

SENATE BILL REPORT

SB 6414

As Reported By Senate Committee On:
Ways & Means, January 31, 2008

Title: An act relating to authorizing a cigarette tax agreement between the state of Washington and the Yakama Nation.

Brief Description: Authorizing a cigarette tax agreement between the state of Washington and the Yakama Nation.

Sponsors: Senators Prentice, Honeyford, Rasmussen and Sheldon; by request of Department of Revenue.

Brief History:

Committee Activity: Ways & Means:1/29/08, 1/31/08 [DP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hatfield, Hobbs, Honeyford, Keiser, Kohl-Welles, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

Staff: Dianne Criswell (786-7433)

Background: The state imposes a tax on the sale, use, consumption, handling, possession, or distribution of cigarettes. The rate of the cigarette tax is 202.5 cents per pack of 20 cigarettes, which equals \$20.25 per carton. Cigarette taxes are added directly to the price of these goods before sales tax is applied. The state sales tax rate is 6.5 percent of the selling price. Local governments may levy additional sales taxes. The combined state and local rate varies from 7 percent to 8.9 percent, depending on the location. Sales tax on an average carton of cigarettes is about \$4.00.

Under federal law, the cigarette tax and sales and use taxes do 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 taxes.

Beginning in 2001, the Legislature authorized the Governor to negotiate and enter into cigarette tax contracts with certain named federally recognized tribes located in Washington. Since 2001, RCW 43.06.460 has been amended and currently lists 27 tribes with which the Governor may contract, allows contracts for renewable periods of eight years

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or less. Cigarettes sold on Indian lands under these contracts are subject to a tribal cigarette tax and are exempt from state cigarette and sales and use taxes. The tribal cigarette tax must equal 100 percent of the cigarette tax and sales and use taxes. The rate may be phased in over three years, but can be no lower than 80 percent of the state cigarette and sales tax rate.

Since 2001 the Yakama Nation has been a federally recognized tribe with whom the Governor may contract. In July 2004 the Yakama Nation and the Governor entered into a cigarette tax compact. In February 2007 the state entered into mediation with the Yakama Nation prior to termination of the compact. In December 2007 the state and the Yakama Nation announced that they made a preliminary agreement to enter into a new cigarette tax compact.

RCW 43.06.465 separately authorizes the Governor to enter into a contract with the Puyallup Tribe. The agreement must require a tribal tax of \$11.75 per carton, in lieu of state cigarette and state and local sales and use taxes. The purchase price to the consumer must be at least as much as the wholesale cost to the retailer, plus the tribal tax amount. If the state cigarette tax rate changes, the tribal tax must increase or decrease by the same dollar amount. The state must receive 30 percent of the tribal tax revenue on a quarterly basis, to be deposited in the general fund. The remaining tribal revenue must be used for essential government services. The agreement must require purchases be from state licensed wholesalers and include provisions regarding enforcement and compliance, purchases by minors, tax administration and compliance, information sharing, cigarette stamping, and dispute resolution. The contracts must be for renewable periods of no more than eight years.

Summary of Bill: Authority is granted to the Governor to enter into a separate cigarette tax compact with the Yakama Nation. The compact must be for renewable periods of no more than eight years. Under a compact, the Yakama Nation will impose its own taxes on the sale of cigarettes, initially equal to 80 percent of the state cigarette tax for the first six years, 84 percent during the seventh year, and 87.6 percent in the eighth year. All revenues must be used for essential government services. The compact does not require revenue sharing with the state. The agreement requires information sharing, including transport of cigarettes, keeping of records, reporting, notice, inspection, audit, and sales to customers outside the jurisdiction of the Yakama Nation. Further, the compact must provide that the state has the authority for unannounced inspection of tribal retailers to verify compliance with stamping and pricing provisions.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This agreement protects the state's interests while helping the state enforce the cigarette tax. This is an agreement of which we can be proud. The treaty right affects negotiation, and the parties agreed to increase information sharing and no revenue sharing. The Yakama Nation has been party to a treaty with the U.S. government for over 150 years. This treaty guarantees the right to travel without conditions. The consideration for the 1855 treaty was considerable, with the Yakama Nation ceding a considerable amount of territory. Treaties and federal courts have recognized tobacco as

integral to our economy. The recent court decision affected our cigarette tax compact with the state. Both parties have worked on the preliminary compact agreement. The tribe intends to ensure regulatory compliance. We will use revenues to fund essential government services. This bill honors and affirms our treaty rights.

CON: In 2001, we understood the tribal tax would be 100 percent of the state cigarette tax and the sales and use taxes. This moves away from that model. Wholesalers are the persons who affix these stamps to ensure compliance with the cigarette tax. These wholesalers should be reimbursed for affixing stamps to all tribal cigarettes.

Persons Testifying: PRO: Leslie Cushman, Department of Revenue; Ralph Sampson Jr., Chairman of the Yakama Nation.

CON: T.K.. Bentler, Washington Association of Neighborhood Stores.