

HOUSE BILL REPORT

HB 2650

As Passed House:
February 15, 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: By Representatives Santos, Ericks, Hunter and Wood; by request of Department of Revenue.

Brief History:

Committee Activity:

Finance: 1/30/08, 2/12/08 [DP].

Floor Activity:

Passed House: 2/15/08, 64-30.

Brief Summary of Bill

- Authorizes the Governor to make a cigarette tax agreement with the Yakama Nation that provides for a tribal tax on cigarettes that phases up to 87.6 percent of the state cigarette tax rate.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 7 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, McIntire, Roach and Santos.

Minority Report: Do not pass. Signed by 2 members: Representatives Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member.

Staff: Don Taylor (786-7150).

Background:

Cigarettes are subject to tax at a rate of \$2.025 per pack of 20 cigarettes (\$20.025 per carton). Revenue from the first 23 cents of the cigarette tax goes to the General Fund. The next 8

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cents are dedicated to water quality improvement programs through June 30, 2021, and to the General Fund thereafter. The next \$1.01 goes to the Health Services Account. The next 10.5 cents are dedicated to the Violence Prevention and Drug Enforcement Account. The remaining 60 cents goes to the Education Legacy Trust Account. A portion of the revenue to the Health Services Account and the Education Legacy Trust Account is used to reimburse other accounts for losses in revenue due to tax rate increases.

The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. Retail sales and use taxes cover the sales of cigarettes. The tax is levied at a 6.5 percent rate by the state. Cities and counties may levy a local tax. The state and local combined sales tax ranges from 7.5 percent to 8.9 percent.

The Department of Revenue (DOR) administers and collects the cigarette tax. Enforcement activities are the responsibility of the Liquor Control Board.

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.

In the 2001 session, the Governor was authorized to enter into contracts concerning the sale of cigarettes with federally recognized Indian tribes located within Washington. Contracts must be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the contracts terms are subject to a tribal cigarette tax and are exempt from state cigarette and sales and use taxes.

In general, cigarette tax contracts must:

- (1) limit tribal retailing to sales of cigarettes by tribes or Indians in Indian country;
- (2) prevent sales to any person under the age of 18 years;
- (3) require tribal cigarette tax revenue 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;
- (7) allow resolution of disputes through a non-judicial process, such as mediation; and
- (8) include a procedure for correcting violations of the contract and a provision for termination of the contract should violations not be resolved.

The Governor is authorized to enter into cooperative agreements with the Squaxin Island Tribe, the Nisqually Tribe, the Tulalip Tribe, the Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, the Kalispel Tribe, the Confederated Tribes of the Colville Reservation, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, the Makah

Tribe, the Hoh Tribe, and the Spokane Tribe at 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 state and the Yakama Nation signed a cigarette tax agreement under this provision of law. In 2007 the DOR notified the Yakama Nation that the agreement was canceled due to non-compliance. The DOR and the Yakama Nation have since engaged in dispute mediation related to the agreement.

The Governor is also authorized to enter into a cigarette tax agreement with the Puyallup Tribe of Indians. The agreement requires 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 include provisions regarding tax enforcement and administration similar to other tribal cigarette agreements.

The state has entered into cigarette tax agreements with 20 of the 28 tribes for which authorization is provided.

Summary of Bill:

The Governor may enter into a cigarette tax agreement with the Yakama Nation. Under the eight year renewable agreement the Yakama Nation must impose a tax on the sales of cigarettes by tribal retailers. The tax must be 80 percent of the state cigarette tax rate during the agreement's first six years, 84 percent during the seventh year, and 87.6 percent during the eighth year. The rate must increase or decrease with the state cigarette tax rate. During the agreement's term cigarette sales are subject to the tribal cigarette tax and are exempt from state cigarette and sales and use taxes.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The sponsor is pleased to bring this cigarette compact legislation with the Yakama Nation before the Finance Committee on behalf of the DOR. Currently, there are 21 compacts with tribal governments in force. Previously, the state was spending considerable resources to enforce cigarette regulations; these agreements allow the tribal governments to participate in the enforcement and to receive the tax receipts for essential services for their

tribal members. The compact is a good way of enhancing cooperation between the state and the tribal government, while continuing to recognize the sovereignty of the Yakama Nation.

The DOR appreciates the support of the bill sponsors and the opportunity to work with the Yakama Nation in resolving this difficult issue. The agreement parallels the compact with the Puyallup Tribe but recognizes the unique treaty rights of the Yakamas, including the right to travel freely. The reason that the tribal tax rate for the Puyallup and Yakama Tribes is less than 100 percent of the state rate, as it is with the other cigarette compacts, is because on these two reservations the stores that sell cigarettes are actually operated by the tribal government. A full rate equivalent to 100 percent of the state tax rate would drive these operations out of business and that would benefit no one.

The Yakama Nation exists and operates pursuant to the Treaty of 1855. There are approximately 10,200 members on the reservation which comprises 1.3 million acres. Part of the agreement with the federal government in 1855 was to cede 11.2 million acres previously claimed by the Yakama Nation. In exchange they were granted the right to travel freely for business or other purposes. This right was affirmed as recently as 2007 by a federal court in the Smiskin decision. Tobacco was already being traded prior to 1855, and, in fact, Governor Stevens and the tribal leaders exchanged use of this product during the treaty negotiations in Walla Walla. The tribe intends to use the receipts of their tribal cigarette tax for social and health services benefitting tribal members; one example is a program of providing burial assistance.

(Opposed) A representative of the tobacco dealers industry reaffirmed support for the original concept of tribal compacts with a tribal tax rate set at 100 percent of the state cigarette tax rate. Non-tribal vendors must collect the \$2.025 per pack cigarette tax, plus state and local retail sales taxes and business and occupation taxes. This results in a competitive disadvantage for sellers that are not located on Indian reservations. The recent Puyallup agreement, with a tax rate less than the state cigarette tax rate, results in even greater disadvantage, and the Yakama rate provided in this bill extends that disadvantage even further.

Persons Testifying: (In support) Representative Santos, prime sponsor; Leslie Cushman, Department of Revenue; and Ralph Sampson Junior, Yakama Nation.

(Opposed) T. K. Bentler, Washington Association of Neighborhood Stores.

Persons Signed In To Testify But Not Testifying: None.