

# HOUSE BILL REPORT

## HB 1934

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### As Passed Legislature

**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:** Representatives Fey, Robertson and Taylor; by request of Department of Transportation.

#### Brief History:

##### Committee Activity:

Transportation: 1/24/22, 2/1/22 [DP].

##### Floor Activity:

Passed House: 2/9/22, 90-6.

Passed Senate: 3/2/22, 48-0.

Passed Legislature.

#### 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 the WSDOT for the transfer of property requiring environmental mitigation.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass. Signed by 25 members: Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry, Chapman,

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Donaghy, Duerr, Entenman, Griffey, Hackney, Klicker, McCaslin, Paul, Ramel, Riccelli, Slatter, Taylor, Valdez, Walsh and Wicks.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Orcutt and Sutherland.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Dent and Goehner.

**Staff:** Jennifer Harris (786-7143).

**Background:**

The Washington State Department of Transportation (WSDOT) may enter into exchange agreements to convey properties under its jurisdiction that serve as environmental mitigation sites 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. The WSDOT may enter into these exchange agreements with local, state, and federal agencies; tribal governments; and private, nonprofit nature conservancy corporations.

Property transfers must be made by quitclaim deed, or other form of conveyance, executed by the Secretary of the 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 the 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 the WSDOT if they meet the following additional requirements:

1. provide the WSDOT with a valid waiver of their tribal sovereign immunity from suit to allow the WSDOT to enforce the terms of the exchange agreement or quitclaim deed in state court; and
2. agree that the environment 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 the 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 the WSDOT with a waiver of their tribal sovereign immunity or to agree that the environmental mitigation site will not be placed in trust status. (However, the WSDOT may still, at its discretion, require these contractually.)

**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:**

(In support) This is a common sense change. The requirement is burdensome and only applies to tribes. Tribes are sovereign governments and should not have this extra burden restricting their property ownership, preventing them from placing the land in federal trust. Tribes have exhibited great stewardship of the land in Washington, and these changes will facilitate projects.

The WSDOT develops mitigation sites to mitigate environmental impacts, and parties to exchange agreements agree to maintain these sites in perpetuity. Current state law is a deterrent to tribal participation. These restrictions were put in place at the request of the WSDOT in 2002, but are not necessary to ensure property will be maintained as an environmental mitigation site. This change will allow the WSDOT to transfer properties that it no longer needs and tribes to maintain important environmental stewardship activities. Stipulations in exchange agreements should be based on agreed to terms and could be set to expire once obligations to the state have been fulfilled.

(Opposed) None.

(Other) While most tribes would enter into these agreements with the best of intentions to comply, this will not always be the case. These restrictions should not be removed. A tribe has turned fee land to tribal trust land in one case and built a casino on the land once it was converted. In the application to convert the land to tribal trust land, it was claimed that the land would be developed within zoning laws. But once the property was converted to tribal trust land, development outside of what was permitted by zoning laws occurred. States may not be able to require the automatic reversion to the WSDOT of property once it is tribal

trust land.

**Persons Testifying:** (In support) Representative Jake Fey, prime sponsor; Megan Cotton, Washington State Department of Transportation; and Chairman Bill Sterud, Puyallup Tribe of Indians.

(Other) Julia Winchell.

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