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HOUSE BILL 2206

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State of Washington

55th Legislature

1997 Regular Session

By Representatives B. Thomas, Appelwick, Van Luven, Anderson, Sullivan, Mason, Regala and Dyer; by request of Revenue

Read first time 02/26/97. Referred to Committee on Finance.

1 AN ACT Relating to negotiation of cooperative agreements between  
2 the governor of the state of Washington and federally recognized Indian  
3 tribes within the borders of the state of Washington concerning the  
4 sales of cigarettes; adding new sections to chapter 43.06 RCW; adding  
5 a new section to chapter 82.08 RCW; adding a new section to chapter  
6 82.12 RCW; adding a new section to chapter 82.24 RCW; creating a new  
7 section; providing an effective date; and declaring an emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** (1) The legislature intends to enhance the  
10 government-to-government relationship enjoyed by both the state of  
11 Washington and the federally recognized Indian tribes in the state of  
12 Washington by authorizing the governor to enter into cooperative  
13 agreements with federally recognized Indian tribes in the state of  
14 Washington concerning the sales of cigarettes.

15 (2) The United States Constitution provides that congress has the  
16 exclusive power to conduct affairs among the various Indian tribes, to  
17 the exclusion of the states where the power is exercised. In its  
18 interpretation of this constitutional provision, the supreme court of  
19 the United States has held that federally recognized Indian tribes and

1 nations are free to engage in sales of cigarettes to their members free  
2 of state taxation when made within the borders of their own Indian  
3 reservation. The supreme court has further held that a state is  
4 prohibited from bringing a lawsuit against an Indian tribe or nation to  
5 compel the tribe or nation to collect state taxes on sales made in  
6 Indian country to either members or nonmembers of the tribe or nation  
7 without either a waiver of immunity by the tribe or nation or  
8 congressional action authorizing the state's lawsuit. Finally, the  
9 supreme court has suggested that a state may provide other methods of  
10 collection of state taxes on sales of cigarettes made by Indian tribes  
11 or nations to persons who are not members of the tribe or nation, such  
12 as entering into mutually satisfactory agreements with Indian tribes or  
13 nations.

14 (3) The legislature intends to follow a path of mutual cooperation  
15 with federally recognized Indian tribes in the state of Washington by  
16 authorizing the governor to negotiate revenue-sharing agreements with  
17 those tribes. While recognizing the individual sovereignty of both the  
18 tribes and the state, these agreements can provide for increased  
19 revenues for both the state and the tribes. In addition, by allowing  
20 for the possibility of simultaneously negotiating the removal of  
21 unstamped cigarettes from the reservations, enforcement of the state's  
22 cigarette tax laws can be greatly enhanced.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06 RCW  
24 to read as follows:

25 (1) The governor may enter into cooperative agreements with  
26 federally recognized Indian tribes in the state of Washington  
27 concerning the sales of cigarettes. All cooperative agreements shall  
28 meet the requirements for cooperative agreements under this section and  
29 section 3 of this act.

30 (2) Cooperative agreements shall provide that the tribe or tribal  
31 licensed retailers shall only make sales of cigarettes in which  
32 delivery and physical transfer of possession of the cigarettes from the  
33 seller to the buyer occurs within the boundaries of the reservation, as  
34 recognized by the United States secretary of the interior. In  
35 addition, cooperative agreements shall provide that the tribe or tribal  
36 licensed retailers shall not sell or give, or permit to be sold or  
37 given, to any person under the age of eighteen years any cigar,  
38 cigarette, or tobacco in any form.

1 (3) Cooperative agreements shall provide for a tribal cigarette tax  
2 in lieu of all state cigarette and state and local retail sales and use  
3 taxes on sales of cigarettes on the reservation by a tribe or tribal  
4 licensed retailers. The tribal cigarette tax shall apply to all sales  
5 of cigarettes to Indian and non-Indian purchasers, but the tribe may  
6 allow an exemption for sales to tribal members if, on the effective  
7 date of this section, the tribal constitution prohibits imposition of  
8 a tax on tribal members.

9 (4) Cooperative agreements shall provide that all cigarettes  
10 possessed or sold by the tribe or tribal licensed retailers shall bear  
11 a tribal cigarette tax stamp purchased by wholesalers from a bank or  
12 other suitable stamp vendor and applied to the cigarettes to verify  
13 payment of the tribal cigarette tax.

14 (5) Cooperative agreements shall provide that the tribe and tribal  
15 licensed retailers shall purchase cigarettes only from:

16 (a) Wholesalers or manufacturers licensed to do business in the  
17 state of Washington;

18 (b) Out-of-state wholesalers or manufacturers who, although not  
19 licensed to do business in the state of Washington, agree to comply  
20 with the terms of the cooperative agreement, are certified by the tribe  
21 to the state as having so agreed, and who do in fact so comply.  
22 However, the state may in its sole discretion exercise its  
23 administrative and enforcement powers over such wholesalers or  
24 manufacturers to the extent permitted by law; and

25 (c) A tribal wholesaler that purchases only from a wholesaler or  
26 manufacturer described in (a) or (b) of this subsection.

27 (6) Cooperative agreements shall be for a term of no more than  
28 eight years.

29 (7) Cooperative agreements may provide that the tribe, at its  
30 option, may substitute the tribe's agreement with the state of  
31 Washington for a cooperative agreement concerning the sales of  
32 cigarettes subsequently negotiated between the state of Washington and  
33 a different tribe. This option is conditioned upon the tribe  
34 substituting the entire subsequent agreement for the tribe's agreement,  
35 except that the expiration date of the tribe's agreement shall remain  
36 unchanged.

37 (8) Cooperative agreements may provide for the payment by the tribe  
38 to the state of Washington of a portion of the tribal cigarette tax  
39 collected under the agreement. Any revenues received under this

1 subsection shall be distributed in the same manner as cigarette tax  
2 revenues under chapter 82.24 RCW.

3 (9) Cooperative agreements may permit the submission of disputes  
4 regarding the interpretation and administration of their provisions for  
5 judicial resolution, but a waiver of sovereign immunity and consent by  
6 the state for the resolution shall be conditioned upon a similar waiver  
7 of sovereign immunity by the Indian tribe, which waiver shall be  
8 approved or otherwise confirmed by the United States as may be required  
9 by law.

10 (10) The governor may delegate the power to negotiate cooperative  
11 agreements to the department of revenue.

12 (11) For purposes of this section, "federally recognized Indian  
13 tribe or nation" means an Indian tribal entity that is recognized as an  
14 Indian tribe by the United States secretary of the interior.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.06 RCW  
16 to read as follows:

17 The tribal cigarette tax which is in lieu of all state cigarette  
18 and state and local retail sales and use taxes on sales of cigarettes  
19 on the reservation by a tribe or tribal licensed retailers as provided  
20 in section 2(3) of this act shall be no less than three dollars and  
21 fifty-four cents per carton of two hundred cigarettes. The minimum  
22 tribal tax shall be prorated for sales of less than a full carton and  
23 for sales of cartons containing fewer or more than two hundred  
24 cigarettes. The minimum tribal cigarette tax shall increase by no less  
25 than twenty-five percent of any future increase in the state cigarette  
26 tax rate. The minimum tribal cigarette tax shall be reduced by twenty-  
27 five percent of that portion of any future reduction in the state  
28 cigarette tax that leaves the total state cigarette tax at or above  
29 seven dollars and sixty-five cents per carton and by one hundred  
30 percent of that portion of any future reduction in the state cigarette  
31 tax that leaves the total state cigarette tax below seven dollars and  
32 sixty-five cents per carton but at or above five dollars and sixty-five  
33 cents per carton. If any future reduction in the state cigarette tax  
34 leaves the total state cigarette tax below five dollars and sixty-five  
35 cents per carton, the state and the Indian tribe or nation shall  
36 negotiate the minimum tribal cigarette tax.

1 As used in this section, any future increase or reduction in the  
2 state cigarette tax means any increase or reduction in the cigarette  
3 tax rate occurring after the effective date of this section.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW  
5 to read as follows:

6 The tax levied by RCW 82.08.020 does not apply to sales of  
7 cigarettes made by a federally recognized Indian tribe or nation or its  
8 licensees during the effective period of a cooperative agreement  
9 entered into between the state and the federally recognized Indian  
10 tribe or nation under section 2 of this act.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.12 RCW  
12 to read as follows:

13 The tax levied by RCW 82.12.020 does not apply in respect to the  
14 use of cigarettes sold by a federally recognized Indian tribe or nation  
15 or its licensees during the effective period of a cooperative agreement  
16 entered into between the state and the federally recognized Indian  
17 tribe or nation under section 2 of this act.

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.24 RCW  
19 to read as follows:

20 This chapter does not apply to the sale, use, consumption,  
21 handling, possession, or distribution of cigarettes by a federally  
22 recognized Indian tribe or nation or its licensees during the effective  
23 period of a cooperative agreement entered into between the state and  
24 the federally recognized Indian tribe or nation under section 2 of this  
25 act.

26 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 April 1, 1997.

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