

Senate Commerce Committee

Aaron Jones 271-2609

SB 26, relative to the definition of deposits as they pertain to land sales.

Hearing Date: January 14, 2025

Time Opened: 10:22 a.m.

Time Closed: 10:42 a.m.

Members of the Committee Present: Senators Innis, Murphy, McGough, Fenton and Reardon

Members of the Committee Absent : Senator Ricciardi

Bill Analysis: This bill defines the meaning of "deposits" as they pertain to land sales.

Sponsors:

Sen. Pearl

Sen. Lang

Sen. Reardon

Sen. Innis

Sen. Murphy

Rep. See

Rep. C. McGuire

Rep. Moffett

Rep. Verville

Rep. Bryer

Who supports the bill: Senator Howard Pearl, Senator Daniel Innis, Senator Tara Reardon, Senator Mark McConkey, Matt Mayberry (NH Home Builders), Curtis Barry (NH Retail Lumber Association)

Who opposes the bill: No one

Who is neutral on the bill: Brandon Garod (NH Attorney General's Office)

Summary of testimony presented in support:

Senator Howard Pearl

- For decades, builders have accepted funds from buyers for upgrades and luxury items that are not included in the base price of a home.
- Recently, the Attorney General's Office classified these funds as deposits. Any funds or upgrades in projects of 10 or more condominiums or 15 or more single-family homes are required to be held in escrow that is fully refundable to the buyer.
- This change has led to three issues.

- First, builders must absorb the cost of upgraded items if a buyer has backed out. As a result, a builder will take either a financial loss or they will have to raise home prices.
- Second, if a buyer does not back out, a builder would have to pay for luxury items that increase carry costs, which contribute to higher home prices.
- Third, some builders have limited choices for buyers to avoid the financial risk of installing upgrades without access to funds.
- This bill would clarify that deposits made in purchase and sales agreements will be held in escrow until closing; however, funds for upgrades and luxury items could be paid directly to a builder and it could be used without being held in escrow.
- Consumers would sign an addendum that would make them aware that any monies used to personalize their homes would be at their own financial risk.

Matt Mayberry, CEO, New Hampshire Home Builders

- For the last 33 years, Mr. Mayberry said the system had worked fine as adults were making their own decisions with full disclosure.
- When building a new home, a buyer can choose from a selection of products. A buyer can ask for specific items beyond what is offered by contractors.
 - For example, Mr. Mayberry had a person request I-beams and wooden beams be used for a garage, so he could set up engine winch.
 - In another example, Mr. Mayberry said a person wanted pink quartz on the floor, the walls, and the ceiling.
 - If a deal fell apart in these instances, the items would not be marketable, so there is an upcharge to the buyer.
- A buyer is provided a disclosure with a specified date, the amount being paid, and a signed acknowledgement that the monies are nonrefundable if the buyer's financing falls apart.
- Mr. Mayberry said they would work with a buyer if they would like something special; however, a builder should not have to take on the liability for something the next buyer would not want.
- A problem has not existed since everything is in full disclosure, and it is often shown in an invoice. Instead, this change has tied up hundreds of thousands of dollars in working capital for builders.
- If a home has been over personalized, and it cannot meet the appraisal, buyers have created an additional issue.

Summary of testimony presented in opposition:

Brandon Garod, Senior Assistant Attorney General and Chief of the Consumer Protection Bureau, New Hampshire Attorney General's Office

- The Department had concerns with the bill in its current form.

- The Consumer Protection Bureau is tasked with reviewing and approving condominium and subdivision projects to help protect consumers. They ensure property disclosures are made, and they ensure consumers money is safe in the event a project does not happen.
- The Department was concerned that money for consumer upgrades, which could be small or large amounts, would not have any protection.
- While there were valid reasons to provide builders with flexibility prior to the completion of a project, the Department believed that providing no protection or limitations to those funds would put consumers at risk if a project fell apart after deposits were made.
- Their concerns would be addressed if there were a clarification made of where money for upgrades would be held and how it would be used for upgrades that were specifically authorized instead of on another project.
- Attorney Garod said some level of protection was necessary for consumers.
- **Senator Reardon** asked if the law with this modification prevented parties from negotiating any differently. If this law did not exist, she asked if the parties could always contract between themselves.
 - **Attorney Garod** said the Legislature believed this was an issue, so they have been tasked with reviewing and enforcing subdivision and condominium projects. This bill would take money out of a protective term that ensures every dollar paid in advance is held until the completion of a project, and it would be left to the parties to negotiate, which could result in consumers being less protected. He said it would be prudent to have some protections that are necessary for everyone.
- **Senator Reardon** asked if the Committee needed to include “unless the parties negotiate differently”.
 - **Attorney Garod** stated he did not know if it would be more protective than what is currently there. A provision could be added that any money paid in advanced for upgrades would be set aside only for those upgrades. This would ensure a builder is under an obligation to use the money only for those upgrades.
- **Senator Reardon** asked if the issue they were trying to correct was what is a deposit, what is refundable, and what is an upgrade. This does not address what would happen to a consumer if they did not buy a property.
 - **Attorney Garod** said if a builder ordered and purchased upgrades, and the buyer backs out of the agreement, it would not be refundable. They were concerned with builders who start off with the best of intentions, yet when money runs short, it is used for other projects. Under this definition, a consumer could pay for upgrades and a builder could use it towards another project. As a result, their money is not protected.
- **Senator Fenton** asked if there were a potential for misuse where a seller could construct a contract to classify more payments as upgrades rather than deposits to avoid escrow requirements, which places a buyer at risk.

- **Attorney Garod** replied it was not a question of negotiating contracts in a way that allowed them to misapply money. If a consumer has paid earnest money, it could not be touched until the end of the job. If they paid for different upgrades, however, their money is not completely protected. A developer could agree to anything, but there is no recourse if it is not done. If there were a requirement that money would be used for the purpose that the consumer paid for, it would give the Department the ability to protect money in these transactions.
- **Senator Innis** asked if this bill could be adjusted with an amendment.
 - **Attorney Garod** believed it could.

Neutral Information Presented: None

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Date Hearing Report completed: January 21, 2025