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## DIGEST

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Pugh

HB No. 529

**Abstract:** Requires contractors to offer third party insurance backed warranties for elevation, re-elevation, or restoration work made necessary following a flood or a hurricane.

Proposed law provides that the legislature finds economic losses caused by contractors not offering enforceable warranties on elevation, re-elevation, or restoration work performed on structures following a hurricane or flood can be minimized by requiring an insured warranty.

Proposed law provides for definitions.

Proposed law requires that every elevation, re-elevation, or restoration contract for improvement to a structure damaged by a flood or hurricane be warranted and that the warranty be backed by a third party insurer for the benefit of the owner of the structure improved.

Proposed law provides that the warranty times shall run as follows:

- (1) One year following the warranty commencement date, the improvement will be free from any defect due to substandard workmanship.
- (2) Two years following the warranty commencement date, the improvement will be free from major structural defects due to substandard workmanship.

Proposed law excludes the following from the warranty required by proposed law:

- (1) Any damage to the extent that it is caused or made worse by negligence, improper maintenance, neglect, or improper operation by anyone other than the contractor or any employee, agent, or subcontractor of the contractor, failure by anyone other than the contractor or any employee, agent, or subcontractor of the contractor to comply with the warranty requirements of manufacturers of appliances, equipment, or fixtures, dampness, condensation, or other damages due to the failure of the owner to maintain adequate ventilation or drainage.
- (2) Any loss or damage which the owner has not taken timely action to minimize.
- (3) Any defect in, or any defect caused by, materials or work supplied by anyone other than the contractor, or any employee, agent, or subcontractor of the contractor.
- (4) Loss or damage resulting from war, accident, riot and civil commotion, water escape, falling



objects, aircraft, vehicles, acts of God following the act of God which caused the damage originally contracted to be repaired, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind driven water, and changes in the level of the underground water table.

(5) Any damage caused by soil movement.

(6) Insect damage.

(7) Any condition which does not result in actual physical damage to the improvement.

(8) Any cost of transportation, food, moving, storage, or other incidental expense related to relocation during the repair.

(9) Any defect not reported in writing by registered or certified mail to the contractor and insurer, as appropriate, prior to the expiration period specified in proposed law for such defects plus 30 days.

(10) Consequential damages including attorneys fees.

(11) Mold and mold damage to the completed improvement.

Proposed law requires the warranty and insurance requirements be set forth in writing between the owner and contractor.

Proposed law requires all of the contractor's obligations under the warranty required by proposed law be insured by the contractor for the benefit of the owner through a third party insurance or bond company.

Proposed law provides for qualification of a third party insurance or bond company.

Proposed law provides that the owner shall notify the contractor and insurer of any knowledge of a defect and give the contractor 60 days to repair, replace, or pay the owner the reasonable cost of repairing or replacing any defective improvement.

Proposed law provides that the insurer shall provide the owner with an inspection report prepared by a LA licensed engineer registered in civil engineering.

Proposed law provides that the insurer shall provide the contractor and the owner with a letter informing both whether the alleged defects are or are not warranted. If the defects are warranted, the letter will detail which defects require repair pursuant to the warranty and the scope of the repair work. If the defects are not warranted, the letter shall specify reasons for making that determination.

Proposed law provides that the owner shall notify the contractor and the insurer whether or not he accepts the scope of repair work. Should the owner accept the scope of repair work stated in the letter, repair work shall begin within 30 days of receipt by the contractor.



Proposed law provides that any action to enforce any warranty provided for in proposed law shall be subject to a preemptive period of 30 days after the expiration of the appropriate time period.

Proposed law provides that any warranty imposed pursuant to proposed law and any insurance benefit shall automatically transfer without charge, to a subsequent owner who acquires title of the structure containing the improvement. Any transfer of the structure will not extend the duration of any warranty or insurance coverage.

Proposed law provides that if a contractor or insurer violates proposed law by failing to perform as required by the warranties and procedures provided in proposed law, any affected owner shall have a cause of action against the contractor or insurer, or both, for actual damages arising out of the violation. The damages with respect to a single defect will not exceed the reasonable cost of repair or replacement necessary to cure the defect and any damage determined to be caused by the defect.

Proposed law provides that the parties shall provide for the arbitration of any claim in dispute. Any arbitration shall comply with and may be binding only to the extent provided for in proposed law.

Provisions of proposed law shall apply to contracts entered into after Jan. 1, 2015.

Effective upon signature of the governor or up lapse of time for gubernatorial action.

(Adds R.S. 9:2790.1.1-2790.1.11)