
Environment & Energy Committee

HB 2550

Brief Description: Establishing net ecological gain as a policy for application across identified land use, development, and environmental laws.

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

Brief Summary of Bill

- Directs the Office of Financial Management to submit a report to the Legislature by December 1, 2020, that assesses how to incorporate a standard of net ecological gain, and an associated mitigation hierarchy, into the Growth Management Act (GMA), Shoreline Management Act (SMA), Construction Projects in State Waters/Hydraulic Projects Approvals (HPAs), and Model Toxics Control Act (MTCA) wherever the existing standard in those laws is less protective of ecological integrity than the standard of net ecological gain.
- Declares that it is the policy of the state for the GMA, SMA, HPAs, and MTCA to achieve net ecological gain, and requires the adoption of state agency rules consistent with a standard of net ecological gain under each of those laws where existing statutory authority does not otherwise bind the agencies to a different standard of ecological protectiveness.
- Limits requirements for state agencies to allow watershed-based compensatory aquatic resources mitigation to apply only to certain infrastructure development projects, rather than both infrastructure projects and non-infrastructure projects.

Hearing Date: 1/28/20

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 Originally enacted in 1990 and 1991, the GMA establishes

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

- the requirement that cities and counties designate natural resource lands and critical areas;
- the requirement that certain cities and counties adopt comprehensive plans and development regulations to implement those plans;
- the statutory establishment of goals to guide the adoption of comprehensive plans;
- the designation of urban growth areas;
- the adoption of countywide planning policies; and
- the voluntary stewardship program, which provides an alternative for counties to protect areas used for agricultural activities through voluntary actions rather than development regulations.

The Shoreline Management Act.

The Shoreline Management Act of 1971 (SMA) requires that most developments near state shorelines be consistent with shoreline master programs, which are plans developed by local governments and approved or adopted by the Department of Ecology (Ecology) for the uses of local governments' shoreline areas. Certain projects require a substantial development permit that is reviewed by the local government and filed with Ecology; projects that require a substantial development permit include developments exceeding a cost of \$7,047 (as adjusted for inflation by the Office of Financial Management in September 2017), or any development that materially interferes with the normal public use of the water or shorelines of the state. In certain property-specific circumstances, variance permits or conditional use permits may be issued by a local government that allow for development that is not consistent with the local shoreline master program. Certain other types of development, such as single-family residences and bulkheads to protect single-family residences, are exempt from permit requirements under the SMA.

The Model Toxics Control Act.

The Model Toxics Control Act (MTCA), which is administered and enforced by Ecology, requires liable parties to clean up sites contaminated with hazardous substances and authorizes Ecology to conduct certain pollution prevention activities. Potentially liable parties may include current or past facility owners and operators and parties that transported or arranged for the disposal or treatment of hazardous substances at a site. Where there is more than one potentially liable party, each party is jointly and severally liable for cleanup. Ecology uses several methods to assist potentially liable persons to clean up hazardous waste sites, including a voluntary clean-up program, entering into settlement agreements or consent decrees, and agreed orders. The chronology of the site clean-up process usually involves an initial investigation, an assessment of the site's hazardousness and a ranking relative to the hazardousness of other contaminated sites, an investigation of the extent and magnitude of site contamination and potential human health and environmental impacts, the selection of a cleanup action, and, ultimately, the performance of the selected cleanup activity.

Hydraulic Project Approvals.

The Hydraulic Project Approval (HPA) program is a permitting process managed by the Washington Department of Fish and Wildlife (WDFW). Any activity that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state must first

obtain an HPA from the WDFW. Through the HPA process, the WDFW specifically analyses and conditions projects based on the anticipated effect on fish life. The protection of fish life is the only ground upon which an HPA may be denied or conditioned. If the WDFW denies approval of a permit, it must provide the applicant with a statement of the reasons why and how the proposed project would adversely affect fish life.

Aquatic Resources Mitigation.

Both the state and federal governments require a proponent of a project that will diminish the function of an existing wetland to mitigate that loss of function. This duty is called compensatory wetland mitigation. The project proponent has a number of options available for mitigating wetland loss; however, any mitigation plan must be approved by the state (primarily through Ecology) and the United States Army Corps of Engineers.

Projects that disturb wetlands are expected to undergo a sequencing review. Actual compensation for wetland loss does not occur unless the loss cannot be avoided, minimized through project planning, or rectified, reduced, or eliminated through repair, rehabilitation, restoration, preservation, or maintenance actions. Once mitigation requirements are triggered, a project proponent must develop a mitigation plan that either restores the damaged wetland, creates new wetland functions at a new site, enhances an existing wetland, or preserves an at-risk wetland.

State regulatory agencies are required to consider mitigation proposals for projects that are timed, designed, and located in a manner to provide equal or better biological functions and values as compared to traditional on-site, in-kind mitigation proposals. Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. Ecology and the WDFW may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on the project site, and must give due consideration to proposals that improve overall biological functions and value and accommodate the mitigation needs of specified types of infrastructure development or non-infrastructure development.

- Infrastructure development is defined to include actions critical for the maintenance or expansion of an existing infrastructure feature, such as a highway, rail line, airport, marine terminal, utility corridor, harbor area, or hydroelectric facility, under planning processes that may include the GMA or SMA.
- Non-infrastructure development means development projects that require compensatory mitigation that do not meet the definition of infrastructure development.

Mitigation plans may be approved through a memorandum of agreement between the project proponent and WDFW or Ecology.

Summary of Bill:

Net Ecological Gain Policy, Rules and Report.

It is declared to be the policy of the state that the Shoreline Management Act (SMA), Growth Management Act (GMA), construction projects in state waters and hydraulic projects approvals (HPAs), and Model Toxics Control Act (MTCA) result in the achievement of net ecological gain, except where otherwise specified in statute. The concept of net ecological gain is defined 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.

Where state agencies with rulemaking authority derived from state land-use, environmental, or development laws have discretion to establish a standard of ecological protectiveness or are not otherwise bound to a different standard of ecological protectiveness, the agencies must adopt rules to implement a standard of net ecological gain.

By December 1, 2020, the Office of Financial Management (OFM) must submit a report to the Legislature that assesses how to incorporate net ecological gain and the mitigation hierarchy into state land-use, environmental, and development laws. The report must address each land use, environmental, or development law or rule where the existing standard is less protective than net ecological gain, including the MTCA, SMA, GMA, and HPA. The OFM must consult with state agencies with subject matter expertise in each of the assessed laws. The OFM's report to the Legislature must include:

- an assessment of opportunities and challenges for implementing a standard of net ecological gain under different laws;
- recommendations for funding, incentives, technical assistance, and similar considerations relevant to the integration of net ecological gain into each law;
- recommendations for when net ecological gain can be achieved using voluntary or incentive-based programs, and when it is likely to require regulation; and
- assessments of how the application of the net ecological gain standard is likely to achieve cobenefits.

Aquatic Resources Mitigation.

Non-infrastructure development is eliminated as a type of development for which the WDFW and the Department of Ecology (Ecology) must consider watershed-based compensatory mitigation and for which the WDFW and Ecology may not limit the scope of options in a mitigation plan to areas on or near the project site. Forest practices regulated by the Department of Natural Resources are identified as a type of infrastructure development. Mitigation plans must, rather than may, be approved through a memorandum of agreement between the project proponent and WDFW or Ecology.

Appropriation: None.

Fiscal Note: Requested on January 20, 2020.

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