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Construction-defects reform bill gets first Senate approval

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Construction-defects reform passed its first test in the Colorado Legislature late Wednesday, garnering the bipartisan support its backers wanted to make their point about its universal appeal but also meeting strong opposition over its perceived slights to homeowners that will continue to serve as its biggest obstacle moving forward.

The state Senate Business, Labor and Technology committee approved the bill — considered roundly to be the top business priority in the 2015 legislative session — by a 6-2 margin, with Democratic Sen. [Cheri Jahn](#) of Wheat Ridge joining the five committee Republicans in supporting SB 177.

It heads now to debate on the full Senate floor and, if it passes as expected, will then move to the less-friendly territory of the Democrat-controlled House.

See Also

- [Cover story: Stalemate at the Colorado statehouse](#)
- [As construction-defects showdown looms, related bills meet their fate](#)
- [Hickenlooper seeking compromise on construction-defects reform](#)

[Senate Bill 177](#)— sponsored by Senate Majority Leader [Mark Scheffel](#), R-Parker, and Sen. [Jessie Ulibarri](#), D-Commerce City — would require that a majority of condo owners, rather than just majority of a homeowners association board, approve the filing of a class-action construction defects lawsuit.

It also requires mediation or arbitration in lieu of a lawsuit and bars HOAs from changing alternative-dispute resolution requirements in a home-ownership declaration without approval from builders.

Nearly 40 people testified for the measure during the course of a seven-hour hearing:

- [Backers](#) said SB 177 holds the key to re-starting a nearly non-existent affordable condominium market that has shut down to persistent and pricey lawsuits enabled by current Colorado law.
- Opponents said it will do nothing to spur builders to begin putting up workforce homes but will rob people of the right to take to court disputes involving the biggest investments of their lives.

The bipartisan committee support comes after similar legislation [died in its first committee in 2013](#) and then passed a committee last year before being [killed in a procedural move](#) near the end of the legislative session.

"This was an enormous coalition that passed this," Scheffel said afterward. "I think we've made a step forward, and there's definite elements that emphasize homeowners the information they receive now."

Ulibarri stressed that he and Scheffel tried to listen to concerns from homeowners groups. As a result, they made several amendments to the bill on Wednesday, to:

- Allow attorneys for homeowners associations to write the notices that must be sent to homeowners explaining their obligations, the costs of a lawsuit and the potential of success or failure in the legal action;
- Ensure homeowners do not have to be present at an association meeting in order to vote for or against a lawsuit; and,
- Clarify that homeowners and builders have to select a mediator or arbitrator in accordance with each other.

"This bill is pro-consumer, this bill is pro-homeowner — because it clearly informs folks about their investment in their largest asset," Ulibarri said. "But for this bill, we will not have construction of any condos below the 400,000-dollar point."

Democratic Sens. [Irene Aguilar](#) of Denver and [Rollie Heath](#) of Boulder, who were the two dissenting votes, disagreed.

"I think if this bill is designed to help with affordable housing, it missed the mark," Heath said. "I think our duty, frankly, as legislators is to look out for laggards [who build defective homes]. And I don't think this bill does that."

Proponents framed SB 177 as a way to create affordable housing in a metro area that needs it desperately. Denver has an average housing price of \$317,000 — the highest cost of any major city not on a coastline — and its rental prices grew at a greater clip in 2014 than any metro area other than San Francisco, they said.

Not having a portfolio of affordable condominiums in a market like that essentially bars many younger professionals from moving into home ownership and stops senior citizens from being able to downsize from large houses unless they want to pay monthly rent, said [Sara Reynolds](#), executive director of the advocacy group Housing Colorado.

A number of local-government leaders laid out how sparse condominium development is. Jefferson County Commissioner [Donald Rosier](#) said that only 173 of the 1,400 multi-family units permitted in his county last year were for ownership rather than rental, while Lakewood Mayor [Bob Murphy](#) said that none of the 2,000 multi-family residence units in the pipeline in his city are condominiums.

"In many parts of our city — downtown, for instance — for-sale, multi-family homes are almost non-existent," Denver Mayor [Michael Hancock](#) said. "We must have a diversity of housing available to meet the needs of the new employees here. Today we don't."

Lakewood [passed an ordinance in October](#) reforming the city's construction-defects law in the same way that SB 177 seeks to reform state law. Since then, Murphy said, half-a-dozen developers have contacted him about building condominiums, though he said he did not know if any of those specifically would be affordable housing.

Witnesses used dueling sets of statistics to argue whether the dearth of condominiums, which represent just 3 percent of new housing in the Denver market, are the results of the current marketplace or of current Colorado law.

Economist [Patricia Pacey](#) of Boulder, who [conducted a study](#) for the Build Our Homes Right coalition of bill opponents, said that economic forces have pushed millennials away from wanting to own condos.

Since the Great Recession, incomes are down, unemployment is up, down payments on condos have jumped from 3 percent to 10 percent and the amount of student debt has doubled, she said.

"There was no direct tie or economic link from reducing the construction-defects law to increasing condos in the urban center," Pacey said. "It will reduce the costs of building a condo but doesn't produce any incentives for construction."

Ulibarri took exception to those assertions, saying that other studies have shown condo development is rampant in comparable cities in other states. It is four times the percentage of the new-home market in Austin, Texas, that it is in Denver, he said, and San Francisco and San Diego both have more than a third of their new housing stock in condominiums.

The California numbers [came from a study](#) conducted by Economic & Planning Systems for the Denver Council of Regional Governments and the **Metro Denver Economic Development Corp.** that argued Colorado's law was the major difference in explaining why other metropolitan areas' condo markets bounced back after the recession while Colorado's didn't.

Metro Denver Economic Development Corp. CEO [Tom Clark](#) said that reform opponents threatened to file litigation against the study even before research began.

[Chris Waggett](#), CEO of Denver-based D4 Urban development company, said he recently attended a community meeting in which several millennials said they were advising friends

not to move to Denver because the cost of housing was too high. That is dangerous for the future of the community, he said.

Sen. Aguilar asked Waggett why he was not developing condominiums.

"Because I've got better things to do than be sued," Waggett replied.

Aguilar and Heath, her Senate colleague, continuously said they didn't believe the bill would lead to more affordable housing. Aguilar, in fact, tried unsuccessfully to add an amendment to the bill prohibiting it from becoming law unless the Colorado Division of Housing produced a study showing that these changes would create more condominiums around the \$200,000 range.

"I think it's deceitful to pass this law without any data saying that the law will create more affordable housing in Colorado," she said.

In addition to failing to solve that problem, a number of opponents said SB 177 would hurt existing homeowners and future condo buyers.

[Molly Foley-Healy](#), legislative liaison for the Community Associations Initiative, said that it will be impossible to get 51 percent of condo owners to approve any legislative action because homeowner apathy is rampant and leads many people never to vote on association matters, thereby giving "straight-up immunity" to developers.

[Jesse Witt](#), an attorney who has represented a number of low- to moderate-income HOAs in legal actions against builders, said the arbitration required through SB 177 can cost as much as \$100,000 just to have a case heard — an expense that is "hugely cost-prohibitive" and has forced some homeowners groups to go without a resolution to their problems.

A number of homeowners-association leaders who have gone through construction-defects conflicts also said that the provision of the bill that denies them the opportunity to change the bylaws of their development and remove mandatory arbitration for any complaints takes away their basic rights to seek redress through a jury trial.

Those arbitration mandates are foisted upon condo owners by builders who don't want to get sued, they said.

"We're not only letting the fox guard the hen house," said [Chad Otto](#), former board president for the Grant Ranch Homeowners Association in Littleton. "You're serving us chickens up on a plate for the fox."

The bill continues to face major hurdles, as House Speaker [Dickey Lee Hullinghorst](#), D-Gunbarrel, has said she has little interest in passing it without major changes.

Scheffel, however, said that was a concern for another day.

"We have to take it one day at a time here," he said. "My goal is to get this through the Senate, and I don't take anything for granted."

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