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**SENATE BILL 5753**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Shewmake and Lovelett

1 AN ACT Relating to a cooperative agreement between the department  
2 of transportation and the Lummi Tribe of the Lummi Reservation,  
3 Washington concerning construction of a highway; and adding new  
4 sections to chapter 47.20 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 47.20  
7 RCW to read as follows:

8 (1) The department is authorized to enter into a cooperative  
9 agreement with the governing authority of the Lummi Tribe of the  
10 Lummi Reservation and appropriate agencies of the United States for  
11 the location, design, right-of-way acquisition, construction, and  
12 maintenance of a public road beginning on Rural Avenue at the  
13 southern boundary of the Ferndale city limits, traveling across the  
14 property held in tribal trust status for the Lummi Nation, and  
15 connect to the approximate location of where the Ferndale city limits  
16 intersect Kope Road. The new road segment shall be named after  
17 construction is concluded.

18 (2) The definitions in this subsection apply throughout this  
19 section and sections 2 through 5 of this act unless context clearly  
20 requires otherwise.

1 (a) "Agreement" means the cooperative agreement between the  
2 department, the governing authority of the Lummi Tribe of the Lummi  
3 Reservation, and agencies of the United States, as authorized by  
4 subsection (1) of this section.

5 (b) "Highway" means the public road segment constructed pursuant  
6 to the agreement authorized by subsection (1) of this section.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.20  
8 RCW to read as follows:

9 The department may assume responsibility for the operation and  
10 maintenance and future improvement of the highway. The agreement may  
11 also reserve to the governing authority of the Lummi Tribe of the  
12 Lummi Reservation authority to construct road intersections or grade  
13 separation crossings of the highway.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.20  
15 RCW to read as follows:

16 The department is authorized to determine the location of the  
17 highway after consultations with the governing authority of the Lummi  
18 Tribe of the Lummi Reservation and the bureau of Indian affairs. The  
19 department may then proceed with the establishment of this section of  
20 the highway as a limited access facility in the manner prescribed in  
21 RCW 47.52.131 through 47.52.137 and 47.52.195 and the administrative  
22 rules adopted by the department to implement those sections, subject  
23 to the following conditions: (1) The access report required by RCW  
24 47.52.131 shall be approved by the governing authority of the Lummi  
25 Tribe of the Lummi Reservation before public hearings; and (2) the  
26 final limited access plan adopted pursuant to RCW 47.52.137 at the  
27 conclusion of the public hearing, or after any appeal from it has  
28 been decided, shall be approved by the governing authority of the  
29 Lummi Tribe of the Lummi Reservation and the bureau of Indian affairs  
30 before the right-of-way is acquired for this section of highway.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.20  
32 RCW to read as follows:

33 The department is authorized to acquire the remaining right-of-  
34 way for the highway by purchase or by condemnation under state or  
35 federal eminent domain statutes. The secretary pursuant to the  
36 agreement is authorized to convey by deed to the Lummi Tribe of the  
37 Lummi Reservation the right-of-way to the entire highway when fully

1 acquired in return for a conveyance by the governing authority of the  
2 Lummi Tribe of the Lummi Reservation to the state of Washington of a  
3 perpetual easement for public travel on the through lanes and  
4 shoulders of the highway when constructed. The agreement may also  
5 authorize the governing authority of the Lummi Tribe of the Lummi  
6 Reservation to convey to the United States an easement to construct,  
7 maintain, and repair highway improvements if such an easement is  
8 required by regulations of the bureau of Indian affairs.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 47.20  
10 RCW to read as follows:

11 Except as otherwise provided by this act or by the agreement  
12 authorized by section 1 of this act, the department may proceed with  
13 the location, design, acquisition of right-of-way, construction, and  
14 maintenance of the highway as an agent of the governing authority of  
15 the Lummi Tribe of the Lummi Reservation in accordance with  
16 applicable state or federal law.

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