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**HOUSE BILL 1869**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Klicker, Dent, Chase, and Graham

AN ACT Relating to encouraging salmon recovery through voluntary stewardship; amending RCW 36.70A.080 and 36.70A.280; adding new sections to chapter 36.70A RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature intends to provide a voluntary option for cities and counties planning to incorporate salmon recovery into their planning under the growth management act. The legislature intends to do this in a way that provides for meaningful and measurable improvement in the protection and enhancement of habitat for anadromous fish. The legislature intends to do this without increasing the liability of cities and counties and their taxpayers, and in a way that encourages rather than discourages the voluntary participation of private landowners in projects that will improve habitat in a watershed.

**Sec.**  RCW 36.70A.080 and 2011 c 318 s 801 are each amended to read as follows:

(1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction((~~,~~)) including, but not limited to:

(a) Conservation;

(b) Solar energy; ((~~and~~))

(c) Recreation; and

(d) Salmon recovery.

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

(3)(a) Cities that qualify as a receiving city may adopt a comprehensive plan element and associated development regulations that apply within receiving areas under chapter 39.108 RCW.

(b) For purposes of this subsection, the terms "receiving city" and "receiving area" have the same meanings as provided in RCW 39.108.010.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70A RCW to read as follows:

(1) If a city or county chooses to adopt an optional salmon recovery element within its comprehensive plan pursuant to RCW 36.70A.080, the salmon recovery element must comply with this section and sections 4 through 8 of this act.

(2) As part of an optional salmon recovery element, a county or city must develop a work plan that is designed to result in an improvement in anadromous fish habitat. The work plan may address, among other elements, in-water and upland habitats, vegetation, water quantity, water quality, and other natural features within the county or city that contribute to anadromous fish habitat on a watershed basis, including applicable elements of salmon recovery plans adopted pursuant to the federal endangered species act. The work plan must include goals and benchmarks for the protection and enhancement of the natural features within the county or city that contribute to anadromous fish habitat on a watershed basis. In developing and implementing the work plan, the county or city must:

(a) Review and incorporate applicable water quality, watershed management, and species recovery data and plans, including the applicable elements of salmon recovery plans adopted pursuant to the endangered species act;

(b) Seek input from tribes, agencies, and stakeholders;

(c) Develop goals for participation by landowners in the county or city necessary to meet the protection and enhancement benchmarks of the work plan;

(d) Ensure outreach and technical assistance is provided to landowners in the county or city;

(e) Create measurable benchmarks that, within 10 years after the receipt of funding, are designed to result in the protection and enhancement of the functions and values of the natural features that contribute to anadromous fish habitat on a watershed basis through voluntary, incentive-based measures;

(f) Designate the entity or entities that will provide technical assistance;

(g) Work with the entity providing technical assistance to ensure that individual stewardship plans contribute to the goals and benchmarks of the work plan;

(h) Incorporate into the work plan any existing development regulations relied upon to achieve the goals and benchmarks for protection;

(i) Establish baseline monitoring for: (i) Participation activities and implementation of the voluntary salmon recovery plans and projects; (ii) stewardship activities; and (iii) existing environmental conditions related to the functions and values of the natural features that contribute to anadromous fish habitat on a watershed basis;

(j) Conduct periodic evaluations, institute adaptive management, and provide a written report of the status of plans and accomplishments to the department of fish and wildlife within 60 days after the end of each biennium; and

(k) Assist state agencies in their monitoring programs.

(3)(a) The county or city shall develop and submit the work plan to the department of fish and wildlife for approval as provided in section 4 of this act.

(b)(i) Not later than five years after the receipt of funding for a participating county or city, and every five years thereafter, the county or city must report to the department of fish and wildlife on whether it has met the work plan's protection and enhancement goals and benchmarks.

(ii) If the county or city determines the protection and enhancement goals and benchmarks have been met, and the department of fish and wildlife concurs under section 5 of this act, the county or city shall continue to implement the work plan.

(iii) If the county or city determines the protection and enhancement goals and benchmarks have not been met, it must propose and submit to the department of fish and wildlife an adaptive management plan to achieve the goals and benchmarks that were not met. The adaptive management plan must identify what additional voluntary actions are needed to meet the benchmarks and must identify the funding necessary to implement these actions. If the department of fish and wildlife does not approve the adaptive management plan under section 5 of this act, the watershed is subject to the provisions of section 6 of this act.

(iv) The county or city must implement the actions identified in the adaptive management plan when funding is provided.

(4) Following approval of a work plan, a county or city may request that a state or federal agency, or both, focus existing enforcement authority in that county or city, if the action will facilitate progress toward achieving work plan protection goals and benchmarks.

(5) Landowners participating in the program are eligible to receive funding and assistance under the voluntary salmon recovery program.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70A RCW to read as follows:

(1)(a) Upon receipt of a work plan submitted to the department of fish and wildlife under section 3 of this act, the department of fish and wildlife must submit the work plan to the salmon recovery technical panel for review.

(b) For the purposes of this section, the "salmon recovery technical panel" means the directors or director designees of the following agencies: The department of fish and wildlife, the department of ecology, the conservation commission, and the recreation and conservation office.

(2) The salmon recovery technical panel shall review the work plan and report to the department of fish and wildlife within 90 days after the department of fish and wildlife receives the work plan. The salmon recovery technical panel shall assess whether, on a more probable than not basis, at the end of 10 years after receipt of funding, the work plan, in conjunction with other existing plans and regulations, will protect and enhance functions and values of the natural features within the county or city that contribute to anadromous fish habitat on a watershed basis.

(3)(a) If the salmon recovery technical panel determines the proposed work plan will protect and enhance functions and values of the natural features that contribute to anadromous fish habitat on a watershed basis within the county or city:

(i) It must recommend approval of the work plan; and

(ii) The department of fish and wildlife must approve the work plan.

(b) If the salmon recovery technical panel determines the proposed work plan will not protect and enhance functions and values of the natural features within the county or city that contribute to anadromous fish habitat on a watershed basis:

(i) It must identify the reasons for its determination; and

(ii) The department of fish and wildlife must advise the county or city of the reasons for disapproval.

(4) The county or city may, within 180 days of receipt of the reasons for the panel's determination, modify and resubmit its work plan for review and approval consistent with this section.

(5) If the department of fish and wildlife does not approve a work plan submitted under this section within two years and nine months after receipt of funding, the department of fish and wildlife shall submit the work plan to the statewide salmon recovery advisory committee for resolution. If the statewide salmon recovery advisory committee recommends approval, the department of fish and wildlife must approve the work plan.

(6) If the department of fish and wildlife does not approve a work plan for a county or city within three years after receipt of funding, the provisions of section 6 of this act apply to the county or city.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70A RCW to read as follows:

(1) If the department of fish and wildlife, following receipt of a report pursuant to section 3 of this act, concludes that the work plan goals and benchmarks for enhancement and protection have not been met, the department of fish and wildlife must consult with the statewide salmon recovery advisory committee for a recommendation on how to proceed. If the department of fish and wildlife, acting upon recommendation from the statewide salmon recovery advisory committee, determines that the county or city is likely to meet the goals and benchmarks with an additional six months of planning and implementation time, the department of fish and wildlife shall grant an extension. If the department of fish and wildlife, acting upon a recommendation from the statewide salmon recovery advisory committee, determines that the county or city is unlikely to meet the goals and benchmarks within six months, the county or city is subject to the provisions of section 6 of this act.

(2) A county or city that fails to meet its goals and benchmarks for enhancement and protection within the six-month time extension under subsection (1) of this section is subject to the provisions of section 6 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70A RCW to read as follows:

(1) Within 18 months after one of the events in subsection (2) of this section, a county or city must:

(a) Develop, adopt, and implement a county or city work plan approved by the department of fish and wildlife that protects and enhances functions and values of the natural features within the county or city that contribute to anadromous fish habitat on a watershed basis. The department of fish and wildlife must approve the work plan if it determines, on a more probable than not basis, that the work plan will, in conjunction with other existing plans and regulations, protect and enhance functions and values of the natural features within the county or city that contribute to anadromous fish habitat on a watershed basis. The department of fish and wildlife shall consult with the departments of commerce and ecology, the recreation and conservation office, the conservation commission, and other relevant state agencies before approving or disapproving the proposed work plan. The department of fish and wildlife's decision under this subsection is subject to appeal under RCW 36.70A.280;

(b) Adopt development regulations certified by the department of fish and wildlife as protective of natural features within the county or city that contribute to anadromous fish habitat on a watershed basis. The county or city may submit existing or amended regulations for certification. The department of fish and wildlife must make its decision on whether to certify the development regulations within 90 days after the county or city submits its request. If the department of fish and wildlife denies the certification, the county or city shall take an action under (a) or (c) of this subsection. The department of fish and wildlife must consult with the departments of commerce and ecology, the recreation and conservation office, and the conservation commission, before making a certification under this section. The appeal of the department of fish and wildlife's decision under this subsection (1)(b) is subject to appeal under RCW 36.70A.280; or

(c) Review and, if necessary, revise development regulations adopted under this chapter to protect natural features within the county or city that contribute to anadromous fish habitat on a watershed basis.

(2) A participating county or city is subject to this section if:

(a) The work plan is not approved by the department of fish and wildlife as provided in section 4 of this act;

(b) The work plan's goals and benchmarks for enhancement and protection have not been met as provided in section 3 of this act;

(c) The department of fish and wildlife has determined, under section 7 of this act, that the county or city, department of fish and wildlife, conservation commission, recreation and conservation office, or departments of ecology or commerce have not received adequate funding to implement a salmon recovery program in the county or city; or

(d) The adaptive management plan is not approved by the department of fish and wildlife as provided in section 3 of this act.

(3) A county or city may not be found to be in noncompliance with the requirements of RCW 36.70A.060 if the department of fish and wildlife has determined that the county or city has not received adequate funding to implement a salmon recovery program in the county or city.

(4) The department of fish and wildlife shall adopt rules to implement subsection (1)(a) and (c) of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70A RCW to read as follows:

(1) By July 31, 2025, the department of fish and wildlife shall:

(a) In consultation with each county or city that has elected under section 3 of this act to participate in the voluntary salmon recovery program, determine which participating counties and cities received adequate funding to establish and implement the program in a participating county or city by July 1, 2025; and

(b) In consultation with other state agencies, for each participating county or city, determine whether state agencies required to take action under the provisions of sections 3 through 7 of this act have received adequate funding to support the program by July 1, 2025.

(2) By July 31, 2027, and every two years thereafter, in consultation with each county and city that has elected under section 3 of this act to participate in the program and other state agencies, the department of fish and wildlife shall determine for each participating county or city whether adequate funding to implement the program was provided during the preceding biennium as provided in subsection (1) of this section.

(3) If the department of fish and wildlife determines under subsection (1) or (2) of this section that a participating county or city has not received adequate funding, the county or city is subject to the provisions of section 6 of this act.

(4) In consultation with the statewide salmon recovery advisory committee and other state agencies, not later than August 31, 2025, and each August 31st every two years thereafter, the department of fish and wildlife shall report to the legislature and each county or city that has elected under section 3 of this act to participate in the program on the progress toward improvements in anadromous fish habitat made by participating counties and cities that have received adequate funding to establish and implement the program.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70A RCW to read as follows:

(1)(a) From the nominations made under (b) of this subsection, the department of fish and wildlife shall appoint a statewide salmon recovery advisory committee, consisting of: Two persons representing county government, two persons representing city government, and two persons representing community interests. The committee, in conjunction with the governor's office, shall also invite participation by two representatives of tribal governments.

(b) Organizations representing county, city, and community interests shall submit nominations of their representatives to the department of fish and wildlife within 90 days of July 30, 2022. Members of the statewide salmon recovery advisory committee shall serve two-year terms, except that for the first year one representative from each of the sectors shall be appointed to the statewide salmon recovery advisory committee for a term of one year. Members may be reappointed by the department of fish and wildlife for additional two-year terms and replacement members shall be appointed in accordance with the process for selection of the initial members of the statewide salmon recovery advisory committee.

(c) Upon notification of the department of fish and wildlife by an appointed member, the appointed member may designate a person to serve as an alternate.

(d) The director of the department of fish and wildlife shall serve as a nonvoting chair of the statewide salmon recovery advisory committee.

(e) Members of the statewide salmon recovery advisory committee shall serve without compensation and, unless serving as a state officer or employee, are not eligible for reimbursement for subsistence, lodging, and travel expenses under RCW 43.03.050 and 43.03.060.

(2) The role of the statewide salmon recovery advisory committee is to advise the department of fish and wildlife and other agencies involved in development and operation of the voluntary salmon recovery program including, but not limited to:

(a) Evaluation and resolution of work plans submitted to the committee by the department of fish and wildlife pursuant to section 4(5) of this act;

(b) Recommendations regarding extensions of time by which counties and cities must meet the goals and benchmarks of work plans pursuant to section 5(1) of this act; and

(c) Consultation with the department of fish and wildlife regarding the progress toward improvements in anadromous fish habitat made by participating counties and cities that have received adequate funding to establish and implement the program.

**Sec.**  RCW 36.70A.280 and 2011 c 360 s 17 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW((~~. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801~~));

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; ((~~or~~))

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous; or

(f) That a department of fish and wildlife approval under section 6(1)(a) of this act, or a department of fish and wildlife certification under section 6(1)(b) of this act, is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

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