

# HOUSE BILL REPORT

## ESHB 1287

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### As Passed Legislature

**Title:** An act relating to subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe.

**Brief Description:** Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe.

**Sponsors:** House Committee on Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Appleton, Dahlquist, Hurst, McCoy, Ryu, Santos and Pollet).

### Brief History:

#### Committee Activity:

Community Development, Housing & Tribal Affairs: 1/30/13, 2/5/13, 2/6/13, 2/13/13 [DP], 1/16/14, 1/23/14 [DPS].

Finance: 2/27/13, 2/28/13 [DP], 1/30/14, 2/4/14 [DPS(CDHT)].

#### Floor Activity:

Passed House: 4/18/13, 64-29.

Senate Amended.

Passed Senate: 4/28/13, 29-15.

Passed House: 2/14/14, 63-34.

Senate Amended.

Passed Senate: 3/7/14, 37-12.

House Concurred.

Passed House: 3/11/14, 61-37.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Extends the state leasehold excise tax to a private leasehold interest in property owned by a federally recognized Indian tribe.
- Recognizes economic development as an essential government service for purposes of qualifying tribally owned property for state tax exemption.
- Requires a payment in lieu of the excise tax for tax-exempt tribal property used for economic development that has no taxable leasehold interest.

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*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.*

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## HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Appleton, Chair; Sawyer, Vice Chair; Johnson, Ranking Minority Member; Gregerson, Hope, Robinson, Santos and Young.

**Minority Report:** Do not pass. Signed by 1 member: Representative Holy, Assistant Ranking Minority Member.

**Staff:** Sean Flynn (786-7124).

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill by Committee on Community Development, Housing & Tribal Affairs be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Fitzgibbon, Hansen, Lytton, Pollet, Reykdal and Springer.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Vick and Wilcox.

**Staff:** Jeffrey Mitchell (786-7139).

### **Background:**

#### Public-Owned Property Tax Exemption.

Real and personal property in the state are subject to a property tax. The state Constitution exempts property owned by federal, state, or local governments from property tax obligations. The Legislature may exempt other property from taxation by statute.

#### Leasehold Excise Tax.

The Legislature exempts a private leasehold interest in government-owned tax-exempt property from property tax. In lieu of a property tax, however, the leasehold interest may be subject to a leasehold excise tax on the possession and use of the property. This excise tax is assessed on the contract rent for the leasehold.

Certain leasehold interests are exempt from the excise tax. A leasehold interest in property that is held in trust for a tribe by the United States is exempt from the excise tax, as long as the contract rent for the leasehold is at least 90 percent of the fair market rental.

#### Tribal-Owned Property Tax Exemption.

State law also exempts all property belonging exclusively to a federally recognized Indian tribe from state taxation if the property is used exclusively for essential governmental services. Essential governmental services include tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation,

and utility services. Federal law generally prohibits state taxation of tribes or tribal members on their reservation.

Public Property Sold on Contract.

Real property sold on contract by the federal, state, or local government that entitles the vendee to possess and use the property in compliance with the terms of the contract, must be assessed and taxed as if the property were privately owned. The title retained by the government body is deemed only as a security for the fulfillment of the contract although no foreclosure for delinquent taxes may affect the title retained by the government body.

Fire Protection Districts.

Fire protection districts (fire districts) are municipal corporations that are authorized to provide fire prevention, fire suppression, and emergency medical services to protect life and property.

The fire districts finance their activities and facilities by imposing regular property taxes, excess voter-approved property tax levies, and benefit charges. A regional fire protection service authority is made up of two or more adjacent fire protection jurisdictions.

**Summary of Engrossed Substitute Bill:**

Tribal Property Tax Exemption: Leasehold Excise Tax.

A private leasehold interest in tax-exempt property owned by a federally recognized Indian tribe is exempt from property taxes. A private leasehold interest in tax-exempt tribal property is subject to a leasehold excise tax.

Economic development is recognized as an essential government service for purposes of qualifying tribally-owned property for tax-exempt status, if the property was owned by the tribe prior to March 1, 2014.

Payment in Lieu of Taxes.

A tribe that owns property exempt from tax under state law must make a payment in lieu of tax (PILT) if:

- the property is used exclusively for economic development;
- there is no taxable leasehold interest in the property;
- the property is outside of the tribe's reservation; and
- the property is not otherwise tax exempt under federal law.

The county where the property is located and the tribe must jointly determine the in lieu of payment amount through good faith negotiation. The amount may not exceed the leasehold excise tax that would apply if there were a leasehold interest in the property. The DOR may determine the PILT rate if the tribe and county cannot agree on the terms.

The tribe must pay the county and the county must distribute payment solely to the local taxing districts, including cities, in the same proportion that each district would have shared if a leasehold excise tax had been levied.

A tribe must file an application to the DOR in order to qualify for the property tax exemption. If the exemption is based on use for economic development, the tribe must file an annual renewal for the exemption to continue. For tax exempt property subject to the PILT, an application must include a declaration from the tribe and county confirming that an agreement has been made on the payment amount.

Tribal Property Sold on Contract.

Property sold on contract by a federally recognized tribe that entitles the vendee to possess and use the property in compliance with the terms of the contract must be assessed and taxed as if the property were privately owned.

Joint Legislative Audit and Review Committee Report.

The Joint Legislative Audit and Review Committee (JLARC) must conduct a six-year study and provide a report to the Legislature by 2020 that evaluates the economic impact of the effects of the leasehold excise tax and tax exemptions authorized under this act. The report must indicate:

- the number of parcels and uses of land involved;
- the economic impact to tribal, state, and local government revenue changes and shifts;
- the impact on public infrastructure and public services;
- the impact on business investment and competition;
- a description of the types of business activities affected;
- impacts on jobs; and
- other data that the JLARC deems necessary in determining the economic impact.

Fire Protection Districts.

A fire protection district or regional fire protection service authority may contract for services with a tribe that owns tax exempt property within the boundaries of the district or authority.

The act expires in 2022.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony** (Community Development, Housing & Tribal Affairs):

(In support) Tribal trust property and fee simple land used for essential governmental services is already exempt. This bill only deals with property used for economic development, which is the driver for essential governmental services for most governments. Land-poor tribes use fee simple lands because they do not have enough trust lands to develop.

The proposed substitute reflects conversations with stakeholders over the past 10 years. The PILT mechanism addresses concerns about tax exempt property that does not have a leasehold. The PILT allows payment when there is no leasehold to tax. When the federal

government typically takes property off the tax rolls it agrees to pay a PILT to counties directly for public services like water, sewers, water etc. The economic development definition is borrowed from the rural county excise tax statute.

(With concerns) There are problems trying to evaluate what exactly the tax impact will be when it is not known how much tribal property will be subject to the exemption. The time period is too long while this uncertainty exists.

(Opposed) The substitute does not cure the tax burden shift to local governments. Other entities are more deserving of tax relief. The tax exemption creates an unfair advantage for tribes to develop property. Parity is a good concept, but the bill only addresses the benefits of the tax exemption without accounting for the burdens that other governments carry, such as compliance with accountability standards. The Senate version limiting the bill to certain properties is a good concept.

The general fiscal sustainability of counties is a concern. The leasehold tax is illusory because the federal regulations and court decisions suggest that the leasehold excise tax is not enforceable against tribes. The tax shift still happens even with the leasehold excise tax and the PILT. If \$5 million is taken off the tax rolls, it is absorbed by the remaining tax payers, even if the tribes pay a PILT.

**Staff Summary of Public Testimony (Finance):**

(In support) This bill increases economic growth and community development. It only affects Washington State tribes. The leasehold excise tax is paid to the state and involvement will only involve the private lessee and the DOR. This bill can be considered as a pilot program with a sunset clause in seven years and a review from the JLARC in five years.

(Opposed) The fiscal note is understated. There is a misidentification of trust lands. Money will not go back to the taxpayer. There is a negative impact on any tax jurisdictions that are at their statutory cap for property tax levies already. The bill is out of scope with the stated title. This bill adds commercial activities. Counties do not engage in commercial activities. Washington's Constitution prohibits counties from using money for profit.

**Persons Testifying (Community Development, Housing & Tribal Affairs):** (In support) Rick Jensen; and Dylan Doty, Muckleshoot Indian Tribe.

(With concerns) Victoria Lincoln, Association of Washington Cities.

(Opposed) Bill Clarke, Washington Realtors; and Monty Cobb, Washington Association of County Officials and Washington State Association of Counties.

**Persons Testifying (Finance):** (In support) Rick Jensen, Muckleshoot Indian Tribe; Miguel Perez-Gibson, Colville and Makah Tribes; Dylan Doty, Muckleshoot Tribe.

(Opposed) Keith Willinover and Monty Cobb, Washington Association of County Officials; Dianne Dorey, Lewis County Assessor; Deanna Walter, Chelan County Assessor; Josh Weiss,

Washington State Association of Counties; Amber Carter, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying** (Community Development, Housing & Tribal Affairs): None.

**Persons Signed In To Testify But Not Testifying** (Finance): None.