

SENATE BILL REPORT

SB 6553

As Reported By Senate Committee On:
Financial Institutions & Housing, January 30, 1996

Title: An act relating to judicial authority to order inspections.

Brief Description: Revising judicial authority to order inspections.

Sponsors: Senators Prentice, Hale, Fraser and Winsley.

Brief History:

Committee Activity: Financial Institutions & Housing: 1/18/96, 1/30/96 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & HOUSING

Majority Report: That Substitute Senate Bill No. 6553 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair; Hale, Sellar and Smith.

Staff: David Cheal (786-7576)

Background: Public safety codes require inspections for enforcement. Inspections may be in response to a complaint of a specific violation, or based on a schedule or other non-complaint based rationale. Inspections of residential property when the consent of the owner or occupant cannot be obtained can only be conducted if certain federal and state constitutional protections are met. The principal protection is that a valid warrant or other court order must be issued by a judge or magistrate.

Two recent decisions of the Washington State Supreme Court have determined that Washington courts are without authority to issue civil inspection warrants because no statute or court rule provides that authority. The court determined that the State Constitution requires a specific authorizing statute. The court also held that the warrants or other court orders must be based on probable cause that a violation of the code being enforced exists in the premises where the inspection is sought.

Summary of Substitute Bill: Superior courts are authorized to issue inspection orders following notice and hearing. The owner or other person in lawful possession of the premises must be given at least ten days notice of the hearing and allowed to present evidence at the hearing if they object to the inspection. If it finds reason to believe that the particular building, structure or dwelling is unfit for human habitation, the court is directed to issue the inspection order. The order may not exceed the scope necessary to investigate the alleged violation.

Fire chiefs are authorized to inspect premises when the chief has reasonable cause to believe the building is unsafe. The occupant must first be contacted and presented with proper credentials and a request for entry. If the owner or occupant denies entry, the fire chief may

obtain an inspection warrant, which superior courts are authorized to issue. However, a judge may not issue an inspection warrant for private dwelling units when the sole basis for the warrant is a systematic or programmed inspection. If the chief seeks to inspect private residential areas, and the alleged violation is a civil infraction, rather than a crime, a notice and hearing must be provided.

Judges of superior courts are given authority to issue civil inspection orders if probable cause can be shown that conditions in a particular building or premises pose a serious threat to life or safety of the occupants, neighbors, human health or the environment. The inspection can only be ordered after a notice and hearing which must occur no earlier than ten or later than 30 days after the notice. If the owner or owner's agent or occupant cannot be personally served, service may be accomplished by posting a copy of the order on the building or other structure, and sending a copy to the owner's last known address.

The court is directed to issue the order if, after the hearing, the judge finds that there is reason to believe that the building or premises harbor conditions that pose a serious threat to life or safety of the occupants or neighbors or the environment. This provision does not authorize orders for residential property or commercial office buildings.

Substitute Bill Compared to Original Bill: The substitute bill limits the scope of inspection orders to what is necessary to investigate the alleged violation. Fire chiefs are required to use the order to show cause procedure if they wish to inspect private residential areas in connection with violations that are civil rather than criminal.

Appropriation: None.

Fiscal Note: Requested on January 17, 1996.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: State and local governments are not able to conduct inspections of private property under current law in order to enforce health and safety codes if the owner or tenant refuses entry, and the alleged violation is not defined as a crime.

Inspection is the key to enforcement and until correcting legislation passes, health and safety codes cannot be effectively enforced.

Testimony Against: (original bill) Inspection orders may be too broad. Some parts of the bill are unclear and could be interpreted to allow violations of privacy rights.

Testified: Kathy Gerke, Assoc. of WA Cities; Miriam Reed, City of Seattle (pro); Otto Jensen, WA State Assoc. of Fire Chiefs (pro); Bill Mikesell, City of Vancouver (pro); Doug Nyhart, AASK; Mike Spence, AASK attorney; Mike Swanson, WAA; Ron Hess, Mobile Park Owners Assoc.; Jeff Powell.