

SENATE BILL REPORT

ESHB 2272

As of April 17, 1997

Title: An act relating to transferring the enforcement of existing cigarette and tobacco taxes from the department of revenue to the liquor control board.

Brief Description: Transferring enforcement of cigarette and tobacco taxes to the liquor control board.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Huff, Clements, Alexander, Wensman, Sehlin and Mitchell).

Brief History:

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Background: The state of Washington imposes a tax on the sale, use, consumption, handling, possession, and distribution of cigarettes and tobacco products. Cigarettes are taxed at the rate of 82 1/2 cents per pack. Tobacco products are taxed at a rate of 74.9 percent of the wholesale price. In addition to the cigarette and tobacco tax, sales tax and business and occupation tax are also applicable to the sale of cigarettes and tobacco products.

According to an estimate from the Department of Revenue, the state will lose \$109 million in tax revenue in fiscal year 1997 from the sale of untaxed cigarettes. Revenue losses occur from casual smuggling from other lower-tax states and purchase of cigarettes from tax-free outlets such as military post exchanges and Indian smoke shops. Studies indicate that the integrity of state cigarette tax revenues depends on the state enforcement actions.

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 a tribal outlet to nontribal members are subject to the tax. The United State Supreme Court has affirmed that the state may impose a cigarette tax on sales made within reservations to nontribal members and that the state may impose minimal burdens on the tribal sellers to assist in collecting the tax. Those burdens have included affixing an appropriate stamp to individual cigarette packages and keeping records that distinguish between exempt sales and taxable sales. The ability of the state to take enforcement action on and off Indian reservations has been the subject of several lawsuits yet the extent of enforcement authority the state may exercise is still uncertain.

In 1995, the Legislature established the cigarette tax and revenue loss advisory committee to study and analyze lost cigarette tax revenues from 1992 to 1995. The study included an analysis of lost cigarette tax revenues and an analysis of revenue losses attributable to cigarette tax increases. The study also addressed the feasibility of reducing lost revenue through negotiated agreements between state and federally-recognized Indian tribes in

Washington. The committee did not reach consensus. The majority recommendation supported a cooperative approach that included negotiated agreements with the tribes. The minority recommendation opposed any agreements with the tribes and suggested more scrutiny should be given to enforcing the law on the collection of tax on purchases of cigarettes by nontribal consumers.

The Department of Revenue is charged with enforcing the cigarette and tobacco products tax laws and administering and collecting the taxes. Department employees do not have general police powers and must appoint as agents local law enforcement officers or State Patrol officers for certain enforcement activity such as search and seizure activity.

The Liquor Control Board enforces the laws relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, including applicable taxes and licenses. In carrying out its duties, the board employs liquor enforcement officers who have general police powers with respect to enforcing the state's liquor laws.

Summary of Amended Bill: Primary enforcement authority for cigarette and tobacco tax laws is transferred from the Department of Revenue to the Liquor Control Board. It is the intent of the Legislature that the cigarette and tobacco tax laws of the state of Washington be actively enforced. The Department of Revenue will continue to administer and collect cigarette and tobacco taxes. The Department of Revenue must appoint enforcement officers of the Liquor Control Board as the department's authorized agents to allow both the department and the board to engage in certain enforcement activities. These officers are not considered employees of the Department of Revenue. The Liquor Control Board is given authority to adopt rules necessary to enforce cigarette and tobacco tax laws.

A schedule is established requiring the Liquor Control Board to reduce lost revenue due to cigarette and tobacco tax evasion by 50 percent within five years.

The Governor is given authority to execute cooperative agreements with federally recognized Indian tribes or nations concerning the sale of cigarettes and tobacco. The Liquor Control Board is required to negotiate the cooperative agreements. The rate of tax imposed on tobacco and cigarette products under the cooperative agreement must be at the same rate as currently applied to these products, but the amount of taxes that may be retained by the Indian tribe or nation may be negotiated.

Fifty percent of the cigarette and tobacco tax revenue received by the state through cooperative agreements with Indian tribes or nations shall be deposited into the Violence Reductions and Drug Enforcement Account and fifty percent shall be deposited into the Health Services Account. The sales and use tax, business and occupations tax, cigarette tax, and tobacco products tax do not apply to sale, use, consumption, handling, possession, or distribution of cigarettes or tobacco by Indian nations or tribes during the effective period of the cooperative agreements.

Amended Bill Compared to Original: Provisions allowing for the Governor to execute cooperative agreements with federally recognized Indian tribes or nations concerning the sale of cigarettes and tobacco products are added. Other statutory provisions which create the framework for the cooperative agreements are added.

Appropriation: None.

Fiscal Note: Available.

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