

HOUSE BILL REPORT

HB 1355

As Reported by House Committee On:
Finance

Title: An act relating to modifying retail taxes compacts between the state of Washington and federally recognized tribes located in Washington state by increasing the revenue-sharing percentages when a compacting tribe has completed a qualified capital investment.

Brief Description: Modifying retail taxes compacts between the state of Washington and federally recognized tribes located in Washington state by increasing the revenue-sharing percentages when a compacting tribe has completed a qualified capital investment.

Sponsors: Representatives Berg, Ryu, Lekanoff, Peterson, Cortes, Stearns, Ortiz-Self, Fosse, Pollet, Wylie, Hill and Ormsby; by request of Department of Revenue.

Brief History:

Committee Activity:

Finance: 1/30/25, 2/4/25 [DP].

Brief Summary of Bill

- Increases the revenue-sharing percentages between a compacting tribe and the state when the tribe has completed a qualified capital investment.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 11 members: Representatives Berg, Chair; Street, Vice Chair; Chase, Mena, Parshley, Ramel, Santos, Scott, Springer, Walen and Wylie.

Minority Report: Without recommendation. Signed by 4 members: Representatives Orcutt, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Abell and Penner.

Staff: Rachelle Harris (786-7137).

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.

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.

Taxation in Indian Country.

Indian country consists of all land set aside primarily for the use of Indians, including all land within an Indian reservation and all land outside of a reservation that is under federal jurisdiction and designated primarily for Indian use. The federal government has the authority to tax all persons in Indian country. In Indian country, tribal governments have the authority to tax all tribal members, nonmembers on trust land, and nonmembers on fee land in certain circumstances.

State powers of taxation are limited in Indian country, particularly where Indian interests are affected. Federal law and policies preempt states from taxing the income of tribal members domiciled on the tribe's reservation. The United States Supreme court has identified two potential barriers to states' taxation of activities or property of nonmembers on reservation land. First, the state authority to impose a tax may be preempted by federal law. Second, it may infringe on the right of the reservation Indians to make their own laws and be ruled by them.

Tribal Compacts.

The Legislature has authorized the Governor to enter into state and tribal compacts in specific circumstances. For example, there are compacts authorized by statute, for all federally recognized tribes, that cover the imposition of cigarette taxes by tribes and the use of those funds for essential government services. In addition, all the tribes have a Class III gaming compact with the state.

Tribal Sales Compacts.

The Governor is authorized to enter into tax compacts with tribes relating to sharing state sales and use taxes and B&O taxes.

A sales compact allows a tribe to retain a portion of sales and use tax and B&O tax revenues 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 by the federal government as trust land.

From the time of a sales compact's implementation date, a compacting tribe is eligible to receive the following from qualified transactions between non-tribal businesses and non-tribal members:

- 100 percent of retailing B&O tax revenue; and
- the first \$500,000 of the total amount of state sales and use tax revenues during each calendar year.

With respect to state sales and use taxes, for transactions occurring within an area constituting new construction, a compacting tribe receives:

- 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 1 of the fourth calendar year following the signing of a sales compact, the tribe receives the following for transactions that are in an area without new construction:

- 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.

Summary of Bill:

A compacting tribe receives 100 percent of the amount of state sales and use tax revenues if they have completed a qualifying capital investment.

The Department of Revenue is authorized to begin administering the bill beginning July 1, 2027, and the bill applies to a compact or compact amendment with an effective date on or after January 1, 2028.

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 bill is about following through on promises we have made to tribes. The pandemic changed behavior and outcomes, and this bill is in response to that behavior change. The projects are helping our state and also generating revenues. The state faces its own budget challenges, but this bill does not take effect until 2027. In 2020 we resolved a longstanding tax dispute between the state and the tribes. The legislature acknowledges the equal sovereignty of tribes in the state, as well as what the tribes contribute to the state. The compact applies to only the state portion of sales tax and B&O tax on tribal lands. Tulalip built a civil commitment facility on tribally owned land that will be turned over to the state soon. The center is a beautiful collaboration between the tribe and the state and is such a good partnership for the state. Sales changed during the pandemic which led to much less revenue than was expected and anticipated under the settlement. This bill helps put us on equal taxation footing with the state. In Clark County and elsewhere, the Cowlitz tribe provides a lot of employment in the state as well as development in communities. Tribes work at being inclusive and working together to develop projects that help communities.

(Opposed) None.

Persons Testifying: Representative April Berg, prime sponsor; Chair, Teri Gobin, Tulalip Tribes of WA; Bill Chairman Iyall, Cowlitz Indian Tribe, Chairman; Chairman Ron Allen, Jamestown S'Klallam Tribe; Steve Ewing, Dept. of Revenue; and Rosalee Revey-Jacobs, Testifying on behalf of Lummi Nation.

Persons Signed In To Testify But Not Testifying: None.