

# SENATE BILL REPORT

## SHB 2803

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As Passed Senate, March 5, 2020

**Title:** An act relating to authorizing the governor to enter into compacts with Indian tribes addressing certain state retail sales tax, certain state use tax, and certain state business and occupation tax revenues, as specified in a memorandum of understanding entered into by the state, Tulalip tribes, and Snohomish county, in January 2020, and including other terms necessary for the department of revenue to administer any such compact.

**Brief Description:** Authorizing the governor to enter into compacts with Indian tribes addressing certain state retail sales tax, certain state use tax, and certain state business and occupation tax revenues, as specified in a memorandum of understanding entered into by the state, Tulalip tribes, and Snohomish county, in January 2020, and including other terms necessary for the department of revenue to administer any such compact.

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Tarleton, Robinson, Sells, Lekanoff, Gregerson, Chapman, Orwall, Peterson, Tharinger and Pollet; by request of Department of Revenue).

**Brief History:** Passed House: 2/18/20, 98-0.

**Committee Activity:** Ways & Means: 2/28/20, 3/02/20 [DP, DNP].

**Floor Activity:**

Passed Senate: 3/05/20, 32-16.

### Brief Summary of Bill

- Authorizes the Governor to enter into compacts with Indian tribes to address sales and business taxes imposed on transactions between non-tribal member businesses and non-tribal customers conducted on tribally owned land.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Pedersen, Rivers and Van De Wege.

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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.*

**Minority Report:** Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Muzzall, Schoesler, Wagoner, Warnick and Wilson, L..

**Staff:** Jeffrey Mitchell (786-7438)

**Background:** Business and Occupation Taxes. Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss. A business may have more than one B&O tax rate, depending on the types of activities conducted. Major tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services, and activities not classified elsewhere. Several lower rates also apply to specific business activities.

Retail Sales and Use Taxes. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Tulalip v. State Litigation. The Tulalip Tribes is a federally recognized tribal government with approximately 4700 members. The 22,000 acre Tulalip reservation is located in Snohomish County. Within the reservation is Quil Ceda Village, a federally recognized tribal municipality covering 2100 acres of land held in trust by the United States. Quil Ceda Village contains dozens of commercial and retail businesses with tens of thousands of visitors and customers a day. There is an ongoing dispute over taxes collected within Quil Ceda Village on transactions between non-tribal businesses and non-tribal customers. The Tulalip Tribes filed a lawsuit claiming federal law preempts the state and county administration and enforcement of state and county taxes and that state and county taxation interferes with the Tulalip's sovereign rights. In 2018, a U.S. District Court ruled in favor of the state holding that the state's general taxation authority is not preempted. The Tribes appealed the decision to the Ninth Circuit of the U.S. Court of Appeals where it is currently in mediation.

**Summary of Bill:** The Governor is authorized to enter into tax compacts with tribes relating to sharing state sales and use taxes and B&O taxes.

A compact would allow a tribe to retain a portion of sales and use tax and B&O taxes generated from sales between non-tribal member businesses and non-tribal member consumers at a business location where the underlying property is owned by the tribe or the federal government as trust land.

From the time of a compact's implementation date, a tribe would be eligible to receive the following from transactions between non-tribal businesses and non-tribal members:

- 100 percent of retailing B&O taxes; and
- the first \$500,000 of the total amount of state sales and use taxes during each calendar year.

For transactions occurring within an area constituting new construction, the tribe would receive:

- 25 percent of any amount over the \$500,000 cap; and
- 60 percent of any amount over the \$500,000 cap if the compacting tribe has completed a qualified capital investment.

Beginning January 1st of the fourth calendar year following the signing of the compact, the tribe would receive the following for transactions not included within new development:

- 25 percent of any amount over the \$500,000 cap; and
- 50 percent of any amount over the \$500,000 cap if the compacting tribe has completed a qualified capital investment.

"Qualified capital investment" means a contribution to the development and construction of a project agreed to by the Governor and compacting tribe. The investment must be proportional to the compacting tribe's estimated revenue, excluding new development.

A compact must include provisions addressing:

- a process for determining when any qualified investment is complete;
- a process to verify compliance with the terms of the compact;
- a process to resolve disputes;
- an agreement that the compact resolves all current and future tax disputes involving non-tribal customers and non-tribal businesses;
- an agreement that in the event of a change in state tax laws affecting the terms of the compact, the parties will discuss in good faith any changes to the compact that may be appropriate, and a tribe may terminate the compact if the good-faith discussions do not result in a mutually satisfactory resolution;
- an agreement regarding the Department of Revenue's (DOR) responsibility to administer and collect taxes on behalf of a tribe without charge;
- an agreement that the compacting tribe will provide information to DOR necessary to fulfill DOR's tax administration responsibilities; and
- terms specifying the duration of the compact.

**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: DOR, the Governor's Office, and the Tulalip Tribes have put great effort into resolve a longstanding tax dispute that allows the parties to

settle currently pending litigation pending in the Ninth Circuit Court. Many legislative members understand the economic benefits that the Tulalip Tribes have created for Washington State and its citizens. The sovereign power to tax the activities within its lands is no different than any other government. Indian tribes are recognized as sovereign nations in the United States Constitution, possessing inherent sovereignty since time immemorial. The United States further recognized tribal sovereignty when they entered into treaties with us. This bill represents a sharing of taxes based on the each party's legal right to tax. If anything the economies and dollars built and earned in Indian country into laid up are the best guarantee to Washington State. The revenues generated here, stay here, helping to grow and build our communities—both tribal and non-tribal. Washington State and its citizens have benefited tremendously through the Tulalips' investment and these benefits will continue to grow with passage of this legislation. We appreciate the relationship with the Tulalip Tribes and the hard work that has gone into this legislation.

**Persons Testifying:** PRO: Josh Weiss, Snohomish County; Teri Gobin, Chairwoman, Tulalip Tribes; Lisa Koop Gunn, Tulalip Tribes Reservation Attorney; Gil Brewer, Department of Revenue.

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