

SENATE BILL REPORT

SB 6601

As Reported by Senate Committee On:
Ways & Means, February 11, 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: Senators Rolfes, Hunt, Liias, Rivers, Saldaña, Stanford and Wilson, C.; by request of Department of Revenue.

Brief History:

Committee Activity: Ways & Means: 1/30/20, 2/11/20 [DPS, DNP].

Brief Summary of First Substitute 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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6601 be substituted therefor, and the substitute bill 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, Muzzall, Pedersen, Rivers and Van De Wege.

Minority Report: Do not pass.

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.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, 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 (First Substitute): 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 that compacting tribe will provide information to DOR necessary to fulfill DOR's tax administration responsibilities; and
- terms specifying the duration of the compact.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

- Clarifies that for any compact allowed under this bill, required compact terms that resolve tax disputes between the tribe and the state also apply to local taxing authorities and local taxes.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The state, local governments, and tribes have been wrestling with the issue of taxation in Indian country for decades. This agency request legislation will finally bring an end to these disputes in authorizing state tax compacts, providing equity and certainty for everyone. Local governments are held harmless in this bill. No local government will see any reduction in revenue as a result of this legislation. In fact, local governments may receive more revenue as the tribes grow their own local economies. I think the most important aspect of this legislation is that it recognizes what all of us hold in common, our shared responsibilities, and aspirations. This bill is a result of federally mandated mediation and as a result, any change to it we would oppose if it is not consistent with the terms of the party's agreement. The benefit of this bill is the elimination of the risk of litigation. This is an important piece of legislation for tribal self-sufficiency and self-government, which depends upon the tribes ability to engage in economic development and to raise revenue. Unless the state and tribes are able to resolve the conflicts over dual taxation, tribal governments are effectively prevented from exercising their authority to tax. Economic development in Indian country is good for everybody, including the state and local governments and surrounding communities. For the past 20 years, the Tulalip tribes have attempted to negotiate a resolution with no avail. In 2015, a lawsuit was filed against the state of Washington and the Department of Revenue. The United States joined the tribe to lead this effort and strongly supported the tribes claims that federal law preempts state and local taxes on these tribal lands. The case is currently stayed in the ninth circuit court of appeals, pending the outcome of these mediation efforts. The Legislature understands that businesses that locate within Washington State bring money to the local economy by supporting jobs and feeder businesses and that these positive ripple effects generate new tax revenue. In the mediation agreement, the Tulalip Tribes agree to construct a \$35 million state civil commitment facility with 48 beds to help address Washington's mental health challenges. Entering this partnership with the state makes it clear that the tribe will continue to exercise its sovereign powers to improve the lives of both Indian and non-Indian people in Washington. It is said that good fences make good neighbors. In this case, good compacts make for good governance. These agreements reinforce the government to government relationship that started before Washington was a state and that continues to this day. This is important to the county for a number of reasons. First, it provides a mechanism for the tribe, county, and the state to resolve litigation. It minimizes the risk of future litigation for the state and other local governments about tax sharing. It also provides a mechanism for the Governor to enter a compact for state taxes without jeopardizing the local share of sales taxes.

Persons Testifying: PRO: Josh Weiss, Snohomish County; Dave Burnett, Chairman, Chehalis Tribe; Brian Cladoosby, Chairman, Swinomish Indian Tribe; Bill Iyall, Chairman, Cowlitz Indian Tribe; Teri Gobin, Chairwoman, Tulalip Tribes; Lisa Koop, Reservation Attorney, Tulalip Tribes; Gil Brewer, Department of Revenue.

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