



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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Anti-Business Retro-bution Bill Narrowly Passes Senate

By the razor thin vote of 25-24, the partisan and anti-business [ESSB 6035](#), emerged from the Senate on the last day for bills to be voted out of their house of origin.

The bill was opposed by every business group, representing approximately 15,000 businesses statewide that use the retrospective rating (retro) program. These businesses account for almost half of all of the workers' comp premiums paid to the state.

Numerous attempts were made by Democrats to "peel off" members of the business community such as restaurants and large general contractors, but the bill never improved, and all of the state's business associations held together. Even groups whose retro groups were unaffected were appalled by the blatant attempt to cut off opposition speech. "Defunding the opposition after an election victory is more like what you'd expect in a banana republic," quipped Farm Bureau first vice president Britt Dudek.

ESSB 6035 is a blatant attempt to muzzle business associations, especially the Building Industry Association of Washington (BIAW), which traditionally supports Republican candidates. Six Democrats joined all 18 Republicans to vote against the bill, but 25 Democrats apparently were not listening to the calls of small businesses from their districts when they voted for the bill.

Passionate Floor Speeches -- Who is right?

Republicans bashed the bill, pointing out that it seeks to regulate the voluntary contracts between a business and its trade association, prescribes what an association can spend its money on, and mandates disclosure of a private association's internal financial records. Democrats stated that they were only trying to spread sunshine, that the bill allows an association to spend money however it wants, and that it does not require disclosure.

Proponents of the bill made many mistakes in their floor speeches, but it is excusable, because the bill was only released an hour before it was voted on, and as such it is likely that most senators did not have a chance to read it.

Here is what the bill would do:

- Prescribe the allowable uses of funds by program administrators, unless the association annually obtains permission from its members on how to spend the money. Since each retro contract spans several years, this is virtually impossible.
- Provide mandatory public disclosure of how administrative fees are spent. We can logically expect that unions and trial lawyers will receive these disclosures and file complaints or lawsuits about them.
- Require new regulations by L&I, annual safety plans, distribution plans, financial statements and other legal disclosures that will add costs to retro programs, thus lowering the amount the employers can expect to be returned.
- Discourage enrollment in retro programs. The current practice that associations use is to encourage enrollment by charging a very small enrollment fee (generally 1% of premium), coupled with a payment to the association that is a percentage of any refund earned. ESSB 6035 would allow large unregulated upfront fees but would only require disclosure if associations received payments as a percentage of the refund.

The Union Factor

ESSB 6035 was seen by many as a gift to labor unions, who have not had a major victory yet this Legislative session. When allegations surfaced that the unions were threatening to withhold political contributions unless Legislators voted for their "Worker Privacy Bill" (a bill that would have prohibited employers from talking to workers about labor unions), this bill was removed from consideration in both houses by Speaker Frank Chopp (D-Seattle) and Senate Majority Leader Lisa Brown (D-Spokane). A criminal investigation has been launched on the union activity by the State Patrol. With the Worker Privacy bill gone, unions were forced to settle for their second choice -- the "Get Retro" bill.

Political observers and commentators have begun to question the passage of any top priorities of the labor council -- especially within a few days of their apparent illegal political threat and at the beginning of the investigation by the state patrol.

Some Senators Listened

Hundreds of small businesses called their Legislators. Some listened. For example, Sen. Mary Margaret Haugen was originally a proponent of the bill, but after many, many farmers called her to express reservation, she changed her position, and was one of six Democrats who voted against the bill. Farm Bureau appreciates Sens. Haugen (D-Camano Island), Hargrove (D-

Hoquiam), Hatfield (D-Raymond), Jarrett (D-Mercer Island), Kilmer (D-Gig Harbor), and Sheldon (D-Potlatch) for opposing the Retro-bution bill.

“In the end, this bill will be defeated in the House if every small business owner calls their elected official,” said Dudek. Be sure to visit the [Farm Bureau website](#) often for updates on what you can do in the upcoming weeks to make a difference.

Anti-Business Bill Withdrawn Illegal/Unethical Lobbying Alleged

Union strong-arm tactics finally backfired in a big way, leading to the demise of their top priority for this year, the so-called “Worker Privacy” bill.

Here is the joint statement from Gov. Chris Gregoire, Senate Majority Leader Lisa Brown and Speaker of the House Frank Chopp regarding the Worker Privacy Act:

“We are no longer considering action on [House Bill 1528](#) and [Senate Bill 5446](#), also known as the Worker Privacy Act. Immediately upon becoming aware of an email linking potential action on the bill to campaign contributions, bringing the bill forward was no longer an option. “The email raises serious legal and ethical questions. The matter has been referred to the Washington State Patrol for investigation.”

According to its website, the Washington State Labor Council, AFL-CIO is the largest labor organization in Washington, and considers itself to be “the voice of labor.” They are an extremely powerful special interest group because they control a large number of potential voters, and more importantly, a sizeable amount of campaign cash. And, unlike the other powerful labor union, the Service Employees International Union, the labor council has focused the vast majority of its contributions on Democrats.

Many Legislators applauded Gregoire, Brown and Chopp’s actions, citing threats to withhold campaign contributions and retribution at the next election as a hindrance to good governing. Both parties quickly placed a gag order in place on their respective members. Before the gag order was announced, Rep. Cary Condotta, an outspoken critic of threats, told news organizations it was “about time” someone did something about the intimidating union tactics.

Lobbyists are not permitted to offer or threaten to withhold campaign contributions in connection with voting for or against a particular measure, and the union activity apparently crossed the line.

The Washington State Patrol has begun an investigation. Here is a portion of their statement:

“The Washington State Patrol has received a request to look into potential criminal allegations surrounding communications pertaining to SB 5446 and HB 1528 – Worker Privacy Act. As with any on-going investigation, no evidence or further information will be released at this time. The WSP will be working hand in hand with prosecutors (we don’t know who may/may not have jurisdiction yet.) as we progress.”

Stay tuned. This will undoubtedly have repercussions for the rest of the session.

House Lets GMA/SMA Bill Die

[HB 1653](#), sponsored by Rep. Geoff Simpson (D-Covington), died without a vote on the House floor Thursday.

The bill would have temporarily interfered with a host of exemptions under the Shoreline Management Act (SMA), including agricultural activities.

The bill unexpectedly moved out of the House Rules Committee Wednesday and ignited a wildfire of last-minute lobbying and grassroots messages to state representatives.

Farm Bureau members were joined by other rural, suburban and urban residents concerned that this legislation would interfere with their rights to use and enjoy their property within a couple hundred feet of shorelines.

Farm Bureau was joined by the Horticultural Association, Grange and Friends of Farms and Forests in the effort to fight back the revived bill. AWB and other business organizations were also in on the effort.

Reps. Brian Blake (D-Aberdeen), Lynn Kessler (D-Hoquiam), Joel Kretz (R-Wauconda), Deb Eddy (D-Kirkland), Jeff Morris (D-Bellingham) and Larry Springer (D-Kirkland) led a bi-partisan, east-west, rural-urban coalition that was opposed to increasing regulation that would be harmful to agriculture. We deeply appreciate their leadership and the support of the House majority that opposed this legislation.

The SMA specifically prevents local governments from limiting or prohibiting agricultural activities, thanks to legislation sponsored in 2002 by Sen. Brian Hatfield (D-Raymond) when he served in the House.

In the July 2008 *Anacortes* ruling, the state Supreme Court ruled that critical areas within the SMA jurisdiction are to be dealt with exclusively under the SMA and all others under the Growth Management Act (GMA).

HB 1653 would have gutted that ruling and given the Department of Ecology leverage over CAO (GMA critical area ordinance) approvals that they do not currently have.

Ecology and the Department of Community, Trade & Economic Development (CTED) were lobbying hard for the passage of the bill.

The SMA specifically provides exemptions or protections for many activities in the shoreline areas. Among those that would have been harmed by this legislation are:

- Selective commercial timber cutting
- Agricultural activities
- Exemption for projects to improve fish or wildlife habitat or fish passage
- Watershed restoration projects

- Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements
- Construction of the normal protective bulkhead common to single family residences
- Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands
- Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his or her own use or for the use of his or her family
- Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner
- Operation and maintenance of any system of dikes, ditches, drains
- The process of removing or controlling an aquatic noxious weed; and others

These activities are currently protected under the SMA, but most of them are not protected under the CAO requirement of the GMA.

The Senate Environment, Water and Energy Committee rejected the companion bill, [SB 5726](#), sponsored by Sen. Adam Kline (D-Seattle).

GMA/Climate Bill Also Perishes to Cutoff Deadline

[HB 1490](#), sponsored by Rep. Sharon Nelson (D-Maury Island) died in the midst of the House floor flurry on Thursday.

The original bill would have added reducing greenhouse gases to the environmental goal of the Growth Management Act.

In addition, full-planning counties would have been mandated to include addressing greenhouse gases and reducing “vehicle miles traveled” (VMT) in their mandatory county-wide planning policies.

Reducing VMT would have had a disproportionate impact on agriculture and rural communities, as it is necessary to travel more miles to services, employment, and markets in rural areas than in more compact urban areas.

The greenhouse gas reduction mandate and goal would have resulted in tens of millions of dollars in litigation, much the same as we have seen result from the current mandate to “include best available science” (BAS) in critical area ordinances. Now, 14 years after that mandate was added to the GMA, there is still no definition of BAS.

Prior to deadline, several amendments were floated, attempting to reduce the bill to a focus on providing affordable housing near the largest public transportation hubs around the state. Washington Farm Bureau offered no objections to later amendments that focused exclusively on affordable housing.

Deadline Passes for Action on Association Health Plan Bill

In a surprise move Tuesday, House leadership relieved the Rules Committee of [SHB 1714](#), and made it eligible for a vote on the House floor.

As you may recall, Farm Bureau strongly opposed the bill as approved by the House Health Care & Wellness Committee last month.

Fortunately, the bill's sponsor, Rep. Eileen Cody (D-Seattle), was willing to work with Farm Bureau and representatives of other association health plans to craft an amendment that addressed our concerns and focused the bill on an evaluation of the small group health insurance market as well as the association plan market.

Thursday's deadline for the House to act on its own bills passed without SHB 1714 being brought to the floor.

Farm Bureau greatly appreciates Rep. Cody's willingness to work with us and other association plan representatives on this important amendment.

Senate Paves the Way for a \$23 Billion Health Care Payroll Tax

A bill to establish the "Washington Health Partnership" passed the Senate on essentially a party-line vote Monday, with Sen. Tim Sheldon (D-Potlatch) providing the only Democrat vote against it.

Farm Bureau opposes [2SSB 5945](#) by Sen. Karen Keiser (D-Des Moines) for several reasons:

- The bill would expand our state's Medicaid program in order to access \$1.8 billion in temporary federal stimulus dollars. Unfortunately, when federal funds dry up, Washington taxpayers would still be on the hook to fund this massive expansion of state-managed health care.
- This latest proposed "Partnership" would work to implement one of the "reform" proposals evaluated in a recent report to the legislature. The bill is narrowly crafted to target a particular reform proposal contained in that report, which would put the state in charge of health care for every Washingtonian.
- The Office of Financial Management estimates this health care "reform" would cost employers \$23 billion in new payroll taxes every two years.
- The Department of Revenue estimates it would need 272 new employees, costing taxpayers \$53 million more per biennium, just to collect the employer taxes.

While 2SSB 5945 only creates the mechanism to pursue these efforts, it clearly would put Washington state on a path to establish a multi-billion dollar payroll tax in order to fund a single-payer health care system. Farm Bureau policy is clearly opposed to such efforts.

Propane Sales and Use Tax Exemption Passes House

On Monday, the House approved [SHB 2275](#), by Reps. Joel Kretz (R-Wauconda), Larry Springer (D-Kirkland) and several others, by a vote of 92-4. The bill would exempt propane used by farmers for off-highway purposes from sales and use taxes.

The bill is scheduled to be heard in the Senate Agriculture & Rural Economic Development next Thursday at 3:30 p.m.

Farm Bill strongly supports SHB 2275.

B&O Tax on Farmers Still on Hold

A bill to impose the Business & Occupations tax on farmers earning \$200,000 or more still has not been acted upon by the Senate or its Ways & Means Committee.

Although no action has been taken on [SB 5911](#), sponsored by Sen. Craig Pridemore (D-Vancouver) since it was introduced February 6, Farm Bureau remains concerned that such a tax could still be considered in order to help balance the state budget.

Farm Bureau continues to monitor this legislation and is opposed to any effort that would increase food prices by raising taxes on Washington's farmers and ranchers.

Climate Continues to Change on CO2 Legislation

The Governor's "Cap and Trade" bill -- [E2SSB 5735](#) sponsored by Sen. Phil Rockefeller (D-Bainbridge Island) -- passed the Senate this week.

In a turn of events from the Committee action on this measure which directed the state to undertake greenhouse gas reduction efforts on a voluntary basis and only if dollars were specifically directed for such efforts, the Senate approved a measure that directs Ecology to develop an emission reduction program by December 1, 2010. Thankfully, this program will be developed as recommendations to the Legislature for approval to implement.

On a slightly brighter note, the bill also calls for an economic analysis of the impacts of an emission reduction program on "consumers, businesses, and citizens" in Washington. The only problem is that this analysis will be due at the same time that the program is to be developed by Ecology -- thus making a true economic analysis of the proposed program impossible. If we really want to avoid undue harm to the economy, we must do an analysis of the final proposal after Ecology has completed it. This means having the economic analysis due at least six months after the program and the Legislature should not even consider the draft program until the 2012 session.

In the final analysis, Legislators should heed our cry to not pass this measure because: (1) we can continue working on the key issues without a bill this year; (2) we need to wait to see what the US government chooses to do on the subject; (3) any mandatory emission reduction program will greatly harm our fragile economy; (4) we need proof that such a program will actually help us deal with natural climate variability -- not just create a new revenue source and bureaucracy.

Drought Strikes Legislative Flood of Water Bills

The first half of the 2009 Legislative session was rather brutal to water bills, although for those of you who have tracked water issues over the years this will not come as a surprise. The surprise this year is the vigor expressed by one particular “stakeholder” group. First, let’s look at what remains alive this session and then consider why things have not advanced.

After more than a dozen good bills were introduced ranging from relinquishment reform to water banking, we are now down to three bills.

1. [ESHB 1571](#), Regarding the adjudication of water rights, sponsored by Rep. Brian Blake (D-Aberdeen), passed the House Thursday. We worked hard on the measure to try to secure some helpful new tools in the statute, but at present the bill only includes modest procedural adjustments to the way new state water rights adjudications would proceed. This measure may speed up future adjudications, but it does not include any of the policy enhancements WFB and other stakeholders had sought. We therefore are neutral on the measure.
2. [ESSB 5583](#), Improving the effectiveness of water banking, sponsored by Sen. Chris Marr (D-Spokane), is also alive. This measure offers some useful adjustments to the trust water program that should enhance the functionality of the program for water right holders who make donations to the trust program. WFB continues to offer guarded support of this measure.
3. [2SHB 1580](#), Establishing a pilot local water management program in the Walla Walla watershed, sponsored by Sen. Lynn Kessler (D-Hoquiam), also cleared the House. The Walla Walla watershed bill will provide some innovative water resource management tools to that watershed to try to meet demands for in-stream and out-of-stream uses. We support the measure.

The 2009 session dawned fairly brightly for water legislation. Stakeholders worked vigorously behind the scene throughout the summer and fall to develop legislation that could be supported by all. However, as the bills came up for hearing it became painfully obvious that one “stakeholder” group was not interested in water law change this year. That “stakeholder” is tribal governments. In spite of careful effort to include tribes in conversations on each of these bills, the tribal representatives testified against almost every bill introduced, and a tribal group issued an email opposing the adjudication bill.

This opposition helped sink the rest of the water bills and nearly brought down the adjudication and trust water bills. The sad fact is that these bills would not have harmed tribal claims and rights, but could have provided some relief to water right holders and increased stream flows.

We certainly hope a new way of including tribal interests can be found to enable us to make responsible water resource reform in the future.

To make this a reality, the Legislature will have to carefully analyze real concerns from unfounded and potentially spurious arguments made simply to defeat legislation. WFB remains steadfast in its offer to work with all stakeholders to find solutions that help all parties.

Bills of Interest

Please note that since some bills have “died” there are two versions of bill tracking posted on our website. Since there is always a chance a bill may be “revived” we judiciously keep a copy of bill tracking as it was before cutoff, in addition to the active bill tracking list. Both are available at: <http://www.wsfb.com/issues/legisletter>.

Information Resources

Washington Farm Bureau: www.wsfb.com
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