

SB 6701 - S AMD 190  
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, 2011, 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 18 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 2009 c 87 s 4 are each amended to read  
25 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 and breeder awards account, the Washington horse  
35 racing commission class C purse fund account, the individual  
36 development account program account, the Washington horse racing  
37 commission operating account (earnings from the Washington horse racing  
38 commission operating account must be credited to the Washington horse

1 racing commission class C purse fund account), the life sciences  
2 discovery fund, the Washington state heritage center account, the  
3 reduced cigarette ignition propensity account, the consumer education  
4 for home construction account, and the reading achievement account.  
5 However, the earnings to be distributed shall first be reduced by the  
6 allocation to the state treasurer's service fund pursuant to RCW  
7 43.08.190.

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

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

19 **PART III. WARRANTIES**

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

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

32 (3) The implied warranty of habitability may be disclaimed or  
33 limited, provided that the contractor can disclaim or limit implied  
34 warranty coverage only for failures or deficiencies of specifically  
35 listed materials or design features of the construction that were  
36 selected or specified by the owner.

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

4 (a) Written;

5 (b) Conspicuous;

6 (c) Typed or printed in ten-point bold face type; and

7 (d) Signed by the homeowner.

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

16 (a) Written;

17 (b) Provided five days prior to closing or five days prior to  
18 entering into a contract for construction of a new home or construction  
19 of a substantial remodel; and

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

23 (6) Damages awarded for a breach of the implied warranty of  
24 habitability are the cost of repairs. However, if it is established  
25 that the cost of repairs is clearly disproportionate to the loss in  
26 market value caused by the breach, damages are limited to the loss in  
27 market value.

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

30 **PART IV. INSPECTIONS**

31 NEW SECTION. **Sec. 18.** Any person applying for a building permit  
32 for construction or substantial remodel of residential real property  
33 shall ensure that an inspection of the property is completed by a  
34 contractor with expertise in the trade. This inspection may be  
35 conducted by a third party or it may be a self-inspection by a



1 contractor. The inspection must occur after the installation of  
2 roofing and waterproofing and prior to the installation of siding.  
3 This inspection must:  
4 (1) Determine that waterproofing has been installed over all  
5 plywood or exterior surfaces;  
6 (2) Determine that waterproofing has been installed around doors,  
7 windows, vents, pipes, and exterior fixtures; and  
8 (3) Document the installation of waterproofing by providing, at a  
9 minimum, one photograph or digital image of each of the elevations of  
10 the residential real property.

11 NEW SECTION. **Sec. 19.** Sections 3 through 13, 17, and 18 of this  
12 act are each added to chapter 64.50 RCW.

13 NEW SECTION. **Sec. 20.** Sections 3 through 13, 17, and 18 of this  
14 act take effect April 1, 2011."

**SB 6701** - S AMD  
By Senator Haugen

15 On page 1, line 1 of the title, after "Relating to" strike the  
16 remainder of the title and insert "improving residential real property  
17 construction by establishing notice requirements, creating a  
18 residential construction board and consumer education office,  
19 strengthening warranty protections applicable to residential real  
20 property construction, and requiring inspections; amending RCW  
21 64.50.010, 64.50.020, 18.27.075, and 43.79A.040; adding new sections to  
22 chapter 64.50 RCW; adding a new section to chapter 43.10 RCW; and  
23 providing an effective date."

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