

HOUSE BILL REPORT

HB 1078

As Reported by House Committee On:

Local Government
Appropriations

Title: An act relating to urban forest management ordinances.

Brief Description: Concerning urban forest management ordinances.

Sponsors: Representatives Duerr, Doglio, Simmons, Reed, Ryu, Walen, Ramel, Macri, Reeves and Kloba.

Brief History:

Committee Activity:

Local Government: 1/11/23, 2/3/23 [DPS].

Appropriations: 1/25/24, 2/1/24 [DP2S(w/o sub LG)].

Brief Summary of Second Substitute Bill

- Requires the Department of Natural Resources to establish optional model ordinances and recommendations for the use of tree banks, including criteria for siting tree banks and providing best practices for maintaining newly planted trees.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Berg, Griffey and Riccelli.

Minority Report: Without recommendation. Signed by 1 member: Representative Goehner, Ranking Minority Member.

Staff: Kellen Wright (786-7134).

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.

Background:

Urban forestry is the planning, establishment, protection, care, and management of trees within and around human settlements.

The Department of Natural Resources (Department) is authorized to establish an urban and community forestry program to encourage planning for, planting, and managing trees in the state's cities, counties, and tribal lands; to maximize the potential of tree and vegetative cover in improving the quality of the environment; to coordinate activities to develop and implement urban forestry programs in the state; to improve human health through delivery of programs and activities in highly impacted communities with health disparities; and to contribute to salmon and orca recovery through programs in regions that include important salmon habitats.

The Department must identify priority regions for the implementation of urban forestry programs. The determination of priority regions must include, but is not limited to: analysis of tree canopy and urban forest inventory; use of health disparity mapping tools to identify highly impacted communities; review of salmon and orca recovery data; and use of the Department's 20-year forest health strategic plan. The Department may consult with outside experts in establishing the priority regions. Through the use of these tools and analyses, the Department must identify areas where urban forestry will generate the greatest benefits in terms of tree canopy needs, health disparities, and salmon habitat.

The Department may also advise, encourage, and assist cities, counties, and tribes in establishing urban forestry programs. The Department must provide technical assistance to cities, counties, tribes, and other public and private entities in developing these programs. The Department may provide assistance to communities developing urban forestry management plans or in developing urban forestry ordinances.

Many communities do have such ordinances. These ordinances can regulate, limit, or prevent the removal of trees within the community in order to maintain tree canopy. For example, in the City of Kirkland, trees that measure more than 6 inches in diameter when measured 4-1/2 feet off the ground are considered regulated trees. Trees that measure more than 26 inches in diameter are considered landmark trees. The removal of such trees from private property requires either notification or a permit, as well as proof of mitigation of the removal through the planting of additional trees.

Meanwhile, the City of Olympia has set a minimum number of tree units that must be maintained on a property. If the removal of a tree would drop the property below that number, then a permit is required.

These regulations can also regulate tree removal during development. In the City of Renton, for example, a land development permit is required prior to tree cutting, removal, or land clearing. The City of Sammamish requires that special measures be taken during

construction to retain and protect trees from construction damage.

Urban heat islands are urban areas that experience higher temperatures than surrounding areas. Buildings, roads, and other infrastructure absorb and re-emit more heat than do areas with natural landscapes, leading to increased temperatures in areas like cities where infrastructure, roads, and structures are highly concentrated.

Summary of Substitute Bill:

A tree bank is an area or areas designated by a community in which trees can be planted to compensate for the removal of trees elsewhere, and includes programs for the payment of a fee-in-lieu of physically planting the trees.

The Department must establish optional model urban forestry ordinances and recommendations related to tree banks. These model ordinances and recommendations must:

- establish criteria for including tree banks in urban forestry ordinances;
- establish criteria for designating tree banks, including that they must be located in priority regions and areas suffering from adverse environmental factors such as pollution or the urban heat island effect;
- using the best available science, determine the appropriate ratios of trees planted within a tree bank to compensate for trees removed elsewhere and the appropriate species of tree to be used;
- provide a tree selection and siting tool for use by local jurisdictions; and
- provide best practices for growing and maintaining newly planted trees within a tree bank.

The Department must provide technical assistance and planning support to local jurisdictions that decide to utilize the model ordinances and recommendations.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 3, 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) This bill is an attempt to balance the need for affordable housing with the need for tree canopy. Sometimes trees within an urban growth area prohibit housing because

trees are on the property, but often the trees that are preserved become unhealthy because the trees around them have been removed or the new homeowners remove the trees that were preserved anyway. Tree banks can address inequities. There are a lot of good ideas in the bill, and the state needs to deal with environmentally marginalized areas. Urban forests are a valuable resource, and vital to the state's reputation. The Department is working to improve tree canopy and environmental equity. Current Department programs assist local governments to help sustain urban forestry management programs and the Department can do more to assist local governments. There are concerns about mandating that tree banks be used, as this could be a disincentive for some local governments to adopt urban forestry ordinances. The bill currently reads like it would allow developers to clear cut areas and remove all of the trees, and that tree regulations can be ignored if a fee is paid. The bill should allow a local option for protecting trees, as removing established trees will impact the community by reducing climate resiliency, wildlife habitat, and health. Most tree ordinances are already written to allow development on the lot. There should be a requirement for developers to maintain the trees in the tree bank for five years and that developers maximize trees on building sites.

(Opposed) This bill is going to have adverse effects on farming and manufacturing and those issues should be solved. Section 1 should be amended to include farming and manufacturing. We should build centralized communities and a centralized economy, with cities being self-sufficient. County and city planners don't want to acknowledge that we can't address the issues while everything we need is still being shipped to us. We have to acknowledge that too much stuff is shipped, and we can't keep relying on Amazon. The intent of the bill is good, and it addresses important issues of providing housing, protecting the environment, and dealing with climate change. Accommodating the projected growth is going to be difficult, and the land available to build continues to shrink through the adoption of critical areas and other means. The provisions should be located elsewhere in statute, as tree ordinances are adopted pursuant to the Growth Management Act. There aren't sufficient sideboards in place, and no requirement for the use of the best available science as there is in other areas of the law. These sideboards are needed to ensure that the needs of housing and the environment are appropriately balanced. We need to ensure that new regulations don't impact the cost or availability of housing. We need hundreds of thousands of new homes to meet the demand, and even small increases in price mean that people are unable to afford housing. The number of planted trees that would be required is unclear and could impact costs. Tree banks should not be allowed to be established in buildable lands. This could be used to restrict housing in some communities. Programs providing for a fee-in-lieu of planting should be allowed. The guidelines would only apply to tree banks, and wouldn't provide guidance for the removal of trees. This would require cities to allow clear cutting on property, including in environmentally sensitive areas with significant adverse consequences. Current tree ordinances do not completely prevent construction; while construction might be more challenging because of the ordinances, developers are creative and they don't need a completely blank slate for construction. This bill is an overreach in micromanaging how cities act. This is not necessary, and cities are able to manage their own ordinances.

(Other) We need to work on managing trees in the urban environment while incentivizing housing in urban areas. There should be requirements for tree retention plans in areas suffering from the urban heat island effect. We need to take equity into account, as many areas lack trees, and there should be the ability to maintain the tree coverage there is unless development capacity loss is certain. The bill should tie in to the specifics of the Department's forestry program. The intent of the bill is great, but there are some concerns about unintended consequences. The language is too broad, and should prevent tree banks from encroaching on buildable lands, as this could exacerbate the housing shortage. It is a good idea to address density and tree equity. Trees grow slowly, and mature trees are better than saplings. Trees require ongoing maintenance, and new trees in particular require years of watering. This bill should support workforce development in green jobs.

Persons Testifying: (In support) Representative Davina Duerr, prime sponsor; Steve Zemke, Friends of Seattle's Urban Forest; and Brian Considine, Washington State Department of Natural Resources.

(Opposed) John Worthington; Brent Ludeman, Building Industry Association of Washington; Brian Holtzclaw, Village Life Homes; and Michael Ruby.

(Other) Joshua Rubenstein, The Nature Conservancy; Mike Ennis, Association of Washington Business; and Bryce Yadon, Futurewise.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Local Government. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Callan, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Chandler, Dye, Rude, Sandlin, Schmick, Stokesbary and Wilcox.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Local Government:

Compared to the substitute house bill, the second substitute house bill:

- authorizes the Department to administer a grant program to award grants to cities and counties that adopt the model urban forestry ordinances produced by the Department or that have, prior to the effective date of the act, adopted similar ordinances;
- requires that the model ordinances prepared by the Department include estimates of the costs to nurture and maintain newly planted trees, and alternative means for covering those costs, including through the imposition of a fee related to the use of the tree bank; and
- makes the bill null and void if specific funding is not provided in the operating budget by June 30, 2024.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) There is some confusion among the public on which version of the bill is being considered. There is suggested language to replace the term "tree banks" with "tree replanting areas," which is less confusing. The model ordinances developed by the Department of Natural Resources would be helpful. Development leads to canopy loss. There isn't time to replant ourselves out of the climate emergency.

(Opposed) The bill moving away from mandatory requirements is appreciated, but the bill still has issues. The bill suggests trees and housing are incompatible, and demonstrates a lack of understanding of the complexity of tree code. Tree banks are not sufficient, because the majority of carbon is stored in the largest trees. The bill should contain stronger protections for the largest trees. Good tree policy preserves as many trees as possible, rather than relying on tree banks. The bill would lead to an increase in transportation miles and a decrease in local manufacturing.

(Other) "Fees in lieu" paid by developers are an important method of restoring forest canopy and recovering the land. There is a need for affordable housing, but also for public health and climate resilience. Trees are needed where people live, not in distant tree banks. Climate-smart construction can protect existing trees. Developers don't need help from the state to continue doing business as usual. Saplings take decades to do the work of existing trees. The removal of the requirement for cities to establish tree banks is appreciated, but tree banks are still implicitly encouraged. Urban tree codes should continue to be implemented by individual cities, as not all cities have land available for tree banks. There are other ways to achieve greater density.

Persons Testifying: (In support) Steve Zemke, Friends of Urban Forests and TreePAC; and Joshua Morris, Birds Connect Seattle.

(Opposed) Lynn Fitz-Hugh, Restoring Earth Connection; and John Worthington.

(Other) Ruth Williams; Martha Baskin; Kathleen Russell; and Robin Thomas, Whatcom Million Trees Project.

Persons Signed In To Testify But Not Testifying: None.