

HOUSE BILL REPORT

HB 1674

As Passed Legislature

Title: An act relating to authorizing the governor to enter into a cigarette tax contract with the Spokane Tribe.

Brief Description: Authorizing the governor to enter into a cigarette tax contract with the Spokane Tribe.

Sponsors: By Representatives Hunter, Conway, Dunn, Ormsby and Wood; by request of Department of Revenue.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/6/07, 2/13/07 [DP].

Floor Activity:

Passed House: 3/7/07, 96-0.

Senate Amended.

Passed Senate: 4/20/07, 45-1.

House Concurred.

Passed House: 4/20/07, 97-1.

Passed Legislature.

<h3>Brief Summary of Bill</h3>

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| <ul style="list-style-type: none">• Authorizes the Governor to enter into a cigarette tax contract with the Spokane Tribe and the Hoh Tribe. |
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HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 9 members: Representatives Hunt, Chair; Appleton, Vice Chair; Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member; Green, Kretz, McDermott, Miloscia and Ormsby.

Staff: Colleen Kerr (786-7168).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 2001, the Legislature authorized the Governor to enter into cigarette tax contracts with some of the federally recognized tribes in Washington. The terms of such contracts are non-negotiable and set by the Legislature in statute. Since then 26 contracts have been executed with the tribes. These tribal cigarette tax contracts are for renewable 8-year periods. The amount of tribal cigarette tax is equal to the total amount of the state cigarette tax and the state and local sales tax; the tribal cigarette tax is in lieu of the state cigarette and state and local sales tax.

Pursuant to 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. Before 2001, enforcement of state cigarette taxes in respect to tribal retail operations has involved considerable difficulty and litigation, with mixed results.

Cigarette Taxes

Cigarette taxes are added directly to the price of cigarettes before the sales tax is applied. The cigarette tax rate is \$20.25 per carton of cigarettes. Retail sales and use taxes are also imposed on sales of cigarettes. 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.

Sales Tax

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 tax rate varies from 7 percent to 9.3 percent, depending on the location. Sales tax applies when items are purchased from a retail seller in the state. Sales tax is paid by the purchaser and collected by the seller.

Use Tax

Use tax is equal to the sales tax rate multiplied by the value of the property used. 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 also 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.

Cigarette Tax Revenue

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

Cigarette Tax Contracts

There are statutory requirements for Tribal cigarette tax contracts:

- The terms of the cigarette tax contract apply to retail sales by Indian sellers in Indian Country, which is land within the boundaries of the reservation and land held in trust for a tribe or by a tribal member; tribal retail sales are limited to Indian Country.

- Cigarettes may only be sold to individuals 18 years and older.
- Tribal cigarette tax must be used for essential government services, including tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
- Cigarettes sold under this contract must bear a tribal cigarette tax stamp.
- Tribal retailers must purchase cigarettes only from approved wholesalers.
- Contracts must contain provisions for compliance.
- Disputes regarding the interpretation and administration of the contract's provisions may be resolved by mediation and other non-judicial process.

The Governor has entered 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, the Sauk-Suiattle Tribe, the Skokomish Tribe, the Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, the Kalispell Tribe, the Confederated Tribes of the Lower Colville Reservation, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, and the Makah Tribe. The Puyallup Tribe also has a cigarette tax contract with separate terms.

The 100 percent rate of taxation on tribal cigarettes may be phased in by the tribe over three years, but during those three years the rate can be no lower than 80 percent of the 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.

Summary of Bill:

The Governor may enter into a cigarette tax contract with the Spokane Tribe and the Hoh Tribe.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect July 1, 2007.

Staff Summary of Public Testimony:

(In support) This is a noncontroversial piece of legislation. Many tribes have already been included in this statute; when the Spokane Tribes are included, only two tribes will not have

cigarette tax contracts. The contract is statutorily defined and the parameters are non-negotiable. This agreement has been a success for both the tribes and the state. This solution actually puts Washington at the forefront of this issue nationally. The Department of Revenue (DOR) has purview over the cigarette tax contracts and the Liquor Control Board enforces the terms of the contracts. During the past few years, the DOR has learned some lessons about the enforcement issue. The DOR is learning how to improve its regulatory effort and trying to find ways to provide the tribal cigarette tax stamps.

(Opposed) None.

Persons Testifying: Scott Wheat, Spokane Tribe of Indians; and Leslie Cushman, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.