

SENATE BILL REPORT

E2SHB 1117

As of February 26, 2022

Title: An act relating to promoting salmon recovery through revisions to the state's comprehensive planning framework.

Brief Description: Promoting salmon recovery through revisions to the state's comprehensive planning framework.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Lekanoff, Fitzgibbon, Bateman, Simmons, Ramel, Peterson, Goodman, Ryu, Kloba, Chopp, Pollet, Macri and Davis).

Brief History: Passed House: 1/26/22, 57-40.

Committee Activity: Housing & Local Government: 3/16/21, 3/24/21 [DP-WM, DNP]; 2/16/22, 2/24/22 [DPA-WM, DNP].

Ways & Means: 3/31/21, 4/02/21 [DP, DNP]; 2/26/22.

Brief Summary of Amended Bill

- Adds salmon recovery as a goal under the Growth Management Act (GMA).
- Requires the land use element of comprehensive plans adopted under the GMA to include a strategy that achieves net ecological gain of salmon habitat in counties west of the crest of the Cascade mountains.
- Requires the capital facilities element and transportation element of comprehensive plans adopted under the GMA to include a schedule for elimination of all identified fish passage barriers.
- Requires the Department of Fish and Wildlife to adopt rules that establish criteria for net ecological gain which certain counties and cities must meet through adoption of comprehensive plans in counties west of the crest of the Cascade mountains.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Cleveland, Lovelett, Salomon and Trudeau.

Minority Report: Do not pass.

Signed by Senators Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Sefzik, Warnick and Wilson, J.

Staff: Maggie Douglas (786-7279)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jed Herman (786-7346)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, which are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes referred to as fully planning under the GMA.

The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. Comprehensive plans must contain certain required elements, including a transportation element, a land use element, and a capital facilities plan element, among others. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute, including, for example, urban growth, housing, and economic development.

Growth Management Act—Comprehensive Plan Updates. Counties and cities are required to review and, if needed, revise their comprehensive plans and development regulations every eight years. Counties, and the cities within them, are grouped into four different year classes for when the obligation to review and revise their comprehensive plans commences. The next round of required comprehensive plan updates begins in 2024 for King, Kitsap, Snohomish, and Pierce counties, and the cities within those counties.

Regional Salmon Recovery Plans. If a species is listed as threatened or endangered under the Endangered Species Act, recovery plans must be developed and adopted. Recovery plans are developed with the input of multiple parties, including federal, state, and tribal governments. Recovery plans for salmon and steelhead are published by the National

Oceanic and Atmospheric Administration—Fisheries. Regional salmon recovery plans have been adopted for multiple regions within Washington, including Puget Sound. The Puget Sound Salmon Recovery Plan includes individual recovery plans for individual watersheds within the broader Puget Sound region.

Summary of Amended Bill: Growth Management Act—Goals. Salmon recovery is added as a goal under the GMA. Under the salmon recovery goal, it is a goal of the GMA to support recovery and enhancement of salmon and steelhead stocks through achievement of net ecological gain. The salmon recovery goal is established to fulfill Washington's tribal treaty obligations, support nontribal commercial and recreational fisheries, and achieve delisting and recovery of threatened or endangered salmon and steelhead runs under the federal Endangered Species Act.

"Net ecological gain" means a standard for a comprehensive plan adopted under the GMA in which the ecological integrity within each water resource inventory area (WRIA) or independent natural drainage that flows directly into marine waters of the planning area is improved and enhanced during the planning period because of the measures adopted by the planning body. The advancement of ecological function and achievement of net ecological gain will occur through the appropriate selection and implementation of publicly funded projects. A publicly funded project includes voluntary grant programs, salmon recovery projects, ecological improvements made through the municipal stormwater permit process, and investments made as a result of the capital facilities element and transportation element of the comprehensive plan.

"Compensatory mitigation ratio" is defined as a measurement of the size, temporal duration, or quality of mitigation required by a permitting agency to ensure impacts to regulated aspects of the environment from an activity subject to a permit are fully mitigated over the life of the activity or project subject to the permit.

"Properly functioning watershed conditions" are watershed conditions that are necessary for salmon to survive and include, but are not limited to, the following functions: forest cover, floodplains, instream habitats, fish passage, riparian habitats, water quality and quantity, and impervious surface levels.

Comprehensive Plans—Net Ecological Gain. Beginning with plan updates adopted after January 1, 2024, in counties west of the crest of the Cascade mountains, the land use element of comprehensive plans must include a strategy that achieves net ecological gain of in-water and upland habitats, vegetation, water quantity, water quality, and other natural features which contribute to anadromous fish habitat on a watershed basis.

The strategy must be developed after providing notice and an opportunity to consult each federally recognized Indian tribe with property, tribal reservation land, or usual and accustomed fishing areas affected by the planning jurisdiction. The achievement of net ecological gain may rely on activities or mitigation carried out by a jurisdiction physically

located outside the jurisdiction if still within the same watershed. Development regulations adopted pursuant to the net ecological gain requirement must require projects owned by public entities including, but not limited to, state agencies, counties, cities, towns, public utilities districts, schools, libraries, and transportation agencies, achieve net ecological gain.

The capital facilities element and transportation element of comprehensive plans must include a schedule for elimination of all identified fish passage barriers, consistent with the prioritization schedule identified by the Fish Passage Barrier Removal Board.

Criteria for Net Ecological Gain. The Department of Fish and Wildlife (DFW), with recommendations from the Washington State Academy of Sciences, must adopt rules to establish criteria for net ecological gain and consistency with the regional salmon recovery plans that GMA counties and cities west of the crest of the Cascade mountains must meet through adoption of their comprehensive plans to support salmon recovery. The DFW must consult on an early and continuous basis with each affected federally recognized tribe, and must also communicate with regional salmon recovery organizations and local governments.

The net ecological gain rules adopted by DFW must account for the impact of the heat island effect on ecological function. The rules adopted by DFW must ensure that, where appropriate, the interjurisdictional coordination process required by the GMA addresses the issue of salmon recovery. Rules adopted by DFW must ensure individual private projects achieve no net loss of ecological function, and may not require individual private projects to contribute to net ecological gain. The net ecological gain rules must not establish minimum riparian buffer widths. The Legislature intends for the Governor's government-to-government process and stakeholder work regarding fully functioning riparian habitats to be the venue for discussion of riparian protection and restoration standards. The net ecological gain rules do not apply to the Voluntary Stewardship Program.

The DFW must establish an advisory group to assist with the implementation of the net ecological gain policy. The advisory group shall include, at a minimum, federally recognized tribes, local governments, state agencies, regional salmon recovery interests, agricultural interests, environmental organizations, business interests, human health and well-being interests, and diversity, equity and inclusion interests.

DFW, in consultation with affected local governments and federally recognized Indian tribes, must establish current environmental baseline conditions within counties and cities fully planning under the GMA, and must then monitor progress toward salmon recovery goals in those jurisdictions. DFW must monitor parameters that affect salmonid health, including stream temperatures, impervious surfaces, and tree canopy cover. When monitoring progress that individual jurisdictions have made toward salmon recovery goals, DFW must monitor the efforts made by counties and cities to address the effect of urban heat islands on salmonid health. DFW must submit a report of its monitoring to the Governor, the Legislature, and affected local governments beginning in 2022, and every

other year thereafter.

Funding. The obligation of local governments to comply with specified provisions in the act is contingent on the provision of state funding to local governments for complying with these requirements. The obligation of local governments to comply with these provisions takes effect two years after the date the Legislature appropriates state funding to comply with these requirements.

EFFECT OF HOUSING & LOCAL GOVERNMENT COMMITTEE AMENDMENT(S):

- Removes the definition of mitigation hierarchy requirement from the GMA.
- Adds a new term for properly functioning watershed conditions under the GMA as watershed conditions that are necessary for salmon to survive including forest cover, floodplains, instream habitats, fish passage, riparian habitats, water quality and quantity, and impervious surface levels.
- Restricts the requirement that by January 1, 2024, the land use element of a comprehensive plan must include a strategy for the recovery of salmon to counties west of the crest of the Cascade mountains.
- Clarifies that projects owned by public entities net ecological gain contribution must be additive to salmon recovery or salmon restoration projects.
- Restricts the requirement for the DFW to adopt rules that establish criteria for net ecological gain which certain counties and cities must meet through adoption of comprehensive plans to counties west of the crest of the Cascade mountains.
- Specifies that rules adopted for net ecological gain by the DFW must not establish minimum riparian buffer widths and that the Governor's government-to-government process will be the venue for the discussion of riparian protection and restoration standards.
- Adds that rules adopted by DFW for net ecological gain to evaluate whether a local government's performance achieves net ecological gain must consider the implication of all projects and activities and adds that the evaluation shall consider publicly funded projects, voluntary projects, and publicly owned projects.
- Specifies that rules adopted for net ecological gain do not apply to the Voluntary Stewardship Program.
- Requires DFW to establish an advisory group to assist with implementation of the net ecological gain policy.
- Removes the requirement for development regulations that protect critical areas to apply mitigation hierarchy requirements and compensatory mitigation requirements.
- Removes the requirement for mitigation imposed under the Aquatic Resources Mitigation Act and the Shoreline Management Act must apply mitigation hierarchy requirements and compensatory mitigation requirements.

Appropriation: None.

Fiscal Note: Requested on February 24, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Housing & Local Government) (Regular Session 2022): *The committee recommended a different version of the bill than what was heard.* PRO: Salmon are a significant economic resource for Washington and create many jobs. Net ecological gain will become a formal goal of the GMA, not just a special consideration. Ecological improvements are coming too slowly for species like salmon. Thirty years of no net loss of habitat is not working. We need to require the improvement of salmon habitat similar to requiring other projects to make improvements like installing sidewalks and providing schools. Cities were involved in developing salmon recovery plans, so it is important to be consistent with those plans. This is not a takings, public funding and public projects will contribute to net ecological gain. Local governments can protect water and restore salmon habitat with proper funding and support. There is an opportunity now to make these changes in time for the next round of GMA updates. Public funds should not contribute to loss of salmon habitat. Counties were partners in developing the policy and have been engaged in finding workable solutions. It is important to come together with local government to work on salmon recovery. There is a concern about whether the fish passage barrier schedule implies that there is funding available to replace all of the barriers. There needs to be clarity that net ecological gain impacts only public projects, and should not impact programs like the Voluntary Stewardship Program (VSP).

CON: What will the cost be for the net ecological gain standard? Other public infrastructure costs will increase for utilities, roads, water, and sewer. This will impact housing costs, which will only further impact the housing crisis. This will dilute funding for other priorities including transportation and local infrastructure. It is unclear how this bill interacts with the VSP; there is concern that this bill could interfere with the good work taking place under the VSP. This could be a vehicle for using site potential tree height to increase riparian zones. The language is too broad and leaves too much to fill in the blanks. The net ecological gain standard attempts to dodge the takings issue. What is the impact for private projects that hook up to public infrastructure? We won't know what net ecological gain looks like until rulemaking is conducted. The state needs to take bold action to recover salmon. The net ecological gain concept is not clear and science based. Family foresters are already doing more for salmon. The state should fully fund existing programs to address salmon habitat. The urban areas have not done their fair share, with the burden falling on rural areas.

OTHER: Integrating local government work with salmon recovery and fish passage is a practical approach that ensures the work doesn't just occur in separate silos. This will add complexity in an already complex area. It is not clear what the net ecological gain standard

will look like.

Persons Testifying (Housing & Local Government): PRO: Representative Debra Lekanoff, Prime Sponsor; Commissioner Kate Dean, Jefferson County; Councilmember Kaylee Galloway, Whatcom County; Paul Jewell, Washington State Association of Counties; Don Gourlie, Puget Sound Partnership; Tom McBride, WDFW; Dave Andersen, Department of Commerce; Carl Schroeder, Association of Washington Cities; Brendan Flynn, Commercial Fisherman; Will Hall, Puget Sound Partnership Leadership Council, former Mayor of Shoreline; Nora Nickum, Seattle Aquarium; Justin Allegro, The Nature Conservancy; Mindy Roberts, Washington Environmental Council.

CON: Dan Wood, WA State Dairy Federation; Jan Himebaugh, Building Industry Association of Washington; Tom Davis, Washington Farm Bureau; Robert Vos; Heather Hansen, Washington Farm Forestry Assn; Mike Ennis, Association of Washington Business; Bill Clarke, WA REALTORS; Bridget Coon, Bar U Ranch Co.; Patrick DePoe, Makah Tribal Council ; Ken Miller; Jay Gordon, self.

OTHER: Alex Soldano, Sound Transit.

Persons Signed In To Testify But Not Testifying (Housing & Local Government): No one.

Staff Summary of Public Testimony on Bill as Amended by Housing & Local Government (Ways & Means) (Regular Session 2022): PRO: The development of the bill was a positive process on how to advance the work of local governments and salmon recovery. Improvements to salmon habitat and recovery are coming too slowly, and bold action is needed. Local governments will work with the DFW, monitoring from a baseline, to make improvements consistent with salmon recovery. It is critical that the funding to implement is provided to do the work that is necessary. The bill has been vetted and comes from a recommendation from the Orca Task Force. There is no change to private lands in this bill, the requirement is the same no net loss standard that applies currently. The net ecological gain will only apply to publicly-owned projects, not publicly-financed projects. The bill clearly excludes riparian impacts to farms. The time to act is now for salmon recovery.

CON: This bill will negatively impact conservation on agricultural lands including programs like the Conservation Reserve Enhancement Program and the VSP program. There is conflicting language on how the net ecological gain standard will apply to voluntary projects that receive public funds. Impacts to the agricultural industry are enormous. There are concerns about constitutional takings in the bill. There will be increasing costs for homes that connect to public infrastructure, making the housing crisis in Washington worse. A better strategy would be to fix the list of fish passage culverts that have already been identified, and the habitat is already there. There is no funding provided for public entities to comply with the provisions of the bill. Net ecological gain is open to interpretation, and should be clarified. There needs to be some assurance that the policies in

the bill will improve salmon returns. More work is needed on the concept of net ecological gain with co-managers, and this is not the vehicle for doing this work. There is not a clearly defined net ecological gain standard. Off-site mitigation could be used and this needs to be evaluated in regards to treaty fishing rights. The GMA has been about balance, and this approach attempts to solve the salmon crisis at the expense of the housing crisis. Impacts on private projects are not fully understood. Developers pay for many public goods, and pass those costs on to homeowners.

Persons Testifying (Ways & Means): PRO: Carl Schroeder, Association of WA Cities; Darcy Nonemacher, Washington Environmental Council; Tom McBride, WDFW.

CON: Dan Wood, WA State Dairy Federation; Brent Ludeman, Building Industry Association of Washington; Ron Wesen; Nicolas Garcia, WPUDA; Peter Browning, Skagit County; Chad Bowechop, Makah Tribal Council ; Bill Clarke, WA REALTORS.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.