

HOUSE BILL REPORT

ESHB 1886

As Passed Legislature

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:

Committee Activity:

Local Government: 2/11/11, 2/15/11 [DPS];

General Government Appropriations & Oversight: 2/18/11 [DPS(LG)].

Floor Activity:

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

Senate Amended.

Passed Senate: 4/6/11, 48-1.

House Concurred.

Passed House: 4/14/11, 92-5.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Establishes the Voluntary Stewardship Program (Program) that allows 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 Washington State Conservation Commission, with the advice of a statewide advisory committee, to administer the Program.
- Establishes operational and implementation requirements for the Program.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 9 members: Representatives Takko, Chair; Tharinger, Vice Chair; Angel, Ranking

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.

Minority Member; Asay, Assistant Ranking Minority Member; Fitzgibbon, Rodne, Smith, Springer and Upthegrove.

Staff: Ethan Moreno (786-7386).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The substitute bill by Committee on Local Government be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; McCune, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen, Van De Wege and Wilcox.

Staff: Jeff Olsen (786-7175).

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 (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 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 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.

Washington State Conservation Commission.

The 10-member Washington 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.

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, including actions related to specific development proposals and planning and policy actions that are not associated with a specific development proposal, 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, in part, detailed information about the environmental impact of the project, any adverse environmental effects that cannot be avoided if the proposal is implemented, and alternatives, including mitigation, to the proposed action.

Specific categorical exemptions from EIS and other requirements for actions meeting specified criteria are specified in 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 adopted in 2007 (*i.e.*, 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 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 the Senate by September 1, 2009.

Legislation in 2010 (*i.e.*, 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 their final report. That report was delivered to the Governor and the Legislature in October of 2010.

Summary of Engrossed Substitute Bill:

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 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;
- providing administrative support for a Commission-appointed statewide advisory committee established to advise the Commission on 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.

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 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 confer with tribes and environmental and agricultural interests. The county also must, in accordance with specified public participation and notice provisions, 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, 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 specified 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 specified.

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 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 the 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> |
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| Receipt by the Director of watershed group report concluding work plan goals and benchmarks <i>have</i> been met. | Consult with the statewide advisory committee. If the Director agrees with watershed group report, group must continue to implement work plan. | If the Director disagrees with watershed group report indicating success with goals and benchmarks, the Director must consult with statewide advisory committee for recommendation on how to proceed. | The 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 if a granted extension fails to result in compliance, remedial requirements apply. |
| Receipt by the Director of watershed group report concluding work plan goals | Consult with the statewide advisory committee for recommendation | The Director, acting upon a recommendation of the statewide advisory | | If a six-month extension is not granted, or a granted extension |

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| and benchmarks <i>have not</i> been met. | on how to proceed. | committee, may grant the watershed group a six-month extension to comply with goals and benchmarks. | fails to result in compliance, remedial requirements apply. |
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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, 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 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 (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 Commerce as protective of critical areas in areas used for agricultural activities. The Commerce's certification decision is subject to appeal before the Board.
- 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 practicable, the watershed group should:
 1. avoid management practices that may have unintended adverse consequences; and
 2. administer the Program in a manner that allows participants to be eligible for public or private environmental protection and enhancement incentives.
- Nothing in the provisions of the Program may be construed to:
 1. require an agricultural operator to discontinue agricultural activities legally existing before the effective date of the legislation; or
 2. limit the authority of a state agency, local government, or landowner to carry out its obligations under any other federal, state, or local law.
- 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 SEPA mandating the completion of an EIS.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Local Government):

(In support) The process of developing the legislation has been lengthy, but the negotiating parties have jointly developed a bill that they support. The bill gives counties the option of determining whether they wish to participate in the proposed Program. The Program includes benchmarks and goals, local compliance monitoring, and a series of "off-ramps" if benchmarks are not met. The adoption of critical area ordinances and other planning documents is a very contentious and litigious process and this bill is a positive approach to those issues. Supporters of the bill are working to address funding issues.

Agriculture in Washington is a \$35 billion industry with 131,000 jobs. The GMA recognizes the importance of the industry, and the industry recognizes the impacts to it resulting from the GMA. The GMA specifies that critical areas must be protected and that agriculture must be preserved, but neither of these requirements is prioritized over the other. The Program created in the bill is truly voluntary and is unlike anything that has been previously tried in Washington. The current system that seeks to protect critical areas and agriculture involves a number of difficult choices. The new approach called for in the bill is based on voluntary agriculture stewardship and it may prove to be a model that can be applied in other states.

State agencies implicated in the bill are assuming that federal funding will be provided to cover associated costs. The Commission intends to reprioritize its work and complete the newly proposed responsibilities within existing resources. There are some concerns about the due dates for work plans and about the bill's provisions applying to all categories of critical areas. A narrowing of applicable provisions might be appropriate.

The bill allows watersheds to develop common-sense stewardship approaches that are tailored to their needs. The bill will help preserve agricultural lands and it gives counties the flexibility to choose an approach that will work best for their needs.

The proponents of the bill request that amendments not be added unless they are supported by the county, environmental, and agricultural negotiators that developed the bill.

Nursery and landscape businesses make significant contributions to the state's economy. These businesses are pleased with the bill and its site-specific, cooperative environmental approaches. The bill uses existing governmental structures and does not create a new layer of bureaucracy.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations & Oversight):

(In support) This bill creates an alternative to the regulatory approach under the GMA for complying with the critical areas ordinances on agricultural lands. The bill creates a voluntary program, and counties can opt-out or fail-out of the program. Millions of dollars have been spent on updating the GMA, and it can be expensive and result in lawsuits. Without this legislation, there may be many more lawsuits. The Environmental Protection Agency has expressed an interest in the concept, and state agencies are assuming federal funds will be available to implement the program. The Washington State Conservation Commission will re-task existing staff to begin implementing the program.

(Opposed) None.

Persons Testifying (Local Government): Representative Takko, prime sponsor; Eric Johnson, Washington State Association of Counties; Dan Wood, Washington Farm Bureau; Len Barson, The Nature Conservancy; Ron Shultz, Washington State Conservation Commission; Harry Reinert, King County; April Putney, Futurewise; and Jeanne McNeil, Washington State Nursery and Landscape Association.

Persons Testifying (General Government Appropriations & Oversight): Dan Wood, Washington Farm Bureau; Bill Robinson, The Nature Conservancy; and Ron Shultz, Washington State Conservation Commission.

Persons Signed In To Testify But Not Testifying (Local Government): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight): None.