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**SUBSTITUTE SENATE BILL 6553**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** Senate Committee on Financial Institutions & Housing (originally sponsored by Senators Prentice, Hale, Fraser and Winsley)

Read first time 02/01/96.

1 AN ACT Relating to judicial authority to order inspections;  
2 amending RCW 35.80.030; adding a new section to chapter 19.27 RCW; and  
3 adding a new section to chapter 2.28 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 35.80.030 and 1989 c 133 s 3 are each amended to read  
6 as follows:

7 (1) Whenever the local governing body of a municipality finds that  
8 one or more conditions of the character described in RCW 35.80.010  
9 exist within its territorial limits, said governing body may adopt  
10 ordinances relating to such dwellings, buildings, structures, or  
11 premises. Such ordinances may provide for the following:

12 (a) That an "improvement board" or officer be designated or  
13 appointed to exercise the powers assigned to such board or officer by  
14 the ordinance as specified herein. Said board or officer may be an  
15 existing municipal board or officer in the municipality, or may be a  
16 separate board or officer appointed solely for the purpose of  
17 exercising the powers assigned by said ordinance.

18 If a board is created, the ordinance shall specify the terms,  
19 method of appointment, and type of membership of said board, which may

1 be limited, if the local governing body chooses, to public officers as  
2 herein defined.

3 (b) If a board is created, a public officer, other than a member of  
4 the improvement board, may be designated to work with the board and  
5 carry out the duties and exercise the powers assigned to said public  
6 officer by the ordinance.

7 (c) That if, after a preliminary investigation of any dwelling,  
8 building, structure, or premises, the board or officer finds that it is  
9 unfit for human habitation or other use, he shall cause to be served  
10 either personally or by certified mail, with return receipt requested,  
11 upon all persons having any interest therein, as shown upon the records  
12 of the auditor's office of the county in which such property is  
13 located, and shall post in a conspicuous place on such property, a  
14 complaint stating in what respects such dwelling, building, structure,  
15 or premises is unfit for human habitation or other use. If the  
16 whereabouts of any of such persons is unknown and the same cannot be  
17 ascertained by the board or officer in the exercise of reasonable  
18 diligence, and the board or officer makes an affidavit to that effect,  
19 then the serving of such complaint or order upon such persons may be  
20 made either by personal service or by mailing a copy of the complaint  
21 and order by certified mail, postage prepaid, return receipt requested,  
22 to each such person at the address of the building involved in the  
23 proceedings, and mailing a copy of the complaint and order by first  
24 class mail to any address of each such person in the records of the  
25 county assessor or the county auditor for the county where the property  
26 is located. Such complaint shall contain a notice that a hearing will  
27 be held before the board or officer, at a place therein fixed, not less  
28 than ten days nor more than thirty days after the serving of said  
29 complaint; and that all parties in interest shall be given the right to  
30 file an answer to the complaint, to appear in person, or otherwise, and  
31 to give testimony at the time and place in the complaint. The rules of  
32 evidence prevailing in courts of law or equity shall not be controlling  
33 in hearings before the board or officer. A copy of such complaint  
34 shall also be filed with the auditor of the county in which the  
35 dwelling, building, structure, or ((~~premise~~—~~premises~~)) premises is  
36 located, and such filing of the complaint or order shall have the same  
37 force and effect as other lis pendens notices provided by law.

38 (d) That the board or officer may determine that a dwelling,  
39 building, structure, or premises is unfit for human habitation or other

1 use if it finds that conditions exist in such dwelling, building,  
2 structure, or premises which are dangerous or injurious to the health  
3 or safety of the occupants of such dwelling, building, structure, or  
4 premises, the occupants of neighboring dwellings, or other residents of  
5 such municipality. Such conditions may include the following, without  
6 limitations: Defects therein increasing the hazards of fire or  
7 accident; inadequate ventilation, light, or sanitary facilities,  
8 dilapidation, disrepair, structural defects, uncleanliness,  
9 overcrowding, or inadequate drainage. The ordinance shall state  
10 reasonable and minimum standards covering such conditions, including  
11 those contained in ordinances adopted in accordance with subdivision  
12 (7)(a) herein, to guide the board or the public officer and the agents  
13 and employees of either, in determining the fitness of a dwelling for  
14 human habitation, or building, structure, or premises for other use.

15 (e) That the determination of whether a dwelling, building,  
16 structure, or premises should be repaired or demolished, shall be based  
17 on specific stated standards on (i) the degree of structural  
18 deterioration of the dwelling, building, structure, or premises, or  
19 (ii) the relationship that the estimated cost of repair bears to the  
20 value of the dwelling, building, structure, or premises, with the  
21 method of determining this value to be specified in the ordinance.

22 (f) That if, after the required hearing, the board or officer  
23 determines that the dwelling is unfit for human habitation, or building  
24 or structure or premises is unfit for other use, it shall state in  
25 writing its findings of fact in support of such determination, and  
26 shall issue and cause to be served upon the owner or party in interest  
27 thereof, as is provided in subdivision (1)(c), and shall post in a  
28 conspicuous place on said property, an order which (i) requires the  
29 owner or party in interest, within the time specified in the order, to  
30 repair, alter, or improve such dwelling, building, structure, or  
31 premises to render it fit for human habitation, or for other use, or to  
32 vacate and close the dwelling, building, structure, or premises, if  
33 such course of action is deemed proper on the basis of the standards  
34 set forth as required in subdivision (1)(e); or (ii) requires the owner  
35 or party in interest, within the time specified in the order, to remove  
36 or demolish such dwelling, building, structure, or premises, if this  
37 course of action is deemed proper on the basis of said standards. If  
38 no appeal is filed, a copy of such order shall be filed with the

1 auditor of the county in which the dwelling, building, structure, or  
2 premises is located.

3 (g) The owner or any party in interest, within thirty days from the  
4 date of service upon the owner and posting of an order issued by the  
5 board under the provisions of subdivision (c) of this subsection, may  
6 file an appeal with the appeals commission.

7 The local governing body of the municipality shall designate or  
8 establish a municipal agency to serve as the appeals commission. The  
9 local governing body shall also establish rules of procedure adequate  
10 to assure a prompt and thorough review of matters submitted to the  
11 appeals commission, and such rules of procedure shall include the  
12 following, without being limited thereto: (i) All matters submitted to  
13 the appeals commission must be resolved by the commission within sixty  
14 days from the date of filing therewith and (ii) a transcript of the  
15 findings of fact of the appeals commission shall be made available to  
16 the owner or other party in interest upon demand.

17 The findings and orders of the appeals commission shall be reported  
18 in the same manner and shall bear the same legal consequences as if  
19 issued by the board, and shall be subject to review only in the manner  
20 and to the extent provided in subdivision (2) of this section.

21 If the owner or party in interest, following exhaustion of his  
22 rights to appeal, fails to comply with the final order to repair,  
23 alter, improve, vacate, close, remove, or demolish the dwelling,  
24 building, structure, or premises, the board or officer may direct or  
25 cause such dwelling, building, structure, or premises to be repaired,  
26 altered, improved, vacated, and closed, removed, or demolished.

27 (h) That the amount of the cost of such repairs, alterations or  
28 improvements; or vacating and closing; or removal or demolition by the  
29 board or officer, shall be assessed against the real property upon  
30 which such cost was incurred unless such amount is previously paid.  
31 Upon certification to him by the treasurer of the municipality in cases  
32 arising out of the city or town or by the county improvement board or  
33 officer, in cases arising out of the county, of the assessment amount  
34 being due and owing, the county treasurer shall enter the amount of  
35 such assessment upon the tax rolls against the property for the current  
36 year and the same shall become a part of the general taxes for that  
37 year to be collected at the same time and with interest at such rates  
38 and in such manner as provided for in RCW 84.56.020, as now or  
39 hereafter amended, for delinquent taxes, and when collected to be

1 deposited to the credit of the general fund of the municipality. If  
2 the dwelling, building, structure, or premises is removed or demolished  
3 by the board or officer, the board or officer shall, if possible, sell  
4 the materials of such dwelling, building, structure, (~~{or}~~) or  
5 premises in accordance with procedures set forth in said ordinance, and  
6 shall credit the proceeds of such sale against the cost of the removal  
7 or demolition and if there be any balance remaining, it shall be paid  
8 to the parties entitled thereto, as determined by the board or officer,  
9 after deducting the costs incident thereto.

10 The assessment shall constitute a lien against the property which  
11 shall be of equal rank with state, county and municipal taxes.

12 (2) Any person affected by an order issued by the appeals  
13 commission pursuant to subdivision (1)(f) hereof may, within thirty  
14 days after the posting and service of the order, petition to the  
15 superior court for an injunction restraining the public officer or  
16 members of the board from carrying out the provisions of the order. In  
17 all such proceedings the court is authorized to affirm, reverse, or  
18 modify the order and such trial shall be heard de novo.

19 (3) An ordinance adopted by the local governing body of the  
20 municipality may authorize the board or officer to exercise such powers  
21 as may be necessary or convenient to carry out and effectuate the  
22 purposes and provisions of this section. These powers shall include  
23 the following in addition to others herein granted: (a)(i) To  
24 determine which dwellings within the municipality are unfit for human  
25 habitation; (ii) to determine which buildings, structures, or premises  
26 are unfit for other use; (b) to administer oaths and affirmations,  
27 examine witnesses and receive evidence; and (c) to investigate the  
28 dwelling and other property conditions in the municipality or county  
29 and to enter upon premises for the purpose of making examinations when  
30 the board or officer has reasonable ground for believing they are unfit  
31 for human habitation, or for other use: PROVIDED, That such entries  
32 shall be made in such manner as to cause the least possible  
33 inconvenience to the persons in possession, and to obtain an order for  
34 this purpose after submitting evidence in support of an application  
35 which is adequate to justify such an order from a superior court of  
36 competent jurisdiction in the event entry is denied or resisted. Upon  
37 application, the superior court may issue an order to show cause, which  
38 shall be served upon the owner or owner's agent and any person in  
39 lawful possession of the premises to be inspected. The order to show

1 cause shall set a date, not less than ten and not more than thirty  
2 court days after the date of the order, for a hearing to determine  
3 whether an order should issue authorizing entry onto the property. The  
4 order to show cause must be served on the owner or owner's agent and,  
5 if applicable, any person in lawful possession of the premises no later  
6 than ten court days before the scheduled hearing. If the owner or  
7 owner's agent, or the persons in lawful possession of the property,  
8 cannot be personally served, then service may be effected by posting a  
9 copy of the order on the building, structure, or dwelling, and sending  
10 a copy of the order by certified mail to the last known address of the  
11 owner and owner's agent, if any.

12 At the hearing, the agency, the owner or owner's agent, and any  
13 occupant may present evidence, through testimony or declarations. The  
14 superior court shall issue an order authorizing entry if it finds  
15 reason to believe that the particular building, structure, or dwelling  
16 is unfit for human habitation, according to the definitions described  
17 in subsection (1)(d) of this section.

18 No order to show cause and no order authorizing entry may be issued  
19 on the sole basis that the building or premises falls within the scope  
20 of a systematic inspection program.

21 The order authorizing entry may not exceed the scope necessary to  
22 investigate the alleged violation.

23 (4) The local governing body of any municipality adopting an  
24 ordinance pursuant to this chapter may appropriate the necessary funds  
25 to administer such ordinance.

26 (5) Nothing in this section shall be construed to abrogate or  
27 impair the powers of the courts or of any department of any  
28 municipality to enforce any provisions of its charter or its ordinances  
29 or regulations, nor to prevent or punish violations thereof; and the  
30 powers conferred by this section shall be in addition and supplemental  
31 to the powers conferred by any other law.

32 (6) Nothing in this section shall be construed to impair or limit  
33 in any way the power of the municipality to define and declare  
34 nuisances and to cause their removal or abatement, by summary  
35 proceedings or otherwise.

36 (7) Any municipality may (by ordinance adopted by its governing  
37 body) (a) prescribe minimum standards for the use and occupancy of  
38 dwellings throughout the municipality, or county, (b) prescribe minimum  
39 standards for the use or occupancy of any building, structure, or

1 premises used for any other purpose, (c) prevent the use or occupancy  
2 of any dwelling, building, structure, or premises, which is injurious  
3 to the public health, safety, morals, or welfare, and (d) prescribe  
4 punishment for the violation of any provision of such ordinance.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27 RCW  
6 to read as follows:

7 Whenever necessary to make an inspection to enforce any provision  
8 of the fire code, or whenever the chief has reasonable cause to believe  
9 that there exists in any building or upon any premises any condition  
10 that violates a state or local fire code, the chief is authorized to  
11 enter such building or premises at all reasonable times to inspect the  
12 same or to perform any duty authorized by the fire code, however, if  
13 such building or premises is occupied, the chief fire official, or his  
14 or her designee, shall first present proper credentials and request  
15 entry; and if such building or premises is unoccupied, the chief shall  
16 first make a reasonable effort to locate the owner or other persons  
17 having charge or control of the building or premises and demand entry.

18 If the owner or occupant denies entry, the chief is authorized to  
19 obtain a proper inspection warrant or other remedy provided by law to  
20 secure entry. A judge of the superior court shall have authority to  
21 issue a civil or criminal inspection warrant. A judge may not issue an  
22 inspection warrant for a private individual dwelling unit when the sole  
23 basis for the warrant application is that the building or premises fall  
24 within the scope of a systematic inspection program. Owners,  
25 occupants, or any other persons having charge, care, or control of any  
26 building or premises, after proper request is made as provided by this  
27 section, promptly permit entry therein by the chief for the purpose of  
28 inspection and examination pursuant to the fire code.

29 If the chief seeks to inspect private residential areas and the  
30 fire code violation reasonably believed to exist does not constitute a  
31 crime, but is a civil infraction, the chief shall apply to superior  
32 court for an order to show cause under RCW 35.80.030(3). The superior  
33 court shall issue an order authorizing entry if, after the hearing, the  
34 court finds reason to believe a condition exists that violates a state  
35 or local fire code.

36 The order authorizing entry may not exceed the scope necessary to  
37 investigate the alleged violation.

1 For the purposes of this section, the term "chief" includes the  
2 chief officer of the fire department serving the jurisdiction and his  
3 or her designee.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 2.28 RCW  
5 to read as follows:

6 If probable cause exists to believe that conditions on a property,  
7 in a particular building, or premises pose a serious threat to life or  
8 safety of the occupants or neighbors, human health, or the environment,  
9 the government agency with jurisdiction may apply to the superior court  
10 judge of the county in which the property, building, or premises is  
11 located for an order to show cause why the government agency should not  
12 be authorized to enter.

13 Upon application, the judge of the superior court may issue an  
14 order to show cause, which shall be served upon the owner or owner's  
15 agent and any occupant. The order to show cause shall set a date, not  
16 less than ten and not more than thirty court days after the date of the  
17 order, for a hearing to determine whether an order should issue  
18 authorizing entry onto the property. The order to show cause must be  
19 served on the owner or owner's agent and, if applicable, any person  
20 having lawful possession of the property, no later than ten court days  
21 before the scheduled hearing. If the owner or owner's agent or the  
22 person having lawful possession of the property cannot be personally  
23 served, then service may be effected by posting a copy of the order on  
24 the building, structure, or dwelling, and sending a copy of the order  
25 by certified mail to the owner's last known address.

26 At the hearing, the agency, the owner or owner's agent, and any  
27 person to whom the order to show cause was directed, may present  
28 evidence through testimony or declarations. The superior court judge  
29 shall issue an order authorizing entry if the judge finds that there is  
30 reason to believe that the particular building or premises harbors  
31 conditions that pose a serious threat to life or safety of the  
32 occupants or neighbors, or to the environment.

33 No order under this section may issue for purely residential  
34 property or commercial office buildings. Nothing in this section  
35 affects any power that any other statute, or court rule, may grant to  
36 a judicial officer to authorize nonconsensual inspections or searches.

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