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HOUSE BILL 2235

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State of Washington

54th Legislature

1996 Regular Session

By Representatives B. Thomas, Sheldon, Regala, Fuhrman and Elliot; by request of Cigarette Tax & Revenue Loss Advisory

Read first time 01/08/96. 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 the cooperative agreement  
26 concerning the sales of cigarettes negotiated by the governor and the  
27 department of revenue with the Puyallup Tribe of Indians entitled  
28 "Cigarette Tax Compact Between the Puyallup Tribe of Indians and the  
29 State of Washington" dated . . . . for a term of eight years. In  
30 addition, the governor may enter into cooperative agreements with other  
31 federally recognized Indian tribes in the state of Washington  
32 concerning the sales of cigarettes. All cooperative agreements shall  
33 meet the requirements for cooperative agreements under this section and  
34 section 3 of this act.

35 (2) Cooperative agreements shall provide that the tribe or tribal  
36 licensed retailers shall only make sales of cigarettes in which  
37 delivery and physical transfer of possession of the cigarettes from the  
38 seller to the buyer occurs within the boundaries of the reservation, as

1 recognized by the United States secretary of the interior. In  
2 addition, cooperative agreements shall provide that the tribe or tribal  
3 licensed retailers shall not sell or give, or permit to be sold or  
4 given, to any person under the age of eighteen years any cigar,  
5 cigarette, or tobacco in any form.

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

14 (4) Cooperative agreements shall provide that all cigarettes  
15 possessed or sold by the tribe or tribal licensed retailers shall bear  
16 a tribal cigarette tax stamp purchased by wholesalers from a bank or  
17 other suitable stamp vendor and applied to the cigarettes to verify  
18 payment of the tribal cigarette tax.

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

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

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

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

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

34 (7) Cooperative agreements may provide that the tribe, at its  
35 option, may substitute the tribe's agreement with the state of  
36 Washington for a cooperative agreement concerning the sales of  
37 cigarettes subsequently negotiated between the state of Washington and  
38 a different tribe. This option is conditioned upon the tribe  
39 substituting the entire subsequent agreement for the tribe's agreement,

1 except that the expiration date of the tribe's agreement shall remain  
2 unchanged.

3 (8) Cooperative agreements may provide for the payment by the tribe  
4 to the state of Washington of a portion of the tribal cigarette tax  
5 collected under the agreement. Any revenues received under this  
6 subsection shall be distributed in the same manner as cigarette tax  
7 revenues under chapter 82.24 RCW.

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

15 (10) Cooperative agreements shall contain provisions for  
16 administration and enforcement substantially equivalent to those  
17 contained in the cigarette tax compact referred to in subsection (1) of  
18 this section.

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

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

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

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

1 percent of that portion of any future reduction in the state cigarette  
2 tax that leaves the total state cigarette tax below seven dollars and  
3 sixty-five cents per carton but at or above five dollars and sixty-five  
4 cents per carton. If any future reduction in the state cigarette tax  
5 leaves the total state cigarette tax below five dollars and sixty-five  
6 cents per carton, the state and the Indian tribe or nation shall  
7 negotiate the minimum tribal cigarette tax.

8 As used in this section, any future increase or reduction in the  
9 state cigarette tax means any increase or reduction in the cigarette  
10 tax rate occurring after the effective date of this section.

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

13 The tax levied by RCW 82.08.020 shall not apply to sales of  
14 cigarettes made by a federally recognized Indian tribe or nation or its  
15 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. 5.** A new section is added to chapter 82.12 RCW  
19 to read as follows:

20 The tax levied by RCW 82.12.020 shall not apply in respect to the  
21 use of cigarettes sold by a federally recognized Indian tribe or nation  
22 or its licensees during the effective period of a cooperative agreement  
23 entered into between the state and the federally recognized Indian  
24 tribe or nation under section 2 of this act.

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

27 This chapter shall not apply to the sale, use, consumption,  
28 handling, possession, or distribution of cigarettes by a federally  
29 recognized Indian tribe or nation or its licensees during the effective  
30 period of a cooperative agreement entered into between the state and  
31 the federally recognized Indian tribe or nation under section 2 of this  
32 act.

33 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
34 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take  
2 effect April 1, 1996.

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