
SUBSTITUTE HOUSE BILL 1735

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/16/23.

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

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

7 NEW SECTION. **Sec. 1.** Washington state continues to face extreme
8 environmental degradation, increased population rates, and growth in
9 infrastructure while habitat and cool and clean water decrease, thus
10 leading to the loss of salmon populations. If we are going to make a
11 difference in salmon recovery, we need to restructure our political
12 and scientific approach to habitat restoration. Investment in net
13 ecological gain for local and state infrastructure projects in urban
14 and rural areas enhances the habitat needed to absorb unforeseen
15 carbon and restores a healthy ecosystem for salmon biomes. The
16 legislature also recognizes that investing throughout an entire biome
17 is an approach to addressing biodiversity to recover entire
18 environments and natural resources up and down rivers, throughout
19 watersheds, and across land areas. The legislature acknowledges that
20 the Washington state academy of sciences found that the principle of
21 no net loss has not been an effective approach for ecosystem or

1 habitat management and protection, nor for the maintenance of
2 ecosystem services, and that there have been net losses of species
3 and habitats in Washington. Net improvement is a common concept that
4 underpins pollution clean-up laws and habitat investments to recover
5 species. Net ecological gain is a common sense approach for
6 infrastructure and building projects that simply provides additional
7 habitat to a location and results in an environmentally healthy place
8 for natural resources and humans.

9 **Sec. 2.** RCW 36.70A.080 and 2011 c 318 s 801 are each amended to
10 read as follows:

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

- 14 (a) Conservation;
- 15 (b) Solar energy; (~~and~~)
- 16 (c) Recreation; and
- 17 (d) Net ecological gain.

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

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

23 (b) For purposes of this subsection, the terms "receiving city"
24 and "receiving area" have the same meanings as provided in RCW
25 39.108.010.

26 **Sec. 3.** RCW 36.70A.030 and 2021 c 254 s 6 are each amended to
27 read as follows:

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

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

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

37 (a) For rental housing, (~~(sixty))~~ 60 percent of the median
38 household income adjusted for household size, for the county where

1 the household is located, as reported by the United States department
2 of housing and urban development; or

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

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

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

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

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

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

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

39 (9) "Emergency housing" means temporary indoor accommodations for
40 individuals or families who are homeless or at imminent risk of

1 becoming homeless that is intended to address the basic health, food,
2 clothing, and personal hygiene needs of individuals or families.
3 Emergency housing may or may not require occupants to enter into a
4 lease or an occupancy agreement.

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

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

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

32 (13) "Freight rail dependent uses" means buildings and other
33 infrastructure that are used in the fabrication, processing, storage,
34 and transport of goods where the use is dependent on and makes use of
35 an adjacent short line railroad. Such facilities are both urban and
36 rural development for purposes of this chapter. "Freight rail
37 dependent uses" does not include buildings and other infrastructure
38 that are used in the fabrication, processing, storage, and transport
39 of coal, liquefied natural gas, or "crude oil" as defined in RCW
40 90.56.010.

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

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

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

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

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

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

33 (20) "Permanent supportive housing" is subsidized, leased housing
34 with no limit on length of stay that prioritizes people who need
35 comprehensive support services to retain tenancy and utilizes
36 admissions practices designed to use lower barriers to entry than
37 would be typical for other subsidized or unsubsidized rental housing,
38 especially related to rental history, criminal history, and personal
39 behaviors. Permanent supportive housing is paired with on-site or
40 off-site voluntary services designed to support a person living with

1 a complex and disabling behavioral health or physical health
2 condition who was experiencing homelessness or was at imminent risk
3 of homelessness prior to moving into housing to retain their housing
4 and be a successful tenant in a housing arrangement, improve the
5 resident's health status, and connect the resident of the housing
6 with community-based health care, treatment, or employment services.
7 Permanent supportive housing is subject to all of the rights and
8 responsibilities defined in chapter 59.18 RCW.

9 ~~((20))~~ (21) "Public facilities" include streets, roads,
10 highways, sidewalks, street and road lighting systems, traffic
11 signals, domestic water systems, storm and sanitary sewer systems,
12 parks and recreational facilities, and schools.

13 ~~((21))~~ (22) "Public services" include fire protection and
14 suppression, law enforcement, public health, education, recreation,
15 environmental protection, and other governmental services.

16 ~~((22))~~ (23) "Recreational land" means land so designated under
17 RCW 36.70A.1701 and that, immediately prior to this designation, was
18 designated as agricultural land of long-term commercial significance
19 under RCW 36.70A.170. Recreational land must have playing fields and
20 supporting facilities existing before July 1, 2004, for sports played
21 on grass playing fields.

22 ~~((23))~~ (24) "Rural character" refers to the patterns of land
23 use and development established by a county in the rural element of
24 its comprehensive plan:

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

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

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

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

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

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

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

1 ~~((24))~~ (25) "Rural development" refers to development outside
2 the urban growth area and outside agricultural, forest, and mineral
3 resource lands designated pursuant to RCW 36.70A.170. Rural
4 development can consist of a variety of uses and residential
5 densities, including clustered residential development, at levels
6 that are consistent with the preservation of rural character and the
7 requirements of the rural element. Rural development does not refer
8 to agriculture or forestry activities that may be conducted in rural
9 areas.

10 ~~((25))~~ (26) "Rural governmental services" or "rural services"
11 include those public services and public facilities historically and
12 typically delivered at an intensity usually found in rural areas, and
13 may include domestic water systems, fire and police protection
14 services, transportation and public transit services, and other
15 public utilities associated with rural development and normally not
16 associated with urban areas. Rural services do not include storm or
17 sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

18 ~~((26))~~ (27) "Short line railroad" means those railroad lines
19 designated class II or class III by the United States surface
20 transportation board.

21 ~~((27))~~ (28) "Urban governmental services" or "urban services"
22 include those public services and public facilities at an intensity
23 historically and typically provided in cities, specifically including
24 storm and sanitary sewer systems, domestic water systems, street
25 cleaning services, fire and police protection services, public
26 transit services, and other public utilities associated with urban
27 areas and normally not associated with rural areas.

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

1 (~~(29)~~) (30) "Urban growth areas" means those areas designated
2 by a county pursuant to RCW 36.70A.110.

3 (~~(30)~~) (31) "Very low-income household" means a single person,
4 family, or unrelated persons living together whose adjusted income is
5 at or below (~~(fifty)~~) 50 percent of the median household income
6 adjusted for household size, for the county where the household is
7 located, as reported by the United States department of housing and
8 urban development.

9 (~~(31)~~) (32) "Wetland" or "wetlands" means areas that are
10 inundated or saturated by surface water or groundwater at a frequency
11 and duration sufficient to support, and that under normal
12 circumstances do support, a prevalence of vegetation typically
13 adapted for life in saturated soil conditions. Wetlands generally
14 include swamps, marshes, bogs, and similar areas. Wetlands do not
15 include those artificial wetlands intentionally created from
16 nonwetland sites, including, but not limited to, irrigation and
17 drainage ditches, grass-lined swales, canals, detention facilities,
18 wastewater treatment facilities, farm ponds, and landscape amenities,
19 or those wetlands created after July 1, 1990, that were
20 unintentionally created as a result of the construction of a road,
21 street, or highway. Wetlands may include those artificial wetlands
22 intentionally created from nonwetland areas created to mitigate
23 conversion of wetlands.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A
25 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (6) The department of fish and wildlife must contract with an
36 independent facilitator to establish a working group that advises the
37 department of fish and wildlife on approaches that lead to measurable
38 attributes of net ecological gain. The working group must address
39 criteria for, and a system for implementing, net ecological gain on
40 public projects, as well as specific elements identified in this

1 section. The working group must include representatives from other
2 state agencies, counties, cities, salmon recovery organizations,
3 environmental organizations, and Indian tribes that opt into
4 participation.

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

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

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

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

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A
11 RCW to read as follows:

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

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.04
28 RCW to read as follows:

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

- 34 (a) Fish passage barrier removal;
- 35 (b) Salmon recovery funding;
- 36 (c) Stormwater financial assistance; and
- 37 (d) Model toxics control act grants.

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

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

--- **END** ---