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HOUSE BILL 1163

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Cooper, Schoesler, Linville, G. Chandler, Keiser, Rockefeller and Conway; by request of Department of Health

Read first time 01/15/1999. Referred to Committee on Health Care.

1 AN ACT Relating to the authority of local health jurisdictions  
2 regarding properties contaminated by toxic chemicals used in the  
3 manufacture of illegal drugs; amending RCW 64.44.010, 64.44.020,  
4 64.44.030, 64.44.040, 64.44.050, and 64.44.060; and creating a new  
5 section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the contamination  
8 of properties used for illegal drug manufacturing poses a threat to  
9 public health. The toxic chemicals left behind by the illegal drug  
10 manufacturing must be cleaned up to prevent harm to subsequent  
11 occupants of the properties. It is the intent of the legislature that  
12 properties are decontaminated in a manner that is efficient, prompt,  
13 and that makes them safe to reoccupy.

14 **Sec. 2.** RCW 64.44.010 and 1990 c 213 s 2 are each amended to read  
15 as follows:

16 The words and phrases defined in this section shall have the  
17 following meanings when used in this chapter unless the context clearly  
18 indicates otherwise.

1 (1) "Authorized contractor" means a person who decontaminates,  
2 demolishes, or disposes of contaminated property as required by this  
3 chapter who is: (a) Certified by the department as provided for in RCW  
4 64.44.060, or (b) until January 1, 1991, listed with the department as  
5 provided for in section 8, chapter 213, Laws of 1990.

6 (2) "Contaminated" or "contamination" means polluted by hazardous  
7 chemicals so that the property is unfit for human habitation or use due  
8 to immediate or long-term hazards. Property that at one time was  
9 contaminated but has been satisfactorily decontaminated according to  
10 procedures established by the state board of health is not  
11 "contaminated."

12 (3) "Hazardous chemicals" means the following substances used in  
13 the manufacture of illegal drugs: (a) Hazardous substances as defined  
14 in RCW 70.105D.020, and (b) precursor substances as defined in RCW  
15 69.43.010 which the state board of health, in consultation with the  
16 state board of pharmacy, has determined present an immediate or long-  
17 term health hazard to humans.

18 (4) "Officer" means a local health officer authorized under  
19 chapters 70.05, 70.08, and 70.46 RCW.

20 (5) "Order" means an administrative action signed by the officer  
21 informing potential occupants that a property has been contaminated  
22 with hazardous chemicals as a result of illegal drug manufacturing or  
23 storage activities and the premise is unfit for use until it has been  
24 decontaminated.

25 (6) "Property" means any property, site, structure, or part of a  
26 structure which is involved in the unauthorized manufacture or storage  
27 of hazardous chemicals. This includes but is not limited to single-  
28 family residences, units of multiplexes, condominiums, apartment  
29 buildings, boats, motor vehicles, trailers, manufactured housing, or  
30 any shop, booth, or garden.

31 (7) "Warning" means a posted notification by the officer,  
32 conspicuously placed at the site of an illegal drug manufacturing or  
33 storage site, informing potential occupants that hazardous chemicals  
34 may exist or have been removed from the premises and that entry is  
35 unsafe.

36 **Sec. 3.** RCW 64.44.020 and 1990 c 213 s 3 are each amended to read  
37 as follows:

1 Whenever a law enforcement agency becomes aware that property has  
2 been contaminated by hazardous chemicals, that agency shall report the  
3 contamination to the local health officer. The local health officer  
4 shall cause a posting of a ~~((notice))~~ warning on the premises  
5 ~~((immediately upon being notified))~~ within one working day of  
6 notification of the contamination and shall cause an inspection to be  
7 done on the property within fourteen days after receiving the notice of  
8 contamination. If a property owner believes that a tenant has  
9 contaminated property that was being leased or rented, and the property  
10 is vacated or abandoned, then the property owner shall contact the  
11 local health officer about the possible contamination. Local health  
12 officers or boards may charge property owners reasonable fees for  
13 inspections of suspected contaminated property requested by property  
14 owners.

15 If property is determined to be contaminated, then the local health  
16 officer shall cause a posting of a notice on the premises. A local  
17 health officer may enter, inspect, and survey at reasonable times any  
18 properties for which there are reasonable grounds to believe that the  
19 property has become contaminated.

20 Local health officers must report all cases of contaminated  
21 property to the state department of health. The department may make  
22 the list of contaminated properties available to health associations,  
23 landlord and realtor organizations, prosecutors, and other interested  
24 groups. The department shall promptly update the list of contaminated  
25 properties to remove those which have been decontaminated according to  
26 provisions of this chapter.

27 The local health officer may determine when the services of an  
28 authorized contractor are necessary.

29 **Sec. 4.** RCW 64.44.030 and 1990 c 213 s 4 are each amended to read  
30 as follows:

31 If after the inspection of the property, the local health officer  
32 finds that it is contaminated, then the property shall be found unfit  
33 for use. The local health officer shall cause to be served an order  
34 prohibiting use either personally or by certified mail, with return  
35 receipt requested, upon all occupants and persons having any interest  
36 therein as shown upon the records of the auditor's office of the county  
37 in which such property is located(~~(, and)~~). The local health officer  
38 shall also post the order prohibiting use in a conspicuous place on the

1 property(~~(, an order prohibiting use)~~). If the whereabouts of such  
2 persons is unknown and the same cannot be ascertained by the local  
3 health officer in the exercise of reasonable diligence, and the health  
4 officer makes an affidavit to that effect, then the serving of the  
5 order upon such persons may be made either by personal service or by  
6 mailing a copy of the order by certified mail, postage prepaid, return  
7 receipt requested, to each person at the address appearing on the last  
8 equalized tax assessment roll of the county where the property is  
9 located or at the address known to the county assessor, and the order  
10 shall be posted conspicuously at the residence. A copy of the order  
11 shall also be mailed, addressed to each person or party having a  
12 recorded right, title, estate, lien, or interest in the property. Such  
13 order shall contain a notice that a hearing before the local health  
14 board or officer shall be held upon the request of a person required to  
15 be notified of the order under this section. The request for a hearing  
16 must be made within ten days of serving the order. The hearing shall  
17 then be held within not less than twenty days nor more than thirty days  
18 after the serving of the order. The officer shall prohibit use as long  
19 as the property is found to be contaminated. A copy of the order shall  
20 also be filed with the auditor of the county in which the property is  
21 located, and such filing of the complaint or order shall have the same  
22 force and effect as other lis pendens notices provided by law. In any  
23 hearing concerning whether property is fit for use, the property owner  
24 has the burden of showing that the property is decontaminated or fit  
25 for use. The owner or any person having an interest in the property  
26 may file an appeal on any order issued by the local health board or  
27 officer within thirty days from the date of service of the order with  
28 the appeals commission established pursuant to RCW 35.80.030. All  
29 proceedings before the appeals commission, including any subsequent  
30 appeals to superior court, shall be governed by the procedures  
31 established in chapter 35.80 RCW.

32 **Sec. 5.** RCW 64.44.040 and 1990 c 213 s 5 are each amended to read  
33 as follows:

34 The city or county in which the contaminated property is located  
35 may take action to condemn or demolish property or to require the  
36 property be vacated or the contents removed from the property. The  
37 city or county (~~(must)~~) may use an authorized contractor if property is  
38 demolished, decontaminated, or removed under this section. No city or

1 county may condemn or demolish property pursuant to this section until  
2 all procedures granting the right of notice and the opportunity to  
3 appeal in RCW 64.44.030 have been exhausted.

4 **Sec. 6.** RCW 64.44.050 and 1990 c 213 s 6 are each amended to read  
5 as follows:

6 An owner of contaminated property who desires to have the property  
7 decontaminated (~~((must))~~) shall use the services of an authorized  
8 contractor (~~((to decontaminate the property))~~) unless determined  
9 otherwise by the health officer. The contractor shall prepare and  
10 submit a written work plan for decontamination to the local health  
11 officer. The local health officer may charge a reasonable fee for  
12 review of the work plan. If the work plan is approved and the  
13 decontamination is completed and the property is retested according to  
14 the plan and properly documented, then the health officer shall allow  
15 reuse of the property. A (~~((notice))~~) release for reuse document shall  
16 be recorded in the real property records (~~((if applicable,))~~) indicating  
17 the property has been decontaminated in accordance with rules of the  
18 state department of health.

19 **Sec. 7.** RCW 64.44.060 and 1997 c 58 s 878 are each amended to read  
20 as follows:

21 (1) After January 1, 1991, a contractor may not perform  
22 decontamination, demolition, or disposal work unless issued a  
23 certificate by the state department of health. The department shall  
24 establish performance standards for contractors by rule in accordance  
25 with chapter 34.05 RCW, the administrative procedure act. The  
26 department shall train and test, or may approve courses to train and  
27 test, contractors and their employees on the essential elements in  
28 assessing property used as an illegal drug manufacturing or storage  
29 site to determine hazard reduction measures needed, techniques for  
30 adequately reducing contaminants, use of personal protective equipment,  
31 methods for proper decontamination, demolition, removal, and disposal  
32 of contaminated property, and relevant federal and state regulations.  
33 Upon successful completion of the training, the contractor or employee  
34 shall be certified.

35 (2) The department may require the successful completion of annual  
36 refresher courses provided or approved by the department for the  
37 continued certification of the contractor or employee.

1 (3) The department shall provide for reciprocal certification of  
2 any individual trained to engage in decontamination, demolition, or  
3 disposal work in another state when the prior training is shown to be  
4 substantially similar to the training required by the department. The  
5 department may require such individuals to take an examination or  
6 refresher course before certification.

7 (4) The department may deny, suspend, or revoke a certificate for  
8 failure to comply with the requirements of this chapter or any rule  
9 adopted pursuant to this chapter. A certificate may be denied,  
10 suspended, or revoked on any of the following grounds:

11 (a) Failing to perform decontamination, demolition, or disposal  
12 work under the supervision of trained personnel;

13 (b) Failing to file a work plan;

14 (c) Failing to perform work pursuant to the work plan;

15 (d) Failing to perform work that meets the requirements of the  
16 department;

17 (e) The certificate was obtained by error, misrepresentation, or  
18 fraud; or

19 (f) If the person has been certified pursuant to RCW 74.20A.320 by  
20 the department of social and health services as a person who is not in  
21 compliance with a support order or a residential or visitation order.  
22 If the person has continued to meet all other requirements for  
23 reinstatement during the suspension, reissuance of the license or  
24 certificate shall be automatic upon the department's receipt of a  
25 release issued by the department of social and health services stating  
26 that the person is in compliance with the order.

27 (5) A contractor who violates any provision of this chapter may be  
28 assessed a fine not to exceed five hundred dollars for each violation.

29 (6) The department of health shall prescribe fees as provided for  
30 in RCW 43.70.250 for the issuance and renewal of certificates, the  
31 administration of examinations, and for the review of training courses.

32 (7) The decontamination account is hereby established in the state  
33 treasury. All fees collected under this chapter shall be deposited in  
34 this account. Moneys in the account may only be spent after  
35 appropriation for costs incurred by the department in the  
36 administration and enforcement of this chapter.

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