

HOUSE BILL REPORT

SHB 2945

As Passed House:

February 13, 1996

Title: An act relating to excise taxation of management entities providing services for casino gambling activity in Washington state.

Brief Description: Taxing management entities that provide services for casino gambling activity in Washington state.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Lisk, Cole, Horn, Romero, Cairnes, Conway, Hargrove, Cody, Thompson, Huff, McMorris, Goldsmith, Jacobsen, Fuhrman, Sehlin, Chopp, Chappell, Regala, Buck, Dyer, Elliot, Sterk, Reams, Sherstad, Lambert, Chandler, McMahan, Murray, Hankins, Appelwick, Dickerson, Johnson, Smith and Mitchell).

Brief History:

Committee Activity:

Commerce & Labor: 2/2/96 [DPS].

Floor Activity:

Passed House: 2/13/96, 88-6.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives McMorris, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Cole; Goldsmith; Horn and Lisk.

Staff: Pam Madson (786-7166).

Background: Businesses operating in the state of Washington are subject to the state business and occupation tax (B&O tax). This tax is imposed on the gross receipts of business activities conducted within the state.

There are several different rates that apply to various classifications of business activity. A business conducting several activities may be required to report in more than one classification. Businesses that provide "selected business services" such as management services or consulting services are taxed at 2 percent. Businesses that

provide banking, loan, investment advisory, or other financial services are taxed at 1.6 percent. Businesses that provide services not covered in other categories are taxed at 1.75 percent.

The federal Indian Gaming Regulatory Act (IGRA) authorizes Indian tribes to conduct Class III gambling activity under a state/tribal compact agreement. The compacts negotiated in Washington and IGRA allow management contracts between the tribe and other businesses offering management services. The compacts also set the number of gaming stations that may operate in a facility and the level of wagering for Class III gaming. The scope of Class III gaming in Washington includes house-banked games such as blackjack and other table games authorized for play in Nevada and any other gaming activity that is permitted within the state.

Summary of Bill: The B&O tax rate for businesses operating casino management services is set at 2 percent. This rate applies to businesses certified by the state and providing services for casino gambling activity that includes financing, development, or operation of a facility capable of conducting gambling activity using 30 or more gaming stations and allowing wagers of \$250 or more.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill focuses on what this state faces in the long term with casino gambling. The 20 percent rate is compared to the rate paid by social card rooms to local governments under state law. Big management companies that are non-tribal entities are coming into this state to provide management services for gambling activity. These big management companies will be receiving profits from those who come to gamble. Millions of dollars will leave this state through these non-tribal management companies. This bill is not aimed at any tribal entity. There will be social impacts from casino gambling. Those coming to gamble will be using roads and other state and local infrastructure. The state will pick up the tab for these costs. We don't know if these management companies are currently paying any B&O tax. The economic development and money made by the tribes stay in the state and help the communities and citizens of the state. There are cases in which other states have not been successful in imposing a tax on businesses because they were preempted by federal law. A recent California case stated that the language of the Indian Gaming Regulatory Act does not itself constitute a prohibition on state taxes. Questions of federal preemption in this case should be decided by the courts.

Testimony Against: The authority of the state to impose and collect this B&O tax is questioned. The federal Indian Gaming Regulatory Act does not grant authority for

state taxation. The U.S. Supreme Court has addressed taxation of certain events for services to Indian tribes, and it found that the state's authority was preempted. From a regulatory viewpoint, it is good to have these experienced and credible management companies working with the tribes. It assures the regulatory agency that when a tribe is bringing a casino on line that they have experienced people there who have knowledge of how to deal with regulatory agencies and have experience in dealing with management of gaming in other areas. There is a lack of information and understanding about the management contracts with the tribes in Washington. The bill appears to penalize those tribes that have chosen to come under the compact process. Those tribes not operating under compacts escape this bill. The B&O tax rate is excessive. This rate would effectively deny tribes the opportunity to obtain experienced contractual services to help ensure that the business is successful. One particular contract is a contract for five years and provides 30 percent to the management company and 70 percent to the tribe. There is a tremendous training responsibility under the contract. The plan is that tribe members will make up 60 percent of the employees, and the other 40 percent will come from surrounding communities. Under the compact, the management company and the tribe share the payment of the 2.5 percent of gross that is paid as the community contribution. There are two charitable gaming tables that contribute to some of the social impacts of gaming. The tribe paid for water and sewer lines. The tribes pay the Gambling Commission by the hour for regulatory activities. If there are problems, tribal governments should be contacted to deal with issues of concern. Tribes are paying a fair share. Revenue from the gaming to the tribe is the same as lottery revenue to the state of Washington. It is general revenue that pays for government services. On the reservation it supports schools, law enforcement, and health services. For some tribes currently considering contracting with management companies, even a 2 percent tax may be prohibitive. It may also create an uncertain legal environment and may discourage companies from doing business with the tribes in Washington.

Testified: Representative Barbara Lisk, prime sponsor; (oppose) Randy Scott, Puyallup Tribal Council, the Lummi Indian Business Committee, and the Quinault Indian Nation; Doreen M. Maloney, Upper Skagit Indian Tribe; Randee Kerns, Upper Skagit Tribe Gaming Commission; Jim Metcalf, Tulalip Tribes; Dawn Vyvyan, Yakama Nation, Jamestown S'Klallam Tribe, Port Gamble S'Kallam Tribe, and Swinomish Tribe; and Trevor Sandison, Harrah's Entertainment.