

# SENATE BILL REPORT

## SB 6559

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As of January 26, 2010

**Title:** An act relating to operation of anaerobic digesters under the Washington right to farm act.

**Brief Description:** Protecting operation of anaerobic digesters under the Washington right to farm act.

**Sponsors:** Senator Haugen.

**Brief History:**

**Committee Activity:** Agriculture & Rural Economic Development: 1/25/10.

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### SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

**Staff:** Sam Thompson (786-7413)

**Background:** In a nuisance lawsuit, a plaintiff may sue a defendant property owner based on the claim that the defendant makes unreasonable use of his or her property to the detriment of the plaintiff's property. A plaintiff may, for example, seek to prohibit or limit noise or odors.

The Washington Right to Farm Act (Act) provides that certain agricultural activities and forest practices are presumed to be reasonable, and therefore have some protection from being prohibited or limited in a nuisance lawsuit.

To qualify for protection under the Act, agricultural activities must meet two requirements. First, they must be consistent with "good practices." Activities and practices conforming with all applicable laws and rules are presumed to be "good practices" not adversely affecting public health and safety. Second, agricultural activities must have been established prior to surrounding non-agricultural activities.

However, even agricultural activities meeting these two requirements may constitute a nuisance if they have "a substantial adverse effect on public health and safety."

**Summary of Bill:** The Act protection is extended to include operation of anaerobic digesters. "Anaerobic digester" is defined as a facility that processes manure from livestock into biogas and dried manure using microorganisms in a decomposition process within a closed, oxygen-free container.

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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.*

The definition of protected "agricultural activity" is revised to include operation of an anaerobic digester. The definition of "farm product" is revised to encompass commodities including electricity generated by an anaerobic digester.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill is a preventive measure. Sometimes anaerobic digesters create odors, and need protection given to agricultural activity under current law. There are currently four commercial digesters operating in Washington, producing electricity and digestate fiber that can be used as bedding material for animals. Development of additional renewable energy generators should be encouraged.

**Persons Testifying:** PRO: Kevin Maas, Farm Power Northwest LLC; Mary Beth Lang, Washington State Department of Agriculture.