

SENATE BILL REPORT

ESSB 5024

As Amended by House, April 8, 2021

Title: An act relating to reducing barriers to condominium construction.

Brief Description: Reducing barriers to condominium construction.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Pedersen, Brown, Gildon, Holy, Mullet, Short and Van De Wege).

Brief History:

Committee Activity: Law & Justice: 1/12/21, 1/14/21 [DPS, DNP].

Floor Activity: Passed Senate: 1/27/21, 37-12.

Passed House: 4/8/21, 97-0.

Brief Summary of Engrossed First Substitute Bill

- Exempts condominiums with ten or fewer units and no more than two stories from the requirement to submit building enclosure design documents and obtain periodic inspections throughout the course of construction.
- Allows deposit funds for the purchase of a unit in a common interest community to be used for construction costs if the declarant maintains a surety bond in favor of the purchaser in the amount of the deposit.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5024 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Holy, Salomon and Wagoner.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Darneille and Kuderer.

Staff: Shani Bauer (786-7468)

Background: Building Enclosure Requirements. Special requirements apply when constructing a multiunit residential building or converting a multiunit residential building to condominium ownership. Building enclosure design documents must be submitted with any application for a building permit addressing waterproofing, weatherproofing, and other protections of the building from water or moisture intrusion. Further, the building enclosure must be inspected by a qualified building inspector throughout the course of construction to ensure the construction is in compliance with the design documents. No condominium unit may be sold without the required enclosure design documents and inspection report.

A multiunit residential building is a building with more than two attached dwelling units, but does not include hotels, motels, dormitories, care facilities, floating homes, or buildings with attached dwelling units each on a single platted lot.

Deposits for Purchase. Under Washington Uniform Common Interest Ownership Act, a unit refers to a physical portion of a common interest community designated for separate ownership or occupancy. A common interest community may include a condominium, cooperative, plat community, or miscellaneous community. When a purchaser enters into an agreement to purchase a unit from the declarant of the community, any earnest money deposit or reservation deposit must be placed in escrow. Consistent with other real estate conveyances, the amount of earnest money that may be forfeited for failing to complete a purchase may not exceed 5 percent of the purchase price.

Summary of Engrossed First Substitute Bill: A multiunit residential building does not include condominiums with ten or fewer units and with no more than two stories. Those condominiums are exempt from the requirement to submit building enclosure design documents and obtain periodic inspections throughout the course of construction. These provisions will expire on June 30, 2031.

Deposit funds for the purchase of a unit in a common interest community may be used for the construction costs of the unit if the declarant obtains and maintains a surety bond in favor of the purchaser in an amount adequate to cover the amount of the deposit to be withdrawn. The purchase agreement must inform the purchaser that deposit funds may be used for construction costs and the deposit may not exceed 10 percent of the purchase price.

Statutory limitations that apply to earnest money deposits for real estate conveyances do not apply to deposits for the purchase of a unit in a common interest community from the declarant of that community.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill addresses concern over the lack of new construction in the condominium market. Condominiums, particularly small projects, represent a chance for people with less funds to get into home ownership. Chapter 64.55 RCW requires hiring a qualified building enclosure consultant during the course of construction and obtaining a final certification report. The inspector is not a regular building inspector and can be hard to find. For a recent project in Spokane, the closest expert was Seattle, who gave a bid of \$150,000 for a 24 unit complex. This is cost prohibitive. Small projects of this size are stick built and similar in scale and construction to a town home or large home. These provisions were largely meant to address large construction projects with metal construction. Warranty provisions continue to apply. This is a small step to improve middle income housing.

pricing is out of sight for most first time home buyers. The way to bring housing costs down is to increase inventory. The financial viability of small infill units is an issue. Money put into escrow is dead money for the two years of construction. Allowing a developer to use those funds for construction while providing a surety bond, frees up money while protecting the purchaser.

This bill creates an opportunity for home ownership. Cities understand that need for more housing and have approved hundreds of units. Most of these are rental units. We want to give people a path to home ownership.

CON: This bill would remove important protections for homeowners. The purpose of 64.55 was to minimize leaking buildings and reduce construction defect claims. Since adoption, the law has done that. There has been tremendous progress in the quality of construction and weatherproofing. Removing protections for buildings with ten units or less would roll back this progress. There is no reason to believe that small buildings do not have the same concerns as larger buildings. A building with fewer units has fewer owners to split repair costs among when repairs are needed.

OTHER: I am a homeowner that has experienced water intrusion issues. These cost a lot of money for a homeowner. I do not support taking away protections for the homeowner.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Eddie Chang, realtor; Jan Himebaugh, Building Industry Association of Washington; Jim Frank, Greenstone Homes; Kyle Moore, City of SeaTac.

CON: Anthony Rafel, Washington State Community Associations Institute.

OTHER: Raelene Schifano, citizen.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Strikes the provisions that exempt certain smaller buildings from building enclosure design and inspection requirements and thereby restores current law applicable to these smaller buildings.
- Removes the expiration date applicable to the stricken section.
- Provides that a qualified building enclosure inspector must be the architect or engineer of record or another person with substantial and verifiable training and experience in building enclosure design and construction, instead of the current requirement that a qualified building enclosure inspector be a person with substantial and verifiable training and experience in building enclosure design and construction.
- Provides that the party holding escrow funds who releases all or any portion of the funds to the declarant has no obligation to monitor the progress of construction or the expenditure of the funds by the declarant.
- Relieves the party holding escrow funds of liability to any purchaser for the release of funds to be used for construction costs as authorized in the bill.
- Modifies, from 10 percent to 5 percent of the purchase price, the cap on deposits made in connection with purchasing a unit from a declarant or dealer under the Washington Uniform Common Interest Ownership Act.
- Strikes the provisions excepting these deposits from state law that guarantees the enforcement of earnest money forfeiture provisions.