

SENATE BILL REPORT

SB 5753

As of February 21, 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.

Sponsors: Senators Shewmake and Lovelett.

Brief History:

Committee Activity: Transportation: 2/21/23.

Brief Summary of Bill

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

SENATE COMMITTEE ON TRANSPORTATION

Staff: Daniel Masterson (786-7454)

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

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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: Cooperative Agreement Authorization. WSDOT is authorized to enter into a cooperative agreement with the Lummi Tribe and other entities for the location, design, right-of-way acquisition, construction, and maintenance of a public road (highway) 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 highway segment shall be named after construction is concluded.

The agreement may reserve authority to construct road intersections or grade separation crossings of the highway to the Lummi Tribe. WSDOT may assume responsibility for the operation and maintenance and future improvement of the highway.

Location, Right-of-way Acquisition, Establishment as Limited Access Facility and Conveyance to the Tribe. WSDOT is authorized to determine the location of the highway after consultations with the Lummi Tribe and the Bureau of Indian Affairs, and to acquire the remaining right-of-way for the highway by purchase or by condemnation under state or federal eminent domain statutes.

WSDOT is allowed to proceed with establishment of this section of the highway as a limited access facility pursuant to state statutes governing limited access facilities and subject to certain approvals by the Lummi Tribe and the Bureau of Indian Affairs before the right-of-way is acquired.

WSDOT is authorized to convey by deed to the Lummi Tribe the right-of-way to the entire highway when fully acquired in return for a conveyance by the Lummi Tribe to the state of Washington of a perpetual easement for public travel on the highway when constructed. The

agreement may also authorize the Lummi Tribe to convey to the United States an easement to construct, maintain, and repair highway 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 highway as an agent of the Lummi Tribe in accordance with the provisions of the bill, the agreement, and applicable state and federal law.

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: 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.