

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 608, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO AGRICULTURE; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A
2 NEW CHAPTER 97, TITLE 67, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PRO-
3 VIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR AGRICULTURAL
4 PROTECTION AREAS, TO PROVIDE FOR THE AGRICULTURAL PROTECTION AREA COM-
5 MISSION, TO PROVIDE FOR REVIEW AND ACTION ON AGRICULTURAL PROTECTION
6 AREA APPLICATIONS, TO PROVIDE FOR RECORDING OF AGRICULTURAL PROTECTION
7 AREAS, TO PROVIDE FOR RENEWAL OF AGRICULTURAL PROTECTION AREAS, TO PRO-
8 VIDE FOR THE ADDITION AND REMOVAL OF LAND FROM AGRICULTURAL PROTECTION
9 AREAS, TO PROVIDE FOR LIMITATIONS ON LOCAL REGULATIONS, TO PROVIDE FOR
10 NUISANCES, AND TO PROVIDE FOR EMINENT DOMAIN; AND DECLARING AN EMER-
11 GENCY AND PROVIDING AN EFFECTIVE DATE.
12

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

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

17 CHAPTER 97

18 AGRICULTURAL PROTECTION AREA ACT

19 67-9701. SHORT TITLE. This chapter shall be known and may be cited as
20 the "Agricultural Protection Area Act."

21 67-9702. LEGISLATIVE INTENT. (1) It is hereby declared by the legisla-
22 ture of the state of Idaho that:

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

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

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

34 (d) Idaho deeply respects the property rights of individual landowners
35 and seeks to minimize the government's control over a landowner's deci-
36 sions regarding the use of his property.

37 (2) It is hereby declared as the purpose of this chapter to provide an
38 opportunity to protect and enhance the economic and cultural benefits that
39 working lands provide to Idahoans by promoting proactive planning tools for
40 working landowners and governing bodies to maintain and enhance the economic

1 value of working lands without impacting the property of those that elect not
2 to participate in this opportunity.

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

4 (1) "Agricultural production" means activities or conditions con-
5 ducted on land actively devoted to agriculture as defined in section 63-604,
6 Idaho Code, or on forest land as defined in section 63-1701, Idaho Code.

7 (2) "Agricultural protection area" means specific parcels of land in a
8 designated geographic area voluntarily created under the authority of this
9 chapter for the purpose of protecting and preserving agricultural land.

10 (3) "Agricultural protection area commission" means the advisory board
11 to the governing body created pursuant to section 67-9705, Idaho Code.

12 (4) "Applicant" means anyone who owns five (5) acres or more of land
13 that has been in active agricultural or forest production for the previous
14 three (3) consecutive years, consistent with the provisions of sections
15 63-604 and 63-1701, Idaho Code, and who voluntarily applies for that land to
16 be part of an agricultural protection area.

17 (5) "Hardship" means a situation or circumstance over which a landowner
18 in an agricultural protection area has no control and can then petition for
19 removal for reasons that include but are not limited to an adverse result in
20 litigation against the farm or landowner, death of a close family member that
21 would lead to unanticipated financial hardships, significant tax liabilities,
22 bankruptcy due to another person's fraud, or any other illegal activ-
23 ity.

24 (6) "Proposal" means written documents submitted to a governing body
25 or agricultural protection area commission from a landowner regarding his
26 property.

27 67-9704. AGRICULTURAL PROTECTION AREAS. (1) No later than January 1,
28 2025, each board of county commissioners shall establish an agricultural
29 protection area ordinance in accordance with the notice and hearing proce-
30 dures in section 67-6509, Idaho Code. At a minimum, the ordinance shall:

31 (a) Establish a process through which agricultural lands may be placed
32 in agricultural protection areas for a minimum of twenty (20) years;

33 (b) Establish the application requirements, including but not lim-
34 ited to information about the landowner; a description of the parcels,
35 structures, and facilities proposed to be included in an agricultural
36 protection area; and the current uses of lands proposed to be included
37 in an agricultural protection area;

38 (c) Establish clear and objective standards for evaluating applica-
39 tions for inclusion in an agricultural protection area;

40 (d) Establish the timeline for reviewing and making decisions on agri-
41 cultural protection area applications; and

42 (e) Establish an application fee to cover the administrative costs of
43 processing applications, including but not limited to reviewing appli-
44 cation materials, holding public meetings and hearings, providing pub-
45 lic notice, recording applicable documents, and updating county land
46 use maps, provided that such fee shall not exceed the actual costs of
47 processing the application.

1 (2) No later than January 1, 2025, each board of county commissioners
2 shall establish by resolution or ordinance an agricultural protection area
3 commission pursuant to section 67-9705, Idaho Code.

4 (3) Agricultural protection areas shall be designated on future land
5 use planning maps to serve as a voluntary and expeditious tool for working
6 landowners while also informing planners, commissions, county officials,
7 and citizens at large on how to proactively plan for agriculture.

8 (4) The designations of specific parcels of land as agricultural pro-
9 tection areas shall not impact other parcels of land not designated as agri-
10 cultural protection areas.

11 67-9705. AGRICULTURAL PROTECTION AREA COMMISSION. (1) The board of
12 county commissioners shall appoint at least three (3) and no more than five
13 (5) members actively employed by or supporting production agriculture in
14 the county, which members may include representatives from the local soil
15 and water conservation district board of supervisors, the local cattlemen's
16 association board, the county farm bureau board, an irrigation district or
17 water users association board, or a grower/commodity association or commis-
18 sion board, to serve as the agricultural protection area commission for the
19 county.

20 (2) The terms of agricultural protection area commissioners shall be
21 established by resolution or ordinance, but in no case shall be less than
22 three (3) years or more than six (6) years.

23 (3) As part of its duties, the commission shall provide for meetings and
24 hearings to obtain advice on the agricultural needs of the county. The com-
25 mission may also conduct informal meetings with public officials and agen-
26 cies, agricultural professionals, educational professionals, and other or-
27 ganizations to evaluate the agricultural needs of the county.

28 (4) The commission may make recommendations to the board of county com-
29 missioners concerning the process by which the agricultural protection area
30 commission will accept, review, and offer recommendations regarding agri-
31 cultural protection area proposals to the board of county commissioners, in-
32 cluding the nature and type of information provided by applicants and the
33 evaluation criteria required to review agricultural protection area appli-
34 cations.

35 (5) The commission shall review applications for inclusion in an agri-
36 cultural protection area pursuant to the county agricultural protection
37 area ordinance and make recommendations to the board of county commissioners
38 regarding such applications.

39 (6) The commission shall review applications to include eligible land
40 in an agricultural protection area and make recommendations to the board of
41 county commissioners within sixty (60) days of receiving such applications.

42 67-9706. REVIEW AND ACTION ON AGRICULTURAL PROTECTION AREA APPLICA-
43 TION. (1) Within sixty (60) days of receiving a recommendation from the agri-
44 cultural protection area commission to support or reject an application, the
45 board of county commissioners shall hold a public hearing regarding the ap-
46 plication in accordance with the notice and hearing procedures pursuant to
47 section 67-6509, Idaho Code. The board of county commissioners may approve
48 or deny an application to include land in an agricultural protection area.

1 If approved, the creation of an agricultural protection area shall be effective upon final action of the board of county commissioners.

2
3 (2) If the board of county commissioners fails to take action on the
4 recommendation of the agricultural protection commission within sixty (60)
5 days of receiving such recommendation, the recommendation of the agricultural
6 protection area becomes final. A decision to approve or deny an agricultural
7 protection area shall be subject to judicial review.

8 67-9707. RECORDING OF AGRICULTURAL PROTECTION AREAS. (1) In order to
9 give constructive notice of the existence of an agricultural protection area
10 designation to all persons who have, may acquire, or may seek to acquire an
11 interest in land in or adjacent to the agricultural protection area, within
12 ten (10) days of the creation of the agricultural protection area, the applicable
13 clerk of the board of county commissioners shall file an executed document
14 with the county recorder containing:

15 (a) The date of creation or dissolution of the agricultural protection
16 area by the board of county commissioners;

17 (b) A legal description of the parcel or parcels of real property to be
18 included in the agricultural protection area that is available through
19 the county recorder's office; and

20 (c) A record of the findings of the agricultural protection area commission
21 and decision of the board of county commissioners.

22 (2) The applicable governing body's failure to record the agricultural
23 protection area does not invalidate the decision to create or dissolve an
24 agricultural protection area.

25 67-9708. RENEWAL OF AGRICULTURAL PROTECTION AREAS. (1) Twenty
26 (20) years after the creation of an agricultural protection area, if the
27 landowner desires to continue with the agricultural protection area, no
28 action on the part of the landowner is necessary and the board of county commissioners
29 shall automatically renew the agricultural protection area for
30 another twenty (20) years.

31 (2) If the landowner desires to terminate the agricultural protection
32 area, written notice to the board of county commissioners is required at
33 least ninety (90) days prior to the expiration of the agricultural protection
34 area before the board of county commissioners terminates the designation.
35

36 (3) The clerk of the board of county commissioners shall record the renewal
37 of an agricultural protection area pursuant to section 67-9707, Idaho
38 Code.

39 67-9709. ADDING LAND TO AND REMOVING LAND FROM AN AGRICULTURAL PROTECTION
40 AREA. (1) A landowner may add land to an existing agricultural protection
41 area by filing an application with the board of county commissioners. The board of county
42 commissioners shall review an application to add
43 land to an existing agricultural protection area in accordance with section
44 67-9706, Idaho Code.

45 (2) An owner of land within an agricultural protection area may remove
46 any or all of the land from the agricultural protection area by filing a petition
47 for removal with the board of county commissioners.

1 (a) The board of county commissioners shall acknowledge receipt of the
2 petition for removal in writing; and

3 (b) Confirm the removal date as ten (10) years from the date of peti-
4 tion for removal, or upon expiration of the designation, whichever is
5 sooner.

6 (3) The board of county commissioners shall establish a process by
7 which an owner of land within an agricultural protection area may remove
8 any or all of the land from the agricultural protection area for reasons of
9 hardship, as defined in this chapter.

10 (4) The board of county commissioners may charge an administrative
11 fee to cover administrative costs associated with processing changes to an
12 agricultural protection area, including but not limited to updating land
13 use maps, recording documents, and reasonable staff time for processing the
14 request, provided that such administrative fee shall not exceed the actual
15 cost of processing changes to an agricultural protection area. The clerk of
16 the board of county commissioners shall record the renewal of an agricul-
17 tural protection area pursuant to section 67-9708, Idaho Code.

18 67-9710. LIMITATIONS ON LOCAL REGULATIONS. (1) A board of county com-
19 missioners having created an agricultural protection area shall encourage
20 the continuity, development, and viability of agricultural use within the
21 specific boundaries designated in the agricultural protection area by not
22 enacting a local law, ordinance, or regulation that would restrict a farm
23 structure or farming practice within the boundaries of the agricultural pro-
24 tecton area, unless such farm structure or farming practice does not comply
25 with generally recognized farming practices or the farm structure or land
26 use is in conflict with the current agricultural land use classification or
27 agricultural zoning designation of the area.

28 (2) The board of county commissioners shall not change the current
29 agricultural land use classification or agricultural zoning designation
30 for parcels of land within an agricultural protection area without written
31 permission from the landowner.

32 (3) The board of county commissioners shall amend applicable land use
33 planning maps to reflect the boundaries of designated agricultural protec-
34 tion areas and their benefits as provided in sections 67-9711 and 67-9712,
35 Idaho Code, and shall comply with the provisions of section 67-6508, Idaho
36 Code.

37 (4) Nothing in this section shall prevent a board of county commission-
38 ers from regulating the siting of large confined animal feeding operations
39 and facilities pursuant to section 67-6529, Idaho Code; the siting of res-
40 idential, commercial, manufacturing, industrial, solar energy, or wind en-
41 ergy structures; or other nonagricultural land uses on lands included within
42 an agricultural protection area.

43 67-9711. NUISANCES. (1) Recognizing that Idaho is a right-to-farm
44 state and that agricultural operations and agricultural facilities pursuant
45 to chapter 45, title 22, Idaho Code, are protected from nuisance actions if
46 they follow generally recognized farming practices, a political subdivision
47 shall ensure that any of its laws or ordinances that define or prohibit a
48 public nuisance shall exclude agricultural protection areas from its def-

1 initiation or from any prohibition for any agricultural activity or operation
2 within an agricultural protection area as long as those agricultural activi-
3 ties or operations follow generally recognized farming practices.

4 (2) In a civil action for nuisance or criminal action for public nui-
5 sance, it is a complete defense if the action involves otherwise lawful agri-
6 cultural activities that were:

7 (a) Conducted within an agricultural protection area; and

8 (b) Not in violation of any federal, state, or local law or regulation
9 relating to the alleged nuisance and were conducted using generally
10 recognized farming practices.

11 67-9712. EMINENT DOMAIN. A political subdivision having or exercis-
12 ing eminent domain powers may not condemn for any purpose any land within an
13 agricultural protection area that is being used for production agriculture
14 except for the expansion or maintenance of an existing highway right-of-way
15 or as granted in section 14, article I and section 8, article XI of the con-
16 stitution of the state of Idaho.

17 SECTION 2. An emergency existing therefor, which emergency is hereby
18 declared to exist, this act shall be in full force and effect on and after
19 July 1, 2024.