

HOUSE BILL REPORT

HB 1201

As Reported by House Committee On:

Finance

Title: An act relating to cooperative agreements concerning the taxation of cigarettes sold on Indian lands.

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

Sponsors: Representatives Dunshee, Barlean, Cairnes, Santos, Morris and Kessler; by request of Department of Revenue.

Brief History:

Committee Activity:

Finance: 1/30/01, 2/6/01 [DP].

Brief Summary of Bill

- Allows the Governor to make cooperative agreements with Indian tribes concerning sales of cigarettes.
- Requires tribal cigarette tax rate equal to 100 percent of state cigarette and sales tax after phase-in period.
- Exempts cigarette sales on Indian land from state cigarette and sales and use taxes during the time a cooperative agreement exists.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 8 members: Representatives Cairnes, Republican Co-Chair; Morris, Democratic Co-Chair; Berkey, Democratic Vice Chair; Roach, Republican Vice Chair; Carrell, Santos, Van Luven and Veloria.

Minority Report: Without recommendation. Signed by 2 members: Representatives Conway and Pennington.

Staff: Rick Peterson (786-7150).

Background:

Cigarette taxes are added directly to the price of these goods before the sales tax is applied. The rate for the cigarette tax is 82.5 cents per pack of 20 cigarettes. Retail sales and use taxes are also imposed on sales of 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. 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 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 equal to the sales tax rate multiplied by the value of the property used.

Revenue from the first 23 cents of the cigarette tax goes to the general fund. The next 8 cents are dedicated to water quality improvement programs through June 30, 2021, and to the general fund thereafter. The next 41 cents go to the Health Services Account. The remaining 10.5 cents are dedicated to youth violence prevention and drug enforcement.

The cigarette tax is due from the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state. The taxpayer pays the tax by purchasing cigarette tax stamps which are placed on cigarette packs. The taxpayer is allowed compensation for placing the cigarette stamps on the packs at the rate of \$4 per 1,000 stamps.

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 tribal cigarette retailers to non-tribal members are subject to the tax. Enforcement of state cigarette 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 concerning the sales of cigarettes with federally recognized Indian tribes located within Washington. Cooperative agreements shall be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the cooperative agreement's term are subject to a tribal cigarette tax and are exempt from cigarette, and sales and use taxes.

In general, cooperative agreements shall:

- (1) Limit tribal retailing to sales of cigarettes made within the boundaries of the reservation and land held in trust for a tribe or tribal member by the United States;

- (2) Prevent sales to any person under the age of 18 years;
- (3) Require tribal cigarette tax be used for essential government services;
- (4) Require the use of tribal cigarette tax stamps;
- (5) Include provisions for compliance;
- (6) Require that tribal retailers purchase cigarettes only from approved sources; and
- (7) Allow submission of disputes regarding the interpretation and administration of the cooperative agreement's provisions for judicial resolution.

The Governor is authorized to enter into cooperative agreements with the Squaxin Island Tribe, Nisqually Tribe, Tulalip Tribes, the Mukleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, and the Sauk-Suiattle Tribe with a tax rate of 100 percent of the state cigarette and sales tax rate. The 100 percent rate may be phased in over three years but the rate can be no lower than 80 percent of state cigarette and sales tax rate. The phase-in period is shortened if Indian cigarette sales increase by 10 percent. New Indian retail operations must pay the full tribal tax rate rather than the lower tax during the phase-in period.

The tax rates and revenue sharing terms of any other cooperative agreement must be authorized in a bill enacted by the Legislature.

The compensation allowed for placing cigarette stamps on packs of cigarettes is increased from \$4 per 1,000 stamps to \$6 per 1,000 stamps starting July 1, 2002.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill is about government to government relationships. It is an agreement with our neighbors. The bill is designed for tribes that operate tribal stores. It is not a precedent for agreements with tribes that have a different approach to retailing cigarettes. The bill does not solve the problem for all tribes. The tribes with individual cigarette businesses need to bring their compact language forward. The bill will give the Squaxin Tribe a stable revenue source to fund government services such as education, health services, roads, and economic development. The bill is a significant compromise

between the retailers and the tribes.

Testimony Against: The bill requires all compacts to contain language that says the tribal tax revenue cannot be used for subsidization of cigarette and food retailers. This language might prevent the tribe from funding general economic development activity. Also, the prohibition against food retailing doesn't seem connected to cigarette retailing. The Puyallup Tribe has an entrepreneurial approach to cigarette retailing and wants specific language in the bill that limits the bill's application to tribes with tribal cigarette operations. Tribes in urban areas or with licensed businesses need a different model.

Testified: (In support) Representative Hans Dunshee, prime sponsor; Fred Kiga, Department of Revenue; Dave Johns, Squaxin Island Tribe; Kelly Croman, Squaxin Island Tribe; Jan Gee, Washington Retail Association; John McCoy, Tulalip Tribes; Michael M. Moran, Muckleshoot Indian Tribe; Mike Lawrence, Harbor Wholesale Grocery; and T.K. Bentler, Washington Association of Neighborhood Stores.

(Opposed) Kari Frank, Puyallup Tribe.