

HOUSE BILL REPORT

ESB 5962

As Reported by House Committee On:
Economic Development, Agriculture & Trade

Title: An act relating to customary agricultural practices.

Brief Description: Concerning customary agricultural practices.

Sponsors: Senators Haugen, Schoesler, Rasmussen, Morton, Shin and Delvin.

Brief History:

Committee Activity:

Economic Development, Agriculture & Trade: 3/25/05, 4/1/05 [DPA].

Brief Summary of Engrossed Bill
(As Amended by House Committee)

- Authorizes awards of legal defense costs and exemplary damages to prevailing farmers actions related to agricultural activities on agricultural land under certain conditions.
- Requires a property seller within one mile of a farm to disclose the farm's existence to buyers.
- Exempts fugitive dust from certain statutory air pollution control requirements.

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE & TRADE

Majority Report: Do pass as amended. Signed by 20 members: Representatives Linville, Chair; Pettigrew, Vice Chair; Kristiansen, Ranking Minority Member; Blake, Buri, Chase, Clibborn, Dunn, Grant, Haler, Holmquist, Kenney, Kilmer, Kretz, McCoy, Morrell, Newhouse, Quall, Strow and Wallace.

Staff: Caroleen Dineen (786-7156).

Background:

Nuisance actions. A nuisance on real property is generally described as an unreasonable or unlawful use that results in annoyance, discomfort, inconvenience, or damage to another person or to the public. Under Washington law, nuisances on real property are classified as either private nuisances (which affect an individual's health, safety, or comfort) or public nuisances (which affect the rights of an entire community or neighborhood). Nuisances may

be addressed through government regulation or civil suits, and certain nuisances are classified as crimes.

A nuisance exception exists for agricultural activities conducted on farmland that are consistent with good agricultural practices and that were established prior to surrounding nonagricultural activities. Agricultural activity is defined for these purposes as conditions or activities occurring on a farm in connection with commercial production of farm products. The exception includes conditions and activities such as noise, odor, dust, fumes, machinery and irrigation pump operation, seed and fertilizer application, and other farming activities. When the statutory conditions are satisfied, the agricultural activities are presumed to be reasonable and are deemed not to constitute a nuisance unless the activity has a substantial adverse effect on public health and safety.

Real property transfer disclosure statements. With certain exceptions and under specified circumstances, Washington law requires sellers of residential real property to provide a buyer with a transfer disclosure statement. The statute specifies the format and questions that the seller must answer. The form includes a statement that disclosure is being made concerning the condition of the property and is provided based on the seller's actual knowledge of the property's condition at the time the form is completed. Required disclosures pertain to real property conditions such as title, water, sewer/septic system, structural conditions, systems and fixtures, legal restrictions, and other conditions.

Clean Air Act requirements. The Washington Clean Air Act (the Act) regulates outdoor air pollution. The Act establishes a system of regional air pollution control authorities to implement federal and state air pollution control regulations. Air pollution control regulations address emission of air contaminants that injure health or unreasonably interfere with enjoyment of life and property. The Act directs the Department of Ecology (DOE) or the local air pollution control authorities to require permits for certain operating sources of air pollutants and allows these state and local agencies to impose registration requirements on sources of other air pollutants.

The Act exempts odors caused by agricultural activities consistent with good agricultural practices on agricultural land unless the odors have a substantial adverse effect on public health. Agricultural activity is defined for these purposes as the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products. Before issuing a notice of violation under the air pollution control statutes for an agricultural activity, the DOE or local air pollution control authority is required to consult with a recognized third-party expert in the activity to determine whether the activity is consistent with good agricultural practices.

Summary of Amended Bill:

Farmer recovery of costs and expenses. A farmer who prevails in a suit alleging that farm agricultural activity constitutes a nuisance may recover full reasonable costs and expenses of defending against the action as determined by a court. A farmer prevailing in a suit based on

allegations that agricultural activity violates specified laws, rules, or ordinances may recover full reasonable defense costs and expenses if a court determines: (1) the agricultural activity does not violate the specified laws, rules, or ordinances; and (2) actual damages are realized by the farm as a result of the suit. Recovery of costs and expenses includes actual damages and reasonable attorneys' fees and costs. For purposes of these provisions, actual damages include lost revenue and the replacement value of crops or livestock damaged or not harvested or sold because of the action.

In addition to recovery of reasonable defense costs and expenses, a farmer prevailing in these types of suits may recover exemplary damages if a court finds that the suit was initiated maliciously and without probable cause.

Agency recovery of investigative costs and expenses. A state or local agency required to investigate a complaint alleging agricultural activity on a farm violates specified laws, rules, or ordinances may recover its full investigative costs and expenses if a court finds that the: (1) agricultural activity does not violate the specified laws, rules, or ordinances; and (2) complaint was initiated maliciously and without probable cause.

Real property transfer disclosure requirements. In addition to the other disclosures required by statute, a seller of real property located within one mile of a farm's or farm operation's property boundary must disclose the existence of the farm or farm operation. In this situation the seller must make the following statement available to a buyer:

This notice is to inform prospective residents that the real property they are about to acquire lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Washington right to farm act.

Clean Air Act requirements. Fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land is exempt from the Act's requirements. "Fugitive dust" is defined for purposes of this exemption to include particulate emissions made airborne by human activity and/or forces of wind that do not pass through a stack, chimney, vent, or other functionally equivalent opening. For the purposes of these provisions, the definitions of "agricultural activity" and "agricultural land" are amended to include references to shellfish production.

The fugitive dust exemption does not apply to facilities subject to the Act's registration requirements as specified in current administrative rules and to specified statutory permit requirements and new source requirements.

Amended Bill Compared to Original Bill:

The amendment replaces the unverified complaint references in the farmer recovery provisions with identification of circumstances in which farmers may recover in suits alleging legal violations. The amendment also replaces the unverified complaint references and definition in the agency recovery provisions with recovery based on a court finding that the alleged legal violations did not occur and that the farmer realized actual damages. In

addition, the amendment includes shellfish production references in the definitions of "agricultural activity" and "agricultural land" in the air pollution control provisions. Further, the amendment reorganizes and clarifies the farmer and agency recovery provisions.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: People move into farm areas because they want the farm view; however, they do not like the other aspects of living near a farm. Farmers trying to be good land stewards have faced complaints and lawsuits from neighboring property owners. Some farmers have been harassed and threatened by neighbors, creating serious stress as well as legal and financial challenges. With trade issues, increasing costs, and regulatory restrictions, farmers already face numerous challenges in trying to continue agricultural operations in this state. When farmers stop farming, agricultural land is lost to homes and other uses. This bill provides farmers a small measure of assistance to continue farming operations.

Testimony Against: None.

Persons Testifying: Dan Wood, Sharon Baker, Mike Salatino and Larry Jensen, Washington State Farm Bureau.

Persons Signed In To Testify But Not Testifying: Jack Field, Washington Cattlemen's Association.