



AIA Washington Council

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Issue Brief

Don't Increase Housing Liability Costs Oppose SSB 6385 / 2837

Background

Senator Brian Weinstein (D-41, Mercer Island) has introduced Senate Bill 6385 which would add a new section to the Construction Defects statute, RCW 64.50 et seq. At the same time, Representative Brendan Williams (D-22, Olympia) has introduced a companion bill, HB 2837, in the House of Representatives. Senator Weinstein recently offered a substitute version of the bill. This bill, as revised on January 24, creates broad new legal liabilities for all design and construction professionals involved in the construction of any improvement on residential property.

Dramatically Alters the Design and Construction Industry

Senator Weinstein's bill proposes several dramatic changes in Washington construction law. Washington currently does not recognize a cause of action for negligent construction. However, people can successfully sue for faulty construction through a breach of contract. If this bill passes, residential owners will be able to sue any construction professional who performed construction on their property regardless of whether the owner had a contractual relationship with the construction professional. Suits by a subsequent purchaser of a residence would be allowed. Privity of contract will no longer matter.

The bill would void longstanding Washington law regarding construction contracts including the economic loss rule, privity of contract, and the implied warranty of workmanship. Washington has used the economic loss rule to separate breach of contract cases from tort cases. The economic loss rule limits a contracting party's recovery of purely economic damages to the remedies provided for in the parties' contract. Economic damages are defined as all damages that do not result in property damage or personal injury.

Washington courts drew a line in sand between tort and contract damages in construction cases, arguing that parties are capable of allocating the risk of negligence through the contract. The courts reasoned that parties should bear some responsibility to review their contracts, ascertain the various risks, and draft language to allocate the same. This includes negligence or "workmanship." The new reasonable care standard under SB 6385 could supplant this, with workmanship being measured under the reasonable care standard.

The effects on architects, contractors, sub-contractors, and possibly suppliers connected to residential construction and remodeling could be far-reaching. **Architects and other construction professionals could face suits from subsequent purchasers of homes that had no contract with the construction professional.**

The House leadership has a task force evaluating the residential construction market. Led by Representative Mark Ericks (D-1, Bothell) and including members of both parties, it is investigating the concerns raised by the bill's proponents and what actions would alleviate future concerns over faulty residential construction. **The task force should have time for its process to work and make recommendations back to the legislature.**