

SENATE BILL REPORT

ESSB 5372

As Passed Senate, March 12, 2001

Title: An act relating to cooperative agreements concerning the taxation of cigarettes sold on Indian lands.

Brief Description: Authorizing cooperative agreements concerning the taxation of cigarette sales on Indian lands.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Swecker, Honeyford, Gardner, T. Sheldon and Oke; by request of Department of Revenue).

Brief History:

Committee Activity: Ways & Means: 2/15/01, 2/20/01 [DPS, DNP].

Passed Senate: 3/12/01, 48-0.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5372 be substituted therefor, and the substitute bill do pass.

Signed by Senators Brown, Chair; Constantine, Vice Chair; Fraser, Hewitt, Honeyford, Kline, Long, Parlette, Rasmussen, Rossi, Sheahan, B. Sheldon, Snyder and Spanel.

Minority Report: Do not pass.

Signed by Senator Regala.

Staff: David Schumacher (786-7474)

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. 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.

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 final 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 must 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 must:

- (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, the Mukleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, and the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Nooksack Indian Tribe, and the Lummi Nation with a tax rate of 100 percent of the state cigarette and sales tax rate.

The 100 percent rate may be phased in over three years 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, 2002.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill is a very closely negotiated agreement between the tribes named, the retail industry and the Department of Revenue. This bill respects the sovereignty of the tribes involved and does not presume that other tribes will be bound by this bill. This will level the playing field between retailers and tribal sellers of cigarettes.

Testimony Against: (with concerns) It is important to realize that tribes are unique, and that solutions that may work for some tribes are not appropriate for every tribe.

Testified: Kelly Cronran, Squaxin Island Tribe (pro); John McCoy, Tulalip Tribes (pro); T. K. Bentler, WA Assn. of Neighborhood Stores (pro); Jim Hedrick, Gov. Office (pro); Fred Kiga, Dept. of Revenue (pro); Kari Frank, Puyallup Tribe (concerns); Jan Gee, WA Food Industry, WA Retail Assn. (pro).

House Amendment(s): The amended bill changes the term "cooperative agreements" to "cigarette tax contracts;" states that the cigarette master settlement agreement is not affected by the bill; clarifies that the bill does not extend to taxation of non-Indian retailers; provides specific requirements for compliance, enforcement, and dispute resolution with regard to the cigarette tax contracts; provides that the Department of Revenue and Liquor Control Board continue to share duties relating to cigarette taxation; and adds the Chehalis Confederated Tribes and the Upper Skagit Tribe to the list of tribes the Governor may negotiate contracts with.