

E2SSB 6239 - H AMD TO APP COMM AMD (H5461.1) **1105**
By Representatives Sullivan and B.

WITHDRAWN 3/3/2006

1 On page 13 of the amendment, after line 7, strike all material
2 through "January 1, 2007." on page 16, line 2 and insert the
3 following:

4 "Sec. 201. RCW 64.44.010 and 1999 c 292 s 2 are each amended to
5 read as follows:

6 The words and phrases defined in this section shall have the
7 following meanings when used in this chapter unless the context
8 clearly indicates otherwise.

9 (1) "Authorized contractor" means a person who decontaminates,
10 demolishes, or disposes of contaminated property as required by
11 this chapter who is certified by the department as provided for in
12 RCW 64.44.060.

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

19 (3) "Department" means the department of health.

20 (4) "Hazardous chemicals" means the following substances (~~used~~
21 ~~in~~) associated with the illegal manufacture of (illegal
22 ~~drugs)~~controlled substances: (a) Hazardous substances as defined
23 in RCW 70.105D.020(~~and~~); (b) precursor substances as defined in
24 RCW 69.43.010 which the state board of health, in consultation with
25 the state board of pharmacy, has determined present an immediate or
26 long-term health hazard to humans; and (c) the controlled substance
27 or substances being manufactured, as defined in RCW 69.50.101.

28 (~~(4)~~) (5) "Officer" means a local health officer authorized
29 under chapters 70.05, 70.08, and 70.46 RCW.

30 (~~(5)~~) (6) "Property" means any real or personal property,
31 (~~site, structure, or part of a structure which~~) or segregable

1 part thereof, that is involved in or affected by the unauthorized
2 manufacture, distribution, or storage of hazardous chemicals. This
3 includes but is not limited to single-family residences, units of
4 multiplexes, condominiums, apartment buildings, boats, motor
5 vehicles, trailers, manufactured housing, ((or)) any shop, booth,
6 ((or)) garden, or storage shed, and all contents of the items
7 referenced in this subsection.

8 **Sec. 202.** RCW 64.44.020 and 1999 c 292 s 3 are each amended to
9 read as follows:

10 Whenever a law enforcement agency becomes aware that property
11 has been contaminated by hazardous chemicals, that agency shall
12 report the contamination to the local health officer. The local
13 health officer shall ((post)) cause a posting of a written warning
14 on the premises within one working day of notification of the
15 contamination and shall inspect the property within fourteen days
16 after receiving the notice of contamination. The warning posting
17 for any property that includes a hotel or motel holding a current
18 license under RCW 70.62.220, shall be limited to inside the room or
19 on the door of the contaminated room and no written warning posting
20 shall be posted in the lobby of the facility. The warning shall
21 inform the potential occupants that hazardous chemicals may exist
22 on, or have been removed from, the premises and that entry is
23 unsafe. If a property owner believes that a tenant has contaminated
24 property that was being leased or rented, and the property is
25 vacated or abandoned, then the property owner shall contact the
26 local health officer about the possible contamination. Local health
27 officers or boards may charge property owners reasonable fees for
28 inspections of suspected contaminated property requested by
29 property owners.

30 A local health officer may enter, inspect, and survey at
31 reasonable times any properties for which there are reasonable
32 grounds to believe that the property has become contaminated. If
33 the property is contaminated, the local health officer shall post
34 a written notice declaring that the officer intends to issue an
35 order prohibiting use of the property as long as the property is contaminated.

36 If access to the property is denied, a local health officer in
37 consultation with law enforcement may seek a warrant for the
38 purpose of conducting administrative inspections. A superior,

1 district, or municipal court within the jurisdiction of the
2 property may, based upon probable cause that the property is
3 contaminated, issue warrants for the purpose of conducting
4 administrative inspections.

5 Local health officers must report all cases of contaminated
6 property to the state department of health. The department may make
7 the list of contaminated properties available to health
8 associations, landlord and realtor organizations, prosecutors, and
9 other interested groups. The department shall promptly update the
10 list of contaminated properties to remove those which have been
11 decontaminated according to provisions of this chapter.

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

14 **Sec. 203.** RCW 64.44.030 and 1999 c 292 s 4 are each amended to
15 read as follows:

16 (1) If after the inspection of the property, the local health
17 officer finds that it is contaminated, then the ~~((property shall be~~
18 ~~found unfit for))~~ local health officer shall issue an order
19 declaring the property unfit and prohibiting its use. The local
20 health officer shall cause the order to be served ~~((an order~~
21 ~~prohibiting use))~~ either personally or by certified mail, with
22 return receipt requested, upon all occupants and persons having any
23 interest therein as shown upon the records of the auditor's office
24 of the county in which such property is located. The local health
25 officer shall also ~~((post))~~ cause the order ~~((prohibiting use))~~ to
26 be posted in a conspicuous place on the property. If the
27 whereabouts of such persons is unknown and the same cannot be
28 ascertained by the local health officer in the exercise of
29 reasonable diligence, and the health officer makes an affidavit to
30 that effect, then the serving of the order upon such persons may be
31 made either by personal service or by mailing a copy of the order
32 by certified mail, postage prepaid, return receipt requested, to
33 each person at the address appearing on the last equalized tax
34 assessment roll of the county where the property is located or at
35 the address known to the county assessor, and the order shall be
36 posted conspicuously at the residence. A copy of the order shall
37 also be mailed, addressed to each person or party having a recorded
38 right, title, estate, lien, or interest in the property. The order

1 shall contain a notice that a hearing before the local health board
2 or officer shall be held upon the request of a person required to
3 be notified of the order under this section. The request for a
4 hearing must be made within ten days of serving the order. The
5 hearing shall then be held within not less than twenty days nor
6 more than thirty days after the serving of the order. The officer
7 shall prohibit use as long as the property is found to be
8 contaminated. A copy of the order shall also be filed with the
9 auditor of the county in which the property is located, where the
10 order pertains to real property, and such filing of the complaint
11 or order shall have the same force and effect as other lis pendens
12 notices provided by law. In any hearing concerning whether property
13 is fit for use, the property owner has the burden of showing that
14 the property is decontaminated or fit for use. The owner or any
15 person having an interest in the property may file an appeal on any
16 order issued by the local health board or officer within thirty
17 days from the date of service of the order with the appeals
18 commission established pursuant to RCW 35.80.030. All proceedings
19 before the appeals commission, including any subsequent appeals to
20 superior court, shall be governed by the procedures established in
21 chapter 35.80 RCW.

22 (2) If the local health officer determines immediate action is
23 necessary to protect public health, safety, or the environment, the
24 officer may issue or cause to be issued an emergency order, and any
25 person to whom such an order is directed shall comply immediately.
26 Emergency orders issued pursuant to this section shall expire no
27 later than seventy-two hours after issuance and shall not impair
28 the health officer from seeking an order under subsection (1) of
29 this section.

30 **Sec. 204.** RCW 64.44.040 and 1999 c 292 s 5 are each amended to
31 read as follows:

32 (1) Upon issuance of an order declaring property unfit and
33 prohibiting its use, the city or county in which the contaminated
34 property is located may take action to prohibit use, occupancy, or
35 removal of such property; condemn, decontaminate, or demolish the
36 property; or ((to)) require that the property be vacated or the
37 contents removed from the property. The city or county may use an
38 authorized contractor if property is demolished, decontaminated, or

1 removed under this section. The city, county, or contractor shall
2 comply with all orders of the health officer during these
3 processes. No city or county may condemn, decontaminate, or
4 demolish property pursuant to this section until all procedures
5 granting the right of notice and the opportunity to appeal in RCW
6 64.44.030 have been exhausted, but may prohibit use, occupancy, or
7 removal of contaminated property pending appeal of the order.

8 (2)(a) It is unlawful for any person to enter upon any
9 property, or to remove any property, that has been found unfit for
10 use by a local health officer pursuant to RCW 64.44.030.

11 (b) This subsection does not apply to: (i) Health officials,
12 law enforcement officials, or other government agents performing
13 their official duties; (ii) authorized contractors or owners
14 performing decontamination pursuant to authorization by the local
15 health officer; and (iii) any person acting with permission of a
16 local health officer, or of a superior court or hearing examiner
17 following an appeal of a decision of the local health officer.

18 (c) Any person who violates this subsection is guilty of a misdemeanor.

19 (3) No provision of this section may be construed to limit the
20 ability of the local health officer to permit occupants or owners
21 of the property at issue to remove uncontaminated personal property
22 from the premises.

23 **Sec. 205.** RCW 64.44.050 and 1999 c 292 s 6 are each amended to
24 read as follows:

25 (1) An owner of contaminated property who desires to have the
26 property decontaminated, demolished, or disposed of shall use the
27 services of an authorized contractor unless otherwise authorized by
28 the local health officer. The contractor and property owner shall
29 prepare and submit a written work plan for decontamination,
30 demolition, or disposal to the local health officer. The local
31 health officer may charge a reasonable fee for review of the work
32 plan. If the work plan is approved and the decontamination,
33 demolition, or disposal is completed and the property is retested
34 according to the plan and properly documented, then the health
35 officer shall allow reuse of the property. A release for reuse
36 document shall be recorded in the real property records indicating
37 the property has been decontaminated, demolished, or disposed of in
38 accordance with rules of the state department of health. The

1 property owner is responsible for: (a) The costs of any property
2 testing which may be required to demonstrate the presence or
3 absence of hazardous chemicals; and (b) the costs of the property's
4 decontamination, demolition, and disposal expenses, as well as
5 costs incurred by the local health officer resulting from the
6 enforcement of this chapter.

7 (2) The local health officer has thirty days from the issuance
8 of an order declaring a property unfit and prohibiting its use to
9 establish a reasonable timeline for decontamination. The department
10 of health shall establish the factors to be considered by the local
11 health officer in establishing the appropriate amount of time.

12 The local health officer shall notify the property owner of the
13 proposed time frame by United States mail to the last known
14 address. Notice shall be postmarked no later than the thirtieth day
15 from the issuance of the order. The property owner may request a
16 modification of the time frame by submitting a letter identifying
17 the circumstances which justify such an extension to the local
18 health officer within thirty-five days of the date of the postmark
19 on the notification regardless of when received.

20 **Sec. 206.** RCW 64.44.060 and 1999 c 292 s 7 are each amended to
21 read as follows:

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

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

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

10 (4) The department may deny, suspend, ~~((or))~~ revoke, or place
11 restrictions on a certificate for failure to comply with the
12 requirements of this chapter or any rule adopted pursuant to this
13 chapter. A certificate may be denied, suspended, ~~((or))~~ revoked, or
14 have restrictions placed on it on any of the following grounds:

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

17 (b) Failing to perform decontamination, demolition, or disposal
18 work using department of health certified decontamination personnel;

19 (c) Failing to file a work plan;

20 ~~((c))~~ (d) Failing to perform work pursuant to the work plan;

21 ~~((d))~~ (e) Failing to perform work that meets the requirements
22 of the department and the requirements of the local health officers;

23 ~~((e) The certificate was obtained by error, misrepresentation,~~
24 ~~or fraud; or))~~

25 (f) Failing to properly dispose of contaminated property;

26 (g) Committing fraud or misrepresentation in: (i) Applying for
27 or obtaining a certification, recertification, or reinstatement;
28 (ii) seeking approval of a work plan; and (iii) documenting
29 completion of work to the department or local health officer;

30 (h) Failing the evaluation and inspection of decontamination
31 projects pursuant to section 308 of this act; or

32 (i) If the person has been certified pursuant to RCW 74.20A.320
33 by the department of social and health services as a person who is
34 not in compliance with a support order or a residential or
35 visitation order. If the person has continued to meet all other
36 requirements for reinstatement during the suspension, reissuance of
37 the license or certificate shall be automatic upon the department's
38 receipt of a release issued by the department of social and health
39 services stating that the person is in compliance with the order.

1 (5) A contractor, supervisor, or worker who violates any
2 provision of this chapter may be assessed a fine not to exceed five
3 hundred dollars for each violation.

4 (6) The department of health shall prescribe fees as provided
5 for in RCW 43.70.250 for: The issuance and renewal of certificates,
6 conducting background checks of applicants, the administration of
7 examinations, and ((for)) the review of training courses.

8 (7) The decontamination account is hereby established in the
9 state treasury. All fees collected under this chapter shall be
10 deposited in this account. Moneys in the account may only be spent
11 after appropriation for costs incurred by the department in the
12 administration and enforcement of this chapter.

13 **Sec. 207.** RCW 64.44.070 and 1999 c 292 s 8 are each amended to
14 read as follows:

15 (1) The state board of health shall promulgate rules and
16 standards for carrying out the provisions in this chapter in
17 accordance with chapter 34.05 RCW, the administrative procedure
18 act. The local board of health and the local health officer are
19 authorized to exercise such powers as may be necessary to carry out
20 this chapter. The department shall provide technical assistance to
21 local health boards and health officers to carry out their duties
22 under this chapter.

23 (2) The department shall adopt rules for decontamination of a
24 property used as ((an illegal drug)) a laboratory for the
25 production of controlled substances and methods for the testing of
26 porous and nonporous surfaces, ground water, surface water, soil,
27 and septic tanks for contamination. The rules shall establish
28 decontamination standards for hazardous chemicals, including but
29 not limited to methamphetamine, lead, mercury, and total volatile
30 organic compounds.

31 (3) The department shall adopt rules regarding independent
32 third party sampling including those pertaining to:

33 (a) Verification of possible property contamination due to the
34 illegal manufacture of controlled substances;

35 (b) Verification of satisfactory decontamination of property
36 deemed contaminated and unfit for use;

37 (c) Certification of independent third party samplers;

38 (d) Qualifications and performance standards for independent

1 third party samplers;

2 (e) Administration of background checks for third party sampler
3 applicants; and

4 (f) The denial, suspension, or revocation of independent third
5 party sampler certification.

6 (4) For the purposes of this section, an independent third
7 party sampler is a person who is not an employee, agent,
8 representative, partner, joint venturer, shareholder, or parent or
9 subsidiary company of the authorized contractor, the authorized
10 contractor's company, or the property owner.

11 NEW SECTION. Sec. 208. A new section is added to chapter 64.44
12 RCW to read as follows:

13 The department may evaluate annually a number of the property
14 decontamination projects performed by licensed contractors to
15 determine the adequacy of the decontamination work, using the
16 services of an independent environmental contractor or state or
17 local agency. If a project fails the evaluation and inspection, the
18 contractor is subject to a civil penalty and license suspension,
19 pursuant to RCW 64.44.060 (4) and (5); and the contractor is
20 prohibited from performing additional work until deficiencies have
21 been corrected.

22 NEW SECTION. Sec. 209. The department of community, trade, and
23 economic development shall report to the legislature on the
24 feasibility of providing incentives and protections to landlords to
25 encourage housing rentals to recovering substance abusers or those
26 convicted of drug crimes. A final report must be submitted to the
27 appropriate committees of the legislature by January 1, 2007.

28 NEW SECTION. Sec. 210. The department of ecology shall, in
29 consultation with interested local health jurisdictions and their
30 corresponding city or county governments, conduct a pilot program
31 to demonstrate application of existing legal methods and grant
32 programs administered under the model toxics control act in chapter
33 70.105D RCW, and other available authorities and funds to clean up
34 methamphetamine-contaminated property for a public purpose. This
35 pilot program shall include: (1) A facility with hazardous
36 substance releases to soil or ground water resulting from a former

1 methamphetamine lab or other historic uses of the property that
2 created liability under chapter 70.105D RCW; and (2) a facility
3 where the primary issue is decontamination or demolition of
4 methamphetamine contaminated structures and other solid waste
5 related issues. The department of ecology shall submit a report on
6 the pilot program to the appropriate committees of the legislature
7 by January 1, 2007."

EFFECT: Allows a court to issue administrative search warrants so that property suspected of methamphetamine contamination can be inspected. Permits a local health officer to issue an emergency order forbidding occupancy of a contaminated property. Establishes new requirements for the owners of contaminated properties, including decontamination time lines set by a local health officer. Provides new conditions under which a contractor for the decontamination of property may have his or her certification suspended. Establishes third-party sampling of decontamination sites. Creates a pilot clean-up project to examine funding sources, and a study to assess options to encourage landlords to rent housing to recovering substance abusers.

Requires that any warning posted in a hotel or motel be placed on the inside of the room or on the door of the contaminated room. Written warnings cannot be posted in the lobby of the facility.