

SENATE BILL REPORT

SHB 1717

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

Committee Activity: Housing & Local Government: 2/22/22.

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

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

Staff: Maggie Douglas (786-7279)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA sets forth three broad planning obligations for those counties and cities who plan fully under the GMA:

- the county legislative authority must adopt a countywide planning policy;
- the county, and the cities within the county, must adopt comprehensive plans and designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations accordingly; and
- the county must designate and take other actions related to urban growth areas (UGAs).

Jurisdictions that fully plan under the GMA must adopt development regulations to assure the conservation of designated natural resource lands of long-term commercial significance. These same jurisdictions must also adopt comprehensive land-use plans to express the general land-use policies of the county or city, and development regulations to implement those plans.

Countywide Planning. 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.

Comprehensive Plans and Development Regulations. Comprehensive plans must include specific planning elements, each of which is a subset of the plan. The rural element of a comprehensive plan must include measures that apply to rural development and protect the rural character of the area by, in part, protecting against conflicts with the use of designated agricultural, forest, and mineral resource lands. The transportation element of a comprehensive plan must include sub-elements that address transportation mandates for forecasting, finance, coordination, and facilities and services needs.

Port Elements. 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.

Urban Growth Areas. Counties that fully plan under the GMA must designate UGAs, areas within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period. In addition, cities must include sufficient areas to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Comprehensive Plan Updates. 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.

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 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 indicates 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 preclude a tribe from participating in subsequent planning processes.

If a memorandum of agreement has been reached, the county and tribe must coordinate their

planning efforts for any areas planned for urban growth. Entering a planning process does not alter or limit any authority or rights the tribe may have, nor does it affect or alter a local government's authority to adopt and amend comprehensive land use plans and development regulations other than what is 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.

If 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 participating in the planning process through a memorandum of agreement.

A tribe may request Commerce provide any notices of proposed comprehensive plans or amendments to comprehensive plans provided by a city or county to Commerce, as well as request Commerce provide facilitation services to resolve issues the tribe 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 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.

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: PRO: Although local governments may collaborate with tribes as the public during a comprehensive review cycle, this bill establishes a process for meaningful collaboration in the planning process. This will also encourage the protection of a tribe's culturally significant area within a local government's jurisdiction. There is no change in a tribe's sovereign rights or a county's ability to adopt their comprehensive plan. This develops a framework for tribes to sit with local governments for discretionary collaboration and coordination in planning, as often jurisdiction over land is checkerboarded at best and this establishes a coordinated response to protect cultural resources.

OTHER: The GMA does not take into account that the imports and economic activity in a jurisdiction have greater environmental impacts than a citizen driving to purchase a good or participate in economic activity. The bill needs to exempt ICLEI members.

Persons Testifying: PRO: Representative Gerry Pollet, Prime Sponsor; Julia Gold, Tulalip Tribes of WA; Dawn Vyvyan, Puyallup Tribe of Indians & Yakama Nation; Joe Tovar, American Planning Association Washington Chapter; Danielle Shaw, Washington Environmental Council / Washington Conservation Voters; Paul Jewell, Washington State Association of Counties.

OTHER: John Worthington.

Persons Signed In To Testify But Not Testifying: No one.