
SENATE BILL 5551

State of Washington

57th Legislature

2001 Regular Session

By Senators Carlson, Kline and Zarelli

Read first time 01/26/2001. Referred to Committee on Judiciary.

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)) it shall cause to be
10 served either personally or by certified mail, with return receipt
11 requested, upon all persons having any interest therein, as shown upon
12 the records of the auditor's office of the county in which such
13 property is located, and shall post in a conspicuous place on such
14 property, a complaint stating in what respects such dwelling, building,
15 structure, or premises is unfit for human habitation or other use. If
16 the whereabouts of any of such persons is unknown and the same cannot
17 be 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 or
22 her 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 or her by the treasurer of the municipality
32 in cases arising out of the city or town or by the county improvement
33 board or officer, in cases arising out of the county, of the assessment
34 amount being due and owing, the county treasurer shall enter the amount
35 of such assessment upon the tax rolls against the property for the
36 current year and the same shall become a part of the general taxes for
37 that year to be collected at the same time and with interest at such
38 rates 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 court of competent
36 jurisdiction in the event entry is denied or resisted. The superior
37 court and courts of limited jurisdiction organized under Title 3, 35,
38 or 35A RCW have jurisdiction to issue such orders.

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

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

22 An order for entry and examination may be granted without prior
23 hearing or written or oral notice to the owner, owner's agent, or any
24 lawful occupant of the property if it clearly appears from specific
25 facts shown by affidavit that immediate and irreparable injury, loss,
26 or damage will result before the owner, owner's agent, or lawful
27 occupant can be heard in opposition, or that there is a serious
28 probability that compromise of the evidence of violation will result if
29 the owner, owner's agent, or lawful occupant is notified prior to
30 inspection, and the applicant for the order certifies to the court in
31 writing the efforts, if any, which have been made to give the notice
32 and the reasons supporting the claim that prior hearing and notice
33 should not be required. Every such order granted without prior hearing
34 and notice must be endorsed with the date and hour of issuance; must be
35 filed forthwith in the court clerk's office and entered of record; must
36 define the injury and state why it is irreparable and why the order was
37 granted without prior hearing and notice; and must expire by its terms
38 within such time after entry, not to exceed fourteen days, as the court
39 fixes, unless within the time so fixed the order, for good cause shown,

1 is extended for a like period or unless the owner, owner's agent, or
2 lawful occupant of the property against which the order is directed
3 consents that it may be extended for a longer period.

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

7 (5) Nothing in this section shall be construed to abrogate or
8 impair the powers of the courts or of any department of any
9 municipality to enforce any provisions of its charter or its ordinances
10 or regulations, nor to prevent or punish violations thereof; and the
11 powers conferred by this section shall be in addition and supplemental
12 to the powers conferred by any other law.

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

17 (7) Any municipality may (by ordinance adopted by its governing
18 body) (a) prescribe minimum standards for the use and occupancy of
19 dwellings throughout the municipality, or county, (b) prescribe minimum
20 standards for the use or occupancy of any building, structure, or
21 premises used for any other purpose, (c) prevent the use or occupancy
22 of any dwelling, building, structure, or premises, which is injurious
23 to the public health, safety, morals, or welfare, and (d) prescribe
24 punishment for the violation of any provision of such ordinance.

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

27 Whenever necessary to make an inspection to enforce any provision
28 of the fire code, or whenever the chief has reasonable cause to believe
29 that there exists in any building or upon any premises any condition
30 that violates a state or local fire code, the chief is authorized to
31 enter such building or premises at all reasonable times to inspect the
32 same or to perform any duty authorized by the fire code. However, if
33 such building or premises is occupied, the chief fire official, or his
34 or her designee, shall first present proper credentials and request
35 entry; and if such building or premises is unoccupied, the chief shall
36 first make a reasonable effort to locate the owner or other persons
37 having charge or control of the building or premises and demand entry.

1 If the owner or occupant denies entry, the chief is authorized to
2 obtain a civil or criminal inspection warrant or other remedy provided
3 by law to secure entry. A judge of the superior court or of a court of
4 limited jurisdiction organized under Title 3, 35, or 35A RCW has
5 authority to issue a civil or criminal inspection warrant.

6 If the chief reasonably believes that the fire code violation does
7 not constitute a crime but is a civil infraction, the chief shall apply
8 to the court for an order to enter and make examination under RCW
9 35.80.030(3) or section 3 of this act. The court shall issue an order
10 authorizing entry if, after the hearing, the court finds reason to
11 believe a condition exists that violates a state or local fire code.

12 For the purposes of this section, "chief" includes the chief
13 officer of the fire department serving the jurisdiction and his or her
14 designee.

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

17 If probable cause exists to believe that conditions on a property
18 or in a particular building or premises pose a serious threat to life
19 or safety of the occupants or neighbors, public health or safety, or
20 the environment, in violation of a state or local law, the government
21 officer or agency with authority to enforce the state or local law may
22 apply to the superior court or a court of limited jurisdiction
23 organized under Title 3, 35, or 35A RCW within the jurisdiction in
24 which the property, building, or premises is located for an order to
25 show cause why the government or officer agency should not be
26 authorized to enter and inspect the property, building, or premises.

27 Upon application, the court may issue an order to show cause, which
28 must be served upon the owner, owner's agent, and any occupant of the
29 property, building, or premises. The order to show cause must set a
30 date, not less than ten and not more than thirty court days after the
31 date of the order, for a hearing to determine whether an order should
32 issue authorizing entry and inspection of the property. The order to
33 show cause must be served on the owner, owner's agent, and, if
34 applicable, any person having lawful possession of the property, no
35 later than ten court days before the scheduled hearing. If the owner
36 or owner's agent or the person having lawful possession of the property
37 cannot be personally served, service may be effected by posting a copy

1 of the order on the building, structure, or premises and sending a copy
2 of the order by certified mail to the owner's last known address.

3 For purposes of this section, "court day" means any day on which a
4 court is open for the transaction of administrative business, including
5 but not limited to the acceptance of papers for filing.

6 For purposes of this section, "owner" means the owner of record of
7 real property, except that if real property is being purchased under a
8 real estate contract, the purchaser is to be considered the owner of
9 the real property if the contract is recorded.

10 At the show cause hearing, the government officer or agency, the
11 owner or owner's agent, and any person to whom the order to show cause
12 was directed may present evidence through testimony or affidavit. The
13 court shall issue an order authorizing entry and inspection if the
14 court finds that there is reason to believe that the particular
15 property, building, or premises harbors conditions that pose a serious
16 threat to life or safety of the occupants, neighbors, public health or
17 safety, or the environment.

18 An order for entry and inspection may be granted without a show
19 cause hearing or notice to the owner, owner's agent, or any lawful
20 occupant of the property if (1) it clearly appears from specific facts
21 shown by affidavit that immediate and irreparable injury, loss, or
22 damage will result before the owner, owner's agent, or lawful occupant
23 can be heard in opposition, and (2) the applicant for the order
24 certifies to the court in writing the efforts, if any, which have been
25 made to give the notice and the reasons supporting the claim that prior
26 hearing and notice should not be required. Every order granted without
27 prior hearing and notice must be endorsed with the date and hour of
28 issuance; must be filed forthwith in the court clerk's office and
29 entered of record; must define the injury and state why it is
30 irreparable and why the order was granted without prior hearing and
31 notice; and must expire by its terms within such time after entry, not
32 to exceed fourteen days, as the court fixes, unless within the time so
33 fixed, the order, for good cause shown, is extended for a like period
34 or unless the owner, owner's agent, or lawful occupant of the property
35 against which the order is directed consents that it may be extended
36 for a longer period.

1 Nothing in this section affects any power that any other statute or
2 court rule may grant to a judicial officer to authorize nonconsensual
3 inspections or searches.

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