

SENATE BILL REPORT

SB 5689

As Reported by Senate Committee On:
Business, Financial Services, Gaming & Trade, February 16, 2023
Ways & Means, March 16, 2023

Title: An act relating to providing a sales and use tax exemption related to internet and telecommunications infrastructure projects involving a federally recognized Indian tribe.

Brief Description: Providing a sales and use tax exemption related to internet and telecommunications infrastructure projects involving a federally recognized Indian tribe.

Sponsors: Senators Stanford, Braun, Keiser, Rolfes and Saldaña.

Brief History:

Committee Activity: Business, Financial Services, Gaming & Trade: 2/09/23, 2/16/23 [DPS-WM, DNP, w/oRec].
Ways & Means: 3/09/23, 3/16/23 [DP2S, DNP].

Brief Summary of Second Substitute Bill

- Provides a sales and use tax exemption for labor and materials used in the construction of an Internet and telecommunications infrastructure project.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Majority Report: That Substitute Senate Bill No. 5689 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Hasegawa, Lovick and Mullet.

Minority Report: Do not pass.

Signed by Senators Dozier, Ranking Member; Boehnke and Gildon.

Minority Report: That it be referred without recommendation.

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.

Signed by Senator MacEwen.

Staff: Jeffrey Mitchell (786-7438)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5689 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Minority Report: Do not pass.

Signed by Senator Schoesler, Ranking Member, Capital.

Staff: Jeffrey Mitchell (786-7438)

Background: Retail Sales and Use Tax. 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 taxes apply to the value of property, digital products, or services when used in this state. The state, most cities, and all counties 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 over 3 percent, depending on the location.

Construction services are generally considered a retail service and therefore subject to sales tax. Contractors must usually collect and remit retail sales tax on their total charges unless a specific exemption applies. This taxable amount includes charges for permits and other fees, labor, profit, materials and charges for subcontractors. Contractors performing retail services must collect sales tax based on the tax rate of the jurisdiction in which they perform their services.

Cable Landing Station. A cable landing station is a facility where one or more subsea telecommunication cables make landfall and connect to land-based power and networking infrastructure.

Tax Preference Performance Statement. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax

Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided.

Summary of Bill (Second Substitute): A sales and use tax exemption is provided for building materials, telecommunications equipment, or any other personal property used or incorporated into a qualified infrastructure project as well as labor and services used in the construction of a qualified infrastructure project or the installation of any equipment or other personal property incorporated into a qualified infrastructure project. "Qualified infrastructure project" means the construction of buildings and utilities related to the deployment of modern global Internet and telecommunications infrastructure that occurs in part in a distressed county located on the coast of Washington. The infrastructure may include, but is not limited to, cable landing stations, communications hubs, buried utility connections and extension, and any related equipment and buildings that will add broadband capacity and infrastructure to the area.

A taxpayer must submit an application to the Department of Revenue to obtain an exemption certificate. Only purchases on or after the date of issuance of the exemption certificate qualify for the sales and use tax exemption. An exemption certificate expires on the date the project is certified as complete by the qualified infrastructure project owner or December 31, 2028, whichever is first. "Qualified infrastructure project owner" means a federally recognized tribe and an indigenous-owned business entity that is deploying an Internet and telecommunications infrastructure in at least one distressed county on the coast of Washington.

The total amount of state sales and use tax that may be exempted is capped at \$8 million.

A project owner must certify to the Department of Labor and Industries (L&I) that a construction project will include community workforce agreements or project labor agreements, pay prevailing wages, and incorporate apprenticeship utilization.

The sales and use tax exemption provisions expire on December 31, 2029.

The bill is exempt from the requirements of including a tax preference performance statement and JLARC review.

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

- Makes labor requirements more prescriptive by requiring construction work to be performed under the terms of a community workforce agreement or project labor agreement negotiated prior to the start of the project.

- Removes data centers from the list of items specifically included in the definition of "qualified infrastructure project."

EFFECT OF CHANGES MADE BY BUSINESS, FINANCIAL SERVICES, GAMING & TRADE COMMITTEE (First Substitute):

- Caps the total amount of state sales and use tax that may be exempted at \$8 million.
- Requires a project owner to certify to L&I that a construction project will include community workforce agreements or project labor agreements, pay prevailing wages, and incorporate apprenticeship utilization.
- Aligns expiration dates.

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 (Business, Financial Services, Gaming & Trade): *The committee recommended a different version of the bill than what was heard.* PRO: There is excitement about a new cable landing as it is a very rare opportunity to boost to further significant development for use of internet capacity. This bill is an economic driver for the PNW region. It connects the digitally underserved communities to countless opportunities and would be a game changer not just for the Quinault Tribe, but for everyone in the region. Since the last cable landing was installed here in Washington, Oregon, and California have laid 14 new cable landings in the same time period. For the past four years, the Quinault and Suquamish tribes has used their funds to extend fiber and improve service abilities, yet none of these advancements has managed to give all residents high speed reliable services. SCC considers these areas to have broadband access when they simply do not, forcing additional costs on tribal members that is unfair and unequitable. The pandemic showcased the importance of access to connection through the internet and the global need for broadband. Services such as telemedicine, job hunting, and educational resources are essential to the wellbeing and success of tribal members, particularly the most vulnerable members who could not access these services otherwise. Constituents encourage language addition to focus public priority to public entities. As there is more development, there is a need and demand for the money to be spent in the correct places that are helping the tribal communities. The downstream effects of this bill make current data centers throughout the region faster, more reliable, more efficient, and a more attractive place for businesses to invest. This project will train apprentices and help replenish the skilled workforce that this region needs.

Persons Testifying (Business, Financial Services, Gaming & Trade): PRO: Senator

Derek Stanford, Prime Sponsor; Tyson Johnston, Quinault Indian Nation; Aaron Wheeler, The Suquamish Tribe; Guy Capoeman, President, Quinault Indian Nation; Matthew Hepner, IBEW/ceww.

Persons Signed In To Testify But Not Testifying (Business, Financial Services, Gaming & Trade): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This bill will support rural populations and isolated communities. The Quinault nation has been without access to the internet. The total estimated cost of this project is \$90 million dollars. More resilient broadband infrastructure will significantly benefit the tribal people.

Persons Testifying (Ways & Means): PRO: Tyson Johnston, Quinault Indian Nation; Guy Capoeman, President, Quinault Indian Nation.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.