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## Local Government Committee

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### HB 1717

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

**Sponsors:** Representatives Pollet, Goehner, Fitzgibbon, Ryu, Leavitt, Berg, Taylor, Robertson, Bateman, Valdez, Duerr, Fey, Ramel, Shewmake, Simmons, Dolan, Macri and Young.

#### Brief Summary of Bill

- Requires counties, cities, and other local governments to enter into negotiations for a memorandum of agreement on collaboration and coordination with a federally recognized tribe for tribal participation in the planning process under the Growth Management Act upon receipt of notice from a tribe that it is planning or would like to plan, and provides for mediation if an agreement is not reached.
- Requires the Department of Commerce to provide and facilitate a dispute resolution process to attempt to resolve a tribe's concerns with a city's or county's comprehensive plan or development regulations, and to provide notice to a tribe of a city's or county's proposed adoption of a comprehensive plan upon request of the tribe.
- Requires a tribe that has a reservation or ceded lands within a county be invited to participate and cooperate in the countywide planning process, and that, if such a tribe does participate, that the planning process include policies that address the protection of tribal cultural resources in collaboration with the tribe.

**Hearing Date:** 1/11/22

**Staff:** Kellen Wright (786-7134).

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*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:**

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's 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.

A city that has a marine container port with more than \$60 million in operating revenue must include an additional container port element in its comprehensive plan. This element 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 practicable. The container 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 area 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.

Comprehensive plans may also include optional elements related to physical development within its jurisdiction, such as a conservation, solar energy, or recreation element.

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 county 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, or 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 Washington state. Most of the reservations in the state are located to the west of the Cascade Mountains.

### **Summary of Bill:**

A federally recognized Indian tribe (tribe) may voluntarily choose to participate in the county or regional planning process and coordinate with the county 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, 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.

A city may include a port container element in its comprehensive plan. When a city's comprehensive plan includes an optional container port element, the city must collaborate with a tribe that has a reservation within or adjacent to the lands subject to the container port element.

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, and this period 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:** Requested on January 4, 2021.

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