

HOUSE BILL REPORT

SSB 5208

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to environmental complaint handling.

Brief Description: Detailing how to handle environmental complaints.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Morton, Loveland, Newhouse, Rasmussen, Swecker, Hochstatter and Hale).

Brief History:

Committee Activity:

Agriculture & Ecology: 4/2/97, 4/3/97 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Delvin; Koster; Mastin and Sump.

Minority Report: Do not pass. Signed by 4 members: Representatives Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

Staff: Bill Lynch (786-7092).

Background: The Department of Ecology (DOE) has been given the authority to adopt such rules and regulations as may be necessary to meet the requirements of the federal Clean Water Act. The DOE may enter property at reasonable times to investigate, inspect or monitor suspected violations of water quality standards.

The DOE has been directed to enforce air quality standards and emission standards throughout the state except in those locations where a local authority is enforcing the state standards or stricter local standards. Air pollution control agency control officers and the DOE are authorized to enter private property at reasonable times to investigate complaints of violations of the Clean Air Act.

Current statutory law does not require people who make complaints of suspected environmental violations to sign the complaints. No person may refuse entry to

agency representatives who present appropriate credentials and request entry for the purpose of making an inspection.

Summary of Amended Bill: Entry onto Property: The DOE and local air pollution control authorities must give 24 hours notice to persons alleged to have committed air or water pollution violations on agricultural or forest land before entering the property. The notice requirement does not apply in the event of an emergency or to enforce the terms of a permit. The department or authority representative must present credentials upon entering the property and provide the property owner with a form which clearly and conspicuously informs the property owner of his or her right to refuse entry for the investigation.

If the property owner refuses entry, and it is not an emergency or an investigation related to a permit, the agency or authority must obtain a search warrant to enter the property. No property owner who properly refuses entry may be subject to criminal or civil penalties for the denial. If the agency or authority representative enters the property on the basis that an emergency exists, the property owner must be provided with the basis for the emergency in writing within 10 days of the entry. The notice must be signed by the person entering the property.

No formal commencement actions may be taken by the DOE or an authority for a violation of air or water quality standards without cogent, site-specific evidence.

Filing of Complaints: When the DOE or an authority receive a complaint that air or water pollution has occurred on agricultural or forest land, the DOE or the authority must document the name and address of the person making the complaint. The identity of the person making the complaint is not subject to public inspection or copying. The DOE and authorities must adopt rules restricting access within the department or authority to the identity of people who make such complaints.

If the DOE or an authority determines that a series of complaints have been made by an individual which are proven to be baseless, the DOE or the authority must notify by certified mail the person making the complaints that a future complaint which is found to be baseless is subject to an infraction for filing frivolous complaints. A civil fine up to \$5000 may be imposed for the infraction. An appeal of an infraction is handled as an adjudicatory proceeding under the Administrative Procedures Act.

Amended Bill Compared to Substitute Bill: The original bill was completely stricken.

Appropriation: None.

Fiscal Note: Requested on March 31, 1997.

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

Testimony For (original bill): Anonymous complaints are used to harass property owners, inspectors gain entry under false pretenses. This bill provides due process to property owners.

Testimony Against: The bill is too broad and many terms are undefined. Property owners should not be able to refuse entry in an emergency or if their facility is operating under a permit. This may jeopardize federal delegation of programs to the state. Getting a warrant delays the process. This will have a chilling effect on legitimate complaints.

Testified: Dick Wallace, Department of Ecology; Dennis Lazzar, Environmental Protection Agency; Ron Shultz, National Audubon Society; and Mike Ryherd, Puget Sound Air Pollution Control Agency (opposed). Bill Garvin, Washington State Farm Bureau; Heather Hansen Rainey, Washington State Grange; Karla Kay Fullerton, Washington Cattlemen's Association; (in favor).