

# HOUSE BILL REPORT

## HB 2230

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### As Amended by the Senate

**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:** Representatives Gregerson, Stokesbary, Entenman, Walsh, Sullivan, Leavitt, Gildon, Ormsby, Santos, Lekanoff and Pollet.

#### Brief History:

##### Committee Activity:

Finance: 1/16/20, 1/28/20 [DP].

##### Floor Activity:

Passed House: 2/13/20, 83-13.

Senate Amended.

Passed Senate: 3/5/20, 47-1.

#### Brief Summary of Bill

- Removes expiration of the property tax exemption for property owned by a federally recognized Indian tribe that is used for economic development purposes.
- Expands the property that could be eligible for the property tax exemption.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass. Signed by 9 members: Representatives Tarleton, Chair; Walen, Vice Chair; Chapman, Frame, Macri, Orwall, Springer, Stokesbary and Wylie.

**Minority Report:** Do not pass. Signed by 1 member: Representative Orcutt, Ranking Minority Member.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Vick.

**Staff:** Tracey O'Brien (786-7152).

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Property Taxes.

Article 7, section 1 of the Washington State Constitution (Constitution) defines property as everything that can be owned, whether tangible or intangible. The property tax is applied annually to assessed value (AV) of all property unless it is specifically exempt by law. The Constitution requires that taxes be uniform within a class of property. For property tax purposes, there are two primary classes of property: real property and personal property. Real property covers land and buildings, structures, or improvements that are affixed to the land. In general, personal property consists of all property other than real property. Most personal property, other than property used in business, has been exempted from property taxes by the Legislature.

### Property Tax Exemptions.

The Constitution authorizes the Legislature to enact property tax exemptions. The Legislature has enacted various property tax exemptions, including an exemption for intangible property, household goods, business inventories and real property owned by qualified retired persons, disabled persons, and veterans. Any property tax exemption may have the effect of increasing the tax rate of the owners of all other taxable property by reducing the overall base of taxable property in the taxing district.

### Property Tax—Regular Levies.

All real and personal property is subject to a tax each year based on the highest and best use, unless a specific exemption is provided by law. The annual growth of all regular property tax levy revenue other than the state levies is limited as follows:

- For jurisdictions with a population of less than 10,000, revenue growth is limited to 1 percent.
- For jurisdictions with a population of 10,000 or more, revenue growth is limited to the lesser of inflation or 1 percent plus the value of new construction.

The state collects two regular property tax levies for common schools. The original state levy was first imposed when Washington achieved statehood in 1889. In 2017 the Legislature adopted Engrossed House Bill 2242, which created the additional state levy. For taxes levied for collection in calendar years 2018, 2020, and 2021, the combined rate for both state levies is \$2.70 per \$1,000 AV. For taxes levied for collection in calendar year 2019, the combined rate for both state levies is \$2.40 per \$1,000 AV. The revenue growth limit does not apply to the state levies during this time. Beginning with taxes levied for collection in calendar year 2022 and thereafter, the revenue growth limit applies to both levies. Participants in the senior citizens, individuals with disabilities, and qualifying veterans property tax exemption program receive a partial exemption from the original state levy and a full exemption from the additional state levy.

The Constitution limits regular levies to a maximum of 1 percent of the property's value (\$10 per \$1,000 of AV). There are individual district rate maximums and aggregate rate maximums to keep the total tax rate for regular property taxes within the constitutional limit. For example:

- The state levy rate is limited to \$3.60 per \$1,000 of AV.
- County general levies are limited to \$1.80 per \$1,000 of AV.

- County road levies are limited to \$2.25 per \$1,000 of AV.
- City levies are limited to \$3.375 per \$1,000 of AV.

#### Tribal-Owned Property Tax Exemption.

State law 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.

In 2014 the Legislature added economic development to the definition of "essential governmental services" in order to extend the state property exemption to land owned by a tribe prior to March 1, 2014, being used for economic development. The legislation included a tax preference performance statement stating that the tax preference was intended to create jobs and improve the economic health of tribal communities. This tax exemption is scheduled to expire January 1, 2022.

#### Leasehold Excise Tax.

State leasehold excise taxes (LET) are levied and collected on the act or privilege of occupying or using publicly-owned real or personal property through a leasehold interest. A leasehold interest is an interest in publicly-owned real or personal property which exists by virtue of any lease, permit, license, or other written or verbal agreement between a public owner and a person who would not be exempt from property taxes if that person owned the property. The leasehold excise tax is levied at a rate of 12.84 percent of taxable rent, i.e., the contract rent.

When tribally owned real or personal property is exempt from property tax, the parcel's occupant may be subject to the LET. This includes leased exempt economic development property owned by the tribe and located inside the reservation that has non-Indian tenants or lessees. The lessee or tenant is considered the taxpayer and is responsible for filing and payment of LET. If the property is located outside the reservation, the tribe, tribal member, and non-Indian tenants and lessees may be subject to LET.

#### Payment in Lieu of Taxes.

Payment in lieu of taxes (PILT) are made in substitution of local property taxes. If the exempt tribally owned economic development property is located off the reservation, a PILT is made by the tribal owner to the county in which the property is located. The county distributes the PILT to the cities and other local taxing districts in the same proportion that each city or local taxing district would have shared if LET had been levied. The amount of the PILT is negotiated and agreed upon by the tribe and the county. If an agreement cannot be reached, the parties may request that the Department of Revenue determine the PILT amount. However, the PILT amount cannot exceed what would have been owed had LET been levied. The provisions for PILT expire January 1, 2022.

#### Tax Preferences.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650

tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

**Summary of Bill:**

The state property tax exemption, LET provisions, and PILT provisions for property owned by a federally recognized Indian tribe that is used for economic development purposes is made permanent.

The date of acquisition requirement for eligible property owned by a tribe is removed, thereby expanding the property eligible for the property tax exemption.

**EFFECT OF SENATE AMENDMENT(S):**

Joint good faith negotiations to determine the amount of payment in lieu of taxes to be paid by a tribe must include any city in which would otherwise be owed leasehold excise tax.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Washington has been trying to make the tax system fairer for tribes since 2004. As a sovereign government, tribes should not be treated differently than a municipal government. Tribal government provide essential services to the community. Moreover, tribal economic development investments contribute direct and indirect economic benefit to the state and local governments.

This exemption has been used for eight years in three counties quite satisfactorily. There are several tribes with pending applications for certification and, with the scheduled expiration of the exemption, there is a lack of certainty for economic development planning purposes. With the current arbitrary property ownership date restriction only three tribes can utilize the exemption. This bill would allow smaller tribes and small rural businesses to take advantage. The PILT and LET provisions provide an opportunity to reduce any revenue gaps that may occur as the result of the exemption.

(Opposed) Local governments, especially counties, have limited resources and large obligations. With the current cap on property tax revenue growth and other revenue restrictions, counties cannot afford the uncertainty created in this legislation without further analysis. It is unclear what the impact of the expansion of the exemption will be in the 36

other counties. Moreover, due to the fact that tribal negotiations are confidential, there is little to inform us on what the amount of PILTs could be expected. There is a JLARC study on this tax exemption scheduled for this year. The Legislature should wait until the report is available in December and see what recommendations the legislative auditor and the Citizen's Commission may have to improve the efficacy of the tax exemption before expanding it and making it permanent.

(Other) The cities have some reservations about the legislation proposed. Many of the cities are appreciative of the role the tribes play in economic development in the communities and the state; however, this legislation makes the exemption wide-open and the impact unknowable. It is easier to feel comfortable about an exemption if the city knows which properties will be exempted from local property taxes. The PILT provisions from 2014 are appreciated as a recognition of the impact the loss of local tax revenues has on local governments. Cities, along with other local taxing districts, would like a seat in the PILT negotiations if this exemption were to continue.

**Persons Testifying:** (In support) Representative Gregerson, prime sponsor; Rodney Cawston, Confederated Tribes of the Colville Reservation; Anita Mitchell; Dylan Doty, Muckleshoot Indian Tribe; Dawn Vyvyan, Sauk-Suiattle Tribe; and Leonard Forsman, Suquamish Tribe.

(Opposed) Mellani McAleenan, Washington State Association of Counties.

(Other) Candice Bock, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.