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HOUSE BILL 2046

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Taylor, Ross, Shea, Haler, Klippert, Johnson, Kretz, and Schmick

Read first time 04/01/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to legislative involvement with compacts and  
2 compact amendments; amending RCW 43.06.110, 43.06.450, 43.06.455,  
3 43.06.460, 43.06.465, 43.06.466, 43.06.475, 43.06.480, 9.46.360, and  
4 43.06.010; adding a new section to chapter 43.06 RCW; and creating new  
5 sections.

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

7 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
8 contractual oversight and transparency act.

9 NEW SECTION. **Sec. 2.** (1) The legislature reaffirms the need for  
10 it to be vigilant in its oversight of all matters concerning the budget  
11 and provide state agencies with sufficient resources to do the people's  
12 work. However, the governor is in the unique position to approve  
13 agreements, contracts, and compacts with the federal government, other  
14 states, and nations, without consultation with the legislature. In  
15 those agreements, the governor can obligate the state to spend money or  
16 provide services without adequate compensation, and without the  
17 legislature being aware until after an agreement is made.

1 (2) The legislature intends to provide increased transparency so  
2 that the people's representatives have oversight over contracts that  
3 bind the state and its resources. This act creates a process by which  
4 the governor must work with the legislature to ensure that there is  
5 broad-based support before an agreement is signed.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.06 RCW  
7 to read as follows:

8 (1) The governor may not adopt, execute, or otherwise enter into  
9 any compact with another state, the federal government, Indian tribe or  
10 band, or other sovereign entity without prior legislative approval as  
11 required in this section.

12 (2) Prior to the adoption or execution of any compact by the  
13 governor, the compact must be submitted to the legislature for its  
14 approval in accordance with the procedures set forth in this section.  
15 Any compact the governor submits for legislative approval must be in  
16 the form of a joint resolution submitted to both houses of the  
17 legislature.

18 (3) Upon introduction to the legislature of the joint resolution  
19 required under this section, the legislature must approve or reject the  
20 resolution by adjournment sine die of the regular or special session in  
21 which the resolution was introduced. Approval of the resolution  
22 requires the affirmative vote of sixty percent of the members of each  
23 house of the legislature. The failure of the legislature to act on the  
24 resolution by adjournment sine die of the relevant session is deemed to  
25 be rejection of the proposed compact.

26 (4) If the legislature approves the joint resolution, then the  
27 governor may execute the compact.

28 (5) If a joint resolution is not introduced to the legislature as  
29 required under this section, then the proposed compact is deemed  
30 rejected.

31 (6) For the purposes of this section, "compact" means any  
32 agreement, contract, or covenant between Washington state and the  
33 federal government or Indian tribe or another state or other sovereign  
34 entity.

35 (7) Class III tribal-state gaming compacts must be approved by  
36 joint resolutions pursuant to RCW 9.46.360.

1 (8) This section does not apply to grant applications for the  
2 benefit of Washington state.

3 **Sec. 4.** RCW 43.06.110 and 2009 c 549 s 5020 are each amended to  
4 read as follows:

5 Subject to the provisions of section 3 of this act, the governor,  
6 or his or her designee, is hereby authorized and empowered to undertake  
7 such programs as will, in the judgment of the governor, or his or her  
8 designee, enable families and individuals of all ages, in rural and  
9 urban areas, in need of the skills, knowledge, motivations, and  
10 opportunities to become economically self-sufficient to obtain and  
11 secure such skills, knowledge, motivations, and opportunities. Such  
12 programs may be engaged in as solely state operations, or in  
13 conjunction or cooperation with any appropriate agency of the federal  
14 government, any branch or agency of the government of this state, any  
15 city or town, county, municipal corporation, metropolitan municipal  
16 corporation or other political subdivision of the state, or any private  
17 corporation. Where compliance with the provisions of federal law or  
18 rules or regulations promulgated thereunder is a necessary condition to  
19 the receipt of federal funds by the state, the governor or his or her  
20 designee, is hereby authorized to comply with such laws, rules or  
21 regulations to the extent necessary for the state to cooperate most  
22 fully with the federal government in furtherance of the programs herein  
23 authorized.

24 **Sec. 5.** RCW 43.06.450 and 2001 c 235 s 1 are each amended to read  
25 as follows:

26 Subject to the provisions of section 3 of this act, the legislature  
27 intends to further the government-to-government relationship between  
28 the state of Washington and Indians in the state of Washington by  
29 authorizing the governor to enter into contracts concerning the sale of  
30 cigarettes. The legislature finds that these cigarette tax contracts  
31 will provide a means to promote economic development, provide needed  
32 revenues for tribal governments and Indian persons, and enhance  
33 enforcement of the state's cigarette tax law, ultimately saving the  
34 state money and reducing conflict. In addition, it is the intent of  
35 the legislature that the negotiations and the ensuing contracts  
36 (~~shall~~) have no impact on the state's share of the proceeds under the

1 master settlement agreement entered into on November 23, 1998, by the  
2 state. Chapter 235, Laws of 2001 does not constitute a grant of taxing  
3 authority to any Indian tribe nor does it provide precedent for the  
4 taxation of non-Indians on fee land.

5 **Sec. 6.** RCW 43.06.455 and 2001 c 235 s 2 are each amended to read  
6 as follows:

7 (1) Subject to the provisions of section 3 of this act, the  
8 governor may enter into cigarette tax contracts concerning the sale of  
9 cigarettes. All cigarette tax contracts (~~shall~~) must meet the  
10 requirements for cigarette tax contracts under this section. Except  
11 for cigarette tax contracts under RCW 43.06.460, the rates, revenue  
12 sharing, and exemption terms of a cigarette tax contract are not  
13 effective unless authorized in a bill enacted by the legislature.

14 (2) Cigarette tax contracts (~~shall~~) must be in regard to retail  
15 sales in which Indian retailers make delivery and physical transfer of  
16 possession of the cigarettes from the seller to the buyer within Indian  
17 country, and are not in regard to transactions by non-Indian retailers.  
18 In addition, contracts (~~shall~~) must provide that retailers (~~shall~~)  
19 may not sell or give, or permit to be sold or given, cigarettes to any  
20 person under the age of eighteen years.

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

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

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

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

1 (b) Out-of-state wholesalers or manufacturers who, although not  
2 licensed to do business in the state of Washington, agree to comply  
3 with the terms of the cigarette tax contract, are certified to the  
4 state as having so agreed, and who do in fact so comply. However, the  
5 state may in its sole discretion exercise its administrative and  
6 enforcement powers over such wholesalers or manufacturers to the extent  
7 permitted by law;

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

10 (d) A tribal manufacturer.

11 (6) Cigarette tax contracts (~~(shall)~~) must be for renewable periods  
12 of no more than eight years. A renewal may not include a renewal of  
13 the phase-in period.

14 (7) Cigarette tax contracts (~~(shall)~~) must include provisions for  
15 compliance, such as transport and notice requirements, inspection  
16 procedures, stamping requirements, recordkeeping, and audit  
17 requirements.

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

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

23 (10) The governor may delegate the power to negotiate cigarette tax  
24 contracts to the department of revenue. The department of revenue  
25 (~~(shall)~~) must consult with the liquor control board during the  
26 negotiations.

27 (11) Information received by the state or open to state review  
28 under the terms of a contract is subject to the provisions of RCW  
29 82.32.330.

30 (12) It is the intent of the legislature that the liquor control  
31 board and the department of revenue continue the division of duties and  
32 shared authority under chapter 82.24 RCW and therefore the liquor  
33 control board is responsible for enforcement activities that come under  
34 the terms of chapter 82.24 RCW.

35 (13) Each cigarette tax contract (~~(shall)~~) must include a procedure  
36 for notifying the other party that a violation has occurred, a  
37 procedure for establishing whether a violation has in fact occurred, an  
38 opportunity to correct such violation, and a provision providing for

1 termination of the contract should the violation fail to be resolved  
2 through this process, such termination subject to mediation should the  
3 terms of the contract so allow. A contract (~~shall~~) must provide for  
4 termination of the contract if resolution of a dispute does not occur  
5 within twenty-four months from the time notification of a violation has  
6 occurred. Intervening violations do not extend this time period. In  
7 addition, the contract (~~shall~~) must include provisions delineating  
8 the respective roles and responsibilities of the tribe, the department  
9 of revenue, and the liquor control board.

10 (14) For purposes of this section and RCW 43.06.460, 82.08.0316,  
11 82.12.0316, and 82.24.295:

12 (a) "Essential government services" means services such as tribal  
13 administration, public facilities, fire, police, public health,  
14 education, job services, sewer, water, environmental and land use,  
15 transportation, utility services, and economic development;

16 (b) "Indian retailer" or "retailer" means (i) a retailer wholly  
17 owned and operated by an Indian tribe, (ii) a business wholly owned and  
18 operated by a tribal member and licensed by the tribe, or (iii) a  
19 business owned and operated by the Indian person or persons in whose  
20 name the land is held in trust; and

21 (c) "Indian tribe" or "tribe" means a federally recognized Indian  
22 tribe located within the geographical boundaries of the state of  
23 Washington.

24 **Sec. 7.** RCW 43.06.460 and 2008 c 241 s 1 are each amended to read  
25 as follows:

26 (1) Subject to the provisions of section 3 of this act, the  
27 governor is authorized to enter into cigarette tax contracts with the  
28 Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the  
29 Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam  
30 Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe,  
31 the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Yakama Nation,  
32 the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the  
33 Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie  
34 Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute  
35 Tribe, the Kalispel Tribe, the Confederated Tribes of the Colville  
36 Reservation, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe,  
37 the Makah Tribe, the Hoh Tribe, the Spokane Tribe, and the Shoalwater

1 Bay Tribe. Each contract adopted under this section (~~shall~~) must  
2 provide that the tribal cigarette tax rate be one hundred percent of  
3 the state cigarette and state and local sales and use taxes within  
4 three years of enacting the tribal tax and (~~shall~~) must be set no  
5 lower than eighty percent of the state cigarette and state and local  
6 sales and use taxes during the three-year phase-in period. The three-  
7 year phase-in period (~~shall~~) must be shortened by three months each  
8 quarter the number of cartons of nontribal manufactured cigarettes is  
9 at least ten percent or more than the quarterly average number of  
10 cartons of nontribal manufactured cigarettes from the six-month period  
11 preceding the imposition of the tribal tax under the contract. Sales  
12 at a retailer operation not in existence as of the date a tribal tax  
13 under this section is imposed are subject to the full rate of the  
14 tribal tax under the contract. The tribal cigarette tax is in lieu of  
15 the state cigarette and state and local sales and use taxes, as  
16 provided in RCW 43.06.455(3).

17 (2) A cigarette tax contract under this section is subject to RCW  
18 43.06.455.

19 **Sec. 8.** RCW 43.06.465 and 2005 c 11 s 2 are each amended to read  
20 as follows:

21 (1) Subject to the provisions of section 3 of this act, the  
22 governor may enter into a cigarette tax agreement with the Puyallup  
23 Tribe of Indians concerning the sale of cigarettes, subject to the  
24 limitations in this section. The legislature intends to address the  
25 uniqueness of the Puyallup Indian reservation and its selling  
26 environment through pricing and compliance strategies, rather than  
27 through the imposition of equivalent taxes. It is the legislature's  
28 intent (a) that an increase in prices through a flat tax will reduce  
29 much of the competitive advantage that has historically existed due to  
30 the discrepancy in the difference between state and tribal taxes, and  
31 (b) that the tribal retailers can remain in business under the changed  
32 circumstances. The governor may delegate the authority to negotiate a  
33 cigarette tax agreement with the Puyallup Tribe to the department of  
34 revenue. The department of revenue (~~shall~~) must consult with the  
35 liquor control board during the negotiations.

36 (2) Any agreement must require the tribe to impose a tax of eleven  
37 dollars and seventy-five cents on each carton of cigarettes, with ten

1 packs a carton and twenty cigarettes per pack being the industry  
2 standard. This tax (~~shall~~) must be prorated for cartons and packs  
3 that are nonstandard. This tribal tax is in lieu of the combined state  
4 and local sales and use taxes, and state cigarette taxes, and as such  
5 these state taxes are not imposed during the term of the agreement on  
6 any transaction governed by the agreement. The tribal tax (~~shall~~)  
7 must increase or decrease by the same dollar amount as any increase or  
8 decrease in the state cigarette tax.

9 (3) The agreement must include a provision requiring the tribe to  
10 transmit thirty percent of the tribal tax revenue on all cigarette  
11 sales to the state. The funds (~~shall~~) must be transmitted to the  
12 state treasurer on a quarterly basis for deposit by the state treasurer  
13 into the general fund. The remaining tribal tax revenue must be used  
14 for essential government services, as that term is defined in RCW  
15 43.06.455.

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

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

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

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

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

34 (6)(a) The agreement must include provisions regarding enforcement  
35 and compliance by the tribe in regard to enrolled tribal members who  
36 sell cigarettes and (~~shall~~) must describe the individual and joint  
37 responsibilities of the tribe, the department of revenue, and the  
38 liquor control board.



1 (b) The agreement must include provisions for tax administration  
2 and compliance, such as transport and notice requirements, inspection  
3 procedures, stamping requirements, recordkeeping, and audit  
4 requirements.

5 (c) The agreement must include provisions for sharing of  
6 information among the tribe, the department of revenue, and the liquor  
7 control board.

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

14 (8) The agreement must provide that retailers (~~shall~~) must  
15 purchase cigarettes only from wholesalers or manufacturers licensed to  
16 do business in the state of Washington.

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

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

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

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

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

4 (14) For purposes of this section:

5 (a) "Indian country" has the same meaning as in chapter 82.24 RCW.

6 (b) "Indian retailer" or "retailer" means (i) a retailer wholly  
7 owned and operated by an Indian tribe or (ii) a business wholly owned  
8 and operated by an enrolled tribal member and licensed by the tribe.

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

12 **Sec. 9.** RCW 43.06.466 and 2008 c 228 s 1 are each amended to read  
13 as follows:

14 (1)(a) The legislature finds that entering into a cigarette tax  
15 agreement with the Yakama Nation is a positive step and that such an  
16 agreement will support a stable and orderly environment on the Yakima  
17 Reservation for regulation of cigarette sales. The legislature further  
18 finds that the very special circumstances of the Yakama Nation pursuant  
19 to the Treaty with the Yakamas of 1855 (12 Stat. 951) support a  
20 cigarette tax agreement that reflects those circumstances. The  
21 legislature also finds that the provisions of the agreement with the  
22 Yakama Nation authorized by chapter 228, Laws of 2008 are reasonably  
23 necessary to prevent fraudulent transactions and place a minimal burden  
24 on the Yakama Nation, pursuant to the United States supreme court's  
25 decision in *Washington v. Confederated Tribes of the Colville Indian*  
26 *Reservation*, 447 U.S. 134 (1980).

27 (b) It is the intent of the legislature that the cigarette tax  
28 agreement with the Yakama Nation reflects the uniqueness of the Yakama  
29 Nation's Treaty through specific terms that govern pricing of  
30 cigarettes, tribal cigarette tax revenue, information sharing, and  
31 administration of the agreement.

32 (2) For purposes of this section:

33 (a) "Cigarette" has the same meaning as in chapter 82.24 RCW; and

34 (b) "Tribal retailer" means a cigarette retailer as that term is  
35 defined in RCW 82.24.010 that is licensed by and located within the  
36 jurisdiction of the Yakama Nation and is wholly owned by the Yakama  
37 Nation or any of its enrolled members.

1           (3) Subject to the provisions of section 3 of this act, the  
2 governor may enter into a cigarette tax agreement with the Yakama  
3 Nation, a federally recognized Indian tribe located within the  
4 geographical boundaries of the state of Washington, concerning the sale  
5 of cigarettes, subject to the provisions of this section. The governor  
6 may delegate the authority to negotiate the agreement to the department  
7 of revenue.

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

10          (5) All cigarettes possessed or sold by tribal retailers must be  
11 subject to the agreement, except cigarettes manufactured within the  
12 jurisdiction of the Yakama Nation by the Yakama Nation or its enrolled  
13 members.

14          (6) The agreement must allow the Yakama Nation to exempt its  
15 enrolled members from the tribal cigarette tax imposed under subsection  
16 (7) of this section.

17          (a) Sales of cigarettes exempt under this subsection must be  
18 subject to the requirements of subsection (9) of this section.

19          (b) The exemption must be provided only at the point of sale and  
20 reimbursement provided to the tribal retailer by the Yakama Nation.

21          (7) The agreement must require the Yakama Nation to impose and  
22 maintain in effect on the sale of cigarettes by tribal retailers a tax  
23 as provided in this subsection.

24          (a) The rate of tax will be expressed in dollars and cents and must  
25 be the percentage of tax imposed by the state under chapter 82.24 RCW  
26 for the period of the agreement as (~~stated here~~) follows:

27           (i) Eighty percent during the first six years;

28           (ii) Eighty-four percent during the seventh year; and

29           (iii) Eighty-seven and six-tenths percent during the eighth year.

30          (b) The tax must be imposed on each carton, or portion of a carton,  
31 of cigarettes, with ten packs per carton and twenty cigarettes per pack  
32 being the industry standard, and prorated for cartons and packs that  
33 are not standard.

34          (c) The tax must be in lieu of the combined state and local sales  
35 and use taxes, and state cigarette taxes, and, as provided in RCW  
36 82.24.302, 82.08.0316, and 82.12.0316, the taxes imposed by chapters  
37 82.08, 82.12, and 82.24 RCW do not apply during the term of the  
38 agreement on any transaction governed by the agreement.

1 (d) Throughout the term of the agreement and any renewal of the  
2 agreement, the tax must increase or decrease in correspondence with the  
3 state cigarette tax by applying the percentages in (a) of this  
4 subsection.

5 (8) The revenue generated by the tax imposed under subsection (7)  
6 of this section must be used by the Yakama Nation for essential  
7 government services, as that term is defined in RCW 43.06.455.

8 (9) All cigarettes possessed or sold by a tribal retailer must bear  
9 a tribal cigarette tax stamp as provided in this subsection.

10 (a) The Yakama Nation may act as its own stamp vendor, subject to  
11 meeting reasonable requirements for internal controls.

12 (b) The stamps must have serial numbers or other discrete  
13 identification that allow stamps to be traced to their source.

14 (10) The price paid by the tribal retailer to the wholesaler must  
15 not be less than the total of the price paid by the Yakama Nation or  
16 other wholesaler and the tax imposed under subsection (7) of this  
17 section.

18 (11) The retail selling price of cigarettes sold by tribal  
19 retailers must not be less than the price paid by them under subsection  
20 (10) of this section.

21 (12) Tribal retailers must not sell or give, or permit to be sold  
22 or given, cigarettes to any person under the age of eighteen years.

23 (13) The authority and the individual and joint responsibility of  
24 the Yakama Nation, the department of revenue, and the liquor control  
25 board for administration and enforcement must be specified in the  
26 agreement including, but not limited to, requirements regarding  
27 transport of cigarettes, keeping of records, reporting, notice,  
28 inspection, audit, and mutual exchange of information.

29 (a) Requirements must provide for sharing of information regarding  
30 transport of cigarettes in the state of Washington by the Yakama Nation  
31 or its enrolled members, reporting of information on sales to customers  
32 located outside the jurisdiction of the Yakama Nation, and authority  
33 for unannounced inspection by the state of tribal retailers to verify  
34 compliance with stamping and pricing provisions.

35 (b) Information received by the state or open to state review under  
36 the terms of the agreement is subject to RCW 82.32.330.

37 (14) The agreement must provide for resolution of disputes using a

1 nonjudicial process, such as mediation, and establish a dispute  
2 resolution protocol that includes the following elements:

3 (a) A procedure for notifying the other party that a violation has  
4 occurred;

5 (b) A procedure for establishing whether a violation has in fact  
6 occurred;

7 (c) An opportunity to correct the violation;

8 (d) A procedure for terminating the agreement in the event of a  
9 failure to correct the violation, such termination subject to mediation  
10 should the terms of the agreement so allow; and

11 (e) Termination of the agreement for cause.

12 (15) The agreement may not include any provisions that impact the  
13 state's share of the master settlement agreement or concern  
14 redistribution of the state's proceeds under the master settlement  
15 agreement.

16 (16) The department of revenue may share with the Yakama Nation tax  
17 information under RCW 82.32.330 that is necessary for the Yakama  
18 Nation's compliance with the agreement.

19 **Sec. 10.** RCW 43.06.475 and 2007 c 69 s 2 are each amended to read  
20 as follows:

21 (1) Subject to the provisions of section 3 of this act, the  
22 governor may enter into timber harvest excise tax agreements concerning  
23 the harvest of timber. All timber harvest excise tax agreements must  
24 meet the requirements for timber harvest excise tax agreements under  
25 this section. The terms of a timber harvest excise tax agreement are  
26 not effective unless the agreement is authorized in RCW 43.06.480.

27 (2) Timber harvest excise tax agreements (~~shall~~) must be in  
28 regard to timber harvests on fee land within the exterior boundaries of  
29 the reservation of the Indian tribe and are not in regard to timber  
30 harvests on trust land or land owned by the tribe within the exterior  
31 boundaries of the reservation.

32 (3) The agreement must provide that the tribal tax (~~shall be~~) is  
33 credited against the state and county taxes imposed under RCW 84.33.041  
34 and 84.33.051.

35 (4) Tribal ordinances for timber harvest excise taxation, or other  
36 authorizing tribal laws, which implement the timber harvest excise tax

1 agreement with the state, must incorporate or contain provisions  
2 identical to chapter 84.33 RCW that relate to the tax rates and  
3 measures, such as stumpage values.

4 (5) Timber harvest excise tax agreements must be for renewable  
5 periods of no more than eight years.

6 (6) Timber harvest excise tax agreements must include provisions  
7 for compliance, such as inspection procedures, recordkeeping, and audit  
8 requirements.

9 (7) Tax revenue retained by the tribe must be used for essential  
10 government services. Use of tax revenue for subsidization of timber  
11 harvesters is prohibited.

12 (8) The timber harvest excise tax agreement may include provisions  
13 to resolve disputes using a nonjudicial process, such as mediation.

14 (9) The governor may delegate the power to negotiate the timber  
15 harvest excise tax agreements to the department of revenue.

16 (10) Information received by the state or open to state review  
17 under the terms of a timber harvest excise tax agreement is subject to  
18 the provisions of RCW 82.32.330. The department of revenue may enter  
19 into an information sharing agreement with the tribe to facilitate  
20 sharing information to improve tax collection.

21 (11) The timber harvest excise tax agreement must include dispute  
22 resolution procedures, contract termination procedures, and provisions  
23 delineating the respective roles and responsibilities of the tribe and  
24 the department of revenue.

25 (12) The timber harvest excise tax agreement must include  
26 provisions to require taxpayers to submit information that may be  
27 required by the department of revenue or tribe.

28 (13) For the purposes of this section:

29 (a) "Essential government services" means services such as forest  
30 land management; protection, enhancement, regulation, and stewardship  
31 of forested land; land consolidation; tribal administration; public  
32 facilities; fire; police; public health; education; job services;  
33 sewer; water; environmental and land use; transportation; utility  
34 services; and public facilities serving economic development purposes  
35 as those terms are defined in RCW 82.14.370(3)(c);

36 (b) "Forest land" has the same meaning as in RCW 84.33.035;

37 (c) "Harvester" has the same meaning as in RCW 84.33.035;

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

4 (e) "Timber" has the same meaning as in RCW 84.33.035.

5 **Sec. 11.** RCW 43.06.480 and 2007 c 69 s 3 are each amended to read  
6 as follows:

7 (1) Subject to the provisions of section 3 of this act, the  
8 governor is authorized to enter into a timber harvest excise tax  
9 agreement with the Quinault Nation. Agreements adopted under this  
10 section must provide that the tribal timber harvest excise tax rate be  
11 one hundred percent of the state timber harvest excise tax.

12 (2) A timber harvest excise tax agreement under this section is  
13 subject to RCW 43.06.475.

14 **Sec. 12.** RCW 9.46.360 and 1992 c 172 s 2 are each amended to read  
15 as follows:

16 (1) The negotiation process for compacts, or compact amendments,  
17 with federally recognized Indian tribes for conducting class III  
18 gaming, as defined in the Indian Gaming Regulatory Act, 25 U.S.C. Sec.  
19 2701 et seq., on federal Indian lands is governed by this section.

20 (2)(a) The (~~gambling~~) commission through the director or the  
21 director's designee (~~shall~~) must negotiate compacts, including  
22 compact amendments, for class III gaming on behalf of the state with  
23 federally recognized Indian tribes in the state of Washington. Nothing  
24 in this section authorizes the governor to execute a compact without  
25 the approval of the legislature.

26 (b) Negotiations should include an expectation that the tribe will  
27 make payments to the state based on the gross gaming revenue generated  
28 from all class III gaming activities consistent with the following  
29 graduated scale:

<u>Tiers</u>	<u>Gross Gaming Revenue</u>	<u>Percentage</u>
<u>1</u>	<u>\$0 - \$30,000,000</u>	<u>3%</u>
<u>2</u>	<u>More than \$30,000,000 - \$60,000,000</u>	<u>5%</u>
<u>3</u>	<u>More than \$60,000,000 - \$90,000,000</u>	<u>10%</u>
<u>4</u>	<u>More than \$90,000,000 - \$120,000,000</u>	<u>15%</u>

1	<u>5</u>	<u>More than \$120,000,000 - \$150,000,000</u>	<u>20%</u>
2	<u>6</u>	<u>More than \$150,000,000 - \$180,000,000</u>	<u>25%</u>
3	<u>7</u>	<u>More than \$180,000,000 - \$210,000,000</u>	<u>30%</u>
4	<u>8</u>	<u>Above \$210,000,000</u>	<u>35%</u>

5 (3)(a) When a tentative agreement with an Indian tribe on a  
6 proposed compact is reached, the director (~~(shall)~~) must immediately  
7 transmit a copy of the proposed compact to all voting and ex officio  
8 members of the (~~(gambling)~~) commission and to the standing committees  
9 of the legislature designated pursuant to subsection (~~(+5)~~) (4) of  
10 this section. The director must forward with his or her submittal  
11 documents a recommendation for approval of the proposed compact and  
12 comments about or analysis of the proposed compact's provisions.

13 (~~(+4)~~) (b) The commission may hold public hearings on the proposed  
14 compact any time after receiving a copy of the compact from the  
15 director. Within forty-five days after receiving the proposed compact  
16 from the director, the commission must vote on whether to forward the  
17 proposed compact, with any comments, to the legislature for approval or  
18 to return the proposed compact to the director with instructions for  
19 further negotiations. Notwithstanding RCW 9.46.040, the four ex  
20 officio members of the (~~(gambling)~~) commission (~~(shall be)~~) are deemed  
21 voting members of the (~~(gambling)~~) commission for the sole purpose of  
22 voting on proposed compacts submitted under this section.

23 (~~(+5)~~) (4) Within thirty days after receiving notice from the  
24 director that a proposed compact (~~(from the director)~~) has been  
25 forwarded by the commission under subsection (3) of this section, one  
26 standing committee from each house of the legislature (~~(shall)~~) must  
27 hold a public hearing on the proposed compact and forward its  
28 respective (~~(comments to the gambling commission)~~) recommendations, if  
29 any, to the legislature. The president of the senate (~~(shall)~~) must  
30 designate the senate standing committee that is to carry out the duties  
31 of this section, and the speaker of the house of representatives  
32 (~~(shall)~~) must designate the house standing committee that is to carry  
33 out the duties of this section. The designated committees (~~(shall)~~)  
34 must continue to perform under this section until the president of the  
35 senate or the speaker of the house of representatives, as the case may  
36 be, designates a different standing committee. The committees must



1 receive at the hearing any comments on the proposed compact provided by  
2 the commission.

3 ~~((6) The gambling commission may hold public hearings on the~~  
4 ~~proposed compact any time after receiving a copy of the compact from~~  
5 ~~the director. Within forty five days after receiving the proposed~~  
6 ~~compact from the director, the gambling commission, including the four~~  
7 ~~ex officio members, shall vote on whether to return the proposed~~  
8 ~~compact to the director with instructions for further negotiation or to~~  
9 ~~forward the proposed compact to the governor for review and final~~  
10 ~~execution.~~

11 ~~(7) Notwithstanding provisions in this section to the contrary, if~~  
12 ~~the director forwards a proposed compact to the gambling commission and~~  
13 ~~the designated standing committees within ten days before the beginning~~  
14 ~~of a regular session of the legislature, or during a regular or special~~  
15 ~~session of the legislature, the thirty day time limit set forth in~~  
16 ~~subsection (5) of this section and the forty five day limit set forth~~  
17 ~~in subsection (6) of this section are each forty five days and sixty~~  
18 ~~days, respectively.~~

19 ~~(8))~~ (5)(a) The legislature may act on the proposed compact by a  
20 joint resolution introduced in the legislative session during which the  
21 designated standing committees received notice under subsection (4) of  
22 this section or, if not in session or if in a special session or within  
23 the last thirty days of a regular session when the notice was received,  
24 in the next convened regular or special legislative session.

25 (b) If a joint resolution is introduced under this subsection, the  
26 legislature must approve or reject the resolution by adjournment sine  
27 die of the regular or special session in which the resolution was  
28 introduced. Approval of the resolution requires the affirmative vote  
29 of sixty percent of the members of each house of the legislature. The  
30 failure of the legislature to act on the resolution by adjournment sine  
31 die of the relevant session is deemed to be rejection of the proposed  
32 compact.

33 (c) If the legislature approves a joint resolution under this  
34 subsection, the proposed compact must be forwarded to the governor for  
35 review and final execution. If the legislature does not approve or  
36 rejects the resolution, the proposed compact must be returned to the  
37 commission for further negotiation.

1        (d) If a joint resolution is not introduced under this subsection,  
2 the proposed compact is deemed rejected and must be returned to the  
3 commission for further negotiation.

4        (6) Funding for the negotiation process under this section must  
5 come from the gambling revolving fund.

6        ((+9)) (7) In addition to the powers granted under this chapter,  
7 the commission, consistent with the terms of any compact, is authorized  
8 and empowered to enforce the provisions of any compact between a  
9 federally recognized Indian tribe and the state of Washington.

10        **Sec. 13.** RCW 43.06.010 and 1994 c 223 s 3 are each amended to read  
11 as follows:

12        In addition to those prescribed by the Constitution, the governor  
13 may exercise the powers and perform the duties prescribed in this and  
14 the following sections:

15        (1) The governor ((shall)) must supervise the conduct of all  
16 executive and ministerial offices;

17        (2) The governor ((shall)) must see that all offices are filled,  
18 including as provided in RCW 42.12.070, and the duties thereof  
19 performed, or in default thereof, apply such remedy as the law allows;  
20 and if the remedy is imperfect, acquaint the legislature therewith at  
21 its next session;

22        (3) The governor ((shall)) must make the appointments and supply  
23 the vacancies mentioned in this title;

24        (4) The governor is the sole official organ of communication  
25 between the government of this state and the government of any other  
26 state or territory, or of the United States;

27        (5) Whenever any suit or legal proceeding is pending against this  
28 state, or which may affect the title of this state to any property, or  
29 which may result in any claim against the state, the governor may  
30 direct the attorney general to appear on behalf of the state, and  
31 report the same to the governor, or to any grand jury designated by the  
32 governor, or to the legislature when next in session;

33        (6) The governor may require the attorney general or any  
34 prosecuting attorney to inquire into the affairs or management of any  
35 corporation existing under the laws of this state, or doing business in  
36 this state, and report the same to the governor, or to any grand jury  
37 designated by the governor, or to the legislature when next in session;

1 (7) The governor may require the attorney general to aid any  
2 prosecuting attorney in the discharge of the prosecutor's duties;

3 (8) The governor may offer rewards, not exceeding one thousand  
4 dollars in each case, payable out of the state treasury, for  
5 information leading to the apprehension of any person convicted of a  
6 felony who has escaped from a state correctional institution or for  
7 information leading to the arrest of any person who has committed or is  
8 charged with the commission of a felony;

9 (9) The governor (~~shall~~) must perform such duties respecting  
10 fugitives from justice as are prescribed by law;

11 (10) The governor (~~shall~~) must issue and transmit election  
12 proclamations as prescribed by law;

13 (11) The governor may require any officer or board to make, upon  
14 demand, special reports to the governor, in writing;

15 (12) The governor may, after finding that a public disorder,  
16 disaster, energy emergency, or riot exists within this state or any  
17 part thereof which affects life, health, property, or the public peace,  
18 proclaim a state of emergency in the area affected, and the powers  
19 granted the governor during a state of emergency (~~shall be~~) are  
20 effective only within the area described in the proclamation;

21 (13) The governor may, after finding that there exists within this  
22 state an imminent danger of infestation of plant pests as defined in  
23 RCW 17.24.007 or plant diseases which seriously endangers the  
24 agricultural or horticultural industries of the state of Washington, or  
25 which seriously threatens life, health, or economic well-being, order  
26 emergency measures to prevent or abate the infestation or disease  
27 situation, which measures, after thorough evaluation of all other  
28 alternatives, may include the aerial application of pesticides;

29 (14) (~~On all~~) With respect to compacts approved and forwarded to  
30 the governor by the legislature pursuant to RCW 9.46.360((+6)), the  
31 governor is authorized and empowered to execute, on behalf of the state  
32 compacts with federally recognized Indian tribes in the state of  
33 Washington pursuant to the federal Indian gaming regulatory act, 25  
34 U.S.C. Sec. 2701 et seq., for conducting class III gaming, as defined  
35 in the federal act, on Indian lands.

36 NEW SECTION. Sec. 14. Sections 12 and 13 of this act apply to all

1 tribal-state class III compacts and compact amendments that have not  
2 been finally executed by the governor as of the effective date of this  
3 section.

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