SENATE BILL REPORT
SB 5692

As of February 7, 2007

Title: An act relating to the use of conservation easements.

Brief Description: Regulating conservation easements.

Sponsors: Senators Rasmussen and Morton.

Brief History:
Committee Activity: Agriculture & Rural Economic Development: 2/08/07.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Staff: Sam Thompson (786-7413)

Background: Conservation easements are land use restrictions or obligations voluntarily granted by landowners to government entities and non-profit organizations to preserve a variety of conservational uses. While Washington statutory law authorizes conservation easements for several purposes, including natural resource protection and farmland preservation, it does not specify any generally-applicable standards.

Twenty-two states have enacted the Uniform Conservation Easements Act (UCEA), a measure proposed in 1981 by the National Conference of Commissioners on Uniform State Laws. UCEA establishes generally-applicable standards, including a provision protecting conservation easements from potential invalidation under common law principles when property is transferred.

The state Growth Management Act provides that counties may provide for conservation easements to accommodate rural land use.

Summary of Bill: Generally-applicable standards and procedures are adopted regarding conservation easements. The Growth Management Act is revised to facilitate use of conservation easements in designated critical areas.

Generally-Applicable Provisions. "Conservation easements" are defined as land interests held by someone other than landowners that impose affirmative obligations or limitations, including:

- retaining or protecting natural resources;
- assuring agricultural, forest, recreational, or open-space use;
- protecting natural, scenic, or open-space values; or
- maintaining or enhancing air or water quality.

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.

Conservation easements are set forth in written agreements executed by landowners and "holders" of easements—government entities authorized to hold land interests or charitable organizations—and recorded in county recording offices. Agreements may provide for third-party enforcement rights by other government or charitable entities.

Generally, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements. An easement is unlimited in duration unless the agreement provides otherwise; however, a court with jurisdiction may modify or terminate an easement under established statutory and common law. A property interest existing when an easement is created is not impaired unless the owner of the interest is a party to the agreement and consents to it.

A lawsuit affecting a conservation easement may be brought by an owner of an interest in the property burdened by the easement, a holder, a person with a third-party enforcement right under the agreement, or any other person authorized by law.

A conservation easement is valid even though: it is not an inheritable property interest; it can be or has been assigned to another holder; it contains provisions not traditionally recognized at common law; it imposes a negative burden; it imposes affirmative obligations; or the benefit does not touch or concern real property.

These standards apply to any interest complying with them created after the act's effective date, and apply to any interest created before the act's effective date if it would have been enforceable had it been created after the effective date, unless retroactive application contravenes state or federal law. They do not invalidate any interest enforceable under another state law.

An easement may provide that development rights acquired by a conservation easement holder may be transferred to another party under applicable law. Unless or until development rights or other interests are transferred in that manner, payments for those rights or interests may be amortized under terms agreed upon by the parties.

Growth Management Act (GMA): If designated critical areas are subject to a conservation easement providing for habitat protection, restoration, or maintenance, the easement is presumed to comply with critical area protection requirements if the easement agreement:

- contains a conservation plan reviewed and determined by a conservation district to meet conservation standards in currently-applicable natural resources conservation service field office technical guides; or
- meets alternate conservation planning and habitat protection requirements in local critical area ordinances.

A county may not adopt GMA development regulations precluding a property owner from establishing a conservation easement, entering into an agreement to sell or transfer development rights, or qualifying for or enrolling land in conservation reserve enhancement or equivalent programs protecting natural resources and habitat areas and future agricultural uses.

In city or county comprehensive plans, rural elements protecting critical area and surface and ground water resources will do so through programs encouraging and facilitating voluntary

use of conservation easements preserving agricultural lands and protecting habitat and other natural resources.

These provisions may not diminish, modify, or replace any other remedy provided under federal or state law.

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.