

HOUSE BILL REPORT

SSB 6728

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to seller disclosure of information concerning unimproved real property zoned for residential use.

Brief Description: Regarding a seller's disclosure of information concerning unimproved real property zoned residential.

Sponsors: Senate Committee on Water, Energy & Environment (originally sponsored by Senators Fraser, Swecker, Fairley, Prentice, Spanel, Thibaudeau and Franklin).

Brief History:

Committee Activity:

Commerce & Labor: 2/15/06, 2/22/06 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Requires the Office of the Attorney General to convene a task force to study issues related to the disclosure of information to prospective purchasers of unimproved property.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Crouse, Holmquist, Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 1 member: Representative Chandler, Assistant Ranking Minority Member.

Staff: Sarah Dylag (786-7109).

Background:

In 1994, the Legislature enacted a requirement that a disclosure statement must be provided as part of a residential real property sale. Under current law, a seller of residential land must provide a buyer with a disclosure statement about the land unless the buyer waives the right to receive it. The disclosure requirement applies only to land with one to four dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home that is personal property.

The disclosure form is specified in statute. The disclosures concern title, water, sewer/septic systems, structural matters, systems and fixtures, common interest matters, and general matters. The questions regarding general matters include a question about whether there are any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel, chemical storage tanks, or contaminated soil or water.

The disclosure statement must be provided within five business days, or as otherwise agreed to, after mutual acceptance of a written purchase agreement between a buyer and a seller. Within three business days of receiving the disclosure statement, the buyer has the right to approve and accept the statement or rescind the agreement for purchase. If the seller fails to provide the statement, the buyer may rescind the transaction until the transfer has closed. If the disclosure statement is delivered late, the buyer's right to rescind expires three days after receipt of the statement.

The seller and any licensed real estate salesperson or broker is not liable for error, inaccuracy, or omission in the disclosure statement if the seller or real estate salesperson or broker had no actual knowledge. This includes situations where the seller relies on information provided by public agencies, or other professionals. In addition, the statute provides that the Consumer Protection Act does not apply to violations of the statute. However, the statute preserves a right of action against the seller or against any agent acting for the seller under common law, statute, or contract.

Summary of Amended Bill:

The Office of Attorney General is required to convene a task force to study issues related to the residential real property disclosure statement and methods to disclose information to prospective purchasers of unimproved real property zoned for residential use. Members of the task force may include representatives from:

- the real estate industry;
- real property purchasers having experience with undisclosed toxic contamination on unimproved residential real property;
- consumer protection organizations;
- the residential construction industry;
- the Department of Ecology; and
- the Department of Licensing.

The Office of the Attorney General may also invite interested legislators to participate.

The task force must:

- recommend improvements to methods for purchasers of unimproved real property zoned for residential use to obtain information about material conditions relating to the property, including information regarding prior industrial uses of property and the

presence of buried industrial waste, utility poles and equipment, and similar material that may contain toxic contaminants;

- recommend additional methods to inform purchasers of potential toxic contamination on unimproved residential real property prior to a sale;
- recommend forms, sources of information, and practices used in transactions involving both improved and unimproved real property zoned for residential use in other states that provide information to the purchaser about conditions of unimproved property;
- identify potential sources of information relevant to conditions of unimproved property zoned for residential use. These sources may include, but are not limited to, existing real estate forms, regulatory agencies, local governments, property inspections, and environmental audits; and
- recommend methods, such as notice provisions, that could be used in transactions of unimproved real property zoned for residential use.

The task force must make recommendations to the Legislature by January 1, 2007.

Amended Bill Compared to Substitute Bill:

The substitute bill required sellers of unimproved property to complete a seller's disclosure form as part of the sale. The substitute bill also expanded the items included in the disclosure form to include whether the land has ever been used for industrial purposes in which soil contamination may have occurred, whether transmission poles, transformers, or other utility equipment have ever been installed, maintained, or buried on the land, and whether the land has ever been used as a legal or illegal dumping site. The amended bill removes these requirements and requires the Office of the Attorney General to convene a task force to study related issues and report back to the Legislature by January 1, 2007.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Substitute bill) This is a consumer protection bill for buyers of residential property. Buying a home is a large investment. There are examples all over the state of persons buying property to build residential homes and later finding buried material on the land that is toxic. In some cases, that toxic material has even gotten into domestic wells. When a consumer finds toxic material on residential property, it begins a long, expensive, litigious process that can cause significant financial problems.

A seller of land is in a better position to know about these issues. Regular purchasers do not hire toxic specialists to inspect land. Under this bill, the seller would be required to fill out the disclosure form for unimproved property to the best of the seller's knowledge.

Testimony Against: (Substitute bill) The question here is whether to add vacant property to the current Seller's Disclosure Act. This bill weakens the existing Seller's Disclosure Act because the Act is not currently written for vacant land. It is not written that way because the Legislature decided that it would not apply to vacant land. If anything, a vacant land disclosure form should be different from the current disclosure form. Adding vacant land to current law and adding elements to the seller's disclosure form creates a risk of misleading buyers about what they know about the land.

Requiring sellers to disclose corrected conditions on the land is also a bad policy that will discourage sellers from cleaning up property and stigmatize land. Current law already addresses the situation when a defect is found on the property after the seller fills out a disclosure form.

There are other ways to obtain this information. In certain situations, sellers are already disclosing this information on existing forms. In addition, the Department of Ecology has a role to play because the Department of Ecology knows about contamination in certain situations.

Persons Testifying: (In support) Senator Fraser, prime sponsor.

(Opposed) Bob Mitchell and Annie Fitzsimmons, Washington Association of Realtors; Bill Clarke, Mentor Law Group; and Clayton Hill, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.