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**SUBSTITUTE SENATE BILL 6459**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Berkey, Marr, and Schoesler)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to the inspection of rental properties; amending  
2 RCW 59.18.030 and 59.18.150; adding a new section to chapter 59.18 RCW;  
3 and prescribing penalties.

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

5 **Sec. 1.** RCW 59.18.030 and 2008 c 278 s 12 are each amended to read  
6 as follows:

7 As used in this chapter:

8 (1) "Distressed home" has the same meaning as in RCW 61.34.020.

9 (2) "Distressed home conveyance" has the same meaning as in RCW  
10 61.34.020.

11 (3) "Distressed home purchaser" has the same meaning as in RCW  
12 61.34.020.

13 (4) "Dwelling unit" is a structure or that part of a structure  
14 which is used as a home, residence, or sleeping place by one person or  
15 by two or more persons maintaining a common household, including but  
16 not limited to single family residences and units of multiplexes,  
17 apartment buildings, and mobile homes.

18 (5) "In danger of foreclosure" means any of the following:

1 (a) The homeowner has defaulted on the mortgage and, under the  
2 terms of the mortgage, the mortgagee has the right to accelerate full  
3 payment of the mortgage and repossess, sell, or cause to be sold the  
4 property;

5 (b) The homeowner is at least thirty days delinquent on any loan  
6 that is secured by the property; or

7 (c) The homeowner has a good faith belief that he or she is likely  
8 to default on the mortgage within the upcoming four months due to a  
9 lack of funds, and the homeowner has reported this belief to:

10 (i) The mortgagee;

11 (ii) A person licensed or required to be licensed under chapter  
12 19.134 RCW;

13 (iii) A person licensed or required to be licensed under chapter  
14 19.146 RCW;

15 (iv) A person licensed or required to be licensed under chapter  
16 18.85 RCW;

17 (v) An attorney-at-law;

18 (vi) A mortgage counselor or other credit counselor licensed or  
19 certified by any federal, state, or local agency; or

20 (vii) Any other party to a distressed property conveyance.

21 (6) "Landlord" means the owner, lessor, or sublessor of the  
22 dwelling unit or the property of which it is a part, and in addition  
23 means any person designated as representative of the landlord.

24 (7) "Mortgage" is used in the general sense and includes all  
25 instruments, including deeds of trust, that are used to secure an  
26 obligation by an interest in real property.

27 (8) "Person" means an individual, group of individuals,  
28 corporation, government, or governmental agency, business trust,  
29 estate, trust, partnership, or association, two or more persons having  
30 a joint or common interest, or any other legal or commercial entity.

31 (9) "Owner" means one or more persons, jointly or severally, in  
32 whom is vested:

33 (a) All or any part of the legal title to property; or

34 (b) All or part of the beneficial ownership, and a right to present  
35 use and enjoyment of the property.

36 (10) "Premises" means a dwelling unit, appurtenances thereto,  
37 grounds, and facilities held out for the use of tenants generally and  
38 any other area or facility which is held out for use by the tenant.

1 (11) "Rental agreement" means all agreements which establish or  
2 modify the terms, conditions, rules, regulations, or any other  
3 provisions concerning the use and occupancy of a dwelling unit.

4 (12) A "single family residence" is a structure maintained and used  
5 as a single dwelling unit. Notwithstanding that a dwelling unit shares  
6 one or more walls with another dwelling unit, it shall be deemed a  
7 single family residence if it has direct access to a street and shares  
8 neither heating facilities nor hot water equipment, nor any other  
9 essential facility or service, with any other dwelling unit.

10 (13) A "tenant" is any person who is entitled to occupy a dwelling  
11 unit primarily for living or dwelling purposes under a rental  
12 agreement.

13 (14) "Reasonable attorney's fees", where authorized in this  
14 chapter, means an amount to be determined including the following  
15 factors: The time and labor required, the novelty and difficulty of  
16 the questions involved, the skill requisite to perform the legal  
17 service properly, the fee customarily charged in the locality for  
18 similar legal services, the amount involved and the results obtained,  
19 and the experience, reputation and ability of the lawyer or lawyers  
20 performing the services.

21 (15) "Gang" means a group that: (a) Consists of three or more  
22 persons; (b) has identifiable leadership or an identifiable name, sign,  
23 or symbol; and (c) on an ongoing basis, regularly conspires and acts in  
24 concert mainly for criminal purposes.

25 (16) "Gang-related activity" means any activity that occurs within  
26 the gang or advances a gang purpose.

27 (17) "Certificate of inspection" means an unsworn statement,  
28 declaration, verification, or certificate made in accordance with the  
29 requirements of RCW 9A.72.085 by a qualified inspector that states that  
30 the landlord has not failed to fulfill any substantial obligation  
31 imposed under RCW 59.18.060 that substantially endangers or impairs the  
32 health or safety of a tenant, including (a) structural members that are  
33 of insufficient size or strength to carry imposed loads with safety,  
34 (b) exposure of the occupants to the weather, (c) plumbing and  
35 sanitation defects that directly expose the occupants to the risk of  
36 illness or injury, (d) not providing facilities to supply adequate  
37 water and hot water, (e) providing heating or ventilation systems that  
38 are not functional or are hazardous, (f) defective, hazardous, or

1 missing electrical wiring or electrical service, (g) defective or  
2 hazardous exits that increase the risk of injury to occupants, and (h)  
3 conditions that increase the risk of fire.

4 (18) "Property" or "rental property" means all dwelling units on a  
5 contiguous quantity of land managed by the same landlord as a single,  
6 rental complex.

7 (19) "Qualified inspector" means a United States department of  
8 housing and urban development certified inspector; a Washington state  
9 licensed home inspector; an American society of home inspectors  
10 certified inspector; a private inspector certified by the national  
11 association of housing and redevelopment officials, the American  
12 association of code enforcement, or other comparable professional  
13 association as approved by the local municipality; a municipal code  
14 enforcement officer; a Washington licensed structural engineer; or a  
15 Washington licensed architect.

16 NEW SECTION. Sec. 2. A new section is added to chapter 59.18 RCW  
17 to read as follows:

18 (1) Local municipalities may require that landlords provide a  
19 certificate of inspection as a business license condition. A local  
20 municipality does not need to have a business license or registration  
21 program in order to require that landlords provide a certificate of  
22 inspection. A certificate of inspection does not preclude or limit  
23 inspections conducted pursuant to the tenant remedy as provided for in  
24 RCW 59.18.115, at the request or consent of the tenant, or issued  
25 pursuant to a warrant.

26 (2) A qualified inspector who is conducting an inspection under  
27 this section may only investigate a rental property as needed to  
28 provide a certificate of inspection.

29 (3) A local municipality may only require a certificate of  
30 inspection on a rental property once every three years.

31 (4)(a) A rental property that has received a certificate of  
32 occupancy within the last four years and has had no code violations  
33 reported on the property during that period is exempt from inspection  
34 under this section.

35 (b) A rental property inspected by a government agency or other  
36 qualified inspector within the previous twenty-four months may provide  
37 proof of that inspection which the local municipality may accept in

1 lieu of a certificate of inspection. If any additional inspections of  
2 the rental property are conducted, a copy of the findings of these  
3 inspections may also be required by the local municipality.

4 (5) A rental property owner may choose to inspect one hundred  
5 percent of the units on the rental property and provide only the  
6 certificate of inspection for all units to the local municipality.  
7 However, if a rental property owner chooses to inspect only a sampling  
8 of the units, the owner must send written notice of the inspection to  
9 all units at the property. The notice must advise tenants that some of  
10 the units at the property will be inspected and that the tenants whose  
11 units need repairs or maintenance should send written notification to  
12 the landlord as provided in RCW 59.18.070. The notice must also advise  
13 tenants that if the landlord fails to adequately respond to the request  
14 for repairs or maintenance, the tenants may contact local municipality  
15 officials. A copy of the notice must be provided to the inspector upon  
16 request on the day of inspection.

17 (6)(a) If a rental property has twenty or fewer dwelling units, no  
18 more than four dwelling units at the rental property may be selected by  
19 the local municipality to provide a certificate of inspection as long  
20 as the initial inspection reveals that no conditions exist that  
21 substantially endanger or impair the health or safety of a tenant.

22 (b) If a rental property has twenty-one or more units, no more than  
23 twenty percent of the units, rounded up to the next whole number, on  
24 the rental property, and up to a maximum of fifty units at any one  
25 property, may be selected by the local municipality to provide a  
26 certificate of inspection as long as the initial inspection reveals  
27 that no conditions exist that substantially endanger or impair the  
28 health or safety of a tenant.

29 (c) If a rental property is asked to provide a certificate of  
30 inspection for a sample of units on the property and a selected unit  
31 fails the initial inspection, the local municipality may require up to  
32 one hundred percent of the units on the rental property to provide a  
33 certificate of inspection.

34 (d) If a rental property has had conditions that substantially  
35 endanger or impair the health or safety of a tenant reported since the  
36 last required inspection, the local municipality may require one  
37 hundred percent of the units on the rental property to provide a  
38 certificate of inspection.

1 (e) If a rental property owner chooses to hire a qualified  
2 inspector other than a municipal housing code enforcement officer, and  
3 a selected unit of the rental property fails the initial inspection,  
4 both the results of the initial inspection and any certificate of  
5 inspection must be provided to the local municipality.

6 (7)(a) The landlord shall provide written notification of his or  
7 her intent to enter an individual unit for the purposes of providing a  
8 local municipality with a certificate of inspection in accordance with  
9 RCW 59.18.150(6). The written notice must indicate the date and  
10 approximate time of the inspection and the company or person performing  
11 the inspection, and that the tenant has the right to see the  
12 inspector's identification before the inspector enters the individual  
13 unit. A copy of this notice must be provided to the inspector upon  
14 request on the day of inspection.

15 (b) A tenant who continues to deny access to his or her unit is  
16 subject to RCW 59.18.150(8).

17 (8) If a rental property owner does not agree with the findings of  
18 an inspection performed by a local municipality under this section, the  
19 local municipality shall offer an appeals process.

20 (9) A penalty for noncompliance under this section may be assessed  
21 by a local municipality.

22 (10) Any person who knowingly submits or assists in the submission  
23 of a falsified certificate of inspection, or knowingly submits  
24 falsified information upon which a certificate of inspection is issued,  
25 is, in addition to the penalties provided for in subsection (9) of this  
26 section, guilty of a gross misdemeanor and must be punished by a fine  
27 of not more than five thousand dollars.

28 (11) As of the effective date of this section, a local municipality  
29 may not enact an ordinance requiring a certificate of inspection unless  
30 the ordinance complies with this section. This prohibition does not  
31 preclude any amendments made to ordinances adopted before the effective  
32 date of this section.

33 **Sec. 3.** RCW 59.18.150 and 2002 c 263 s 1 are each amended to read  
34 as follows:

35 (1) The tenant shall not unreasonably withhold consent to the  
36 landlord to enter into the dwelling unit in order to inspect the  
37 premises, make necessary or agreed repairs, alterations, or

1 improvements, supply necessary or agreed services, or exhibit the  
2 dwelling unit to prospective or actual purchasers, mortgagees, tenants,  
3 workers, or contractors.

4 (2) Upon written notice of intent to seek a search warrant, when a  
5 tenant or landlord denies a fire official the right to search a  
6 dwelling unit, a fire official may immediately seek a search warrant  
7 and, upon a showing of probable cause specific to the dwelling unit  
8 sought to be searched that criminal fire code violations exist in the  
9 dwelling unit, a court of competent jurisdiction shall issue a warrant  
10 allowing a search of the dwelling unit.

11 Upon written notice of intent to seek a search warrant, when a  
12 landlord denies a fire official the right to search the common areas of  
13 the rental building other than the dwelling unit, a fire official may  
14 immediately seek a search warrant and, upon a showing of probable cause  
15 specific to the common area sought to be searched that a criminal fire  
16 code violation exists in those areas, a court of competent jurisdiction  
17 shall issue a warrant allowing a search of the common areas in which  
18 the violation is alleged.

19 The superior court and courts of limited jurisdiction organized  
20 under Titles 3, 35, and 35A RCW have jurisdiction to issue such search  
21 warrants. Evidence obtained pursuant to any such search may be used in  
22 a civil or administrative enforcement action.

23 (3) As used in this section:

24 (a) "Common areas" means a common area or those areas that contain  
25 electrical, plumbing, and mechanical equipment and facilities used for  
26 the operation of the rental building.

27 (b) "Fire official" means any fire official authorized to enforce  
28 the state or local fire code.

29 (4)(a) A search warrant may be issued by a judge of a superior  
30 court or a court of limited jurisdiction under Titles 3, 35, and 35A  
31 RCW to a code enforcement official of the state or of any county, city,  
32 or other political subdivision for the purpose of allowing the  
33 inspection of any specified premises to determine the presence of an  
34 unsafe building condition or a violation of any building regulation,  
35 statute, or ordinance.

36 (b) A search warrant must only be issued upon application of a  
37 designated officer or employee of a county or city prosecuting or  
38 regulatory authority supported by an affidavit or declaration made

1 under oath or upon sworn testimony before the judge, establishing  
2 probable cause for the inspection and where the inspection is to be  
3 made of a dwelling unit or rental property that a violation of a state  
4 or local law, regulation, or ordinance regarding rental housing  
5 substantially endangers the health or safety of the tenant or adjoining  
6 neighbors. In addition, the affidavit must contain a statement that  
7 consent to inspect has been sought from the owner and the tenant and  
8 both the owner and the tenant have refused or a statement setting forth  
9 facts or circumstances reasonably justifying the failure to seek such  
10 consent.

11 (c) In determining probable cause, the judge is not limited to  
12 evidence of specific knowledge, but may also consider any of the  
13 following:

- 14 (i) The age and general condition of the premises;
- 15 (ii) Previous violations or hazards found present in the premises;
- 16 (iii) The type of premises;
- 17 (iv) The purposes for which the premises are used; or
- 18 (v) The presence of hazards or violations in and the general  
19 condition of premises near the premises sought to be inspected.

20 (d) Before issuing an inspection warrant, the judge shall find that  
21 the applicant has (i) provided written notice of the date, approximate  
22 time, and court in which the applicant will be seeking the warrant to  
23 the owner and, if the applicant reasonably believes the dwelling unit  
24 or rental property to be inspected is in the lawful possession of a  
25 tenant, to the tenant and (ii) posted a copy of the notice on the  
26 exterior of the dwelling unit or rental property to be inspected. The  
27 judge shall also allow the owner and any tenant who appears during  
28 consideration of the application for the warrant to defend against or  
29 in support of the issuance of the warrant.

30 (e) All warrants must include at least the following:

- 31 (i) The name of the agency and building official requesting the  
32 warrant and authorized to conduct an inspection pursuant to the  
33 warrant;
- 34 (ii) A reasonable description of the premises and items to be  
35 inspected; and
- 36 (iii) A brief description of the purposes of the inspection.

37 (f) An inspection warrant is effective for the time specified in  
38 the warrant, but not for a period of more than ten days unless it is



1 extended or renewed by the judge who signed and issued the original  
2 warrant upon satisfying himself or herself that the extension or  
3 renewal is in the public interest. The inspection warrant must be  
4 executed and returned to the judge by whom it was issued within the  
5 time specified in the warrant or within the extended or renewed time.  
6 After the expiration of the time specified in the warrant, the warrant,  
7 unless executed, is void.

8 (g) An inspection pursuant to a warrant must not be made between  
9 7:00 p.m. of any day and 8:00 a.m. of the succeeding day; on Saturday,  
10 Sunday, or any legal holiday unless the owner or, if occupied, the  
11 tenant specifies a preference for inspection during such hours or on  
12 such a day; or in the absence of an owner or occupant over the age of  
13 eighteen years or a person designated by the owner or occupant unless  
14 specifically authorized by the judge upon a showing that the judge's  
15 authority is reasonably necessary to effectuate the purpose of the rule  
16 being enforced. An inspection pursuant to a warrant may not be made by  
17 means of forcible entry, except that the judge may expressly authorize  
18 a forcible entry when facts are shown that are sufficient to create a  
19 reasonable suspicion of a violation of a state or local law or rule  
20 relating to municipal or county building, fire, safety, environmental,  
21 animal control, land use, plumbing, electrical, health, minimum  
22 housing, or zoning standards that, if the violation existed, would be  
23 an immediate threat to the health or safety of the tenant or when facts  
24 are shown establishing that reasonable attempts to serve a previous  
25 warrant have been unsuccessful. Immediate execution of a warrant is  
26 prohibited, except when necessary to prevent loss of life or property.

27 (h) Any person who willfully refuses to permit inspection,  
28 obstructs inspection, or aids in the obstruction of an inspection of  
29 property authorized by warrant issued pursuant to this section is  
30 subject to remedial and punitive sanctions for contempt of court under  
31 chapter 7.21 RCW. Such conduct may also be subject to a civil penalty  
32 imposed by local ordinance that takes into consideration the facts and  
33 circumstances and the severity of the violation.

34 (5) The landlord may enter the dwelling unit without consent of the  
35 tenant in case of emergency or abandonment.

36 ((+5+)) (6) The landlord shall not abuse the right of access or use  
37 it to harass the tenant. Except in the case of emergency or if it is  
38 impracticable to do so, the landlord shall give the tenant at least two

1 days' notice of his or her intent to enter and shall enter only at  
2 reasonable times. The tenant shall not unreasonably withhold consent  
3 to the landlord to enter the dwelling unit at a specified time where  
4 the landlord has given at least one day's notice of intent to enter to  
5 exhibit the dwelling unit to prospective or actual purchasers or  
6 tenants. A landlord shall not unreasonably interfere with a tenant's  
7 enjoyment of the rented dwelling unit by excessively exhibiting the  
8 dwelling unit.

9 ~~((+6))~~ (7) The landlord has no other right of access except by  
10 court order, arbitrator or by consent of the tenant.

11 ~~((+7))~~ (8) A landlord or tenant who continues to violate the  
12 rights of the tenant or landlord with respect to the duties imposed on  
13 the other as set forth in this section after being served with one  
14 written notification alleging in good faith violations of this section  
15 listing the date and time of the violation shall be liable for up to  
16 one hundred dollars for each violation after receipt of the notice.  
17 The prevailing landlord or tenant may recover costs of the suit or  
18 arbitration under this section, and may also recover reasonable  
19 attorneys' fees.

20 ~~((+8))~~ (9) Nothing in this section is intended to (a) abrogate or  
21 modify in any way any common law right or privilege or (b) affect the  
22 common law as it relates to a local municipality's right of entry under  
23 emergency or exigent circumstances.

24 NEW SECTION. **Sec. 4.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

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