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LEGISLATURE OF THE STATE OF IDAHO
Sixty-seventh Legislature First Regular Session - 2023

IN THE _____

BILL NO. _____

BY _____

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 AGRICULTURE
8 PROTECTION AREAS, TO PROVIDE FOR THE ADDITION OF LAND AND REMOVAL OF
9 LAND, TO PROVIDE FOR LIMITATIONS ON LOCAL REGULATIONS, TO PROVIDE FOR
10 NUISANCES, TO PROVIDE FOR EMINENT DOMAIN, TO PROVIDE FOR THE AGRICUL-
11 TURAL LANDS PROTECTION FUND; AND DECLARING AN EMERGENCY AND PROVIDING
12 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 98, Title 67, Idaho Code, and to read as follows:

18 CHAPTER 97
19 AGRICULTURAL PROTECTION AREAS

20 67-9701. SHORT TITLE. This act shall be referred to as the "Agricul-
21 tural Protection Area Act."

22 67-9701A. LEGISLATIVE INTENT. (1) It is hereby declared by the legis-
23 lature 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.

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

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 act to protect and en-
36 hance the economic and cultural benefits that working lands provide to Ida-
37 hoans 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.

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

3 67-9701B. DEFINITIONS. As used in the chapter:

4 (1) "Agricultural protection area board" means the advisory board cre-
5 ated under section 67-9701D, Idaho Code.

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

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

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

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

18 (4) "Applicant" means anyone who owns more than 5 acres of land for
19 agricultural production and who voluntarily applies for that land to be part
20 of an agricultural protection area.

21 (5) "Agricultural lands protection fund" refers to a dedicated fund to
22 be created within the Idaho state department of agriculture for the purpose
23 of providing financial incentives to the owners of real property placed into
24 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 67-9701C. 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. The process for applicants to apply for and be
40 granted land to be placed into an agriculture protection area shall be devel-
41 oped by a governing body.

42 67-9701D. AGRICULTURE PROTECTION AREA BOARD. (1) The county govern-
43 ing body shall appoint at least three (3) and not more than five (5) members
44 from 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.

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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 67-9701E. NOTICE OF PROPOSAL FOR CREATION OF AN AGRICULTURE PROTEC-
8 TION AREA. (1) A governing body shall conduct at least one (1) public hearing
9 in 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, repeal, or amend the application
14 shall be sent to all political subdivisions providing services within the
15 planning jurisdiction at least fifteen (15) days prior to the public hear-
16 ing scheduled by the governing body. A record of the hearing, findings made,
17 and actions taken by the governing body shall be maintained by the governing
18 body.

19 (2) The notice shall contain:

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

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

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

27 67-9701F. REVIEW OF PROPOSAL FOR CREATION OF AN AGRICULTURE PROTEC-
28 TION AREA. (1) After fifteen (15) days from the date of the notice, the ap-
29 plicable governing body shall refer the proposal and any objections to the
30 agriculture protection area board for their review, comments, and recommen-
31 dations.

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

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

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

47 (5) Within ten (10) days of the recording of the creation or removal
48 of an agriculture protection area, the applicable governing body shall send

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

9 (6) The applicable governing body's failure to record the notice re-
10 quired of this section or to send the written notification under subsection
11 (5) of this section does not invalidate the dissolution of an agriculture
12 protection area.

13 67-9701G. PUBLIC HEARING - REVIEW AND ACTION ON PROPOSAL. (1) After
14 receipt of the written reports from the agriculture protection area with a
15 recommendation to support or reject the proposal the governing body shall:

16 (a) Schedule a public hearing;

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

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

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

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

25 (c) Ensure that the notice includes:

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

28 (ii) A description and map of the proposed agriculture protection
29 area;

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

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

34 (2) The governing body shall:

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

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

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

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1 67-9701H. REVIEW OF AGRICULTURE PROTECTION AREAS. (1) Twenty (20)
2 years after its creation, a notice shall be sent to the land owner of the
3 agriculture protection area notifying them of their options to either renew
4 the land's agriculture protection area status for another twenty (20) years
5 or terminate the agriculture protection area. If the landowner desires to
6 continue with the agriculture protection area, the local government shall
7 reauthorize the designation as long as there is no public objection. If the
8 landowner desires to terminate the agriculture protection area, the local
9 government shall terminate the designation.

10 (2) If there is an objection from a neighboring landowner notified un-
11 der the conditions of section 67-9701G (1) (b) (iii), Idaho Code, to the fur-
12 ther continuation of the agriculture protection area, the agriculture pro-
13 tection area board shall hold a public hearing at least one hundred twenty
14 (120) days before the end of the calendar year. Furthermore, the agriculture
15 protection area board shall:

16 (a) Provide notice of the hearing using the same procedures required by
17 section 67-9701G, Idaho Code.

18 (b) Make a recommendation to the governing body whether the agriculture
19 protection area shall be modified, terminated, or remain the same.

20 (c) If the governing body modifies or terminates the agriculture
21 protection area the governing body shall file an executed document
22 containing the legal description and map of the modified or terminated
23 agriculture protection area. The governing body shall provide to the
24 landowner the reasons for the decision to modify or terminate the agri-
25 culture protection area.

26 (d) If an agriculture protection area is not modified or terminated,
27 then it remains the same geographic area as previously approved and is
28 considered to be reauthorized for another twenty (20) years.

29 67-9701(I). ADDING LAND TO OR REMOVING LAND FROM AN AGRICULTURE
30 PROTECTION AREA. (1) Any owner may add land to an existing agriculture pro-
31 tection area by filing a proposal with the appropriate governing body. The
32 applicable governing body shall comply with the provisions for creating an
33 agriculture protection area in determining whether to accept the proposal as
34 specified in section 67-9701G, Idaho Code.

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

38 67-9701J. LIMITATIONS ON LOCAL REGULATIONS. (1) A political subdivi-
39 sion within which an agriculture protection area is created shall encourage
40 the continuity, development, and viability of agricultural use within the
41 agriculture protection area by not enacting a local law, ordinance, or regu-
42 lation that would restrict a farm structure or farming practice, unless that
43 farm structure or farming practice does not comply with generally recognized
44 farming practices.

45 (2) A political subdivision shall not change the zoning designation
46 or pertinent regulations including conditional uses for that zoning clas-
47 sification that affects land within an agriculture protection area unless

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1 the political subdivision receives written approval for the change from the
2 landowner within the agriculture protection area affected by the change.

3 (3) A political subdivision shall amend the county's, city's, or town's
4 comprehensive land use plan and ordinances to maintain and enhance agricul-
5 tural protection areas as provided by Idaho law and shall comply with section
6 67-6508, Idaho Code.

7 67-9701K. NUISANCES. (1) Recognizing that Idaho is a right to farm
8 state and that agricultural operations and agricultural facilities pursuant
9 to chapter 45, title 22, Idaho Code, are protected from nuisance actions if
10 they follow generally recognized farming practices. A political subdivi-
11 sion shall ensure that any of its laws or ordinances that define or prohibit
12 a public nuisance shall exclude agriculture protection areas from its def-
13 inition or from any prohibition for any agricultural activity or operation
14 within an agriculture protection area as long as those agricultural activi-
15 ties or operations follow generally recognized farming practices.

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

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

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

23 67-9701L. EMINENT DOMAIN. A political subdivision having or exercis-
24 ing eminent domain powers may not condemn for any purpose any land within an
25 agriculture protection area that is being used for agriculture production.

26 67-9701M. AGRICULTURAL LANDS PROTECTION FUND. (1) There is hereby
27 created and established in the state treasury an ongoing dedicated fund to be
28 known and designated as the "Agricultural Lands Protection Fund." The fund
29 shall consist of such moneys as may be provided by legislative appropri-
30 ations or otherwise directed to the fund by the Idaho state legislature and
31 all moneys granted, donated, contributed, bequeathed, or otherwise provided
32 to the fund by the federal government, local unit of government, organi-
33 zation, or any other person. The fund is specifically empowered to accept
34 grants, gifts, transfers, bequests, and donations, including those which
35 are limited in their purpose by the grantor.

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

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

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

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

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

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