

HOUSE BILL REPORT

HB 2008

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to cooperative agreements concerning the timber harvest excise taxation of timber harvests on fee land within the boundaries of the Quinault Indian Reservation.

Brief Description: Creating a cooperative agreement relating to the timber harvest excise taxation of timber harvests within the Quinault Indian Reservation.

Sponsors: Representatives VanDeWege, Kessler, Haigh, Takko and Ericks.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/26/07, 2/27/07 [DPS].

Brief Summary of Substitute Bill

- Allows the Governor to enter into a Timber Harvest Excise Tax Contract with the Quinault Nation.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Green, McDermott, Miloscia and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member and Kretz.

Staff: Colleen Kerr (786-7168).

Background:

Timber Harvest Excise Tax

In 1971, the Legislature excluded timber from property taxation. Instead of a property tax, the state imposes a timber harvest excise tax, also referred to as the forest excise tax or FET, on every person in the state who engages in the business of harvesting timber on either public or private land. Timber owners pay a 5 percent excise tax on the stumpage value of the timber when it is harvested.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The person who owns the timber at the time of harvest, in effect the harvester, is responsible for paying the FET. Anyone who intends to harvest timber on private land must obtain a permit from the Department of Revenue (DOR); anyone who is not required to obtain a permit must register with the DOR. When the owner of the timber at the time of harvest cannot be determined, the landowner at the time of harvest is responsible for the tax. The FET is paid quarterly on all timber harvested during the previous quarter

Revenue from the FET is split between the counties and State General Fund. Four percent of the tax is distributed to the counties with the remaining 1 percent being distributed to the State General Fund. Under statute, both the state and counties may impose the FET; the 5 percent rate is inclusive of both levies. The state administers both levies and distributes to the counties.

Timber Harvest Excise Tax Revenue

Thirteen counties have forested fee land within the exterior boundary of a reservation that is subject to the FET. These counties, and the portion of their distribution that is from such forest lands are as follows:

County Percentage

Clallam 0.75
Ferry 4
Grays Harbor 2
Jefferson 0.25
Kitsap 0.5
Klickitat 0.5
Mason 0.5
Okanogan 2
Skagit 0.5
Snohomish 0.75
Stevens 1
Whatcom 0.5
Yakima 2

In 2006, the state distributed \$38,719,697.96 of FET revenue to all counties. An average 1.1 percent of the state's total FET revenue comes from forest lands within the exterior boundaries of a reservation. Thirteen million of the total amount was distributed to counties that have taxable forest lands within the exterior boundaries of a reservation; of that \$13 million, \$153,439.60 was from forest lands within the exterior boundaries of a reservation.

Other Government-to-Government Agreements

For comparison, since 2001, the state has also entered into government-to-government agreements with some of the 29 federally recognized tribes regarding cigarette tax. The terms of such contracts are non-negotiable and set by the legislature in statute. Since then, 26 contracts have been executed with the tribes; one contract is pending Legislative authorization. Tribal cigarette tax contracts are for renewable eight-year periods. The amount of tribal cigarette tax is equal to the total amount of the state cigarette tax and the state and

local sales tax; the tribal cigarette tax is in lieu of the state cigarette and state and local sales tax.

There are statutory requirements for tribal cigarette tax contracts:

- The terms of the cigarette tax contract apply to retail sales by Indian sellers in Indian Country, which is land within the boundaries of the reservation and land held in trust for a tribe or by a tribal member; tribal retail sales are limited to Indian Country.
- Cigarettes may only be sold to individuals 18 years and older.
- Tribal cigarette tax must be used for essential government services, including tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
- Cigarettes sold under this contract must bear a tribal cigarette tax stamp.
- Tribal retailers must purchase cigarettes only from approved wholesalers.
- Contracts must contain provisions for compliance.
- Disputes regarding the interpretation and administration of the contract's provisions may be resolved by mediation and other nonjudicial process.

The primary difference between the cigarette tax contracts and the proposed timber harvest excise tax contract is that the cigarette tax goes to cigarettes sold by tribal sellers in Indian Country, while the timber harvest excise contract pertain to fee land that is within the exterior boundaries of a reservation. As it now stands, the difficulty has been in enforcement of the FET on these properties for harvesters who do not register with the DOR. Indeed, there is information asymmetry on both sides: for tribal forest management enforcement it is difficult to determine whether a harvester is on tribal or fee land at the time without accessing files and thereby leaving the area; for the DOR, because there is limited jurisdiction within the reservation, it is difficult to ascertain how many harvesters are on fee land if they do not register.

Summary of Substitute Bill:

The Governor may enter into a timber harvest excise tax contracts with the Quinault Nation. These contracts are for timber harvests on fee land within the exterior boundaries of the reservation and do not pertain to timber harvests on trust land or land owned by the tribe. The tribal timber harvest excise tax must be equal to 100 percent of the state timber harvest excise tax. Tribal timber harvest excise tax contracts are for renewable eight-year periods. The Governor may delegate the power to negotiate the timber harvest excise tax to the DOR.

Those individuals that are subject to a tribal timber harvest excise tax pursuant to a contract between the tribe and state are allowed a tax credit against the state and county timber harvest excise tax for the amount of the tribal timber harvest excise tax. In effect, individuals will not be subject to overlapping timber harvest excise tax liabilities.

The state will distribute funds from the state's portion of the timber harvest excise tax revenue to counties affected by the timber harvest excise tax contracts in an amount equal to that of

any tribal tax credited against the county's portion of the timber harvest excise tax revenue. This amount distributed to the counties will include any increase in revenue that is the result of improved enforcement of the tax by the tribe.

Tribal timber harvest excise contracts are subject to the following terms:

- The tribal tax shall be credited against the state and county taxes imposed under statute.
- Tribal ordinances or other laws for timber harvest excise taxation that implement the terms of the timber harvest excise tax must reflect provisions that are identical to those in state code for tax rates and measures.
- Contracts must include provisions for compliance, recordkeeping, and audit requirements.
- Contracts must include provisions for dispute resolution, contract termination, and provisions delineating the respective roles and responsibilities of the tribe and the state.
- Contracts must include provisions that require taxpayers to submit necessary information to the state or the tribe.

Tax revenue retained by the tribe through the timber harvest excise tax may only be used for essential government services. For the purposes of these contracts, essential government services are:

- forest land management;
- protection, enhancement, regulation, and stewardship of forested land;
- land consolidation;
- tribal administration;
- public facilities, fire, and police;
- public health;
- education;
- job services;
- sewer and water;
- environmental and land use;
- transportation;
- utility services; and
- public facilities serving economic development purposes.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that the contract will govern the timber harvest excise tax on fee land within the exterior boundaries of the reservation; it provides the transfer mechanism for reimbursement from the state's portion of the revenue to counties for the full amount of tribal timber harvest excise tax credited; and, it provides that the tribal timber harvest excise tax revenue received under an agreement with the state may be used for public facilities that serve an economic development purpose, meaning bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation

infrastructure, commercial infrastructure, and port facilities that facilitate job creation or retention of businesses and jobs.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill originated from a request by the Quinault Nation who manage a great deal of timber land. They have excellent forest management practices and are better able to levy this tax. It is hoped that if the tribes manage this land, it will actually be able to increase the amount of timber harvest excise tax revenue from this land. The land in question is similar to that of the Colville and Yamaka tribes, where there is a large reservation with forested fee land within the boundaries of the reservation. The background to this bill and the language in the proposed substitute speak to the cooperation between the Quinault, Grays Harbor, and the state.

There are 3,700 members of the Quinault Nation who support this bill and believe that it is an opportunity for the state and the tribe to come together to form an agreement that will benefit the community at large. Over the past five years, much of the revenue from fee land within the exterior boundaries of a reservation has fallen between the cracks and not been received by the state. Many harvesters are not registering with the DOR and not paying the tax. It is difficult for the tribe to help enforce because there is a constant question of what land is fee land. This contract will eliminate that question and allow the tribe to be the sole enforcement within the boundaries of the reservation, and perhaps increase the amount of revenue. Through the transfer mechanism in the proposed substitute, the county will benefit from this increase of revenue.

Revenues from the tribal timber harvest excise tax will be used for essential government services. The Quinault's number one priority is fighting methamphetamine addiction. The total tax base available to the Quinault is only \$900,000, this is the total amount with which the Quinault runs a government and all government services. Every plan the Quinault develop to address its social and economic problems must be comprehensive to have multiple effects. This increase in revenue will be a great benefit, both for the dollars and for the predictability of a revenue stream. It will help to create a positive healthy community.

The DOR for many years has had difficulty getting access to fee land within the exterior boundaries of the reservation. When it sought cooperation from the tribes, the tribe said it would prefer to enforce the tax themselves because it was in a better position to do so. This is how the conversation behind this bill began. The Quinault have a good history of forest management. This bill is good for the environment and for state-tribal relations.

The search for a solution to this bill has been testament to the good relations between the state and the tribe. The important aspect of this agreement to focus on is that it is a state-tribal partnership. Initially collection will be done by the state. As the agreement and process proceeds, there may be another agreement to turn over control to the tribe. It is also important to note that this is a diminishing resource for the state and county. As the tribe acquires more land within the reservation, the repatriation eliminates the revenue source for the state and county. This agreement will actually allow the county to have greater revenue in the short term.

(With concerns) The Department of Natural Resources is concerned with certain language in the original bill that appears to acknowledge existing authority of the Quinault Nation over fee land within the reservation. The DNR is not aware of this authority and is concerned about the implications of this finding and it will affect the DNR's jurisdiction. The DNR would hope for an amendment to remedy this apparent problem.

The counties appreciate that they will be held harmless for loss of revenue under the terms of the proposed substitute. It is appropriate that the state has the responsibility as it is the negotiator of these contracts. Counties do have a problem with the inclusion of economic development as an essential government services.

(Neutral) Grays Harbor county is concerned about the revenue shift and whether there is a time limit to how long the state will transfer an equivalent amount of funds.

Persons Testifying: (In support) Representative Van De Wege, prime sponsor; Hilary Moran, Randy Scott, and Fawn Sharp, Quinault Nation; and Leslie Cushman, Department of Revenue;

(With concerns) Leonard Young, Department of Natural Resources; and Julie Murray, Washington State Association of Counties.

(Neutral) Al Carter, Grays Harbor County.

Persons Signed In To Testify But Not Testifying: None.