

HOUSE BILL REPORT

SSB 5248

As Passed House - Amended:

April 13, 2007

Title: An act relating to preserving the viability of agricultural lands.

Brief Description: Preserving the viability of agricultural lands.

Sponsors: By Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Hatfield, Schoesler, Rasmussen, Morton, Honeyford, Haugen, Shin and Holmquist).

Brief History:

Committee Activity:

Local Government: 3/27/07 [DPA].

Floor Activity:

Passed House - Amended: 4/13/07, 82-15.

Brief Summary of Substitute Bill (As Amended by House)

- Specifies that, from May 1, 2007, until July 1, 2010, counties and cities may not amend or adopt critical area ordinances (CAOs) as they specifically apply to agricultural activities.
- Requires counties and cities subject to the deferral requirements to review and, if necessary, revise their CAOs as they specifically apply to agriculture activities by December 1, 2011.
- Defines "agricultural activities."
- Requires, subject to funding provisions, the William D. Ruckelshaus Center (Center) to conduct a two-phased examination of the conflicts between agricultural activities and CAOs.
- 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.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 4 members: Representatives Simpson, Chair; Eddy, Vice Chair; B. Sullivan and Takko.

Minority Report: Do not pass. Signed by 3 members: Representatives Curtis, Ranking Minority Member; Schindler, Assistant Ranking Minority Member and Ross.

Staff: Ethan Moreno (786-7386).

Background:

The Growth Management Act (GMA) 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 GMA (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.

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.

The GMA requires all jurisdictions to satisfy specific designation mandates for natural resource lands and critical areas. All local governments, for example, must designate, where appropriate, agricultural lands that are not characterized by urban growth that have long-term significance for the commercial production of food or other agricultural products. Planning jurisdictions have further requirements under the GMA and must also adopt development regulations that conserve designated agricultural lands.

In addition to designation requirements, all local governments must also 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.

Summary of Amended Bill:

Deferral of Regulatory Actions

For the period beginning May 1, 2007, and concluding July 1, 2010, counties and cities may not amend or adopt CAOs as they specifically apply to agricultural activities. This mandatory deferral of certain regulatory actions does not:

- nullify CAOs adopted by a county or city prior to May 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 adopt or employ voluntary measures or programs to protect or enhance critical areas associated with agricultural activities.

Counties and cities subject to the CAO deferral requirements:

- should implement voluntary programs to enhance public resources and the viability of agriculture. Voluntary programs implemented to enhance public resources and agriculture viability must include measures evaluating these programs; and
- must review and, if necessary, revise their CAOs as they specifically apply to agricultural activities to comply with the GMA by December 1, 2011.

Definition of "Agricultural Activities"

"Agricultural activities" is defined to mean, in part, agricultural uses and practices currently existing or legally allowed on rural land or designated agricultural land of long-term commercial significance. 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.

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 adopted under the GMA. 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 begin by July 1, 2007, and 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 adopted under the GMA;
- 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 two preliminary reports 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, and December 1, 2008.

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 and desired outcomes identified by stakeholders in the first phase.

The second phase includes requirements that must be met by stakeholders. More specifically, stakeholders must examine innovative solutions, including, but not limited to, outcome-based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches. Stakeholders must also examine ways to modify statute to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches.

During the second phase, the Center must also seek to achieve agreement among participating stakeholders and to develop a coalition to support changes or new approaches to protecting critical areas during the 2010 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, 2009.

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 December 1, 2011.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: 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 of substitute bill) The GMA was enacted to protect agricultural and resource lands. The GMA established a presumption that the activities of farmers were beneficial. Farmers are stewards of the land. Thousands of acres have fallen out of agricultural production in recent years, food processors have been lost, and the pressures to develop are very high. This bill does not cost money, doesn't harm fish, and provides certainty to farmers.

If buffers are mandated, a significant amount of land will be taken out of productive use and farming activities will be halted. Some members of the agricultural community attended their first buffer meeting in 1993; people would like to see these meetings end. If buffers are required, grass in buffer areas will die and become a fire hazard. The Governor indicated that she would not support the imposition of mandatory buffers on farmers. According to one

study, critical areas are adequately protected under current law. True science doesn't support buffers and farmers must be protected from politically-motivated science. Dairy farmers will be driven out of business with buffers. Buffers are a habitat for disease and pests that create problems for orchards. Half of the Skagit County potato industry could be affected by proposed regulations. The GMA directs that agricultural lands be enhanced. Are buffers an enhancement of agriculture? It does not make sense to regulate land out of production. Farmers are complying with existing regulations and citizens can already shut down farmers who violate regulations.

Farmers need certainty so that they can continue to farm. The striking amendment should not be supported. Farmers want to continue farming. The underlying bill will give more certainty to farmers. It also sends a clear message that agriculture is very important and is strongly supported in Washington. Farmers are continually looking for ways to improve agricultural practices.

Does the Legislature want agriculture to exist in Washington's future? Farmers need to have this question answered. What kind of message is the state going to send to agriculture? The underlying bill sends a message of support. The striking amendment proposes a two-year regulatory delay. The underlying bill should be supported for consistency. If the Legislature waits two years to address these issues, many farms will be lost.

Farmers should be granted the exemption of the underlying bill for two years while the Ruckelshaus Center examines the issues. Do not put farmers in limbo for another two years. The underlying bill would make the issues contained within Initiative 933 go away at no cost, and would provide certainty and other benefits.

The original bill was designed to extend the protective measures for agriculture in the Shoreline Management Act to the GMA. The Farm Bureau has been meeting with members of the environmental community throughout the session and conversations are continuing. The two-year time out, without provisions granting certainty to farmers, could be perceived as giving farmers two years notice to leave the field. This will result in productive acreage being lost to regulation and a loss of good environmental stewardship. The Farm Bureau is looking for amendatory language that offers greater predictability.

(Opposed to substitute bill) Futurewise was part of a coalition that worked to defeat Initiative 933 in 2006. As part of those efforts, the organization promised to work on issues related to fairness and land use practices, and its work on this bill is part of that promise. Conversations are continuing with agricultural counterparts. The striking amendment represents negotiated compromises and is the best offer the environmental community can make. New approaches and funding are needed to resolve conflicts between agriculture and regulatory measures; this is why the striking amendment includes requirements for the Ruckelshaus Center. Futurewise believes that protecting agriculture and agricultural land is important, but it does not believe that agricultural activities should have a broad exemption from CAOs. The language of the striking amendment represents an attempt to create a productive arena for resolving these issues. The environmental community wants to develop consensus solutions and avoid fighting these issues at the ballot box. The striking amendment addresses the underlying

issues and should be supported. The importance of maintaining our agricultural base is important for wildlife as well as preserving the roles and functions of riparian areas. Sustainable policy solutions can and should be attained.

Persons Testifying: (In support of substitute bill) John Roozen, Washington Bulb Company Incorporated and Western Washington Agricultural Association; Bob P. Rose, Washington Farm Bureau and Washington Cattlemen's Association; Roger Short, North Olympic Farm Bureau; Terry Willis; Janet McRae and Randy Good, Skagit County Cattlemen; Ron Wesen; Ed Husmann, Industrial Farm Bureau; Larry R. Jensen, Skagit Red Potato Growers and Skagit Farm Bureau; Jack Field, Washington Cattleman's Association; Scott Dahlman, Washington State Grange; Dan Wood, Washington Farm Bureau; Curtis Johnson, Western Washington Agricultural Association and Farmland Legacy Program; Tarn Mower; David Fenn; and Mike Kayser.

(Opposed) Kaleen Cottingham, Futurewise; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; and Heath Packard, Audubon.

Persons Signed In To Testify But Not Testifying: Carol Osterman; Mike Shenby, Western Washington Agricultural Association; R.J. Remund; Norman MacLeod, Olympic Water Users Association; Ellen Byman, Friends of Skagit County; Rick Nelson, Allen Lougheep, and Jim Hinton, Washington Cattlemen's Association; Vivian Thomsen and Bill Zimmerman, Washington Farm Bureau; R. Jane Rose, Rose Ranch, Washington Cattlemen's Association and Washington Farm Bureau; Norm Mitchell and Fran Woerns, Skagit County Cattleman; Robert Thode; and Eric Johnson, Washington Association of Counties.