

HOUSE BILL REPORT

ESHB 3128

As Passed House:

March 22, 2000

Title: An act relating to cooperative agreements between the governor in regard to taxation of cigarettes sold within Indian country.

Brief Description: Authorizing the governor to enter into cooperative agreements concerning the sales of cigarettes.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Thomas, Dunshee and Santos; by request of Department of Revenue).

Brief History:

Committee Activity:

Finance: 2/28/00 [DPS].

Floor Activity:

Passed House: 3/9/00, 85-13.

Passed House: 3/22/00, 98-0.

Brief Summary of Substitute Bill

- Allows the Governor to make cooperative agreements with Indian tribes concerning sales of cigarettes.
- Exempts cigarette sales on Indian land from cigarette and sales and use taxes during the time a cooperative agreement exists.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Dunshee, Democratic Co-Chair; Thomas, Republican Co-Chair; Cairnes, Republican Vice Chair; Reardon, Democratic Vice Chair; Carrell; Cox; Dickerson; Santos and Van Luven.

Minority Report: Do not pass. Signed by 2 members: Representatives Conway and Pennington.

Staff: Rick Peterson (786-7150).

Background:

Cigarette taxes are added directly to the price of these goods before the sales tax is applied. The rate for the cigarette tax is 82.5 cents per pack of 20 cigarettes. Retail sales and use taxes are also imposed on sales of cigarettes. Sales tax applies when items are purchased at retail in the state. Sales tax is paid by the purchaser and collected by the seller. Use tax is imposed on the use of an item in this state, when the acquisition of the item has not been subject to sales tax. Use tax applies to items purchased from sellers who do not collect sales tax, items acquired from out of state, and items produced by the person using the item. The state sales tax rate is 6.5 percent of the selling price. Local governments may levy additional sales taxes. The total state and local rate varies from 7 percent to 8.6 percent, depending on the location. Use tax is equal to the sales tax rate multiplied by the value of the property used.

Revenue from the first 23 cents of the cigarette tax goes to the general fund. The next 8 cents are dedicated to water quality improvement programs through June 30, 2021, and to the general fund thereafter. The next 41 cents go to the health services account. The remaining 10.5 cents are dedicated to youth violence prevention and drug enforcement.

The cigarette tax is due from the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state. The taxpayer pays the tax by purchasing cigarette tax stamps which are placed on cigarette packs. The taxpayer is allowed compensation for placing the cigarette stamps on the packs at the rate of \$4 per 1,000 stamps.

Under federal law, the cigarette tax does not apply to cigarettes sold on an Indian reservation to an enrolled tribal member for personal consumption. However, sales made by tribal cigarette retailers to non-tribal members are subject to the tax. Enforcement of state cigarette taxes in respect to tribal retail operations has involved considerable difficulty and litigation, with mixed results.

Summary of Bill:

The Governor may enter into cooperative agreements concerning the sales of cigarettes with federally recognized Indian tribes located within Washington. Cooperative agreements shall be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the cooperative agreement's term are subject to a tribal cigarette tax and are exempt from cigarette, and sales and use taxes.

In general, cooperative agreements shall:

- (1) Limit tribal retailing to sales of cigarettes made within the boundaries of the reservation and land held in trust for a tribe or tribal member by the United States;
- (2) Prevent sales to any person under the age of 18 years;
- (3) Require tribal cigarette tax be used for essential government services.
- (4) Require the use of tribal cigarette tax stamps;
- (5) Include provisions for compliance.
- (6) Require that tribal retailers purchase cigarettes only from approved sources; and
- (7) Allow submission of disputes regarding the interpretation and administration of the cooperative agreement's provisions for judicial resolution.

The Governor is authorized to enter into cooperative agreements with the Squaxin Island Tribe, Nisqually Tribe, Tulalip Tribes, and Mukleshoot Indian Tribe with a tax rate of 100 percent of the state cigarette and sales tax rate. A three year phase in of the 100 percent rate is allowed but the rate can be no lower than 80 percent of state cigarette and sales tax rate. The phase in period is shortened if Indian cigarette sales increase by 10 percent. New Indian retail operations must pay the full tribal tax rate rather than the lower tax during the phase in period.

The tax rates and revenue sharing terms of any other cooperative agreement must be authorized in a bill enacted by the Legislature.

The compensation allowed for placing cigarette stamps on packs of cigarettes is increased from \$4 per 1,000 stamps to \$6 per 1,000 stamps starting July 1, 2001.

Appropriation: None.

Fiscal Note: Requested on substitute February 29, 2000.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The state has little power to tell the Indian tribes what to do. They are independent tribal nations and Washington should deal with them like we deal with other states. This bill is about developing friendship and trust between the state and the tribes. The proposal acknowledges the government to government relationship between the state and Indian tribes. The bill will mitigate the tax

difference, promote public use of cigarette tax revenue, and provide a means to end a long standing cigarette tax compliance problem. This bill is important, it will work for the Squaxin Tribe and the state. The Tulalips support the legislation and are flexible to any changes needed to get the legislation through. The Nisquallys support the bill but are opposed to the language related to self-governing dependent Indian communities.

Testimony Against: If the tax is less than 100 percent of the state tax, this bill creates an unfair advantage in favor of Indian retailers. The Puyallups are reluctantly in opposition to the bill due to the requirement for the tax to be at 80 percent of the state tax. At a tax rate of 80 percent it is not economically possible for the Puyallup cigarette retailers to survive. The Yakimas would like an amendment that limits the bill's application to the specific tribes that are agreeable to these terms. The Yakimas would like to negotiate their own compact. The bill should have tightened enforcement requirements and an audit mechanism.

Testified: (In support) Representative Thomas, prime sponsor; Fred Kiga, Department of Revenue; Dave Lopeman, Squaxin Island Tribe; John McCoy, Tulalip Tribe; Richard A. Wells, Nisqually Indian Tribe; and Clayton Finkbrauer, Lummi Nation.

(In support, with concerns) T.K. Bentler, Washington Association of Neighborhood Stores.

(Suggested amendment) Dawn Vyvyan, Yakima Nation.

(Opposed) Amy Brackenburn, Washington Food Industry; and John Bell, Puyallup Tribe.