

# SENATE BILL REPORT

## SB 5794

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As Passed Senate, March 10, 2005

**Title:** An act relating to authorizing a cigarette taxation agreement between the state of Washington and the Puyallup Indian Tribe.

**Brief Description:** Authorizing the governor to enter into a cigarette tax agreement with the Puyallup Tribe of Indians.

**Sponsors:** Senators Prentice, Swecker, Regala, Franklin, Kohl-Welles, McAuliffe and Rasmussen; by request of Department of Revenue.

**Brief History:**

**Committee Activity:** Ways & Means: 2/15/05, 2/16/05 [DP].

Passed Senate: 3/10/05, 47-2.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Zarelli, Ranking Minority Member; Fairley, Kohl-Welles, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller and Thibaudeau.

**Staff:** Terry Wilson (786-7433)

**Background:** The state imposes a tax on the sale, use, consumption, handling, possession, or distribution of cigarettes. Cigarette taxes are added directly to the price of these goods before the sales tax is applied. The rate for the cigarette tax is 142.5 cents per pack of twenty cigarettes which is equal to \$14.25 per carton. Retail sales and use taxes are also imposed on sales of cigarettes. 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 8.9 percent, depending on the location. State and local sales and use taxes on an average carton of cigarettes are about \$3.00.

Under federal law, the state cigarette and state and local sales and use 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 the taxes.

In 2001, the Legislature authorized the Governor to enter into contracts regarding the taxation of the sale of cigarettes sold on Indian lands. Under a cigarette tax contract, the sales must be subject to a tribal cigarette tax equal to 100 percent of the state cigarette and state and local sales and use taxes and are exempt from these state and local taxes. The rate may be phased in over three years but can be no lower than 80 percent of the state cigarette and sales tax rate. Revenues from the tribal tax must be used for essential government services. The contracts must be for renewable periods of no more than eight years.

The Governor has the authority to contract with twenty-one tribes and has contracted with eighteen tribes to date.

In June 1996, the state of Washington brought suit against the major tobacco companies, seeking reimbursement for costs incurred in treating tobacco-related illnesses as well as damages for violations of consumer protection and anti-trust laws. On November 23, 1998, the Attorneys General and other representatives of forty-six states announced a national settlement with the five largest tobacco manufacturers. The settlement of Washington's case was approved by the King County Superior Court and the decision became final on December 24, 1998. The national master settlement agreement requires annual payments by the companies to the participating states.

**Summary of Bill:** The Governor is authorized to enter into an agreement with the Puyallup Tribe of Indians regarding the taxation of cigarettes. The agreement must require a tribal tax of \$11.75 per carton, in lieu of state cigarette and state and local sales and use taxes. The purchase price to the consumer must be at least as much as the wholesale cost to the retailer, plus the tribal tax amount. If the state cigarette tax rate changes, the tribal tax must increase or decrease by the same dollar amount. The state must receive 30 percent of the tribal tax revenue on a quarterly basis, to be deposited in the general fund. The remaining tribal revenue must be used for essential government services.

The agreement must require purchases be from state licensed wholesalers and include provisions regarding enforcement and compliance, purchases by minors, tax administration and compliance, information sharing, cigarette stamping, and dispute resolution. The contracts must be for renewable periods of no more than eight years. The agreement must not impact the state share of the master settlement agreement.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** The Puyallup tribe and the department have been working on this dispute since 1989. This will increase the price of cigarettes and levels the playing field. It is good for the state and the tribe. It is a smaller tax than other compacts but the business model is different. It is an urban reservation. The smokeshops need the price advantage to stay in business. The most important benefit is the cooperation between the tribe and the state. This reinforces the government to government relationship.

**Testimony Against:** This gives the tribe a \$7.10 price advantage over non-Indian retailers. The Puyallup Tribe should be added to the 2001 act. There should be no price advantage.

**Who Testified:** PRO: Leslie Cushman, Dept of Revenue; Bernice Delorne, John Bell, Puyallup Tribe.

CON: T.K. Bentler, WA Assn of Neighborhood Stores.