

SENATE BILL REPORT

SB 5145

As Reported By Senate Committee On:
Agriculture & Rural Economic Development, February 26, 2007

Title: An act relating to clarifying existing requirements for conservation of agricultural lands.

Brief Description: Clarifying existing requirements for conservation of agricultural lands.

Sponsors: Senators Haugen and Rasmussen.

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 1/22/07, 2/26/07 [DPS].

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5145 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rasmussen, Chair; Hatfield, Vice Chair; Schoesler, Ranking Minority Member and Morton.

Staff: Bob Lee (786-7404)

Background: The wetland mitigation bank statute, enacted in 1998, directed the Department of Ecology to promulgate rules that provide for the creation of wetland mitigation banks. "Wetland mitigation banks" are defined as sites where wetlands are restored, created, or enhanced for the purpose of providing compensatory off-site mitigation in advance of authorized and unavoidable impacts to other wetlands. The agency's rule is to determine how these banks are to be certified and how credits are to be measured. The local jurisdiction in which the bank is located is required to be a signatory to the banking instrument.

The Growth Management Act (GMA) was enacted in 1990. Local jurisdictions that are required, or choose to plan, are to adopt development regulations. Generally, agricultural lands are either designated as "agricultural lands of long-term commercial significance" or as "rural" lands. Agricultural lands of long-term commercial significance are those that are not already characterized by urban growth and have long-term significance for the commercial production of food or other agricultural products. With a few exceptions, such as the one acre accessory use provision enacted in 2006, conversion of this category of agricultural land to non-agricultural uses is not allowed.

The restrictions on the conversion of agricultural lands in areas zoned as rural are less and depend on the local ordinance.

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.

The wetland mitigation bank statute does not require the agency to include either land use designations or environmental permitting requirements as components of their rules. The GMA requires state agencies to comply with locally adopted comprehensive plans and development regulations.

Summary of Bill: Wetland mitigation banking projects must not be permitted on designated agricultural lands of long-term commercial significance but may be permitted as a special use on other agricultural lands. Conservation projects that consist exclusively of planting vegetation or on-site mitigation projects required for permitted activities may be permitted uses.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Agriculture & Rural Economic Development): Wetland mitigation banking projects may be permitted by conditional or special use on agricultural lands if the local government has adopted the criteria for evaluating such projects established by the Department of Community, Trade and Economic Development (CTED). Conservation projects that consist exclusively of planting vegetation or on-site mitigation required for permitted activities are allowed. The criteria is to minimize the impact on the continued agricultural use of agricultural lands of long-term commercial significance. A report is to be provided to the Legislature by January 1, 2008.

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.

Staff Summary of Public Testimony: PRO: We never thought that we would have to require a state agency to not approve placing wetland mitigation banks on designated prime farmland. Environmental Protection Agency studies show that over 50 percent of wetland mitigation banks have failed and it is unwise to destroy one resource when the success rate is so low. The two wetland mitigation banks in Skagit County take out 1 percent of agricultural land. There are other options than prime agricultural lands for locating these projects. People question the ability of the Department of Ecology to authorize banks that conflict with the GMA.

CON: It is best for the issue to be addressed at the local level. The amount of agricultural land being used for wetland mitigation banks is small. The role of wetland mitigation banks is important and needs to proceed. The bill is too blunt of an instrument.

OTHER: The language may be too broad. It is important to keep the dialogue up. There is concern about the consistency of the definition in this draft with that in the wetland mitigation bank statute.

Persons Testifying: PRO: Senator Haugen, prime sponsor; Ellen Bynum, Friends of Skagit County, Western Washington Agricultural Association; Carolyn Kelly, Skagit Conservation District; John Larson, Washington Association of Conservation Districts; Dan Woods, Farm Bureau.

CON: James Hodge, Skagit Environmental Bank; Sky Miller, Wildlands Inc.; Andrew Cook, Building Industry Association of Washington; Victor Woodward.

OTHER: Kaleen Cottingham, Futurewise; Lauren Driscoll, Department of Ecology; Eric Johnson, Washington Public Ports.