
HOUSE BILL 1955

State of Washington

54th Legislature

1995 Regular Session

By Representatives Elliot, Regala and Fuhrman; by request of Governor Lowry

Read first time 02/17/95. Referred to Committee on Finance.

1 AN ACT Relating to the negotiation of cooperative agreements
2 concerning the sales of cigarettes between the governor of the state of
3 Washington and federally recognized Indian tribes within the borders of
4 the state of Washington; adding a new section to chapter 43.06 RCW;
5 adding a new section to chapter 82.01 RCW; adding a new section to
6 chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a
7 new section to chapter 82.14 RCW; adding a new section to chapter 82.24
8 RCW; creating a new section; and declaring an emergency.

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

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

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 a waiver of immunity by the tribe or nation or congressional
8 action authorizing the state's lawsuit. Finally, the supreme court has
9 suggested that a state may provide other methods of collection of state
10 taxes on sales of cigarettes made by Indian tribes or nations to
11 persons who are not members of the tribe or nation, such as entering
12 into mutually satisfactory agreements with Indian tribes or nations.

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

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

24 (1) The governor is authorized to enter into revenue-sharing
25 cooperative agreements concerning the sales of cigarettes with
26 federally recognized Indian tribes or nations.

27 (2) A revenue-sharing cooperative agreement shall provide for a
28 negotiated payment to the state in lieu of all cigarette and retail
29 sales state and local taxes on sales of cigarettes by a tribe on the
30 reservation, or in tribally licensed stores, as the agreement may
31 provide.

32 (3) The negotiated payment in lieu of all cigarette and retail
33 sales state and local taxes on a sale of cigarettes contained in a
34 revenue-sharing cooperative agreement may be either an amount or at a
35 rate less than the amount or rate of state and local taxes otherwise
36 imposed on sales of cigarettes.

37 (4) Such agreements may permit the submission of disputes regarding
38 the interpretation and administration of their provisions for judicial

1 resolution, provided that a waiver of sovereign immunity and consent by
2 the state for such resolution shall be conditioned upon a similar
3 waiver of sovereign immunity by the Indian tribe, which waiver shall be
4 approved or otherwise confirmed by the United States as may be required
5 by law.

6 (5) The governor may delegate the power to negotiate such
7 agreements.

8 (6) For purposes of this section, a "federally recognized Indian
9 tribe or nation" means an Indian tribal entity that is recognized as an
10 Indian tribe by the United States bureau of Indian affairs.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.01 RCW
12 to read as follows:

13 Sales of cigarettes made by federally recognized Indian tribes or
14 nations or their licensees, during the effective period of a revenue-
15 sharing cooperative agreement entered into between the state and a
16 federally recognized Indian tribe pursuant to sections 1 and 2 of this
17 act, whereby the tribe may impose a tax in lieu of all other cigarette
18 and retail sales state and local taxes imposed by chapters 82.08,
19 82.12, 82.14, and 82.24 RCW shall be exempt from any taxes otherwise
20 due under this title.

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

23 Sales of cigarettes made by federally recognized Indian tribes or
24 nations or their licensees, during the effective period of a revenue-
25 sharing cooperative agreement entered into between the state and a
26 federally recognized Indian tribe pursuant to sections 1 and 2 of this
27 act, whereby the tribe imposes a tax in lieu of all other cigarette and
28 retail sales state and local taxes imposed by this chapter and chapters
29 82.12, 82.14, and 82.24 RCW shall be exempt from any taxes otherwise
30 due under this chapter.

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

33 Sales of cigarettes made by federally recognized Indian tribes or
34 nations or their licensees, during the effective period of a revenue-
35 sharing cooperative agreement entered into between the state and a
36 federally recognized Indian tribe pursuant to sections 1 and 2 of this

1 act, whereby the tribe imposes a tax in lieu of all other cigarette and
2 retail sales state and local taxes imposed by this chapter and chapters
3 82.08, 82.14, and 82.24 RCW shall be exempt from any taxes otherwise
4 due under this chapter.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.14 RCW
6 to read as follows:

7 Sales of cigarettes made by federally recognized Indian tribes or
8 nations or their licensees, during the effective period of a revenue-
9 sharing cooperative agreement entered into between the state and a
10 federally recognized Indian tribe pursuant to sections 1 and 2 of this
11 act, whereby the tribe imposes a tax in lieu of all other cigarette and
12 retail sales state and local taxes imposed by this chapter and chapters
13 82.08, 82.12, and 82.24 RCW shall be exempt from any taxes otherwise
14 due under this chapter.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.24 RCW
16 to read as follows:

17 Sales of cigarettes made by federally recognized Indian tribes or
18 nations or their licensees, during the effective period of a revenue-
19 sharing cooperative agreement entered into between the state and a
20 federally recognized Indian tribe pursuant to sections 1 and 2 of this
21 act, whereby the tribe imposes a tax in lieu of all other cigarette and
22 retail sales state and local taxes imposed by this chapter and chapters
23 82.08, 82.12, and 82.14 RCW shall be exempt from any taxes otherwise
24 due under this chapter.

25 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and shall take
28 effect immediately.

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