

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 377

BY ANDRUS

AN ACT

1 RELATING TO AGRICULTURE; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF
2 A NEW CHAPTER 97, TITLE 67, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO
3 PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR AGRICULTURE
4 PROTECTION AREAS, TO PROVIDE FOR AGRICULTURE PROTECTION AREA BOARDS,
5 TO PROVIDE FOR NOTICES OF PROPOSAL AND CREATION OF AGRICULTURAL PROTEC-
6 TION AREAS, TO PROVIDE FOR REVIEW OF PROPOSALS, TO PROVIDE FOR PUBLIC
7 HEARINGS AND ACTION ON PROPOSALS, TO PROVIDE FOR REVIEW OF AGRICUL-
8 TURE PROTECTION AREAS, TO PROVIDE FOR THE ADDITION OF LAND AND REMOVAL
9 OF LAND, TO PROVIDE FOR LIMITATIONS ON LOCAL REGULATIONS, TO PROVIDE
10 FOR NUISANCES, TO PROVIDE FOR EMINENT DOMAIN, AND TO PROVIDE FOR THE
11 AGRICULTURAL LANDS PROTECTION FUND; AND DECLARING AN EMERGENCY AND PRO-
12 VIDING AN EFFECTIVE DATE.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended
16 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
17 ter 97, Title 67, Idaho Code, and to read as follows:

18 CHAPTER 97

19 AGRICULTURAL PROTECTION AREAS

20 67-9701. SHORT TITLE. This chapter shall be known and may be cited as
21 the "Agricultural Protection Area Act."

22 67-9702. LEGISLATIVE INTENT. (1) It is hereby declared by the legisla-
23 ture of the state of Idaho that:

24 (a) Working farms, ranches, and forests provide important benefits to
25 all Idahoans by sustaining Idaho's economy, food, and fiber production,
26 the cultural heritage of local communities, habitat for wildlife, in-
27 tact watersheds for clean water, and opportunities to hunt, fish, and
28 enjoy the outdoors with landowner permission;

29 (b) Working farms, ranches, and forests and the benefits they provide
30 to Idahoans have been lost to rapid population growth, conversion to de-
31 velopment, and other uses in recent decades; and

32 (c) Many of Idaho's rural working landowners are deeply committed to
33 maintaining agricultural and forestry traditions, and to serving as
34 stewards of natural resources and wildlife.

35 (2) It is hereby declared as the purpose of this chapter to protect and
36 enhance the economic and cultural benefits that working lands provide to
37 Idahoans by:

38 (a) Promoting proactive planning tools for working landowners and
39 governing bodies to maintain and enhance the economic value of working
40 lands; and

1 (b) Creating a new dedicated fund to incentivize Idaho working landown-
2 ers to protect their farm, ranch, and forest economies.

3 67-9703. DEFINITIONS. As used in the chapter:

4 (1) "Agricultural production" means an activity or condition that oc-
5 curs in connection with the production of agricultural products for food,
6 fiber, fuel, and other lawful purposes and includes but is not limited to:

7 (a) Producing agricultural, horticultural, floricultural, and viti-
8 cultural crops, fruits and vegetable products, seeds, hay, sod,
9 forestry, nursery stock, and other plants; and

10 (b) Breeding, hatching, raising, producing, feeding, and keeping live-
11 stock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish
12 and other aquatic species, and bees.

13 (2) "Agricultural protection area" means a geographic area created un-
14 der the authority of this chapter for the purpose of protecting and preserv-
15 ing farmland.

16 (3) "Agricultural protection area board" means the advisory board cre-
17 ated under section 67-9705, Idaho Code.

18 (4) "Agricultural lands protection fund" refers to a dedicated fund to
19 be created within the Idaho state department of agriculture for the purpose
20 of providing financial incentives to the owners of real property placed into
21 an agricultural protection area.

22 (5) "Applicant" means anyone who owns more than five (5) acres of land
23 for agricultural production and who voluntarily applies for that land to be
24 part of an agricultural protection area.

25 (6) "Governing body" means the governing body of a county or municipal-
26 ity in which land is proposed to be included into an agricultural protection
27 area.

28 (7) "Municipality" means a city or town.

29 (8) "Planning commission" means a county or municipal land use planning
30 entity.

31 (9) "Proposal" means written documents submitted to or from a governing
32 body or agriculture protection area board.

33 (10) "Unincorporated" means the geographic areas of a county not within
34 a municipality.

35 67-9704. AGRICULTURE PROTECTION AREAS. After January 1, 2025, each
36 county and municipality in the state of Idaho shall receive applications for
37 the creation of agriculture protection areas for the purpose of protecting
38 and preserving farmland. Agriculture protection areas shall be established
39 through a governing body. A process shall be developed by a governing body
40 for applicants to apply and receive approval for land to be placed into an
41 agriculture protection area.

42 67-9705. AGRICULTURE PROTECTION AREA BOARD. (1) The county governing
43 body shall appoint at least three (3) and not more than five (5) members from
44 the county's soil and water conservation district board of directors to
45 serve as the agriculture protection area board for the county and municipal
46 governing bodies within the boundaries of the county.

1 (2) The purpose of agriculture protection area boards is to evaluate
2 proposals from applicants and make recommendations to governing bodies for
3 final consideration.

4 (3) Anyone owning land that is dedicated to production agriculture that
5 is greater than five (5) acres shall be allowed to apply for their land to be
6 part of an agriculture protection area.

7 67-9706. NOTICE OF PROPOSAL FOR CREATION OF AN AGRICULTURE PROTECTION
8 AREA. (1) A governing body shall conduct at least one (1) public hearing in
9 which interested persons shall have an opportunity to be heard. At least
10 fifteen (15) days prior to the hearing, notice of the time and place and a
11 summary of the application to be discussed shall be published in the official
12 newspaper or paper of general circulation within the municipality or unin-
13 corporated area. Notice of intent to adopt or repeal the application shall
14 be sent to all political subdivisions providing services within the planning
15 jurisdiction at least fifteen (15) days prior to the public hearing sched-
16 uled by the governing body. A record of the hearing, findings made, and ac-
17 tions taken by the governing body shall be maintained by the governing body.

18 (2) The notice shall contain:

19 (a) A statement that a proposal for the creation of an agriculture pro-
20 tection area has been filed with the applicable governing body;

21 (b) A statement that the proposal will be open to public input in the
22 office of the applicable governing body;

23 (c) A statement that any person affected by the establishment of the
24 agriculture protection area may, within fifteen (15) days of the date of
25 the notice, file a written notification to object.

26 67-9707. REVIEW OF PROPOSAL FOR CREATION OF AN AGRICULTURE PROTECTION
27 AREA. (1) After fifteen (15) days from the date of the notice, the applicable
28 governing body shall refer the proposal and any objections to the agricul-
29 ture protection area board for their review, comments, and recommendations.

30 (2) Within forty-five (45) days after the receipt of the proposal, the
31 agriculture protection area board shall submit a written report to the ap-
32 plicable governing body with a recommendation to approve or reject the pro-
33 posal.

34 (3) In order to give constructive notice of the existence of the agri-
35 culture protection area to all persons who have, may acquire, or may seek
36 to acquire an interest in land in or adjacent to the agriculture protection
37 area, within ten (10) days of the creation of the agriculture protection
38 area, the applicable governing body shall file an executed document contain-
39 ing a legal description of the agriculture protection area with the county
40 recorder of deeds.

41 (4) If the legal description of the parcel or parcels of real property
42 to be included in the agriculture protection area is available through the
43 county recorder's office, the applicable governing body shall use that legal
44 description in its executed document required in this section.

45 (5) Within ten (10) days of the recording of the creation or removal
46 of an agriculture protection area, the applicable governing body shall send
47 written notification to the director of the Idaho state department of agri-
48 culture that the agriculture protection area has been created or removed.

1 The notification shall include the names of the working landowners of the
 2 parcel or parcels of real property within the agriculture protection area;
 3 the total acreage of the area; the date of approval or removal of the area;
 4 and the date of recording. The Idaho state department of agriculture shall
 5 annually report the data to its germane committees in the house of represen-
 6 tatives and the senate.

7 (6) The applicable governing body's failure to record the notice re-
 8 quired pursuant to this section or to send the written notification pursuant
 9 to subsection (5) of this section does not invalidate the creation or disso-
 10 lution of an agriculture protection area.

11 67-9708. PUBLIC HEARING -- REVIEW AND ACTION ON PROPOSAL. (1) After
 12 receipt of the written reports from the agriculture protection area with a
 13 recommendation to support or reject the proposal, the governing body shall:

14 (a) Schedule a public hearing;

15 (b) Provide notice of that public hearing by:

16 (i) Posting notice on the governing body's website;

17 (ii) Posting notice at five (5) public places, designated by the
 18 governing body, within or near the proposed agriculture protec-
 19 tion area; and

20 (iii) Mailing written notice to each land owner within one thou-
 21 sand (1,000) feet of the land proposed for inclusion within an
 22 agriculture protection area; and

23 (c) Ensure that the notice includes:

24 (i) The time, date, and place of the public hearing on the pro-
 25 posal;

26 (ii) A description and map of the proposed agriculture protection
 27 area;

28 (iii) A summary of the recommendations of the governing body and
 29 agriculture protection area board; and

30 (iv) A statement that interested persons may appear at the public
 31 hearing and speak in favor or against the proposal.

32 (2) The governing body shall:

33 (a) Convene the public hearing at the time, date, and place specified in
 34 the notice; and

35 (b) Take oral and written testimony from interested persons.

36 (3) Within one hundred twenty (120) days of the submission of the pro-
 37 posal, based on the recommendation by the agriculture protection area board,
 38 the governing body shall approve or reject the proposal. The creation of the
 39 agriculture protection area shall be effective at the earlier of the final
 40 approval of the governing body or one hundred twenty (120) days after submis-
 41 sion of a proposal complying with the provisions of this chapter. If the gov-
 42 erning body rejects the proposal, the body must provide its findings and rea-
 43 sons to the applicant. The applicant may appeal the decision to the govern-
 44 ing body within sixty (60) days of the rejection by the governing body. Final
 45 decisions of the governing body shall be subject to judicial review.

46 67-9709. REVIEW OF AGRICULTURE PROTECTION AREAS. (1) Twenty (20)
 47 years after its creation, a notice shall be sent to the land owner of the
 48 agriculture protection area notifying them of their options to either renew

1 the land's agriculture protection area status for another twenty (20) years
2 or terminate the agriculture protection area. If the landowner desires to
3 continue with the agriculture protection area, the local government shall
4 reauthorize the designation as long as there is no public objection. If the
5 landowner desires to terminate the agriculture protection area, the local
6 government shall terminate the designation.

7 (2) If there is an objection from a neighboring landowner notified un-
8 der the conditions of section 67-9708(1) (b) (iii), Idaho Code, to the further
9 continuation of the agriculture protection area, the agriculture protection
10 area board shall hold a public hearing at least one hundred twenty (120) days
11 before the end of the calendar year. Furthermore, the agriculture protec-
12 tion area board shall:

13 (a) Provide notice of the hearing using the same procedures required by
14 section 67-9708, Idaho Code;

15 (b) Make a recommendation to the governing body whether the agriculture
16 protection area shall be modified, terminated, or remain the same;

17 (c) If the governing body terminates the agriculture protection area
18 the governing body shall file an executed document containing the legal
19 description and map of the modified or terminated agriculture protec-
20 tion area. The governing body shall provide to the landowner the rea-
21 sons for the decision to terminate the agriculture protection area; and

22 (d) If an agriculture protection area is not terminated, then it re-
23 mains the same geographic area as previously approved and is considered
24 to be reauthorized for another twenty (20) years.

25 67-9710. ADDING LAND TO OR REMOVING LAND FROM AN AGRICULTURE PROTEC-
26 TION AREA. (1) Any owner may add land to an existing agriculture protection
27 area by filing a proposal with the appropriate governing body. The applica-
28 ble governing body shall comply with the provisions for creating an agricul-
29 ture protection area in determining whether to accept the proposal as speci-
30 fied in section 67-9708, Idaho Code.

31 (2) An owner of land within an agriculture protection area may remove
32 any or all of the land from the agriculture protection area by filing a peti-
33 tion for removal with the applicable governing body.

34 67-9711. LIMITATIONS ON LOCAL REGULATIONS. (1) A political subdivi-
35 sion within which an agriculture protection area is created shall encourage
36 the continuity, development, and viability of agricultural use within the
37 agriculture protection area by not enacting a local law, ordinance, or regu-
38 lation that would restrict a farm structure or farming practice, unless that
39 farm structure or farming practice does not comply with generally recognized
40 farming practices.

41 (2) A political subdivision shall not change the zoning designation
42 or pertinent regulations including conditional uses for that zoning clas-
43 sification that affects land within an agriculture protection area unless
44 the political subdivision receives written approval for the change from the
45 landowner within the agriculture protection area affected by the change.

46 (3) A political subdivision shall amend the county's, city's, or town's
47 comprehensive land use plan and ordinances to maintain and enhance agricul-

1 tural protection areas as provided by Idaho law and shall comply with the
2 provision of section 67-6508, Idaho Code.

3 67-9712. NUISANCES. (1) Recognizing that Idaho is a right to farm
4 state and that agricultural operations and agricultural facilities pursuant
5 to chapter 45, title 22, Idaho Code, are protected from nuisance actions if
6 they follow generally recognized farming practices, a political subdivision
7 shall ensure that any of its laws or ordinances that define or prohibit a pub-
8 lic nuisance shall exclude agriculture protection areas from its definition
9 or from any prohibition for any agricultural activity or operation within
10 an agriculture protection area as long as those agricultural activities or
11 operations follow generally recognized farming practices.

12 (2) In a civil action for nuisance or criminal action for public nui-
13 sance, it is a complete defense if the action involves agricultural activi-
14 ties that were:

15 (a) Conducted within an agriculture protection area; and

16 (b) Not in violation of any federal, state, or local law or regulation
17 relating to the alleged nuisance or were conducted using generally rec-
18 ognized farming practices.

19 67-9713. EMINENT DOMAIN. A political subdivision having or exercis-
20 ing eminent domain powers may not condemn for any purpose any land within
21 an agriculture protection area that is being used for agriculture produc-
22 tion unless the need for condemnation bears a direct relationship to public
23 health or safety.

24 67-9714. AGRICULTURAL LANDS PROTECTION FUND. (1) There is hereby cre-
25 ated and established in the state treasury an ongoing dedicated fund to be
26 known and designated as the "Agricultural Lands Protection Fund." The fund
27 shall consist of such moneys as may be provided by legislative appropri-
28 ations or otherwise directed to the fund by the Idaho state legislature and
29 all moneys granted, donated, contributed, bequeathed, or otherwise provided
30 to the fund by the federal government, a local unit of government, an organ-
31 ization, or any other person. The fund is specifically empowered to accept
32 grants, gifts, transfers, bequests, and donations, including those which
33 are limited in their purpose by the grantor.

34 (2) All interest income from the fund is hereby appropriated to and is
35 to be administered for these and other purposes related to growing Idaho's
36 agricultural economy specifically by:

37 (a) Incentivizing working landowners to utilize agricultural protec-
38 tion areas for the purposes of carrying out the provisions of this chap-
39 ter;

40 (b) Developing land use planning and zoning tools and guidance for
41 county and municipal governments to proactively plan for agricultural
42 production in their long-term planning; and

43 (c) Promoting working landowner succession planning resources devel-
44 oped and administered by the Idaho farm and ranch center.

45 SECTION 2. An emergency existing therefor, which emergency is hereby
46 declared to exist, this act shall be in full force and effect on and after
47 July 1, 2023.