

SENATE BILL REPORT

ESSB 5431

As Passed Senate, May 2, 2017

Title: An act relating to protection of composting from nuisance lawsuits.

Brief Description: Concerning the protection of composting from nuisance lawsuits.

Sponsors: Senate Committee on Agriculture, Water, Trade & Economic Development (originally sponsored by Senators Warnick, Takko, Brown, Hawkins, Lias, Schoesler, Honeyford and Fortunato).

Brief History:

Committee Activity: Agriculture, Water, Trade & Economic Development: 2/07/17, 2/14/17 [DPS, w/oRec].

Floor Activity:

Passed Senate: 3/03/17, 43-0.

First Special Session: Passed Senate: 5/02/17, 40-6.

Brief Summary of Engrossed Substitute Bill

- Establishes that composting, if it meets specific requirements, is presumed to be reasonable and not found to be a nuisance unless the activity violates county or city regulations or has a substantial adverse effect on public health and safety.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5431 be substituted therefor, and the substitute bill do pass.

Signed by Senators Warnick, Chair; Hawkins, Vice Chair; Chase, Ranking Minority Member; Wellman, Assistant Ranking Minority Member; Brown, Honeyford, McCoy, Short, Takko and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senator Pearson.

Staff: Karen Epps (786-7424)

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.

Background: Certain agricultural activities conducted on farmland are generally presumed to be reasonable and not a nuisance unless the activity or practice has a substantial adverse effect on public health and safety. In order to be considered reasonable and thus not a nuisance, the agricultural activities must be consistent with good agricultural practices and established prior to surrounding nonagricultural activities. Agricultural activities that comply with all applicable laws and rules are presumed to be good agricultural practices. For the purposes of nuisance law, agricultural activities are defined as activities that occur on a farm in connection with the commercial production of farm products and includes, but is not limited to: having roadside stands at the farm; noise; odors; dust; fumes; operation of machinery and irrigation pumps; the keeping of bees; having employees on the farm; and conversion from one agricultural activity to another. In a nuisance lawsuit, a plaintiff may sue a defendant property owner based on the claim that the defendant makes unreasonable use of the defendant's property to the detriment of the plaintiff's property.

Summary of Engrossed Substitute Bill: Composting, if consistent with good agricultural or forest practices, established prior to surrounding nonagricultural or nonforestry activities, and in compliance with county and city regulations, is presumed to be reasonable and must not be found to constitute a nuisance unless the activity or practice violates county or city regulations or has a substantial adverse effect on public health and safety.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Agricultural operations are exempt from nuisance lawsuits. Agriculture wants to be good neighbors and composting facilities want to be good neighbors as well. Composting is very important to farming. The compost industry supports the growing need of local governments to reduce landfill volumes and enhance recycling. The industry keeps waste fees lower for the ratepayer and the recycled products improve soil, air, and water quality. This bill makes a simple change that will protect the composting industry and the communities it serves far into the future. Adding compost to the definition of farm products will clarify and confirm protection from nuisance lawsuits for composting facilities. This bill does not make any changes to the significant regulations or guidelines already in place for the industry.

OTHER: There are concerns with the bill because it adds compost to a definition but does not further define what compost is, which raises questions of whether the compost operation is industrial or how the land is zoned. In rural counties or rural areas of counties, agriculture is an allowed use and every effort is made to keep it as unregulated as possible. There are counties with urban/rural interface with neighbor to neighbor nuisance issues and if counties are not allowed to create at least a few parameters, that raises some concerns.

Persons Testifying: PRO: Senator Judy Warnick, Prime Sponsor; Jay Blazey, Cedar Grove.

OTHER: Laura Berg, WA State Assn. of Counties.

Persons Signed In To Testify But Not Testifying: No one.