

# HOUSE BILL REPORT

## HB 2187

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### As Reported by House Committee On: Local Government

Appropriations Subcommittee on General Government & Information Technology

**Title:** An act relating to extending the date by which counties participating in the voluntary stewardship program must review and, if necessary, revise development regulations that apply to critical areas in areas used for agricultural activities.

**Brief Description:** Extending the date by which counties participating in the voluntary stewardship program must review and, if necessary, revise development regulations that apply to critical areas in areas used for agricultural activities.

**Sponsors:** Representatives Takko and Blake.

#### **Brief History:**

##### **Committee Activity:**

Local Government: 1/15/14, 2/5/14 [DPS];

Appropriations Subcommittee on General Government & Information Technology:  
2/7/14 [DPS(LG)].

#### **Brief Summary of Substitute Bill**

- Requires the Washington State Conservation Commission (Commission), upon request by a county, to determine whether the county has received adequate state or federal funding to establish and implement the Voluntary Stewardship Program (VSP) of the Growth Management Act.
- Extends, subject to a determination by the Commission, the date by which counties participating in the VSP that have not received adequate funding for the VSP must review and, if necessary, revise development regulations to protect critical areas as they apply to agricultural activities.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Takko, Chair; Gregerson, Vice Chair; Overstreet, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Pike, Springer and Taylor.

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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.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Farrell and Fitzgibbon.

**Staff:** Ethan Moreno (786-7386).

**Background:**

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for "planning jurisdictions," the 29 counties and the cities within that are obligated to satisfy all 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 are implemented through locally adopted development regulations, and these plans and regulations must be reviewed, and if necessary, revised according to a recurring eight-year schedule specified in the GMA.

All counties and cities are required by the GMA to 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 additional requirements under the GMA and must also adopt development regulations that conserve these agricultural lands and other designated natural resource lands.

All counties and cities must also designate and protect environmentally sensitive critical areas. These protection requirements obligate local governments to adopt development regulations, also known as critical areas ordinances, 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.

Voluntary Stewardship Program.

Legislation enacted in 2011 (Engrossed Substitute House Bill 1886, enacted as Chapter 360, Laws of 2011) established the Voluntary Stewardship Program (VSP). The VSP, which is administered by the Washington State Conservation Commission (Commission), seeks to protect and enhance critical areas on lands used for agricultural activities through voluntary actions by agricultural operators.

The VSP provides a watershed oriented framework for protecting critical areas in areas used for agricultural activities that is an alternative to the traditional practice of protecting these areas through development regulations mandated by the GMA. The legislative authorities of 28 counties have elected to protect these critical areas through the VSP, with two counties receiving state funds for program implementation.

With limited exceptions, the VSP requires counties to review and, if necessary, revise their development regulations to protect critical areas as they specifically apply to agricultural activities by July 22, 2013. If the county did not elect to participate in the VSP, this review

and revision requirement applied to all unincorporated areas. If the county did elect to participate in the VSP, the review and revision requirement applied only to watersheds that were not participating in the VSP.

Additionally, counties that participate in the VSP and that completed a review of their development regulations adopted to protect critical areas as they specifically apply to agricultural activities between July 1, 2003, and June 30, 2007, are not required to review and revise those regulations until mandated by the GMA's recurring eight-year review and revision schedule. Subsequent reviews and revisions of development regulations adopted to protect critical areas as they specifically apply to agricultural activities must occur according to applicable requirements of the GMA.

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### **Summary of Substitute Bill:**

All counties participating in the Voluntary Stewardship Program (VSP) that have not received adequate state or federal funding for the establishment and implementation of the VSP by December 1, 2014, may seek a determination of funding adequacy by the Commission. Upon receipt for a determination of funding adequacy, the Commission has 21 days to make the adequacy determination.

If the Commission determines that the county has not received adequate funding to establish and implement the VSP, the county is not required to review and, if necessary, revise its development regulations to protect critical areas as they specifically apply to agricultural activities until June 1, 2017, or the applicable date mandated by the GMA's recurring review and revision schedule, whichever is later.

### **Substitute Bill Compared to Original Bill:**

The amended bill makes the following changes to the original bill:

- establishes a process by which all counties participating in the VSP that have not received adequate state or federal funding for the establishment and implementation of the VSP by December 1, 2014, may seek a determination of funding adequacy by the Commission;
- specifies that the Commission must, within 21 days of a request for a determination of funding adequacy, make the adequacy determination;
- specifies that if the Commission determines that the county has not received adequate state or federal funding to establish and implement the VSP, the county is not required to review and, if necessary, revise its development regulations to protect critical areas as they specifically apply to agricultural activities until June 1, 2017, or the applicable date mandated by the GMA's recurring review and revision schedule, whichever is later;
- deletes a provision in the underlying bill related to extending critical area regulation review and revision requirements for certain counties participating in the VSP; and
- makes technical changes.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) After a multi-year process, and the involvement of the Ruckelshaus Center, a diverse coalition of stakeholders reached agreement on the development of the Voluntary Stewardship Program (VSP). The implementation of the VSP requires money, but it should not fail because of a lack of financial resources. Perhaps money can be found in the budget for implementation of the VSP, but the process should move forward.

The Washington State Conservation Commission (Commission) supports the bill. The resolution of the timeline issue should include the support of the three entities involved in developing the VSP: agricultural stakeholders; environmental stakeholders; and county representatives.

The past included highly contentious fights regarding critical area ordinances. The creation of the VSP was the result of a broad coalition of supporters. If the VSP can be funded and implemented, it will provide numerous benefits, including the future preservation of natural resources. If, however, the VSP collapses due to a lack of funds and timeline issues, it would be a travesty.

The issues associated with this bill have long histories. The VSP was the result of four years of negotiations; it is an unprecedented program created by an unprecedented coalition. Without legislation, 18 counties will need to update their critical area ordinances by July 22, 2015. This update process will result in numerous multi-million dollar lawsuits. The Legislature has four basic policy options for the VSP: do nothing; extend the deadline; exempt agriculture from critical area ordinance requirements; or fully fund the VSP. The Governor's budget does not include provisions to fully fund the VSP, so approximately \$8.4 million needs to be raised or repurposed for the VSP.

An amendment is forthcoming, as the desire of the bill is to extend the delay to all counties participating in the VSP that have not been funded. The amendment should be supported. The requested extension is not a reflection of unwillingness to implement the VSP. Counties are ready to move forward with implementation, but they lack the funds to do so. If the VSP cannot be funded, the timeline should be extended.

This bill supports good outcomes. Voluntary-based programs are effective and improve environmental outcomes for fewer dollars. There are myriad protections in place for agricultural lands, including existing critical area ordinances and water protections. The Farm Bureau is committed to securing money for the VSP. The state is losing ranchers and farmers, partially due to economic factors, and partially due to regulatory factors. The enactment of the VSP was the right thing to do.

(With concerns) This bill is premature - you still have one biennial and supplemental budget to provide assistance for the 26 counties that have not received VSP funding. If you do not appropriate funds for the VSP, counties will be back to ask for an extension of the timeline for VSP requirements. The old days were very difficult, with sheriff deputies at county commissioner meetings. Counties support an \$8.5 million appropriation for the VSP, and your assistance is needed in securing these resources. Counties need a collaborative, less litigious, and less divisive approach to implement the Growth Management Act (GMA), protect critical areas, and protect the viability of agriculture. A technical amendment may be needed to amend timeframe provisions of the VSP in a current statute.

(Opposed) The debate has not been about whether to protect natural resources, but how to do so – through a regulatory program or through a voluntary program. The voluntary-based VSP was a difficult leap of faith for the environmental community to support. The VSP should be funded. Because of a moratorium enacted six or seven years ago for critical area regulations as they apply to agricultural land, there have been no protections in place under the GMA to ensure an appropriate balance between agricultural interests and habitat needs. If adopted, this bill will result in 13-14 years without protections on the ground – the state cannot afford this approach. Please fund the VSP, but if you do not, the appropriate remedy is to go back to the previous regulatory framework.

The VSP should be funded, but not delayed.

**Persons Testifying:** (In support) Representative Takko, prime sponsor; Josh Giuntoli, Washington State Conservation Commission; Jim Jesernig, Pacific Coast Shellfish Growers Association, Washington Association of Conservation Districts, Washington Association of Wheat Growers, and Washington State Potato Commission; Dan Wood, Washington State Dairy Federation, and Dairy Farmers of Washington; Even Sheffels, Washington Farm Bureau; and Jack Field, Washington Cattlemen's Association.

(With concerns) Eric Johnson, Washington State Association of Counties.

(Opposed) Mo McBroom, Nature Conservancy; and Kelsey Beck, Futurewise.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

**Majority Report:** The substitute bill by Committee on Local Government be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Parker, Ranking Minority Member; Buys, Christian, Springer and Taylor.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Hudgins, Chair; Dunshee, S. Hunt and Jinkins.

**Staff:** Dan Jones (786-7118).

**Summary of Recommendation of Committee On Appropriations Subcommittee on General Government & Information Technology Compared to Recommendation of Committee On Local Government:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) None.

(Opposed) The history of this bill goes back six years to a debate about agricultural activities under the GMA. The Legislature directed the agricultural community, the environmental community, counties, and tribes to come together to find a solution. After three years of negotiations, the solution agreed to was that rather than a regulatory approach there would be a VSP. The VSP was supported by all parties, and legislation was passed two years ago to implement the VSP.

Twenty-eight counties have opted in to the VSP. In order for counties to implement the VSP, the counties have to put together a plan and the activities are supposed to be paid for by the federal government. The plan has only been funded for two counties. This bill kicks out the deadline, which disassembles the whole purpose of the negotiated agreement.

The solution is to appropriate money in the budget. The State Conservation Commission says an appropriation of \$7 or \$8 million dollars would be needed, but the actual cost may be less.

**Persons Testifying:** Bill Robinson, The Nature Conservancy.

**Persons Signed In To Testify But Not Testifying:** None.