

HOUSE BILL REPORT

HB 1631

As Reported by House Committee On:
Community Development, Housing & Tribal Affairs
Transportation

Title: An act relating to allowing federally recognized tribes with lands held in trust in a county that is west of the Cascade mountain range that borders Puget Sound with a population of at least one hundred eighteen thousand, but less than two hundred fifty thousand, persons to enter into agreements regarding fuel taxes.

Brief Description: Allowing federally recognized tribes with lands held in trust in a county that is west of the Cascade mountain range that borders Puget Sound with a population of at least one hundred eighteen thousand, but less than two hundred fifty thousand, persons to enter into agreements regarding fuel taxes.

Sponsors: Representatives Lytton, Appleton, Van De Wege, Pollet and Santos.

Brief History:

Committee Activity:

Community Development, Housing & Tribal Affairs: 2/3/15, 2/9/15 [DP];

Transportation: 2/25/15, 2/26/15 [DP].

Brief Summary of Bill

- Allows the Department of Licensing (by delegated authority of the Governor) to enter into fuel tax agreements with certain federally recognized tribes with lands held in trust.

HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 4 members: Representatives Appleton, Chair; Robinson, Vice Chair; Sawyer and Van De Wege.

Minority Report: Do not pass. Signed by 3 members: Representatives Johnson, Ranking Minority Member; Zeiger, Assistant Ranking Minority Member; Hawkins.

Staff: Kirsten Lee (786-7133).

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.

Background:

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. In 2007 legislation was enacted which authorized the Governor to enter into a motor vehicle fuel tax agreement with any federally recognized Indian tribe with a reservation in Washington regarding fuel taxes. The Governor has delegated this authority to the Department of Licensing (DOL).

There are two types of fuel tax agreements.

75 Percent Refund/25 Percent (75/25) State Tax Agreement.

Tribes agree to purchase the fuel sold at tribally owned retail stations from state-licensed fuel distributors with the state fuel tax included. Tribes report their purchases to the DOL and receive 75 percent of the state fuel tax revenue collected as a refund, and the state retains 25 percent as state tax.

Per Capita Agreement.

A per capita agreement is a computational formula resulting in an estimate of the amount of fuel tax most likely paid by tribal members purchasing fuel on the reservation. This formula provides an annual amount of fuel tax to be refunded to each tribe. All per capita agreements were entered into prior to the 2007 legislation.

In 2013 the fuel tax statutes concerning tribal motor vehicle (gasoline) and special fuel (diesel) taxes were consolidated. This change will take effect on July 1, 2015.

Summary of Bill:

The DOL, by delegated authority from the Governor, may enter into fuel tax agreements with federally recognized Indian tribes with trust lands in certain counties. The federally recognized tribe must have trust lands located in a county that is west of the Cascade mountain range that borders Puget Sound and has a population of at least 118,000, but less than 250,000 people.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1 relating to fuel tax agreements with certain tribes, which takes effect July 1, 2015.

Staff Summary of Public Testimony:

(In support) The bill very narrowly allows the Samish to enter into a fuel compact as several other tribes already do.

(Opposed) Fuel compacts gave 75 percent of the tax back to tribes, when none should have been given. The effect of tribal fuel taxes creates a disadvantage. This bill includes non-reservation tribes, and is not appropriate because it leaves everyone else out. There is no way to track the money received by the tribes for fuel taxes. There is a question of whether the fuel tax funds can be used for the specific uses defined in RCW 82.36.450. An ongoing case disputes the legitimacy of these fuel tax compacts.

Persons Testifying: (In support) Representative Lytton, prime sponsor; and Cody Arledge, Samish Indian Nation.

(Opposed) Tim Hamilton, Automotive United Trades Organization.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 13 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Moscoso, Vice Chair; Bergquist, Gregerson, McBride, Moeller, Morris, Ortiz-Self, Riccelli, Sells and Tarleton.

Minority Report: Do not pass. Signed by 12 members: Representatives Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Hayes, Kochmar, Pike, Rodne, Shea, Takko, Wilson, Young and Zeiger.

Staff: David Munnecke (786-7315).

Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On Community Development, Housing & Tribal Affairs:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2015, except for section 2, which takes effect 90 days after the adjournment of the session in which the bill is passed

Staff Summary of Public Testimony:

(In support) This bill is about equality between citizens. The Samish have tried to enter into a fuel tax compact for 10 years, but have not yet succeeded because tribes must have federal

recognition and a reservation to be eligible. The Samish have federal recognition, but no reservation, although the Samish are in the process of getting land declared a reservation.

Federal law does not require a reservation for tax exemption, but the reservation requirement was added to the act to keep non-state tribes from entering into fuel tax compacts.

The statute requires that the fuel tax funds sent to the tribes be used for transportation purposes, and there are regular audits.

(Opposed) The incidence of the motor vehicle fuel tax is at the rack, so that the fuel tax can be collected from everyone. The 18th Amendment requires the tax to be spent on the roads. Under the compacts, \$250 million has come out of the State Treasury without an appropriation. While there are audits to determine how much fuel tax revenue should be sent to the tribes, there are no audits to determine how that money is spent.

The fuel tax refunds to the tribes allows for unfair competition, since they can undercut the price charged at other private stations.

This bill only affects the ability of the Samish to receive a fuel tax refund. The fuel taxes will be collectable as long as they're at the rack.

Persons Testifying: (In support) Cody Arledge, Samish Indian Nation.

(Opposed) Tim Hamilton.

Persons Signed In To Testify But Not Testifying: None.