associations Institute - California Legislative Action Committee
Consumer Attorneys of California
Consumer Watchdog
Hoainsuranceproject.org
Hudson Management
Johnson Ranch Management
Kasdan Turner Thomson Booth LLP
Phoenix Commons, Inc, 55+ Cohousing
Prendiville Insurance Agency
Regent on the Park
Riley Pasek Canty Seltzer LLP
Socher Insurance, a Hub International Company
United Policyholders
Vintage Group
Walters Management
Wine Country Young Democrats

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334