

HB 2232 - H AMD 912

By Representative Anderson

FAILED 02/10/2012

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) Under federal law, Indian nations are
4 federally dependent domestic sovereigns that are distinct, independent
5 political entities legally separate from the state and owing no
6 allegiance to the state. Indian nations are uniquely empowered to
7 generate income for their communities through taxing and other revenue
8 mechanisms, such as operating casinos, that are not available to
9 constitutionally authorized political subdivisions of the state.
10 Indian nations do not pay property tax on land held in trust by the
11 federal government nor on nonreservation land used for essential
12 government services. Tribally owned businesses are not subject to
13 sales and excise taxes on transactions conducted by tribal members on
14 tribal land. The state of Washington, through the Centennial Accord,
15 has agreed to treat Indian nations on a sovereign-to-sovereign basis.

16 (2) The legislature finds that many statutory provisions treat
17 Indian nations not as independent sovereigns but as state-dependent
18 entities, which they are not, creating a clear conflict in the
19 application of state laws. Indian nations have numerous independent
20 sources of revenue. In 2011, the tribes generated nearly one billion
21 nine hundred fifty-four million dollars in net gambling receipts. The
22 Washington state office of financial management estimates that less
23 than two percent of the state's population is Native American.

24 (3) In this time when the state faces significant continuing budget
25 deficits and must make funding reductions to service programs it is
26 providing to all its citizens, the legislature has made policy changes
27 in many areas to require those that have independent sources of revenue
28 to pay for the state services they use. The legislature intends to
29 clarify the sovereign legal standing of Indian nations with respect to
30 the state of Washington and the eligibility of Indian nations to apply

1 for and receive state-provided program resources contingent upon
2 sovereign-to-sovereign revenue sharing agreements to help defray the
3 costs of such program services. The legislature intends the state to
4 eventually govern sovereign-to-sovereign relations with each tribe
5 through single compacts with individual tribes that address the
6 multitude of issues between each tribe and the state instead of the
7 multitude of compacts on select issues created today.

8 NEW SECTION. **Sec. 2.** (1) To be eligible to apply for and receive
9 money from programs identified in section 3 of this act, a tribal
10 government of a federally recognized Indian tribe located within the
11 state must have a sovereign-to-sovereign agreement with the state that
12 provides for the state to receive remuneration from the Indian nation
13 for the privileges provided by these state programs and services in an
14 amount sufficient so that the state receives a benefit for extending
15 the privilege of state programs and services to federally recognized
16 Indian nations.

17 (2) The requirements and conditions of this section apply unless
18 the application of a requirement or condition is prohibited by federal
19 law.

20 NEW SECTION. **Sec. 3.** (1) State-funded programs subject to the
21 conditions of section 2 of this act include but are not limited to:

22 (a) Public facilities loans and grants from the community economic
23 revitalization board;

24 (b) The local infrastructure financing tool program;

25 (c) Bond funding from the state and local improvements revolving
26 account for:

27 (i) Waste disposal facilities;

28 (ii) Water supply facilities;

29 (iii) Recreation areas and facilities; and

30 (iv) Health and social service facilities;

31 (d) Department of agriculture programs for:

32 (i) Funding and technical assistance under the department's pest
33 program;

34 (ii) Surface water monitoring; and

35 (iii) Food safety;

36 (e) The building communities fund program;

- 1 (f) The tourism competitive grant program;
- 2 (g) Programs funded under the recreation and conservation office;
- 3 (h) Lake Roosevelt Columbia partnership agreements;
- 4 (i) Toxic clean-up programs under the department of ecology;
- 5 (j) The centennial clean water program;
- 6 (k) Public health emergency preparedness and response under the
7 department of health;
- 8 (l) Grant programs under the emergency management division of the
9 military department;
- 10 (m) The competitive grant program for economic development activity
11 designed to further regional cluster growth administered by the
12 department of commerce;
- 13 (n) Grants and loans through the department of transportation for
14 planning, acquisition, construction, improvement, and maintenance or
15 operation of an airport;
- 16 (o) Funds received from counties using the county road
17 administration board ferry capital improvement program;
- 18 (p) State maintenance funds to eligible tribes under the temporary
19 assistance for needy families program;
- 20 (q) Housing-based supportive services for homeless families;
- 21 (r) Funds available through housing assistance programs and the
22 Washington housing trust fund;
- 23 (s) Affordable housing programs and tax exemptions for tribal and
24 intertribal housing authorities;
- 25 (t) Funds from the home visiting services account;
- 26 (u) Funds from the American Indian scholarship endowment fund;
- 27 (v) Grants made available for heritage capital projects;
- 28 (w) Funding from the forest and fish support account;
- 29 (x) State funds provided through the department of social and
30 health services as follows:
- 31 (i) Funds by the juvenile rehabilitation administration;
- 32 (ii) Funds provided for outpatient and prevention services and
33 administration of those programs;
- 34 (iii) Funds provided as part of the mental health block grant;
- 35 (iv) Programs through the children's administration that foster
36 independent living and life skills; and
- 37 (v) Funds provided for alcohol, drug, and problem-gambling

1 treatment unless the tribe has made contributions to the state through
2 provisions of Appendix X2 to the tribal-state gaming compacts;

3 (y) Services provided by the Washington state patrol in Indian
4 country or to Indian members on their property; and

5 (z) State programs or funding provided through the superintendent
6 of public instruction, including:

7 (i) The building bridges dropout prevention grants; and

8 (ii) Services provided by the office of native education.

9 (2) Nothing in this section or section 2 of this act prohibits
10 allowing access to federally recognized Indian tribes located within
11 the state and their members to federally provided funding for which
12 they are otherwise eligible.

13 (3) State agencies may require compliance with section 2 of this
14 act for Indian nations seeking access to state-funded programs not
15 listed in subsection (1) of this section that come into existence after
16 the effective date of this section unless prohibited by statute.

17 (4) Nothing in this chapter prevents tribal citizens as individuals
18 from applying for and receiving state services that they are eligible
19 to receive under the law.

20 NEW SECTION. **Sec. 4.** (1) The governor may enter an agreement with
21 an Indian tribe to receive payment for the privilege of participating
22 in state programs under section 2 of this act subject to the conditions
23 of this section.

24 (2) The agreement with each Indian tribe must be for an amount
25 sufficient to provide the state with a benefit for extending the
26 privilege of state programs and services to federally recognized Indian
27 tribes. The agreement must specify that payments are made to the state
28 treasurer on a quarterly basis.

29 (3) A sovereign-to-sovereign agreement entered into pursuant to
30 this chapter must include:

31 (a) Mechanisms to allow the state auditor and state agencies to
32 conduct audits of recipients of state services in the same manner as
33 they would for local governments or other program participants; and

34 (b) A provision that agreements are public records and must be
35 disclosed upon request and posted on an appropriate state web site.

1 NEW SECTION. **Sec. 5.** The Indian nation eligibility for state
2 services account is created in the state treasury. All receipts from
3 the agreements in section 4 of this act must be deposited into the
4 account. The state treasurer must track amounts received from
5 individual Indian tribes and report amounts received quarterly to the
6 department of revenue. The state treasurer must transfer on July 1st
7 of each year the entire fund balance of the account into the general
8 fund.

9 NEW SECTION. **Sec. 6.** The state may consent to the jurisdiction of
10 the federal courts in actions brought by an Indian tribe seeking
11 enforcement of an agreement under section 4 of this act, conditioned
12 upon the Indian tribe providing similar consent in the agreement and
13 waiver of claims of sovereign immunity that would prevent enforcement
14 of any provisions of this chapter or in relation to state government
15 services provided pursuant to an agreement under section 4 of this act.

16 **Sec. 7.** RCW 43.06.455 and 2001 c 235 s 2 are each amended to read
17 as follows:

18 (1) The governor may enter into cigarette tax contracts concerning
19 the sale of cigarettes. All cigarette tax contracts (~~shall~~) must
20 meet the requirements for cigarette tax contracts under this section.
21 Except for cigarette tax contracts under RCW 43.06.460, the rates,
22 revenue sharing, and exemption terms of a cigarette tax contract are
23 not effective unless authorized in a bill enacted by the legislature.

24 (2) Cigarette tax contracts (~~shall be~~) are in regard to retail
25 sales in which Indian retailers make delivery and physical transfer of
26 possession of the cigarettes from the seller to the buyer within Indian
27 country, and are not in regard to transactions by non-Indian retailers.
28 In addition, contracts (~~shall~~) must provide that retailers (~~shall~~)
29 do not sell or give, or permit to be sold or given, cigarettes to any
30 person under the age of eighteen years.

31 (3) A cigarette tax contract with a tribe (~~shall~~) must provide
32 for a tribal cigarette tax in lieu of all state cigarette taxes and
33 state and local sales and use taxes on sales of cigarettes in Indian
34 country by Indian retailers. The tribe may allow an exemption for
35 sales to tribal members.

1 (4) Cigarette tax contracts (~~shall~~) must provide that all
2 cigarettes possessed or sold by a retailer (~~shall~~) bear a cigarette
3 stamp obtained by wholesalers from a bank or other suitable stamp
4 vendor and applied to the cigarettes. The procedures to be used by the
5 tribe in obtaining tax stamps must include a means to assure that the
6 tribal tax will be paid by the wholesaler obtaining such cigarettes.
7 Tribal stamps must have serial numbers or some other discrete
8 identification so that each stamp can be traced to its source.

9 (5) Cigarette tax contracts (~~shall~~) must provide that retailers
10 (~~shall~~) purchase cigarettes only from:

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

13 (b) Out-of-state wholesalers or manufacturers who, although not
14 licensed to do business in the state of Washington, agree to comply
15 with the terms of the cigarette tax contract, are certified to the
16 state as having so agreed, and who do in fact so comply. However, the
17 state may in its sole discretion exercise its administrative and
18 enforcement powers over such wholesalers or manufacturers to the extent
19 permitted by law;

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

22 (d) A tribal manufacturer.

23 (6) Cigarette tax contracts (~~shall~~) must be for renewable periods
24 of no more than eight years. A renewal may not include a renewal of
25 the phase-in period. For renewals occurring after the effective date
26 of this section, any agreement must include a provision requiring the
27 tribe to provide for the state to receive remuneration from the Indian
28 nation for the privileges provided by these state programs and services
29 in an amount sufficient so that the state receives a benefit for
30 extending the privilege of state programs and services to federally
31 recognized Indian nations.

32 (7) Cigarette tax contracts (~~shall~~) must include provisions for
33 compliance, such as transport and notice requirements, inspection
34 procedures, stamping requirements, recordkeeping, and audit
35 requirements.

36 (8) Tax revenue retained by a tribe must be used for essential
37 government services. Use of tax revenue for subsidization of cigarette
38 and food retailers is prohibited.

1 (9) The cigarette tax contract may include provisions to resolve
2 disputes using a nonjudicial process, such as mediation.

3 (10) The governor may delegate the power to negotiate cigarette tax
4 contracts to the department of revenue. The department of revenue
5 (~~shall~~) must consult with the liquor control board during the
6 negotiations.

7 (11) Information received by the state or open to state review
8 under the terms of a contract is subject to the provisions of RCW
9 82.32.330.

10 (12) It is the intent of the legislature that the liquor control
11 board and the department of revenue continue the division of duties and
12 shared authority under chapter 82.24 RCW and therefore the liquor
13 control board is responsible for enforcement activities that come under
14 the terms of chapter 82.24 RCW.

15 (13) Each cigarette tax contract (~~shall~~) must include a procedure
16 for notifying the other party that a violation has occurred, a
17 procedure for establishing whether a violation has in fact occurred, an
18 opportunity to correct such violation, and a provision providing for
19 termination of the contract should the violation fail to be resolved
20 through this process, such termination subject to mediation should the
21 terms of the contract so allow. A contract (~~shall~~) must provide for
22 termination of the contract if resolution of a dispute does not occur
23 within twenty-four months from the time notification of a violation has
24 occurred. Intervening violations do not extend this time period. In
25 addition, the contract (~~shall~~) must include provisions delineating
26 the respective roles and responsibilities of the tribe, the department
27 of revenue, and the liquor control board.

28 (14) For purposes of this section and RCW 43.06.460, 82.08.0316,
29 82.12.0316, and 82.24.295:

30 (a) "Essential government services" means services such as tribal
31 administration, public facilities, fire, police, public health,
32 education, job services, sewer, water, environmental and land use,
33 transportation, utility services, and economic development;

34 (b) "Indian retailer" or "retailer" means (i) a retailer wholly
35 owned and operated by an Indian tribe, (ii) a business wholly owned and
36 operated by a tribal member and licensed by the tribe, or (iii) a
37 business owned and operated by the Indian person or persons in whose
38 name the land is held in trust; and

1 (c) "Indian tribe" or "tribe" means a federally recognized Indian
2 tribe located within the geographical boundaries of the state of
3 Washington.

4 **Sec. 8.** RCW 84.36.010 and 2010 c 281 s 1 are each amended to read
5 as follows:

6 (1) All property belonging exclusively to the United States, the
7 state, or any county or municipal corporation subject to subsection (3)
8 of this section; all property belonging exclusively to any federally
9 recognized Indian tribe located in the state, if that property is used
10 exclusively for essential government services; all state route number
11 16 corridor transportation systems and facilities constructed under
12 chapter 47.46 RCW; all property under a financing contract pursuant to
13 chapter 39.94 RCW or recorded agreement granting immediate possession
14 and use to the public bodies listed in this section or under an order
15 of immediate possession and use pursuant to RCW 8.04.090; and, for a
16 period of forty years from acquisition, all property of a community
17 center; is exempt from taxation. All property belonging exclusively to
18 a foreign national government is exempt from taxation if that property
19 is used exclusively as an office or residence for a consul or other
20 official representative of the foreign national government, and if the
21 consul or other official representative is a citizen of that foreign
22 nation.

23 (2) For the purposes of this section the following definitions
24 apply unless the context clearly requires otherwise.

25 (a) "Community center" means property, including a building or
26 buildings, determined to be surplus to the needs of a district by a
27 local school board, and purchased or acquired by a nonprofit
28 organization for the purposes of converting them into community
29 facilities for the delivery of nonresidential coordinated services for
30 community members. The community center may make space available to
31 businesses, individuals, or other parties through the loan or rental of
32 space in or on the property.

33 (b) "Essential government services" means services such as tribal
34 administration, public facilities, fire, police, public health,
35 education, sewer, water, environmental and land use, transportation,
36 and utility services.

1 (3) The exemption for a federally recognized Indian tribe located
2 in the state is only allowed for those tribes with a valid sovereign-
3 to-sovereign remuneration agreement under chapter 43.--- RCW (the new
4 chapter created in section 9 of this act).

5 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act constitute
6 a new chapter in Title 43 RCW.

7 NEW SECTION. **Sec. 10.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately."

15 Correct the title.

EFFECT: (1) Strikes all provisions of the original bill; (2) requires an Indian tribe to have a sovereign-to-sovereign agreement with the state requiring payment of remuneration to the state in order to receive the benefit of specified state programs and services; (3) requires that the remuneration be in an amount that provides the state with sufficient benefit; (4) authorizes the governor to enter into an agreement with a tribe to allow participation in specified state programs in return for the tribe's payment of the requisite remuneration; (5) creates the Indian nation eligibility for state services account in the state treasury for the receipt of payments made by tribes in return for the receipt of state services and participation in state programs; (6) requires the state and a tribe to mutually consent to the jurisdiction of the federal courts for enforcement of remuneration agreements and for a tribe to waive its sovereign immunity regarding such enforcement; (7) requires that new agreements between the state and a tribe regarding cigarette compacts to include remuneration to the state in order to receive the benefit of the state tax exemption; (8) makes the property tax exemption for tribal property used for essential government services contingent upon the tribe having a sovereign-to-sovereign remuneration agreement in place; (9) makes the tribal leasehold tax exemption contingent upon the tribe having a sovereign-to-sovereign remuneration agreement in place; and (10) adds an emergency clause.

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