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April 9, 2018

The Honorable Laura Friedman
Assembly Member, District 20
State Capitol, Room 2137
Sacramento, CA 95814

RE: AB 2648 (Friedman): Water Contamination – HOUSING KILLER

Dear Assembly Member Friedman,

On behalf of the California Building Industry Association, we regret to inform you that our organization has identified your bill, Assembly Bill 2648, as a Housing Killer for its potentially devastating impact on the home building industry.

AB 2648 would carve out an exemption from the 10-year statute of repose for water contamination lawsuits against property owners, developers, contractors, architects, engineers and other service providers. While we appreciate the intent behind AB 2648, we have grave concerns about this bill as drafted and its impact on those whom we represent as well as on California's home buyers.

We echo the concerns outlined previously in the letter of opposition submitted on behalf of a wide coalition in the construction industry (attached) and would like to further add our rationale for placing AB 2648 on our Housing Killer list. At the beginning of the year, CBIA sent a letter to the legislature enumerating the criteria used to judge bills. With regard to AB 2648, we found the following:

Will the bill constrain housing production and supply? Yes. Liability for housing construction not just for the open-ended term, but in this case, where builders are not responsible for water quality, increases costs which reduces the capital available for construction of more homes.

Will it increase the cost to build houses? Yes, increased product liability means higher costs. In essence, this bill would open home builders up to indefinite liability and the potential for extensive lawsuits at any point in time.

Will it make housing even more expensive for Californians? Yes. As this raises the cost of doing business, it will necessitate raising home prices. The market cannot simply absorb the additional costs this proposal would bring about.

Will it make any of the processes associated with homebuilding such as the entitlement, approval, or permitting processes more complicated, difficult, and lengthy? No. This bill impacts the end of the development process, after the unit has been constructed and sold.

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Does it discourage homeownership? Yes, by increasing prices, AB 2648 discourages homeownership. According to the National Association of Home Builders, in California, for every \$1,000 increase in the price of a home, 15,000 families are priced out of the market.

Will it encourage unnecessary lawsuits aimed at new home construction? Absolutely. Water providers are responsible for water quality not builders. This bill opens home builders up to unlimited liability.

Because of the harmful impact this bill would have on the home building industry, we are compelled to classify AB 2648 as a Housing Killer. Thank you for your attention to this matter. We are hopeful that you will continue to work with us to address our concerns.

Sincerely,

Erin M. Guerrero

Erin M. Guerrero
Vice President, Legislative Affairs

cc: Members, Assembly Environmental Safety and Toxic Materials Committee
Josh Tooker – Chief Consultant, Assembly Environmental Safety and Toxic Materials Committee
John Kennedy – Consultant, Assembly Republican Caucus



April 3, 2018

The Honorable Bill Quirk
Chair, Assembly Environmental Safety and Toxic Materials Committee
Assembly Member, District 20
Sacramento, CA 95814

RE: Assembly Bill 2648 (Friedman): Water Contamination - OPPOSE

Dear Assembly Member Quirk,

The organizations below must regretfully oppose AB 2648 (Friedman) which would carve out an exemption from the 10-year statute of repose for water contamination lawsuits against property owners, developers, contractors, architects, engineers and other service providers. While we appreciate the intent behind AB 2648, we have concerns about this bill as drafted and its impact on those whom we represent.

We are concerned that opening up design and construction companies to liability imposed by legislation enacted after the construction was complete presents due process issues. This appears to be a central issue in *San Diego Unified School Dist. v. County of San Diego*, 170 Cal.App.4th 288 (2009) (*San Diego*). We believe that there is already ample statutory and case law to provide remedies in instances of water contamination.

Statutes of repose provide certainty and notice to both plaintiffs and defendants about their obligations, duties, and remedies under the law. The Code of Civil Procedure establishes a

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variety of time limits depending on the allegation. The code section this bill would amend (California Code of Civil Procedure §337.15) sets an outside limit on property defect claims that are less easily discovered in order to provide certainty and encourage construction in the state (Chevron U.S.A. Inc. v. Superior Court, 44 Cal. App.4th 1009 (1994)). In carving out an exemption to this statute of repose, this bill opens up the question of what statute of limitations applies when there is an allegation of water contamination. If there is none, AB 2648 unnecessarily exposes a large number of Californians to unanticipated liability that may lead to bankruptcy.

Furthermore, case law is clear that Code of Civil Procedure section 337.15 which the bill seeks to amend is not a bar to actions for recovery of clean-up costs.

“We therefore disagree that section 337.15 bars this entire action as a matter of law, and the trial court erred in concluding that ‘no matter how penned, the District’s expenditures and basis for this action result from actions to address physical defects of the landfill.’” (*San Diego at 310.*)

Other causes of action – such as nuisance, equitable, express or implied indemnity, breach of contract, nuisance and trespass, and a variety of federal and state statutory and regulatory environmental laws imposing liability on operators of hazardous sites among others – already provide recovery for these damages and, again, CCP 337.15 is not a bar. Case law further shows that CCP section 337.15 is not a bar to claims for personal injury or wrongful death. *Martinez v. Traubner* 32 Cal. 3d 755 (1982).

The California Supreme Court has also found that the “limitations period provided by section 337.15 is ... exceptionally long” *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 379. Section 337.15 “was enacted in 1971 by the Legislature to provide a ‘firm and final’ outside limitation period for construction suits involving claims for latent defects. (*Lantzy at 377.*)” “[T]he purpose of section 337.15 is to protect contractors and other professionals and tradespeople in the construction industry from perpetual exposure to liability for their work. The statute reflects a legitimate concern that ‘*expanding concepts of liability could imperil the construction industry unless a statute of limitations was enacted.*’ Such concerns legitimately include the prohibitive cost of insurance against a perpetual and never ending risk[.]” [*Lantzy at 377.*] (Emphasis added.)

The term “water contamination” is both ambiguous and subjective. There are naturally occurring contaminants and science continues to evolve. What was either not known or was not considered harmful in the past could, today, be considered a contaminant. Rather than “water contamination,” this bill should focus on exposure to hazardous materials or toxic substances in drinking water.

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Additionally, we believe that Code of Civil Procedure section 340.8 provides the appropriate limitations period and that this section should be made explicitly applicable to water contamination claims.

Finally, insofar as this bill essentially eliminates the statute of repose for water contamination claims, consideration should be given to those claims that have already expired under existing law. The bill should be explicit that expired claims may not be revived pursuant to this section.

While we understand the author's concern for those impacted by contaminated water, injured plaintiffs in California already have a wealth of legal options to seek redress. There is no need to further extend the statute of repose for certain torts as this will only serve to increase frivolous lawsuits. For these reasons, we feel compelled to oppose AB 2648.

Thank you for your attention to this matter.

Sincerely,

California Building Industry Association (CBIA)
California Apartment Association (CAA)
California Business Properties Association (CBPA)
Construction Employers Association (CEA)
California Chamber of Commerce
California Association of Specialty Contractors (CalPASC)
American Council of Engineering Companies (ACEC)
Associated General Contractors of California (AGC)
California Sheet Metal & Air Conditioning Contractors (CalSMACNA)
American Subcontractors Association of California (ASAC)
United Contractors (UCON)
California Legislative Conference of the Plumbing, Heating and Piping Industry (CLC)
Wall and Ceiling Alliance (WACA)
Northern California Allied Trades (NCAT)
Building Owners and Managers Association of California (BOMA California)
California Chapters of the National Electrical Contractors Association (NECA)
International Council of Shopping Centers (ICSC)
Commercial Real Estate Development Association of California (NAIOP)
Associated Builders and Contractors – Northern California Chapter (ABC NorCal)
Southern California Contractors Association (SCCA)

cc: Assembly Member Laura Friedman
Members, Assembly Environmental Safety and Toxic Materials Committee
Josh Tooker – Chief Consultant, Assembly Environmental Safety and Toxic Materials Committee
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