

## DAILY NEWS CLIPS

### FEDERAL NEWS CLIPS

June 26, 2012

#### **U.S. HIGHWAY TALKS 97 PERCENT DONE, BOXER SAYS AS DEADLINE LOOMS**

By Jeff Plungis  
Bloomberg Businessweek  
June 25, 2012

U.S. House and Senate negotiators have completed 97 percent of their work on a bill that would set highway and transportation policy into next year, Senator Barbara Boxer said.

House Speaker John Boehner and Senate Majority Leader Harry Reid were deciding on whether to move forward, Boxer told transportation lobbyists on a conference call yesterday. Staff talks on the bill extended around the clock over the weekend, the California Democrat said.

“We are on the 1/2 yard line,” Boxer said in urging the lobbyists to contact congressional leaders to push for a deal. “We cannot afford to have any slippage from the progress we’ve been making.” She declined to answer questions about specific agreements, saying negotiations weren’t complete.

The Highway Trust Fund, which enables the federal government to pay for state road, bridge and mass transit projects, may run out of money if Congress resorts, as it has nine times already, to a temporary extension of current law, which runs out June 30.

Lawmakers have no plans for a 30-day extension of the highway measure, according to a House Republican leadership aide and a Senate Democratic leadership aide who spoke on condition of anonymity as the talks are continuing. Lawmakers would either reach agreement on a measure lasting as long as two years, or extend the current authorization for six months, after the November elections, they said.

#### ***Long Talks***

The two sides have always been close though close isn’t finished, said a Republican Senate leadership aide who also spoke on condition of not being named.

The House and Senate have discussing the transportation measure since April. The Senate passed a two-year, \$109 billion plan on a bipartisan 74-22 vote March 14. After efforts to pass its own long-term bill fell apart, the House passed an extension of current law April 18.

The issues holding up a deal include how to speed up approval of highway projects and whether states will have the flexibility to spend money dedicated to pedestrian improvements and bicycle trails on highways and bridges instead.

The U.S. Chamber of Commerce, the largest U.S. business lobbying group, supports a final measure that would cut down the average 13 years it takes to complete a road or bridge project with federal funding.

### ***Environmental Reviews***

The Washington-based Chamber prefers the House approach, which sets deadlines for environmental reviews and runs agency approvals concurrently rather than consecutively, said Janet Kavinoky, the group's executive director for transportation and infrastructure.

Rebuilding the I-35W Bridge over the Mississippi River in Minneapolis after its August 2007 collapse in just over a year showed it was possible to get big projects done in less time, Kavinoky said.

"If we can get that redone in that amount of time, and it was a major bridge, we can apply some of the lessons learned to the program as a whole," Kavinoky said.

Deron Lovaas, federal transportation policy director for the Natural Resources Defense Council, said it's unfair to blame all of the delays on complying with the National Environmental Policy Act, which has helped to reduce harmful social, economic and environmental impact of highway projects for 42 years.

"Countless projects that would have had significant harmful effect on the environment have either been avoided or completed with lower environmental impact," Lovaas said on the New York-based group's website June 14.

### ***Bike Paths***

Congressional negotiators are also trying to resolve differences over a federal program that guarantees a small portion of U.S. gasoline-tax revenues are spent on non-highway projects, like bike paths or developing safe walking routes.

States should be able to decide how much money, if any, to take away from roads and bridges, said Greg Cohen, president of the American Highway Users Alliance, a group of motorists and trucking firms that advocates on transportation policy.

"It shouldn't be a mandate," Cohen said. "This is sort of red meat to conservatives as a sign that the program has lost its way."

Transportation for America, a coalition of consumer and planning groups, released a study June 21 showing more than 50,000 pedestrians were killed between 2001 and 2010. The policies backed by the so-called enhancement program save lives, the group said.

### ***Multiple Users***

The House language, emphasizing roads and bridges to the exclusion of other needs, takes transportation policy back to the 1950s, said David Goldberg, the Washington-based group's communications director.

"There are multiple users of roadways in developed areas," Goldberg said. "It's not just cars. You have to consider the needs of everybody."

The Highway Trust Fund will run out of money sometime in the next 15 months without a congressional transportation deal, according to the Congressional Budget Office. The fund, which works as a kind of credit card to reimburse states for construction they're undertaking, is paid for through taxes on gasoline, diesel, new-truck purchases and truck tires.

Originally published here: <http://www.businessweek.com/news/2012-06-25/u-dot-s-dot-highway-talks-97-percent-done-boxer-says-as-deadline-looms>

## **SIDES STILL TALKING AS DEADLINE LOOMS**

By Meredith Shiner and John Stanton

Roll Call

June 26, 2012

### ***Highway Bill Must Be Finished by Wednesday***

Top negotiators on a final transportation reauthorization package are up against a tight deadline, with legislative language needing to be posted three legislative days before a House vote and authorization for current projects set to expire this weekend.

House sources indicated an agreement would need to be reached by Wednesday to have enough time for bill-writers to do their work and to satisfy House rules. But Monday, it appeared that talks over the weekend had not bridged the most important points of contention, and both sides began to gird for what they believe will be a difficult end of the week.

Between the transportation bill, an extension of student loan rates and the potential fallout from the Supreme Court's health care ruling, Republicans and Democrats alike are hoping they can hit their deadlines instead of being stuck with the blame for failure.

"I'm putting my colleagues on notice. Mr. President, the Senate will stay as long as we have to, end of the week if necessary, to complete this substantial workload," Senate Majority Leader Harry Reid (D-

Nev.) said on the floor Monday. “We hope that there will be cooperation not only in this body but also in the House of Representatives.”

But the path to a deal remains unclear, and the top grievances from House Republicans now are not over what’s already in the bipartisan Senate-approved two-year extension but instead over what’s still missing.

A House GOP leadership aide confirmed that talks continued throughout the weekend between Senate Environment and Public Works Chairman Barbara Boxer (D-Calif.) and House Transportation and Infrastructure Chairman John Mica (R-Fla.). The aide said that based on those talks, Speaker John Boehner (R-Ohio) remains hopeful a deal can be cut by Wednesday evening.

But the aide warned that “nothing is agreed to until everything is agreed to,” explaining that part of the problem remains how conferees will balance compromises on the biggest issues, most notably the Keystone XL oil pipeline and changes to the environmental permit process that would expedite and streamline reviews.

House Republicans have made clear in talks with Boxer that “if you don’t want to do Keystone, you’re going to have to give a lot on streamlining, and if you don’t want to do streamlining, you’re going to have to give on Keystone. ... It’s that sort of balancing act,” the aide said.

Still, the GOP aide added that “there’s no poison pill in it at this point” and that the two sides are working diligently to resolve their differences.

The composition of the conference committee has been viewed as a litmus test for whether Boehner can clear a deal through his conservative Conference, with eight of Boehner’s 20 appointed conferees being freshmen. If they can approve the compromise in the conference committee, it’s likely the package could garner enough votes for final passage.

Although House GOP leaders have yet to endorse the idea of linking student loans and the highway bill — which has been discussed privately in the Senate — they remain open to the idea if a deal on both topics can be reached. Some sources have suggested it might be easier to pass both measures together. Reid has floated a proposal to pay for such a deal in a way that has overlapping offsets. But there is a wider consensus on student loans, even though missing the July 1 deadline to keep rates from doubling is less serious than missing the transportation deadline, when some highway projects will stop. Interest rates can be fixed retroactively.

Senate leadership sources were being especially coy Monday and did not want to speak to any of the specifics on either set of talks. In Congress, silence can cut both ways: Either the sides are close to a deal and don’t want to leak the details, or they are far apart and scrambling to find suitable alternatives.

Democratic sources, however, indicated that it would be bad for the White House and even their own candidates running for re-election if transportation projects that create jobs lapse and loan rates go up. Though no one is speaking openly about another temporary highway extension, some sources suggested neither party is eager to fall short on the issue.

House GOP leaders are playing a wait-and-see game on student loans. According to GOP leadership aides, Boehner at this point is content to allow Senate Minority Leader Mitch McConnell (R-Ky.) to take

the lead in negotiating with Reid. With Republicans in both chambers largely united on the issue — and both leaders wary of a repeat of last winter's payroll tax cut debacle — it is unlikely McConnell would cut a deal he wasn't sure would make it through the House.

Republicans in particular are eager to have the issue behind them; Democrats have been relatively successful in painting the party as standing in the way of an extension despite repeated statements to the contrary, and the Democratic Congressional Campaign Committee has used the standoff on student loans to hammer Republicans.

For instance, on Monday the DCCC circulated a release to local media in 60 districts represented by Republicans accusing them of voting "to protect taxpayer subsidies for Big Oil companies instead of stopping these student loan rates from increasing by \$1,000 per person at the end of the month."

*Originally published here: [http://www.rollcall.com/issues/57\\_157/Sides-Still-Talking-as-Deadline-Looms-215663-1.html?pos=htmbtxt](http://www.rollcall.com/issues/57_157/Sides-Still-Talking-as-Deadline-Looms-215663-1.html?pos=htmbtxt)*

## **SHOWDOWN TIME AGAIN IN CONGRESS ON STUDENT LOANS, HIGHWAYS**

By Lisa Mascaro  
Los Angeles Times  
June 26, 2012

*Action is needed by week's end to keep students' interest rates down and construction money flowing.*

Congress often waits until the last possible minute to make tough decisions, and that moment arrives this week for two crucial issues that have become political pawns.

Action is needed by Saturday to prevent student loan interest rates from doubling for 7 million college undergraduates. If nothing is done, students' payments would increase by \$1,000 a year, on average. Also by week's end, Congress must reach agreement on the federal highway program, or the money stops.

Lawmakers are struggling to make deals on the measures, which Democrats and Republicans both say they support.

"Lots to do — a very short time to do it," Senate Majority Leader Harry Reid (D-Nev.) said Monday.

The reason for the delay is clear: Neither party has much to gain from an early compromise on the debates that have prevented agreement because neither wants to be criticized for caving.

Republicans, for example, want to pay for the subsidized student loans by cutting other domestic programs that Democrats want to protect. Highway funding is being targeted for reductions by the GOP, while Democrats want to maintain road and infrastructure development.

Each party hopes the other blinks.

The likely result is another showdown in Congress, which for the last 18 months has been defined by its penchant for lurching from crisis to crisis.

At the White House, the administration was optimistic Monday that lawmakers would resolve the standoff on student loans — an issue President Obama has frequently highlighted as he seeks to win over young voters and middle-class families ahead of the November election.

"We remain confident that Congress will do that, and that student loan rates will not double," Press Secretary Jay Carney said. "But there is certainly concern that only a few days remain before those loan rates double."

Talks are underway between Reid and Sen. Mitch McConnell of Kentucky, the Republican Senate leader, on a framework for the student loan deal, aides say.

Both the GOP-led House and the Senate, which the Democrats control, have approved bills to keep so-called Stafford loan rates at 3.4%. But the bills take different approaches to paying for the program.

Under the contours of an agreement, the \$6-billion cost would be covered through proposals from both sides, which could include increases to the amount employers pay for a pension guaranty program, as well as loan limits on part-time students or those who stay in school longer.

House Speaker John A. Boehner(R-Ohio) has chided Obama for stoking a controversy over college loans. He insists there is no dispute because Republicans also want to keep interest rates low. But a final agreement still could prove difficult.

As has happened repeatedly in this Congress, Boehner faces a restive Republican majority powered by a conservative flank that is skeptical of government programs and spending.

This dynamic has stymied talks on the highway bill. The \$109-billion measure, which would pay for highway and transit projects for two years, passed with bipartisan support in the Senate in March but has run into turbulence in the House.

Failure to approve a highway measure would halt the government's ability to collect the federal gas tax that pays for transportation construction and improvements. It is unclear what the loss of the 18.4-cent-a-gallon tax would mean for prices at the pump, but it would stall needed work on infrastructure.

Boehner has suggested punting on the highway bill by approving an extension that would continue the funding until after the November election. Democrats have rebuffed that overture but, with the deadline looming, may decide to accept.

*Originally published here: <http://www.latimes.com/news/nationworld/nation/la-na-congress-deadline-20120627,0,7023896.story>*

## **TEMPORARY EXTENSION MAY BE NECESSARY EVEN IF LAWMAKERS REACH HIGHWAY BILL DEAL**

By Ben Geman and Keith Laing  
The Hill  
June 25, 2012

A key member of the committee of lawmakers negotiating a new transportation spending bill said Monday evening that Congress may have to pass a temporary funding extension even if they reach a bicameral compromise.

“We may have to get an extension of a week or so because you have to write everything up,” said Sen. Jay Rockefeller (D-W. Va.), who is chairman of the Senate Commerce, Science and Transportation Committee.

Rockefeller said lawmakers are seeking to come to an agreement as soon as late Monday night. He said he was more optimistic than he had been at other points during the two-month negotiation between the 47-member House-Senate conference committee.

“Yesterday I would have said no chance of getting it done. Today I would say [there’s a] chance of getting it done,” said Rockefeller , who said there has been “give on both sides.”

“I now for the first time think that we have a good chance of getting a bill,” he said in the Capitol Monday evening.

Ben Geman has more, including details on negotiations about the controversial Keystone XL oil pipeline’s inclusion in the transportation bill, in Overnight Energy on The Hill’s E-2 Wire.

*Originally published here: <http://thehill.com/blogs/transportation-report/highways-bridges-and-roads/234701-temporary-extension-may-be-necessary-even-if-lawmakers-reach-highway-bill-deal>*

## **HIGHWAY BILL TALKS AT FEVER PITCH**

By Ben Geman  
The Hill (Excerpt from “Overnight Energy” Blog)  
June 25, 2012

Capitol Hill negotiations on a sweeping surface transportation bill are at a boil as lawmakers seek a deal imminently — a possibility that seemed remote not long ago.

“Both sides are continuing to work towards a deal and they’re close, but we don’t expect to be able to announce anything tonight,” said a Senate Democratic leadership aide.

House and Senate negotiators are trying to craft a bill before the current funding authorization expires June 30.

“Yesterday I would have said no chance of getting it done. Today I would say [there’s a] chance of getting it done,” said Sen. Jay Rockefeller (D-W.Va.), a member of the House-Senate negotiating group, who said there has been “give on both sides.”

“I now for the first time think that we have a good chance of getting a bill,” he said in the Capitol Monday evening.

Rockefeller said that even if there’s a deal, lawmakers could need to vote through a short extension of the current authorization beyond June 30, given the time needed to dot the i’s.

“We may have to get an extension of a week or so because you have to write everything up,” said Rockefeller, who also said lawmakers are seeking to come to an agreement as soon as late Monday night.

Of particular interest to E2 readers is the fate of House provisions, which Senate Republicans want too, that would provide a federal cross-border permit for the proposed Keystone XL oil sands pipeline. Rockefeller said Keystone is “probably not in it.”

Sen. Kay Bailey Hutchison (R-Texas), who is also on the House-Senate conference committee, said the prospects for reaching a deal appear fluid. “I have heard 'good' and I have heard 'slow down,' ” she told reporters in the Capitol Monday.

Sen. James Inhofe (R-Okla.), the top Republican on the Environment and Public Works Committee, appeared confident about the talks — and kept details close to the vest.

“I feel very optimistic that we are going to be able to perform a miracle here,” he said Monday.

“Staff has done a great job in getting everyone together and ironing out some of the difficult points, and I think we can see the light at the end of this tunnel,” he said.

Originally published here: <http://thehill.com/blogs/e2-wire/e2-wire/234665-overnight-energy-the-next-battle-over-climate-rules-highway-bill-talks-at-fever-pitch-and-more>

## **FDA MARKS THIRD ANNIVERSARY OF TOBACCO REGULATIONS**

By Thomas A. Briant

CSP.net

June 25, 2012

*A look at back, a look forward*

This month marks the third anniversary of the passage and implementation of the Family Smoking Prevention and Tobacco Control Act, the federal law that authorized the FDA to regulate cigarettes, roll-your-own and smokeless tobacco products.

Over the past three years, some of the major tobacco regulations have included the banning of the sale of cigarettes with a characterizing flavor, the prohibition of self-service displays in retail stores (except in



age-restricted tobacco shops), restrictions on advertising claims and the release of nine text and graphic picture cigarette health warnings. The cigarette health warnings are now the subject of two federal lawsuits resulting in a delay of the original effective date of Sept. 22, 2012.

Other significant regulations that are either pending or expected to be issued soon include: (1) a proposed retail violation reporting form that will allow members of the public to report potential retail violations directly to the FDA via smartphone, the Internet, by phone, or mail; and (2) a set of proposed regulations that the FDA has announced will apply to other tobacco products, such as cigars, pipe tobacco and electronic cigarettes.

Regarding the violation reporting form, please note that the federal Office of Management and Budget is now reviewing the violation reporting form and needs to decide whether to approve the use of the form by the FDA. As to the announcement regarding regulations on other tobacco products, the Tobacco Control Act granted the FDA the authority to extend regulations to other products besides cigarettes, roll-your-own and smokeless tobacco.

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## **JUDGE BLOCKS ROLL-YOUR-OWN CIGARETTE TAXES**

By Mike Baker  
Associated Press  
June 25, 2012

***\*\*This AP story was picked up by several publications across Washington, Oregon, and Idaho.***

A Washington judge blocked the collection of taxes on roll-your-own cigarettes Monday, citing a voter-approved initiative that makes it harder for lawmakers to raise taxes.

Franklin County Superior Court Judge Bruce Spanner granted a request for a preliminary injunction, said Department of Revenue spokesman Mike Gowrylow. He said Spanner considered the upcoming tax in violation of a voter-approved initiative requiring two-thirds of lawmakers to support tax increases.

The Legislature voted earlier this year to force roll-your-own cigarette stores to collect the state's 15-cents-per-cigarette tax, with lawmakers arguing that they were simply enforcing an existing tax and saying that the stores were exploiting a loophole to avoid taxes. Dozens of roll-your-own cigarette stores have appeared recently in Washington, selling cigarettes at less than half the price offered by most retailers.

The tax change was set to raise some \$12 million over the next year to help balance the state budget. Two-thirds of state House members approved the law change, but only 27 of the state's 49 senators approved the change.

Opponents said it would undermine 65 stores employing 250 people across the state. The lawsuit in Franklin County was filed by a consumer, a tobacco retailer and a company that supplies roll-your-own machines.

"It is gratifying to see that the Washington courts have stepped in to protect the constitutional rights of small business owners and customers," said Chris Weiss, lead attorney for RYO Machine, in a statement.

Roll-your-own stores were supposed to start collecting taxes July 1. State officials are exploring whether to appeal the decision.

*Originally published here:*

[http://seattletimes.nwsourc.com/html/localnews/2018528577\\_rollyourown26.html](http://seattletimes.nwsourc.com/html/localnews/2018528577_rollyourown26.html)

## **ROLL-YOUR-OWN GETS PRELIMINARY INJUNCTION AGAINST THE STATE OF WASHINGTON**

By David Haviland

KBKW News – Grays Harbor, Washington

June 25, 2012

Today, the plaintiffs in the Roll-Your-Own tobacco lawsuit against the State of Washington announced that Judge Bruce A. Spanner of Franklin County has granted their request for a preliminary injunction to delay the scheduled July 1 implementation date of HB 2565, in wake of their recent lawsuit. This will prevent enforcement of the proposed new taxes during the legal challenges.

"We are very pleased that Judge Spanner has granted our request for an injunction while our legal challenges are heard in court," said Phil Accordino, CEO of RYO Machine. "We look forward to making our case that HB 2565 is an invalid piece of legislation because it violates Initiative 1053, which would have required a 2/3 vote from both houses of the state legislature in order to raise taxes on our small, independent tobacco stores across the state."

Chris Weiss, lead attorney for RYO from Stoel Rives, said, "It is gratifying to see that the Washington courts have stepped in to protect the constitutional rights of small business owners and customers." He added, "While this case is very important to the RYO tobacco industry, it has a far reaching effect on all Washingtonians. Judge Spanner made a hard decision, and I believe the right decision."

Filed in Franklin County, the plaintiffs are Dana Henne, a consumer and Franklin County resident; 1/2 Price Smokes, Inc., an independent tobacco retailer in Benton County; and RYO Machine, LLC.

There are currently 65 small, independent RYO tobacco stores that employ approximately 250 individuals across the State of Washington. The RYO Coalition of Washington supports the efforts of the plaintiffs in this case to promote small businesses and their employees throughout the state.

*Originally published here:* <http://kbkw.com/modules/news/article.php?storyid=4286>

## **FRANKLIN COUNTY JUDGE OVERRULES OLYMPIA ON CIGARETTE TAX**

By John Trumbo  
The News Tribune (WA)  
June 26, 2012

Roll-your-own cigarettes won't be hit with a 15-cent tax in Washington when the new law takes effect Sunday, ruled Franklin County Superior Court Judge Bruce Spanner.

The judge granted a preliminary injunction Monday after a hearing in Pasco where plaintiffs claimed the tax violated state law.

Spanner disagreed with state attorney David Hankins, who argued that the court had no right to question why the new tax didn't have two-thirds approval of the Legislature.

The injunction will take effect when a \$200,000 bond or security is posted, Spanner said.

Seattle attorney Chris Weiss said he expects the security will be posted before July. Weiss represents Dana Henne of Pasco, a roll-your-own cigarette consumer; Gary Alexander of Sammamish, who owns 1/2 Price Smokes stores in Tacoma and Kennewick; and RYO Machine LLC.

Spanner considered the tax a violation of Initiative 1023, which was approved by voters in 2010 requiring a two-thirds majority of the Legislature for tax increases.

The roll-your-own taxing bill, House Bill 2565, passed in the House, but the Senate did not pass it by a two-thirds majority. Gov. Chris Gregoire signed the bill into law anyway. The bill was supposed to close a loophole that gives roll-your-own cigarette buyers smokes at about half the cost of prepacked cigarettes from other retail stores.

Weiss said the judge made a hard but right decision, and he expects the state to appeal Spanner's decision, possibly in connection with a high court appeal on the constitutionality of Initiative 1023. He said the injunction will remain until the legal challenges to the new law are resolved.

Spanner said he initially planned to call for a security deposit of \$12 million, which would be about one year's worth of tax revenue on roll-your-own cigarettes in the state, but Weiss' arguments convinced him to cut it by \$11.8 million.

Weiss said the new tax threatens the roll-your-own businesses, which have a niche market because of the existing cigarette tax.

Weiss noted that HB2565 was in response to the Department of Revenue's position that it did not have the authority to tax roll-your-own cigarettes under the existing law.

Hankins argued it wasn't a new tax because the tax rate on cigarettes remains the same, and that prepackaged and roll-your-own cigarettes look the same. He held up examples to show the court.

Hankins said the judge had no authority to examine the procedures of the Legislature in approving the cigarette tax, even if it was a work-around on the two-thirds majority requirement.

"You're telling me a court in this state has no right to look into whether the Legislature followed the law?" Spanner asked.

"Yes, if it is a procedural issue," Hankins replied.

Weiss said the governor's strong support for the tax did not give her "the right to override 1053."

Spanner said he has the right to scrutinize what the Legislature has signed off on.

"It's what we're doing here," the judge said.

*Originally published here:* <http://www.thenewstribune.com/2012/06/26/2194330/franklin-county-judge-overrules.html#storylink=cpy>

## **JUDGE GRANTS INJUNCTION BLOCKING NEW TAX ON RYO SMOKE SHOPS**

Kitsap Peninsula Business Journal (WA)  
June 26, 2012

A Franklin County Superior Court judge has agreed to a preliminary injunction request from plaintiffs who filed a lawsuit against the state over a law that would impose new taxes on tobacco shops where customers roll their own cigarettes in bulk.

Judge Bruce A. Spanner indicated at Monday's preliminary hearing in Pasco that he regards House Bill 2565 - which the Legislature passed earlier this year — as being subject to the two-thirds approval for tax increases as required by voter-approved Initiative 1053, according to plaintiffs' attorney Chris Weiss of Seattle.

The lawsuit was filed against the state, the Department of Revenue and the Liquor Control Board to challenge HB 2565, which was passed with two-thirds approval in the House but not in the state Senate.

The plaintiffs are Dana Henne of Franklin County; 1/2 Price Smokes, Inc., an independent tobacco retailer in Benton County; and RYO Machine, LLC, a company that makes bulk cigarette-rolling machines. The plaintiffs are required to post a \$200,000 bond for the injunction to be issued, Weiss said.

The law was scheduled to go into effect July 1.

There are currently 65 small, independent RYO tobacco stores — including stores in Bremerton, Silverdale and Port Orchard — that employ approximately 250 individuals across the state of Washington. The RYO Coalition of Washington supports the efforts of the plaintiffs in this case to promote small businesses and their employees throughout the state.

*Originally published here:* [http://kpbj.com/business\\_daily/2012-06-26/judge\\_grants\\_injunction\\_blocking\\_new\\_tax\\_on\\_ryo\\_smoke\\_shops](http://kpbj.com/business_daily/2012-06-26/judge_grants_injunction_blocking_new_tax_on_ryo_smoke_shops)

## **JUDGE BLOCKS TAX ON ROLL YOUR OWN CIGARETTES**

By Jerry Cornfield  
The Herald (WA)  
June 25, 2012

A Franklin County Superior Court judge today said the state cannot impose an additional tax on cheaper smokes known as roll-your-own cigarettes.

In an oral ruling, Superior Court Judge Bruce Spanner issued a preliminary injunction preventing the state from collecting the tax July 1 as planned. Spanner said under voter-approved Initiative 1053, lawmakers needed at least a two-thirds majority to approve the tax and failed to obtain it.

The state estimated the tax would bring in about \$137,000 a day.

In April, as part of the final agreement to balance the budget, a bipartisan majority of lawmakers passed House Bill 2565 requiring operators of roll-your-own stores to collect a tax on cigarettes produced by cigarette-making machines. Supporters said the bill would ensure those rolling their own cigarettes paid the same amount of tax as those who buy pre-packaged smokes.

The House passed the bill on a 66-32 vote which met the two-thirds requirement. However, the Senate vote of 27-19 approving the measure was less than two-thirds of that chamber.

Joe Baba, owner of Tobacco Joes roll-your-own store in Everett, fought passage of the bill and considered filing his own lawsuit against the tax. He was in the court room when Spanner issued his decision.

"I'm elated," Baba began, "that the judge ruled in our favor supporting small businesses and allowing our stores to stay open and offer customers the ability to make their own smokes without new taxes and government interference."

The lawsuit was filed against the state Department of Revenue by the owner of a roll your own store and one of their customers. The Attorney General's Office is defending the state agency.

State officials said late Monday they are evaluating whether to seek a stay of the injunction and appeal the decision.

"The judge believes that the Legislature would have had to comply with the two-thirds majority requirement for tax increases in order to enforce and collect taxes from "roll your own" cigarette machines. We argue that the cigarette machine legislation did not impose a new tax but rather provided a new method of collecting an existing cigarette tax previously uncollected because the state lacked an effective means of collecting it," said AG spokesman Dan Sytman.

*Originally published here:* <http://heraldnet.com/article/20120625/BLOG13/120629936/-1/NEWS01>

## **RULING MADE IN ROLL YOUR OWN CIGARETTES LAWSUIT**

By Bryant Maddrick

KNDO TV – NBC Washington

June 25, 2012

Roll your own cigarettes will remain cheaper for now, thanks to a ruling in Franklin County Civil Court Monday afternoon.

The ruling gives roll your own tobacco shops a victory to protect themselves from higher taxes imposed by the state legislature.

Judge Bruce Spanner ruled that the new taxes cannot be forced on stores like the half price smokes shop in Kennewick.

The lawsuit argued the new taxes violate initiative 1053 which requires a two thirds majority vote in the state legislature for any tax increase.

And judge Spanner agreed, "We've been able to protect the jobs that are in place, that's beneficial to the local community and it's based on our constitutional framework in this state," explains Chris Weiss, attorney for the defendants in the case.

Half price smokes employs 18 people, and the store's owner plans on hiring another 7 or 8 employees and opening another store in Pasco.

The judge instituted a temporary restraining order that would protect this afternoon's ruling. The defense expects the state to appeal.

*Originally published here:* <http://www.kndo.com/story/18877425/ruling-made-in-roll-your-cigarettes-lawsuit>

## **ARE LAWS BINDING ON THE LEGISLATURE?**

By Jason Mercier, Director, Center for Government Reform, Washington Policy Center

Washington Policy Center

June 25, 2012

Based on a state brief in the roll-your-own cigarette "tax" lawsuit being heard today at 2 p.m. in Franklin County, lawmakers may be able to ignore a law without first repealing it by passing a new law. It looks like this means that even if the Supreme Court were to eventually settle the constitutionality of the supermajority requirement for tax increases, if a future Legislature were to pass a tax increase in violation of that law without first repealing it, such action would appear to be deemed appropriate by the Attorney General's Office. This novel argument epitomizes the need for the people to be provided the opportunity to vote on constitutional supermajority vote requirements for tax increases.

Consider the following argument from the state's brief (emphasis added)

**“Even if this Court were to conclude that the Cigarette Machine Legislation raises taxes for purposes of RCW 43.135.034, the statutory two-thirds vote requirement cannot, by itself, invalidate the Cigarette Machine Legislation.** The Washington Supreme Court has explained that one enactment, even an enactment by initiative, cannot bind future legislatures. *Wash. State Farm Bureau Fed’n v. Gregoire*, 162 Wn.2d 284, 174 P.3d 1142 (2007). In *Farm Bureau*, the plaintiffs argued that a bill enacted by the 2005 Legislature exceeded the fiscal year expenditure limit established under the terms of Initiative 601 and therefore was invalid until it complied with a voter approval requirement adopted in the initiative. *Id.*

The Court upheld the legislation, reasoning that it is a fundamental principle of our system of government that each duly elected legislature is fully vested with the plenary power to enact laws, except as limited by our state and federal constitutions. *Farm Bureau*, 162 Wn.2d at 290. “No legislature can enact a statute that prevents a future legislature from exercising its law-making power. . . . To reason otherwise would elevate enactments of prior legislatures to constitutional status and reduce the current Legislature to a second-class representative of the people.” *Id.* These principles are likewise true for initiatives because when the people pass an initiative, they are exercising a legislative power that is coextensive with the Legislature’s. *Id.* “A law passed by initiative is no less a law than one enacted by the Legislature. Nor is it more. A previously passed initiative can no more bind a current legislature than a previously enacted statute.” *Id.* at 290-91 (footnotes omitted).

**The Court’s holding in *Farm Bureau* was explicit: a prior statute (whether enacted by the Legislature or by initiative) cannot prospectively invalidate a later statute. Therefore, RCW 43.135.034 cannot itself prospectively invalidate the Cigarette Machine Legislation.”**

While the rest of us were under the impression that the Legislature must first amend or repeal an old law before undertaking a new policy strategy, the Attorney General's Office appears to be arguing that another option is for lawmakers to simply ignore existing law and put a new one on the books.

The implication of the brief appears to indicate that if the Supreme Court upholds the constitutionality of the supermajority requirement for tax increases and a future Legislature ignores the law, the Attorney General's Office will defend the Legislature's tax increase.

Speaking of the Supreme Court and the King County Superior Court ruling from earlier this year:

“The State is seeking direct review by the Washington Supreme Court and has filed a motion seeking a stay of the superior court ruling. The Supreme Court Commissioner denied the State’s motion for a stay but referred the motion to the full Court which will consider the motion on July 11.”

Here are the other arguments the state makes in defense of the roll-your-own cigarette "tax":

“In sum, plaintiffs are not likely to prevail for all of the following reasons as a matter of law: (1) RCW 82.32.150 requires an assessment before plaintiffs can challenge a tax statute in superior court even if they make constitutional arguments, (2) the cigarette tax is already due from consumers possessing, handling, or consuming any unstamped cigarettes in Washington, and therefore the Cigarette Machine Legislation does not raise taxes, (3) the enrolled bill doctrine prevents this Court from invalidating a statute based on perceived procedural error, (4) RCW 43.135.034 cannot itself invalidate the Cigarette Machine Legislation, and (5) the legislation does not violate the Washington Constitution. If the Court

finds plaintiffs are not likely to prevail for any one of these reasons, it must decline grant the preliminary injunction.”

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