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SENATE BILL 5794

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State of Washington

59th Legislature

2005 Regular Session

By Senators Prentice, Swecker, Regala, Franklin, Kohl-Welles, McAuliffe and Rasmussen; by request of Department of Revenue

Read first time 02/07/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to authorizing a cigarette taxation agreement  
2 between the state of Washington and the Puyallup Indian Tribe; amending  
3 RCW 82.08.0316 and 82.12.0316; adding a new section to chapter 43.06  
4 RCW; adding a new section to chapter 82.24 RCW; creating a new section;  
5 and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** In 2001, the legislature enacted Engrossed  
8 Substitute Senate Bill No. 5372, which authorized the governor to enter  
9 into cigarette contracts with fourteen Indian tribes. In subsequent  
10 sessions, the legislature increased to twenty-one the number of tribes  
11 with whom the governor may negotiate under the terms of RCW 43.06.460.  
12 The legislature finds that this effort has been effective, as measured  
13 by the success of the existing agreements.

14 The legislature further finds the agreements resolved decades of  
15 conflict between the state and tribes over the sale of contraband  
16 cigarettes to non-Indians; benefited the tribes through tribal tax  
17 revenues; benefited the state because cigarettes are stamped and taxed;  
18 enhanced public health because access to low-priced cigarettes is

1 reduced; improved law and order; and reduced the competitive advantage  
2 gained through the sale of tax-free cigarettes.

3 The 2001 legislation and its later amendments did not encompass the  
4 Puyallup Tribe of Indians within its scope due to the very different  
5 nature of the cigarette trade on the Puyallup Indian reservation. The  
6 legislature therefore intends to address the special circumstances on  
7 the Puyallup Indian reservation by recognizing the substantial  
8 distinctions and enacting legislation authorizing a cigarette tax  
9 agreement with the tribe that differs from the contracts entered into  
10 under RCW 43.06.460. Section 2 of this act provides the governor  
11 authority to enter into an agreement and sets forth the general  
12 framework for the agreement.

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

15 (1) The governor may enter into a cigarette tax agreement with the  
16 Puyallup Tribe of Indians concerning the sale of cigarettes, subject to  
17 the limitations in this section. The legislature intends to address  
18 the uniqueness of the Puyallup Indian reservation and its selling  
19 environment through pricing and compliance strategies, rather than  
20 through the imposition of equivalent taxes. It is the legislature's  
21 intent (a) that an increase in prices through a flat tax will reduce  
22 much of the competitive advantage that has historically existed due to  
23 the discrepancy in the difference between state and tribal taxes, and  
24 (b) that the tribal retailers can remain in business under the changed  
25 circumstances. The governor may delegate the authority to negotiate a  
26 cigarette tax agreement with the Puyallup Tribe to the department of  
27 revenue. The department of revenue shall consult with the liquor  
28 control board during the negotiations.

29 (2) Any agreement must require the tribe to impose a tax of eleven  
30 dollars and seventy-five cents on each carton of cigarettes, with ten  
31 packs a carton and twenty cigarettes per pack being the industry  
32 standard. This tax shall be prorated for cartons and packs that are  
33 nonstandard. This tribal tax is in lieu of the combined state and  
34 local sales and use taxes, and state cigarette taxes, and as such these  
35 state taxes are not imposed during the term of the agreement on any  
36 transaction governed by the agreement. The tribal tax shall increase

1 or decrease by the same dollar amount as any increase or decrease in  
2 the state cigarette tax.

3 (3) The agreement must include a provision requiring the tribe to  
4 transmit thirty percent of the tribal tax revenue on all cigarette  
5 sales to the state. The funds shall be transmitted to the state  
6 treasurer on a quarterly basis for deposit by the state treasurer into  
7 the general fund. The remaining tribal tax revenue must be used for  
8 essential government services, as that term is defined in RCW  
9 43.06.455.

10 (4) The agreement is limited to retail sales in which Indian  
11 retailers make delivery and physical transfer of possession of the  
12 cigarettes from the seller to the buyer within Indian country, and are  
13 not in regard to transactions by non-Indian retailers. In addition,  
14 agreements shall provide that retailers shall not sell or give, or  
15 permit to be sold or given, cigarettes to any person under the age of  
16 eighteen years.

17 (5)(a) The agreement must include a provision to price and sell the  
18 cigarettes so that the retail selling price is not less than the price  
19 paid by the retailer for the cigarettes.

20 (b) The tribal tax is in addition to the retail selling price.

21 (c) The agreement must include a provision to assure the price paid  
22 to the retailer includes the tribal tax, as evidenced by the tribe's  
23 cigarette stamp.

24 (d) If the tribe is acting as a wholesaler to tribal retailers, the  
25 retail selling price must not be less than the price the tribe paid for  
26 such cigarettes plus the tribal tax, as evidenced by the tribe's  
27 cigarette stamp.

28 (6)(a) The agreement must include provisions regarding enforcement  
29 and compliance by the tribe in regard to enrolled tribal members who  
30 sell cigarettes and shall describe the individual and joint  
31 responsibilities of the tribe, the department of revenue, and the  
32 liquor control board.

33 (b) The agreement must include provisions for tax administration  
34 and compliance, such as transport and notice requirements, inspection  
35 procedures, stamping requirements, recordkeeping, and audit  
36 requirements.

37 (c) The agreement must include provisions for sharing of

1 information among the tribe, the department of revenue, and the liquor  
2 control board.

3 (7) The agreement must provide that all cigarettes possessed or  
4 sold by a tribal retailer shall bear a tribal cigarette stamp obtained  
5 by wholesalers from a bank or other suitable stamp vendor and applied  
6 to the cigarettes. Tribal stamps must have serial numbers or some  
7 other discrete identification so that each stamp can be traced to its  
8 source.

9 (8) The agreement must provide that retailers shall purchase  
10 cigarettes only from wholesalers or manufacturers licensed to do  
11 business in the state of Washington.

12 (9) The agreement must be for a renewable period of no more than  
13 eight years.

14 (10) The agreement must include provisions to resolve disputes  
15 using a nonjudicial process, such as mediation, and shall include a  
16 dispute resolution protocol. The protocol shall include a procedure  
17 for notifying the other party that a violation has occurred, a  
18 procedure for establishing whether a violation has in fact occurred, an  
19 opportunity to correct such violation, and a provision providing for  
20 termination of the agreement should the violation fail to be resolved  
21 through this process, such termination subject to mediation should the  
22 terms of the agreement so allow. An agreement must provide for  
23 termination of the agreement if resolution of a dispute does not occur  
24 within twenty-four months from the time notification of a violation has  
25 occurred. Intervening violations do not extend this time period.

26 (11) The agreement may not include any provisions that impact the  
27 state's share of the master settlement agreement, and as such this  
28 agreement does not authorize negotiation regarding a redistribution of  
29 the state's proceeds under the master settlement agreement.

30 (12) Information received by the state or open to state review  
31 under the terms of an agreement is subject to RCW 82.32.330.

32 (13) It is the intent of the legislature that the liquor control  
33 board and the department of revenue continue the division of duties and  
34 shared authority under chapter 82.24 RCW.

35 (14) For purposes of this section:  
36 (a) "Indian country" has the same meaning as in chapter 82.24 RCW.  
37 (b) "Indian retailer" or "retailer" means (i) a retailer wholly

1 owned and operated by an Indian tribe or (ii) a business wholly owned  
2 and operated by an enrolled tribal member and licensed by the tribe.

3 (c) "Indian tribe" or "tribe" means the Puyallup Tribe of Indians,  
4 which is a federally recognized Indian tribe located within the  
5 geographical boundaries of the state of Washington.

6 **Sec. 3.** RCW 82.08.0316 and 2001 c 235 s 4 are each amended to read  
7 as follows:

8 The tax levied by RCW 82.08.020 does not apply to sales of  
9 cigarettes by an Indian retailer during the effective period of a  
10 cigarette tax contract subject to RCW 43.06.455 or a cigarette tax  
11 agreement under section 2 of this act.

12 **Sec. 4.** RCW 82.12.0316 and 2001 c 235 s 5 are each amended to read  
13 as follows:

14 The provisions of this chapter shall not apply in respect to the  
15 use of cigarettes sold by an Indian retailer during the effective  
16 period of a cigarette tax contract subject to RCW 43.06.455 or a  
17 cigarette tax agreement under section 2 of this act.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.24 RCW  
19 to read as follows:

20 The taxes imposed by this chapter do not apply to the sale, use,  
21 consumption, handling, possession, or distribution of cigarettes by an  
22 Indian retailer during the effective period of a cigarette tax  
23 agreement under section 2 of this act.

24 NEW SECTION. **Sec. 6.** (1) On January 5, 2005, it was announced  
25 that a cigarette tax agreement had been reached between the state of  
26 Washington and the Puyallup Indian Tribe. Before being signed by the  
27 governor, the legislature must provide authorization to the governor to  
28 sign such an agreement. Because the state and the Puyallup Indian  
29 Tribe have reached an agreement in principle, time for implementation  
30 is of the essence.

31 (2) This act is necessary for the immediate preservation of the  
32 public peace, health, or safety, or support of the state government and

1 its existing public institutions, and takes effect immediately.

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