

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2803

66th Legislature
2020 Regular Session

Passed by the House February 18, 2020
Yeas 98 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate March 5, 2020
Yeas 32 Nays 16

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2803** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2803

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By House Finance (originally sponsored by Representatives Tarleton, Robinson, Sells, Lekanoff, Gregerson, Chapman, Orwall, Peterson, Tharinger, and Pollet; by request of Department of Revenue)

READ FIRST TIME 02/10/20.

1 AN ACT Relating to authorizing the governor to enter into
2 compacts with Indian tribes addressing certain state retail sales
3 tax, certain state use tax, and certain state business and occupation
4 tax revenues, as specified in a memorandum of understanding entered
5 into by the state, Tulalip tribes, and Snohomish county, in January
6 2020, and including other terms necessary for the department of
7 revenue to administer any such compact; adding new sections to
8 chapter 43.06 RCW; and creating a new section.

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

10 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.06
11 RCW to read as follows:

12 (1) The legislature intends to further the government-to-
13 government relationship between the state of Washington and federally
14 recognized Indian tribes in the state of Washington by authorizing
15 the governor to enter into compacts concerning the state's retail
16 sales, use, and business and occupation taxes on certain activities.

17 (2) The legislature finds that these compacts will benefit all
18 Washingtonians by providing a means to promote economic development
19 and providing needed revenues for tribal governments and Indian
20 persons.

1 (3) The state and the tribes have a long-standing history of
2 working together to develop cooperative agreements on taxation for
3 cigarettes, fuel, timber, and marijuana. It is the legislature's
4 intent, given the positive experiences from the nearly two decades of
5 cooperation, to build on these successes and provide the governor
6 with the authority to address state sales, use, and business and
7 occupation taxes on certain activities.

8 (4) In addition, it is the legislature's intent that these
9 compacts will have no impact on the taxation of any transaction that
10 is the subject of other compacts, contracts, or agreements authorized
11 elsewhere in this chapter.

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

14 (1)(a) The governor may enter into compacts with tribes
15 concerning revenue collected by the state from the state sales tax,
16 state use tax, and certain state business and occupation taxes, to
17 the extent these taxes are imposed on qualified transactions. All
18 compacts must meet the requirements under this section.

19 (b)(i) Except with regard to the terms of a compacting tribe's
20 qualified capital investment, the governor may delegate the authority
21 to negotiate compacts to the department.

22 (ii) In negotiating the terms of a compacting tribe's qualified
23 capital investment, the governor must be satisfied that the
24 compacting tribe's qualified capital investment is substantially
25 proportionate to the compacting tribe's estimated tax revenue under
26 the compact as compared to qualified capital investments contained in
27 other compacts. For purposes of estimating a compacting tribe's tax
28 revenue under a compact, tax revenue from new development is not
29 included in the estimate.

30 (2) Any compact authorized under this section must include
31 provisions that allow the compacting tribe to receive, beginning on
32 the compact's implementation date, the following amounts of tax
33 collected on qualified transactions and received by the state:

34 (a) One hundred percent of certain state business and occupation
35 tax revenues;

36 (b) The first five hundred thousand dollars of the total amount
37 of state sales tax and state use tax collected during each calendar
38 year from taxpayers, regardless of whether the taxpayers meet the
39 requirements of a new development. If this five hundred thousand

1 dollar cap is reached during a calendar year, any amounts collected
2 from taxpayers that do not meet the requirements of a new development
3 will be deemed to have been collected and applied to the cap first,
4 but only in the calendar month in which the cap is reached;

5 (c) The following amounts of state sales tax and state use tax
6 collected during each calendar year from taxpayers meeting the
7 requirements of a new development:

8 (i) Twenty-five percent of any amount over the cap described in
9 (b) of this subsection (2); or

10 (ii) Sixty percent of any amount over the cap described in (b) of
11 this subsection (2), if the compacting tribe has completed a
12 qualified capital investment; and

13 (d) Beginning January 1st of the fourth calendar year following
14 the signing of the compact, the following amounts of state sales tax
15 and state use tax collected during each calendar year from taxpayers
16 that do not meet the requirements of a new development:

17 (i) Twenty-five percent of any amount over the cap described in
18 (b) of this subsection (2); or

19 (ii) Fifty percent of any amount over the cap described in (b) of
20 this subsection (2), if the compacting tribe has completed a
21 qualified capital investment.

22 (3) The parties to any compact must agree to include the
23 following provisions in the compact:

24 (a) A process for determining when any qualified capital
25 investment is complete;

26 (b) A process to verify compliance with the terms of the compact;

27 (c) A delineation of the respective roles and responsibilities of
28 the compacting tribe and the department;

29 (d) A process to resolve disputes, including the use of a
30 nonjudicial process;

31 (e) An agreement that the compact resolves all current and future
32 disputes between the compacting tribe and state and local taxing
33 authorities, while the compact is in effect, to the extent such
34 disputes relate to the levying, assessment, and collection of taxes
35 related to the following:

36 (i) Transactions between nonmembers, where such transactions are
37 subject to any state sales tax, local sales tax, and any other taxes
38 in effect or authorized as of the effective date of this section,
39 except for any business and occupation tax under chapter 82.04 RCW
40 other than certain state business and occupation taxes;

1 (ii) State and local use tax imposed on nonmembers and sourced to
2 a location within the Indian country of the compacting tribe pursuant
3 to RCW 82.32.730; and

4 (iii) State and local personal property taxes imposed on
5 nonmembers;

6 (f) An agreement that in the event of a change in state tax laws
7 that affects the negotiated terms of a compact, or a change in the
8 department's interpretation regarding the property taxation of
9 nonmember-owned improvements on Indian trust land:

10 (i) The parties must discuss in good faith any changes in the
11 compact or this section that may be appropriate to preserve the
12 intended benefits of the compact; and

13 (ii) A compacting tribe may terminate the compact if the good
14 faith discussions do not result in a mutually satisfactory
15 resolution;

16 (g) (i) An agreement that the department must perform all
17 functions related to the administration and collection of the taxes
18 collected on qualified transactions. The department may not impose
19 any charge on a compacting tribe for these services. However, the
20 department may seek legislative appropriations to cover its
21 administrative costs associated with compact negotiations and
22 administration.

23 (ii) As part of the department's authority under (g) (i) of this
24 subsection (3), the department will apply the provisions contained in
25 Title 82 RCW insofar as they are applicable to the taxes at issue in
26 any compact authorized under this section;

27 (h) An agreement that the compacting tribe will provide
28 information the department determines is necessary to fulfill the
29 department's tax administration obligations under the compact,
30 including information related to parcel ownership and business
31 operations in the compact covered area; and

32 (i) Terms specifying the duration of the compact, and any related
33 terms.

34 (4) (a) A compacting tribe may examine department records related
35 to the payment of tax amounts to the compacting tribe. The compacting
36 tribe must agree to keep information obtained from the department
37 pursuant to a compact confidential to the same extent as the
38 department is required to keep that information confidential pursuant
39 to RCW 82.32.330.

1 (b) Information received by the state or open to state review
2 under the terms of a compact is deemed tax information under RCW
3 82.32.330.

4 (5) The amounts in subsection (2) of this section must be paid to
5 the compacting tribe on a monthly basis within sixty days after the
6 department receives the tax amounts.

7 (6) All refunds and credits the department issues to taxpayers of
8 amounts previously paid to the compacting tribe under the terms of a
9 compact will be charged to the compacting tribe.

10 (7) Funds dedicated under RCW 82.08.020 and 82.12.0201 to the
11 performance audits of government account under RCW 43.09.475 are not
12 reduced by any payment to the compacting tribe.

13 (8) The department may adopt rules as may be necessary to
14 administer the provisions of this section.

15 (9) This section does not affect the depositing of state sales
16 tax, state use tax, and certain state business and occupation tax
17 into the general fund as required by RCW 82.32.380.

18 (10) The definitions in this subsection apply throughout this
19 section unless the context clearly requires otherwise.

20 (a) "Certain state business and occupation tax" means the tax
21 imposed in chapter 82.04 RCW with respect to any qualified
22 transaction as defined in (o)(i) of this subsection (10).

23 (b) "Compact" means a compact authorized by this section.

24 (c)(i) "Compact covered area" means: (A) Trust land, whether
25 located within or outside of the boundaries of the compacting tribe's
26 reservation; and (B) fee land within the boundaries of the compacting
27 tribe's reservation and under tribal or tribal-member ownership.

28 (ii) For purposes of this subsection (10)(c), "tribal or tribal-
29 member ownership" means fee land with a greater than fifty percent
30 ownership interest being held by any combination of the compacting
31 tribe or its tribal members.

32 (iii) "Compact covered area" does not include any land that, as
33 of the effective date of this section, was fee land in which one or
34 more nonmembers held a majority ownership, but only with respect to:

35 (A) A business that was in operation on that land as of the
36 effective date of this section and continues to be in operation on
37 that same land; or

38 (B) A substantially similar successor business to a business
39 described in (c)(iii)(A) of this subsection (10) is in operation on
40 that same land.

1 (d) "Compacting tribe" means, with respect to any specific
2 compact, the tribe that is a party to the compact.

3 (e) "Department" means the department of revenue.

4 (f) "Implementation date" means the date, negotiated by the
5 parties to the compact, on which the department is required to begin
6 administering the terms of such compact.

7 (g) "Indian country" has the same meaning as provided in 18
8 U.S.C. Sec. 1151, as existing on the effective date of this section.

9 (h) "Indian reservation" means all lands, notwithstanding the
10 issuance of any patent, within the boundaries of areas set aside by
11 the United States for the use and occupancy of Indian tribes by
12 treaty, law, or executive order, or otherwise designated or described
13 "reservation" by any federal act, and that are currently recognized
14 as "Indian reservations" by the United States department of the
15 interior. The term applies to all land within the boundaries of the
16 Indian reservation, regardless of whether the land is owned by
17 nonmembers, tribal members, or an Indian tribe.

18 (i) "Indian tribe" or "tribe" means a federally recognized Indian
19 tribe located at least partially within the geographical boundaries
20 of the state of Washington and includes its enterprises,
21 subsidiaries, and constituent parts.

22 (j) "Local sales tax" means any sales tax that a local taxing
23 authority is authorized to impose under chapter 82.14 RCW, RCW
24 81.104.170, or any other provision of state law.

25 (k) "Local use tax" means any use tax that a local taxing
26 authority is authorized to impose under chapter 82.14 RCW, RCW
27 81.104.170, or any other provision of state law.

28 (l) "New development" means, with respect to any specific compact
29 and the compact covered area associated with that compact, a person
30 that:

31 (i) Is subject to state sales tax or state use tax collection or
32 payment obligations as a result of business activity within the
33 compact covered area;

34 (ii) Conducts business operations in a structure within the
35 compact covered area, and construction of that structure began on or
36 after the date the compact is signed by the parties, but not
37 including any such construction involving the renovation of or
38 addition to a structure existing before the date the compact is
39 signed by the parties; and

1 (iii) Has not previously been subject to state sales tax or state
2 use tax collection or payment obligations as a result of that same
3 business activity operated within a different structure located
4 elsewhere within the compact covered area.

5 (m) "Nonmember" means, with respect to any specific compact:

6 (i) A natural person who is not a tribal member of the compacting
7 tribe;

8 (ii) A tribe that is not the compacting tribe; or

9 (iii) Any entity where not more than fifty percent of the
10 ownership interests are held by any combination of the compacting
11 tribe or any tribal members of the compacting tribe.

12 (n) "Qualified capital investment" means a contribution to the
13 development and construction of a project agreed to by the governor
14 and the compacting tribe.

15 (o) "Qualified transaction" means:

16 (i) A retail sale subject to state sales tax, involving a seller
17 and purchaser who are both nonmembers, and that is sourced to a
18 location within the compact covered area pursuant to RCW 82.32.730;
19 or

20 (ii) Any use by a nonmember upon which the state use tax is
21 imposed and sourced to a location within the compact covered area
22 pursuant to RCW 82.32.730.

23 (p) "State sales tax" means the tax imposed in RCW 82.08.020(1).

24 (q) "State use tax" means the tax imposed in RCW 82.12.020 at the
25 rate in RCW 82.08.020(1).

26 (r) "Tribal member" means an enrolled member of a federally
27 recognized tribe, or in the context of a marital community, the
28 spouse of a tribal member of the compacting tribe.

29 NEW SECTION. **Sec. 3.** Nothing in this act in any way limits,
30 restricts, reduces, or affects local taxes authorized under chapter
31 82.14 RCW, RCW 81.104.170, Title 35, 36, or 84 RCW, or any other
32 provision of state law authorizing a local tax.

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