

SENATE BILL REPORT

ESHB 1886

As Reported by Senate Committee On:
Agriculture & Rural Economic Development, March 15, 2011
Ways & Means, March 31, 2011

Title: An act relating to implementing recommendations developed in accordance with Substitute Senate Bill No. 5248, chapter 353, Laws of 2007

Brief Description: Implementing recommendations of the Ruckelshaus Center process.

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

Brief History: Passed House: 2/28/11, 95-2.

Committee Activity: Agriculture & Rural Economic Development: 3/08/11, 3/15/11 [DPA-WM].

Ways & Means: 3/24/11, 3/31/11 [DPA, DNP, w/oRec].

Brief Summary of Bill

- Establishes the 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 (GMA).
- 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.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Hatfield, Chair; Shin, Vice Chair; Delvin, Ranking Minority Member; Becker, Haugen, Hobbs, Honeyford and Schoesler.

Staff: Bob Lee (786-7404)

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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Conway, Fraser, Hatfield, Hewitt, Holmquist Newbry, Kastama, Keiser, Kohl-Welles, Pflug, Pridemore, Rockefeller and Tom.

Minority Report: Do not pass.

Signed by Senator Honeyford.

Minority Report: That it be referred without recommendation.

Signed by Senator Schoesler.

Staff: Chris Godwin (786-7441)

Background: In 2007 the Legislature charged the Ruckelshaus Center (Center) to conduct an examination of the conflict between the dual mandates of protecting agricultural land and protecting critical areas in local ordinances adopted under the Growth Management Account (GMA). The Center also was instructed to facilitate stakeholder discussions to identify policy and funding options for a resolution to this issue. A three-year moratorium was placed on the requirement for local governments to update their critical area ordinances as they specifically applied to agricultural activities. This moratorium was extended by legislative action in 2010 and expires on July 1, 2011.

This is the legislation that was formulated as a result of the facilitated stakeholder discussions.

Summary of Bill (Recommended Amendments): The Voluntary Stewardship Program (Program) is established as an option for counties to utilize. The purpose of the Program is to protect and enhance critical areas on lands used for agricultural activities through voluntary actions by agricultural operators.

In administering the Program, the State Conservation Commission (Commission) is assigned the following duties and tasks, including:

- establishing policies and procedures for implementing the Program;
- administering funding for counties to implement the Program;
- establishing a technical panel;
- reviewing and evaluating watershed work plans submitted under provisions of the Program, in conjunction with the technical panel;
- 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, the 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.

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.

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.

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 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's 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. Provisions 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 ten 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.

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; or
- 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.

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 ten 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.

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 ten 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.

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.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): The state process will be more inviting to the tribes. When considering which watersheds are eligible for the program, the commission and Commerce must include a determination of whether or not a plan can be feasibly implemented.

EFFECT OF CHANGES MADE BY AGRICULTURE & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Amendments): An environmental impact statement is not required for decisions made pertaining to work plans submitted to the state, nor for decisions made by a county on whether to participate in the voluntary stewardship program.

Appropriation: None.

Fiscal Note: Available

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Agriculture & Rural Economic Development): PRO: The legislation is important to both the farming community and the environmental community. To make this program successful, it will be important to secure funding. This bill provides local governments with an option other than regulation and could be a model for other states that are struggling with the same issue. This legislation has taken four years to develop and is an alternative to costly litigation which has been encountered with the present option. Counties may opt in and use this program to achieve enhancement of current conditions. When this process started, counties had 16 objectives which all are addressed in this legislation. This option allows local solutions

rather than trying to use a one-size-fits-all approach. Federal funding is anticipated to fund the bulk of the activities under this bill and work to obtain federal funding has already started.

OTHER: In working with the state agency caucus, there are concerns about the short time frames for state review. If only a few counties opt to participate in the program and the plans come in one at a time, the 45-day time frame may be adequate. However, if 30 counties participate and all of the plans come in just before the deadline, the 45-day period will not be sufficient. There is concern about all five types of critical areas being included. The agencies plan to re-task existing staff but implementation depends on federal dollars coming in.

Persons Testifying (Agriculture & Rural Economic Development): PRO: Representative Takko, prime sponsor; Jack Field, Washington Cattlemen's Assn.; Bill Robinson, Nature Conservancy; Dan Wood, Washington State Farm Bureau; Harry Reinert, Washington Assn. of Counties and King County.

OTHER: Michael Kern, Ruckelshaus Center; Ron Shultz, Conservation Commission.

Staff Summary of Public Testimony on Companion SB 5713 (Ways & Means): PRO: This bill is the result of an assignment given to the Ruckelshaus Center in 2007 to determine a solution to balancing interests between the environment and agriculture. The Native American tribes decided not to participate in this effort out of concerns related to a regulatory backstop. The bill does allow for continued input by the Native American tribes going forward. The Commission has been working with other state agencies. Their funding assumes federal dollars and assumes that costs would be phased including planning, grant issuance, and implementation. This is a new approach that relies on voluntary enhancement of critical areas as opposed to a regulatory approach. Counties must develop a plan to protect their critical areas that includes benchmarks and goals. It is important to establish benchmarks to determine whether the program is effective, and to monitor those benchmarks. We endorse the bill and the agreement in the bill rather than establishing aggressive agricultural buffers around critical areas on agricultural land. We know there is a federal and local cost to this program and we have been looking at federal programs for funding. We appreciate that this is a collaborative program that will end contention that currently exists in the critical area ordinance process.

OTHER: This bill is the product of a legislative initiative to help the agricultural interest, tribes, counties, and environmentalists to ensure prosperous farms and protect the environment. The tribes did not participate in the last year because they were concerned about the efficacy of the program, but the process allows for them to react at multiple points.

Persons Testifying (Ways & Means): PRO: Ron Schultz, State Conservation Commission; Bill Robinson, Nature Conservancy; Dan Wood, Washington Farm Bureau; Eric Johnson, Association of Counties.

OTHER: William Ruckelshaus, Ruckelshaus Center.