
Local Government Committee

HB 1886

Brief Description: Implementing recommendations of the Ruckelshaus Center process.

Sponsors: Representatives Takko, Angel, Bailey and Tharinger.

Brief Summary of Bill

- Establishes the agriculture and critical areas voluntary stewardship program (Program).
- Authorizes participating counties to protect critical areas in areas used for agricultural activities through the Program rather than through regulatory requirements of the Growth Management Act.
- Directs the State Conservation Commission, with the advice of a statewide advisory committee, to administer the Program.
- Establishes definitions and operational and implementation requirements for the Program.

Hearing Date: 2/11/11

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act.

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.

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 Department of Commerce (Commerce) provides technical and financial assistance to jurisdictions that must implement requirements of the GMA.

The GMA directs planning jurisdictions to 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. Comprehensive plans are implemented through locally-adopted development regulations, both of which are subject to recurring review and revision requirements prescribed in the GMA.

All jurisdictions are required by the GMA 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 these agricultural lands and other designated natural resource lands.

In addition to requirements for natural resource lands, all local governments must designate and protect critical areas. These protection requirements obligate local governments to adopt development regulations, also known as critical areas 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.

With regard to the protection of critical areas and the designation and conservation of natural resource lands, neither of these two requirements is given priority over the other in the GMA.

The GMA establishes a seven-member Growth Management Hearings Board (Board) that has limited jurisdiction and may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is noncompliant with the GMA, specific provisions of the SMA, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments; or
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted.

State Conservation Commission.

The 10-member State Conservation Commission (Commission) assists and guides Washington's 47 conservation districts, which are political subdivisions of the state, as they work with local communities to conserve renewable natural resources. Duties of the Commission include:

- informing district supervisors of activities and experiences in other districts;
- facilitating an interchange of advice and experience between districts;
- securing cooperation and assistance of federal, state, and local agencies for district operations;
- administering and distributing allocated funds;
- disseminating information about district activities and programs; and
- reviewing and commenting on state and local plans, programs, and activities.

Recent Legislative Action.

Legislation adopted in 2007 (*i.e.*, Substitute Senate Bill (SSB) 5248, enacted as chapter 253, Laws of 2007) temporarily prohibited counties and cities from taking certain actions pertaining to CAOs. As specified in SSB 5248, between May 1, 2007, and July 1, 2010, counties and cities were prohibited from amending or adopting CAOs as they specifically applied to agricultural activities, a term defined in the legislation. Counties and cities subject to the temporary prohibition were required to review and, if necessary, revise their CAOs as they specifically applied to agricultural activities to comply with requirements of the GMA by December 1, 2011.

The 2007 legislation also charged the William D. Ruckelshaus Center (Center) with conducting a two-phased examination of the conflicts between agricultural activities and CAOs adopted under the GMA. The examination, which was directed to begin by July 1, 2007, was to be completed in two distinct phases. In the first phase, the Center was directed to conduct fact-finding and stakeholder discussions related to stakeholder concerns, desired outcomes, opportunities, and barriers. In the second phase of the examination, the Center was directed to:

- facilitate stakeholder discussions to identify policy and financial options or opportunities to address the issues and desired outcomes identified in the first phase; and
- 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.

Various reporting requirements were established for the Center in SSB 5248 and a final report of findings and legislative recommendations was to be issued by the Center to the Governor and the appropriate committees of the House of Representatives and Senate by September 1, 2009.

Legislation in 2010 (*i.e.*, Substitute Senate Bill (SSB) 6520, enacted as chapter 203, Laws of 2010) extended the temporary prohibition established in SSB 5248 on adopting or amending certain CAOs by one additional year. The 2010 legislation also granted jurisdictions subject to this extended temporary prohibition one additional year before being required to review and, if necessary, revise their CAOs as they apply to agricultural activities. Finally, SSB 6520 granted the Center one additional year to issue their final report. That report was delivered to the Governor and the Legislature in October of 2010.

Summary of Bill:

I. Establishment and Administration of Program.

The Agriculture and Critical Areas Voluntary Stewardship Program (Program) is established. The Program must be designed to protect and enhance critical areas on lands used for agricultural activities through voluntary actions by agricultural operators.

The State Conservation Commission (Commission) is charged with administering the program. In fulfilling its administrative duties, the Commission must complete numerous tasks, including:

- establishing policies and procedures for implementing the Program;
- administering funding for counties to implement the Program;
- establishing a technical panel and, in conjunction with the technical panel, reviewing and evaluating watershed work plans submitted under provisions of the Program;
- designating, based upon county nominations, priority watersheds for the Program;

- providing administrative support for a Commission-appointed statewide advisory committee established to advise the Commission on the development and operation of the Program; and
- satisfying recurring requirements to report to the Legislature.

Other administrative duties related to the Program are specified. For example, the Commission, Commerce, the Department of Ecology, and other state agencies as directed by the Governor must cooperate and collaborate to implement the Program, and develop materials to assist local watershed groups in the development of required work plans. The Commission also must, according to a specified schedule, determine which watersheds and state agencies have received adequate funding to implement the Program in participating watersheds. Additionally, by August 31, 2015, and every two years thereafter, the Commission must report to the Legislature and participating counties on the participating watersheds that have received adequate funding to establish and implement the Program.

II. County Option - Program is Alternative to Certain Requirements of the GMA.

As an alternative to protecting critical areas used for agricultural activities through critical area development regulations mandated by the GMA, the legislative authority of a county may elect to protect these critical areas through the Program. A county choosing this alternative has six months from the effective date of the legislation to:

- elect to have the county participate in the Program;
- identify, in accordance with specified criteria, watersheds that will participate in the Program; and
- nominate, in accordance with specified criteria, watersheds for consideration by the Commission as state priority watersheds.

Prior to adopting an ordinance or resolution to participate in the Program, the county must notify property owners and other affected and interested individuals, tribes, agencies, businesses, school districts, and organizations.

Subject to funding provisions, once a county elects to participate in the Program, the Program applies to all unincorporated property within a participating watershed upon which agricultural activities occur.

Counties that elect to participate in the Program are eligible for state funding to implement the Program, subject to the availability of state funding. These counties are also not required to implement the Program in a participating watershed until adequate funding is provided.

III. General Requirements - Development Regulations that Protect Critical Areas.

With limited exceptions, counties have two years following the effective date of the legislation to review and, if necessary, revise their development regulations adopted under the GMA to protect critical areas as they specifically apply to agricultural activities. If the county is not participating in the Program, this review and revision requirement applies to all unincorporated areas. If the county is participating in the program, the review and revision requirement applies only to watersheds that are not participating in the Program. Subsequent reviews and revisions of these development regulations must occur according to applicable requirements of the GMA.

IV. Program Operation - Designated Watershed Groups and Work Plans.

Once the Commission makes funds available to a county participating in the Program, the county, within 60 days, must:

- acknowledge receipt of the funds; and
- designate a watershed group and an entity to administer funds for each watershed for which funding has been provided. The watershed group must include broad representation of watershed stakeholders and representatives of agricultural and environmental groups.

Designated watershed groups must develop a work plan to protect critical areas while maintaining the viability of agriculture in the watershed. The work plan must include goals and benchmarks for the protection and enhancement of critical areas. In developing the work plan, the watershed group must satisfy specified requirements, including:

- reviewing and incorporating applicable water quality, watershed management, farmland protection, and species recovery data and plans;
- seeking input from tribes, agencies, and stakeholders;
- developing goals for participation by agricultural operators;
- creating measurable benchmarks to protect and enhance critical area functions and values;
- designating an entity or entities to provide Program-related technical assistance; and
- conducting periodic evaluations, instituting adaptive management, and providing related reports according to specified schedules.

A designated watershed group must submit the work plan to the Director of the Commission (Director) for approval. Upon receipt of a work plan, the Director must submit the work plan to a technical panel for review. The technical panel is to be comprised of the directors or director designees of specified state agencies. The technical panel has 45 days after the Commission receives the work plan to review and assess the plan.

If the technical panel determines that the proposed work plan will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed, it must recommend approval of the work plan and the Director must approve the work plan. If the technical panel determines that the proposed work plan will not meet the criteria for approval, it must identify its reasons for the determination and the Director must advise the watershed group of the reasons for the disapproval. The watershed group may modify and resubmit its work plan for review and potential approval. Provision governing work plans that are not approved by the Director, including requirements for a review by the statewide advisory committee, are specified.

The approval of a work plan by a designated watershed group triggers additional requirements. Within five years of the receipt of funding for a participating watershed, the watershed group must report to the Director and the county on whether it has met the work plan's protection and enhancement goals and benchmarks. If the watershed group, the Director, and the statewide advisory committee concur on the success of the plan, the watershed group must continue implementing the work plan. If the watershed group determines that protection goals and benchmarks have not been met, it must propose an adaptive management plan, to be approved or disapproved by the Director, to achieve the unmet goals and benchmarks. If the watershed group determines that enhancement goals and benchmarks have not been met, the watershed group

must determine what additional voluntary actions are needed to meet the benchmarks, identify funding necessary to implement these actions and then proceed with the associated implementation.

Similar work plan evaluation and reporting measures are required within 10 years after receipt of funding for a participating watershed and every five years thereafter. Provisions for watersheds with adaptive management plans that are not approved by the Director and watersheds that, as determined by the watershed group, do not meet protection goals and benchmarks are specified.

Various evaluation and consultation requirements pertaining to evaluation reports by watershed groups of work plans are specified and are summarized in the chart below.

Table 1: Actions Following Receipt by Director of Watershed Group Report .

<i>Action</i>	<i>Action of Director/ Result 1</i>	<i>Action of Director/ Result 2</i>	<i>Action of Director/ Result 2 (cont.)</i>	<i>Result 3</i>
Receipt by Director of watershed group report concluding work plan goals and benchmarks <i>have</i> been met.	Consult with statewide advisory committee. If Director agrees with watershed group report, group must continue to implement work plan.	Consult with statewide advisory committee. If Director disagrees with watershed group report indicating success with goals and benchmarks, Director must consult with technical panel for recommendation on how to proceed.	Director, acting upon a recommendation of the statewide advisory committee, may grant the watershed group a six-month extension to comply with goals and benchmarks.	If a six-month extension is not granted, or a granted extension fails to result in compliance, remedial measures apply.
Receipt by Director of watershed group report concluding work plan goals and benchmarks <i>have not</i> been met.	Consult with statewide advisory committee. If Director agrees with watershed group report, Director must consult technical panel for recommendation on how to proceed.	Director, acting upon a recommendation of the statewide advisory committee, may grant the watershed group a six-month extension to comply with goals and benchmarks.		If a six-month extension is not granted, or a granted extension fails to result in compliance, remedial measures apply.

V. Remedial Measures/Triggers.

If any of the following events occur, a participating county must take remedial actions:

- The watershed group work plan is not approved by the Director.
- The goals and benchmarks for protection specified in a work plan have not been met.
- The Commission determines that the county, Commerce, the Commission, or the Departments of Agriculture, Ecology, or Fish and Wildlife have received insufficient funding to implement the Program in the watershed.
- The Commission determines that the watershed has not received adequate funding to implement the program.
- The county withdraws from the Program.

The remedial action options, which must be taken within 18 months of a 'triggering' event, include the following, of which the county must complete one.

- develop, adopt, and implement a watershed work plan approved by Commerce that meets specified critical areas and agricultural requirements. Commerce must consult with other state agencies before approving or disapproving the plan and its decision is subject to appeal before the Growth Management Hearings Board (GMHB).
- adopt qualifying development regulations previously adopted under the GMA by another jurisdiction for the purpose of protecting critical areas in areas used for agricultural activities. The 'secondary' adoption of these regulations is subject to appeal before the GMHB.
- adopt development regulations certified by Commerce as protective of critical areas in areas used for agricultural activities. The Commerce's certification decision is subject to appeal before the GMHB.
- review and, if necessary, revise its development regulations to protect critical areas as they relate to agricultural activities.

VI. Withdrawal from the Program.

A county electing to participate in the Program may withdraw through an adopted ordinance or resolution. A withdrawal may occur from the Program at the end of three years, five years, or eight years from receipt of funding, or at any time after 10 years from receipt of funding.

A county that withdraws a participating watershed from the Program must, within 18 months, review and, if necessary, revise its development regulations that protect critical areas in the applicable watershed as they specifically apply to agricultural activities.

VII. Regulation Review and Revision Requirements of the GMA.

A county that participates in the Program and is achieving related benchmarks and goals is generally not required to update development regulations that protect critical areas as they specifically apply to agricultural activities in the participating watershed. Exceptions to this provision are specified. Additionally, unless the watershed group and the Director agree that Program-related goals and benchmarks have been met, counties electing to participate in the Program must, beginning 10 years from receiving Program funding, review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed according to a recurring schedule established in the GMA.

VIII. Miscellaneous Provisions.

Several miscellaneous provisions related to the establishment and implementation of the Program are specified. Examples are specified below.

- Agricultural operators implementing an individual stewardship plan consistent with a work plan are presumed to be working toward the protection of critical areas.
- An agricultural operator participating in the Program may withdraw from the Program and is not required to continue voluntary measures after expiration of an applicable contract.
- In developing stewardship practices to implement a work plan, to the maximum extent practical, the watershed group should:
 - avoid management practices that may have unintended adverse consequences; and
 - administer the program in a manner that allows participants to be eligible for public or private environmental protection and enhancement incentives.
- Nothing in the Growth Management Act may be construed to:
 - require an agricultural operator to discontinue agricultural activities legally existing before the effective date of the legislation; or
 - limit the authority of a state agency, local government, or landowner to carry out its obligations under any other federal, state, or local law.

Appropriation: None.

Fiscal Note: Requested on February 9, 2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.