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**SENATE BILL 6601**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators Rolfes, Hunt, Lias, Rivers, Saldaña, Stanford, and Wilson, C.; by request of Department of Revenue

Read first time 01/24/20. Referred to Committee on Ways & Means.

1 AN ACT Relating to authorizing the governor to enter into  
2 compacts with Indian tribes addressing certain state retail sales  
3 tax, certain state use tax, and certain state business and occupation  
4 tax revenues, as specified in a memorandum of understanding entered  
5 into by the state, Tulalip tribes, and Snohomish county, in January  
6 2020, and including other terms necessary for the department of  
7 revenue to administer any such compact; adding new sections to  
8 chapter 43.06 RCW; and creating a new section.

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

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

12 (1) The legislature intends to further the government-to-  
13 government relationship between the state of Washington and federally  
14 recognized Indian tribes in the state of Washington by authorizing  
15 the governor to enter into compacts concerning the state's retail  
16 sales, use, and business and occupation taxes on certain activities.

17 (2) The legislature finds that these compacts will benefit all  
18 Washingtonians by providing a means to promote economic development  
19 and providing needed revenues for tribal governments and Indian  
20 persons.

1 (3) The state and the tribes have a long-standing history of  
2 working together to develop cooperative agreements on taxation for  
3 cigarettes, fuel, timber, and marijuana. It is the legislature's  
4 intent, given the positive experiences from the nearly two decades of  
5 cooperation, to build on these successes and provide the governor  
6 with the authority to address state sales, use, and business and  
7 occupation taxes on certain activities.

8 (4) In addition, it is the legislature's intent that these  
9 compacts will have no impact on the taxation of any transaction that  
10 is the subject of other compacts, contracts, or agreements authorized  
11 elsewhere in this chapter.

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

14 (1)(a) The governor may enter into compacts with tribes  
15 concerning revenue collected by the state from the state sales tax,  
16 state use tax, and certain state business and occupation taxes, to  
17 the extent these taxes are imposed on qualified transactions. All  
18 compacts must meet the requirements under this section.

19 (b)(i) Except with regard to the terms of a compacting tribe's  
20 qualified capital investment, the governor may delegate the authority  
21 to negotiate compacts to the department.

22 (ii) In negotiating the terms of a compacting tribe's qualified  
23 capital investment, the governor must be satisfied that the  
24 compacting tribe's qualified capital investment is substantially  
25 proportionate to the compacting tribe's estimated tax revenue under  
26 the compact as compared to qualified capital investments contained in  
27 other compacts. For purposes of estimating a compacting tribe's tax  
28 revenue under a compact, tax revenue from new development is not  
29 included in the estimate.

30 (2) Any compact authorized under this section must include  
31 provisions that allow the compacting tribe to receive, beginning on  
32 the compact's implementation date, the following amounts of tax  
33 collected on qualified transactions and received by the state:

34 (a) One hundred percent of certain state business and occupation  
35 tax revenues;

36 (b) The first five hundred thousand dollars of the total amount  
37 of state sales tax and state use tax collected during each calendar  
38 year from taxpayers, regardless of whether the taxpayers meet the  
39 requirements of a new development. If this five hundred thousand

1 dollar cap is reached during a calendar year, any amounts collected  
2 from taxpayers that do not meet the requirements of a new development  
3 will be deemed to have been collected and applied to the cap first,  
4 but only in the calendar month in which the cap is reached;

5 (c) The following amounts of state sales tax and state use tax  
6 collected during each calendar year from taxpayers meeting the  
7 requirements of a new development:

8 (i) Twenty-five percent of any amount over the cap described in  
9 (b) of this subsection (2); or

10 (ii) Sixty percent of any amount over the cap described in (b) of  
11 this subsection (2), if the compacting tribe has completed a  
12 qualified capital investment; and

13 (d) Beginning January 1st of the fourth calendar year following  
14 the signing of the compact, the following amounts of state sales tax  
15 and state use tax collected during each calendar year from taxpayers  
16 that do not meet the requirements of a new development:

17 (i) Twenty-five percent of any amount over the cap described in  
18 (b) of this subsection (2); or

19 (ii) Fifty percent of any amount over the cap described in (b) of  
20 this subsection (2), if the compacting tribe has completed a  
21 qualified capital investment.

22 (3) The parties to any compact must agree to include the  
23 following provisions in the compact:

24 (a) A process for determining when any qualified capital  
25 investment is complete;

26 (b) A process to verify compliance with the terms of the compact;

27 (c) A delineation of the respective roles and responsibilities of  
28 the compacting tribe and the department;

29 (d) A process to resolve disputes, including the use of a  
30 nonjudicial process;

31 (e) An agreement that the compact resolves all current and future  
32 disputes between the parties while the compact is in effect, to the  
33 extent such disputes relate to revenues from the following:

34 (i) Transactions between nonmembers, where such transactions are  
35 subject to any taxes in effect or authorized as of the effective date  
36 of this section, except for any business and occupation tax under  
37 chapter 82.04 RCW other than certain state business and occupation  
38 taxes;

1 (ii) State and local use tax imposed on nonmembers and sourced to  
2 a location within the Indian country of the compacting tribe pursuant  
3 to RCW 82.32.730; and

4 (iii) Personal property taxes imposed on nonmembers;

5 (f) An agreement that in the event of a change in state tax laws  
6 that affects the negotiated terms of a compact, or a change in the  
7 department's interpretation regarding the property taxation of  
8 nonmember-owned improvements on Indian trust land:

9 (i) The parties must discuss in good faith any changes in the  
10 compact or this section that may be appropriate to preserve the  
11 intended benefits of the compact; and

12 (ii) A compacting tribe may terminate the compact if the good  
13 faith discussions do not result in a mutually satisfactory  
14 resolution;

15 (g) (i) An agreement that the department must perform all  
16 functions related to the administration and collection of the taxes  
17 collected on qualified transactions. The department may not impose  
18 any charge on a compacting tribe for these services. However, the  
19 department may seek legislative appropriations to cover its  
20 administrative costs associated with compact negotiations and  
21 administration.

22 (ii) As part of the department's authority under (g) (i) of this  
23 subsection (3), the department will apply the provisions contained in  
24 Title 82 RCW insofar as they are applicable to the taxes at issue in  
25 any compact authorized under this section;

26 (h) An agreement that the compacting tribe will provide  
27 information the department determines is necessary to fulfill the  
28 department's tax administration obligations under the compact,  
29 including information related to parcel ownership and business  
30 operations in the compact covered area; and

31 (i) Terms specifying the duration of the compact, and any related  
32 terms.

33 (4) (a) A compacting tribe may examine department records related  
34 to the payment of tax amounts to the compacting tribe. The compacting  
35 tribe must agree to keep information obtained from the department  
36 pursuant to a compact confidential to the same extent as the  
37 department is required to keep that information confidential pursuant  
38 to RCW 82.32.330.

1 (b) Information received by the state or open to state review  
2 under the terms of a compact is deemed tax information under RCW  
3 82.32.330.

4 (5) The amounts in subsection (2) of this section must be paid to  
5 the compacting tribe on a monthly basis within sixty days after the  
6 department receives the tax amounts.

7 (6) All refunds and credits the department issues to taxpayers of  
8 amounts previously paid to the compacting tribe under the terms of a  
9 compact will be charged to the compacting tribe.

10 (7) Funds dedicated under RCW 82.08.020 and 82.12.0201 to the  
11 performance audits of government account under RCW 43.09.475 are not  
12 reduced by any payment to the compacting tribe.

13 (8) The department may adopt rules as may be necessary to  
14 administer the provisions of this section.

15 (9) This section does not affect the depositing of state sales  
16 tax, state use tax, and certain state business and occupation tax  
17 into the general fund as required by RCW 82.32.380.

18 (10) The definitions in this subsection apply throughout this  
19 section unless the context clearly requires otherwise.

20 (a) "Certain state business and occupation tax" means the tax  
21 imposed in chapter 82.04 RCW with respect to any qualified  
22 transaction as defined in (m) (i) of this subsection (10).

23 (b) "Compact" means a compact authorized by this section.

24 (c) (i) "Compact covered area" means: (A) Trust land, whether  
25 located within or outside of the boundaries of the compacting tribe's  
26 reservation; and (B) fee land within the boundaries of the compacting  
27 tribe's reservation and under tribal or tribal-member ownership.

28 (ii) For purposes of this subsection (10) (c), "tribal or tribal-  
29 member ownership" means fee land with a greater than fifty percent  
30 ownership interest being held by any combination of the compacting  
31 tribe or its tribal members.

32 (iii) "Compact covered area" does not include any land that, as  
33 of the effective date of this section, was fee land in which one or  
34 more nonmembers held a majority ownership, but only with respect to:

35 (A) A business that was in operation on that land as of the  
36 effective date of this section and continues to be in operation on  
37 that same land; or

38 (B) A substantially similar successor business to a business  
39 described in (c) (iii) (A) of this subsection (10) is in operation on  
40 that same land.

1 (d) "Compacting tribe" means, with respect to any specific  
2 compact, the tribe that is a party to the compact.

3 (e) "Department" means the department of revenue.

4 (f) "Implementation date" means the date, negotiated by the  
5 parties to the compact, on which the department is required to begin  
6 administering the terms of such compact.

7 (g) "Indian country" has the same meaning as provided in 18  
8 U.S.C. Sec. 1151, as existing on the effective date of this section.

9 (h) "Indian reservation" means all lands, notwithstanding the  
10 issuance of any patent, within the boundaries of areas set aside by  
11 the United States for the use and occupancy of Indian tribes by  
12 treaty, law, or executive order, or otherwise designated or described  
13 "reservation" by any federal act, and that are currently recognized  
14 as "Indian reservations" by the United States department of the  
15 interior. The term applies to all land within the boundaries of the  
16 Indian reservation, regardless of whether the land is owned by  
17 nonmembers, tribal members, or an Indian tribe.

18 (i) "Indian tribe" or "tribe" means a federally recognized Indian  
19 tribe located at least partially within the geographical boundaries  
20 of the state of Washington and includes its enterprises,  
21 subsidiaries, and constituent parts.

22 (j) "New development" means, with respect to any specific compact  
23 and the compact covered area associated with that compact, a person  
24 that:

25 (i) Is subject to state sales tax or state use tax collection or  
26 payment obligations as a result of business activity within the  
27 compact covered area;

28 (ii) Conducts business operations in a structure within the  
29 compact covered area, and construction of that structure began on or  
30 after the date the compact is signed by the parties, but not  
31 including any such construction involving the renovation of or  
32 addition to a structure existing before the date the compact is  
33 signed by the parties; and

34 (iii) Has not previously been subject to state sales tax or state  
35 use tax collection or payment obligations as a result of that same  
36 business activity operated within a different structure located  
37 elsewhere within the compact covered area.

38 (k) "Nonmember" means, with respect to any specific compact:

39 (i) A natural person who is not a tribal member of the compacting  
40 tribe;

1 (ii) A tribe that is not the compacting tribe; or  
2 (iii) Any entity where not more than fifty percent of the  
3 ownership interests are held by any combination of the compacting  
4 tribe or any tribal members of the compacting tribe.

5 (l) "Qualified capital investment" means a contribution to the  
6 development and construction of a project agreed to by the governor  
7 and the compacting tribe.

8 (m) "Qualified transaction" means:

9 (i) A retail sale subject to state sales tax, involving a seller  
10 and purchaser who are both nonmembers, and that is sourced to a  
11 location within the compact covered area pursuant to RCW 82.32.730;  
12 or

13 (ii) Any use by a nonmember upon which the state use tax is  
14 imposed and sourced to a location within the compact covered area  
15 pursuant to RCW 82.32.730.

16 (n) "State sales tax" means the tax imposed in RCW 82.08.020(1).

17 (o) "State use tax" means the tax imposed in RCW 82.12.020 at the  
18 rate in RCW 82.08.020(1).

19 (p) "Tribal member" means an enrolled member of a federally  
20 recognized tribe, or in the context of a marital community, the  
21 spouse of a tribal member of the compacting tribe.

22 NEW SECTION. **Sec. 3.** Nothing in this act in any way reduces or  
23 affects local taxes authorized under chapter 82.14 RCW, Title 35, 36,  
24 or 84 RCW, or any other provision of state law authorizing a local  
25 tax.

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