

2 **SSB 5208** - H COMM AMD

3 By Committee on Agriculture & Ecology

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5 Strike everything after the enacting clause and insert the  
6 following:

7 NEW SECTION. **Sec. 1.** The legislature finds that there is a need  
8 to establish a clear process for handling complaints regarding air and  
9 water quality from uses of agricultural and forest lands. The  
10 legislature also finds that this process should reduce the number of  
11 frivolous complaints against property owners and protect people who  
12 make complaints in good faith about possible violations of air or water  
13 pollution laws.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.94 RCW  
15 to read as follows:

16 (1) In exercising its authority under RCW 70.94.200, in  
17 investigating conditions on agricultural or forest land, a control  
18 officer, the department, or its duly authorized representative must  
19 comply with this section.

20 (2) The control officer, department, or its duly authorized  
21 representative must provide at least twenty-four hours' notice to a  
22 person alleged to have engaged in polluting activities on agricultural  
23 or forest land, before entering the property to investigate violations  
24 of this chapter or the federal clean air act. This notice must also be  
25 provided to the property owner if it is someone other than the person  
26 alleged to have engaged in the polluting activities. The twenty-four-  
27 hour notice requirement of this section does not apply in the event of  
28 an emergency or to enforce the terms of a permit.

29 (3) A control officer, department, or its duly authorized  
30 representative must present credentials to the property owner upon  
31 entering the property, and must provide a form to the property owner  
32 which clearly and conspicuously informs the property owner of his or  
33 her right to refuse entry for the investigation. The property owner  
34 may not deny entry in the event of an emergency or if the investigation  
35 is included within the terms of a permit. If the property owner denies

1 entry, and it is not an emergency or an investigation related to a  
2 permit, the department, control officer, or its representative must  
3 obtain a search warrant to enter the property. No property owner who  
4 is authorized to deny entry pursuant to this subsection may be  
5 subjected to criminal or civil penalties for the denial of entry. If  
6 the department, a control officer, or its representative enters the  
7 property on the basis that an emergency exists, the property owner must  
8 be provided the basis for the emergency in writing within ten days of  
9 the entry. The notice must be signed by the person entering the  
10 property.

11 (4) No formal commencement action may be taken by the department or  
12 an authority for a violation of this chapter on property subject to  
13 this section without cogent, site-specific evidence.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.94 RCW  
15 to read as follows:

16 (1) When the department or an authority receives a complaint that  
17 pollution has occurred on agricultural or forest land, the department  
18 or authority must document the name and address of the person who made  
19 the complaint, the time the alleged pollution occurred, and other  
20 information related to the complaint. In the event the evidence was  
21 collected by an employee of the department or a control officer, the  
22 name of the employee or control officer must be documented.  
23 Information revealing the identity of the person who made the complaint  
24 is exempt from public inspection and copying. The department and  
25 authorities shall adopt rules which restrict access within the  
26 department to the identity of people who make such complaints.

27 (2) If the department or an authority determines that an individual  
28 has made a series of complaints which have proven to be baseless, the  
29 department or authority shall notify the person by certified mail,  
30 return receipt requested, that a future complaint which is found to be  
31 baseless constitutes grounds for an infraction for filing frivolous  
32 complaints. The notice shall describe the penalty for the infraction.

33 (3) If a person who has been notified by the department or  
34 authority about making frivolous complaints makes another baseless  
35 complaint, the department or authority shall issue a notice of  
36 infraction for filing frivolous complaints. A civil fine up to five  
37 thousand dollars may be imposed for the infraction. An appeal of an

1 infraction shall be treated as an adjudicative proceeding under the  
2 administrative procedure act, chapter 34.05 RCW.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.48 RCW  
4 to read as follows:

5 (1) In exercising its authority under RCW 90.48.120, in  
6 investigating conditions on agricultural or forest land, the department  
7 or its duly authorized representative must comply with this section.

8 (2) The department or its duly authorized representative must  
9 provide at least twenty-four hours' notice to a person alleged to have  
10 engaged in polluting activities on agricultural or forest land, before  
11 entering the property to investigate violations of this chapter. This  
12 notice must also be provided to the property owner if it is someone  
13 other than the person alleged to have engaged in the polluting  
14 activities. The twenty-four-hour notice requirement of this section  
15 does not apply in the event of an emergency or to enforce the terms of  
16 a permit.

17 (3) The department or its duly authorized representative must  
18 present credentials to the property owner upon entering the property,  
19 and must provide a form to the property owner which clearly and  
20 conspicuously informs the property owner of his or her right to refuse  
21 entry for the investigation. The property owner may not deny entry in  
22 the event of an emergency or if the investigation is included within  
23 the terms of a permit. If the property owner denies entry, and it is  
24 not an emergency or an investigation related to a permit, the  
25 department or its representative must obtain a search warrant to enter  
26 the property. No property owner who is authorized to deny entry  
27 pursuant to this subsection may be subjected to criminal or civil  
28 penalties for the denial of entry. If the department or its  
29 representative enters the property on the basis that an emergency  
30 exists, the property owner must be provided the basis for the emergency  
31 in writing within ten days of the entry. The notice must be signed by  
32 the person entering the property.

33 (4) No formal commencement action may be taken by the department or  
34 its representative for a violation of this chapter on property subject  
35 to this section without cogent, site-specific evidence.

36 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.48 RCW  
37 to read as follows:

1 (1) When the department receives a complaint that pollution has  
2 occurred on agricultural or forest land, the department must document  
3 the name and address of the person who made the complaint, the time the  
4 alleged pollution occurred, and other information related to the  
5 complaint. In the event the evidence was collected by an employee of  
6 the department, the name of the employee must be documented.  
7 Information revealing the identity of the person who made the complaint  
8 is exempt from public inspection and copying. The department shall  
9 adopt rules which restrict access within the department to the identity  
10 of people who make such complaints.

11 (2) If the department determines that an individual has made a  
12 series of complaints which have proven to be baseless, the department  
13 shall notify the person by certified mail, return receipt requested,  
14 that a future complaint which is found to be baseless constitutes  
15 grounds for an infraction for filing frivolous complaints. The notice  
16 shall describe the penalty for the infraction.

17 (3) If a person who has been notified by the department about  
18 making frivolous complaints makes another baseless complaint, the  
19 department shall issue a notice of infraction for filing frivolous  
20 complaints. A civil fine up to five thousand dollars may be imposed  
21 for the infraction. An appeal of an infraction shall be treated as an  
22 adjudicative proceeding under the administrative procedure act, chapter  
23 34.05 RCW."

24 Correct the title.

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