

HOUSE BILL REPORT

ESHB 1495

As Passed Legislature

Title: An act relating to the protection of consumers in the sale of lands.

Brief Description: Changing land development regulations.

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

Brief History:

Reported by House Committee on:
Commerce & Labor, March 1, 1991, DPS;
Passed House, March 19, 1991, 97-0;
Passed House, February 10, 1992, 94-0;
Amended by Senate;
Passed Legislature.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *That Substitute House Bill No. 1495 be substituted therefor, and the substitute bill do pass.*
Signed by 10 members: Representatives Heavey, Chair; Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; and Vance.

Staff: Jim Kelley (786-7166).

Background: In 1974, the Land Development Act (RCW 58.19) was passed in an attempt to protect consumers from fraudulent land sales. The Department of Licensing was designated as the regulatory agent and allowable fees were set by statute. The fee schedule has not been amended since enactment.

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 instance, 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.

A developer's failure to comply with the act causes the department 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 of Bill: Registration of a public offering statement with the Department of Licensing is no longer required. However, a developer is required to provide a purchaser with a public offering statement at least two days prior to the closing of a sale. A developer's failure to comply with this requirement may result in imposition of the following penalties against the developer: 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 which are part of a development of 26 or more lots and which are not included under an exception. In addition to current exceptions, a developer is excepted from compliance with the act for the following reasons: the development is located in a city that was incorporated prior to January 1, 1974; the development is in a city or a county that has adopted a comprehensive land use plan; or there are fewer than nine lots remaining in a development which otherwise required compliance.

In addition to current requirements, the public offering statement must include material terms and conditions of any home owner'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 this act must be printed in bold-face type at the top of the statement.

Other than the developer, a person who compiled the report is not liable for misrepresentations contained in the report unless he or she had actual knowledge of the

misrepresentations at the time the report was compiled. The developer is liable for misrepresentations in the report if, at the time the report was compiled, the builder knew or in the exercise of reasonable care, should have known, of the misrepresentation.

The bill sets forth provisions the developer must satisfy prior to conveyance of any lots in a development which is 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.

Fiscal Note: Available.

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

Testimony For: It is more efficient to authorize a purchaser to recover damages in the event of a fraudulent land sale than to require the Department of Licensing to monitor every development through the recording of a public offering statement.

Testimony Against: None.

Witnesses: Marsha Long, Department of Licensing (in favor); Mark Triplett, Developers Association (in favor); and Glen Hudson, Washington Association of Realtors (in favor).