

HOUSE BILL REPORT

ESHB 2212

As Passed House:

March 13, 2007

Title: An act relating to addressing the application of the growth management act to certain agricultural activities occurring on agricultural lands.

Brief Description: Expressing progress in balancing the productive use of agricultural lands with their preservation.

Sponsors: By House Committee on Local Government (originally sponsored by Representatives Blake, B. Sullivan and Newhouse).

Brief History:

Committee Activity:

Local Government: 2/22/07, 2/27/07 [DPS].

Floor Activity:

Passed House: 3/13/07, 79-17.

Brief Summary of Engrossed Substitute Bill

- Requires, until July 1, 2009, counties and cities to defer amending or adopting critical area ordinances and implementing regulations as they specifically apply to agricultural activities.
- Includes a retroactive clause applying the deferral provisions to qualifying ordinances and regulations adopted on or after January 1, 2007.
- Requires, subject to funding provisions, the William D. Ruckelshaus Center (Center) to conduct a two-phased examination of the conflicts between agricultural activities and critical area ordinances and implementing regulations.
- Establishes examination and reporting requirements that must be met by the Center.
- Includes a null and void clause if funding for the Center's examination is not provided by June 30, 2007 in the omnibus appropriations act.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Expires all provisions on July 1, 2010.
- Includes an emergency clause.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Simpson, Chair; Eddy, Vice Chair; Curtis, Ranking Minority Member; Schindler, Assistant Ranking Minority Member; B. Sullivan and Takko.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act/Introduction and General Requirements

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

The GMA requires all jurisdictions to satisfy specific designation and protection mandates. All local governments, for example, must designate and protect critical areas. These protection requirements obligate local governments to adopt development regulations, also known as critical area ordinances (CAOs), meeting specified criteria. As defined by statute, critical areas include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

All planning jurisdictions must adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. Planning jurisdictions must also adopt development regulations that implement and conform with the comprehensive plan.

Growth Management Hearings Boards

The GMA establishes three regional Growth Management Hearings Boards (Boards). Each Board consists of three members satisfying residency requirements and qualified by experience or training in matters pertaining to land use planning. The Boards have limited jurisdiction and may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is noncompliant with the GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments; or

- that 20-year planning population projections adopted by the Office of Financial Management should be adjusted.

Final decisions of the Boards may be appealed to the appropriate superior court. Additionally, if all parties agree, a superior court may directly review a petition filed with a Board.

Summary of Engrossed Substitute Bill:

Deferral of Regulatory Actions/Retroactivity

Until July 1, 2009, counties and cities must defer amending or adopting CAOs and implementing regulations as they specifically apply to agricultural activities. This mandatory deferral does not:

- nullify CAOs and implementing regulations adopted by a county or city prior to January 1, 2007;
- limit or otherwise modify the obligations of a county or city to comply with the requirements of the GMA pertaining to critical areas not associated with agricultural activities; or
- limit the ability of a county or city to employ voluntary measures or programs to protect or enhance critical areas associated with agricultural activities.

Counties and cities that defer amending or adopting CAOs and implementing regulations must review and revise these ordinances and regulations as they specifically apply to agriculture activities to comply with the GMA by July 1, 2010.

The deferment provisions apply retroactively to any CAO and implementing regulations as they specifically apply to agricultural activities that were amended or adopted by a county or city on or after January 1, 2007.

Definition of "Agricultural Activities"

"Agricultural activities" is defined to mean, in part, agricultural uses and practices currently existing or legally allowed. Numerous examples of permitted activities are specified, including:

- producing, breeding, or increasing agricultural products;
- rotating and changing agricultural crops;
- allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; and
- maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility.

Local Government Authority

Nothing in the bill limits or otherwise modifies the authority of a county or city to:

- comply with an order from a Board or court;
- implement a settlement in compliance with the requirements of the GMA; or

- attempt to settle issues raised in litigation challenging CAOs and implementing regulations as they specifically apply to agricultural activities.

William D. Ruckelshaus Center - Examination and Reports

Subject to the availability of amounts appropriated for this specific purpose, the William D. Ruckelshaus Center (Center) must conduct a two-phased examination of the conflicts between agricultural activities and CAOs and implementing regulations adopted under the GMA to protect critical areas. In completing the examination, the Center must:

- work and consult with willing participants, including, but not limited to, agricultural, environmental, tribal, and local government interests; and
- involve and apprise legislators and legislative staff of its efforts.

The examination must be completed in two distinct phases. In the first phase, the Center must conduct fact-finding and stakeholder discussions. The discussions must identify stakeholder concerns, desired outcomes, opportunities, and barriers. The fact-finding must identify existing regulatory, management, and scientific information related to agricultural activities and critical areas, including, in part, the following:

- CAOs and implementing regulations adopted to protect critical areas;
- acreage protected by conservation easements;
- buffer widths;
- requirements of federally approved salmon recovery plans; and
- the impacts of agricultural activities on Puget Sound recovery efforts.

The Center must issue a report of its fact-finding efforts and stakeholder discussions to the Governor and the appropriate committees of the House of Representatives and the Senate by December 1, 2007.

In the second phase of the examination, the Center must facilitate discussions between stakeholders to identify policy and financial options or opportunities to address the issues identified in the first phase. In particular, the Center must examine innovative solutions, including, but not limited to, outcome based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches. The Center must also work to achieve consensus among participating stakeholders on identified issues and to develop a coalition of diverse stakeholders to support agreed upon changes or new approaches to protecting critical areas during the 2009 legislative session.

A final report of findings and legislative recommendations must be issued by the Center to the Governor and the appropriate committees of the House and Senate by September 1, 2008.

Null and Void Clause/Expiration Date

The bill is null and void if funding for the examination required by the Center is not provided by June 30, 2007, in the omnibus appropriations act. All provisions of the bill expire on July 1, 2010.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately. However, the bill is null and void if not funded in the budget.

Staff Summary of Public Testimony:

(In support) Our agricultural lands are facing a crisis. This bill is another idea that can start a discussion about preserving working agricultural lands. Farmers will soon be making decisions about keeping or selling their lands out of fear.

(With concerns) Virtually all of us have some connection to agriculture in this state. The environmental community is committed to working with the agricultural community. Use of a mediator, such as the Ruckelshaus Center, is a preferred solution. The timing of this bill is too slow. Support exists for legislation that would be jointly developed. Support exists for facilitator-based conversations after session.

The current protections for critical areas have been ineffective and have negatively affected treaty rights and other matters. There are ongoing challenges in the courts pertaining to critical areas and implementing this legislation might be difficult.

The Ruckelshaus Center is designed to help people work through disputes by identifying and assessing issues and working through a process that will help resolve disputes. The Legislature has a role to play in the Ruckelshaus Center by establishing an arena for dispute resolution. This bill is not drawn in a way that is conducive to success and working through a difficult process in good faith. This bill needs to be modified for the arena to be properly established. The Ruckelshaus Center has been asked to examine resolutions related to Initiative 933 through collaborative processes.

The intent behind this bill is appreciated. Agricultural lands, fish, and buffers are all critically important. The Northwest Indian Fisheries Commission is committed to working with other parties and the Legislature to find a win/win solution to these issues.

The balance between critical areas ordinances and agricultural lands has been difficult to achieve. Concerns exist about the mechanics of the bill, including its retroactive/prospective provisions.

(Opposed) This bill will provide too much regulation. Farming is economically marginal, and farmers need regulatory relief.

The threat to impose buffers has once again raised its ugly head. The impact of buffers may make farming financially unviable. Buffers are a taking and scientifically do not prove to be the solution. Farm plans already must be developed according to specific requirements and counties should not be included in developing or approving plans as they do not have the expertise to perform this function. Farm plans are expensive to draw up and they are complicated. These plans contain very private and specific information and the thought of

making them public is almost criminal. Watershed planning would be a more effective approach to enhancing water quality. Watershed planning and conservation districts should receive more funding.

Futurewise is committed to working with the agricultural community to find long-term solutions to these long-simmering issues. This bill is not as blunt as others, but it would preclude the possibilities of productive interim discussions. Allowing the use of an approved farm plan may be an acceptable approach to solving these issues, as some counties have already adopted this approach, but this bill would reduce flexibility.

Balancing critical areas ordinances with agricultural activities is vital. Everyone enjoys the benefits of clean drinking water, flood control, et cetera, but no one wants to pay the price of regulations that achieve these benefits. This bill is too complex and will not solve the underlying issues.

The Ruckelshaus Center should be used to develop collaborative solutions to the difficult problems this bill addresses. Farmers are in a difficult predicament. This bill, however, has a predetermined solution and that is not the best approach toward finding a resolution.

Adamant opposition to this bill exists. The bill represents a work in progress. If a solution is not found, farmers will continue to subdivide their lands into the smallest possible divisions to protect their capital. Farmers are being asked to shoulder a disproportionate burden. Farmland is developed - not with buildings, but it is developed. Buffers take private land out of control from private citizens. This bill will not produce good results and may lead to revolt. Farm plan exemption disclosures were earned through years of legislative effort and this bill would be an inappropriate reversal of those efforts.

The components of this bill turn farm plans into a statutory hammer. This bill sends the wrong message to people who are trying to do the right thing. This bill will turn counties into farm managers; it's hard enough to get building permits from counties and they're not qualified to make decisions on farming practices.

We have a problem, but we also have common ground, as the people testifying on this bill have all been opposed to the inappropriate conversion of farmland. A different solution process that includes working with agricultural and conservation stakeholders would be more appropriate than those of this bill.

The Ruckelshaus Center needs to be funded. The task force provision of this bill needs to be drafted in a way that won't ensure failure. Farmers are trying to determine whether to subdivide their land now or to wait for the adoption of critical areas ordinances. They are, however, taking the money today, so there are consequences if nothing is done. We need a time-out to give farmers a break or we will lose farmland.

The Farm Bureau is not opposed to discussions, but if discussions are the solution, farmland will be lost. Mandated buffers will prohibit farmers from receiving revenues they currently receive for voluntary conservation measures. Previous discussions have not changed measures that hamper farmers in their efforts to keep farmers farming. More discussion is

part of the solution, as specific goals and time frames for solutions should be set. The Legislature needs to extend the current protections for legal agricultural activities on agricultural lands that exists under the Shoreline Management Act to the GMA. Action is needed now, because buffers are being considered for 2007 and 2008.

Persons Testifying: (In support) Representative Blake, prime sponsor.

(With concerns) Joe Ryan, Washington Environmental Council/ Washington Conservation Voters; Marty Lesch, Swinomish Tribe; Steve Robinson, Northwest Indian Fisheries Commission; Leonard Bauer, Department of Community Trade, and Economic Development; Bill Ruckelshaus, William D. Ruckelshaus Center University of Washington/Washington State University; and Eric Johnson, Washington State Association of Counties.

(Opposed) Roger Short, North Olympic Farm Bureau; Terry Willis; Kaleen Cottingham, Futurewise; Gayle Broadbent, Adams Cove Group; Bill Robinson, The Nature Conservancy; Chris Cheney, Washington Fryer Commission, Hop Growers of Washington; Heath Packard, Audubon; Jay Gordon, Washington State Dairy Federation; Dan Wood, Washington State Farm Bureau; and Jack Field, Washington Cattlemen's Association.

Persons Signed In To Testify But Not Testifying: None.