

HOUSE BILL REPORT

EHB 1648

As Amended by the Senate

Title: An act relating to agricultural operations, activities, and practices.

Brief Description: Increasing protections for agricultural operations, activities, and practices.

Sponsors: By Representatives B. Sullivan, Kretz, Grant, Linville and Strow.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/14/07 [DP].

Floor Activity:

Passed House: 2/28/07, 97-0.

Senate Amended.

Passed Senate: 4/11/07, 46-0.

Brief Summary of Engrossed Bill

- Broadens definition of "agricultural activity" and adds definition of "operation" to increase the protection of agricultural activities and operations from nuisance lawsuits.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 15 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Dickerson, Eickmeyer, Grant, Hailey, Kagi, Lantz, McCoy, Newhouse, Orcutt, Strow and VanDeWege.

Staff: Meg Van School (786-7105).

Background:

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

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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. 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. "Agricultural activity" is defined for these purposes as conditions or activities occurring on a farm in connection with commercial production of farm products, including noise, odor, dust, fumes, machinery and irrigation pump operation, ground and aerial application of seed, fertilizer, conditioners, plant protection products, and other farming activities.

Summary of Engrossed Bill:

The Legislature intends to enhance the protection of agricultural operations and activities from nuisance lawsuits. The existing definition of "agricultural activity" is broadened to include the keeping of bees for pollination of agricultural products and gardens. The word "operation" is added to existing definitions to mean the production of farm or forest products. If agricultural and forest operations and related activities and practices conform to all applicable laws and rules, are consistent with good agricultural and forest practices, and are established prior to surrounding activities, they shall be presumed reasonable and not constitute a nuisance unless found to have an adverse effect on the public health and safety.

EFFECT OF SENATE AMENDMENT(S):

Clarifies that: (1) the keeping of bees for production of apicultural products (honey, beeswax) as well as for production of agricultural products is an agricultural activity; (2) "conversion from one agricultural activity to another" includes a change in the type of plant-related farm product being produced; (3) "agricultural activity" includes the use of new technological practices and equipment.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The Supreme Court recently held that a farmer sued for changing from apple to cherry production was not protected under the right-to-farm statutes. There have been beekeeping complaints, as well as issues about odors, chemicals and animal activity. People want to see a farm and know it is there, but do not want to smell it or be faced with the slower

traffic inherent with farming. We believe that the language in HB 1648, especially the addition of "operation," will get us the protections we are looking for. We support the bill because we want to keep working lands working. Forestry and farming are preferred land uses that satisfy conservation objectives and provide many contributions to state and community economies. If growers feel unwelcome and discouraged from doing business, they may decide to allow their land to be converted to other uses. We lose 60,000 acres every year to such conversions. We support this bill because we want to make sure that newcomer nuisance lawsuits do not disrupt the viability of agriculture and forest lands which often times leads to conversion. We want to make sure that certain conversions, for example, from a passive use like low-intensity pasturing to a high-intensity animal feed lot have adequate opportunities for public involvement in the conversion process. I believe there are such involvement opportunities, but the members may want to ask questions on this. Many counties have their own right-to-farm ordinances that are used along with the so-called "code of the west" to educate newcomers to rural areas about living near agriculture and forest lands. This bill is meant to protect organic farming operations as well as conventional.

(Opposed) We need stronger laws to protect organic farming and products. I am concerned about the insertion of "plant pollination" in the definition of agricultural activity because this may allow genetically modified organisms to cross-pollinate with organic foods. An amendment to the troublesome language could work instead of opposing the entire bill.

Persons Testifying: (In support) Representative B. Sullivan, prime sponsor; Dan Wood, Washington Farm Bureau; Megan Lynch, Cascade Land Conservancy; Kaleen Cottingham, Futurewise; Eric Johnson, Washington Association of Counties; Jack Field, Washington Cattlemen's Association; and Jay Gordon, Washington Dairy Federation.

(Opposed) Yoshe Revelle, Global Citizen.

Persons Signed In To Testify But Not Testifying: None.