

HOUSE BILL REPORT

SSB 6617

As Reported by House Committee On: Local Government

Title: An act relating to verification of the contents of farm plans prepared by conservation districts.

Brief Description: Regarding the contents of farm plans prepared by conservation districts.

Sponsors: Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Haugen and Rasmussen).

Brief History:

Committee Activity:

Local Government: 2/22/06, 2/23/06 [DPA].

Brief Summary of Substitute Bill (As Amended by House Committee)

- Exempts farm plans (plans) developed by conservation districts from public disclosure requirements unless permission to release the plan has been granted by the landowner or operator requesting the plan, or the plan is used for applications or permit issuances.
- Specifies that plans developed under certain state water pollution control provisions that are not subject to the federal Clean Water Act are subject to specific dairy and animal feedlot disclosure requirements.
- Obligates conservation districts, before developing a plan, to inform the applicable landowner or operator of the types of information that are subject to public disclosure requirements.
- Specifies requirements that must be satisfied before a plan is disclosed by a conservation district to the public.
- Defines "farm plan."

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Simpson, Chair; Clibborn, Vice Chair; Schindler, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; B. Sullivan, Takko and Woods.

Staff: Ethan Moreno (786-7386).

Background:

Conservation Districts and Farm Plans

Conservation districts (districts) may be organized in conformity with statutory requirements as governmental subdivisions of the state in incorporated or unincorporated areas. The 47 districts existing in Washington are governed by five-member boards of supervisors and are granted specific powers prescribed in statute, including the authority to:

- conduct surveys, investigations, and research relating to the conservation of renewable natural resources, a term defined in statute to include land, air, water, vegetation, wildlife, and other natural resources;
- implement preventative and control measures and works of improvement for the conservation of renewable natural resources on lands within the district; and
- prepare and keep current comprehensive long-range programs (programs) recommending the conservation of the renewable natural resources of the district. These programs must be directed toward the best use of renewable natural resources and in a manner that will best meet the needs of the district and the state, taking into consideration, where appropriate, numerous statutory criteria.

Districts must prepare annual work plans (work plans), describing the action programs, services, facilities, materials, working arrangements and estimated funds needed to implement the parts of the long-range programs that are of the highest priorities. Districts must hold public hearings in connection with the preparation of work plans and programs.

Programs and supplemental work plans developed by each district have official status as the authorized program of the district, and must be published by the district. Copies must be made available by districts to the appropriate counties, municipalities, special purpose districts and state agencies, and must be made available in convenient places for examination by interested parties. Program summaries and selected excerpts must be distributed as widely as feasible for public information.

"Farm plans" or "farm water quality management plans" are defined in the Washington Administrative Code as site-specific plans for managing resources to protect water quality. Farm plans are developed by farm operators in cooperation with a resource agency and must be approved by district supervisors.

Disclosure of Public Records

The open public records law was approved by voters in 1972 as part of Initiative 276. All public records of state agencies and local governments are open to public inspection and copying unless a record is expressly exempted by law. Disclosure exemptions are provided in

statute for qualifying financial, commercial and proprietary information. This disclosure requirement is liberally construed and any exceptions are narrowly constructed.

Public disclosure provisions for dairies, animal feeding operations (AFOs), and concentrated animal feeding operations (CAFOs) were enacted in 2005. Certain information obtained by state and local agencies from dairies, AFOs and CAFOs that are not required to apply for federal stormwater and wastewater discharge permits is disclosable only in ranges, rather than actual numbers, that provide meaningful information to the public while ensuring confidentiality of business information.

Federal and State Clean Water Requirements

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA defines pollutant broadly to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. Among other provisions, the CWA sets effluent limitations for discharges of pollutants to navigable waters and requires states to adopt surface water quality standards to protect humans, fish and other aquatic life. The Department of Ecology (DOE) has been delegated federal authority to implement CWA programs in Washington.

The CWA also establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater and stormwater discharges. The NPDES permits are required for wastewater discharges from point sources to surface waters. The NPDES permits also are required for storm water discharges from certain industries, qualifying construction sites, and municipalities operating municipal separate storm sewer systems that satisfy specified criteria.

At the state level, water pollution control statutes grant the DOE authority to administer various water pollution regulatory and enforcement programs to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state.

Summary of Amended Bill:

Prior to developing a farm plan (plan), conservation districts must inform the landowner or operator in writing of the types of information that are subject to public disclosure, pursuant to state disclosure requirements. Before completing the final draft of a plan, districts must send the final draft to the requesting landowner or operator to verify the information contained within the draft. The final plan may not be disclosed by a district until the requesting owner or operator confirms the information within the plan and a signed copy is received by the district.

"Farm plan" is defined as a plan prepared by a conservation district in cooperation with a land owner or operator for the purpose of conserving, monitoring, or enhancing renewable natural resources. Plans include, but are not limited to, provisions pertaining to:

- developing and prioritizing conservation objectives;
- inventorying soil, water, vegetation, livestock, and wildlife;
- implementing conservation measures, including technical assistance provided by the district; and
- other specified matters.

The list of financial, commercial, and proprietary information that is exempt from public disclosure requirements is expanded to include an exemption for plans developed by conservation districts, unless permission to release the plan is granted by the landowner or operator requesting the plan, or the plan is used for the application or issuance of a permit.

Plans developed in compliance with state water pollution control laws and not under the CWA are subject to disclosure provisions applicable to dairies, AFOs, and CAFOs.

Amended Bill Compared to Substitute Bill:

The amended bill defines "farm plans" and specifies that plans used for the application or issuance of all permits, rather than only for the application or issuance permits under the CWA, are subject to disclosure requirements. Technical changes are made.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except section 2 relating to disclosure provisions for farm plans, which takes effect July 1, 2006.

Testimony For: (In support) Education should precede regulation. Conservation districts have the goal of educating the public. Public disclosure will lead to a lack of participation in the educational programs of districts. Copying costs and staffing costs pertaining to disclosure requirements are significant to small districts. If people believe that plans will be used by the public as a basis for inspecting their land, people will not submit plans. People have reasons for deviating from plans, including a lack of finances.

This bill is an incentive for people to produce plans and seek technical guidance from districts. Districts are subdivisions of government, but they are not regulatory entities. Districts are the only entities that routinely design and implement solutions to non-point pollution matters on private lands. Farm plans are site-specific and comprehensive: they contain inventory information, sensitive business information, and records of decisions. Farmers believe that plan information, similar to residential or corporate information, is private. Confidentiality is important and will lead to effective relationships and better outcomes. The relationship of confidence should not be disrupted. The disclosure of plans leads to a lack of trust between farmers and districts. Public outcry, angry farmers, and declines in requests for district assistance have resulted from plan disclosures in Whidbey Island.

Districts provide meaningful technical support to farmers: they help them work through conservation problems. Although support exists for environmental protection, the Whidbey Environmental Action Network (WEAN) has become litigious. Without this bill, the WEAN could use a farmer's plan against that farmer. District staff have proper farming and scientific credentials. The credentials of the WEAN are unclear. The information disclosed to the WEAN was misrepresented in court documents and trust between producers and districts was damaged. Districts provide summary information to counties and do produce reports analyzing farm planning effectiveness. Districts are encouraged to develop disclosure policies. This bill will allow the conservation commission to provide more guidance to districts about disclosure requirements. Incentive-based options are more effective and are needed.

(Neutral) Voluntary actions are important and should be encouraged. In some instances, plans are used to demonstrate compliance with permit requirements. Certain plan provisions must be disclosed to satisfy permit issuance requirements. Technical concerns existing in the original bill have been resolved.

Testimony Against: This bill exists because of a disclosure request made by the WEAN and concerns about shellfish harvest closures. The closures led to questions about the contents of plans, whether they are being implemented, and whether they are effective. Counties do not review plans, yet they can be viewed as evidence of complying with critical areas requirements of the Growth Management Act. The plans are public information, do not contain sensitive information, and are created with public funds. Analysis of plans will be impossible if they are exempted from disclosure requirements. The WEAN provided their own copier for the disclosure request they made in Whidbey Island. Current disclosure laws allow public entities to charge for copy costs. Reviewing plans under disclosure laws does not give people the right to trespass. Public funds should equate to public disclosure.

Traditionally rural areas are abutting against more urban areas. Population growth equals environmental stresses. The issues encapsulated within this bill are examples of conflicts that result from growth. All districts are not equal, as operational practices vary. Newspapers are not especially interested in plans, but in districts and the state. Newspapers are uncomfortable with provisions linking disclosure obligations to the federal Clean Water Act: the link should be removed. Plans are still disclosable under discovery, if authorized by a judge: this bill will not change that.

Persons Testifying: (In support) Senator Haugen, prime sponsor; John Larson and Fred Colvin, Washington Association of Conservation Districts; Karen Krug and Karen Lennon, Whidbey Island Conservation District; Carolyn Kelly, Skagit Conservation District; George Boggs, Whatcom Conservation District; Stu Trefry, Washington Conservation Commission; Jack Field, Washington Cattleman's Association; and John Cline.

(Neutral) Melodie Selby, Washington Department of Ecology.

(Opposed) Steve Erickson, Whidbey Environmental Action Network; and Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: None.