

SENATE BILL REPORT

SB 5930

As of February 7, 2022

Title: An act relating to the participation of tribal governments in exchange agreements.

Brief Description: Allowing tribal governments to participate in exchange agreements without certain restrictions.

Sponsors: Senators Wilson, C., Lias, Nguyen and Saldaña; by request of Department of Transportation.

Brief History:

Committee Activity: Transportation: 2/07/22.

Brief Summary of Bill

- Removes the requirement that a tribal government provide the Washington State Department of Transportation (WSDOT) with a waiver of their tribal sovereign immunity and agree not to place the property in trust status in order to participate in an exchange agreement with WSDOT for the transfer of property requiring environmental mitigation.

SENATE COMMITTEE ON TRANSPORTATION

Staff: Daniel Masterson (786-7454)

Background: The Washington State Department of Transportation (WSDOT) may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations to convey properties under its jurisdiction that serve as environmental mitigation sites. These exchange agreements may be entered into as full or partial consideration for the grantee assuming all future maintenance and operation obligations and costs required to permanently maintain and operate the environmental mitigation site.

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.

Property transfers must be made by quitclaim deed, or other form of conveyance, executed by WSDOT, and must expressly restrict the use of the property to a mitigation site consistent with preservation of the functions and values of the site. Property transfers must also provide for the automatic reversion to WSDOT if the property is not used as a mitigation site or is not maintained in compliance with applicable permits, laws, and regulations relating to the maintenance and operation of the mitigation site.

Tribal governments are only eligible to participate in an environmental mitigation site exchange agreement with WSDOT if they meet the following additional requirements:

- provide WSDOT with a valid waiver of their tribal sovereign immunity from suit to allow WSDOT to enforce the terms of the exchange agreement or quitclaim deed in state court; and
- agree that the environmental mitigation site will not be placed in trust status.

Sovereign immunity prevents a sovereign from being sued without its consent. Tribal governments, state governments, and the federal government have sovereign immunity. A waiver of immunity grants consent to be sued.

When property is placed into trust status, the Secretary of the Department of the Interior acquires title to property and holds it for the benefit of a Native American tribe or individual tribal members. The use of trust lands is governed by the tribes, subject to certain federal restrictions, and the land is usually not subject to state laws.

During the 2021-23 fiscal biennium, the additional requirements placed on tribal governments do not apply to any exchange agreement with a tribal government for the acquisition of real property needed by WSDOT for the State Route 167/State Route 509 Puget Sound Gateway project.

Summary of Bill: To be eligible to participate in an environmental mitigation site exchange agreement, tribal governments are no longer required to provide WSDOT with a waiver of their tribal sovereign immunity or to agree that the environmental mitigation site will not be placed in trust status. WSDOT may still, at its discretion, require these contractually as part of an exchange agreement.

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: This improves the opportunities for tribes to

participate in agreements. The law as currently written acts as a deterrent to tribes' willingness to enter into environmental mitigation site exchange agreements. Recently the Puyallup Tribe completed a negotiation that would allow SR 167 to be completed from Puyallup to the Port of Tacoma. As part of that agreement, the WSDOT is set to transfer over 100 acres of land to the Puyallup Tribe. Since the Treaty of Medicine Creek, the Puyallup Tribe has seen almost the complete loss of its traditional reservation land base. Through various illegal transactions and mismanagement by the federal government, the tribe lost almost 99 percent of its almost 18,000 acres set aside for the Puyallup reservation. The existing law amended in this bill limits the repatriation of this land due to trust status as the tribe gets property back piece by piece. Allowing these lands to be put into trust status provides for increased certainty, so that these lands may be placed into trust through federal and tribal permitting once the state has fulfilled its mitigation burdens. WSDOT develops sites as environmental mitigation sites to mitigate project impacts to environmental resources. The underlying law was passed in 2002, since then the agency has come to realize that the additional restrictions that only apply to the transfer of sites to tribal governments are burdensome and act as a deterrent to tribal participation in these agreements. Furthermore, they are not necessary to ensure that environmental mitigation sites remain as such in perpetuity.

Persons Testifying: PRO: Senator Claire Wilson, Prime Sponsor; Megan Cotton, Washington State Department of Transportation; Bill Sterud, Chairman, Puyallup Tribe of Indians.

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