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**SUBSTITUTE HOUSE BILL 3128**

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**State of Washington**

**56th Legislature**

**2000 Regular Session**

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

Read first time 02/28/2000. Referred to Committee on .

1 AN ACT Relating to cooperative agreements between the governor in  
2 regard to taxation of cigarettes sold within Indian country; adding new  
3 sections to chapter 43.06 RCW; adding a new section to chapter 82.08  
4 RCW; adding a new section to chapter 82.12 RCW; adding a new section to  
5 chapter 82.24 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature intends to further the  
8 government-to-government relationship between the state of Washington  
9 and Indians in the state of Washington by authorizing the governor to  
10 enter into cooperative agreements concerning the sale of cigarettes.  
11 The legislature finds that these agreements will provide a means to  
12 promote economic development, provide needed revenues for tribal  
13 governments and Indian persons, and enhance enforcement of the state's  
14 cigarette tax law, ultimately saving the state money and reducing  
15 conflict.

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

1 (1) The governor may enter into cooperative agreements concerning  
2 the sale of cigarettes. Except for cooperative agreements under  
3 section 3 of this act, the rates and revenue sharing terms of a  
4 cooperative agreement are not effective unless authorized in a bill  
5 enacted by the legislature.

6 (2) Cooperative agreements shall be in regard to retail sales in  
7 which Indian retailers make delivery and physical transfer of  
8 possession of the cigarettes from the seller to the buyer within the  
9 Indian lands. In addition, cooperative agreements shall provide that  
10 retailers shall not sell or give, or permit to be sold or given,  
11 cigarettes to any person under the age of eighteen years.

12 (3) A cooperative agreement shall provide for a tribal cigarette  
13 tax in lieu of all state cigarette taxes and state sales and use taxes  
14 on sales of cigarettes on Indian lands by Indian retailers. The tribe  
15 may allow an exemption for sales to tribal members.

16 (4) Cooperative agreements shall provide that all cigarettes  
17 possessed or sold by a retailer shall bear a tribal cigarette tax stamp  
18 obtained by wholesalers from a bank or other suitable stamp vendor and  
19 applied to the cigarettes.

20 (5) Cooperative agreements shall provide that retailers shall  
21 purchase cigarettes only from:

22 (a) Wholesalers or manufacturers licensed to do business in the  
23 state of Washington;

24 (b) Out-of-state wholesalers or manufacturers who, although not  
25 licensed to do business in the state of Washington, agree to comply  
26 with the terms of the cooperative agreement, are certified to the state  
27 as having so agreed, and who do in fact so comply. However, the state  
28 may in its sole discretion exercise its administrative and enforcement  
29 powers over such wholesalers or manufacturers to the extent permitted  
30 by law;

31 (c) A tribal wholesaler that purchases only from a wholesaler or  
32 manufacturer described in (a), (b), or (d) of this subsection; and

33 (d) A tribal manufacturer.

34 (6) Cooperative agreements shall be for renewable terms of no more  
35 than eight years.

36 (7) Cooperative agreements shall include provisions for compliance.

37 (8) Tax revenue retained by a tribe must be used for essential  
38 government services.

1 (9) Cooperative agreements may provide for the submission of  
2 disputes regarding the interpretation and administration of their  
3 provisions for judicial resolution, and, if such submissions are  
4 agreed, shall include provision for a limited waiver of sovereign  
5 immunity and consent by the state for the resolution conditioned upon  
6 a similar limited waiver of sovereign immunity by the other parties to  
7 the agreement.

8 (10) The governor may delegate the power to negotiate cooperative  
9 agreements to the department of revenue.

10 (11) For purposes of this section and sections 3 through 6 of this  
11 act:

12 (a) "Essential government services" means services such as tribal  
13 administration, public facilities, fire, police, public health,  
14 education, job services, sewer, water, environmental and land use,  
15 transportation, utility services, and economic development excluding  
16 retail cigarette-related development;

17 (b) "Indian lands" means all land within the exterior boundaries of  
18 a reservation and land held in trust for a tribe or tribal member by  
19 the United States;

20 (c) "Indian retailer" or "retailer" means a business wholly owned  
21 and operated by an Indian tribe or a business wholly owned and operated  
22 by a tribal member and licensed by the tribe; and

23 (d) "Indian tribe" or "tribe" means a federally recognized Indian  
24 tribe located within the geographical boundaries of the state of  
25 Washington.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.06 RCW  
27 to read as follows:

28 (1) The governor is authorized to enter into cooperative agreements  
29 with the Squaxin Island Tribe, Nisqually Tribe, Tulalip Tribes, and  
30 Muckleshoot Indian Tribe. Each agreement adopted under this section  
31 shall provide that the tribal cigarette tax rate be one hundred percent  
32 of the state cigarette and state sales and use taxes within three years  
33 of enacting the tribal tax and shall be set no lower than eighty  
34 percent of the state cigarette and state sales and use taxes during the  
35 three-year phase-in period. The tribal cigarette tax is in lieu of the  
36 state cigarette and sales and use taxes, as provided in section 2(3) of  
37 this act.

1 (2) A cooperative agreement under this section is subject to  
2 section 2 of this act.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW  
4 to read as follows:

5 The tax levied by RCW 82.08.020 does not apply to sales of  
6 cigarettes by an Indian retailer during the effective period of a  
7 cooperative agreement subject to section 2 of this act.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.12 RCW  
9 to read as follows:

10 The provisions of this chapter shall not apply in respect to the  
11 use of cigarettes sold by an Indian retailer during the effective  
12 period of a cooperative agreement subject to section 2 of this act.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.24 RCW  
14 to read as follows:

15 This chapter does not apply to the sale, use, consumption,  
16 handling, possession, or distribution of cigarettes by an Indian  
17 retailer during the effective period of a cooperative agreement subject  
18 to section 2 of this act.

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