

HOUSE BILL REPORT

SHB 1717

As Passed House:
February 11, 2022

Title: An act relating to tribal participation in planning under the growth management act.

Brief Description: Concerning tribal participation in planning under the growth management act.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Pollet, Goehner, Fitzgibbon, Ryu, Leavitt, Berg, Taylor, Robertson, Bateman, Valdez, Duerr, Fey, Ramel, Shewmake, Simmons, Dolan, Macri and Young).

Brief History:

Committee Activity:

Local Government: 1/11/22, 1/14/22 [DPS];
Appropriations: 1/27/22, 2/1/22 [DPS(LG)].

Floor Activity:

Passed House: 2/11/22, 92-6.

Brief Summary of Substitute Bill

- Requires local governments, upon receiving notice from a federally recognized Indian tribe, to enter into negotiations on a memorandum of agreement for collaboration and coordination with the tribe for participation in the planning process under the Growth Management Act, and provides for mediation if an agreement is not reached.
- Requires the Department of Commerce to provide notice to a tribe of a city or county's proposed adoption of a comprehensive plan upon request of the tribe, and to facilitate a dispute resolution process to attempt to resolve a tribe's concerns with a city or county's comprehensive plan or development regulations.
- Requires that a tribe that has a reservation or ceded lands within a county be invited to participate in the countywide planning process, and that, if

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the tribe does participate, that the planning process include policies that address the protection of tribal cultural resources in collaboration with the tribe.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Berg, Robertson and Senn.

Staff: Kellen Wright (786-7134).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Local Government be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Without recommendation. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Chandler, Dye, Hoff, Jacobsen, Rude and Schmick.

Staff: Jessica Van Horne (786-7288).

Background:

The Growth Management Act (GMA) requires that certain counties, and the cities within those counties, engage in planning for future population growth. The comprehensive plan is the central part of this planning process. The Legislature has established 14 goals to act as the basis of the comprehensive plan. Examples of goals include reducing sprawl, providing for affordable housing, and protecting property rights. The comprehensive plan must address these goals and set out the policies and standards that are meant to guide the city or county's actions and decisions in the future. Comprehensive plans must contain certain elements, such as a land use element, a housing element, and a capital facilities plan element. These elements must satisfy the requirements for each individual element while fitting within the overall comprehensive plan.

One element that is only applicable to certain cities is a port element. A city that includes

all or part of a port district with annual operating revenues of more than \$20 million must include a marine industrial port element in its comprehensive plan, while a city with a marine container port with more than \$60 million in operating revenue must include a container port element in its comprehensive plan. These elements must be developed cooperatively between the city and the port and must establish programs that define and protect the core port and port-related industrial uses in the city, provide reasonably efficient access to these areas through freight corridors in the city, resolve land use conflicts along the edge of the core area, and minimize incompatible uses along the edge of the area to the extent this is possible. The port element must be consistent with the other elements of the city's comprehensive plan.

Another portion of a comprehensive plan is the designation of an urban growth area (UGA) or areas. Urban growth is encouraged inside of a designated UGA and is not allowed to occur outside of a UGA. Cities and counties must include sufficient areas and densities to accommodate the growth that is projected to occur over the next 20 years. Urban growth areas must be first located in areas already characterized by urban growth that have sufficient public service capabilities to serve the new growth, and second in areas that are characterized by urban growth and that may be provided with any additional public service capabilities that are needed.

Within 14 months of a county initially becoming subject to the GMA's requirements, the county must adopt a countywide planning policy in consultation with the cities within the county. Countywide planning policies must address UGAs, policies to promote orderly development, policies for siting state or countywide capital facilities, policies and strategies for countywide transportation, policies considering the need for affordable housing, policies for countywide economic development, and the fiscal impact of these policies. When adopting countywide planning policies, federal agencies and Indian tribes may participate in and cooperate with the plan-adoption process.

Every eight years, a county or city that is planning under the GMA must review and revise its comprehensive plan and development regulations to ensure that the plan and regulations comply with the requirements of the GMA. This review and revision requires legislative action from the county or city. The county and cities must establish a public participation program that provides notice to various interested or impacted individuals and organizations, including Indian tribes, who can become involved in the process.

Before adopting a comprehensive plan, an amendment to a comprehensive plan, or development regulation in the comprehensive plan, a city or county must notify the Department of Commerce (Commerce) at least 60 days prior to the final adoption of the plan.

There are 29 federally recognized Indian tribes in the State of Washington.

Summary of Substitute Bill:

A federally recognized Indian tribe (tribe) may voluntarily choose to participate in the county or regional planning process and coordinate with the counties and cities required to plan under the GMA. Once a local government receives notice from a tribe whose reservation or ceded lands are in the county that the tribe has a planning process or will initiate a parallel planning process, the local government must enter into good faith negotiations with the tribe to attempt to reach a mutually acceptable memorandum of agreement regarding collaboration and participation in the planning process. If such an agreement cannot be reached, the local government and tribe must enter mediation for up to 30 days using an expert paid for by Commerce. If an agreement still has not been reached after the initial mediation period, there can be an extension of the mediation period for an additional 30 days, upon written notice from one of the parties to Commerce. At the end of the mediation period or periods, if there is no agreement, there is no further obligation on the parties to attempt to reach an agreement. The failure to reach an agreement does not prevent a tribe from attempting to participate in subsequent planning processes.

Entering a planning process does not alter or limit any authority or rights that the tribe may have, and a local government's authority to adopt and amend comprehensive land use plans and development regulations is not affected or altered, other than as may be provided in the memorandum of agreement. A tribe that does not choose to participate in the planning process has not waived its rights to seek review under the GMA.

When a tribe has chosen to participate in the planning process, and a memorandum of agreement has been reached, the county and the tribe must coordinate their planning efforts for any areas planned for urban growth.

When a city's comprehensive plan includes a port element, the city must develop the element collaboratively with the port, as well as with an applicable tribe that is participating in the planning process through a memorandum of agreement.

Upon request, Commerce must provide a tribe with any notices of proposed comprehensive plans or amendments to comprehensive plans provided by a city or county to Commerce.

A tribe may request that Commerce provide facilitation services to resolve issues that it has with a local government concerning the local government's comprehensive plan. Upon receipt of a tribe's request, Commerce must notify the local government and encourage resolution of the issue prior to the adoption of the plan. Once a city or county has been notified by Commerce, the city or county must delay the adoption of its plan or associated development regulations by at least 60 days. This delay may be extended by joint agreement between the local government and the tribe. Commerce must provide a summary of the tribe's concerns, as well as any supporting materials, to the local government. The local government must then either amend the plan as requested, or enter into a facilitated process with the tribe arranged by Commerce, with an expert to be paid for by Commerce. At the end of the 60-day period during which the adoption of the comprehensive plan or development regulations was delayed, unless there is an agreed extension of the period, the

local government may adopt its proposed plan. The facilitator must prepare a report of the agreements or disagreements that occurred during the process that are allowed to be disclosed by the parties, and any elements of the plan that the local government agreed to amend.

The local government may not be penalized for non-compliance under the GMA due to the delay in the adoption of its plan caused by the dispute resolution process.

Federal agencies and tribes with a reservation or ceded lands within a county are required to be invited to participate in the countywide planning process. Countywide planning policies must include policies that address the protection of tribal cultural resources in collaboration with tribes that choose to participate in the process.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 9, 2022.

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

Staff Summary of Public Testimony (Local Government):

(In support) Traditional areas or territories should be added to the bill. Not all tribes in the state are treaty tribes. Some tribes are executive order tribes, some are federally recognized, and they are located throughout the state. Tribes have decades of experience of growth management and have found it to be an effective tool to protect treaty fishing resources, promote smart growth, prevent sprawl, and engage with local elected officials on a productive and collaborative basis. The Growth Management Act is key to preserving quality of life in the county and beyond and is producing positive results. The relations between tribes and local governments over managing growth are not always easy, as there are sometimes differing opinions, but it is important to tribes and to keep a healthy balance between growth and the environment. The Growth Management Act implicitly precluded tribes from being part of the process because of separate planning authority that tribes operate under, but this can cause problems due to overlapping jurisdictions, checkerboard land ownership, and off-reservation treaty rights. It is difficult to resolve overlapping authority without guidance from the state to local governments, and collaboration and participation is therefore crucial. Cultural protection is an area that needs to be coordinated with the tribe. The process of developing a memorandum of agreement makes sense for local governments and sovereign tribal nations with different decision making practices as it allows agreement for how they will work together on land that both care about. Prior concerns with the bill have been worked through with tribes and others, and the bill is productive, good policy that improves on current Growth Management Act requirements for collaboration. Coordinated comprehensive planning is good for development expectations, the development of infrastructure, and the protection of natural resources. This encourages

early and often planning efforts under mutually agreeable conditions.

(Opposed) The new version of the bill is better than the original, but land use planning updates should be completed through an open and public process. This bill has a special process with tribes and mediation that is not available to others, instead of the broad public and private engagement process the Growth Management Act requires. Tribes can already participate to the same extent as other interested parties, and the processes in this bill might exclude others. This could result in agreements between the local government and the tribe without public participation. Planning is a better process with more public participation, and tribes and local governments are both sophisticated enough to plan together without this bill. Tribal ceded lands are included in the bill, but this is broad and ceded lands are not necessarily near tribal lands.

(Other) There were some initial concerns over the port element in the bill, but these have been satisfied with a proposed amendment.

Staff Summary of Public Testimony (Appropriations):

(In support) The Growth Management Act does not address tribal engagement or tribal sovereignty and lacks protocols for local governments to follow when engaging with tribes. Without tribal engagement, not all land use interests are addressed during the comprehensive planning process. This legislation would acknowledge tribal sovereignty and rights and provide mechanisms for tribal engagement in the comprehensive planning process. This will help tribes and local governments consider the long-term impacts of urban growth and climate change in a prospective manner. It will also allow tribes to have greater access to natural and cultural resources as well as land previously ceded to the federal government. Some tribes already have memorandums of understanding with their local governments, which allows them to successfully coordinate on issues such as land usage. This legislation would provide a formal framework and process to provide for local and tribal coordination.

(Opposed) None.

Persons Testifying (Local Government): (In support) Representative Gerry Pollet, prime sponsor; Paul Jewell, Washington State Association of Counties; Andrew Strobel, Puyallup Tribe of Indians; Julia Gold, Tulalip Tribes of Washington; Leonard Forsman, Suquamish Tribe; Michael Moran, Confederated Tribes of the Colville Reservation; and Carl Schroeder, Association of Washington Cities .

(Opposed) Mike Ennis, Association of Washington Business; and Jan Himebaugh, Building Industry Association of Washington.

(Other) Sean Eagan, The Northwest Seaport Alliance.

Persons Testifying (Appropriations): Dawn Vyvyan, Puyallup Tribe and Yakama

Nation; Danielle Shaw, Washington Environmental Council and Washington Conservation Voters; Julia Gold, Tulalip Tribes of Washington; and Dana Miller, Yakama Nation Tribal Council.

Persons Signed In To Testify But Not Testifying (Local Government): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.