
Environment & Energy Committee

HB 2549

Brief Description: Integrating salmon recovery efforts with growth management.

Sponsors: Representatives Lekanoff, Doglio, Peterson, Pollet, Macri and Hudgins.

Brief Summary of Bill

- Makes salmon recovery a goal of the Growth Management Act (GMA).
- Requires cities and counties planning under the GMA framework to develop a salmon and steelhead comprehensive plan element.
- Establishes a process for approval of city and county salmon and steelhead GMA comprehensive plan elements by the Department of Fish and Wildlife (WDFW) or the adoption of an alternative proposal for the local jurisdiction by the WDFW.
- Establishes a standard of net ecological gain applicable to anadromous fish recovery for purposes of provisions of the GMA, including the GMA's goals, critical areas ordinances, salmon and steelhead recovery elements, and the voluntary stewardship program.
- Directs the WDFW to establish salmon recovery performance goals applicable to jurisdictions planning under the GMA.

Hearing Date: 1/23/20

Staff: Jacob Lipson (786-7196).

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 Originally enacted in 1990 and 1991, the GMA establishes land-use designation and environmental protection requirements for all Washington counties and cities.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 29 counties,

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and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land-use plans that are generalized, coordinated land-use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. The required elements of comprehensive plans address topics that include:

- land use;
- transportation;
- capital facilities; and
- rural areas.

Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA. New comprehensive plan elements required after 2002 are null and void unless they are funded by the state in an amount sufficient to cover applicable local government costs.

GMA-Goals.

Under the GMA, planning jurisdictions must consider 13 nonprioritized goals set forth in statute for the purpose of guiding the adoption of comprehensive plans and development regulations. The GMA planning goals address transportation, urban growth, reducing sprawl, open space and recreation, and the environment, among other topics. In addition, the goals and policies of the Shoreline Management Act have been added as a fourteenth goal of the GMA.

GMA-Critical Areas and Voluntary Stewardship Program.

The GMA provides that all counties and cities are obligated to designate and adopt policies and development regulations using best available science (BAS) to protect environmentally sensitive areas known as "critical areas." All cities and counties are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an updated schedule. As defined by statute, critical areas include:

- wetlands;
- aquifer recharge areas;
- fish and wildlife habitat conservation areas;
- frequently flooded areas; and
- geologically hazardous areas.

Cities and counties must give special consideration to conservation or protection measures that are necessary to preserve or enhance anadromous fisheries. Protection of critical areas may include both regulatory and nonregulatory measures, and local governments may develop alternative means of protection of critical areas using best management practices or a combination of regulatory and nonregulatory programs, so long as cities and counties assure use of BAS and no net loss of functions and values of the critical areas.

As an alternative to protect critical areas through development regulations in areas used for agricultural activities, county legislative authorities can opt to protect such areas through the voluntary stewardship program (VSP), which is administered by the Washington State Conservation Commission. The VSP provides a watershed-oriented framework reliant upon

voluntary actions by agricultural operators for protecting critical areas in areas used for agricultural activities that serves as an alternative to the traditional practice of protecting these areas through development regulations mandated by the GMA.

The Department of Commerce (COM) has adopted rules to help cities and counties assess what constitutes the BAS to use as the basis for critical area regulations. Under these rules, cities and counties may use information that local, state, or federal natural resource agencies have determined to meet BAS based on specified criteria. The rules establish that the responsibility for development and implementation of critical area ordinances rests with city and county legislative authorities, but that when feasible, cities and counties should consult with qualified scientific experts or teams of experts in identifying BAS. The COM makes a list of BAS, as identified by state or federal natural resources agencies for critical areas, publicly available.

GMA- Appeal Procedures.

The GMA includes enforcement and penalty provisions for public entities. A seven-member Growth Management Hearings Board (GMHB) established under the GMA is charged with hearing and determining petitions alleging noncompliance by state agencies, counties, or cities with the GMA and related statutory provisions. The GMHB must make findings of fact and prepare a written decision. Final decisions and orders of the GMHB may be appealed to superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with the GHMB.

Salmon Recovery.

The Washington Department of Fish and Wildlife (WDFW) is responsible for the management of the state's fish and wildlife resources. Several species of salmon are listed as either threatened or endangered under the federal Endangered Species Act.

The WDFW maintains a Fish Passage Barrier Removal Board (Board), composed of representatives from various state agencies, cities, counties, and tribal governments. The duty of the Board is to identify and expedite the removal of human-made or -caused impediments to anadromous fish passage in the most efficient manner practical, through the development of a coordinated approach and schedule that identifies and prioritizes the projects necessary to eliminate fish passage barriers caused by state and local roads and highways, and barriers owned by private parties.

The Washington State Department of Transportation (WSDOT) has identified more than 2,052 barriers to fish passage in the state highway system, and more than 1,523 barriers have more than 200 meters of fish habitat upstream from the barrier. These fish passage barriers are corrected:

- as part of larger transportation projects;
- through projects designed specifically to remove such barriers; and
- as part of maintenance activities when the required work is more limited.

The WSDOT is subject to a United States District Court injunction requiring the removal of fish passage barriers on state highways in much of Western Washington by the year 2030.

The Governor's Salmon Recovery Office, located within the Recreation and Conservation Office (RCO), is responsible for coordinating the state strategy to allow for salmon recovery to healthy, sustainable population levels. Part of that responsibility is to coordinate and assist in the

development, implementation, and revision of regional salmon recovery plans as part of the statewide strategy for salmon recovery. Within designated salmon recovery regions, lead entities develop habitat project lists, including habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities. With assistance from a citizen committee, the lead entities evaluate the suggested projects, prioritize them, define the sequence for project implementation, and submit this as the habitat project list to the Salmon Recovery Funding Board.

Summary of Bill:

Net Ecological Gain.

The concept of net ecological gain is defined for purposes of the Growth Management Act (GMA) as a standard for a development project, policy, plan, development regulation, or activity in which the environmental impacts caused by the development are outweighed by measures taken consistent with the mitigation hierarchy. The mitigation hierarchy is established as the following management options to address environmental impacts, in descending order of priority:

- avoidance;
- minimization;
- rehabilitation or restoration;
- offset; and
- compensation.

GMA Goals.

Salmon recovery is added as a goal of the GMA and is specified to include supporting the recovery and enhancement of salmon stocks through net ecological gain from growth planning designed to fulfill tribal treaty obligations and achieve the delisting of threatened or endangered species. The environment and open space and recreation goals of the GMA are also amended to establish a goal of net ecological gain with respect to the protection of the environment and the conservation, protection, and restoration of fish and wildlife habitat.

GMA Comprehensive Plans.

In consultation with Indian tribes, the Department of Fish and Wildlife (WDFW) must establish anadromous fish species recovery performance goals that include timelines and benchmarks for achieving the newly established GMA salmon recovery goals across jurisdictions fully planning under the GMA. The WDFW must monitor and annually report progress toward these goals.

Jurisdictions fully planning under the GMA must develop a salmon and steelhead protection and recovery element as part of their comprehensive plans. The element must be designed to achieve the recovery, enhancement, and net ecological gain of anadromous fisheries and to achieve the WDFW's performance goals established for the jurisdiction. Salmon and steelhead elements must be developed in consultation with local or otherwise affected Indian tribes. Elements must consist of:

- an inventory of habitat projects: (a) identified by lead entities under the Salmon Recovery Funding Board process, or (b) that implement a recovery plan under the federal Endangered Species Act. This inventory of projects must be accompanied by a plan for

ensuring that ecosystem services provided by those projects are enhanced by new development undertaken in the jurisdiction;

- an inventory of fish passage barriers identified by the Department of Transportation, WDFW, or the local government and a plan for assessing and prioritizing the elimination of fish passage barriers over which the city or county has jurisdiction; and
- a plan for how other GMA comprehensive plan elements will contribute to the restoration and improvement of salmon habitat, taking into consideration any relevant watershed plans and stormwater activities undertaken under municipal stormwater permits issued by the Department of Ecology.

Salmon and steelhead elements of a comprehensive plan become effective only when approved or adopted by the WDFW. The WDFW must approve a salmon and steelhead element unless the proposal is not consistent with the newly established salmon recovery GMA goal or the salmon and steelhead element requirements. WDFW must achieve final action on a submitted element within 180 days of receipt. Salmon and steelhead elements must be prepared beginning with the next regularly scheduled periodic update of the GMA comprehensive plan. The WDFW and the planning jurisdiction must follow specified procedures in providing notice and opportunity for written comment on salmon and steelhead elements. After a process of considering public comment and protocols for the revision of comprehensive plans by the planning jurisdiction, if the WDFW does not approve a salmon and steelhead element and associated development regulations, the WDFW may develop and by rule adopt an alternative to the local government's proposal. Actions taken by the WDFW to approve or adopt an alternative salmon and steelhead element for a local jurisdiction are appealable to the Growth Management Hearings Board.

GMA Critical Areas and Voluntary Stewardship Program.

Beginning July 1, 2021, the standard requiring city and county critical area designations to give special consideration to measures to preserve or enhance anadromous fisheries is eliminated and replaced with a mandate that cities and counties adopt and implement all conservation or protection measures that provide net ecological gain for the preservation or enhancement of anadromous fisheries. By September 1, 2021, the Department of Commerce (COM) must update critical area guidelines to incorporate net ecological gain requirements. The COM must consult with the WDFW regarding critical area guidelines. New critical area requirements to implement net ecological gain are null and void unless funded in an amount sufficient to cover applicable local government costs, in the same manner as applies to new comprehensive plan elements required of local governments.

The voluntary stewardship program is designed to achieve net ecological gain for anadromous fisheries and to protect and enhance critical areas. By no later than January 1, 2025, the work plans of each watershed group designated by a county implementing a voluntary stewardship program must be updated to achieve net ecological gain with respect to anadromous fisheries.

Riparian Ecosystems Workgroup.

An interagency workgroup on riparian ecosystems is established to:

- review BAS on riparian ecosystems for different types of development and land uses;
- identify watersheds to be first treated with comprehensive riparian ecosystem improvement strategies to achieve net ecological gain of salmon; and
- make recommendations to other government entities regarding the funding of salmon habitat improvements.

The work group must consist of representatives from the Departments of Ecology, Fish and Wildlife, Agriculture, Natural Resources, and Commerce, the Recreation and Conservation Office, the Conservation Commission, the Puget Sound Partnership, an organization representing Washington cities, and an organization representing Washington counties. By July 1, 2021, the work group must submit a report to the Legislature detailing its findings and recommendations. Between 2022 and 2029, the work group must continue to meet at least once per year to review the status of recommendation implementation.

Appropriation: None.

Fiscal Note: Requested on January 15, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 4, 5, 6, 7, 8, 10, 11, and 12, addressing critical areas ordinances, comprehensive plan elements, approval of salmon and steelhead comprehensive plan elements by the Department of Fish and Wildlife, Growth Management Hearings Board jurisdiction, and the voluntary stewardship program, all of which take effect July 1, 2021.