

E2SHB 1393 - S AMD 313
By Senator Haugen

1 Strike everything after the enacting clause and insert the
2 following:

3 **"PART I. NOTICE AND RIGHT TO CURE**

4 **Sec. 1.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to read
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Action" means any civil lawsuit or action in contract or tort
9 for damages or indemnity brought against a construction professional to
10 assert a claim, whether by complaint, counterclaim, or cross-claim, for
11 damage or the loss of use of real or personal property caused by a
12 defect in the construction of a residence or in the substantial remodel
13 of a residence. "Action" does not include any civil action in tort
14 alleging personal injury or wrongful death to a person or persons
15 resulting from a construction defect.

16 (2) "Association" means an association, master association, or
17 subassociation as defined and provided for in RCW 64.34.020(4),
18 64.34.276, 64.34.278, and 64.38.010(1).

19 (3) "Claimant" means a homeowner or association who asserts a claim
20 against a construction professional concerning a defect in the
21 construction of a residence or in the substantial remodel of a
22 residence.

23 (4) "Construction professional" means an architect, builder,
24 builder vendor, contractor, subcontractor, engineer, or inspector,
25 including, but not limited to, a dealer as defined in RCW
26 64.34.020(~~(+12)~~) and a declarant as defined in RCW 64.34.020(~~(+13)~~),
27 performing or furnishing the design, supervision, inspection,
28 construction, or observation of the construction of any improvement to

1 real property, whether operating as a sole proprietor, partnership,
2 corporation, or other business entity.

3 (5) "Homeowner" means: (a) Any person, company, firm, partnership,
4 corporation, or association who contracts with a construction
5 professional for the construction, sale, or construction and sale of a
6 residence; and (b) an "association" as defined in this section.
7 "Homeowner" includes, but is not limited to, a subsequent purchaser of
8 a residence from any homeowner.

9 (6) "Residence" means a single-family house, duplex, triplex,
10 quadraplex, or a unit in a multiunit residential structure in which
11 title to each individual unit is transferred to the owner under a
12 condominium or cooperative system, and shall include common elements as
13 defined in RCW 64.34.020(6) and common areas as defined in RCW
14 64.38.010(4).

15 (7) "Response notice" means a written response provided by a
16 construction professional under RCW 64.50.020(2).

17 (8) "Serve" or "service" means personal service or delivery by
18 certified mail to the last known address of the addressee.

19 ((+8)) (9) "Substantial remodel" means a remodel of a residence,
20 for which the total cost exceeds one-half of the assessed value of the
21 residence for property tax purposes at the time the contract for the
22 remodel work was made.

23 **Sec. 2.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to read
24 as follows:

25 (1) In every construction defect action brought against a
26 construction professional, the claimant shall, no later than forty-five
27 days before filing an action, serve written notice of claim on the
28 construction professional. The notice of claim shall state that the
29 claimant asserts a construction defect claim against the construction
30 professional and shall describe the claim in reasonable detail
31 sufficient to determine the general nature of the defect.

32 (2) Within twenty-one days after service of the notice of claim,
33 the construction professional shall serve a written response notice on
34 the claimant by registered mail or personal service. The written
35 response notice shall:

36 (a) Propose to inspect the residence that is the subject of the
37 claim, including a description of the scope of the inspection, and to

1 complete the inspection within a specified time frame. The proposal
2 shall include the statement that the construction professional shall,
3 based on the inspection, offer to remedy the defect, compromise by
4 payment, or dispute the claim;

5 (b) Offer to compromise and settle the claim by monetary payment
6 without inspection. A construction professional's offer under this
7 subsection (2)(b) to compromise and settle a homeowner's claim may
8 include, but is not limited to, an express offer to purchase the
9 claimant's residence that is the subject of the claim, and to pay the
10 claimant's reasonable relocation costs; or

11 (c) State that the construction professional disputes the claim and
12 will neither remedy the construction defect nor compromise and settle
13 the claim.

14 (3)(a) If the construction professional disputes the claim or does
15 not respond to the claimant's notice of claim within the time stated in
16 subsection (2) of this section, the claimant may bring an action
17 against the construction professional for the claim described in the
18 notice of claim without further notice.

19 (b) If the claimant rejects the (~~inspection proposal or the~~)
20 settlement offer made by the construction professional pursuant to
21 subsection (2) of this section, the claimant shall serve written notice
22 of the claimant's rejection on the construction professional. After
23 service of the rejection, the claimant may bring an action against the
24 construction professional for the construction defect claim described
25 in the notice of claim. If the construction professional has not
26 received from the claimant, within thirty days after the claimant's
27 receipt of the construction professional's response, either an
28 acceptance or rejection of the (~~inspection proposal or~~) settlement
29 offer, then at anytime thereafter the construction professional may
30 terminate the (~~proposal or~~) offer by serving written notice to the
31 claimant, and the claimant may thereafter bring an action against the
32 construction professional for the construction defect claim described
33 in the notice of claim.

34 (4)(a) If the (~~claimant elects to allow the~~) construction
35 professional proposes to inspect (~~in accordance with the construction~~
36 ~~professional's proposal~~) pursuant to subsection (2)(a) of this
37 section, the claimant shall provide the construction professional and

1 its contractors or other agents reasonable access to the claimant's
2 residence during normal working hours to inspect the premises and the
3 claimed defect.

4 (b) Whether conducted by a third-party inspector or the
5 construction professional, the person conducting the inspection shall
6 produce a written report that describes the scope of the inspection,
7 the findings and results of the inspection, a description of the
8 additional construction necessary to remedy the defect described in the
9 claim, a timetable for the completion of such construction, and an
10 estimate of the costs of repair.

11 (c) Within fourteen days following completion of the inspection and
12 delivery of the inspection report, the construction professional shall
13 serve on the claimant:

14 (i) A written offer to remedy the construction defect at no cost to
15 the claimant(~~(, including a report of the scope of the inspection, the~~
16 ~~findings and results of the inspection, a description of the additional~~
17 ~~construction necessary to remedy the defect described in the claim, and~~
18 ~~a timetable for the completion of such construction));~~

19 (ii) A written offer to compromise and settle the claim by monetary
20 payment pursuant to subsection (2)(b) of this section; or

21 (iii) A written statement that the construction professional will
22 not proceed further to remedy the defect.

23 ~~((+e))~~ (d) If the construction professional does not proceed
24 further to remedy the construction defect within the agreed timetable,
25 or if the construction professional fails to comply with the provisions
26 of ~~((+b))~~ (c) of this subsection, the claimant may bring an action
27 against the construction professional for the claim described in the
28 notice of claim without further notice.

29 ~~((+d))~~ (e) If the claimant rejects the offer made by the
30 construction professional pursuant to ~~((+b))~~ (c)(i) or (ii) of this
31 subsection to either remedy the construction defect or to compromise
32 and settle the claim by monetary payment, the claimant shall serve
33 written notice of the claimant's rejection on the construction
34 professional.

35 (f) After service of the rejection notice pursuant to (e) of this
36 subsection, the claimant may bring an action against the construction
37 professional for the construction defect claim described in the notice
38 of claim. If the construction professional has not received from the

1 claimant, within thirty days after the claimant's receipt of the
2 construction professional's response, either an acceptance or rejection
3 of the offer made pursuant to ~~((b))~~ (c)(i) or (ii) of this
4 subsection, then at anytime thereafter the construction professional
5 may terminate the offer by serving written notice to the claimant.

6 (5)(a) Any claimant accepting the offer of a construction
7 professional to remedy the construction defect pursuant to subsection
8 ~~((4)(b)(i))~~ (4)(c)(i) of this section shall do so by serving the
9 construction professional with a written notice of acceptance within a
10 reasonable time period after receipt of the offer, and no later than
11 thirty days after receipt of the offer. The claimant shall provide the
12 construction professional and its contractors or other agents
13 reasonable access to the claimant's residence during normal working
14 hours to perform and complete the construction by the timetable stated
15 in the offer.

16 (b) The claimant and construction professional may, by written
17 mutual agreement, alter the extent of construction or the timetable for
18 completion of construction stated in the offer, including, but not
19 limited to, repair of additional defects.

20 (6) Any action commenced by a claimant prior to compliance with the
21 requirements of this section shall be subject to dismissal without
22 prejudice, and may not be recommenced until the claimant has complied
23 with the requirements of this section.

24 (7) Nothing in this section may be construed to prevent a claimant
25 from commencing an action on the construction defect claim described in
26 the notice of claim if the construction professional fails to perform
27 the construction agreed upon, fails to remedy the defect, or fails to
28 perform by the timetable agreed upon pursuant to subsection (2)(a) or
29 (5) of this section.

30 (8) Prior to commencing any action with a court or the residential
31 construction board alleging a construction defect, or after the
32 dismissal of any action without prejudice pursuant to subsection (6) of
33 this section, the claimant may amend the notice of claim to include
34 construction defects discovered after the service of the original
35 notice of claim, and must otherwise comply with the requirements of
36 this section for the additional claims. The service of an amended
37 notice of claim shall relate back to the original notice of claim for
38 purposes of tolling statutes of limitations and repose. Claims for

1 defects discovered after the commencement or recommencement of an
2 action may be added to such action only after providing notice to the
3 construction professional of the defect and allowing for response under
4 subsection (2) of this section.

5 **PART II. RESIDENTIAL CONSTRUCTION BOARD AND**
6 **CONSUMER EDUCATION OFFICE**

7 NEW SECTION. **Sec. 3.** For the purposes of sections 4 through 13 of
8 this act, the following definitions apply unless the context clearly
9 requires otherwise:

10 (1) "Board" means the residential construction board created under
11 section 4 of this act.

12 (2) "Contractor" means a person registered under chapter 18.27 RCW
13 who performed services for the construction, alteration, or repair of
14 a residence.

15 (3) "Mediator" means a person selected by the residential
16 construction board to investigate defect complaints under this chapter.

17 (4) "Owner" means a person that possesses an interest in a
18 residence or in land that is a residential site or has entered into a
19 contract for the purchase of an interest in the residence or land.
20 "Owner" includes, but is not limited to, a subsequent purchaser of a
21 residence from any owner.

22 (5) "Residence" means a single-family house, duplex, triplex, or
23 quadraplex.

24 NEW SECTION. **Sec. 4.** A residential construction board is created
25 in the office of the attorney general. The board shall consist of
26 seven members, appointed by the governor. The governor shall appoint
27 initial members of the board to staggered terms of two to four years.
28 Thereafter, all members shall be appointed to full four-year terms.
29 Members of the board hold their office until successors are appointed.
30 A vacancy is filled by appointment by the governor for the unexpired
31 portion of the term in which the vacancy occurs. Existing members of
32 the board may be reappointed for additional terms. The board shall
33 select from its members a chair, vice-chair, and any other officer the
34 board determines is necessary to perform its duties. The board shall
35 consist of:

1 (1) Three members possessing a minimum of ten years of experience
2 in the construction of residences and directly, as employees or
3 officers of a firm, registered under chapter 18.27 RCW;

4 (2) One member possessing a minimum of ten years of experience in
5 the remodeling of residences and directly, as employees or officers of
6 a firm, registered under chapter 18.27 RCW;

7 (3) One building inspector employed by a city or county; and

8 (4) Two members of the general public.

9 NEW SECTION. **Sec. 5.** (1) The board shall form and manage a
10 consumer education office whose duties must include:

11 (a) Educating consumers about contracting for residential
12 construction services, including the requirements of chapter 18.27 RCW
13 and methods available to protect themselves against loss;

14 (b) Producing written and electronic consumer education materials
15 about contracting for residential construction services and legal
16 resources available to consumers;

17 (c) Creating a pamphlet explaining a homeowner's legal rights and
18 remedies and provide contractors and other construction professionals
19 with a downloadable version of the brochure to attach to contracts for
20 purchase and sale of new residential real property or the substantial
21 remodel of existing residential real property. The office shall
22 periodically update this pamphlet;

23 (d) Identifying and working collaboratively with agencies and
24 organizations who are already engaged in consumer education efforts in
25 the area of residential construction, such as the department of labor
26 and industries, the department of licensing, local governments, the
27 construction industry, financial institutions, and other interested
28 organizations and individuals, to increase outreach to consumers;

29 (e) Sharing consumer education materials with and serve as a
30 resource for agencies and organizations who are already engaged in
31 consumer education;

32 (f) Developing a uniform manner of receiving, cataloging,
33 analyzing, and responding to consumer complaints about residential
34 construction;

35 (g) Identifying which agencies and organizations are already
36 receiving complaints and coordinate with them to ensure that all

1 agencies and organizations are requesting the same information from
2 complaining consumers and that all consumers are referred to the
3 office;

4 (h) Entering into data-sharing agreements with the department of
5 labor and industries, local governments, and other agencies with
6 enforcement duties in residential construction to increase assistance
7 to consumers and enforcement of construction-related laws; and

8 (i) Reporting to the legislature on an annual basis the total
9 number of complaints, the nature of the complaints, the monetary value
10 of the complaints, whether complaints have been resolved, and any other
11 information that the office deems relevant. The first report is due on
12 January 1, 2010, and subsequent reports are due on November 1st of each
13 year thereafter.

14 (2) The board shall:

15 (a) Manage a residential construction complaint resolution process
16 consistent with the requirements of sections 7 through 13 of this act;
17 and

18 (b) Report to the legislature on an annual basis any
19 recommendations for changes in law or rule to improve the quality of
20 residential home construction.

21 NEW SECTION. **Sec. 6.** (1) The board shall solicit and review
22 qualifications for mediators based on the following standards:

23 (a) Minimum of ten years of experience in residential construction;

24 (b) Current contractors registration in the state or former
25 contractors registration in the state, provided that the registration
26 was not terminated by an action of the department of labor and
27 industries; and

28 (c) Other qualifications the board may deem appropriate.

29 (2)(a) By a majority vote, the board shall select mediators that
30 meet the qualifications of the board. There is no right of appeal of
31 a selection decision made by the board. All qualified mediator names
32 must be compiled into a single ranked list. Names of newly selected
33 mediators must be added to the bottom of the list.

34 (b) Mediators may not be employees of the board or the state.
35 Mediators must be paid on a per case basis at a rate set by the board.

36 (c) Mediators may be removed from the list for any reason by a

1 majority vote of the members of the board. There is no right of appeal
2 of a removal decision made by the board.

3 NEW SECTION. **Sec. 7.** (1) The board shall assign a mediator to
4 each complaint filed with the board. The board shall assign the
5 mediator from the top of the list of mediators approved by the board by
6 providing written notice to the mediator, owner, and contractor of the
7 assignment.

8 (2) A mediator may reject an assignment for any reason by providing
9 written notice to the board within five business days of receiving the
10 assignment notice from the board. A mediator shall reject an
11 assignment if the mediator is aware of any common financial interest
12 between the mediator and the owner or contractor.

13 (3) The mediator shall disclose in writing within three business
14 days of receiving the assignment notice to the board, the owner, and
15 the contractor any preexisting personal or professional relationships
16 between the mediator and the owner or the contractor. The presence of
17 a preexisting relationship is not a basis for requiring a mediator to
18 reject an assignment.

19 (4) The owner may reject up to one mediator for any reason, by
20 providing written notice to the board of the rejection within five
21 business days of receiving the assignment notice from the board.

22 (5) The contractor may reject up to one mediator for any reason, by
23 providing written notice to the board of the rejection within five
24 business days of receiving the assignment notice from the board.

25 (6) If a mediator assignment is rejected for any reason, the board
26 shall assign the next mediator in the manner provided for under this
27 section.

28 (7) After the mediator is assigned to a complaint, regardless of
29 whether the mediator rejects or is rejected from further investigation
30 of the complaint, the mediator's name must be added at the bottom of
31 the list of approved mediators and must be available for assignment to
32 future cases as the mediator's name advances on the list.

33 NEW SECTION. **Sec. 8.** If an owner files a complaint with the board
34 against any contractor to assert a claim arising out of or related to
35 the construction, alteration, or repair of a residence located in this

1 state and the owner has not followed the procedure set forth in this
2 chapter, the board shall dismiss the complaint without prejudice.

3 NEW SECTION. **Sec. 9.** A complaint filed under section 11 of this
4 act must arise from the performance, or a contract for the performance,
5 of work that requires a contractor registered under chapter 18.27 RCW.

6 NEW SECTION. **Sec. 10.** The board must receive the complaint no
7 later than six years after the substantial completion of construction
8 as defined in RCW 4.16.310. If a complaint is filed with the board
9 within the applicable statute of limitations, the filing of the
10 complaint tolls the statute of limitations for the period of time until
11 the board issues a decision under section 11 of this act. If a
12 complaint is filed with the board within the time limitations contained
13 in a written express warranty, the filing of the complaint tolls the
14 timeline for filing claims under the written express warranty for the
15 period of time until the board provides final notice to the homeowner
16 and contractor under section 12 of this act.

17 NEW SECTION. **Sec. 11.** (1) Prior to commencing any construction
18 action with a court relating to the quality of construction of a
19 residence or filing a claim under a written express warranty complying
20 with section 19 of this act, an owner must submit a complaint to the
21 board.

22 (2) The owner must file the complaint with the board in a form and
23 manner prescribed by the board.

24 (3) The board shall suspend processing of the complaint if:

25 (a) The board determines that the nature or complexity of the
26 dispute described in the complaint is such that a court is the
27 appropriate forum for the adjudication of the dispute; or

28 (b) The board determines that the contractor is not registered
29 under chapter 18.27 RCW.

30 (4) The board may dismiss or close the complaint if any of the
31 following conditions apply:

32 (a) The owner does not respond to a mediator request and the
33 request is necessary to the mediator's investigation of the complaint;

34 (b) The owner does not allow the mediator to conduct one or more
35 on-site meetings to mediate or investigate the complaint;

1 (c) The owner does not permit the contractor against whom the
2 complaint is filed to be present at an on-site investigation made by
3 the mediator; or

4 (d) The mediator determines that the contractor against whom the
5 complaint is filed is capable of complying with recommendations made by
6 the mediator relative to the complaint, but the owner does not permit
7 the contractor to comply with the recommendations.

8 (5) Upon acceptance of the complaint, the board shall assign a
9 mediator to the complaint in the form and manner prescribed under
10 section 7 of this act.

11 (6) The mediator shall initiate proceedings to determine the
12 validity of the complaint.

13 (7) At a minimum, the mediator shall conduct one or more on-site
14 meetings to mediate or investigate the complaint.

15 (8) All proceedings of the mediation, including any statement made
16 by any party or other participant, must be privileged and not reported,
17 recorded, or placed in evidence, used for any impeachment, made known
18 to a court or jury, or construed for any purposes as an admission. A
19 party is not bound by anything done or said at the mediation unless
20 settlement is reached, in which event the agreement upon a settlement
21 must be reduced to writing and is binding upon all parties to that
22 agreement.

23 (9) If the mediator is unable to resolve the complaint under this
24 section, the mediator shall issue a written notice to the board, which
25 must be forwarded by the board to the owner and contractor. Unless a
26 homeowner or contractor requests an advisory decision from the board,
27 notice of the mediator's decision is considered a final notice.

28 (10) If the mediator is able to resolve the complaint, the mediator
29 shall deliver the written and signed settlement to the board. The
30 board shall forward the written and signed settlement to the owner and
31 contractor. The written and signed settlement is considered a final
32 notice.

33 (11) A mediated resolution of a residential construction complaint
34 resulting in a written and signed settlement may be enforced in any
35 superior court with jurisdiction.

36 (12) If a residential construction board complaint is not resolved
37 by mediation or agreement of the owner and contractor, the complaint
38 may be brought to the board for an advisory decision. The complaint

1 must be presented to the board in a form and manner prescribed by the
2 board. The board, upon hearing the complaint, shall issue an advisory
3 decision intended to assist the parties in their further negotiation of
4 the complaint and attempt to reach settlement. This advisory decision
5 is considered a final notice. Proceedings before the board, including
6 any statement made by any party or other participant, must be
7 privileged and not reported, recorded, or placed in evidence, used for
8 any impeachment, made known to a court or jury, or construed for any
9 purposes as an admission. A party is not bound by anything done or
10 said at the board proceeding.

11 NEW SECTION. **Sec. 12.** Notwithstanding the provisions of chapter
12 7.06 RCW, any other provision of law, or any contractual provision,
13 failure of a contractor to initiate mediation proceedings within thirty
14 days after notification by the board of a complaint under section 11 of
15 this act is a waiver by the contractor of any contractual right to
16 mediation or arbitration.

17 NEW SECTION. **Sec. 13.** (1) Within twenty days after final notice
18 of the board's decision, the owner or the contractor may reject the
19 decision by delivering written notice of the rejection to the board.
20 The board shall forward written notice of the rejection to the owner
21 and the contractor within five days of receiving the rejection of the
22 decision.

23 (2) Upon receipt of written notice of rejection of the board's
24 decision, an owner pursuing a claim under an implied warranty of
25 habitability may file with the clerk of a superior court with
26 jurisdiction a written notice of request for a trial de novo on all
27 issues of law and fact. The trial de novo must be held, including a
28 right to jury, if demanded. Any owner pursuing a claim under an
29 express written warranty may file the claim in the form and manner
30 prescribed by the warranty contract.

31 **Sec. 14.** RCW 18.27.075 and 2001 c 159 s 14 are each amended to
32 read as follows:

33 (1) The department shall charge a fee of one hundred dollars for
34 issuing or renewing a certificate of registration during the 2001-2003

1 biennium. The department shall revise this amount at least once every
2 two years for the purpose of recognizing economic changes as reflected
3 by the fiscal growth factor under chapter 43.135 RCW.

4 (2) The department shall also charge a consumer education fee of
5 one hundred dollars per year for issuing or renewing a certificate of
6 registration to a contractor who discloses, as required under RCW
7 18.27.030, that he or she will perform both residential and commercial
8 work or only residential work. A contractor who discloses that he or
9 she will perform only commercial work is not required to pay the fee.
10 The department shall deposit the fee in the consumer education for home
11 construction account created in section 15 of this act.

12 NEW SECTION. Sec. 15. A new section is added to chapter 43.10 RCW
13 to read as follows:

14 The consumer education for home construction account is created in
15 the custody of the state treasurer for the purpose of funding the
16 consumer education office created under section 5 of this act. All
17 fees charged under RCW 18.27.075(2) must be deposited into the account.
18 Expenditures from the account may be used only to fund the office of
19 consumer education for home construction. Only the residential
20 construction board created under section 4 of this act or the board's
21 designee may authorize expenditures from the account. The account is
22 subject to the allotment procedures under chapter 43.88 RCW, but an
23 appropriation is not required for expenditures.

24 **Sec. 16.** RCW 43.79A.040 and 2008 c 208 s 9, 2008 c 128 s 20, and
25 2008 c 122 s 24 are each reenacted and amended to read as follows:

26 (1) Money in the treasurer's trust fund may be deposited, invested,
27 and reinvested by the state treasurer in accordance with RCW 43.84.080
28 in the same manner and to the same extent as if the money were in the
29 state treasury.

30 (2) All income received from investment of the treasurer's trust
31 fund shall be set aside in an account in the treasury trust fund to be
32 known as the investment income account.

33 (3) The investment income account may be utilized for the payment
34 of purchased banking services on behalf of treasurer's trust funds
35 including, but not limited to, depository, safekeeping, and
36 disbursement functions for the state treasurer or affected state

1 agencies. The investment income account is subject in all respects to
2 chapter 43.88 RCW, but no appropriation is required for payments to
3 financial institutions. Payments shall occur prior to distribution of
4 earnings set forth in subsection (4) of this section.

5 (4)(a) Monthly, the state treasurer shall distribute the earnings
6 credited to the investment income account to the state general fund
7 except under (b) and (c) of this subsection.

8 (b) The following accounts and funds shall receive their
9 proportionate share of earnings based upon each account's or fund's
10 average daily balance for the period: The Washington promise
11 scholarship account, the college savings program account, the
12 Washington advanced college tuition payment program account, the
13 agricultural local fund, the American Indian scholarship endowment
14 fund, the foster care scholarship endowment fund, the foster care
15 endowed scholarship trust fund, the students with dependents grant
16 account, the basic health plan self-insurance reserve account, the
17 contract harvesting revolving account, the Washington state combined
18 fund drive account, the commemorative works account, the Washington
19 international exchange scholarship endowment fund, the toll collection
20 account, the developmental disabilities endowment trust fund, the
21 energy account, the fair fund, the family leave insurance account, the
22 food animal veterinarian conditional scholarship account, the fruit and
23 vegetable inspection account, the future teachers conditional
24 scholarship account, the game farm alternative account, the GET ready
25 for math and science scholarship account, the grain inspection
26 revolving fund, the juvenile accountability incentive account, the law
27 enforcement officers' and firefighters' plan 2 expense fund, the local
28 tourism promotion account, the pilotage account, the produce railcar
29 pool account, the regional transportation investment district account,
30 the rural rehabilitation account, the stadium and exhibition center
31 account, the youth athletic facility account, the self-insurance
32 revolving fund, the sulfur dioxide abatement account, the children's
33 trust fund, the Washington horse racing commission Washington bred
34 owners' bonus fund account, the Washington horse racing commission
35 class C purse fund account, the individual development account program
36 account, the Washington horse racing commission operating account
37 (earnings from the Washington horse racing commission operating account
38 must be credited to the Washington horse racing commission class C

1 purse fund account), the life sciences discovery fund, the Washington
2 state heritage center account, the consumer education for home
3 construction account, and the reading achievement account. However,
4 the earnings to be distributed shall first be reduced by the allocation
5 to the state treasurer's service fund pursuant to RCW 43.08.190.

6 (c) The following accounts and funds shall receive eighty percent
7 of their proportionate share of earnings based upon each account's or
8 fund's average daily balance for the period: The advanced right-of-way
9 revolving fund, the advanced environmental mitigation revolving
10 account, the city and county advance right-of-way revolving fund, the
11 federal narcotics asset forfeitures account, the high occupancy vehicle
12 account, the local rail service assistance account, and the
13 miscellaneous transportation programs account.

14 (5) In conformance with Article II, section 37 of the state
15 Constitution, no trust accounts or funds shall be allocated earnings
16 without the specific affirmative directive of this section.

17 **Sec. 17.** RCW 43.79A.040 and 2008 c 239 s 9, 2008 c 208 s 9, 2008
18 c 128 s 20, and 2008 c 122 s 24 are each reenacted and amended to read
19 as follows:

20 (1) Money in the treasurer's trust fund may be deposited, invested,
21 and reinvested by the state treasurer in accordance with RCW 43.84.080
22 in the same manner and to the same extent as if the money were in the
23 state treasury.

24 (2) All income received from investment of the treasurer's trust
25 fund shall be set aside in an account in the treasury trust fund to be
26 known as the investment income account.

27 (3) The investment income account may be utilized for the payment
28 of purchased banking services on behalf of treasurer's trust funds
29 including, but not limited to, depository, safekeeping, and
30 disbursement functions for the state treasurer or affected state
31 agencies. The investment income account is subject in all respects to
32 chapter 43.88 RCW, but no appropriation is required for payments to
33 financial institutions. Payments shall occur prior to distribution of
34 earnings set forth in subsection (4) of this section.

35 (4)(a) Monthly, the state treasurer shall distribute the earnings
36 credited to the investment income account to the state general fund
37 except under (b) and (c) of this subsection.

1 (b) The following accounts and funds shall receive their
2 proportionate share of earnings based upon each account's or fund's
3 average daily balance for the period: The Washington promise
4 scholarship account, the college savings program account, the
5 Washington advanced college tuition payment program account, the
6 agricultural local fund, the American Indian scholarship endowment
7 fund, the foster care scholarship endowment fund, the foster care
8 endowed scholarship trust fund, the students with dependents grant
9 account, the basic health plan self-insurance reserve account, the
10 contract harvesting revolving account, the Washington state combined
11 fund drive account, the commemorative works account, the Washington
12 international exchange scholarship endowment fund, the toll collection
13 account, the developmental disabilities endowment trust fund, the
14 energy account, the fair fund, the family leave insurance account, the
15 food animal veterinarian conditional scholarship account, the fruit and
16 vegetable inspection account, the future teachers conditional
17 scholarship account, the game farm alternative account, the GET ready
18 for math and science scholarship account, the grain inspection
19 revolving fund, the juvenile accountability incentive account, the law
20 enforcement officers' and firefighters' plan 2 expense fund, the local
21 tourism promotion account, the pilotage account, the produce railcar
22 pool account, the regional transportation investment district account,
23 the rural rehabilitation account, the stadium and exhibition center
24 account, the youth athletic facility account, the self-insurance
25 revolving fund, the sulfur dioxide abatement account, the children's
26 trust fund, the Washington horse racing commission Washington bred
27 owners' bonus fund account, the Washington horse racing commission
28 class C purse fund account, the individual development account program
29 account, the Washington horse racing commission operating account
30 (earnings from the Washington horse racing commission operating account
31 must be credited to the Washington horse racing commission class C
32 purse fund account), the life sciences discovery fund, the Washington
33 state heritage center account, the reduced cigarette ignition
34 propensity account, the consumer education for home construction
35 account, and the reading achievement account. However, the earnings to
36 be distributed shall first be reduced by the allocation to the state
37 treasurer's service fund pursuant to RCW 43.08.190.

1 (c) The following accounts and funds shall receive eighty percent
2 of their proportionate share of earnings based upon each account's or
3 fund's average daily balance for the period: The advanced right-of-way
4 revolving fund, the advanced environmental mitigation revolving
5 account, the city and county advance right-of-way revolving fund, the
6 federal narcotics asset forfeitures account, the high occupancy vehicle
7 account, the local rail service assistance account, and the
8 miscellaneous transportation programs account.

9 (5) In conformance with Article II, section 37 of the state
10 Constitution, no trust accounts or funds shall be allocated earnings
11 without the specific affirmative directive of this section.

12 **PART III. WARRANTIES**

13 NEW SECTION. **Sec. 18.** (1) Except as provided in subsection (2) or
14 (3) of this section, the implied warranty of habitability may not be
15 contractually disclaimed, waived, modified, or limited. The implied
16 warranty of habitability transfers from the homeowner to subsequent
17 purchasers. Subsequent purchasers of a residence may bring an action
18 for breach of implied warranty of habitability.

19 (2) The implied warranty of habitability may be disclaimed or
20 waived if the contractor or seller provides to the homeowner a
21 transferable written express warranty at the time of closing that has
22 been accepted by the United States department of housing and urban
23 development under 24 CFR Sec. 203.202 through 202.209, as now or
24 hereafter amended.

25 (3) The implied warranty of habitability may be disclaimed or
26 limited, provided that the contractor can disclaim or limit implied
27 warranty coverage only for failures or deficiencies of specifically
28 listed materials or design features of the construction that were
29 selected or specified by the owner.

30 (4) A disclaimer, waiver, modification, or limitation of an implied
31 warranty of habitability under subsection (2) or (3) of this section
32 must be:

- 33 (a) Written;
- 34 (b) Conspicuous;
- 35 (c) Typed or printed in ten-point bold face type; and
- 36 (d) Signed by the homeowner.

1 (5) A contractor must provide notice of the warranty that will be
2 provided to the owner. The notice must contain a list of the potential
3 legal remedies for an owner dissatisfied with the construction of the
4 home including, but not limited to, breach of contract, fraud, breach
5 of express or implied warranties, and violation of chapter 19.86 RCW.
6 The contractor is only required to provide notice to an owner if there
7 is privity of contract between the owner and the contractor. This
8 notice must be:

9 (a) Written;

10 (b) Provided five days prior to closing or five days prior to
11 entering into a contract for construction of a new home or construction
12 of a substantial remodel; and

13 (c) Signed by both the contractor and the owner at or prior to
14 closing or entering into the contract for construction of a new home or
15 construction of a substantial remodel.

16 (6) Damages awarded for a breach of the implied warranty of
17 habitability are the cost of repairs. However, if it is established
18 that the cost of repairs is clearly disproportionate to the loss in
19 market value caused by the breach, damages are limited to the loss in
20 market value.

21 (7) This section does not apply to condominium units created under
22 chapter 64.32 or 64.34 RCW.

23 **PART IV. INSPECTIONS**

24 NEW SECTION. **Sec. 19.** Any person applying for a building permit
25 for construction or substantial remodel of residential real property
26 shall ensure that an inspection of the property is completed by a
27 contractor with expertise in the trade. This inspection may be
28 conducted by a third party or it may be a self-inspection by a
29 contractor. The inspection must occur after the installation of
30 roofing and waterproofing and prior to the installation of siding.
31 This inspection must:

32 (1) Determine that waterproofing has been installed over all
33 plywood or exterior surfaces;

34 (2) Determine that waterproofing has been installed around doors,
35 windows, vents, pipes, and exterior fixtures; and

1 (3) Document the installation of waterproofing by providing, at a
2 minimum, one photograph or digital image of each of the elevations of
3 the residential real property.

4 NEW SECTION. **Sec. 20.** Sections 3 through 13, 18, and 19 of this
5 act are each added to chapter 64.50 RCW.

6 NEW SECTION. **Sec. 21.** Sections 3 through 13, 18, and 19 of this
7 act take effect April 1, 2010."

E2SHB 1393 - S AMD
By Senator

8 On page 1, line 2 of the title, after "by" strike the remainder of
9 the title and insert "establishing notice requirements, creating a
10 residential construction board and consumer education office,
11 strengthening warranty protections applicable to residential real
12 property construction, and requiring inspections; amending RCW
13 64.50.010, 64.50.020, and 18.27.075; reenacting and amending RCW
14 43.79A.040 and 43.79A.040; adding new sections to chapter 64.50 RCW;
15 adding a new section to chapter 43.10 RCW; and providing an effective
16 date."

--- END ---