

HOUSE BILL REPORT

ESHB 1426

As Passed House:

March 13, 2007

Title: An act relating to the administration of fuel taxes.

Brief Description: Modifying the administration of fuel taxes.

Sponsors: By House Committee on Transportation (originally sponsored by Representatives Clibborn and Hankins; by request of Department of Licensing).

Brief History:

Committee Activity:

Transportation: 2/7/07, 3/1/07 [DPS].

Floor Activity:

Passed House: 3/13/07, 81-15.

Brief Summary of Engrossed Substitute Bill

- Eliminates language indicating the state's fuel tax is imposed on the end user.
- Defines licensees as fuel suppliers, distributors, importers, exporters, blenders, or international fuel tax agreement license holders.
- Authorizes the Governor to enter into fuel tax compact agreements with federally recognized tribes.
- Makes various administrative and technical changes to the existing fuel tax statutes.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Clibborn, Chair; Flannigan, Vice Chair; Appleton, Armstrong, Campbell, Curtis, Dickerson, Eddy, Hankins, Hudgins, Lovick, Rolfes, Sells, Simpson, Springer, B. Sullivan, Takko, Upthegrove, Wallace and Wood.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 6 members: Representatives Jarrett, Ranking Minority Member; Schindler, Assistant Ranking Minority Member; Ericksen, Hailey, Kristiansen and Rodne.

Staff: Jerry Long (786-7306).

Background:

Washington's fuel tax statutes declare that motor vehicle and special fuel taxes are imposed on the end user. Statute also directs fuel taxes be collected at the time the fuel is removed from the terminal rack, with those in the chain of distribution above the retailer being allowed certain credits and required to keep records showing the tax has been passed down the distribution chain. However, retailers are not allowed those same credits, and are not required to pass on the tax to the consumer or required to show receipts indicating the tax has been paid. Also, there is no enforcement at the user level for motor vehicle fuels to determine if the tax was paid by the end user.

Under federal law, absent explicit Congressional authorization, states are prohibited from imposing taxes on a tribe or its members for sales made on tribal lands. On January 4, 2006, the United States District Court for the Western District of Washington entered an order in favor of two plaintiff tribes, the Squaxin and Swinomish, declaring that the legal incidence of Washington's motor vehicle fuel tax is on the retailer. The order states that Washington's motor vehicle fuel taxes may not be applied to motor vehicle fuels delivered to, received by, or sold by any retail fuel station that is owned by a tribe, tribal enterprise, or tribal member and located on tribal lands. Because the court found that the Squaxin and Swinomish meet the above criteria, the court entered an injunction against the collection of Washington's motor vehicle fuel taxes for fuels delivered to, received by, or sold by the plaintiffs' retail stations.

In June 2006, the Department of Licensing (DOL) and the two plaintiff tribes signed short-term intergovernmental agreements that are structured so the tribes charge their customers a fuel tax equivalent to the state motor vehicle fuel tax, with the tribes receiving 75 percent of the tax revenue collected and the state receiving 25 percent.

Summary of Engrossed Substitute Bill:

Current statutory language declaring that motor vehicle and special fuel taxes are imposed on the end user are eliminated from state motor vehicle and special fuel tax statutes. Amendatory language is included to define licensees as fuel suppliers, distributors, importers, exporters, blenders, or international fuel tax agreement (IFTA) license holders, and explicitly states that the incidence of taxation be borne exclusively by these entities, except for distributors.

New sections are added to the motor fuel and special fuel tax chapters authorizing the Governor (or the DOL as their designee) to enter into fuel tax compact agreements with federally-recognized tribes operating or licensing retail stations on reservation or trust lands. Existing state/tribal fuel tax agreements are unaffected by the legislation. Any future compact

agreement requires the tribal entity to: (1) acquire fuel only from lawful entities; (2) spend fuel tax proceeds, or equivalent amounts, only on transportation planning, construction and maintenance of roads, bridges, boat ramps, transit services and facilities, police service and other highway-related purposes; and (3) allow for audits or other means of ensuring compliance to certify the number of gallons of fuel purchased for resale by the tribe and the use of fuel tax proceeds. Information from the tribal entity provided to the state is deemed personal information and exempt from public inspection or copying. The DOL is required to prepare and submit an annual report to the Legislature on the status of existing compact agreements and ongoing negotiations with the tribes. New sections are also added to the motor fuel and special fuel tax chapters requiring tribal licensees and retailers pass the tax through to end users as part of the selling price.

Various administrative changes are also addressed including: moving the racing fuel exemption from the special fuels to the motor fuels chapter; inserting IFTA provisions; moving compliance language to more appropriate subsections of the two fuel tax chapters; and deleting an obsolete reference regarding marine fuel dealers.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The decision to explicitly place the incidence of taxation at the supplier lever was based on the belief that it is the most legally-defensible option, harms the least number of interests, and offers the greatest level of protection against future litigation with regard to state fuel tax revenues. Three issues also addressed by the bill include the legal issue of tax incidence, where the suppliers are neutral on the issue, Governor's authority to contract with federally-recognized tribes and the policy issue of state regulation of payment due dates within the industry, which is eliminated by this bill. Out of the 400 to 500 distributors in the state, 119 of the suppliers are licensed and take advantage of the payment float and distributor credits available. One of the goals in the bill was to not impact the tax at the rack process enacted by the Legislature in 1999 and the existing tribal compacts. The tribes and Department of Licensing worked together to develop the contacting language in the bill. In June 2006, the Department of Licensing signed short-term intergovernmental agreements that are structured so the tribes charge their customers a fuel tax equivalent to the state fuel tax, with the tribes receiving 75 percent of the tax revenue collected, with the other 25 percent being paid to the state. Presently under the court order, the two tribes do not have to pay the state any fuel tax. The Squaxin tribe has been successful in using the fuel tax funds to assist in replacing a Mason County bridge in a partnership with Mason County and the funding could be used to leverage federal funds.

(Opposed) Distributors agree the issue needs to be addressed, but believes a bill that does not eliminate the float and credits for distributors could also solve the problem. The state could keep the tax at the rack and the distributors' float and other credits. The distributors float can be kept intact with jeopardizing the state's ability to establish the incidence of the tax at the supplier level. Distributors' cash flow is negatively impacted. The elimination of the float doesn't benefit the state but rather benefits suppliers, whose payment due date to the state remains unchanged. The terms for the payment of product from the distributor to the supplier is 10 days after delivery and, if the tax was also due at the same time, distributors in many cases will be required to borrow money and pay interest on the loans to replace the float the distributors will lose. The distributors have a proposed solution that will not affect the tribes, will maintain the float, and handle loss allowance.

Persons Testifying: (In support) Representative Clibborn, prime sponsor; Sharon Whitehead, Department of Licensing; and Kelly Corman, Squaxin Island Tribe.

(Opposed) Charlie Brown and Lea Wilson, Washington Oil Marketers Association; Bill Bellman, Sun Pacific Energy; and Phil Dormaier, Wenatchee Petroleum Company.

Persons Signed In To Testify But Not Testifying: Scott Wheat, Spokane Tribe of Indians.