



# LegisLetter

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## *Activities of the Legislature affecting farmers and ranchers in Washington state*

January 16, 2009

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## **Budget Deficit Tops State Legislative Agenda**

As the legislative session kicked off this week, several committees were briefed on the governor's proposed supplemental budget for the current fiscal year and her 2009-2011 budget proposal.

Faced with a \$5.7 billion deficit for the 2009-2011 biennium, which some predict will grow to \$7 billion, the Legislature is expected to view all legislation introduced this year with an eye on how the budget will be affected.

True to her campaign promises, Governor Chris Gregoire offered up a no-new-taxes supplemental and biennial budget. Swift action by the legislature to adopt the governor's supplemental budget, which saves \$500 million in the current budget year, could reduce the 2009-2011 deficit by as much as \$2 billion.

While the Governor's approach has been to spend less, Senate Majority Leader Lisa Brown (D-Spokane) and Speaker Frank Chopp (D-Seattle) have not ruled out tax increases in order to balance the budget.

Unless the state Supreme Court overturns Initiative 960, any tax increase will require a two-thirds vote of the legislature or a vote of the people. Sen. Brown filed a lawsuit last year seeking to overturn I-960. The Supreme Court has not yet issued its ruling.

More information about the state budget and the various budget proposals as they are released is available online at [www.fiscal.wa.gov](http://www.fiscal.wa.gov).

## **2009 Washington Farm Bureau Legislative Priorities**

### **1) Encourage water conservation by repealing or significantly modifying statutory relinquishment of water rights.**

Water is key to Washington's economic vitality and quality of life. Washington has 268.7 billion gallons of water passing through the state on a daily basis with a consumptive demand of only 4.7 billion gallons per day (or 1.75 percent). We can meet the needs of in-stream and out-of-stream users by carefully managing our water resources. This means eliminating practices that hinder efficient, predictable water supply availability and use.

The current "use-it-or-lose-it" relinquishment policy discourages water right holders from using less than their full right and clouds the validity of rights for transfer purposes. This runs counter to the desire to meet existing and future demand through transfers and efficiency measures. The elimination of partial relinquishment or limiting the period to which relinquishment applies will provide needed certainty and incentive to conserve water.

### **2) Promote a sustainable agricultural labor supply by enacting an essential worker program for agriculture.**

Agriculture is an economic engine that employs more workers than any other industry in our state, and the number one agricultural employer is the tree fruit industry. A vital component of labor intensive agriculture is the 50,000 migrant and seasonal workers who toil in our apple and cherry orchards, pick grapes, harvest berries and hops, and perform all of the other seasonal jobs that exist mainly in the six month period from May through October.

Every year our industry does more to make the workplace safer for seasonal workers; several innovative programs are underway. We need safe housing for seasonal workers, we need this workforce to be more stable, and we need to fix our immigration system so that the workforce is legal as well as stable. In short, we need to protect our migrant and seasonal workforce. Other states have. The federal government has not. Working together, we can create an Essential Worker Program that is the model for every state in the nation.

### **3) Foster sound environmental outcomes by encouraging voluntary stewardship and creating market opportunities that recognize environmental benefits provided by agriculture.**

Whether the discussion is on climate change, fish and wildlife habitat, wetlands, or other areas, Washington's farmlands are a resource for providing desired environmental benefits. By creating a marketplace that rewards environmental stewardship, we can gain more progress in protecting and enhancing the natural environment and the agricultural economy.

### **4) Promote a sound economy by reducing the fiscal and regulatory burden faced by farmers and ranchers.**

During the gubernatorial campaign, both candidates emphasized the view that now is not the time to raise taxes. It is vital that Washington farmers remain competitive, both domestically and internationally. Washington state already loses an average of 85,000 acres of farmland annually. The economic situation, particularly in Eastern Washington, is not good, and we cannot afford new taxes, fees and regulations that would cause more farmers and ranchers to cease doing business because they cannot compete. Higher

business costs for agriculture lead to higher consumer prices, a lack of international competitiveness, and adversely affect the state economy.

## **2009 Legislative Days**

Washington Farm Bureau Legislative Days are Feb. 4-5 at the Red Lion Hotel in Olympia. Activities are also scheduled at the Legislative Building on the Capitol campus and at the WFB Professional Office Building in Lacey.

A [registration form](#) is available for download (to complete and send via e-mail, fax or mail). You may also view the general [agenda](#).

Please contact the Red Lion Hotel at (360) 943-4000 for room reservations. Single rooms are \$98 plus tax. The hotel will release our block of rooms on January 23 and cannot guarantee room availability after that date.

For more information, contact [Shannon Garland](#).

### **Economic Stimulus – Tax Relief is Temporary, New Program Benefits are Permanent**

#### ***Little Chance for Permanent Rate Relief***

On January 15, Governor Gregoire and the Employment Security Department announced a temporary stimulus package that will include a temporary tax reduction for employers, a temporary increase in unemployment benefits for workers, and permanent increases for two benefit programs.

The Governor's office estimates the cost of the tax reductions, payment increases, and benefit programs this year will be \$400 million. All of these initiatives will be funded from the unemployment insurance trust funds, which come from taxes collected solely on employers. Washington employers pay higher unemployment insurance taxes than in most other states, and farmers and other seasonal employers are hit especially hard.

For employers, the unemployment insurance "social tax" will be reduced in 2009 by a maximum of four tenths of one percent (.408) of payroll. For some agricultural employers, the savings will be much less – as little as one tenth of one percent (.108) of payroll.

For an agricultural employer with a payroll of \$1 million per year, the savings will range from \$90 per month to \$340 per month, depending on the rate class of the employer.

For laid off workers, the proposal is to add \$45 each week to each displaced worker's unemployment insurance benefit, or \$2,250 for the entire year. In some cases, benefits to an individual may be limited by a cap on the total unemployment benefits that an individual is entitled to receive.

Washington has one of the largest excesses in unemployment insurance funds of any state. Our fund contains nearly double what is recommended in reserves. The fund ballooned due to changes in the unemployment insurance system in the past five years. Employers fought unsuccessfully last year to reduce the surplus through lower rates, and it was widely anticipated that there was sufficient momentum to make permanent cuts this year.

But the Governor's actions will likely pre-empt any attempt by employers to achieve a permanent reduction in tax rates. There is every reason to believe that rates will remain high, and programs will be further expanded, unless employers can figure a realistic way to reduce the large fund surplus.

The employer tax reduction and the worker benefit increase will expire at the end of the year. Expansion of the training benefit program would be indefinite. This program allows workers who are laid off to collect unemployment insurance, without looking for a job, if the worker enrolls in an approved re-training program. The program is currently open only to workers who have worked the majority of the last year, and two of the last four years, in a declining industry. The program will be expanded by removing this requirement, and further opening the program to low income workers, seasonal workers, workers who have suffered a disability (not required to be work related), and persons who are recently discharged from active duty military service.

The training benefit program is currently underutilized, in part because of tight eligibility criteria.

The final program that was altered was the shared work program. Under this program, an employer may reduce hourly wages between 10 and 50 percent, and the employee receives a corresponding percentage of unemployment insurance benefits. Changes proposed would broaden the program by making it more widely available and extending the duration of benefits.

## **Progress on Open Space Tax Program**

In early 2008, farmers in counties across the state received notices that they could be removed from eligibility for the Open Space Tax program.

The Open Space Tax program, sometimes referred to as “current use program,” provides that qualifying farmland will be valued for tax purposes at the value of farmland, instead of “highest and best use.” The result can be significant savings in annual taxes.

The program has been in use since the early 1970s, when voters approved a ballot measure to preserve various forms of open space.

Last year, many farmers were shocked to be told that horse operations and farms that did not breed livestock on site were no longer eligible. Many farms raise and process pigs, chickens, and calves that have been bred at other farms.

In response to the uproar, the Washington State Department of Revenue (DOR) held two stakeholder meetings in November 2008. At one meeting, Washington Farm Bureau testified that horses are indeed an agricultural product and that off-site breeding is a common practice.

Washington Farm Bureau also asked the Department of Revenue to issue new guidance to county assessors, reasoning that the open space tax program eligibility problem was created by DOR guidance and could be corrected by DOR guidance.

Hundreds of people attended the stakeholder meetings and told their stories. It made a difference.

In response to input, DOR wrote to all county assessors, asking them to forestall any removals based on those livestock issues. DOR then issued an emergency rule on the last day of 2008, clarifying that off-site breeding does not disqualify farms from eligibility.

The same rule clarifies that horse boarding operations could be eligible if the horses grazed on the property. Equine industry operators have expressed their disappointment in the failure to address their concerns.

Bipartisan legislation is being drafted to “lock in” the clarification on the breeding issue, as well as fully address equine issues. Other legislation may be introduced to deal with other issues related to the open space tax program.

Washington Farm Bureau sent a follow-up letter to county assessors asking them if they intend to follow the recommendation from DOR that the counties forestall any action against people currently enrolled in the program. Responses to that letter are being compiled; not all counties have responded.

If you are facing removal from the program, make sure you file an appeal to vest your standing.

Please also email Dan Wood, Washington Farm Bureau Director of Local Affairs, at [dwood@wsfb.com](mailto:dwood@wsfb.com) to let him know of any county actions to involuntarily remove a farming operation from the Open Space Tax program. We will need that information to correct this trend and pass legislation.

## Ruckelshaus Center Discussions Continue

A diverse coalition continues its discussion of "...outcome based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches" to address agricultural activities within critical areas as directed by 2007 legislation.

Meanwhile, the "time out" continues to prevent local governments from adversely affecting agricultural activities during updates of critical area ordinances required by the state Growth Management Act.

Agricultural, tribal, county and environmental interests have been focused on fact-finding tasks and taking steps toward discussing possibly voluntary programs that might create cooperative opportunities to enhance the environment through incentive-based programs.

"The voluntary incentive programs are the ultimate aim of the discussions," said Washington Farm Bureau local affairs director Dan Wood. "Decades of lawsuits and regulations haven't benefited the environment or farms. I think the tribal and environmental interests are ready to try a new approach."

The Ruckelshaus Center, a policy resolution center staffed by WSU and UW, has issued its [second report to the legislature](#), outlining the range of discussions and the tasks ahead. The final report to the legislature is due in September 2009.

In the fact-finding phase, the Center is collecting information for the committee to review. Great care is being taken to ensure the accuracy of the required fact-finding reports, which will include an overview of adopted and proposed Critical Area Ordinances, the amount of land currently reserved through conservation programs, and other views of agriculture and the environment. The full list of fact-finding reports can be found in [section 3 of SB 5248](#).

During the regulatory "time out," which began in May 2007 and ends July 1, 2010, several court rulings have provided further protection for agricultural activities. Among those are:

- September 2007. The state Supreme Court ruled in the *Swinomish* case that local governments have a duty to *protect*, but not *enhance* the environment; that buffers are not required by the GMA; that local governments may balance the 13 *equal and competing* goals of the GMA (among them enhancing agriculture, protecting the environment and protecting property rights); and that local governments may *depart* from best available science by showing on the record how doing so helps balance those goals.
- July 2008. The Division I Court of Appeals ruled in the *CAPR* case that the King County 65-10 (65% set-aside) was an illegal "in-kind" development tax and was invalid.
- July 2008. The state Supreme Court held in the *Anacortes* case that the Shoreline Management Act (SMA) exclusively governs critical areas within the roughly 200-foot jurisdiction of the SMA and the GMA does not apply in SMA-governed areas. The effective date of this distinction was in 2003, according to the Court. Agricultural activities are exempt from the SMA.
- November 2008. The Western Washington Growth Management Hearings Board, in the *Olympic Stewardship Foundation* case, overturned Jefferson County's "freeze" on the use of thousands of acres in the Channel Migration Zone, primarily because of the lack of scientific basis for the

regulations. The CMZ was defined as anywhere the river or stream might have been in a 100-year period, ranging up to several thousand feet, depending on the meander of a river. Key to the case was that the presentation of BAS *did not support* that channels were likely to migrate in the CMZ over 100 or 50 years AND that BAS *did support* the adopted 75-foot buffers on seasonal and intermittent streams.

The agricultural caucus has proposed a format for developing a program that uses “outcome based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches.”

The format would include regional goals for environmental enhancements, voluntary programs (existing and possibly new) that would provide a wide range of options and incentive for property owners, and review of progress.

While the environmental and tribal interests have discussed their interest in “regulatory backstops,” the agricultural team has reminded them that there are local, state and federal laws on the books that prohibit agricultural activities from causing environmental harm.

Among the existing laws are the state and federal clean water acts, the ESA, pesticide labeling, nutrient management requirements, and many others. Since the state Supreme Court ruled that there is a duty to *protect* -- and not *enhance* – the environment, the focus needs to be on truly voluntary programs that will allow progress in the agreeable goals of enhancing agricultural viability and the environment.

If you have any questions regarding the Ruckelshaus Center discussions, please [email Dan Wood](#).

The agricultural team at the Ruckelshaus discussions includes WFB’s Dan Wood and John Stuhlmiller, Jack Field of the Cattlemen’s Association, Jay Gordon of the Dairy Federation, Scott Dahlman of the Grange, Jeanne McNeil of the Nursery and Landscape Association, and Mike Shelby of the Western Washington Agriculture Association.

The Ruckelshaus Center policy recommendations will require *agreement* among participants. Before agreement can be reached, each of the participants will need the approval of their respective board, including the WFB state Board of Directors.

Further updates on the Ruckelshaus Center discussions will be provided at the Washington Farm Bureau Legislative Days Feb. 4-5 2009. You can [register online](#) and also view the [Tentative Legislative Days Agenda](#). If you need more information on Legislative Days, please [email Shannon Garland](#).

## Information Resources

Washington Farm Bureau: [www.wsfb.com](http://www.wsfb.com) Governor's Bill Actions: [www.governor.wa.gov](http://www.governor.wa.gov)  
Legislative Information: [www.leg.wa.gov](http://www.leg.wa.gov) Legislative Hotline: (800) 562-6000