

**Amendment 34  
Construction Liability  
Legislative Council Staff Responses to Public Comments**

The revisions requested by interested persons are provided below in the following format:

ALL CAPS = Proposed new language

~~Strike Type~~ = Proposed deletions

Standard Type = Current language

All page and line references are to the Final Draft version

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1 **BACKGROUND SECTION**

2 **1. Responder:** Scott F. Sullan

3 **Suggested change:** Page 1, line 18:

4 Medical expenses resulting from an injury are fully reimbursable, ~~but awards for "pain and~~  
5 ~~suffering" for these injuries are capped at \$250,000~~ IF THEY ARE PROVEN TO RESULT FROM  
6 A CONSTRUCTION DEFECT. UNDER CURRENT LAW, AN OWNER OF PROPERTY IS NOT ENTITLED  
7 TO RECOVER FOR "PAIN AND SUFFERING" ARISING OUT OF DAMAGE TO THEIR PROPERTY.

8 **Basis for suggested change:** Under current law, medical expenses resulting from  
9 an injury are "fully reimbursable" only if the fault of another is proven to have caused the  
10 injury (i.e. as a result of the construction defect). In addition, property owners are not  
11 entitled to recover "pain and suffering" arising out of damage to real property.

12 **Staff comment:** Agree in part. It is already clear from the context of the  
13 surrounding language that this analysis is talking about expenses that result from a  
14 construction defect. It is not necessary to re-state the proposed additions to this sentence.  
15 Regarding the second point, "pain and suffering" may only be recovered when damage to  
16 real property results in personal or bodily injury. The revised staff language incorporates  
17 Mr. Sullan's suggestion that this text indicate that recovery is not available for damages to  
18 property.

19 **Revised staff language:** Page 1, line 18:

20 Medical expenses resulting from an injury are fully reimbursable ~~but awards~~. AWARDS for  
21 "pain and suffering" for ~~these injuries~~ BODILY AND PERSONAL INJURY are capped at  
22 \$250,000; A PROPERTY OWNER CANNOT BE AWARDED MONEY DUE TO THE LOSS OF USE OF  
23 PROPERTY.

24 \*\*\*\*\*



1 differentiate between the damages collected by residential and commercial property owners,  
2 especially since there are different interpretations on the meaning of "actual damages."

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4 **4. Responder:** Scott F. Sullan

5 **Suggested change:** Page 1, line 26:

6 It removes limitations on the amount of money a property owner can collect in damages  
7 ~~except for punitive damages and lawsuits involving governments.~~ DUE TO A FAILURE TO  
8 BUILD IN A GOOD AND WORKMANLIKE MANNER, BUT IT DOES NOT REMOVE THE LIMITATIONS  
9 ON PUNITIVE DAMAGES OR ON DAMAGE CLAIMS BROUGHT AGAINST STATE AND LOCAL  
10 GOVERNMENTS. IT ALSO REMOVES LIMITATIONS ON THE AMOUNT STATE OR LOCAL  
11 GOVERNMENTS CAN RECOVER ON BEHALF OF TAXPAYERS FOR THE COST OF REPAIRING  
12 CONSTRUCTION DEFECTS IN PUBLIC WORKS PROJECTS.

13 **Basis for suggested change:** Under the proposed amendment, the limitation is not  
14 removed on lawsuits brought against state or local governments, it is only removed in suits  
15 brought by state or local governments to recover the cost to taxpayers of repairing  
16 construction defects.

17 **Staff comment:** Agree in part. The initiative removes limitations in cases brought  
18 by state or local governments, not in cases brought against these governments. However,  
19 our language is more concise.

20 **Revised staff language:** Page 1, line 26:

21 It removes limitations on the amount of money a property owner can collect in damages  
22 except for punitive damages and lawsuits ~~involving~~ AGAINST governments.

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24 **5. Responder:** Scott F. Sullan

25 **Suggested change:** Page 1, line 28:

26 This proposal creates a new section in the state constitution that affects current law. It  
27 removes limitations on the amount of money a property owner can collect in damages,  
28 except for punitive damages and lawsuits involving governments. It also sets in the state  
29 constitution the current time frames for filing a lawsuit. ~~Finally, the proposal could~~  
30 ~~eliminate the current requirement that a property owner and construction professional try~~  
31 ~~to resolve the problem before bringing a lawsuit.~~ In addition to these changes to current  
32 law, the proposal affects the types of laws the legislature can pass in the future concerning  
33 construction problems.



