
SENATE BILL 5449

State of Washington 59th Legislature 2005 Regular Session

By Senators Poulsen, Swecker, Pridemore, Kline, Fraser and Rockefeller

Read first time 01/25/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to providing the department of ecology with lien
2 authority to facilitate the recovery of remedial action costs; amending
3 RCW 70.105D.060; and adding a new section to chapter 70.105D RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.105D
6 RCW to read as follows:

7 (1) It is in the public interest for the department to recover
8 remedial action costs incurred in discharging its responsibility under
9 this chapter, as these recovered funds can then be applied to the
10 cleanup of other facilities. Thus, in addition to other cost-recovery
11 mechanisms provided under this chapter, this section is intended to
12 facilitate the recovery of state funds spent on remedial actions by
13 providing the department with lien authority. This will also prevent
14 a facility owner or mortgagee from gaining a financial windfall from
15 increased land value resulting from department-conducted remedial
16 actions at the expense of the state taxpayers.

17 (2) If the state of Washington incurs remedial action costs
18 relating to a remedial action of real property, and those remedial

1 action costs are unrecovered by the state of Washington, the department
2 may file a lien against that real property.

3 (a) Liens filed under this section shall have priority in rank over
4 all other privileges, liens, encumbrances, or other security interests
5 affecting the property, whenever incurred, filed, or recorded.

6 (b) The lien shall not exceed the remedial action costs incurred by
7 the state.

8 (c) The department shall, when notifying potentially liable persons
9 of their potential liability under RCW 70.105D.040, include a notice
10 stating that if the department incurs remedial action costs relating to
11 the remediation of real property and the costs are not recovered by the
12 department, the department may file a lien against that real property
13 under this section.

14 (3) Before filing a lien under this section, the department shall
15 give the property owner on which the lien is to be filed and mortgagees
16 and lienholders of record a notice of its intent to file a lien, as
17 provided in this subsection (3):

18 (a) The notice required under this subsection (3) must be sent by
19 certified mail or served in the manner for serving civil process to the
20 property owner and mortgagees of record at the addresses listed in the
21 recorded documents. If the property owner is unknown or if a mailed
22 notice is returned as undeliverable, the department shall provide
23 notice by posting a legal notice in the newspaper of largest
24 circulation in the county the site is located. The notice shall
25 provide:

26 (i) A statement of the purpose of the lien;

27 (ii) A brief description of the property to be affected by the
28 lien;

29 (iii) A statement of the remedial action costs incurred by the
30 state related to the property affected by the lien;

31 (iv) A brief statement of facts showing probable cause that the
32 property is the subject of the remedial action costs incurred by the
33 department; and

34 (v) The time period following service or other notice during which
35 any recipient of the notice whose legal rights may be affected by the
36 lien may comment on the notice.

37 (b) Any comments on the notice must be received by the department

1 on or before thirty days following service or other provision of the
2 notice of intent to file a lien. The comments should be limited to the
3 property owner's defense, if any, to liability under RCW 70.105D.040.

4 (c) If no comments are received by the department, the lien may be
5 filed on the property immediately.

6 (d) If the department receives any comments on the lien, the
7 department will determine if the property owner has established a valid
8 defense to liability under RCW 70.105D.040. If no valid defense has
9 been established, the department may file the lien. Any further
10 challenge to the lien may only occur at the times specified under RCW
11 70.105D.060.

12 (e) If the department has reason to believe that exigent
13 circumstances require the filing of a lien prior to giving notice under
14 this subsection (3), or prior to the expiration of the time period for
15 comments, the department may file the lien immediately. For the
16 purposes of this subsection (3), exigent circumstances include, but are
17 not limited to, an imminent bankruptcy filing by the property owner, or
18 the imminent transfer or sale of the property subject to lien by the
19 property owner, or both.

20 (4) A lien filed under this section is effective when a statement
21 of lien is filed with the county auditor in the county where the
22 property is located. The statement of lien must include a description
23 of the property subject to lien and the amount of the lien.

24 (5) Unless the department determines it is in the public interest
25 to remove the lien, the lien continues until the liability for the
26 remedial action costs have been satisfied through sale of the property
27 or other means agreed to by the department.

28 (6)(a) The department may accept a payment not to exceed the
29 increase in the fair market value of the real property that is
30 attributable to a remedial action conducted by the department when the
31 department determines this is in the public interest and one of the
32 following circumstances apply:

33 (i) The property is abandoned;

34 (ii) The current property owner is not liable under this chapter;

35 or

36 (iii) The property is subject to a settlement under RCW
37 70.105D.040(5).

1 (b) The increase in fair market value must be measured at the time
2 of the sale or other disposition of the real property and shall be
3 determined by subtracting the county assessor's value of the property
4 for the most recent year prior to remedial action being initiated from
5 the sale price of the property after remedial action.

6 (7)(a) This section does not apply to real property used solely for
7 residential purposes and consisting of four residential units or less
8 at the time the lien is recorded. This limitation does not apply to
9 illegal drug manufacturing and storage sites under chapter 64.44 RCW.

10 (b) This section does not apply if the lien is filed after the
11 department obtains a judgment against the property owner and the lien
12 is for the amount of the judgment.

13 (c) If the property owner has consented to the department filing a
14 lien on the real property, then only subsection (3)(a)(i) through (iii)
15 of this section requiring notice to mortgagees and lienholders of
16 record apply.

17 **Sec. 2.** RCW 70.105D.060 and 1994 c 257 s 13 are each amended to
18 read as follows:

19 The department's investigative and remedial decisions under RCW
20 70.105D.030 and 70.105D.050, its decisions regarding filing a lien
21 under section 1 of this act, and its decisions regarding liable persons
22 under RCW 70.105D.020(~~((8) and))~~ (16), 70.105D.040, and section 1 of
23 this act shall be reviewable exclusively in superior court and only at
24 the following times: (1) In a cost recovery suit under RCW
25 70.105D.050(3); (2) in a suit by the department to enforce an order or
26 an agreed order, or seek a civil penalty under this chapter; (3) in a
27 suit for reimbursement under RCW 70.105D.050(2); (4) in a suit by the
28 department to compel investigative or remedial action; and (5) in a
29 citizen's suit under RCW 70.105D.050(5). The court shall uphold the
30 department's actions unless they were arbitrary and capricious.

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