

FINAL BILL REPORT

ESHB 1495

PARTIAL VETO

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Brief Description: Changing land development regulations.

By House Committee on Commerce & Labor (originally sponsored by Representatives Heavey and Hargrove; by request of Department of Licensing).

Senate Committee on Governmental Operations

Background: In 1974, the Land Development Act was passed to protect consumers from fraudulent land sales. The Department of Licensing was designated as the regulatory agent and allowable fees were set by statute.

Under the act, developers are required to file a public offering statement with the department when selling lots in a development composed of at least 10 lots. There are several exceptions to this requirement, however. For example, the act does not apply to developments: if the lots are five acres or larger; if the lots are improved with a residential, industrial, or commercial building; or if the seller is legally obligated to construct a building on the lot within two years.

A public offering statement must include, among other things, a general description of the development, significant terms of encumbrances and liens affecting the development, information concerning all improvements, and a description of hazards existing on and around the development.

If a developer fails to comply with the act, the department is authorized to seek a cease and desist order prohibiting the developer from selling lots in the development until the requirements are satisfied. The act does not authorize civil damages.

Summary: Registration of a land development public offering statement with the Department of Licensing is no longer required and all sections that gave the director the power or duty to implement the registration program are repealed.

A developer is required to provide a purchaser with a public offering statement at least two days prior to the closing of a sale. If a developer fails to comply with this

requirement, the developer is subject to the following penalties: liability for actual damages; an injunctive order prohibiting future sales; and voidance of all sales agreements made with the purchaser(s) who did not receive the statement. In addition to an injured party filing charges against a developer, the attorney general may file an action, on behalf of the state, seeking injunctive relief.

The act applies to all lots that are part of a development of 26 or more lots and that are not included under an exception. In addition to current exceptions, offers or dispositions on the following types of property are excepted from compliance with the act: developments located in a city that was incorporated prior to January 1, 1974; developments in a city or a county that has adopted a comprehensive land use plan under the Growth Management Act of 1990; developments otherwise requiring compliance when there are less than 9 lots remaining in a development; condominiums that are subject to regulation under the Condominium Act; property sold by the government; property sold through a foreclosure action; and land conveyed by an offer that can be revoked by the buyer at any time without penalty.

As additional requirements, the public offering statement must include material terms and conditions of any homeowner's association of which the purchaser will be a member, a statement that the developer has or has not received all required approvals and permits, and a copy of the plat map and certificate. Notice of a purchaser's rights under the act must be printed in bold-face type at the top of the statement.

Other than the developer, a person who prepares a public offering statement is not liable for misrepresentations contained in the statement unless he or she had actual knowledge of the misrepresentations at the time the statement was prepared. The developer is liable for misrepresentations in the statement if the developer knew or in the exercise of reasonable care, should have known, of the misrepresentation.

A developer must satisfy certain specified requirements before conveying any lots in a development that are encumbered by a lien or mortgage.

A violation of this chapter is a per se violation of the Consumer Protection Act. The attorney general may bring an action in the name of the state, but no private right of action is allowed under the Consumer Protection Act.

Votes on Final Passage:

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|--------|----|----|-------------------|
| House | 94 | 0 | |
| Senate | 36 | 11 | (Senate amended) |
| House | 96 | 0 | (House concurred) |

Effective: June 11, 1992

Partial Veto Summary: The governor vetoed the section that created new exceptions from compliance with the act for offers or dispositions on certain types of property. The new exceptions included developments in a city or county that has adopted a comprehensive land use plan under the Growth Management Act and land conveyed by an offer that can be revoked by the buyer without penalty. (See VETO MESSAGE)