

# SENATE BILL REPORT

## ESHB 3128

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As Reported By Senate Committee On:  
Commerce, Trade, Housing & Financial Institutions, March 31, 2000

**Title:** An act relating to cooperative agreements between the governor in regard to taxation of cigarettes sold within Indian country.

**Brief Description:** Authorizing the governor to enter into cooperative agreements concerning the sales of cigarettes.

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Thomas, Dunshee and Santos; by request of Department of Revenue).

**Brief History:**

**Committee Activity:** Commerce, Trade, Housing & Financial Institutions: 3/31/2000 [DP].

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### SENATE COMMITTEE ON COMMERCE, TRADE, HOUSING & FINANCIAL INSTITUTIONS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Shin, Vice Chair; Gardner, Rasmussen, T. Sheldon and Winsley.

**Staff:** Catherine Mele (786-7470)

**Background:** The cigarette tax is due from the first taxable person who sells, uses, consumes, handles, possesses or distributes cigarettes in this state. The seller (wholesaler or retailer) pays the tax by purchasing cigarette tax stamps which are placed on cigarette packs. The seller (wholesaler or retailer) receives compensation for placing the cigarette stamps on the packs at the rate of \$4 per 1,000 stamps. In general, funds from the cigarette tax are used for the general fund, water quality account, youth violence prevention and drug enforcement account, salmon recovery account, and health services account. The rate for the cigarette tax is 82.5 cents per pack of 20 cigarettes.

The state also imposes retail sales and use taxes on cigarettes. Sales tax applies when items are purchased at retail in the state. Sales tax is paid by the purchaser and collected by the seller. 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. Use tax is imposed on the use of an item in this state, when the acquisition of the item has not been subject to sales tax. Use tax applies to items purchased from sellers who do not collect sales tax, items acquired from out of state, and items produced by the person using the item. The tax rate is equal to the sales tax rate multiplied by the value of the property used.

Under federal law, state taxes do 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 state taxes. Enforcement of state 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 regarding the retail sale of cigarettes with the Squaxin Island Tribe, Nisqually Tribe, Tulalip Tribe, and Muckleshoot Tribe. Cooperative agreements address retail sales in which Indian retailers make delivery and physical transfer of cigarettes from the seller to the buyer within Indian lands. Cooperative agreements must prevent sales of cigarettes to persons under the age of 18. Cooperative agreements provide for a tribal cigarette tax when an Indian retailer sells cigarettes on Indian lands. This tribal tax replaces the state cigarette tax, and the state sales and use taxes. Cooperative agreements require the use of a tribal cigarette stamp, and require Indian retailers to purchase cigarettes only from approved sources. The tribes retain any tax revenue from the tribal cigarette tax, and must use it for essential government services. Cooperative agreements must contain provisions for compliance, and may allow for submission of disputes to the courts.

Each cooperative agreement must provide that the tribal cigarette tax be 100 percent of the state cigarette and state sales and use tax within three years of the enactment of the tribal cigarette tax. During the three-year phase in period, the tribal cigarette tax must not be less than 80 percent of the state taxes. The phase in period becomes shorter if Indian cigarette sales increase by 10 percent more than the cigarette sales were in the six months preceding the cooperative agreement. New Indian retailers must pay the full tribal tax rather than the lower tax during the phase in period.

On July 1, 2001, the wholesalers' and retailers' compensation for affixing cigarette stamps on packs of cigarettes is increased from \$4 per 1,000 stamps to \$6 per 1,000 stamps.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** This bill is about developing friendship and trust between the state and the tribes. The proposal acknowledges the government-to-government relationship between the state and Indian tribes. The bill will mitigate the tax difference, promote public use of cigarette tax revenue, and provide a means to end a long-standing cigarette tax compliance problem. This bill is important because it will help the tribes establish a tax base for essential government services and create infrastructure for economic development. This proposal has been through much compromise and negotiation for the last several years. It opens the door for other tribes to enter into agreements with the state of Washington. There is legislative oversight over future agreements with other tribes since these agreements will need legislation. The state benefits from the bill by not spending precious state resources on law enforcement.

**Testimony Against:** This legislation creates a precedent for future agreements with other tribes. This is what happened with the gambling compacts because there has not been consideration of each tribe's unique circumstances. Some tribes are concerned with this model agreement because it determines the outcome for future negotiations. It leaves little flexibility for other tribes to negotiate something different in the future. This undermines the government-to-government relationship between the state of Washington and other tribes.

**Testified:** John McCoy, Tulalip (pro); David Johns, Squaxin Tribe, McClean Distributors (pro); Bob Gee, WA Food Industry, WA Retail Assn. (pro); Amy Brackenbury, WA Food Industry (pro); Bruce Tower, Crowell Law Office, Shoalwater Bay Tribe, Spokane Tribe (con); Fred Kiga, Revenue (pro); T.K. Bentler, WA Assn. of Neighborhood Stores (pro); Richard A. Wells, Nisqually Indian Tribe (pro).