

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1133

Agreements for Property Repairs Related to Reactive Drywall

SPONSOR(S): Mayfield

TIED BILLS:

IDEN./SIM. BILLS: SB 2196

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Vickroy	Cooper
2)	Civil Justice & Courts Policy Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Since 2006, approximately 550 million pounds of drywall has been imported from China, enough to build 60,000 average-sized homes. In the state of Florida alone, enough drywall was imported between January 2006 and February 2007 to build 30,000 homes at a size of 2,000 square feet each.

As of February 17, 2010, the Consumer Product Safety Commission (CPSC) has received 2,971 incident reports related to imported Chinese drywall from around the country. Consumer complains include metal corrosion to electrical wiring, plumbing, and utilities, structural damage, and health complaints including: eye, nose, and throat irritation, chest pain, nausea, shortness of breath, and headaches. The CPSC and Center for Disease Control (CDC) has found a strong link between the drywall and metal corrosion, but has yet to find a definitive link between the drywall and health-related issues.

The Eastern District of Louisiana is currently deciding multi-district litigation of class action suits involving imported drywall. In these suits, plaintiffs have named not only Chinese manufacturers of the drywall, but also a German corporation that is affiliated with some of the manufacturers, as well as American distributors, contractors, developers, and insurance companies. Furthermore, the federal government, as well as state and local governments, are in the process of developing standards for remediation of the damage caused by the drywall. Thus, at this time, it is unclear which entities will be liable for damage to homes and property, and what steps they must take to repair such damage.

The bill permits contractors or condominium developers to enter into agreements with property owners to repair damage caused by the drywall. If the agreement is entered into prior to the establishment of remediation standards and completed according to the agreed-upon terms, property owners will not have a cause of action against the contractors or developers for property damage arising from the drywall, regardless of the remediation standards subsequently established by federal, state, or local governments.

The bill may reduce future litigation between contractors and property owners who have entered into agreements to repair damage caused by the drywall prior to the establishment of remediation standards.

The bill takes effect July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

During the height of the housing boom, the demand for drywall increased faster than the domestic supply, requiring construction companies to import it and other building materials from other countries.¹ Approximately 550 million pounds of drywall has been imported from China since 2006, enough to build 60,000 average-sized homes.² It has been estimated that between January 2006 and the February 2007, Florida ports alone imported enough drywall to build 30,000 homes at a size of 2,000 square feet each.³

As of February 17, 2010, the Consumer Product Safety Commission (CPSC) has received 2,971 incident reports related to the drywall from around the country, with Florida residents reporting the largest number of cases.⁴ These drywall-related problems included not only damage to electrical wiring, plumbing, and utilities due to metal corrosion caused by hydrogen sulfide gas, and structural damage due to the drywall itself,⁵ but also complaints of various health-related issues such as: eye, nose, and throat irritation, chest pain, nausea, shortness of breath, and headaches.⁶ However, the CPSC and Center for Disease Control (CDC) have not yet found a definitive link between the low levels of sulfur gas that may be emitted from the drywall, possibly as the result of a warm and humid climate,

¹ CBS News, U.S.: *Chinese Drywall, Corrosion Linked*, <http://www.cbsnews.com/stories/2009/11/23/national/main5749657.shtml?tag=contentMain;contentBody> (last visited March 19, 2010).

² Aaron Kessler, *Drywall Problems May Just be Beginning*, HERALD TRIBUNE, Feb. 1, 2009, at A1.

³ Jason Hanna, *Chinese-Made Drywall Ruining Homes, Owners Say*, <http://www.cnn.com/2009/US/03/18/chinese.drywall/index.html> (last visited March 22, 2010).

⁴ Consumer Protection Safety Commission, *Investigation of Imported Drywall Status Update: February 2010*, available at <http://www.cpsc.gov/info/drywall/index.html>.

⁵ Consumer Protection Safety Commission, *Executive Summary of October 29, 2009 Release of Initial Chinese Drywall Studies*, available at <http://www.cpsc.gov/info/drywall/investigation.html>

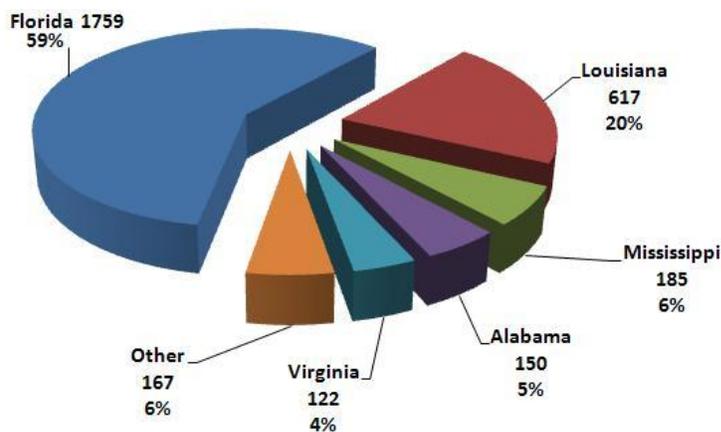
⁶ Consumer Protection Safety Commission, *Press Statement on Corrosion in Homes and Connections to Chinese Drywall* (November 23, 2009), available at <http://www.cpsc.gov/info/drywall/nov2009statement.pdf>; and Rebecca Porter, *Attorneys Seek MDL to Scale Chinese Drywall Problem* (American Association for Justice, 2009), available at <http://web2.westlaw.com>.

and these health complaints.⁷ The CPSC has found a strong link between the drywall and metal corrosion.

The CPSC and CDC are currently developing a federal remediation protocol to guide contractors in repairing the damage caused by the reactive drywall. State and local governments have also begun the process of developing standards. However, current state and federal law does not specify how a contractor must satisfactorily repair the damage. There is some controversy as to whether contractors should be required to not only remove the drywall and affected wiring, but all electrical systems within the home. There is some evidence that insulated wiring is not immune to the corrosive gases emitted by the drywall, therefore, removing only the exposed wiring would not prevent future corrosion and damage.⁸

The damage to the homes has in some cases forced homeowners to move out and live with family or rent other lodging. For homeowners with mortgage payments, this additional financial burden may force some families to fall into foreclosure, particularly if they cannot afford to have the repairs completed while waiting for insurance companies to review their claims.⁹

Number (and Percentage) of Reports by State:¹⁰



Current Legal Issues:

Because the manufacturers of the reactive drywall are located outside the United States, it is unclear whether homeowners may hold them liable in Federal Court to recover for damage to their homes.¹¹ Class action suits have been filed naming not only the Chinese manufacturers of the drywall, but also a German company, Knauf Gips KG, which is affiliated with some of the manufacturers, as well as various American distributors, suppliers, contractors, and home and contractor insurers.¹² Many insurance companies have taken the position that the pollution and contamination exclusions of many insurance policies relieves them of a duty to pay on claims to either contractors or homeowners; however, a plaintiff-contractor who could show the damage was caused by a defective product may be able to recover against its insurance policy. On June 15, 2009, ten federal suits from around the

⁷ Consumer Protection Safety Commission, *Frequently Asked Questions*, <http://www.cpsc.gov/info/drywall/faqs.html> (last visited March 22, 2010); and Rebecca Porter, *Attorneys Seek MDL to Scale Chinese Drywall Problem* (American Association for Justice, 2009), available at <http://web2.westlaw.com>.

⁸ Aaron Kessler, *Drywall Evidence Presents Dilemma for Lennar Corp.*, *HERALD TRIBUNE*, March 8, 2010, at D9.

⁹ Nadia Vanderhoof, *Florida Homeowners Walk Away from Homes with Tainted Drywall*, <http://www.scrippsnews.com/node/52375> (last visited March 22, 2010).

¹⁰ Consumer Protection Safety Commission, *Where has problem drywall been reported?*, <http://www.cpsc.gov/info/drywall/where.html>

¹¹ Rebecca Porter, *Attorneys Seek MDL to Scale Chinese Drywall Problem* (American Association for Justice, 2009), available at <http://web2.westlaw.com>.

¹² Jason Hanna, *Chinese-Made Drywall Ruining Homes, Owners Say*, <http://www.cnn.com/2009/US/03/18/chinese.drywall/index.html> (last visited March 22, 2010).

country, including Florida, were consolidated into a single multi-district litigation in the Eastern District of Louisiana, located in New Orleans, LA.¹³

Besides recovering damages for the cost of repairing the damage to the homes, other forms of damages may be relevant. Diminution in value refers to the “rule of damages which provides for difference between ‘before’ and ‘after’ value of property which has been damaged or taken.”¹⁴ It is the total loss in market value of damaged property, or the loss in value prior to repair. Stigma damages, however, refer to the diminished value of property even after the damage itself has been completely and satisfactorily repaired. This diminished value is the result of continued perceptions of hazards to human health, and has been found recoverable in some environmental contamination cases.¹⁵ Until the multi-district litigation is completed, it is unclear whether homeowners would have a cause of action for diminution in value or stigma damages.

Effect of Proposed Changes:

The bill authorizes a property owner or condominium association, to enter into an agreement with a licensed contractor or condominium developer for specific repair of damage stemming from reactive drywall. The bill refers to agreements entered into absent other governmental laws, rules, or established standards, which likely refers to the pending federal remediation protocol, or local or state protocols which may be adopted. Thus, once remediation protocols are in place, agreements between the property owner or condominium association and contractor or developer will be required to follow those protocols. However, if an agreement is entered into prior to the establishment of such protocols, a contractor will only be required to comply with the provisions of the contract, even if such provisions differ from the protocol. Therefore, a property owner or condominium association could not require a contractor or developer who has completed the contract to comply with additional remediation requirements established by law after the date of the agreement.

The bill states that if the contract is completed, property owners will not have a cause of action against the developer or contractor for damage to the property arising from the reactive drywall or from repairs; however it is unclear whether the bill includes stigma damages or diminution in value damages in this reference to damages. Thus, the bill may also prevent property owners from recovering for the decline in market value as a result of owning a home that was built with reactive drywall. It appears that the bill does not exclude property owners from bringing suit for personal injury from the reactive drywall, or for negligent conduct related to the execution of the agreement.

It is unclear whether the bill refers to written and/or oral agreements. If a contractor or developer enters into an oral agreement to repair damage stemming from reactive drywall, this may conflict with current law. Current law requires all home improvement contracts to be in writing.¹⁶ Home improvement includes repair, replacement, remodeling, alteration, conversion, modernization, or improvement of a building used as a single-family residence.¹⁷

B. SECTION DIRECTORY:

Section 1 permits contractors and developers to enter into agreements with property owners and condominium associations to repair property damage stemming from reactive drywall. It provides that if a contractor or developer enters into an agreement to repair damage before other governmental remediation law is passed, and it is completed according to the terms of the agreement, a property owner may not require a contractor or developer to comply with the remediation law.

Section 2 provides for an effective date of July 1, 2010.

¹³ See *In re Chinese-Manufactured Drywall Products Liability Litigation*, 626 F.2d 1346 (2009).

¹⁴ BLACK’S LAW DICTIONARY 458 (6th ed. 1990).

¹⁵ See *Bonnette v. Conoco, Inc*, 837 So. 2d 1219 (La. 2003).

¹⁶ Section 520.73(1), F.S.; and section 520.61(13), F.S. (“‘Home improvement contract’ or ‘contract’ means a written agreement contained in one or more documents...”).

¹⁷ Section 520.61(12), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive impact on state expenditures as the result of reduced litigation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce future litigation with contractors and condominium developers who have completed the terms of the agreement. This may have a positive impact on contractors and developers; however, it may prevent homeowners and condominium associations from bringing certain types of claims for damages.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Because it is unclear whether "agreement" refers to a written or oral agreement or contract, inserting the word "written" and/or "contract" may clarify the meaning of the term and may resolve the conflicts with current law.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES