

HOUSE BILL REPORT

HB 1735

As Reported by House Committee On:
Environment & Energy

Title: An act relating to adding net ecological gain as a voluntary element of comprehensive plans adopted under the growth management act.

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 History:

Committee Activity:

Environment & Energy: 2/7/23, 2/13/23 [DPS].

Brief Summary of Substitute 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 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.

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.

- 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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Doglio, Chair; Mena, Vice Chair; Berry, Duerr, Fey, Lekanoff, Ramel, Slatter and Street.

Minority Report: Without recommendation. Signed by 6 members: Representatives Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Barnard, Couture and Goehner.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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

Working Group on Net Ecological Gain.

The WDFW must contract with an independent facilitator to establish a working group that advises the WDFW on approaches that lead to measurable attributes of net ecological gain. The working group must address criteria and a system for implementing net ecological gain on public projects. The working group must include representatives from other state agencies, counties, cities, salmon recovery organizations, environmental organizations, and Indian tribes that opt into participation.

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 the Department of Commerce (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. Commerce may award more than \$100,000 for applications by a city or county 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 working group on net ecological gain, must compile examples of net gain through existing pollution reduction and salmon habitat protection and recovery programs including, but not limited to:

- fish passage barrier removal;
- salmon recovery funding;
- stormwater financial assistance; and
- Model Toxics Control Act capital grants.

In a report summarizing the results, the WDFW, in collaboration with the working group, 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.

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.

Substitute Bill Compared to Original Bill:

Rules adopted by the Department of Fish and Wildlife (WDFW) related to net ecological gain do not apply to special purpose district projects unless the special purpose district chooses to apply the net ecological gain standard to a project or projects.

The creation of a joint oversight body on net ecological gain is removed.

The WDFW is required to contract with an independent facilitator to establish a working group that advises the WDFW on approaches that lead to measurable attributes of net ecological gain. The working group must address criteria for, and a system for implementing, net ecological gain on public projects. The working group must include

representatives from other state agencies, counties, cities, salmon recovery organizations, environmental organizations, and Indian tribes that opt into participation.

The requirement that the WDFW take certain actions to develop its proposed budget is removed.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 14, 2023.

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

Staff Summary of Public Testimony:

(In support) It is good that net ecological gain is a voluntary element of comprehensive plans. Local governments should be included in the oversight body. There should be some flexibility in the amount of the grant program.

The bill is voluntary and applies only to public projects. The definition for net ecological gain comes from a recommendation made by the Washington State Academy of Sciences. The definition of net ecological gain considers cumulative improvements over time.

One county recently added a salmon recovery goal, is updating its culvert removal schedule, and is working to achieve net ecological gain for all public projects. Simply cutting carbon dioxide emissions, although crucial, is not enough. Counties want a seat at the table and to work collaboratively with the state. The bill gives local governments the tools they need to succeed.

Net ecological gain is not a new concept; as far back as 1989, the state was looking at the need to call for a net increase in wetlands. There are multiple examples of net ecological gain happening throughout the state. The next step is to figure out how to implement net ecological gain systemwide. Net ecological gain is also about equity; often, the communities feeling the harm are not the communities causing the harm.

(Opposed) One part of the bill talks about rulemaking just for public projects, but the language is a bit ambiguous as to whether it might also apply to private projects. Whenever the state adds regulations, the effect is to also add time and cost to projects.

There is a concern that local governments applying net ecological gain requirements could increase costs for infrastructure. These requirements could also increase timelines for processing permits.

(Other) Certain public entities, such as public utility districts, should be able to opt in to net ecological gain requirements if they want to.

This bill would support Puget Sound recovery efforts. The policy of no-net-loss has put the state at risk of losing iconic salmon species and failing to uphold treaty obligations. Now is the time to make this change given the schedule for comprehensive plan updates. It is important to have a robust monitoring program, which the bill includes.

Persons Testifying: (In support) Representative Debra Lekanoff, prime sponsor; Paul Jewell, Washington State Association of Counties; Tom McBride, Department of Fish and Wildlife; Kaylee Galloway; and Mindy Roberts, Washington Conservation Action.

(Opposed) Josie Cummings, Building Industry Association of Washington; and Mike Ennis, Association of Washington Business.

(Other) Bill Clarke, Washington Public Utility District Association; Don Gourlie, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying: None.