



WASHINGTON FARM BUREAU
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LegisLetter

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Activities of the Legislature affecting farmers and ranchers in Washington state

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Governor Releases Proposal for New Taxes

A month after submitting what programs she would like to “buy back” from her “all cuts” budget, the governor provided some additional “help” this week by submitting her ideas on how the Legislature should fund them. Seeking to raise approximately \$600 million, the governor proposed five new or increased taxes. The largest revenue proposal is to nearly triple the hazardous substance tax from 0.7 percent to 2 percent on petroleum products such as: fuel, fertilizer, and pesticides. She would also like to add a penny per ounce tax on bottled water, and a nickel per can tax on carbonated beverages. Rounding out her proposal is a \$1 increase on the cigarette tax, and extending the sales tax to candy and gum.

It is estimated the new taxes will raise just under \$500 million, leaving a gap of nearly \$100 million, which the governor suggests can be filled by closing some tax “loopholes.” Some in the Legislature are seeking to raise closer to \$800 million in new revenues, so it will be interesting to see what other proposals surface in the upcoming weeks. The Legislature is not required to follow the governor’s proposal.

Hazardous Substance Tax Increase Could Hit Ag Hard

The largest tax increase in the governor's recent revenue proposal is an increase in the hazardous substance tax on petroleum products. In 1988, Washington voters approved the Model Toxics Control Act (MTCA). The Act funds hazardous waste cleanup through a 0.7 percent tax on the wholesale value of hazardous substances, mostly fuel, fertilizer, and pesticides. Under the current proposal though, a majority of the tax increase would be transferred into the general fund to be used for general government expenses.

The increase in this tax was suggested by some environmental organizations earlier this session, after a petroleum "barrel tax" they supported stalled in the Legislature. The current bills encompassing this idea are [SB 6851](#), sponsored by Sen. Ed Murray (D-Seattle), and [HB 3181](#), sponsored by Rep. Timm Ormsby (D-Spokane). The latter bill was granted a hearing in the House Finance Committee on Wednesday and passed out of the committee on Thursday. The bill is operating under the guise of providing funds for stormwater cleanup, but the reality is quite different. [HB 3181](#) would create a new Stormwater Account, but in 2010 only 20 percent of the money from the tax would go into the account. An equal amount would go into different environmental accounts, and **60 PERCENT WOULD GO INTO THE GENERAL FUND**. At least legislators are being honest about what this is really about; raising general fund revenues with a **HIDDEN GAS TAX!**

This bill has the potential to hit ag especially hard as the tax is applied mostly to fuel and plant protection chemicals—two of farmers largest input costs. It is estimated that it could add 3-5 cents to a gallon of fuel, and this is on the wholesale cost so it applies to "dyed" diesel as well. At a time when fertilizer costs are already skyrocketing, this would add insult to injury by essentially taxing fertilizer twice. It would increase the costs of the fertilizer because it is petroleum-intensive to make and would also impose a tax on the final product. This is a poor attempt by the Legislature to raise general fund revenues with a gas and chemical tax, while claiming it is for environmental cleanup.

Legislators Seeking Alternative Ways to Fund Government Responsibilities

As the session moves along, the budget is becoming more and more of a focal point each day. This is leaving legislators grasping for straws as they look everywhere they can think for new sources of revenue.

One of those attempts is [SB 6837](#), sponsored by Sen. Rodney Tom (D-Bellevue). This bill would divide the state into three zones based on forest fire danger and apply the forest fire protection assessment at a different rate to two of them. Currently all landowners that qualify pay a fee of \$17.50 and \$0.27 for each acre over 50. For landowners in the "high risk" zone, their assessment would increase nearly 400 percent to \$68.50 per parcel, and \$1.08 for each acre over 50. "Medium risk" zones would double the current assessment to \$34.50 per parcel, and \$0.54 on each acre over 50. The "low risk" zones would remain at the current rate. The bill would also add a 5 percent fee on all leases of state lands. This additional revenue would for the first time help fund fire suppression as well as fire prevention. Until now, fire suppression (actually putting out forest fires) was seen as a responsibility of the state as it is a public good and this bill seeks to shift that cost.

While Farm Bureau opposed the bill, we also oppose the greater issue at hand here—an attempt to make specific groups of citizens pay for services that have been viewed for decades as the state’s responsibility. In addition, there have already been attempts to raise water rights processing and hydraulic permit approval fees to exorbitant rates. Farm Bureau will continue to oppose these costs shifts.

Urge Senators to Pass Protection of Shoreline Uses!

[HB 1653](#) has been **revised** to include language that protects existing uses and activities in shoreline areas and provides protection from the Department of Ecology’s interim guidance. The bill, now known as [EHB 1653](#), passed the House this week and is now before the Senate Environment, Water, and Energy Committee.

The bill **must** be passed to provide protection from critical area ordinances interfering with legally existing uses and structures.

The Department of Ecology recently issued “guidance” to local governments that they have the option to reach into shoreline jurisdiction with their critical areas ordinances until the time that their shoreline master programs (SMP) are updated and approved by Ecology.

The Attorney General then issued an opinion saying that Ecology has the authority to issue that guidance. The AG reasoned that a 4-1-4 Supreme Court ruling, followed by two Court of Appeals cases that appear to be in conflict, left the situation unclear and that the guidance was acceptable.

There is no dispute that there will be distinct authority between the SMA (Shoreline Management Act) and GMA (Growth Management Act) once the local government SMP is updated and approved. The approval of the SMP by Ecology is a function of existing law.

Some counties are already there, having recently updated their SMPs.

In the past, local governments have adopted regulations and buffers that have left existing uses and activities as “nonconforming” uses. That designation immediately damages the use and value of the property.

If your “nonconforming” building burns down, you can’t replace it. If you change your “nonconforming” use, you might lose the ability to have any use at all. And you certainly could not make significant modifications or redevelopments of those “nonconforming” uses.

The bottom line is this: The Ecology guidance, backed by the Attorney General Opinion, has left property owners unprotected from local governments that would choose to regulate in the shoreline areas via their critical areas ordinances (GMA).

Washington Farm Bureau, Washington Association of Realtors, the Association of Washington Business and others who believe in property rights and protecting business have negotiated language that protects existing uses and activities from these interim ordinances. The language also allows an option to modify or redevelop those uses and activities.

Neither of those protections will be ensured if [EHB 1653](#) does not pass the Senate.

Many people have reacted to the language in the original bill considered last year, which WFB, the Realtors, and AWB killed in 2009. This year's striking amendment replaces the previous bill. Now we have a bill that protects the right of use, the value, and the ability to modify, legally existing uses and activities on private property in the shoreline areas.

Action Requested: [Contact your senator and urge support for EHB 1653!](#)

Legislation to Extend Ruckelshaus Talks Remains Alive

The legislation would add one more year to the discussion and report deadlines and one more year to the moratorium that prevents local governments from updating their critical areas ordinances with regard to agricultural activities.

Washington Farm Bureau support the extension of the talks and moratorium, believing that it is possible to reach agreement on voluntary programs to enhance fish runs, enhance environmental conditions and enhance agricultural viability.

On Saturday, February 13, [SSB 6520](#) was passed in the Senate with a vote of 45 yeas, 0 nays, and 4 excused. The bill was referred to the House Local Government and Housing Committee and has been **scheduled for a public hearing at 1:30 pm on Monday, February 22**. For the bill to advance, it will need to be reported out of the Local Government and Housing Committee on February 22. The hearing will be held in the John L. O'Brien Building, Hearing Room E.

[SHB 2891](#) did not meet the cutoff for the last day to consider bills in the house of origin, so it died in the House Rules Committee. It is common for one bill to move while the other withers. In this case, [SSB 6520](#) will be the vehicle for extending the talks at the Ruckelshaus Center.

Majority of Water Bills Dry Up

At the midway point in the 2010 session, we are now down to just a couple water bills of note.

In a surprising move, the House pulled [2SHB 2591](#) from the House Rules Committee and debated the bill Thursday before abruptly stopping consideration of the bill. **It remains on the floor calendar awaiting further action.** The bill, sponsored by Rep. Jeff Morris (D-Mount Vernon) would significantly raise the fees charged for the processing of water right permit applications. Additionally the bill would implement a registration process for permit exempt wells and place additional fees on such wells and the drilling of the same. WFB opposes this increase in fees mainly due to the fact that the fee increases will not fully fund the program, would likely displace current general fund dollars provided to the program, and thus result in higher fees with no tangible processing benefit. WFB urges **the House to reject the measure.**

Alternatively, we **support** [E2SSB 6267](#), sponsored by Sen. Phil Rockefeller (D-Bainbridge Island). The measure was heard by the House Agriculture and Natural Resources Committee on February 18. This measure initially drew nearly universal opposition, but after WFB and other

stakeholders engaged in a process to develop a workable bill, we switched to support of the measure.

[E2SSB 6267](#) cleans up the current ability of water permit applicants to use a method of processing known as cost reimbursement, whereby applicants can pay to process water right applications ahead of them in the permit line.

The bill would also create two “new” methods of getting to a decision point for permit applications. First is a “coordinated cost reimbursement” process, which is simple organized cost reimbursement. Under this process, Ecology would process the applications of all willing applicants in a basin. This method still requires applicants to pay for the processing.

The second new method is that of “expedited permit processing.” This process would still be initiated at the request of water right permit applicants but would allow for an expedited process that would require applicants choosing to participate to fund 100 percent of the costs incurred by Ecology to process the applications. Unwilling applicants would simply see their application remain in the permit processing line until they sought regular processing by Ecology or wanted to exercise the cost reimbursement or expedited process in the future.

While we still hope that Ecology will use the “standard” permit process to catch up with the current backlog of water permit applications, providing options to those in line is a good thing and will aid Ecology in better focusing their resources.

We urge the House to support this measure and put to rest [HB 2591](#).

Stock Water Update

[2SSB 6803](#), sponsored by Sen. Phil Rockefeller (D-Bainbridge Island) remained in the Senate Rules Committee, so it is no longer active as a standalone policy bill. The bill would have impacted ongoing litigation, which is examining whether or not the provisions of RCW 90.44.050 place a limit on water withdrawals for stock watering or not. It would also have carved out one segment of the livestock industry (dairy) at the expense of other stock water users. We do not support measures that help some and harm others. Water law is complex and needs to be approached very carefully to not imbalance the present system and to avoid making currently legal uses of water illegal.

WFB will continue to seek a positive outcome through the present stock water working group. This group agreed that we needed to consider this issue more to determine the best possible course of action related to these issues.

UI Policy Changes May Be Dead for the Year

This week's house of origin cutoff for bills possibly resulted in the death of all bills regarding unemployment insurance. Farm Bureau had hoped legislators would see the benefit in smoothing out and/or deferring sharp increases in UI tax rates on employers. However, in exchange for that aspect, legislators floated the idea of adding in four different types of benefit increases. The plan, reportedly suggested by organized labor and endorsed by the governor's office, would have included the following provisions:

1. Allow eligible part-time workers to receive UI benefits while looking for part-time jobs. This is the concept found in [SB 6526](#), a bill requested by the Employment Security Department that would allow the state to receive almost \$100 million in one-time federal funds. ESD estimates the cost of the benefits to be \$17 million annually, and none of the federal money would likely go toward paying for those increased costs. The concept is also found in [HB 2553](#), but the language in that bill is broader and could result in higher benefit amounts.
2. Allow ESD to have discretion to grant UI benefits to certain individuals who voluntarily quit their jobs. ESD believes this change would allow benefits to go to an additional 1,100 workers each year at a cost of \$7 million annually. UI has traditionally been for employees who lose their jobs through no fault of their own. This change helps undercut that foundation.
3. Increase the benefit multiplier so that weekly benefit payments go up. Currently that multiplier is at 3.85 percent. The changes would have permanently increased the multiplier to 3.9 percent in 2011, 3.95 percent in 2012, and 4.0 percent in 2013. 4.0 percent roughly equates to an increase of about \$8 per week for UI claimants.
4. Increase the weekly benefit payments. The cap on these payments is \$133 per week. Last session the Legislature increased that cap to \$155 for one year. The proposal would have extended the \$155 through the end of 2010, costing about \$6 million.

In exchange for this, employers would have received a permanent cap on the UI social tax at the current rate of 1.22 percent. Because of the increase in benefits, employers would have ended up paying more into the system than they currently do and would continue to do so over a longer period of time. Also, the suggested changes would have caused the UI trust fund to dwindle to critical levels in the short-run.

Taken together as a package, the costs outweighed the benefits, so Farm Bureau and other trade associations opposed the package. The first rule in a recession is to "do no harm." But each of these changes would have harmed the economy because they would have raised employer taxes at a time when businesses are struggling to survive. Instead, the Legislature needs to be encouraging businesses to create and sustain new jobs.

The issue of UI isn't completely dead, however. Since bills necessary to implement the budget can still be considered, legislators may attempt to revive some or all of these concepts in order to receive the "free" federal money to help in the midst of this tight budget year.

One example may be [HB 2630](#), sponsored by Rep. Tim Probst (D-Vancouver). The bill would fund a worker retraining program using \$98 million in UI funds. We have no problem with the concept of the program, but **we oppose using UI as the funding source.**

Action item: Please call 1-800-562-6000 and let your legislators know that they should oppose [HB 2630](#) unless the bill is changed to specify a funding source different from UI.

U.S. DOL Erects Barriers to Legal Ag Workforce

Last week the U.S. Department of Labor published the final rule changes regarding the federal H-2A agricultural guest worker program. The rule changes are essentially a roll-back of the 2008 rules adopted by then-Secretary of Labor Elaine Chao. Those rules were designed to provide a more flexible and workable structure for solving ag labor shortages.

Instead of finding ways for agricultural employers to obtain an adequate, legal, and stable labor supply, the new rules impose more barriers for farmers who need to hire workers to keep their farm operations running and who want to access the federal program to obtain a legal workforce.

Ironically, the Obama Administration still insists that comprehensive immigration reform is a priority, while it simultaneously imposes more impediments to the usage of already-existing, overly complex, guest worker programs.

“This final H-2A rule will only compound existing labor shortages,” American Farm Bureau Federation President Bob Stallman said in a statement. “It is the right policy of the United States to require that only those who are legally eligible to work in this country should be given U.S. jobs. But since there haven’t been, for several years, enough legal workers in the U.S. to meet the demand of U.S. agricultural employers, it is the responsibility of the administration and Congress to authorize a useful program and enable capable, dependable and willing employees to come to the U.S. temporarily to do the jobs that domestic workers don’t want.”

The rules add more complexities and bureaucracy to a program that ought to be streamlined. Here are some examples:

- Rates of pay for guest workers (the Adverse Effect Wage Rate) would no longer be tied to a prevailing wage for the job in question, and the resulting increase would make the program virtually un-useable for farmers who already struggle to compete with cheap overseas competition.
- State Workforce Agencies will not verify the identity and employment eligibility of the domestic workers they require farmers to interview in response to an H-2A application. Instead, farmers will be forced to offer employment to domestic workers and will not be able to verify the employment eligibility of domestic workers until the season starts, often a month or more after the offer of employment. This delay will make it impossible to replace an undocumented domestic worker with a legally documented foreign worker.
- The rules create more bureaucracy in a program that advocates for farmers and workers agree is already too bureaucratic. It would create a national job registry for all H-2A job orders and require farmers to hire domestic workers months after positions had been filled.
- Other details are summarized on a U.S. DOL fact sheet:
<http://www.dol.gov/opa/media/press/eta/eta20100198-fs.htm>

“The new rules are bad news for U.S. agriculture and bad news for comprehensive immigration reform,” said Tamar Jacoby, president of ImmigrationWorks USA. “Instead of making it easier for needed foreign workers to come to the U.S. legally and contribute to the U.S. economy – the primary goal of immigration reform – the new H-2A regulations will make it *harder* for American farmers to hire the workers they need to keep their operations running and provide food for Americans. This will be ruinous for agricultural employers – and also for many American workers employed in the farm sector and in an array of related fields.”

These rules were rushed through after attempts by current Labor Secretary Hilda Solis to merely cancel the 2008 H-2A rules were rebuffed in court. The newly adopted rules are opposed by virtually every agriculture-related association, and the American Farm Bureau Federation is considering a legal challenge to the new rules. According to Stallman, Farm Bureau is encouraging Congress to create a meaningful guest worker program that works fairly and honorably for employers and employees alike.

Bills of Interest

We are now over halfway through this session's legislative process. Thus, the list of the bill we are tracking has dwindled considerably as legislation died. The [bill tracking list](#) is available on our website and will continue to be updated regularly as bill statuses change.

If there is a bill of interest to you that does not appear on our tracking, please email [Daniel Turner](#) with a request that WFB staff review the bill.

Information Resources

- [Washington Farm Bureau](#)
- [Governor's Bill Actions:](#)
- [Legislative Information](#)
- Legislative Hotline: (800) 562-6000