

HB 3128

Bill Analysis

February 22, 2000

Brief Description: Authorizing the governor to enter into cooperative agreements concerning the sales of cigarettes.

Bill Sponsors: Representatives Thomas, Dunshee and Santos; by request of Department of Revenue.

Brief Summary of Bill

- Allows Governor to make cooperative agreements with Indian tribes concerning sales of cigarettes.
- Exempts cigarette sales on Indian land from cigarette and sales and use taxes during the time a cooperative agreement exists.

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Background:

Cigarette taxes are added directly to the price of these goods before the sales tax is applied. The rate for the cigarette tax is 82.5 cents per pack of 20 cigarettes. Retail sales and use taxes are also imposed on sales of cigarettes. Sales tax applies when items are purchased at retail in the state. Sales tax is paid by the purchaser and collected by the seller. 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 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. 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 rate varies from 7 percent to 8.6 percent, depending on the location. Use tax is equal to the sales tax rate multiplied by the value of the property used.

Revenue from the first 23 cents of the cigarette tax goes to the general fund. The next 8 cents are dedicated to water quality improvement programs through June 30, 2021, and to the general fund thereafter. The next 41 cents go to the health services account. The remaining 10.5 cents are dedicated to youth violence prevention and drug enforcement.

The cigarette tax is due from the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state. Under 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 nontribal members are subject to the tax. Enforcement of state cigarette taxes in respect to tribal retail operations has involved considerable difficulty and litigation, with mixed results.

Summary of Bill:

The governor may enter into cooperative agreements concerning the sales of cigarettes with federally recognized Indian tribes or self-governing dependent Indian communities. Cooperative agreements shall be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the cooperative agreement's term are exempt from cigarette, and sales and use taxes.

Cooperative agreements shall:

- (1) Limit tribal retailing to sales of cigarettes made within the boundaries of the reservation and land held in trust for a tribe or tribal member by the United States;
- (2) Prevent sales to any person under the age of eighteen years;
- (3) Require a tribal cigarette tax of no less than 80 percent of the state cigarette, and sales and use taxes;
- (4) Require tribal cigarette tax be used for essential government services.
- (5) Require sharing of tribal tax proceeds with state if tribal tax is less than 100 percent of state cigarette, and sales and use taxes:
 - a. If tribal tax is between 90 percent and 100 percent of state cigarette, and sales and use taxes then 20 percent of the tax proceeds shall be transmitted to the State Treasurer for deposit in the rural county development account.
 - b. If tribal tax is between 80 percent and 90 percent of state cigarette, and sales and

use taxes then 30 percent of the tax proceeds shall be transmitted to the State Treasurer for deposit in the rural county development account.

- (6) Require the use of tribal cigarette tax stamps;
- (7) Require that tribal retailers purchase cigarettes only from approved sources; and
- (8) Allow submission of disputes regarding the interpretation and administration of the cooperative agreement's provisions for judicial resolution.

An agreement with a self-governing dependent Indian community must also provide a dedication of a portion of the tax proceeds to support education and a means for the Department of Revenue to check that tribal retailers purchase cigarettes only from approved sources.

Appropriation: None.

Fiscal Note: Requested February 7, 2000.

Effective Date: Ninety days after adjournment of session in which bill is passed.