

HOUSE BILL REPORT

SSB 5636

As Reported By House Committee On:
Natural Resources

Title: An act relating to health inspection warrants.

Brief Description: Revising health inspection warrants for local health officers in response to pollution in commercial or recreational shellfish harvesting areas.

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Oke, Swecker, Rossi and Horn).

Brief History:

Committee Activity:

Natural Resources: 2/20/98, 2/24/98 [DPA].

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 10 members: Representatives Buck, Chairman; Sump, Vice Chairman; Thompson, Vice Chairman; Butler, Assistant Ranking Minority Member; Alexander; Anderson; Chandler; Eickmeyer; Hatfield and Pennington.

Minority Report: Without recommendation. Signed by 1 member: Representative Regala, Ranking Minority Member.

Staff: Bill Lynch (786-7092).

Background: Local boards of health are required to identify failing septic systems and to use reasonable efforts to determine new failures. The Washington Supreme Court has ruled that superior courts and municipal courts do not have the statutory authority to issue civil warrants to inspect property suspected of containing health or safety code violations. Since this ruling, local health officers are largely unable to obtain access to property without the person's consent, even when there is probable cause that a problem exists.

Summary of Amended Bill: A local health officer, environmental health director, or equivalent officer may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. The warrant may only be requested after a person has refused access to his or her property. Notice must be given to any affected

person that a warrant is being requested, and the person may be present at any court proceeding to consider the issuance of the requested warrant.

The court official may issue the warrant upon probable cause. A request for search warrant to inspect, examine, test, or conduct sampling on the property must show that it is in response to pollution in commercial or recreational shellfish harvesting areas, or pollution in freshwater. The local health officer, environmental health director, or equivalent officer must also submit a specific administrative plan which was developed expressly in response to the pollution as part of the justification for the warrant, along with specific evidence showing that it is reasonable to believe pollution is coming from the septic system on the property to be accessed.

The administrative plan submitted to the court must contain: the overall goal of the inspection; the location and identification by address of the properties authorized for inspection by the local health officer; requirements for giving the property owners and people occupying the property notice of the plan, the plan's provisions, and any times for inspections; the survey procedures to be used in the inspection; the criteria that will be used to define on-site sewage system failure; and the follow-up actions that would be pursued once an on-site sewage system failure has been identified and confirmed.

Amended Bill Compared to Substitute Bill: Language was added to require the submission of specific evidence showing that it is reasonable to believe pollution is coming from the septic system on the property to be accessed. The people who may request an administrative search warrant is narrowed. An administrative search warrant may be issued in response to pollution in shellfish harvest areas or in freshwater.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (original bill): Failing on-site septic systems is a major problem for shellfish. Voluntary compliance with inspections has dropped dramatically since the court said there was no statutory authority to issue these warrants. Polluters adversely affect the property rights of adjacent property owners. There are many beaches where people can't swim or shellfish can't be harvested. It isn't fair to people who improve their systems to prevent pollution when others avoid the law.

Testimony Against (original bill): The language is too broad. It would allow any pollution in a bay to constitute probable cause to search all waterfront property. Tests are not always accurate. Criminal search warrants are available.

Testified (original bill): Senator Bob Oke, prime sponsor (pro); Bill Dewey, Taylor Shellfish Company and Pacific Coast Oyster Growers Association (pro); Don Miles, Bremerton/Kitsap County Health Department (pro); Sam Wilson, property owner (pro); Del Sutterfield, property owner (pro); Maryanne Guichard, Department of Health (pro); Tom Cowan, Puget Sound Water Quality Action Team (pro); Peggy Bruton, Eld Inlet Watershed Council (pro); John Walker, Kitsap County Prosecutor's Office (pro); Tim Secker, property owner (con); Diane Oberquell, property owner (con); Mary Jo Cady, Mason County Commissioner (con); and Doug Neyhart, King County Apartment Owners Association.