
Environment & Energy Committee

HB 1735

Brief Description: Adding net ecological gain as a voluntary element of comprehensive plans under the growth management act.

Sponsors: Representatives Lekanoff, Fitzgibbon, Ramel, Pollet and Macri.

Brief Summary of Bill

- Adds net ecological gain as one of the optional elements that a county or city planning fully under the Growth Management Act may include in its comprehensive plan.
- Directs the Department of Fish and Wildlife (WDFW) to adopt rules to establish criteria for net ecological gain that must be achieved by jurisdictions that choose to adopt net ecological gain as an element within their comprehensive plans.
- Requires the WDFW to monitor and report 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.
- Creates a joint oversight body on net ecological gain for the purpose of identifying criteria for, and a system for implementing, net ecological gain on public projects.
- Creates a planning grant of up to \$100,000, subject to funding, for counties and cities that plans to include within their comprehensive plan a net ecological gain element that complies with the net ecological gain rules adopted by the WDFW.
- Directs the WDFW, in collaboration with the joint oversight body on net ecological gain, to conduct a study of the effectiveness of current conservation programs.

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.

- Requires the Director of the WDFW to provide an estimated amount equal to 10 percent of any revenues to the General Fund accruing in amounts exceeding 2022 revenues, and at least 10 percent of any budget surpluses identified by the Economic and Revenue Forecast Council, to be committed to funding specified items of work related to net ecological gain.

Hearing Date: 2/7/23

Staff: Robert Hatfield (786-7117).

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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, that 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. In 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 purposes of when the obligation to review and revise their comprehensive plans commences. The next round of required comprehensive plan updates begins with King, Kitsap, Snohomish, and Pierce counties, and the cities within those counties, in 2024.

Regional Salmon Recovery Plans.

Recovery plans are developed and adopted under the federal Endangered Species Act when a species has been listed as threatened or endangered. 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. 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 Bill:

Growth Management Act—Optional Element.

Net ecological gain is added as one of the optional elements that a county or city planning fully under the Growth Management Act (GMA) may include in its comprehensive plan.

Criteria for Net Ecological Gain.

The Department of Fish and Wildlife (WDFW), with recommendations from the oversight body described below, must adopt rules to establish criteria for net ecological gain and consistency with the applicable portions of 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, the WDFW must consult on an early and continuous basis 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.

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.

The rules adopted by the WDFW must ensure that, where appropriate, the interjurisdictional coordination process required by the GMA addresses the issue of salmon recovery.

The rules adopted by the WDFW may not require or assume that the proponents of individual private projects will be responsible for achieving net ecological gain. Rules adopted by the WDFW must ensure that individual private projects achieve no net loss of ecological function, and that net ecological gain is achieved 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.

The WDFW, 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, must:

1. establish the current environmental baseline conditions within each fully planning county and city;

2. identify any monitoring data gaps and make recommendations to fill those gaps; and
3. monitor the degree to which each jurisdiction that includes 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 WDFW must monitor progress towards the goals set forth in the regional salmon recovery plans, including parameters that affect salmonid health including, but not limited to, stream temperature, impervious surfaces, and tree canopy cover.

The WDFW must also monitor and report the progress that each fully planning jurisdiction 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.

The WDFW 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.

The WDFW must submit a report of its monitoring to the Governor, the Legislature, and affected local governments beginning in 2024 and every other year thereafter.

Joint Oversight Body on Net Ecological Gain.

A joint oversight body on net ecological gain is established for the purpose of identifying criteria for, and a system for implementing, net ecological gain on public projects.

The oversight body consists of the following members:

- the Director of the Department of Ecology, or the Director's designee;
- the Governor's senior policy advisor on natural resources;
- the Director of the Department of Agriculture, or the Director's designee;
- the Director of the WDFW, or the Director's designee;
- the Executive Director of the State Conservation Commission, or the Executive Director's designee;
- the Commissioner of Public Lands, or the Commissioner's designee;
- the Secretary of the Department of Transportation, or the Secretary's designee;
- the Executive Director of the Puget Sound Partnership, or the Executive Director's designee; and
- the Director of the Department of Commerce (Commerce), or the Director's designee.

There are two cochairs of the oversight body. One cochair of the oversight body must be the Governor's senior policy adviser on natural resources.

The oversight body must, by a majority of the members, adopt rules to govern its conduct as may be necessary or appropriate.

The oversight body must convene from time to time at the call of one or both of the cochairs or upon the request of three or more members of the oversight body. The oversight body must meet at least three times each calendar year. The oversight body is encouraged to hold at least one of its meetings each year at a location outside of Olympia. Any meeting of the oversight body must include an opportunity for public comment.

The oversight body is responsible for, among other things:

- determining what actions, projects, and activities count toward the achievement of net ecological gain;
- determining the appropriate number of net ecological gain credits to be attributed to individual actions, projects, and activities;
- developing a system that guides project proponents' development of the net ecological gain components of their projects; and
- suggesting to the Legislature key ecological milestones that should be tracked and reported.

The expenses of the operations of the oversight body, including the expenses associated with the oversight body's meetings, must be paid by the WDFW, except that the costs of attendance at oversight body meetings incurred by oversight body members, including representatives of other departments, must be borne by the representative's department.

A work group is created within the oversight body for the purpose of providing engagement on matters and tasks as directed by the cochairs of the oversight body. The cochairs of the oversight body must appoint members of the oversight body to serve in the work group.

Staff support for the oversight body must be provided by the WDFW.

Net Ecological Gain Grants.

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 WDFW is eligible to apply to Commerce for planning grant assistance of up to \$100,000, subject to the availability of funds appropriated for that purpose. Commerce must develop grant criteria in cooperation with the WDFW 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 WDFW's net ecological gain rules. A county or city may request, and Commerce may award, more than \$100,000 for applications that demonstrate extraordinary potential to increase net ecological gain within the county or city.

Study of Current Conservation Programs.

The WDFW, in collaboration with the joint oversight body on net ecological gain, must conduct a study of current conservation programs including, but not limited to:

- fish passage barrier removal;
- salmon recovery funding;

- stormwater financial assistance; and
- Model Toxics Control Act capital grants.

In the study, the WDFW, in collaboration with the joint oversight body, must assess the degree to which each conservation program achieves a net improvement in ecological conditions.

The WDFW must submit its report to the appropriate committees of the Legislature no later than June 30, 2024.

Department of Fish and Wildlife—Budget Process.

As part of the budget development for the WDFW, the Governor must require the Director of the WDFW to provide an estimated amount equal to 10 percent of any revenues to the General Fund accruing in amounts exceeding 2022 revenues, and at least 10 percent of any budget surpluses identified by the Economic and Revenue Forecast Council, to be committed to funding the adoption of net ecological gain rules, monitoring related to net ecological gain, staffing the joint oversight body on net ecological gain, and conducting the study of the effectiveness of current conservation programs.

The estimates described above must be transmitted to the Governor and must be included in the budget without revision.

Growth Management Act—Definitions.

A definition for "net ecological gain" is added to the GMA, to mean 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; 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.