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**SUBSTITUTE HOUSE BILL 1735**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Lekanoff, Fitzgibbon, Ramel, Pollet, and Macri)

AN ACT Relating to adding net ecological gain as a voluntary element of comprehensive plans adopted under the growth management act; amending RCW 36.70A.080 and 36.70A.030; adding new sections to chapter 36.70A RCW; adding a new section to chapter 77.04 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  Washington state continues to face extreme environmental degradation, increased population rates, and growth in infrastructure while habitat and cool and clean water decrease, thus leading to the loss of salmon populations. If we are going to make a difference in salmon recovery, we need to restructure our political and scientific approach to habitat restoration. Investment in net ecological gain for local and state infrastructure projects in urban and rural areas enhances the habitat needed to absorb unforeseen carbon and restores a healthy ecosystem for salmon biomes. The legislature also recognizes that investing throughout an entire biome is an approach to addressing biodiversity to recover entire environments and natural resources up and down rivers, throughout watersheds, and across land areas. The legislature acknowledges that the Washington state academy of sciences found that the principle of no net loss has not been an effective approach for ecosystem or habitat management and protection, nor for the maintenance of ecosystem services, and that there have been net losses of species and habitats in Washington. Net improvement is a common concept that underpins pollution clean-up laws and habitat investments to recover species. Net ecological gain is a common sense approach for infrastructure and building projects that simply provides additional habitat to a location and results in an environmentally healthy place for natural resources and humans.

**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) Net ecological gain.

(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.

**Sec.**  RCW 36.70A.030 and 2021 c 254 s 6 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed ((~~thirty~~)) 30 percent of the monthly income of a household whose income is:

(a) For rental housing, ((~~sixty~~)) 60 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development; or

(b) For owner-occupied housing, ((~~eighty~~)) 80 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(3) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(4) "City" means any city or town, including a code city.

(5) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(6) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(7) "Department" means the department of commerce.

(8) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(9) "Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

(10) "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

(11) "Extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below ((~~thirty~~)) 30 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(12) "Forestland" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forestland is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forestland to other uses.

(13) "Freight rail dependent uses" means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development for purposes of this chapter. "Freight rail dependent uses" does not include buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of coal, liquefied natural gas, or "crude oil" as defined in RCW 90.56.010.

(14) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(15) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(16) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(17) "Minerals" include gravel, sand, and valuable metallic substances.

(18) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 120 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(19) "Net ecological gain" means improvement over current conditions in ecological functions and values that support biodiversity and resiliency of native plant, animal, and fungi species; water quality and quantity; and air quality and food security for all species. Improvement is at a cumulative scale that can be incrementally implemented through site-specific actions, with any short-term loss of those functions and values being more than offset by overall ecological gains.

(20) "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

((~~(20)~~)) (21) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

((~~(21)~~)) (22) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

((~~(22)~~)) (23) "Recreational land" means land so designated under RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

((~~(23)~~)) (24) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

((~~(24)~~)) (25) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

((~~(25)~~)) (26) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

((~~(26)~~)) (27) "Short line railroad" means those railroad lines designated class II or class III by the United States surface transportation board.

((~~(27)~~)) (28) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

((~~(28)~~)) (29) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

((~~(29)~~)) (30) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

((~~(30)~~)) (31) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below ((~~fifty~~)) 50 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(31)~~)) (32) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

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

(1) The department of fish and wildlife, with recommendations from the working group established in subsection (6) of this section, shall adopt rules that establish criteria for net ecological gain and consistency with the applicable regional salmon recovery plans that counties and cities that choose to adopt a voluntary net ecological gain element in their comprehensive plans must meet through adoption of their comprehensive plans in order to support salmon recovery. In adopting rules pursuant to this section, the department of fish and wildlife must consult on an early and continuous basis with federally recognized Indian tribes.

(2) The rules adopted under this section must address the applicable components of salmon recovery plans that local governments have authority over, such as the habitat restoration and protection elements of the recovery plans.

(3) The rules adopted under this section must ensure that, where appropriate, the interjurisdictional coordination process required by RCW 36.70A.100 addresses the issue of salmon recovery.

(4) The rules adopted under this section must not require or assume that the proponents of individual private projects will be responsible for achieving net ecological gain. Rules adopted under this section must ensure that individual private projects achieve no net loss of ecological function. Rules adopted under this section must ensure that net ecological gain is advanced through the appropriate selection of publicly funded projects, and voluntary projects whose purpose is salmon recovery but which may receive funding from either public or private sources. Rules adopted under this section related to net ecological gain must account for the impact of the urban heat island effect on ecological function.

(5) The rules adopted under this section must address implementation including, but not limited to:

(a) Determining what actions, projects, and activities count toward the achievement of net ecological gain;

(b) Determining the appropriate number of net ecological gain credits to be attributed to individual actions, projects, and activities;

(c) Developing a system that guides project proponents' development of the net ecological gain components of their projects;

(d) Developing a tracking system for net ecological gain at the appropriate scale;

(e) Recommending methods to appropriately track or account for voluntary incentive program contributions to net ecological gain from private landowners;

(f) Identifying, using the appropriate criteria and ecosystem functions, the current ecosystems baseline;

(g) Recommending ecological targets and goals that will serve as appropriate benchmarks of success; and

(h) Suggesting to the legislature key ecological milestones that should be tracked and reported.

(6) The department of fish and wildlife must contract with an independent facilitator to establish a working group that advises the department of fish and wildlife on approaches that lead to measurable attributes of net ecological gain. The working group must address criteria for, and a system for implementing, net ecological gain on public projects, as well as specific elements identified in this section. The working group must include representatives from other state agencies, counties, cities, salmon recovery organizations, environmental organizations, and Indian tribes that opt into participation.

(7) The rules adopted under this section do not apply to special purpose district projects unless the special purpose district chooses to apply the net ecological gain standard to a project or projects.

(8) The department of fish and wildlife must incorporate measurable attributes of ecosystem structure and function and shall monitor progress towards the goals set forth in the regional salmon recovery plans that include parameters that affect salmonid health including, but not limited to, indicators of stream temperature, impervious surfaces, and tree canopy cover. As part of its monitoring, and as appropriate, the department of fish and wildlife shall obtain monitoring data from relevant and reliable sources including, but not limited to, local governments, state agencies, federal agencies, and Indian tribes. In addition, the department of fish and wildlife shall also monitor and report the progress that each jurisdiction planning under RCW 36.70A.040 has made toward achieving no net loss of ecological function, and the progress that each jurisdiction that chooses to include a voluntary net ecological gain element in its comprehensive plan has made toward achieving net ecological gain. As part of this ongoing monitoring effort, the department of fish and wildlife, in early and continuous consultation with each federally recognized Indian tribe with property, tribal reservation land, or usual and accustomed fishing areas in, adjacent to, or directly affected by the planning jurisdiction, and in communication with the affected local governments, shall first establish the current environmental baseline conditions within each county and city planning under RCW 36.70A.040, identify any monitoring data gaps and make recommendations to fill those gaps, and monitor the degree to which each jurisdiction that chooses to include a voluntary net ecological gain element in its comprehensive plan is successful at achieving net ecological gains and no net losses through individual projects, over time, including, where appropriate, the efforts made by jurisdictions to address the effect of urban heat islands on salmonid health. The department of fish and wildlife is encouraged to work with or seek feedback from local watershed groups in review of the current environmental baseline conditions and monitoring efforts.

(9) The department of fish and wildlife shall facilitate an ongoing and collaborative process for the purpose of identifying gaps and targets related to salmon habitat and funding, to be informed by its monitoring work pursuant to this section.

(10) The department of fish and wildlife shall provide a report of its monitoring under this section to the governor, the appropriate committees of the legislature, and the local governments subject to this act no later than October 15th of every even-numbered year, beginning in 2024.

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

A county or city that plans to include within its comprehensive plan a net ecological gain element that complies with the net ecological gain rules adopted by the department of fish and wildlife pursuant to section 4 of this act is eligible to apply to the department for planning grant assistance of up to $100,000, subject to the availability of funds appropriated for that purpose. The department shall develop grant criteria in cooperation with the department of fish and wildlife to ensure that grant funds awarded are proportionate to the level of effort proposed by a county or city toward the achievement of net ecological gain. Funding may be provided in advance of, and to support, adoption of policies or ordinances consistent with this section. A county or city may request, and the department may award, more than $100,000 for applications that demonstrate extraordinary potential to increase net ecological gain within the county or city.

NEW SECTION. **Sec.**  A new section is added to chapter 77.04 RCW to read as follows:

(1) The department, in collaboration with the working group on net ecological gain established in section 4(6) of this act, must compile examples of net gain through existing pollution reduction and habitat protection and recovery programs including, but not limited to:

(a) Fish passage barrier removal;

(b) Salmon recovery funding;

(c) Stormwater financial assistance; and

(d) Model toxics control act grants.

(2) In a report summarizing the results, the department, in collaboration with the working group on net ecological gain, must assess the degree to which each conservation program achieves a net improvement in ecological conditions and any numerical measures used to track progress.

(3) The department must submit its report to the appropriate committees of the legislature no later than June 30, 2024.

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