SENATE BILL REPORT
2SHB 1516

As of March 19, 2025

Title: An act relating to conducting a study of insurance coverage options for permanently affordable homeownership units.

Brief Description: Conducting a study of insurance coverage options for permanently affordable homeownership units.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hill, Taylor, Reed, Simmons, Morgan, Ormsby, Farivar, Parshley, Gregerson, Macri, Ramel, Pollet and Salahuddin).

Brief History: Passed House: 3/11/25, 58-38.
Committee Activity: Business, Financial Services & Trade: 3/19/25.

Brief Summary of Bill

- Requires the Office of the Insurance Commissioner (OIC) to conduct a study on options for permanently affordable homeownership developers to reduce condominium construction defect liability costs.
- Authorizes the OIC to contract with actuarial or other consultants for the study.
- Requires insurers and risk retention groups to provide requested information to the OIC for the study.
- Requires the OIC to provide a report to the Legislature by December 31, 2026.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Staff: John Kim (786-7453)

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.

Background: Permanently Affordable Homeownership. Permanently affordable homeownership refers to units sold to households under certain income limits; that are sponsored by a nonprofit organization or governmental entity; and that are subject to certain refinancing restrictions and resale restrictions designed to provide affordability to future low- and moderate-income homebuyers. In 2021, the Legislature created a property tax exemption for new housing construction, conversion, and rehabilitation improvements assuring permanently affordable homeownership.

Condominium Implied Warranties. Under the Washington Condominium Act, condominium sales are subject to implied warranties of quality construction. According to a 2022 study on condominium conversions by the Washington State Department of Commerce (Commerce study), condominiums are subject to a higher warranty standard than detached housing or apartment buildings.

Such implied warranties include:

- that the unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, except for reasonable wear and tear and damage by casualty or condemnation;
- that the unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type;
- that any improvements made or contracted for by a declarant developer or dealer will be free from defective materials; constructed in accordance with engineering and construction standards, including applicable building codes generally accepted in the state of Washington at the time of construction; and constructed in a workmanlike manner; and
- that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

Condominium Defect Liability Insurance. State law authorizes condominium developers to obtain defect liability insurance for the unit owners and owners' association by providing a qualified warranty, which is deemed insurance for purposes of the Washington Insurance Code. Providing the qualified warranty releases the declarant developer from implied warranty liability.

A qualified warranty is subject to minimum coverage standards, including that it provide a two-year materials and labor warranty for noncompliance with building code; a five-year building envelope warranty providing coverage for defects in the building envelope; and a ten-year structural defects warranty that provides coverage for defects that cause structural damage that renders the condominium unlivable.

The Commerce study cited the lack of availability of such insurance and concerns by condominium developers, realtors, and contractors regarding construction defect liability as among the reasons for developer hesitance in reentering the condominium market, despite 2019 legislative changes constraining condominium defect liability.

Summary of Bill: Study by the Office of the Insurance Commissioner. The Office of the Insurance Commissioner (OIC) must conduct a study regarding how projects that develop new permanently affordable homeownership units may utilize different insurance coverage options and approaches to reduce costs related to condominium construction defect liability while maintaining commensurate access to insurance coverage.

The study must be conducted in consultation with:

- identified nonprofit organizations and government entities that sponsor permanently affordable homeownership units;
- authorized insurers of permanently affordable homeownership projects;
- unauthorized insurers of permanently affordable homeownership projects;
- representatives of the residential building construction industry; and
- relevant state associations.

In conducting the study, the OIC must:

- collect and use relevant findings from past insurance market studies conducted by the OIC on or after December 31, 2017, or other relevant information released on or after December 31, 2017, that may assist the OIC in conducting the analysis or making recommendations; and
- collect information and data from entities transacting insurance in the state.

The OIC may contract with actuarial or other consultants to facilitate the study. Funding for the study must be provided from the OIC's regulatory account.

Requirement for Insurers and Risk Retention Groups to Provide the Office of the Insurance Commissioner with Requested Information. Any identified authorized insurers, unauthorized insurers, and risk retention groups are required to provide the requested information and data to the OIC in conducting the study.

Legislative Report. The OIC must submit a report on its findings to the appropriate committees of the Legislature by December 31, 2026. The report must include:

- an actuarial analysis of how the condominium construction defect liability risk pools for nonprofit organizations and government entities that sponsor permanently affordable homeownership units may differ from for-profit models of condominium production, sale, and ownership;
- an analysis of the role that the OIC and insurers can play to lower condominium construction defect liability insurance costs for nonprofit organizations and government entities that sponsor permanently affordable homeownership units; and
- recommendations for how current or new insurance mechanisms may be used to reduce insurance costs for nonprofit organizations and government entities that sponsor permanently affordable homeownership units.

Definitions. The term permanently affordable homeownership is defined to mean a unit that, in addition to meeting the definition of affordable housing, is:

- sponsored by a nonprofit organization or governmental entity and the sponsor:
    1. at the initial sale and at each successive sale of the unit, executes a new ground lease or deed restriction, the forms of which may include a ground lease, deed restriction, community land trust lease, or affordability covenant with a duration of at least 99 years; and
    2. supports the unit's homeowner and enforces the ground lease or deed restriction; and
- subject to a ground lease or deed restriction, the forms of which may include a ground lease, deed restriction, community land trust lease, or affordability covenant that includes:
    1. a resale restriction designed to provide affordability for future low and moderate-income homebuyers;
    2. a right of first refusal for the sponsoring organization to purchase the home at resale, except in cases where the sponsor organization is a limited equity cooperative and the sponsor organization is not partnered with a community land trust; and
    3. a requirement that the sponsor must approve any refinancing secured by the home, including home equity lines of credit, except where the sponsor organization is a limited equity cooperative and the sponsor organization is not partnered with a community land trust.

The term affordable housing means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than 30 percent of the household's income.

Expiration. The OIC study section created by the bill expires December 31, 2027.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

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: PRO: This study is not taking anything out of the operating budget and is coming from the OIC's account. We need to look at this to know how we can help our developers build condominiums that will help fill a big gap in our housing supply. Condos offer something different from apartments and single-family homes. Condos are more affordable generally for homeownership. If we can help builders reduce costs and find options that will make insurance more affordable, they'll be more willing to build. We're looking for local governments and nonprofits to build more

permanently affordable homeownership, to offer more opportunities for folks to buy a starter home and for seniors to downsize from larger homes. What we got in 2022 was a better purview and context on what's driving the costs around building condos, and insurance is the biggest cost. We have to look at it closer and the best agency to do that is the OIC.

The OIC is eager to conduct the study and appreciates the authority to contract out for a consultant and collect data to do this work. The study will be funded from the OIC's regulatory account and not from the general fund.

Condos are a critical entry point for the first-time home buyer, costing roughly $250,000 less than townhomes and $400,000 less than traditional detached single-family homes in Seattle. But condo construction has stalled dramatically, making up just one percent of new construction in 2011. Most of the projects by Habitat for Humanity Seattle-King and Kittitas Counties are permitted as condos, subject to the same rules and regulations as any other condo builder. We are facing condo construction insurance costs approaching a million dollars, and sometimes more, per project, with no clear pathway to reduce some of those costs. This study represents our commitment to finding real solutions for Washington families while maintaining construction standards and consumer protections.

Some nonprofits face approaching a million dollars of upfront insurance premium costs per project. Unlike private condo production models, nonprofit and government models maintain strong interest in the units after they are produced and the Housing Development Consortium believes that permanently affordable models result in different actuarial risk compared to private production, but these are not currently recognized in the Revised Code of Washington. There's no current study that focuses on this specific area of condo liability.

Right now, limited equity housing cooperatives are struggling to develop due to high inflexible premium costs. Rising costs threaten preserving and developing affordable homeownership across Washington.

Persons Testifying: PRO: Representative Natasha Hill, Prime Sponsor; Rory Paine-Donovan, Office of the Insurance Commissioner; Victoria OBanion, Northwest Cooperative Development Center; Ryan Donohue, Habitat for Humanity Seattle-King & Kittitas Counties; Brady Nordstrom, Housing Development Consortium.

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