

SENATE BILL REPORT

ESB 5962

As Passed Senate, March 10, 2005

Title: An act relating to customary agricultural practices.

Brief Description: Protecting customary agricultural practices against nuisance actions.

Sponsors: Senators Haugen, Schoesler, Rasmussen, Morton, Shin and Delvin.

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 2/22/05 [DP].
Passed Senate: 3/10/05, 47-2.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Schoesler, Ranking Minority Member; Delvin, Jacobsen, Morton and Sheldon.

Staff: Sam Thompson (786-7413)

Background: In a nuisance lawsuit, a plaintiff may sue a property owner based on the claim that the defendant makes unreasonable use of their property to the detriment of the plaintiff's property. These lawsuits may, for example, seek to prevent noise or odors.

The Washington "Right to Farm Act" provides that agricultural activities conducted on farmland, if consistent with good agricultural practice and established prior to surrounding non-agricultural activities, are presumed to be reasonable and therefore do not constitute "nuisances" that may be prevented in a lawsuit. An exception is specified for activities that have a substantial adverse effect on public health and safety. However, if agricultural activities are undertaken in conformity with applicable laws and regulations, they are presumed to be good agricultural practices not affecting public health and safety.

It has been suggested that farmers in urbanizing areas may be subjected to unfounded nuisance lawsuits, that these unfounded lawsuits should be discouraged. It is also suggested that dust generation caused by farming practices should be exempted from Clean Air Act standards, violation of which may potentially subject a farm to liability.

Summary of Bill: If a farmer prevails in a lawsuit alleging agricultural activity to be a nuisance, or a lawsuit based on a complaint that was unfounded when it was filed, the farmer may recover costs and expenses reasonably incurred in defense. These costs and expenses may include lost revenue, the replacement value of crops or livestock damaged or unable to be harvested or sold as a result of the lawsuit, and attorneys' fees and costs. If the court finds that the lawsuit was initiated maliciously and without probable cause, the farmer may also recover punitive damages.

A court may order a person filing a complaint against a farmer with an investigating agency to pay the agency its investigative costs if the agency or court determines that the farm conforms with legal standards allegedly violated and the complaint was unfounded at the time it was initiated.

A seller of land located within one mile of a farm must make the following statement available to a buyer: "This notice is to inform prospective residents that the real property they are about to acquire lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Washington right to farm act."

Fugitive dust caused by agricultural activity that is consistent with good agricultural practices is expressly exempted from Washington Clean Air Act standards. "Fugitive dust" is defined as particulate emission made airborne by human activity, forces of wind, or both, and which does not pass through a stack, chimney, vent, or similar opening. The exemption generally applies to soil preparation, planting, fertilizing, weed and pest control, and harvesting; it also applies to dust generation from feedlots with fewer than 1,000 head of cattle.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: In addition to facing baseless nuisance lawsuits, farmers have been harassed by other unfounded complaints alleging violations of laws and regulations. These claims seek to prevent farmers from conducting ordinary, legal agricultural practices, and cause them to expend large sums and a great deal of time and effort in response before claims are decided in their favor. Penalties should be imposed to discourage these vexatious claims. The notice requirement to buyers of property close to farms is intended to make them consider the effects of ordinary, legal agricultural practices.

Testimony Against: None.

Other: This legislation may discourage legitimate complaints against farms; farmers prevailing in nuisance lawsuits should be able to recover costs, but not treble damages. The provision exempting dust from Clean Air Act standards is too broad, and should be limited to plowing, planting, weeding, harvesting or tilling; large feedlots should not be exempted.

Who Testified: PRO: Senator Haugen, prime sponsor; Dan Wood, Sharon Baker, Mike Salatino and Larry Jensen, Washington Farm Bureau; Marguerite Sutherland, Preserve Land for Agriculture Now; Jim Sizemore; John Roozen. OTHER: Marsh Taylor, Department of Ecology.

House Amendment(s): The amendment states a claim that agricultural activity violates specified laws need not be unfounded when it was initiated for a farmer to later recover costs and expenses from the claimant if the farmer prevails. However, a farmer may not recover: (1) costs and expenses from a state or local agency that investigates or pursues an enforcement action; or (2) attorneys' fees and costs from a claimant unless the farmer suffered compensable

"actual" damages, including lost revenue and the replacement value of crops damaged or unable to be harvested or sold.

An investigating agency may not recover its investigative costs unless a court determines that a farm did not violate legal standards allegedly violated and also finds that the complaint was initiated maliciously and without probable cause.

An exemption from Clean Air Act standards for odors and dust caused by agricultural activity consistent with good agricultural practices on agricultural land is revised to include shellfish production.

Passed House: 94-0.