

SENATE BILL REPORT

ESHB 1287

As Reported by Senate Committee On:
Ways & Means, March 3, 2014

Title: An act relating to subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe.

Brief Description: Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe.

Sponsors: House Committee on Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Appleton, Dahlquist, Hurst, McCoy, Ryu, Santos and Pollet).

Brief History: Passed House: 2/14/14, 63-34.

Committee Activity: Ways & Means: 3/03/14 [DPA, DNP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Assistant Ranking Member on the Operating Budget; Bailey, Billig, Braun, Dammeier, Frockt, Rivers, Schoesler and Tom.

Minority Report: Do not pass.

Signed by Senators Honeyford, Capital Budget Chair; Becker, Hatfield, Hewitt, Padden and Parlette.

Staff: Dean Carlson (786-7305)

Background: Publicly Owned Property-Tax Exemption. Real and personal property in the state are subject to a property tax. The state constitution exempts property owned by federal, state, or local governments from property tax obligations. The Legislature may exempt other property from taxation by statute.

Leasehold Excise Tax. The Legislature exempts a private leasehold interest in government-owned, tax-exempt property from the property tax. In lieu of a property tax however, the leasehold interest may be subject to a leasehold excise tax on the possession and use of the property. This excise tax is assessed on the contract rent for the leasehold.

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.

Certain leasehold interests are exempt from the excise tax. A leasehold interest in property that is held in trust for a tribe by the United States is exempt from the excise tax, as long as the contract rent for the leasehold is at least 90 percent of the fair market rental.

Tribally Owned Property-Tax Exemption. The Legislature also exempts all property belonging exclusively to a federally recognized Indian tribe from state taxation if the property is used exclusively for essential governmental services. Essential governmental services include tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services. Federal law may also preempt the state's ability to impose taxes on tribes and activity on tribal lands held in trust by the United States.

Public Property Sold on Contract. Real property sold on contract by the federal, state, or local government that entitles the vendee to possess and use the property in compliance with the terms of the contract, must be assessed and taxed as if the property were privately owned. The title retained by the government body is deemed only as a security for the fulfillment of the contract although no foreclosure for delinquent taxes may affect the title retained by the government body.

Fire Protection Districts. Fire protection districts (fire districts) are municipal corporations that are authorized to provide fire prevention, fire suppression, and emergency medical services to protect life and property. The fire districts finance their activities and facilities by imposing regular property taxes, excess voter-approved property tax levies, and benefit charges. A regional fire protection service authority is made up of two or more adjacent fire protection jurisdictions.

Summary of Bill (Recommended Amendments): Tribal Property Tax Exemption: Leasehold Excise Tax. A private leasehold interest in tax-exempt property owned by a federally recognized Indian tribe is exempt from property taxes. A private leasehold interest in tax-exempt tribal property is subject to a leasehold excise tax.

Economic development is recognized as an essential government service for purposes of qualifying tribally owned property for tax-exempt status if the property was owned by the tribe prior to March 1, 2014.

Payment in Lieu of Taxes (PILT). A tribe that owns property exempt from tax under state law must make a PILT if:

- the property is used exclusively for economic development;
- there is no taxable leasehold interest in the property;
- the property is outside of the tribe's reservation; and
- the property is not otherwise tax exempt under federal law.

The county where the property is located and the tribe must jointly determine the PILT amount through good-faith negotiation. The amount may not exceed the leasehold excise tax that would apply if there were a leasehold interest in the property. If the county and the tribe cannot come to an agreement on the payments, the Department of Revenue determines the rate. The tribe must pay the county and the county must distribute payment solely to the

local taxing districts, including cities, in the same proportion that each district would have shared if a leasehold excise tax had been levied.

When the tribe submits an application and in renewals for the property tax exemption, they must present a declaration that an agreement to the amount of PILT has been reached and that it is in good standing in order to receive the property tax exemption.

Tribal Property Sold on Contract. Property sold on contract by a federally recognized tribe that entitles the vendee to possess and use the property in compliance with the terms of the contract must be assessed and taxed as if the property were privately owned.

Joint Legislative Audit and Review Committee (JLARC) Report. JLARC must conduct a six-year study and provide a report to the Legislature by 2020 that evaluates the economic impact of the effects of the leasehold excise tax and tax exemptions authorized under this act. The report must indicate the following:

- the number of parcels and uses of land involved;
- the economic impact to tribal, state, and local government revenue changes and shifts;
- the impact on public infrastructure and public services;
- the impact on business investment and competition;
- a description of the types of business activities affected;
- the impacts on jobs; and
- other data that JLARC deems necessary in determining the economic impact.

Fire Districts. A fire district or regional fire protection service authority may contract for services with a tribe that owns tax-exempt property within the boundaries of the district or authority.

The act expires on January 1, 2022.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): If the county and the tribe cannot come to an agreement on PILT payments, the Department of Revenue determines the rate. Requires that the tribe present a declaration that a PILT payment agreement exists and that it is in good standing in order to receive the property tax exemption. To receive the property tax exemption, the tribe must have owned the property prior to March 1, 2014. A provision is added that if the courts hold any provision of the bill invalid, the remainder of the bill is null and void. The effective date is changed from January 1, 2015, to apply to those taxes levied for collection in 2015 and thereafter. The expiration date is changed from July 1, 2022, to January 1, 2022.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on SB 6162: PRO: This is fee simple land off the reservation. We worked on a lot of safeguards on this bill. It would not cover casinos. We took the concerns from last year and improved the bill. Tribes should have the same application of property tax as state and local government property held in fee.

CON: This bill is improved from last year with the addition of the PILT payment. This will negatively impact some local jurisdictions. We like the movement of the bill, but are still opposed because of the potential large tax shift. This creates an economic advantage for the tribes. The property in the bill does not have a comparison to other local governments. The tribes are much different.

OTHER: The PILT is negotiated between the tribes and the county. There is no fallback if there is not agreement. We want to make sure that PILT distributions go to the cities.

Persons Testifying: PRO: Rick Jensen, Muckleshoot Indian Tribe 360; Dylan Doty, Muckleshoot Indian Tribe; Miguel Perez-Gibson, Colville Tribes, Makah Tribes.

CON: Josh Weiss, WA State Assn. of Counties; Monty Cobb, WA State Assn. of County Officials; Bill Clarke, WA Realtors.

OTHER: Victoria Lincoln, Assn. of WA Cities.