

SENATE BILL REPORT

E2SHB 1117

As Reported by Senate Committee On:
Housing & Local Government, March 24, 2021
Ways & Means, April 2, 2021

Title: An act relating to promoting salmon recovery through revisions to the state's comprehensive planning framework.

Brief Description: Promoting salmon recovery through revisions to the state's comprehensive planning framework.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Lekanoff, Fitzgibbon, Bateman, Simmons, Ramel, Peterson, Goodman, Ryu, Kloba, Chopp, Pollet, Macri and Davis).

Brief History: Passed House: 3/2/21, 58-38.

Committee Activity: Housing & Local Government: 3/16/21, 3/24/21 [DP-WM, DNP].
Ways & Means: 3/31/21, 4/02/21 [DP, DNP].

Brief Summary of Bill

- Adds salmon recovery as a goal under the Growth Management Act (GMA).
- Requires the land use element of comprehensive plans adopted under the GMA to include a strategy that achieves net ecological gain of salmon habitat.
- Requires the capital facilities element and transportation element of comprehensive plans adopted under the GMA to include a schedule for elimination of all identified fish passage barriers.
- Requires the Department of Fish and Wildlife to adopt rules that establish criteria for net ecological gain which certain counties and cities must meet through adoption of comprehensive plans.

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.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Cleveland, Lovelett and Salomon.

Minority Report: Do not pass.

Signed by Senators Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Short, Assistant Ranking Member; Warnick.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Lias, Pedersen and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Gildon, Mullet, Muzzall, Rivers, Van De Wege, Wagoner and Warnick.

Staff: Jed Herman (786-7346)

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, which 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. When 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 when the obligation to review and revise their comprehensive plans commences. The next round of required comprehensive plan updates begins in 2024 for King, Kitsap, Snohomish, and Pierce counties, and the cities within those counties.

Regional Salmon Recovery Plans. If a species is listed as threatened or endangered under the Endangered Species Act, recovery plans must be developed and adopted. 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—Fisheries. 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.

Aquatic Resources Mitigation Act. Under state and federal law, a project proponent whose action would impact aquatic resources must first attempt to avoid and minimize that impact. For unavoidable impacts, compensatory mitigation is required to replace the loss of aquatic resource function. The Aquatic Resources Mitigation Act sets forth a number of mitigation options that project proponents may select to comply with mitigation requirements.

Shoreline Management Program. The Shoreline Management Act (SMA) involves a cooperative regulatory approach between local governments and the state. The Department of Ecology and local governments are authorized to adopt necessary and appropriate rules for implementing the provisions of the SMA. At the local level, SMA regulations are developed in local shoreline master programs. All counties and cities with shorelines of the state are required to adopt master programs that regulate land-use activities in shoreline areas of the state.

Summary of Bill: Growth Management Act—Goals. Salmon recovery is added as a goal under the GMA. Under the salmon recovery goal, it is a goal of the GMA to support recovery and enhancement of salmon and steelhead stocks through achievement of net ecological gain to fulfill Washington's tribal treaty obligations, support nontribal commercial and recreational fisheries, and achieve delisting and recovery of threatened or endangered salmon and steelhead runs under the federal Endangered Species Act.

"Net ecological gain" means a standard for a comprehensive plan adopted under the GMA in which the ecological integrity within each water resource inventory area (WRIA) or independent natural drainage that flows directly into marine waters of the planning area is improved and enhanced during the planning period because of the measures adopted by the planning body, including no net loss of ecological function with respect to the permitting of individual projects to advance salmon recovery and other environmental benefits. The

advancement of ecological function and achievement of net ecological gain within each WRIA or independent natural drainage that flows directly into marine waters will occur through the appropriate selection and implementation of publicly funded projects. A publicly funded project includes voluntary grant programs, salmon recovery projects, ecological improvements made through the municipal stormwater permit process, and investments made as a result of the capital facilities element and transportation element of the comprehensive plan.

Comprehensive Plans—Net Ecological Gain. Beginning with plan updates adopted after January 1, 2024, the land use element of comprehensive plans must include a strategy that achieves net ecological gain of in-water and upland habitats, vegetation, water quantity, water quality, and other natural features which contribute to anadromous fish habitat on a watershed basis.

The strategy must be developed after providing notice and an opportunity to consult each federally recognized Indian tribe with property, tribal reservation land, or usual and accustomed fishing areas affected by the planning jurisdiction. The achievement of net ecological gain may rely on activities or mitigation carried out by a jurisdiction physically located outside the jurisdiction if still within the same watershed.

Development regulations adopted pursuant to the net ecological gain requirement may not require individual private projects to achieve net ecological gain. Development regulations adopted pursuant to the net ecological gain requirement must require projects owned by public entities including, but not limited to, state agencies, counties, cities, towns, public utilities districts, schools, libraries, and transportation agencies, achieve net ecological gain.

The capital facilities element and transportation element of comprehensive plans must include a schedule for elimination of all identified fish passage barriers, consistent with the prioritization schedule identified by the Fish Passage Barrier Removal Board.

Criteria for Net Ecological Gain. Through consultation with each federally recognized Indian tribe and local governments, the Department of Fish and Wildlife (DFW), must adopt rules to establish criteria for net ecological gain and consistency with the regional salmon recovery plans that counties and cities fully planning under the GMA must meet through adoption of their comprehensive plans to support salmon recovery. The net ecological gain rules adopted by DFW must account for the impact of the heat island effect on ecological function. The rules adopted by DFW must ensure that, where appropriate, the interjurisdictional coordination process required by the GMA addresses the issue of salmon recovery.

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

and voluntary projects whose purpose is salmon recovery, but may receive funding from either public or private sources.

DFW, in consultation with affected local governments and federally recognized Indian tribes, must establish current environmental baseline conditions within counties and cities fully planning under the GMA, and must then monitor progress toward salmon recovery goals in those jurisdictions. DFW must monitor parameters that affect salmonid health, including stream temperatures, impervious surfaces, and tree canopy cover. When monitoring progress that individual jurisdictions have made toward salmon recovery goals, DFW must monitor the efforts made by counties and cities to address the effect of urban heat islands on salmonid health. DFW must submit a report of its monitoring to the Governor, the Legislature, and affected local governments beginning in 2022, and every other year thereafter.

Mitigation Hierarchy Requirements and Compensatory Mitigation Requirements.

Development regulations that protect critical areas must apply mitigation hierarchy requirements and compensatory mitigation requirements. Before using a lower level in the mitigation hierarchy, project proponents must demonstrate it is not possible to mitigate environmental impacts through actions taken consistent with higher levels of the mitigation hierarchy. Mitigation imposed under both the Aquatic Resources Mitigation Act and the SMA must also apply mitigation hierarchy requirements and compensatory mitigation requirements.

"Mitigation hierarchy requirement" means a proponent must first avoid impacts where feasible, must then minimize impacts where avoidance is not feasible, and must then mitigate any remaining impacts where avoidance and minimization are not feasible. "Compensatory mitigation ratio" is defined as a measurement of the size, temporal duration, or quality of mitigation required by a permitting agency to ensure impacts to regulated aspects of the environment from an activity subject to a permit are fully mitigated over the life of the activity or project subject to the permit.

Funding. The obligation of local governments to comply with specified provisions in the act is contingent on the provision of state funding to local governments for complying with these requirements. The obligation of local governments to comply with these provisions takes effect two years after the date the Legislature appropriates state funding to comply with these requirements.

The provisions of the act contingent on funding are:

- amendments to the goals of the GMA;
- amendments to critical areas protection requirements of the GMA;
- amendments to comprehensive plan requirements under the GMA;
- amendments to the Aquatic Resources Mitigation Act;
- rules related to net ecological gain; and
- mitigation requirements imposed pursuant to the SMA.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Housing & Local Government): PRO: There has been extensive work done with a variety of stakeholders to incorporate salmon recovery in to local government. Millions of dollars have been spent on salmon recovery and we need to protect taxpayers' investment. The GMA was developed to protect timber and agriculture, and now we need to incorporate salmon into the GMA. The state has a right to uphold treaty rights for tribes. The orca task force identified salmon habitat degradation as a cause of decline, and with comprehensive plan updates coming soon we need to act now in order to not lose another decade. With population increases and degraded habitat, wild salmon need help. Improvements to salmon habitat have been too slow and we need to improve ecological function. This is a practical framework to align with existing efforts and is consistent with salmon recovery plans. This approach does not impact private projects, it only impacts public projects. Language addressing identification of fish passage barriers has been amended and includes a schedule for their elimination. Language in previous versions of the bill regarding funding for implementation are preferred over the current approach. Investments made now will save money in the long-term. There are costs to local governments and funding is needed to implement the bill.

CON: While there have been improvements made in the bill, there needs to be additional changes to address implementation concerns. The compensatory mitigation is very difficult to implement, will make projects more costly and may result in litigation. Net ecological gain will increase the costs of transportation infrastructure and public utility projects. The burden of compliance will increase permit processing time. There needs to be clarifying language regarding private projects using public infrastructure are not responsible for additional ecological gain. The GMA balances all of the elements, however, with the approach in this bill the balance is gone. The goals are tied to regulatory outcomes for salmon recovery, unlike housing, for example, where there are goals. Work needs to be done to ensure the increased costs of public infrastructure to meet the net ecological gain standard are not passed on to housing through higher impact fees.

OTHER: Agriculture is important to our state and needs to be protected, however, the food processors are in jeopardy by making water more difficult to come by. Water is critical to the agricultural sector, and the sector uses a very small percent of the available water. The bill takes important steps forward with integrating the work of local comprehensive plans with salmon recovery plans.

Persons Testifying (Housing & Local Government): PRO: Representative Debra

Lekanoff, Prime Sponsor; Stephanie Solien, Puget Sound Partnership Leadership Council; Cynthia Stewart, League of Women Voters of Washington; Darcy Nonemacher, Washington Environmental Council; Jeff Davis, Washington Department of Fish and Wildlife; Paul Jewell, Washington State Association of Counties; Justin Allegro, The Nature Conservancy; Carl Schroeder, Association of Washington Cities.

CON: Tom Davis, Washington Farm Bureau; Mike Ennis, Association of Washington Business; Jan Himebaugh, Building Industry Association of Washington; Bill Clarke, Washington REALTORS.

OTHER: Pam Lewison, Washington Policy Center; Dave Andersen, Washington Department of Commerce.

Persons Signed In To Testify But Not Testifying (Housing & Local Government): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: Adding salmon habitat to the GMA will help address climate impacts. Including the tribes in the process is essential. There are a group of GMA bills that have been developed in a balanced approach that should move forward together. Adequate funding is needed to implement the changes in the bill. There is more work to do for salmon recovery and we do not have another decade to wait. Recovery of salmon habitat will also mitigate heat island effect, reduce pollution, and improve human health. A healthy environment is the foundation of our economy, and salmon recovery is critical for endangered orca whale recovery. Local governments need to lead by example. It is time for the GMA to evolve, and the bill would remove the silos in place for salmon recovery and land use and helps with the investments being made for salmon recovery. Salmon recovery improvements are coming too slowly.

CON: While planning for salmon recovery is a good idea, there are concerns about the net ecological gain standard. While the net ecological gain standard only applies to public projects, access to public infrastructure will cause prices to go up impacting private projects. There is a conflict for public utilities from funding activities not directly related to the project. Public utilities must charge higher rates to pay for the costs. The bill should be limited to only projects directly related to salmon recovery. There needs to be more accountability and engagement with tribes. While there is support for the intent of the bill, changes should be made to establish a meaningful baseline. The bill leaves too many important details to rulemaking.

Persons Testifying (Ways & Means): PRO: Cynthia Stewart, League of Women Voters of Washington; Paul Jewell, Washington State Association of Counties; Margen Carlson, Washington Department of Fish and Wildlife; Tina Whitman, Friends of the San Juans; Darcy Nonemacher, Washington Environmental Council; Phil Anderson; Carl Schroeder, Association of Washington Cities.

CON: Jan Himebaugh, Building Industry Association of Washington; Nicolas Garcia,

Washington Public Utility Districts Association; Timothy J. Greene, Makah Tribal Council.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.