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HOUSE BILL 2212

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Blake, B. Sullivan and Newhouse

Read first time 02/13/2007. Referred to Committee on Local Government.

1            AN ACT Relating to addressing the application of the growth  
2 management act to certain agricultural activities occurring on  
3 agricultural lands; amending RCW 36.70A.030, 36.70A.060, 36.70A.280,  
4 and 36.70A.190; adding a new section to chapter 36.70A RCW; creating  
5 new sections; and providing an expiration date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.** The legislature finds that the goals of the  
8 state's growth management act rightfully include both protection of the  
9 environment and the maintenance and enhancement of natural resource-  
10 based industries, including timber, agriculture, and fisheries. The  
11 legislature acknowledges the importance of local governments adopting  
12 development regulations that protect critical areas on agricultural  
13 lands. The legislature also acknowledges the efforts of landowners and  
14 operators who develop and implement farm plans governing agricultural  
15 activities on agricultural lands. The legislature finds that there  
16 have been and continue to be a considerable number of legal challenges  
17 brought before the growth management hearings boards and the courts  
18 concerning regulations protecting critical areas and their application  
19 to agricultural lands. The legislature therefore finds it necessary to

1 initiate short and longer-term actions to identify, consider, reduce,  
2 and resolve issues causing conflicts between agricultural activities  
3 occurring on agricultural lands and development regulations that  
4 protect critical areas.

5 **Sec. 2.** RCW 36.70A.030 and 2005 c 423 s 2 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Adopt a comprehensive land use plan" means to enact a new  
10 comprehensive land use plan or to update an existing comprehensive land  
11 use plan.

12 (2) "Agricultural activities" means agricultural uses and practices  
13 including, but not limited to: Producing, breeding, or increasing  
14 agricultural products; rotating and changing agricultural crops;  
15 allowing land used for agricultural activities to lie fallow in which  
16 it is plowed and tilled but left unseeded; allowing land used for  
17 agricultural activities to lie dormant as a result of adverse  
18 agricultural market conditions; allowing land used for agricultural  
19 activities to lie dormant because the land is enrolled in a local,  
20 state, or federal conservation program, or the land is subject to a  
21 conservation easement; conducting agricultural operations; maintaining,  
22 repairing, and replacing agricultural equipment; maintaining,  
23 repairing, and replacing agricultural facilities, when the replacement  
24 facility is no closer to the shoreline than the original facility; and  
25 maintaining agricultural lands under production or cultivation.

26 (3) "Agricultural land" means land primarily devoted to the  
27 commercial production of horticultural, viticultural, floricultural,  
28 dairy, apiary, vegetable, or animal products or of berries, grain, hay,  
29 straw, turf, seed, Christmas trees not subject to the excise tax  
30 imposed by RCW 84.33.100 through 84.33.140, finfish in upland  
31 hatcheries, or livestock, and that has long-term commercial  
32 significance for agricultural production.

33 ~~((3))~~ (4) "City" means any city or town, including a code city.

34 ~~((4))~~ (5) "Comprehensive land use plan," "comprehensive plan," or  
35 "plan" means a generalized coordinated land use policy statement of the  
36 governing body of a county or city that is adopted pursuant to this  
37 chapter.

1       (~~(5)~~) (6) "Critical areas" include the following areas and  
2 ecosystems: (a) Wetlands; (b) areas with a critical recharging effect  
3 on aquifers used for potable water; (c) fish and wildlife habitat  
4 conservation areas; (d) frequently flooded areas; and (e) geologically  
5 hazardous areas.

6       (~~(6)~~) (7) "Department" means the department of community, trade,  
7 and economic development.

8       (~~(7)~~) (8) "Development regulations" or "regulation" means the  
9 controls placed on development or land use activities by a county or  
10 city, including, but not limited to, zoning ordinances, critical areas  
11 ordinances, shoreline master programs, official controls, planned unit  
12 development ordinances, subdivision ordinances, and binding site plan  
13 ordinances together with any amendments thereto. A development  
14 regulation does not include a decision to approve a project permit  
15 application, as defined in RCW 36.70B.020, even though the decision may  
16 be expressed in a resolution or ordinance of the legislative body of  
17 the county or city.

18       (~~(8)~~) (9) "Farm plan" means a plan prepared by a conservation  
19 district in cooperation with a landowner or operator for the purpose of  
20 conserving, monitoring, or enhancing renewable natural resources. Farm  
21 plans include, but are not limited to, site-specific provisions  
22 pertaining to:

23       (a) Developing and prioritizing conservation objectives;

24       (b) Taking an inventory of soil, water, vegetation, livestock, and  
25 wildlife;

26       (c) Implementing conservation measures, including technical  
27 assistance provided by the district;

28       (d) Developing and implementing livestock nutrient management  
29 measures;

30       (e) Developing and implementing plans pursuant to business and  
31 financial objectives; and

32       (f) Recording, or records of, decisions.

33       (10) "Forest land" means land primarily devoted to growing trees  
34 for long-term commercial timber production on land that can be  
35 economically and practically managed for such production, including  
36 Christmas trees subject to the excise tax imposed under RCW 84.33.100  
37 through 84.33.140, and that has long-term commercial significance. In  
38 determining whether forest land is primarily devoted to growing trees

1 for long-term commercial timber production on land that can be  
2 economically and practically managed for such production, the following  
3 factors shall be considered: (a) The proximity of the land to urban,  
4 suburban, and rural settlements; (b) surrounding parcel size and the  
5 compatibility and intensity of adjacent and nearby land uses; (c) long-  
6 term local economic conditions that affect the ability to manage for  
7 timber production; and (d) the availability of public facilities and  
8 services conducive to conversion of forest land to other uses.

9 ~~((+9))~~ (11) "Geologically hazardous areas" means areas that  
10 because of their susceptibility to erosion, sliding, earthquake, or  
11 other geological events, are not suited to the siting of commercial,  
12 residential, or industrial development consistent with public health or  
13 safety concerns.

14 ~~((+10))~~ (12) "Long-term commercial significance" includes the  
15 growing capacity, productivity, and soil composition of the land for  
16 long-term commercial production, in consideration with the land's  
17 proximity to population areas, and the possibility of more intense  
18 uses of the land.

19 ~~((+11))~~ (13) "Mediation" means a process in which a mediator  
20 facilitates communication and negotiation between parties to assist  
21 them in reaching a voluntary agreement regarding their dispute.

22 (14) "Minerals" include gravel, sand, and valuable metallic  
23 substances.

24 ~~((+12))~~ (15) "Public facilities" include streets, roads, highways,  
25 sidewalks, street and road lighting systems, traffic signals, domestic  
26 water systems, storm and sanitary sewer systems, parks and recreational  
27 facilities, and schools.

28 ~~((+13))~~ (16) "Public services" include fire protection and  
29 suppression, law enforcement, public health, education, recreation,  
30 environmental protection, and other governmental services.

31 ~~((+14))~~ (17) "Recreational land" means land so designated under  
32 RCW 36.70A.1701 and that, immediately prior to this designation, was  
33 designated as agricultural land of long-term commercial significance  
34 under RCW 36.70A.170. Recreational land must have playing fields and  
35 supporting facilities existing before July 1, 2004, for sports played  
36 on grass playing fields.

37 ~~((+15))~~ (18) "Rural character" refers to the patterns of land use

1 and development established by a county in the rural element of its  
2 comprehensive plan:

3 (a) In which open space, the natural landscape, and vegetation  
4 predominate over the built environment;

5 (b) That foster traditional rural lifestyles, rural-based  
6 economies, and opportunities to both live and work in rural areas;

7 (c) That provide visual landscapes that are traditionally found in  
8 rural areas and communities;

9 (d) That are compatible with the use of the land by wildlife and  
10 for fish and wildlife habitat;

11 (e) That reduce the inappropriate conversion of undeveloped land  
12 into sprawling, low-density development;

13 (f) That generally do not require the extension of urban  
14 governmental services; and

15 (g) That are consistent with the protection of natural surface  
16 water flows and ground water and surface water recharge and discharge  
17 areas.

18 ~~((16))~~ (19) "Rural development" refers to development outside the  
19 urban growth area and outside agricultural, forest, and mineral  
20 resource lands designated pursuant to RCW 36.70A.170. Rural  
21 development can consist of a variety of uses and residential densities,  
22 including clustered residential development, at levels that are  
23 consistent with the preservation of rural character and the  
24 requirements of the rural element. Rural development does not refer to  
25 agriculture or forestry activities that may be conducted in rural  
26 areas.

27 ~~((17))~~ (20) "Rural governmental services" or "rural services"  
28 include those public services and public facilities historically and  
29 typically delivered at an intensity usually found in rural areas, and  
30 may include domestic water systems, fire and police protection  
31 services, transportation and public transit services, and other public  
32 utilities associated with rural development and normally not associated  
33 with urban areas. Rural services do not include storm or sanitary  
34 sewers, except as otherwise authorized by RCW 36.70A.110(4).

35 ~~((18))~~ (21) "Urban growth" refers to growth that makes intensive  
36 use of land for the location of buildings, structures, and impermeable  
37 surfaces to such a degree as to be incompatible with the primary use of  
38 land for the production of food, other agricultural products, or fiber,

1 or the extraction of mineral resources, rural uses, rural development,  
2 and natural resource lands designated pursuant to RCW 36.70A.170. A  
3 pattern of more intensive rural development, as provided in RCW  
4 36.70A.070(5)(d), is not urban growth. When allowed to spread over  
5 wide areas, urban growth typically requires urban governmental  
6 services. "Characterized by urban growth" refers to land having urban  
7 growth located on it, or to land located in relationship to an area  
8 with urban growth on it as to be appropriate for urban growth.

9 ~~((+19+))~~ (22) "Urban growth areas" means those areas designated by  
10 a county pursuant to RCW 36.70A.110.

11 ~~((+20+))~~ (23) "Urban governmental services" or "urban services"  
12 include those public services and public facilities at an intensity  
13 historically and typically provided in cities, specifically including  
14 storm and sanitary sewer systems, domestic water systems, street  
15 cleaning services, fire and police protection services, public transit  
16 services, and other public utilities associated with urban areas and  
17 normally not associated with rural areas.

18 ~~((+21+))~~ (24) "Wetland" or "wetlands" means areas that are  
19 inundated or saturated by surface water or ground water at a frequency  
20 and duration sufficient to support, and that under normal circumstances  
21 do support, a prevalence of vegetation typically adapted for life in  
22 saturated soil conditions. Wetlands generally include swamps, marshes,  
23 bogs, and similar areas. Wetlands do not include those artificial  
24 wetlands intentionally created from nonwetland sites, including, but  
25 not limited to, irrigation and drainage ditches, grass-lined swales,  
26 canals, detention facilities, wastewater treatment facilities, farm  
27 ponds, and landscape amenities, or those wetlands created after July 1,  
28 1990, that were unintentionally created as a result of the construction  
29 of a road, street, or highway. Wetlands may include those artificial  
30 wetlands intentionally created from nonwetland areas created to  
31 mitigate conversion of wetlands.

32 **Sec. 3.** RCW 36.70A.060 and 2005 c 423 s 3 are each amended to read  
33 as follows:

34 (1)(a) Except as provided in RCW 36.70A.1701, each county that is  
35 required or chooses to plan under RCW 36.70A.040, and each city within  
36 such county, shall adopt development regulations on or before September  
37 1, 1991, to assure the conservation of agricultural, forest, and

1 mineral resource lands designated under RCW 36.70A.170. Regulations  
2 adopted under this subsection may not prohibit uses legally existing on  
3 any parcel prior to their adoption and shall remain in effect until the  
4 county or city adopts development regulations pursuant to RCW  
5 36.70A.040. Such regulations shall assure that the use of lands  
6 adjacent to agricultural, forest, or mineral resource lands shall not  
7 interfere with the continued use, in the accustomed manner and in  
8 accordance with best management practices, of these designated lands  
9 for the production of food, agricultural products, or timber, or for  
10 the extraction of minerals.

11 (b) Counties and cities shall require that all plats, short plats,  
12 development permits, and building permits issued for development  
13 activities on, or within five hundred feet of, lands designated as  
14 agricultural lands, forest lands, or mineral resource lands, contain a  
15 notice that the subject property is within or near designated  
16 agricultural lands, forest lands, or mineral resource lands on which a  
17 variety of commercial activities may occur that are not compatible with  
18 residential development for certain periods of limited duration. The  
19 notice for mineral resource lands shall also inform that an application  
20 might be made for mining-related activities, including mining,  
21 extraction, washing, crushing, stockpiling, blasting, transporting, and  
22 recycling of minerals.

23 (2) Except as provided in section 5 of this act, each county and  
24 city shall adopt development regulations that protect critical areas  
25 that are required to be designated under RCW 36.70A.170. For counties  
26 and cities that are required or choose to plan under RCW 36.70A.040,  
27 such development regulations shall be adopted on or before September 1,  
28 1991. For the remainder of the counties and cities, such development  
29 regulations shall be adopted on or before March 1, 1992.

30 (3) Such counties and cities shall review these designations and  
31 development regulations when adopting their comprehensive plans under  
32 RCW 36.70A.040 and implementing development regulations under RCW  
33 36.70A.120 and may alter such designations and development regulations  
34 to insure consistency.

35 (4) Forest land and agricultural land located within urban growth  
36 areas shall not be designated by a county or city as forest land or  
37 agricultural land of long-term commercial significance under RCW

1 36.70A.170 unless the city or county has enacted a program authorizing  
2 transfer or purchase of development rights.

3 **Sec. 4.** RCW 36.70A.280 and 2003 c 332 s 2 are each amended to read  
4 as follows:

5 (1) A growth management hearings board shall hear and determine  
6 only those petitions alleging either:

7 (a) That a state agency, county, or city planning under this  
8 chapter is not in compliance with the requirements of this chapter,  
9 chapter 90.58 RCW as it relates to the adoption of shoreline master  
10 programs or amendments thereto, or chapter 43.21C RCW as it relates to  
11 plans, development regulations, or amendments, adopted under RCW  
12 36.70A.040 or chapter 90.58 RCW. A board, however, may only hear and  
13 determine a petition related to agricultural activities occurring on  
14 agricultural lands under this subsection if the parties have  
15 participated in mediation services provided by the department under RCW  
16 36.70A.190; or

17 (b) That the twenty-year growth management planning population  
18 projections adopted by the office of financial management pursuant to  
19 RCW 43.62.035 should be adjusted.

20 (2) Petitions alleging noncompliance with development regulations  
21 that protect critical areas as they relate to agricultural activities  
22 occurring on agricultural land are subject to section 5 of this act.

23 (3) A petition may be filed only by: (a) The state, or a county or  
24 city that plans under this chapter; (b) a person who has participated  
25 orally or in writing before the county or city regarding the matter on  
26 which a review is being requested; (c) a person who is certified by the  
27 governor within sixty days of filing the request with the board; or (d)  
28 a person qualified pursuant to RCW 34.05.530.

29 ~~((3))~~ (4) For purposes of this section "person" means any  
30 individual, partnership, corporation, association, state agency,  
31 governmental subdivision or unit thereof, or public or private  
32 organization or entity of any character.

33 ~~((4))~~ (5) To establish participation standing under subsection  
34 ~~((2))~~ (3)(b) of this section, a person must show that his or her  
35 participation before the county or city was reasonably related to the  
36 person's issue as presented to the board.



1       (~~(5)~~) (6) When considering a possible adjustment to a growth  
2 management planning population projection prepared by the office of  
3 financial management, a board shall consider the implications of any  
4 such adjustment to the population forecast for the entire state.

5       The rationale for any adjustment that is adopted by a board must be  
6 documented and filed with the office of financial management within ten  
7 working days after adoption.

8       If adjusted by a board, a county growth management planning  
9 population projection shall only be used for the planning purposes set  
10 forth in this chapter and shall be known as a "board adjusted  
11 population projection". None of these changes shall affect the  
12 official state and county population forecasts prepared by the office  
13 of financial management, which shall continue to be used for state  
14 budget and planning purposes.

15       NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW  
16 to read as follows:

17       (1) Development regulations adopted under RCW 36.70A.060(2) on or  
18 before January 1, 2007, may not prohibit or otherwise limit  
19 agricultural activities occurring on agricultural lands if:

20       (a) The agricultural activities occurring on agricultural land are  
21 consistent with a farm plan for the parcels on which the agricultural  
22 activities are occurring;

23       (b) The applicable farm plan has been filed with and approved by  
24 the county in which the agricultural land is located;

25       (c) The applicable farm plan provides a level of protection to  
26 critical areas that is at least equal to the level of protection the  
27 jurisdiction otherwise requires through its development regulations  
28 under RCW 36.70A.060(2) for critical areas located on agricultural  
29 lands; and

30       (d) The landowner or operator waives the exemption from public  
31 disclosure provided under RCW 42.56.270(17) for the applicable farm  
32 plan.

33       (2) With regard to a petition under RCW 36.70A.280 alleging  
34 noncompliance with development regulations that protect critical areas  
35 as they relate to agricultural activities occurring on agricultural  
36 lands:

1 (a) A board may not hear or determine such a petition if the  
2 agricultural activities occurring on agricultural lands are in  
3 compliance with the requirements in subsection (1) of this section;

4 (b) A board may only hear and determine such a petition:

5 (i) If the agricultural activities occurring on agricultural lands  
6 are not in compliance with the requirements in subsection (1) of this  
7 section; and

8 (ii) The parties have participated in mediation services provided  
9 by the department under RCW 36.70A.190.

10 (3) As used in this section, "agricultural land" means those  
11 specific land areas on which agricultural activities are conducted.

12 **Sec. 6.** RCW 36.70A.190 and 1991 sp.s. c 32 s 3 are each amended to  
13 read as follows:

14 (1) The department shall establish a program of technical and  
15 financial assistance and incentives to counties and cities to encourage  
16 and facilitate the adoption and implementation of comprehensive plans  
17 and development regulations throughout the state.

18 (2) The department shall develop a priority list and establish  
19 funding levels for planning and technical assistance grants both for  
20 counties and cities that plan under RCW 36.70A.040. Priority for  
21 assistance shall be based on a county's or city's population growth  
22 rates, commercial and industrial development rates, the existence and  
23 quality of a comprehensive plan and development regulations, and other  
24 relevant factors.

25 (3) The department shall develop and administer a grant program to  
26 provide direct financial assistance to counties and cities for the  
27 preparation of comprehensive plans under this chapter. The department  
28 may establish provisions for county and city matching funds to conduct  
29 activities under this subsection. Grants may be expended for any  
30 purpose directly related to the preparation of a county or city  
31 comprehensive plan as the county or city and the department may agree,  
32 including, without limitation, the conducting of surveys, inventories  
33 and other data gathering and management activities, the retention of  
34 planning consultants, contracts with regional councils for planning and  
35 related services, and other related purposes.

36 (4) The department shall establish a program of technical  
37 assistance:

1 (a) Utilizing department staff, the staff of other state agencies,  
2 and the technical resources of counties and cities to help in the  
3 development of comprehensive plans required under this chapter. The  
4 technical assistance may include, but not be limited to, model land use  
5 ordinances, regional education and training programs, and information  
6 for local and regional inventories; and

7 (b) Adopting by rule procedural criteria to assist counties and  
8 cities in adopting comprehensive plans and development regulations that  
9 meet the goals and requirements of this chapter. These criteria shall  
10 reflect regional and local variations and the diversity that exists  
11 among different counties and cities that plan under this chapter.

12 (5) The department shall provide mediation services to resolve  
13 disputes between: (a) Counties and cities regarding, among other  
14 things, coordination of regional issues and designation of urban growth  
15 areas; (b) counties, cities, and other persons regarding the  
16 application of development regulations that protect critical areas to  
17 agricultural activities occurring on agricultural lands; and (c)  
18 counties, cities, and other persons regarding alleged noncompliance  
19 with requirements of the statutes named in RCW 36.70A.280(1)(a) that  
20 relate to agricultural activities occurring on agricultural lands.

21 (6) The department shall provide planning grants to enhance citizen  
22 participation under RCW 36.70A.140.

23 NEW SECTION. Sec. 7. (1)(a) A joint legislative task force on  
24 development regulations and agricultural lands is established, with  
25 members as provided in this subsection.

26 (i) The president of the senate shall appoint two members from each  
27 of the two largest caucuses of the senate.

28 (ii) The speaker of the house of representatives shall appoint two  
29 members from each of the two largest caucuses of the house of  
30 representatives.

31 (b) The office of financial management and the department of  
32 community, trade, and economic development shall each maintain a  
33 liaison representative who shall be a nonvoting member. Each agency  
34 shall cooperate with the task force and provide such information as the  
35 cochairs may reasonably request.

36 (c) The task force shall choose its cochairs from among its  
37 members.

1 (2) Legislative members of the task force shall be reimbursed for  
2 travel expenses in accordance with RCW 44.04.120.

3 (3) The expenses of the task force shall be paid jointly by the  
4 senate and the house of representatives. Task force expenditures are  
5 subject to approval by the senate facilities and operations committee  
6 and the house of representatives executive rules committee, or their  
7 successor committees.

8 (4) Staff support shall be provided by the senate committee  
9 services and the house of representatives office of program research.

10 (5) The task force may contract with additional persons who have  
11 specific technical expertise if such expertise is necessary to carry  
12 out the work of the task force. Such a contract may be entered into  
13 only if an appropriation is specifically provided for this purpose.

14 (6)(a) Beginning July 1, 2007, the task force shall work with the  
15 Ruckelshaus center to design and carry out a process to identify issues  
16 that cause conflicts between agricultural activities occurring on  
17 agricultural land and development regulations that protect critical  
18 areas. Such issues may include, but are not limited to, an assessment  
19 of:

20 (i) The degree to which local critical areas ordinances limit or  
21 modify currently existing agricultural activities on agricultural land;

22 (ii) Issues that have driven the legal challenges that have come  
23 before the growth management hearings boards and the courts;

24 (iii) Performance-based methods for reaching environmental goals of  
25 critical areas ordinances while allowing agricultural activities on  
26 agricultural land to continue;

27 (iv) Technical assistance available to local governments in  
28 resolving land use disputes involving agricultural activities on  
29 agricultural land; and

30 (v) Recommendations for statutory changes to help resolve disputes.

31 (b) The task force and the center shall involve stakeholders from  
32 diverse perspectives in the process, including but not limited to  
33 representatives of counties, cities, the agriculture industry, the  
34 environmental community, Native American tribes, and state agencies.

35 (c) By January 1, 2008, the task force shall submit a progress  
36 report to the governor and the appropriate committees of the  
37 legislature identifying issues, initial recommendations, and a plan for  
38 the work remaining.

1           (d) By October 1, 2008, the task force and the center shall report  
2 to the governor and the appropriate committees of the legislature its  
3 findings and recommendations for resolving or reducing these conflicts,  
4 including statutory changes for consideration during the 2009  
5 legislative session.

6           (7) This section expires June 30, 2009.

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