

# FINAL BILL REPORT

## ESHB 1886

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Synopsis as Enacted

**Brief Description:** Implementing recommendations of the Ruckelshaus Center process.

**Sponsors:** House Committee on Local Government (originally sponsored by Representatives Takko, Angel, Bailey and Tharinger).

**House Committee on Local Government**

**House Committee on General Government Appropriations & Oversight**

**Senate Committee on Agriculture & Rural Economic Development**

**Senate Committee on Ways & Means**

**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.

The Department of 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.

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*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.*

All local governments must also designate and protect environmentally sensitive 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 requirement to protect critical areas and to designate and conserve natural resource lands, neither of these two requirements is given priority over the other in the GMA.

#### Washington State Conservation Commission.

The 10-member Washington State Conservation Commission (Commission) assists and guides Washington's 47 conservation districts 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;
- securing cooperation and assistance of federal, state, and local agencies for district operations;
- administering and distributing allocated funds; and
- reviewing and commenting on state and local plans, programs, and activities.

#### State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify possible environmental impacts that may result from governmental decisions. Any governmental action may be conditioned or denied pursuant to the SEPA if the conditions or denials are based upon policies identified by the appropriate governmental authority and incorporated into formally designated regulations, plans, or codes.

Local governments and state agencies must prepare an environmental impact statement (EIS) for legislation and other major actions having a probable significant, adverse environmental impact. The EIS includes detailed information about the environmental impact of the project, any adverse environmental effects that cannot be avoided if the proposal is implemented, and alternatives to the proposed action.

Specific categorical exemptions from an EIS and other requirements for actions meeting specified criteria are specified in the SEPA. Categories of government actions that are not considered as potential major actions significantly affecting the quality of the environment are also defined in administrative rules.

#### Recent Legislative Action.

Legislation enacted in 2007 (Substitute Senate Bill 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, 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 the Senate by September 1, 2009.

Legislation enacted in 2010 (Substitute Senate Bill 6520, enacted as chapter 203, Laws of 2010) extended the temporary prohibition established in SSB 5248 on adopting or amending certain CAOs 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 its final report. That report was delivered to the Governor and the Legislature in October of 2010.

## **Summary:**

### I. Establishment and Administration of Program.

The 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 Washington 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 work plans submitted under provisions of the Program;
- designating, based upon county nominations, priority watersheds for the Program; and
- providing administrative support for a Commission-appointed statewide advisory committee established to advise the Commission on the Program.

Other administrative duties related to the Program are specified. For example, the Commission, Department of Commerce (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.

The statewide advisory committee, which is charged with advising the Commission and other agencies in the development and operation the Program, must be appointed by the Commission from nominations made by county, agricultural, and environmental organizations. At least two representatives from each of these organizations must serve on the committee and the Commission, in conjunction with the Office of the Governor, and must invite participation by two representatives of tribal governments. The Director of the Commission (Director) must serve as the non-voting chair. Term of office, delegate, and other provisions governing the statewide advisory committee are established.

## II. County Option – Program is Alternative to Certain Requirements of the Growth Management Act.

As an alternative to protecting critical areas used for agricultural activities through critical area development regulations mandated by the Growth Management Act (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 act to:

- elect to have the county participate in the Program;
- identify watersheds that will participate in the Program; and
- nominate 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 confer with tribes and environmental and agricultural interests. The county also must provide notice to 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 electing to participate in the Program are eligible for state funding to implement the Program, subject to the availability of state funding. These counties are 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 act 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, and participating tribes.

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 and implementing 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 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 delineated state agencies. The technical panel has 45 days after the Director 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. Provisions governing work plans that are not approved by the Director, including requirements for a review by the statewide advisory committee, are established.

The approval of a work plan 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 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 established.

#### V. Remedial Actions/Triggers.

If any of the following events occur, a participating county must select and implement 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, the Commerce, the Commission, or the departments of Agriculture, Ecology, or Fish and Wildlife have received insufficient funding to implement the Program in the watershed; or
- The Commission determines that the watershed has not received adequate funding to implement 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. The 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 (Board);
- 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 Board;
- adopt development regulations certified by the Commerce as protective of critical areas in areas used for agricultural activities. The Commerce's certification decision is subject to appeal before the Board; or
- 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.

Miscellaneous provisions related to the establishment and implementation of the Program are specified. For example:

- 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.
- Definitions pertaining to the establishment and implementation of the Program are specified.
- Decisions pertaining to work plans and county decisions whether to participate in the Program are not subject to requirements under the State Environmental Policy Act mandating the completion of an environmental impact statement.

**Votes on Final Passage:**

House	95	2	
Senate	48	1	(Senate amended)
House	92	5	(House concurred)

**Effective:** July 22, 2011