

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2650

60th Legislature
2008 Regular Session

Passed by the House February 15, 2008
Yeas 64 Nays 30

Speaker of the House of Representatives

Passed by the Senate March 6, 2008
Yeas 47 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2650** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2650

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Representatives Santos, Ericks, Hunter, and Wood; by request of
Department of Revenue

Read first time 01/15/08. Referred to Committee on Finance.

1 AN ACT Relating to authorizing a cigarette tax agreement between
2 the state of Washington and the Yakama Nation; amending RCW 82.08.0316
3 and 82.12.0316; adding a new section to chapter 43.06 RCW; adding a new
4 section to chapter 82.24 RCW; creating a new section; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.06 RCW
8 to read as follows:

9 (1) The legislature finds that entering into a cigarette tax
10 agreement with the Yakama Nation is a positive step and that such an
11 agreement will support a stable and orderly environment on the Yakima
12 Reservation for regulation of cigarette sales. The legislature further
13 finds that the very special circumstances of the Yakama Nation pursuant
14 to the Treaty with the Yakamas of 1855 (12 Stat. 951) support a
15 cigarette tax agreement that reflects those circumstances. The
16 legislature also finds that the provisions of the agreement with the
17 Yakama Nation authorized by this act are reasonably necessary to
18 prevent fraudulent transactions and place a minimal burden on the

1 Yakama Nation, pursuant to the United States supreme court's decision
2 in *Washington v. Confederated Tribes of the Colville Indian*
3 *Reservation*, 447 U.S. 134 (1980).

4 It is the intent of the legislature that the cigarette tax
5 agreement with the Yakama Nation reflects the uniqueness of the Yakama
6 Nation's Treaty through specific terms that govern pricing of
7 cigarettes, tribal cigarette tax revenue, information sharing, and
8 administration of the agreement.

9 (2) For purposes of this section:

10 (a) "Cigarette" has the same meaning as in chapter 82.24 RCW; and

11 (b) "Tribal retailer" means a cigarette retailer as that term is
12 defined in RCW 82.24.010 that is licensed by and located within the
13 jurisdiction of the Yakama Nation and is wholly owned by the Yakama
14 Nation or any of its enrolled members.

15 (3) The governor may enter into a cigarette tax agreement with the
16 Yakama Nation, a federally recognized Indian tribe located within the
17 geographical boundaries of the state of Washington, concerning the sale
18 of cigarettes, subject to the provisions of this section. The governor
19 may delegate the authority to negotiate the agreement to the department
20 of revenue.

21 (4) The agreement must be for a renewable period of no more than
22 eight years.

23 (5) All cigarettes possessed or sold by tribal retailers must be
24 subject to the agreement, except cigarettes manufactured within the
25 jurisdiction of the Yakama Nation by the Yakama Nation or its enrolled
26 members.

27 (6) The agreement must allow the Yakama Nation to exempt its
28 enrolled members from the tribal cigarette tax imposed under subsection
29 (7) of this section.

30 (a) Sales of cigarettes exempt under this subsection must be
31 subject to the requirements of subsection (9) of this section.

32 (b) The exemption must be provided only at the point of sale and
33 reimbursement provided to the tribal retailer by the Yakama Nation.

34 (7) The agreement must require the Yakama Nation to impose and
35 maintain in effect on the sale of cigarettes by tribal retailers a tax
36 as provided in this subsection.

37 (a) The rate of tax will be expressed in dollars and cents and must

1 be the percentage of tax imposed by the state under chapter 82.24 RCW
2 for the period of the agreement as stated here:

3 (i) Eighty percent during the first six years;

4 (ii) Eighty-four percent during the seventh year; and

5 (iii) Eighty-seven and six-tenths percent during the eighth year.

6 (b) The tax must be imposed on each carton, or portion of a carton,
7 of cigarettes, with ten packs per carton and twenty cigarettes per pack
8 being the industry standard, and prorated for cartons and packs that
9 are not standard.

10 (c) The tax must be in lieu of the combined state and local sales
11 and use taxes, and state cigarette taxes, and, as provided in sections
12 2 through 4 of this act, the taxes imposed by chapters 82.08, 82.12,
13 and 82.24 RCW do not apply during the term of the agreement on any
14 transaction governed by the agreement.

15 (d) Throughout the term of the agreement and any renewal of the
16 agreement, the tax must increase or decrease in correspondence with the
17 state cigarette tax by applying the percentages in (a) of this
18 subsection.

19 (8) The revenue generated by the tax imposed under subsection (7)
20 of this section must be used by the Yakama Nation for essential
21 government services, as that term is defined in RCW 43.06.455.

22 (9) All cigarettes possessed or sold by a tribal retailer must bear
23 a tribal cigarette tax stamp as provided in this subsection.

24 (a) The Yakama Nation may act as its own stamp vendor, subject to
25 meeting reasonable requirements for internal controls.

26 (b) The stamps must have serial numbers or other discrete
27 identification that allow stamps to be traced to their source.

28 (10) The price paid by the tribal retailer to the wholesaler must
29 not be less than the total of the price paid by the Yakama Nation or
30 other wholesaler and the tax imposed under subsection (7) of this
31 section.

32 (11) The retail selling price of cigarettes sold by tribal
33 retailers must not be less than the price paid by them under subsection
34 (10) of this section.

35 (12) Tribal retailers must not sell or give, or permit to be sold
36 or given, cigarettes to any person under the age of eighteen years.

37 (13) The authority and the individual and joint responsibility of
38 the Yakama Nation, the department of revenue, and the liquor control

1 board for administration and enforcement must be specified in the
2 agreement including, but not limited to, requirements regarding
3 transport of cigarettes, keeping of records, reporting, notice,
4 inspection, audit, and mutual exchange of information.

5 (a) Requirements must provide for sharing of information regarding
6 transport of cigarettes in the state of Washington by the Yakama Nation
7 or its enrolled members, reporting of information on sales to customers
8 located outside the jurisdiction of the Yakama Nation, and authority
9 for unannounced inspection by the state of tribal retailers to verify
10 compliance with stamping and pricing provisions.

11 (b) Information received by the state or open to state review under
12 the terms of the agreement is subject to RCW 82.32.330.

13 (14) The agreement must provide for resolution of disputes using a
14 nonjudicial process, such as mediation, and establish a dispute
15 resolution protocol that includes the following elements:

16 (a) A procedure for notifying the other party that a violation has
17 occurred;

18 (b) A procedure for establishing whether a violation has in fact
19 occurred;

20 (c) An opportunity to correct the violation;

21 (d) A procedure for terminating the agreement in the event of a
22 failure to correct the violation, such termination subject to mediation
23 should the terms of the agreement so allow; and

24 (e) Termination of the agreement for cause.

25 (15) The agreement may not include any provisions that impact the
26 state's share of the master settlement agreement or concern
27 redistribution of the state's proceeds under the master settlement
28 agreement.

29 (16) The department of revenue may share with the Yakama Nation tax
30 information under RCW 82.32.330 that is necessary for the Yakama
31 Nation's compliance with the agreement.

32 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.24 RCW
33 to read as follows:

34 The taxes imposed by this chapter do not apply to the sale, use,
35 consumption, handling, possession, or distribution of cigarettes by a
36 tribal retailer during the effective period of a cigarette tax
37 agreement under section 1 of this act.

1 **Sec. 3.** RCW 82.08.0316 and 2005 c 11 s 3 are each amended to read
2 as follows:

3 The tax levied by RCW 82.08.020 does not apply to sales of
4 cigarettes by an Indian retailer during the effective period of a
5 cigarette tax contract subject to RCW 43.06.455 or a cigarette tax
6 agreement under RCW 43.06.465 or section 1 of this act.

7 **Sec. 4.** RCW 82.12.0316 and 2005 c 11 s 4 are each amended to read
8 as follows:

9 The provisions of this chapter shall not apply in respect to the
10 use of cigarettes sold by an Indian retailer during the effective
11 period of a cigarette tax contract subject to RCW 43.06.455 or a
12 cigarette tax agreement under RCW 43.06.465 or section 1 of this act.

13 NEW SECTION. **Sec. 5.** In December 2007 it was announced that a
14 cigarette tax agreement between the state of Washington and the Yakama
15 Nation had been reached in principle. The legislature must provide
16 authorization to the governor to sign such an agreement. Because the
17 parties have reached an agreement in principle, time for implementation
18 is of the essence.

19 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 immediately.

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