

SENATE BILL REPORT

SB 5753

As Reported by Senate Committee On:
Transportation, February 23, 2023

Title: An act relating to a cooperative agreement between the department of transportation and the Lummi Tribe of the Lummi Reservation, Washington concerning construction of a highway.

Brief Description: Concerning a cooperative agreement between the department of transportation and the Lummi Tribe of the Lummi Reservation, Washington concerning construction of a highway. [**Revised for 1st Substitute:** Concerning a roadway construction cooperative agreement between the department of transportation and the Lummi Nation.]

Sponsors: Senators Shewmake and Lovelett.

Brief History:

Committee Activity: Transportation: 2/21/23, 2/23/23 [DPS].

Brief Summary of First Substitute Bill

- Authorizes the Washington State Department of Transportation to enter into a cooperative agreement with the Lummi Nation, and other entities, to construct and maintain a public road through tribal trust lands.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5753 be substituted therefor, and the substitute bill do pass.

Signed by Senators Lias, Chair; Lovick, Vice Chair; Shewmake, Vice Chair; King, Ranking Member; Holy, Assistant Ranking Member; Cleveland, Kauffman, Lovelett, MacEwen, Nobles, Padden, Randall, Valdez, Wilson, C. and Wilson, J..

Staff: Daniel Masterson (786-7454)

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

Background: The Washington State Department of Transportation (WSDOT) may purchase right-of-way for constructing or improving city streets that are also state highways.

Title to all such rights-of-way shall vest in the city or town subject to the requirement that the local jurisdiction use the property for public road purposes. However, if the road or street is to be operated as either a partially or fully controlled access highway, title to and full control over that portion incorporated into the limited access highway shall be vested in the state.

Unused portions of right-of-way may be used for non-transportation uses with the prior written approval of WSDOT and in accordance with any limited access plan. All revenue derived from any non-transportation use shall be shared by the city or town and the state in the same proportion as the purchase costs were shared.

There is currently no general provision in state statute that authorizes WSDOT to convey active public right-of-way to the governing authority of a tribe, even if the tribe agrees to keep the road or street open for public use. However, there are specific provisions allowing a cooperative agreement between WSDOT and the governing authority for the Quinault Indian Reservation for development and maintenance of a highway extension from the existing State Route 109 North through the Quinault Indian Reservation and intersecting with highway 101 south of Queets. These provisions include authorization for WSDOT to convey the right-of-way to the entire highway to the governing authority for the Quinault Indian Reservation in return for a conveyance to the state of Washington of a perpetual easement for public travel on the highway when constructed.

Summary of Bill (First Substitute): Cooperative Agreement Authorization. WSDOT is authorized to enter into a cooperative agreement with the Lummi Nation and other entities for the location, design, right-of-way acquisition, construction, and maintenance of a public road beginning on Rural Avenue at the southern boundary of the Ferndale city limits, traveling across the property held in tribal trust status for the Lummi Nation, and connecting to the approximate location of where the Ferndale city limits intersect Kope Road. The new road segment shall be named after construction is concluded.

The agreement shall reserve authority to construct road intersections or grade separation crossings of the roadway to the Lummi Nation. The Lummi Nation shall assume responsibility for the operation and maintenance and future improvement of the roadway.

Location, Right-of-way Acquisition, and Conveyance to the Lummi Nation. WSDOT is authorized to determine the location of the roadway in consultation with and approval by the Lummi Nation and the Bureau of Indian Affairs, and to acquire the remaining right-of-way for the roadway with an easement provided by the Lummi Nation .

WSDOT is authorized to convey by deed to the Lummi Nation the right-of-way to the entire

roadway when fully acquired in return for a conveyance by the Lummi Nation to the state of Washington of a perpetual easement for public travel on the roadway when constructed. The agreement may also authorize the Lummi Nation to convey to the United States an easement to construct, maintain, and repair roadway improvements if such an easement is required by regulations of the Bureau of Indian Affairs.

WSDOT may proceed with the location, design, acquisition of right-of-way, construction, and maintenance of the roadway. After construction and turnback of the roadway to the Lummi Nation, the Lummi Nation will have the responsibility to maintain the roadway as a public road.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (First Substitute):

- Provides that the Lummi Nation will operate, maintain and improve the roadway instead of WSDOT.
- Removes provisions authorizing WSDOT to establish the road as a limited access facility.
- Narrows the provision authorizing WSDOT to acquire right-of-way to allow only an easement provided by the Lummi Nation.
- Removes the authorization that WSDOT may act as an agent of the Lummi Nation.
- Updates all references to the Lummi Nation, replacing “Lummi Tribe of the Lummi Reservation.”
- Replaces all references to “highway” with “roadway.”
- Makes minor technical changes.

Appropriation: None.

Fiscal Note: Requested on February 20th, 2023.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Slater road connects I-5, the Phillips 66 refinery, the Lummi Nation, agricultural areas, housing areas, and is an important backroad into Ferndale. You have provided funding to improve this road a number of times. A hiccup came up when WSDOT was working with the Tribe to connect with Kope road that this bill addresses. The Slater Road/I-5 improvement project was funded by Connecting WA and is currently under design, and scheduled to start construction later this year. WSDOT has communicated that there's a need to acquire right-of-way and easements from various landowners including the Lummi Nation. This will allow a connection to provide safe public access to Kope road. The Lummi Nation is

supportive of granting the easement with request that the requested facility be a public road and that it be returned back to the Nation to be maintained by the Tribe. WSDOT has communicated that current statute doesn't allow conveyance back to the Tribe in the same manner as with other jurisdictions. The intent of the bill is to address this specific issue to help the project proceed. Phillips 66 has also delivered a letter of support from this bill.

Persons Testifying: PRO: Senator Sharon Shewmake, Prime Sponsor; Tim Ballew, Lummi Nation.

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