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**HOUSE BILL 1039**

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**State of Washington**

**69th Legislature**

**2025 Regular Session**

**By** Representatives Abbarno and Orcutt

Prefiled 12/11/24.

1 AN ACT Relating to extending governmental services from cities to  
2 tribal lands; amending RCW 36.70A.110; adding a new section to  
3 chapter 36.70A RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature is providing a clear  
6 statement of the authority for a city and tribal government to  
7 mutually agree to contract for urban governmental services beyond the  
8 urban growth boundary of the city to tribal lands with urban  
9 development and be in compliance with the provisions of the growth  
10 management act.

11 **Sec. 2.** RCW 36.70A.110 and 2024 c 26 s 1 are each amended to  
12 read as follows:

13 (1) Each county that is required or chooses to plan under RCW  
14 36.70A.040 shall designate an urban growth area or areas within which  
15 urban growth shall be encouraged and outside of which growth can  
16 occur only if it is not urban in nature. Each city that is located in  
17 such a county shall be included within an urban growth area. An urban  
18 growth area may include more than a single city. An urban growth area  
19 may include territory that is located outside of a city only if such  
20 territory already is characterized by urban growth whether or not the

1 urban growth area includes a city, or is adjacent to territory  
2 already characterized by urban growth, or is a designated new fully  
3 contained community as defined by RCW 36.70A.350. When a federally  
4 recognized Indian tribe whose reservation or ceded lands lie within  
5 the county or city has voluntarily chosen to participate in the  
6 planning process pursuant to RCW 36.70A.040, the county or city and  
7 the tribe shall coordinate their planning efforts for any areas  
8 planned for urban growth consistent with the terms outlined in the  
9 memorandum of agreement provided for in RCW 36.70A.040(8).

10 (2) Based upon the growth management population projection made  
11 for the county by the office of financial management, the county and  
12 each city within the county shall include areas and densities  
13 sufficient to permit the urban growth that is projected to occur in  
14 the county or city for the succeeding twenty-year period, except for  
15 those urban growth areas contained totally within a national  
16 historical reserve. As part of this planning process, each city  
17 within the county must include areas sufficient to accommodate the  
18 broad range of needs and uses that will accompany the projected urban  
19 growth including, as appropriate, medical, governmental,  
20 institutional, commercial, service, retail, and other nonresidential  
21 uses.

22 Each urban growth area shall permit urban densities and shall  
23 include greenbelt and open space areas. In the case of urban growth  
24 areas contained totally within a national historical reserve, the  
25 city may restrict densities, intensities, and forms of urban growth  
26 as determined to be necessary and appropriate to protect the  
27 physical, cultural, or historic integrity of the reserve. An urban  
28 growth area determination may include a reasonable land market supply  
29 factor and shall permit a range of urban densities and uses. In  
30 determining this market factor, cities and counties may consider  
31 local circumstances. Cities and counties have discretion in their  
32 comprehensive plans to make many choices about accommodating growth.

33 Within one year of July 1, 1990, each county that as of June 1,  
34 1991, was required or chose to plan under RCW 36.70A.040, shall begin  
35 consulting with each city located within its boundaries and each city  
36 shall propose the location of an urban growth area. Within sixty days  
37 of the date the county legislative authority of a county adopts its  
38 resolution of intention or of certification by the office of  
39 financial management, all other counties that are required or choose  
40 to plan under RCW 36.70A.040 shall begin this consultation with each

1 city located within its boundaries. The county shall attempt to reach  
2 agreement with each city on the location of an urban growth area  
3 within which the city is located. If such an agreement is not reached  
4 with each city located within the urban growth area, the county shall  
5 justify in writing why it so designated the area an urban growth  
6 area. A city may object formally with the department over the  
7 designation of the urban growth area within which it is located.  
8 Where appropriate, the department shall attempt to resolve the  
9 conflicts, including the use of mediation services.

10 (3) Urban growth should be located first in areas already  
11 characterized by urban growth that have adequate existing public  
12 facility and service capacities to serve such development, second in  
13 areas already characterized by urban growth that will be served  
14 adequately by a combination of both existing public facilities and  
15 services and any additional needed public facilities and services  
16 that are provided by either public or private sources, and third in  
17 the remaining portions of the urban growth areas. Urban growth may  
18 also be located in designated new fully contained communities as  
19 defined by RCW 36.70A.350.

20 (4) In general, cities are the units of local government most  
21 appropriate to provide urban governmental services. In general, it is  
22 not appropriate that urban governmental services be extended to or  
23 expanded in rural areas except in those limited circumstances shown  
24 to be necessary to protect basic public health and safety and the  
25 environment and when such services are financially supportable at  
26 rural densities and do not permit urban development and as authorized  
27 in section 3 of this act.

28 (5) On or before October 1, 1993, each county that was initially  
29 required to plan under RCW 36.70A.040(1) shall adopt development  
30 regulations designating interim urban growth areas under this  
31 chapter. Within three years and three months of the date the county  
32 legislative authority of a county adopts its resolution of intention  
33 or of certification by the office of financial management, all other  
34 counties that are required or choose to plan under RCW 36.70A.040  
35 shall adopt development regulations designating interim urban growth  
36 areas under this chapter. Adoption of the interim urban growth areas  
37 may only occur after public notice; public hearing; and compliance  
38 with the state environmental policy act, chapter 43.21C RCW, and  
39 under this section. Such action may be appealed to the growth  
40 management hearings board under RCW 36.70A.280. Final urban growth

1 areas shall be adopted at the time of comprehensive plan adoption  
2 under this chapter.

3 (6) Each county shall include designations of urban growth areas  
4 in its comprehensive plan.

5 (7) An urban growth area designated in accordance with this  
6 section may include within its boundaries urban service areas or  
7 potential annexation areas designated for specific cities or towns  
8 within the county.

9 (8) If, during the county's annual review under RCW  
10 36.70A.130(2)(a), the county determines revision of the urban growth  
11 area is not required to accommodate the population projection for the  
12 county made by the office of financial management for the succeeding  
13 20-year period, but does determine that patterns of development have  
14 created pressure for development in areas exceeding the amount of  
15 available developable lands within the urban growth area, then the  
16 county may revise the urban growth area or areas based on identified  
17 patterns of development and likely future development pressure if the  
18 following requirements are met:

19 (a) The revised urban growth area would not result in a net  
20 increase in the total acreage or development capacity of the urban  
21 growth area or areas;

22 (b) The areas added to the urban growth area are not designated  
23 by the county as agricultural, forest, or mineral resource lands of  
24 long-term commercial significance;

25 (c) If the areas added to the urban growth area have previously  
26 been designated as agricultural, forest, or mineral resource lands of  
27 long-term commercial significance, either an equivalent amount of  
28 agricultural, forest, or mineral resource lands of long-term  
29 commercial significance must be added to the area outside of the  
30 urban growth area, or the county must wait a minimum of two years  
31 before another swap may occur;

32 (d) Less than 15 percent of the areas added to the urban growth  
33 area are critical areas other than critical aquifer recharge areas.  
34 Critical aquifer recharge areas must have been previously designated  
35 by the county and be maintained per county development regulations  
36 within the expanded urban growth area and the revised urban growth  
37 area must not result in a net increase in critical aquifer recharge  
38 areas within the urban growth area;

39 (e) The areas added to the urban growth areas are suitable for  
40 urban growth;

1 (f) The transportation element and capital facility plan element  
2 of the county's comprehensive plan have identified the transportation  
3 facilities and public facilities and services needed to serve the  
4 urban growth area and the funding to provide the transportation  
5 facilities and public facilities and services;

6 (g) The areas removed from the urban growth area are not  
7 characterized by urban growth or urban densities;

8 (h) The revised urban growth area is contiguous, does not include  
9 holes or gaps, and will not increase pressures to urbanize rural or  
10 natural resource lands;

11 (i) The county's proposed urban growth area revision has been  
12 reviewed according to the process and procedure in the countywide  
13 planning policies adopted and approved according to RCW 36.70A.210;  
14 and

15 (j) The revised urban growth area meets all other requirements of  
16 this section.

17 (9) (a) At the earliest possible date prior to the revision of the  
18 county's urban growth area authorized under subsection (8) of this  
19 section, the county must engage in meaningful consultation with any  
20 federally recognized Indian tribe that may be potentially affected by  
21 the proposed revision. Meaningful consultation must include  
22 discussion of the potential impacts to cultural resources and tribal  
23 treaty rights.

24 (b) A county must notify the affected federally recognized Indian  
25 tribe of the proposed revision using at least two methods, including  
26 by mail. Upon receiving a notice, the federally recognized Indian  
27 tribe may request a consultation to determine whether an agreement  
28 can be reached related to the revision of the county's urban growth  
29 area. If an agreement is not reached, the parties must enter  
30 mediation pursuant to RCW 36.70A.040.

31 (10) (a) Except as provided in (b) of this subsection, the  
32 expansion of an urban growth area is prohibited into the one hundred  
33 year floodplain of any river or river segment that: (i) Is located  
34 west of the crest of the Cascade mountains; and (ii) has a mean  
35 annual flow of one thousand or more cubic feet per second as  
36 determined by the department of ecology.

37 (b) Subsection (10) (a) of this section does not apply to:

38 (i) Urban growth areas that are fully contained within a  
39 floodplain and lack adjacent buildable areas outside the floodplain;

1 (ii) Urban growth areas where expansions are precluded outside  
2 floodplains because:

3 (A) Urban governmental services cannot be physically provided to  
4 serve areas outside the floodplain; or

5 (B) Expansions outside the floodplain would require a river or  
6 estuary crossing to access the expansion; or

7 (iii) Urban growth area expansions where:

8 (A) Public facilities already exist within the floodplain and the  
9 expansion of an existing public facility is only possible on the land  
10 to be included in the urban growth area and located within the  
11 floodplain; or

12 (B) Urban development already exists within a floodplain as of  
13 July 26, 2009, and is adjacent to, but outside of, the urban growth  
14 area, and the expansion of the urban growth area is necessary to  
15 include such urban development within the urban growth area; or

16 (C) The land is owned by a jurisdiction planning under this  
17 chapter or the rights to the development of the land have been  
18 permanently extinguished, and the following criteria are met:

19 (I) The permissible use of the land is limited to one of the  
20 following: Outdoor recreation; environmentally beneficial projects,  
21 including but not limited to habitat enhancement or environmental  
22 restoration; stormwater facilities; flood control facilities; or  
23 underground conveyances; and

24 (II) The development and use of such facilities or projects will  
25 not decrease flood storage, increase stormwater runoff, discharge  
26 pollutants to fresh or salt waters during normal operations or  
27 floods, or increase hazards to people and property.

28 (c) For the purposes of this subsection (10), "one hundred year  
29 floodplain" means the same as "special flood hazard area" as set  
30 forth in WAC 173-158-040 as it exists on July 26, 2009.

31 (11) If a county, city, or utility has adopted a capital facility  
32 plan or utilities element to provide sewer service within the urban  
33 growth areas during the twenty-year planning period, nothing in this  
34 chapter obligates counties, cities, or utilities to install sanitary  
35 sewer systems to properties within urban growth areas designated  
36 under subsection (2) of this section by the end of the twenty-year  
37 planning period when those properties:

38 (a)(i) Have existing, functioning, nonpolluting on-site sewage  
39 systems;

1           (ii) Have a periodic inspection program by a public agency to  
2 verify the on-site sewage systems function properly and do not  
3 pollute surface or groundwater; and

4           (iii) Have no redevelopment capacity; or

5           (b) Do not require sewer service because development densities  
6 are limited due to wetlands, floodplains, fish and wildlife habitats,  
7 or geological hazards.

8           NEW SECTION.   **Sec. 3.** A new section is added to chapter 36.70A  
9 RCW to read as follows:

10           A federally recognized Indian tribe and a city both located in a  
11 county that touches the Columbia river with a population of more than  
12 500,000 may agree by December 31, 2028, to extend urban governmental  
13 services beyond the city and urban growth areas to property within  
14 the jurisdiction of the federally recognized Indian tribe that abuts  
15 the boundaries of the city.

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