

SENATE BILL REPORT

SB 6464

As of February 5, 1996

Title: An act relating to negotiation of cooperative agreements between the governor of the state of Washington and federally recognized Indian tribes within the borders of the state of Washington concerning the sales of cigarettes.

Brief Description: Allowing negotiation of agreements between the governor and Indian tribes for cigarette sales.

Sponsors: Senators Spanel and Moyer; by request of Cigarette Tax & Revenue Loss Advisory.

Brief History:

Committee Activity: Ways & Means: 2/5/96.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Terry Wilson (786-7433)

Background: The state imposes a tax on the sale, use, consumption, handling, possession, and distribution of cigarettes. The rate of tax increased from 56½ cents per pack to 81½ cents per pack on July 1, 1995, and the rate will increase on July 1, 1996, to 82½ cents per pack. In addition to this tax, state and local sales and use taxes and business and occupation taxes apply to the sale of cigarettes equal to approximately 15 cents to 19 cents per pack, depending on the price.

According to estimates from the Department of Revenue, the state is losing an increasing amount of revenues per year from illegal sales of untaxed cigarettes. These losses occur from casual smuggling from lower-tax states and the purchase of cigarettes from tax-free outlets such as military post exchanges and Indian smokeshops. Federal law prevents the state from taxing the federal government directly. Therefore, the state is prohibited from taxing sales made by military post exchanges. Federal law also prevents the state from taxing cigarettes sold at an outlet on an enrolled Indian tribal member's tribal reservation to an enrolled tribal member for personal consumption. Sales made to non-tribal members are subject to the tax, but many Indian retailers do not collect the tax.

Because of this problem, a joint select committee, known as the Cigarette Tax and Revenue Loss Advisory Committee, was established by Senate Concurrent Resolution No. 8417 to study current state law on the unlawful possession, purchase, sale, and use of unstamped and untaxed cigarettes on Indian reservations by non-tribal members. The committee recommended a path of mutual cooperation with federally recognized Indian tribes in the state by authorizing the Governor to negotiate revenue-sharing agreements with those tribes.

Summary of Bill: The Governor may enter into the cooperative agreement concerning the sales of cigarettes negotiated by the Governor and the Department of Revenue with the Puyallup Tribe of Indians for a term of eight years. In addition, the Governor may enter

into cooperative agreements with other federally recognized Indian tribes in the state concerning the sales of cigarettes. Negotiated agreements must contain the following provisions.

(1) Tribal licensed retailers shall only make sales of cigarettes in which delivery and physical transfer of possession of the cigarettes from the seller to the buyer occurs within the boundaries of the reservation. Cooperative agreements shall provide that the tribe or tribal licensed retailers shall not sell cigarettes to any person under the age of 18 years.

(2) A tribal cigarette tax must be imposed in lieu of all state cigarette and state and local retail sales and use taxes on sales of cigarettes on the reservation by a tribe or tribal licensed store. The tribal cigarette tax applies to all sales of cigarettes to Indian and non-Indian purchasers, unless the tribal constitution prohibits imposition of a tax on tribal members. The tribal cigarette tax must be no less than \$3.54 per carton of 200 cigarettes. The minimum tribal tax shall be prorated for sales of less than a full carton and for sales of cartons containing fewer or more than 200 cigarettes. The minimum tribal cigarette tax shall increase by no less than 25 percent of any future increase in the state cigarette tax rate. The minimum tribal cigarette tax shall be reduced by 25 percent of that portion of any future reduction in the state cigarette tax which leaves the total state cigarette tax at or above \$7.65 per carton and by 100 percent of that portion of any future reduction in the state cigarette tax which leaves the total state cigarette tax below \$7.65 per carton but at or above \$5.65 per carton. If any future reduction in the state cigarette tax leaves the total state cigarette tax below \$5.65, the state and the Indian tribe or nation shall negotiate the minimum tribal cigarette tax.

(3) All cigarettes possessed or sold by tribes or tribal licensed retailers must bear a tribal cigarette tax stamp.

(4) The tribe and tribal licensed retailers must purchase cigarettes only from approved sources.

(5) Cooperative agreements are for a term of no more than eight years.

(6) A tribe may substitute the tribe's agreement with the state for a cooperative agreement concerning the sales of cigarettes subsequently negotiated between the state and a different tribe, except for the expiration date.

(7) Cooperative agreements may provide for the payment by the tribe to the state of a portion of the tribal cigarette tax collected under the agreement.

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

(9) Cooperative agreements must contain provisions for administration and enforcement substantially equivalent to those contained in the cigarette tax compact between the state the Puyallup Tribe.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on April 1, 1996.

Testimony For: In general, states have no authority on Indian reservations. States can tax non-Indians but cannot go on the reservation to seize contraband cigarettes. If the price differential is less, fewer people will buy cigarettes from Indians. People do not care that it is illegal now. This bill establishes a government to government relationship between the state and the tribes. It resolves a dispute that has been around for 25 years. The U.S. Supreme Court recognizes that states may resolve this issue with compacts.

Testimony Against: Retailers are opposed. The differential under the agreements puts retailers at a competitive disadvantage. Sales will shift to smokeshops.

Testified: Len McComb, Department of Revenue (pro); Representative Jerry Blanton (con); T.K. Bentler, WA State Assoc. of Neighborhood Stores (con); Alison Gottfriedson, Puyallup Tribal Council (pro); Randy Scott, Puyallup Tribal Council, Colville Confederated Tribes, Quinault Indian Nation, Lummi Indian Bus. Comm. (pro).