

ESHB 1886 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/06/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The purpose of this act is to establish
4 the voluntary stewardship program as recommended in the report
5 submitted by the William D. Ruckelshaus Center to the legislature as
6 required by chapter 353, Laws of 2007 and chapter 203, Laws of 2010.

7 (2) It is the intent of this act to:

8 (a) Promote plans to protect and enhance critical areas within the
9 area where agricultural activities are conducted, while maintaining and
10 improving the long-term viability of agriculture in the state of
11 Washington and reducing the conversion of farmland to other uses;

12 (b) Focus and maximize voluntary incentive programs to encourage
13 good riparian and ecosystem stewardship as an alternative to historic
14 approaches used to protect critical areas;

15 (c) Rely upon RCW 36.70A.060 for the protection of critical areas
16 for those counties that do not choose to participate in this program;

17 (d) Leverage existing resources by relying upon existing work and
18 plans in counties and local watersheds, as well as existing state and
19 federal programs to the maximum extent practicable to achieve program
20 goals;

21 (e) Encourage and foster a spirit of cooperation and partnership
22 among county, tribal, environmental, and agricultural interests to
23 better assure the program success;

24 (f) Improve compliance with other laws designed to protect water
25 quality and fish habitat; and

26 (g) Rely upon voluntary stewardship practices as the primary method
27 of protecting critical areas and not require the cessation of
28 agricultural activities.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply to
2 sections 1 through 15 of this act and RCW 36.70A.130 and 36.70A.280
3 unless the context clearly requires otherwise.

4 (1) "Agricultural activities" means all agricultural uses and
5 practices as defined in RCW 90.58.065.

6 (2) "Commission" means the state conservation commission as defined
7 in RCW 89.08.030.

8 (3) "Director" means the executive director of the state
9 conservation commission.

10 (4) "Enhance" or "enhancement" means to improve the processes,
11 structure, and functions existing, as of the effective date of this
12 section, of ecosystems and habitats associated with critical areas.

13 (5) "Participating watershed" means a watershed identified by a
14 county under section 4(1) of this act to participate in the program.

15 (6) "Priority watershed" means a geographic area nominated by the
16 county and designated by the commission.

17 (7) "Program" means the voluntary stewardship program established
18 in section 3 of this act.

19 (8) "Protect" or "protecting" means to prevent the degradation of
20 functions and values existing as of the effective date of this section.

21 (9) "Receipt of funding" means the date a county takes legislative
22 action accepting any funds as required in section 5(1) of this act to
23 implement the program.

24 (10) "Statewide advisory committee" means the statewide advisory
25 committee created in section 11 of this act.

26 (11) "Technical panel" means the directors or director designees of
27 the following agencies: The department of fish and wildlife; the
28 department of agriculture; the department of ecology; and the
29 commission.

30 (12) "Watershed" means a water resource inventory area, salmon
31 recovery planning area, or a subbasin as determined by a county.

32 (13) "Watershed group" means an entity designated by a county under
33 the provisions of section 5 of this act.

34 (14) "Work plan" means a watershed work plan developed under the
35 provisions of section 6 of this act.

36 NEW SECTION. **Sec. 3.** (1) The voluntary stewardship program is
37 established to be administered by the commission. The program shall be

1 designed to protect and enhance critical areas on lands used for
2 agricultural activities through voluntary actions by agricultural
3 operators.

4 (2) In administering the program, the commission must:

5 (a) Establish policies and procedures for implementing the program;

6 (b) Administer funding for counties to implement the program
7 including, but not limited to, funding to develop strategies and
8 incentive programs and to establish local guidelines for watershed
9 stewardship programs;

10 (c) Administer the program's technical assistance funds and
11 coordinate among state agencies and other entities for the
12 implementation of the program;

13 (d) Establish a technical panel;

14 (e) In conjunction with the technical panel, review and evaluate:

15 (i) Work plans submitted for approval under section 6(2)(a) of this
16 act; and (ii) reports submitted under section 6(2)(b) of this act;

17 (f) Review and evaluate the program's success and effectiveness and
18 make appropriate changes to policies and procedures for implementing
19 the program, in consultation with the statewide advisory committee and
20 other affected agencies;

21 (g) Designate priority watersheds based upon the recommendation of
22 the statewide advisory committee. The commission and the statewide
23 advisory committee may only consider watersheds nominated by counties
24 under section 4 of this act. When designating priority watersheds, the
25 commission and the statewide advisory committee shall consider the
26 statewide significance of the criteria listed in section 4(3) of this
27 act;

28 (h) Provide administrative support for the program's statewide
29 advisory committee in its work. The administrative support must be in
30 collaboration with the department of ecology and other agencies
31 involved in the program;

32 (i) Maintain a web site about the program that includes times,
33 locations, and agenda information for meetings of the statewide
34 advisory committee;

35 (j) Report to the legislature on the general status of program
36 implementation by December 1, 2013, and December 1, 2015;

37 (k) In conjunction with the statewide advisory committee, conduct

1 a review of the program beginning in 2017 and every five years
2 thereafter, and report its findings to the legislature by December 1st;
3 and

4 (1) Report to the appropriate committees of the legislature in the
5 format provided in RCW 43.01.036.

6 (3) The department shall assist counties participating in the
7 program to develop plans and development regulations under section 9(1)
8 of this act.

9 (4) The commission, department, department of agriculture,
10 department of fish and wildlife, department of ecology, and other state
11 agencies as directed by the governor shall:

12 (a) Cooperate and collaborate to implement the program; and

13 (b) Develop materials to assist local watershed groups in
14 development of work plans.

15 (5) State agencies conducting new monitoring to implement the
16 program in a watershed must focus on the goals and benchmarks of the
17 work plan.

18 NEW SECTION. **Sec. 4.** (1)(a) As an alternative to protecting
19 critical areas in areas used for agricultural activities through
20 development regulations adopted under RCW 36.70A.060, the legislative
21 authority of a county may elect to protect such critical areas through
22 the program.

23 (b) In order to participate in the program, within six months after
24 the effective date of this section, the legislative authority of a
25 county must adopt an ordinance or resolution that:

26 (i) Elects to have the county participate in the program;

27 (ii) Identifies the watersheds that will participate in the
28 program; and

29 (iii) Based on the criteria in subsection (4) of this section,
30 nominates watersheds for consideration by the commission as state
31 priority watersheds.

32 (2) Before adopting the ordinance or resolution under subsection
33 (1) of this section, the county must (a) confer with tribes, and
34 environmental and agricultural interests; and (b) provide notice
35 following the public participation and notice provisions of RCW
36 36.70A.035 to property owners and other affected and interested

1 individuals, tribes, government agencies, businesses, school districts,
2 and organizations.

3 (3) In identifying watersheds to participate in the program, a
4 county must consider:

5 (a) The role of farming within the watershed, including the number
6 and acreage of farms, the economic value of crops and livestock, and
7 the risk of the conversion of farmland;

8 (b) The overall likelihood of completing a successful program in
9 the watershed; and

10 (c) Existing watershed programs, including those of other
11 jurisdictions in which the watershed has territory.

12 (4) In identifying priority watersheds, a county must consider the
13 following:

14 (a) The role of farming within the watershed, including the number
15 and acreage of farms, the economic value of crops and livestock, and
16 the risk of the conversion of farmland;

17 (b) The importance of salmonid resources in the watershed;

18 (c) An evaluation of the biological diversity of wildlife species
19 and their habitats in the geographic region including their
20 significance and vulnerability;

21 (d) The presence of leadership within the watershed that is
22 representative and inclusive of the interests in the watershed;

23 (e) Integration of regional watershed strategies, including the
24 availability of a data and scientific review structure related to all
25 types of critical areas;

26 (f) The presence of a local watershed group that is willing and
27 capable of overseeing a successful program, and that has the
28 operational structures to administer the program effectively, including
29 professional technical assistance staff, and monitoring and adaptive
30 management structures; and

31 (g) The overall likelihood of completing a successful program in
32 the watershed.

33 (5) Except as otherwise provided in subsection (9) of this section,
34 beginning with the effective date of the ordinance or resolution
35 adopted under subsection (1) of this section, the program applies to
36 all unincorporated property upon which agricultural activities occur
37 within a participating watershed.

1 (6)(a) Except as otherwise provided in (b) of this subsection,
2 within two years after the effective date of this section, a county
3 must review and, if necessary, revise development regulations adopted
4 under this chapter to protect critical areas as they specifically apply
5 to agricultural activities:

6 (i) If the county has not elected to participate in the program,
7 for all unincorporated areas; or

8 (ii) If the county has elected to participate in the program, for
9 any watershed not participating in the program.

10 (b) A county that between July 1, 2003, and June 30, 2007, in
11 accordance with RCW 36.70A.130 completed the review of its development
12 regulations as required by RCW 36.70A.130 to protect critical areas as
13 they specifically apply to agricultural activities is not required to
14 review and revise its development regulations until required by RCW
15 36.70A.130.

16 (c) After the review and amendment required under (a) of this
17 subsection, RCW 36.70A.130 applies to the subsequent review and
18 amendment of development regulations adopted under this chapter to
19 protect critical areas as they specifically apply to agricultural
20 activities.

21 (7)(a) A county that has made the election under subsection (1) of
22 this section may withdraw a participating watershed from the program by
23 adopting an ordinance or resolution withdrawing the watershed from the
24 program. A county may withdraw a watershed from the program at the end
25 of three years, five years, or eight years after receipt of funding, or
26 any time after ten years from receipt of funding.

27 (b) Within eighteen months after withdrawing a participating
28 watershed from the program, the county must review and, if necessary,
29 revise its development regulations that protect critical areas in that
30 watershed as they specifically apply to agricultural activities. The
31 development regulations must protect the critical area functions and
32 values as they existed on the effective date of this section. RCW
33 36.70A.130 applies to the subsequent review and amendment of
34 development regulations adopted under this chapter to protect critical
35 areas as they specifically apply to agricultural activities.

36 (8) A county that has made the election under subsection (1) of
37 this section is eligible for a share of the funding made available to
38 implement the program, subject to funding availability from the state.

1 (9) A county that has made the election under subsection (1) of
2 this section is not required to implement the program in a
3 participating watershed until adequate funding for the program in that
4 watershed is provided to the county.

5 NEW SECTION. **Sec. 5.** (1) When the commission makes funds
6 available to a county that has made the election provided in section
7 4(1) of this act, the county must within sixty days:

8 (a) Acknowledge the receipt of funds; and

9 (b) Designate a watershed group and an entity to administer funds
10 for each watershed for which funding has been provided.

11 (2) A county must confer with tribes and interested stakeholders
12 before designating or establishing a watershed group.

13 (3) The watershed group must include broad representation of key
14 watershed stakeholders and, at a minimum, representatives of
15 agricultural and environmental groups and tribes that agree to
16 participate. The county should encourage existing lead entities,
17 watershed planning units, or other integrating organizations to serve
18 as the watershed group.

19 (4) The county may designate itself, a tribe, or another entity to
20 coordinate the local watershed group.

21 NEW SECTION. **Sec. 6.** (1) A watershed group designated by a county
22 under section 5 of this act must develop a work plan to protect
23 critical areas while maintaining the viability of agriculture in the
24 watershed. The work plan must include goals and benchmarks for the
25 protection and enhancement of critical areas. In developing and
26 implementing the work plan, the watershed group must:

27 (a) Review and incorporate applicable water quality, watershed
28 management, farmland protection, and species recovery data and plans;

29 (b) Seek input from tribes, agencies, and stakeholders;

30 (c) Develop goals for participation by agricultural operators
31 conducting commercial and noncommercial agricultural activities in the
32 watershed necessary to meet the protection and enhancement benchmarks
33 of the work plan;

34 (d) Ensure outreach and technical assistance is provided to
35 agricultural operators in the watershed;

1 (e) Create measurable benchmarks that, within ten years after the
2 receipt of funding, are designed to result in (i) the protection of
3 critical area functions and values and (ii) the enhancement of critical
4 area functions and values through voluntary, incentive-based measures;

5 (f) Designate the entity or entities that will provide technical
6 assistance;

7 (g) Work with the entity providing technical assistance to ensure
8 that individual stewardship plans contribute to the goals and
9 benchmarks of the work plan;

10 (h) Incorporate into the work plan any existing development
11 regulations relied upon to achieve the goals and benchmarks for
12 protection;

13 (i) Establish baseline monitoring for: (i) Participation
14 activities and implementation of the voluntary stewardship plans and
15 projects; (ii) stewardship activities; and (iii) the effects on
16 critical areas and agriculture relevant to the protection and
17 enhancement benchmarks developed for the watershed;

18 (j) Conduct periodic evaluations, institute adaptive management,
19 and provide a written report of the status of plans and accomplishments
20 to the county and to the commission within sixty days after the end of
21 each biennium;

22 (k) Assist state agencies in their monitoring programs; and

23 (l) Satisfy any other reporting requirements of the program.

24 (2)(a) The watershed group shall develop and submit the work plan
25 to the director for approval as provided in section 7 of this act.

26 (b)(i) Not later than five years after the receipt of funding for
27 a participating watershed, the watershed group must report to the
28 director and the county on whether it has met the work plan's
29 protection and enhancement goals and benchmarks.

30 (ii) If the watershed group determines the protection goals and
31 benchmarks have been met, and the director concurs under section 8 of
32 this act, the watershed group shall continue to implement the work
33 plan.

34 (iii) If the watershed group determines the protection goals and
35 benchmarks have not been met, it must propose and submit to the
36 director an adaptive management plan to achieve the goals and
37 benchmarks that were not met. If the director does not approve the

1 adaptive management plan under section 8 of this act, the watershed is
2 subject to section 9 of this act.

3 (iv) If the watershed group determines the enhancement goals and
4 benchmarks have not been met, the watershed group must determine what
5 additional voluntary actions are needed to meet the benchmarks,
6 identify the funding necessary to implement these actions, and
7 implement these actions when funding is provided.

8 (c)(i) Not later than ten years after receipt of funding for a
9 participating watershed, and every five years thereafter, the watershed
10 group must report to the director and the county on whether it has met
11 the protection and enhancement goals and benchmarks of the work plan.

12 (ii) If the watershed group determines the protection goals and
13 benchmarks have been met, and the director concurs under section 8 of
14 this act, the watershed group shall continue to implement the work
15 plan.

16 (iii) If the watershed group determines the protection goals and
17 benchmarks have not been met, the watershed is subject to section 9 of
18 this act.

19 (iv) If the watershed group determines the enhancement goals and
20 benchmarks have not been met, the watershed group must determine what
21 additional voluntary actions are needed to meet the benchmarks,
22 identify the funding necessary to implement these actions, and
23 implement these actions when funding is provided.

24 (3) Following approval of a work plan, a county or watershed group
25 may request a state or federal agency to focus existing enforcement
26 authority in that participating watershed, if the action will
27 facilitate progress toward achieving work plan protection goals and
28 benchmarks.

29 (4) The commission may provide priority funding to any watershed
30 designated under the provisions of section 3(2)(g) of this act. The
31 director, in consultation with the statewide advisory committee, shall
32 work with the watershed group to develop an accelerated implementation
33 schedule for watersheds that receive priority funding.

34 (5) Commercial and noncommercial agricultural operators
35 participating in the program are eligible to receive funding and
36 assistance under watershed programs.

1 NEW SECTION. **Sec. 7.** (1) Upon receipt of a work plan submitted to
2 the director under section 6(2)(a) of this act, the director must
3 submit the work plan to the technical panel for review.

4 (2) The technical panel shall review the work plan and report to
5 the director within forty-five days after the director receives the
6 work plan. The technical panel shall assess whether at the end of ten
7 years after receipt of funding, the work plan, in conjunction with
8 other existing plans and regulations, will protect critical areas while
9 maintaining and enhancing the viability of agriculture in the
10 watershed.

11 (3)(a) If the technical panel determines the proposed work plan
12 will protect critical areas while maintaining and enhancing the
13 viability of agriculture in the watershed:

14 (i) It must recommend approval of the work plan; and

15 (ii) The director must approve the work plan.

16 (b) If the technical panel determines the proposed work plan will
17 not protect critical areas while maintaining and enhancing the
18 viability of agriculture in the watershed:

19 (i) It must identify the reasons for its determination; and

20 (ii) The director must advise the watershed group of the reasons
21 for disapproval.

22 (4) The watershed group may modify and resubmit its work plan for
23 review and approval consistent with this section.

24 (5) If the director does not approve a work plan submitted under
25 this section within two years and nine months after receipt of funding,
26 the director shall submit the work plan to the statewide advisory
27 committee for resolution. If the statewide advisory committee
28 recommends approval, the director must approve the work plan.

29 (6) If the director does not approve a work plan for a watershed
30 within three years after receipt of funding, the provisions of section
31 9(2) of this act apply to the watershed.

32 NEW SECTION. **Sec. 8.** (1) Upon receipt of a report by a watershed
33 group under section 6(2)(b) of this act that the work plan goals and
34 benchmarks have been met, the director must consult with the statewide
35 advisory committee. If the director concurs with the watershed group
36 report, the watershed group shall continue to implement the work plan.

1 If the director does not concur with the watershed group report, the
2 director shall consult with the statewide advisory committee following
3 the procedures in subsection (2) of this section.

4 (2) If either the director, following receipt of a report under
5 subsection (1) of this section, or the watershed group, in the report
6 submitted to the director under section 6(2)(b) of this act, concludes
7 that the work plan goals and benchmarks for protection have not been
8 met, the director must consult with the statewide advisory committee
9 for a recommendation on how to proceed. If the director, acting upon
10 recommendation from the statewide advisory committee, determines that
11 the watershed is likely to meet the goals and benchmarks with an
12 additional six months of planning and implementation time, the director
13 must grant an extension. If the director, acting upon a recommendation
14 from the statewide advisory committee, determines that the watershed is
15 unlikely to meet the goals and benchmarks within six months, the
16 watershed is subject to section 9 of this act.

17 (3) A watershed that fails to meet its goals and benchmarks for
18 protection within the six-month time extension under subsection (2) of
19 this section is subject to section 9 of this act.

20 NEW SECTION. **Sec. 9.** (1) Within eighteen months after one of the
21 events in subsection (2) of this section, a county must:

22 (a) Develop, adopt, and implement a watershed work plan approved by
23 the department that protects critical areas in areas used for
24 agricultural activities while maintaining the viability of agriculture
25 in the watershed. The department shall consult with the departments of
26 agriculture, ecology, and fish and wildlife and the commission, and
27 other relevant state agencies before approving or disapproving the
28 proposed work plan. The appeal of the department's decision under this
29 subsection is subject to appeal under RCW 36.70A.280;

30 (b) Adopt development regulations previously adopted under this
31 chapter by another local government for the purpose of protecting
32 critical areas in areas used for agricultural activities. Regulations
33 adopted under this subsection (1)(b) must be from a region with similar
34 agricultural activities, geography, and geology and must: (i) Be from
35 Clallam, Clark, King, or Whatcom counties; or (ii) have been upheld by
36 a growth management hearings board or court after July 1, 2011, where

1 the board or court determined that the provisions adequately protected
2 critical areas functions and values in areas used for agricultural
3 activities;

4 (c) Adopt development regulations certified by the department as
5 protective of critical areas in areas used for agricultural activities
6 as required by this chapter. The county may submit existing or amended
7 regulations for certification. The department must make its decision
8 on whether to certify the development regulations within ninety days
9 after the county submits its request. If the department denies the
10 certification, the county shall take an action under (a), (b), or (d)
11 of this subsection. The department must consult with the departments
12 of agriculture, ecology, and fish and wildlife and the commission
13 before making a certification under this section. The appeal of the
14 department's decision under this subsection (1)(c) is subject to appeal
15 under RCW 36.70A.280; or

16 (d) Review and, if necessary, revise development regulations
17 adopted under this chapter to protect critical areas as they relate to
18 agricultural activities.

19 (2) A participating watershed is subject to this section if:

20 (a) The work plan is not approved by the director as provided in
21 section 7 of this act;

22 (b) The work plan's goals and benchmarks for protection have not
23 been met as provided in section 6 of this act;

24 (c) The commission has determined under section 10 of this act that
25 the county, department, commission, or departments of agriculture,
26 ecology, or fish and wildlife have not received adequate funding to
27 implement a program in the watershed; or

28 (d) The commission has determined under section 10 of this act that
29 the watershed has not received adequate funding to implement the
30 program.

31 (3) The department shall adopt rules to implement subsection (1)(a)
32 and (c) of this section.

33 NEW SECTION. **Sec. 10.** (1) By July 31, 2015, the commission must:

34 (a) In consultation with each county that has elected under section
35 4 of this act to participate in the program, determine which
36 participating watersheds received adequate funding to establish and
37 implement the program in a participating watershed by July 1, 2015; and

1 (b) In consultation with other state agencies, for each
2 participating watershed determine whether state agencies required to
3 take action under the provisions of sections 1 through 15 of this act
4 have received adequate funding to support the program by July 1, 2015.

5 (2) By July 31, 2017, and every two years thereafter, in
6 consultation with each county that has elected under section 4 of this
7 act to participate in the program and other state agencies, the
8 commission shall determine for each participating watershed whether
9 adequate funding to implement the program was provided during the
10 preceding biennium as provided in subsection (1) of this section.

11 (3) If the commission determines under subsection (1) or (2) of
12 this section that a participating watershed has not received adequate
13 funding, the watershed is subject to the provisions of section 9 of
14 this act.

15 (4) In consultation with the statewide advisory committee and other
16 state agencies, not later than August 31, 2015, and each August 31st
17 every two years thereafter, the commission shall report to the
18 legislature and each county that has elected under section 4 of this
19 act to participate in the program on the participating watersheds that
20 have received adequate funding to establish and implement the program.

21 NEW SECTION. **Sec. 11.** (1)(a) From the nominations made under (b)
22 of this subsection, the commission shall appoint a statewide advisory
23 committee, consisting of: Two persons representing county government,
24 two persons representing agricultural organizations, and two persons
25 representing environmental organizations. The commission, in
26 conjunction with the governor's office, shall also invite participation
27 by two representatives of tribal governments.

28 (b) Organizations representing county, agricultural, and
29 environmental organizations shall submit nominations of their
30 representatives to the commission within ninety days of the effective
31 date of this section. Members of the statewide advisory committee
32 shall serve two-year terms except that for the first year, one
33 representative from each of the sectors shall be appointed to the
34 statewide advisory committee for a term of one year. Members may be
35 reappointed by the commission for additional two-year terms and
36 replacement members shall be appointed in accordance with the process

1 for selection of the initial members of the statewide advisory
2 committee.

3 (c) Upon notification of the commission by an appointed member, the
4 appointed member may designate a person to serve as an alternate.

5 (d) The executive director of the commission shall serve as a
6 nonvoting chair of the statewide advisory committee.

7 (e) Members of the statewide advisory committee shall serve without
8 compensation and, unless serving as a state officer or employee, are
9 not eligible for reimbursement for subsistence, lodging, and travel
10 expenses under RCW 43.03.050 and 43.03.060.

11 (2) The role of the statewide advisory committee is to advise the
12 commission and other agencies involved in development and operation of
13 the program.

14 NEW SECTION. **Sec. 12.** (1) Agricultural operators implementing an
15 individual stewardship plan consistent with a work plan are presumed to
16 be working toward the protection and enhancement of critical areas.

17 (2) If the watershed group determines that additional or different
18 practices are needed to achieve the work plan's goals and benchmarks,
19 the agricultural operator may not be required to implement those
20 practices but may choose to implement the revised practices on a
21 voluntary basis and is eligible for funding to revise the practices.

22 NEW SECTION. **Sec. 13.** In developing stewardship practices to
23 implement the work plan, to the maximum extent practical the watershed
24 group should:

25 (1) Avoid management practices that may have unintended adverse
26 consequences for other habitats, species, and critical areas functions
27 and values; and

28 (2) Administer the program in a manner that allows participants to
29 be eligible for public or private environmental protection and
30 enhancement incentives while protecting and enhancing critical area
31 functions and values.

32 NEW SECTION. **Sec. 14.** An agricultural operator participating in
33 the program may withdraw from the program and is not required to
34 continue voluntary measures after the expiration of an applicable

1 contract. The watershed group must account for any loss of protection
2 resulting from withdrawals when establishing goals and benchmarks for
3 protection and a work plan under section 6 of this act.

4 NEW SECTION. **Sec. 15.** Nothing in sections 1 through 14 of this
5 act may be construed to:

6 (1) Interfere with or supplant the ability of any agricultural
7 operator to work cooperatively with a conservation district or
8 participate in state or federal conservation programs;

9 (2) Require an agricultural operator to discontinue agricultural
10 activities legally existing before the effective date of this section;

11 (3) Prohibit the voluntary sale or leasing of land for conservation
12 purposes, either in fee or as an easement;

13 (4) Grant counties or state agencies additional authority to
14 regulate critical areas on lands used for agricultural activities; and

15 (5) Limit the authority of a state agency, local government, or
16 landowner to carry out its obligations under any other federal, state,
17 or local law.

18 **Sec. 16.** RCW 36.70A.130 and 2010 c 216 s 1 and 2010 c 211 s 2 are
19 each reenacted and amended to read as follows:

20 (1)(a) Each comprehensive land use plan and development regulations
21 shall be subject to continuing review and evaluation by the county or
22 city that adopted them. Except as otherwise provided, a county or city
23 shall take legislative action to review and, if needed, revise its
24 comprehensive land use plan and development regulations to ensure the
25 plan and regulations comply with the requirements of this chapter
26 according to the deadlines in subsections (4) and (5) of this section.

27 (b) Except as otherwise provided, a county or city not planning
28 under RCW 36.70A.040 shall take action to review and, if needed, revise
29 its policies and development regulations regarding critical areas and
30 natural resource lands adopted according to this chapter to ensure
31 these policies and regulations comply with the requirements of this
32 chapter according to the deadlines in subsections (4) and (5) of this
33 section. Legislative action means the adoption of a resolution or
34 ordinance following notice and a public hearing indicating at a
35 minimum, a finding that a review and evaluation has occurred and

1 identifying the revisions made, or that a revision was not needed and
2 the reasons therefor.

3 (c) The review and evaluation required by this subsection may be
4 combined with the review required by subsection (3) of this section.
5 The review and evaluation required by this subsection shall include,
6 but is not limited to, consideration of critical area ordinances and,
7 if planning under RCW 36.70A.040, an analysis of the population
8 allocated to a city or county from the most recent ten-year population
9 forecast by the office of financial management.

10 (d) Any amendment of or revision to a comprehensive land use plan
11 shall conform to this chapter. Any amendment of or revision to
12 development regulations shall be consistent with and implement the
13 comprehensive plan.

14 (2)(a) Each county and city shall establish and broadly disseminate
15 to the public a public participation program consistent with RCW
16 36.70A.035 and 36.70A.140 that identifies procedures and schedules
17 whereby updates, proposed amendments, or revisions of the comprehensive
18 plan are considered by the governing body of the county or city no more
19 frequently than once every year. "Updates" means to review and revise,
20 if needed, according to subsection (1) of this section, and the
21 deadlines in subsections (4) and (5) of this section or in accordance
22 with the provisions of subsection (6) of this section. Amendments may
23 be considered more frequently than once per year under the following
24 circumstances:

25 (i) The initial adoption of a subarea plan. Subarea plans adopted
26 under this subsection (2)(a)(i) must clarify, supplement, or implement
27 jurisdiction-wide comprehensive plan policies, and may only be adopted
28 if the cumulative impacts of the proposed plan are addressed by
29 appropriate environmental review under chapter 43.21C RCW;

30 (ii) The development of an initial subarea plan for economic
31 development located outside of the one hundred year floodplain in a
32 county that has completed a state-funded pilot project that is based on
33 watershed characterization and local habitat assessment;

34 (iii) The adoption or amendment of a shoreline master program under
35 the procedures set forth in chapter 90.58 RCW;

36 (iv) The amendment of the capital facilities element of a
37 comprehensive plan that occurs concurrently with the adoption or
38 amendment of a county or city budget; or

1 (v) The adoption of comprehensive plan amendments necessary to
2 enact a planned action under RCW 43.21C.031(2), provided that
3 amendments are considered in accordance with the public participation
4 program established by the county or city under this subsection (2)(a)
5 and all persons who have requested notice of a comprehensive plan
6 update are given notice of the amendments and an opportunity to
7 comment.

8 (b) Except as otherwise provided in (a) of this subsection, all
9 proposals shall be considered by the governing body concurrently so the
10 cumulative effect of the various proposals can be ascertained.
11 However, after appropriate public participation a county or city may
12 adopt amendments or revisions to its comprehensive plan that conform
13 with this chapter whenever an emergency exists or to resolve an appeal
14 of a comprehensive plan filed with the growth management hearings board
15 or with the court.

16 (3)(a) Each county that designates urban growth areas under RCW
17 36.70A.110 shall review, at least every ten years, its designated urban
18 growth area or areas, and the densities permitted within both the
19 incorporated and unincorporated portions of each urban growth area. In
20 conjunction with this review by the county, each city located within an
21 urban growth area shall review the densities permitted within its
22 boundaries, and the extent to which the urban growth occurring within
23 the county has located within each city and the unincorporated portions
24 of the urban growth areas.

25 (b) The county comprehensive plan designating urban growth areas,
26 and the densities permitted in the urban growth areas by the
27 comprehensive plans of the county and each city located within the
28 urban growth areas, shall be revised to accommodate the urban growth
29 projected to occur in the county for the succeeding twenty-year period.
30 The review required by this subsection may be combined with the review
31 and evaluation required by RCW 36.70A.215.

32 (4) Except as provided in subsection (6) of this section, counties
33 and cities shall take action to review and, if needed, revise their
34 comprehensive plans and development regulations to ensure the plan and
35 regulations comply with the requirements of this chapter as follows:

36 (a) On or before December 1, 2004, for Clallam, Clark, Jefferson,
37 King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the
38 cities within those counties;

1 (b) On or before December 1, 2005, for Cowlitz, Island, Lewis,
2 Mason, San Juan, Skagit, and Skamania counties and the cities within
3 those counties;

4 (c) On or before December 1, 2006, for Benton, Chelan, Douglas,
5 Grant, Kittitas, Spokane, and Yakima counties and the cities within
6 those counties; and

7 (d) On or before December 1, 2007, for Adams, Asotin, Columbia,
8 Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan,
9 Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman
10 counties and the cities within those counties.

11 (5) Except as otherwise provided in subsections (6) and (8) of this
12 section, following the review of comprehensive plans and development
13 regulations required by subsection (4) of this section, counties and
14 cities shall take action to review and, if needed, revise their
15 comprehensive plans and development regulations to ensure the plan and
16 regulations comply with the requirements of this chapter as follows:

17 (a) On or before December 1, 2014, and every seven years
18 thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce,
19 Snohomish, Thurston, and Whatcom counties and the cities within those
20 counties;

21 (b) On or before December 1, 2015, and every seven years
22 thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and
23 Skamania counties and the cities within those counties;

24 (c) On or before December 1, 2016, and every seven years
25 thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and
26 Yakima counties and the cities within those counties; and

27 (d) On or before December 1, 2017, and every seven years
28 thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield,
29 Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille,
30 Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities
31 within those counties.

32 (6)(a) Nothing in this section precludes a county or city from
33 conducting the review and evaluation required by this section before
34 the deadlines established in subsections (4) and (5) of this section.
35 Counties and cities may begin this process early and may be eligible
36 for grants from the department, subject to available funding, if they
37 elect to do so.

1 (b) A county that is subject to a deadline established in
2 subsection (4)(b) through (d) of this section and meets the following
3 criteria may comply with the requirements of this section at any time
4 within the thirty-six months following the deadline established in
5 subsection (4) of this section: The county has a population of less
6 than fifty thousand and has had its population increase by no more than
7 seventeen percent in the ten years preceding the deadline established
8 in subsection (4) of this section as of that date.

9 (c) A city that is subject to a deadline established in subsection
10 (4)(b) through (d) of this section and meets the following criteria may
11 comply with the requirements of this section at any time within the
12 thirty-six months following the deadline established in subsection (4)
13 of this section: The city has a population of no more than five
14 thousand and has had its population increase by the greater of either
15 no more than one hundred persons or no more than seventeen percent in
16 the ten years preceding the deadline established in subsection (4) of
17 this section as of that date.

18 (d) A county or city that is subject to a deadline established in
19 subsection (4)(d) of this section and that meets the criteria
20 established in subsection (6)(b) or (c) of this section may comply with
21 the requirements of subsection (4)(d) of this section at any time
22 within the thirty-six months after the extension provided in subsection
23 (6)(b) or (c) of this section.

24 (e) State agencies are encouraged to provide technical assistance
25 to the counties and cities in the review of critical area ordinances,
26 comprehensive plans, and development regulations.

27 (7)(a) The requirements imposed on counties and cities under this
28 section shall be considered "requirements of this chapter" under the
29 terms of RCW 36.70A.040(1). Only those counties and cities that meet
30 the following criteria may receive grants, loans, pledges, or financial
31 guarantees under chapter 43.155 or 70.146 RCW:

32 (i) Complying with the deadlines in this section;

33 (ii) Demonstrating substantial progress towards compliance with the
34 schedules in this section for development regulations that protect
35 critical areas; or

36 (iii) Complying with the extension provisions of subsection (6)(b),
37 (c), or (d) of this section.

1 (b) A county or city that is fewer than twelve months out of
2 compliance with the schedules in this section for development
3 regulations that protect critical areas is making substantial progress
4 towards compliance. Only those counties and cities in compliance with
5 the schedules in this section may receive preference for grants or
6 loans subject to the provisions of RCW 43.17.250.

7 (8)(a) Except as otherwise provided in (c) of this subsection, if
8 a participating watershed is achieving benchmarks and goals for the
9 protection of critical areas functions and values, the county is not
10 required to update development regulations to protect critical areas as
11 they specifically apply to agricultural activities in that watershed.

12 (b) A county that has made the election under section 4(1) of this
13 act may only adopt or amend development regulations to protect critical
14 areas as they specifically apply to agricultural activities in a
15 participating watershed if:

16 (i) A work plan has been approved for that watershed in accordance
17 with section 7 of this act;

18 (ii) The local watershed group for that watershed has requested the
19 county to adopt or amend development regulations as part of a work plan
20 developed under section 6 of this act;

21 (iii) The adoption or amendment of the development regulations is
22 necessary to enable the county to respond to an order of the growth
23 management hearings board or court;

24 (iv) The adoption or amendment of development regulations is
25 necessary to address a threat to human health or safety; or

26 (v) Three or more years have elapsed since the receipt of funding.

27 (c) Beginning ten years from the date of receipt of funding, a
28 county that has made the election under section 4(1) of this act must
29 review and, if necessary, revise development regulations to protect
30 critical areas as they specifically apply to agricultural activities in
31 a participating watershed in accordance with the review and revision
32 requirements and timeline in subsection (5) of this section. This
33 subsection (8)(c) does not apply to a participating watershed that has
34 determined under section 6(2)(c)(ii) of this act that the watershed's
35 goals and benchmarks for protection have been met.

36 **Sec. 17.** RCW 36.70A.280 and 2010 c 211 s 7 are each amended to
37 read as follows:

1 (1) The growth management hearings board shall hear and determine
2 only those petitions alleging either:

3 (a) That, except as provided otherwise by this subsection, a state
4 agency, county, or city planning under this chapter is not in
5 compliance with the requirements of this chapter, chapter 90.58 RCW as
6 it relates to the adoption of shoreline master programs or amendments
7 thereto, or chapter 43.21C RCW as it relates to plans, development
8 regulations, or amendments, adopted under RCW 36.70A.040 or chapter
9 90.58 RCW. Nothing in this subsection authorizes the board to hear
10 petitions alleging noncompliance with RCW 36.70A.5801; ((or))

11 (b) That the twenty-year growth management planning population
12 projections adopted by the office of financial management pursuant to
13 RCW 43.62.035 should be adjusted;

14 (c) That the approval of a work plan adopted under section 9(1)(a)
15 of this act is not in compliance with the requirements of the program
16 established under section 4 of this act;

17 (d) That regulations adopted under section 9(1)(b) of this act are
18 not regionally applicable and cannot be adopted, wholly or partially,
19 by another jurisdiction; or

20 (e) That a department certification under section 9(1)(c) of this
21 act is erroneous.

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

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

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

36 (5) When considering a possible adjustment to a growth management
37 planning population projection prepared by the office of financial

1 management, the board shall consider the implications of any such
2 adjustment to the population forecast for the entire state.

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

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

13 NEW SECTION. **Sec. 18.** Sections 1 through 15 of this act are each
14 added to chapter 36.70A RCW under the subchapter heading "voluntary
15 stewardship program."

16 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.21C
17 RCW to read as follows:

18 (1) Decisions made under section 6 of this act pertaining to work
19 plans, as defined in section 2 of this act, are not subject to the
20 requirements of RCW 43.21C.030(2)(c).

21 (2) Decisions made by a county under section 4 of this act on
22 whether to participate in the voluntary stewardship program established
23 by section 3 of this act are not subject to the requirements of RCW
24 43.21C.030(2)(c).

25 NEW SECTION. **Sec. 20.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 21.** If any part of this act is found to be in
30 conflict with federal requirements that are a prescribed condition to
31 the allocation of federal funds to the state, the conflicting part of
32 this act is inoperative solely to the extent of the conflict and with
33 respect to the agencies directly affected, and this finding does not
34 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal
2 requirements that are a necessary condition to the receipt of federal
3 funds by the state."

ESHB 1886 - S COMM AMD

By Committee on Ways & Means

ADOPTED 04/06/2011

4 On page 1, line 3 of the title, after "2007;" strike the remainder
5 of the title and insert "amending RCW 36.70A.280; reenacting and
6 amending RCW 36.70A.130; adding new sections to chapter 36.70A RCW;
7 adding a new section to chapter 43.21C RCW; and creating a new
8 section."

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