

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 473

BY AGRICULTURAL 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 PROPOSALS, 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 IDAHO AGRICULTURAL PROTECTION AREAS

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 production,
25 the cultural heritage of local communities, habitat for wildlife, in-
26 tact 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 landown-
35 ers and seeks to minimize the government's involuntary control over a
36 landowner's decisions 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 an activity or condition, consis-
5 tent with section 63-604, Idaho Code, in connection with the production of
6 agricultural products for food, fiber, fuel, and other lawful purposes and
7 includes but is not limited to:

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

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

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

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

19 (4) "Applicant" means anyone who owns five (5) acres or more of land
20 that has been in active agricultural or forest production for the previous
21 three (3) consecutive years, consistent with section 63-604, Idaho Code, and
22 who voluntarily applies for that land to be part of an agricultural protec-
23 tion area.

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

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

34 (7) "Municipality" means an incorporated city.

35 (8) "Proposal" means written documents submitted to a governing body
36 or agricultural protection area commission from a landowner regarding their
37 property.

38 (9) "Unincorporated" means the geographic areas of a county not within a
39 municipality.

40 67-9704. AGRICULTURAL PROTECTION AREAS. (1) A governing body shall
41 create an agricultural protection area commission by resolution or ordi-
42 nance such that the governing body will be ready to accept applications from
43 landowners to designate agricultural protection areas no later than January
44 1, 2025. Agricultural protection areas shall be designated on future land
45 use planning maps and comprehensive plans of counties and municipalities to
46 serve as a voluntary and expeditious tool for working landowners while also
47 informing planners, commissions, county officials, and citizens at large on
48 how to proactively plan for agriculture. A process shall be developed by a

1 governing body for applicants to propose land parcels to be placed into an
2 agricultural protection area for a minimum of twenty (20) years.

3 (2) The designations of specific parcels of land as an agricultural
4 protection area shall not have any impact on land use planning or zoning
5 decisions regarding other parcels of land not designated as an agricultural
6 protection area. The designation of an agricultural protection area on any
7 parcels of land shall not be used as a basis for or a factor in land use and
8 planning activities and decisions on other parcels of land not designated as
9 agricultural protection areas. If a city or county makes a land use planning
10 or zoning decision on a parcel of land not designated as an agricultural pro-
11 tection area and bases that decision in whole or in part on another parcel's
12 designation as an agricultural protection area, then the landowner of the
13 subject parcel not designated as an agricultural protection area shall be
14 deemed to have suffered actual harm pursuant to section 67-6535(3), Idaho
15 Code.

16 67-9705. AGRICULTURAL PROTECTION AREA COMMISSION. (1) The county gov-
17 erning body shall appoint at least three (3) and no more than five (5) members
18 actively employed by or supporting production agriculture in the county,
19 which members may include representatives from the local soil and water con-
20 servation district board of supervisors, the local cattlemen's association
21 board, the county farm bureau board, an irrigation district or water users
22 association board, or a grower/commodity association or commission board,
23 to serve as the agricultural protection area commission for the county and
24 municipal governing bodies within the boundaries of the county.

25 (2) The purpose of an agricultural protection area commission is to
26 collaborate with the applicable governing body to:

27 (a) Establish the process by which the agricultural protection area
28 commission will accept, review, and offer recommendations regarding
29 agricultural protection area proposals from landowners to the govern-
30 ing body such that the governing body can make a final decision whether
31 to designate an agricultural protection area within one hundred twenty
32 (120) days of receipt of the proposal;

33 (b) Establish the landowner information and evaluation criteria re-
34 quired for an agricultural protection area proposal;

35 (c) Calculate a proposal application fee commensurate with the level of
36 effort of the governing body to process the application and record the
37 agricultural protection area designation; and

38 (d) Evaluate agricultural protection area proposals from landowners
39 and make recommendations to the governing body for final consideration
40 within sixty (60) days of receiving the proposal from the governing
41 body.

42 (3) The term of an agricultural protection area commission member shall
43 be no less than three (3) years and no greater than six (6) years.

44 67-9706. REVIEW AND ACTION ON AGRICULTURAL PROTECTION AREA PRO-
45 POSAL. (1) After receipt of a recommendation from the agricultural protec-
46 tion area commission to support or reject a proposal, the governing body
47 shall:

1 (a) Include the proposal on the next available regular agenda to affirm
2 or reject the recommendation of the agricultural protection area com-
3 mission; and

4 (b) Provide an opportunity for public hearing to appeal the recommenda-
5 tion of the agricultural protection area commission.

6 (2) The creation of the agricultural protection area shall be effec-
7 tive at the earlier of the final approval of the governing body or one hundred
8 twenty (120) days after submission of a proposal complying with the provi-
9 sions of this chapter. Final decisions of the governing body shall be sub-
10 ject to judicial review.

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

18 (a) The date of creation or dissolution of the agricultural protection
19 area by the governing body;

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

23 (c) A record of the findings of the agricultural protection area com-
24 mission, public hearings if applicable, and actions taken by the gov-
25 erning body; and

26 (d) A recommendation to add or remove the parcel or parcels to or from
27 the future land use planning map and the most recent comprehensive plan,
28 consistent with section 31-709, Idaho Code.

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

32 67-9708. RENEWAL OF AGRICULTURAL PROTECTION AREAS. (1) Twenty (20)
33 years after its creation, if the landowner desires to continue with the agri-
34 cultural protection area, no action on the part of the landowner is necessary
35 and the governing body shall automatically renew the agricultural protec-
36 tion area for another twenty (20) years.

37 (2) If the landowner desires to terminate the agricultural protection
38 area, written notice to the applicable governing body is required at least
39 ninety (90) days prior to the expiration of the agricultural protection area
40 before the governing body terminates the designation.

41 (3) The governing body shall record the renewal of an agricultural pro-
42 tection area according to the procedure provided in section 67-9707, Idaho
43 Code.

44 67-9709. ADDING LAND TO OR REMOVING LAND FROM AN AGRICULTURAL PROTEC-
45 TION AREA. (1) A landowner may add land to an existing agricultural protec-
46 tion area by filing a proposal with the applicable governing body. The gov-
47 erning body shall comply with the provisions for creating an agricultural

1 protection area in determining whether to accept the proposal as specified
2 in section 67-9706, Idaho Code.

3 (2) An owner of land within an agricultural protection area may remove
4 any or all of the land from the agricultural protection area by filing a peti-
5 tion for removal with the applicable governing body.

6 (a) The applicable governing body will acknowledge receipt of the peti-
7 tion for removal in writing; and

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

11 (3) A governing body shall establish a process by which an owner of land
12 within an agricultural protection area may remove any or all of the land from
13 the agricultural protection area for reasons of hardship, as defined in this
14 chapter.

15 (4) The governing body shall record the renewal of an agricultural pro-
16 tection area according to the procedure provided in section 67-9707, Idaho
17 Code.

18 67-9710. LIMITATIONS ON LOCAL REGULATIONS. (1) A governing body that
19 creates an agricultural protection area shall encourage the continuity, de-
20 velopment, and viability of agricultural use within the specific boundaries
21 designated in the agricultural protection area by not enacting a local law,
22 ordinance, or regulation that would restrict a farm structure or farming
23 practice, unless that farm structure or farming practice does not comply
24 with generally recognized farming practices.

25 (2) A governing body shall not change the current agricultural land
26 use classification or agricultural zoning designation for parcels of land
27 within an agricultural protection area without written permission from the
28 landowner.

29 (3) A governing body shall amend the applicable future land use plan-
30 ning map and comprehensive plan to reflect the boundaries of designated
31 agricultural protection areas and their benefits as provided in sections
32 67-9711 and 67-9712, Idaho Code, and shall comply with the provision of sec-
33 tion 67-6508, Idaho Code.

34 67-9711. NUISANCES. (1) Recognizing that Idaho is a right-to-farm
35 state and that agricultural operations and agricultural facilities pursuant
36 to chapter 45, title 22, Idaho Code, are protected from nuisance actions if
37 they follow generally recognized farming practices, a political subdivision
38 shall ensure that any of its laws or ordinances that define or prohibit a
39 public nuisance shall exclude agricultural protection areas from its def-
40 inition or from any prohibition for any agricultural activity or operation
41 within an agricultural protection area as long as those agricultural activi-
42 ties or operations follow generally recognized farming practices.

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

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

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

4 67-9712. EMINENT DOMAIN. A political subdivision having or exercis-
5 ing eminent domain powers may not condemn for any purpose any land within an
6 agricultural protection area that is being used for agricultural production
7 except for as granted in section 14, article I and section 8, article XI of
8 the constitution of the state of Idaho.

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