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SENATE BILL 6551

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Stevens, King, Morton, Schoesler, Holmquist Newbry, and Swecker

Read first time 01/31/12. Referred to Committee on Transportation.

1 AN ACT Relating to providing transparency and legislative oversight  
2 of tribal fuel tax agreements; amending RCW 82.36.450 and 82.38.310;  
3 and declaring an emergency.

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

5 **Sec. 1.** RCW 82.36.450 and 2007 c 515 s 19 are each amended to read  
6 as follows:

7 (1) The governor may enter into an agreement with any federally  
8 recognized Indian tribe located on a reservation within this state  
9 regarding motor vehicle fuel taxes included in the price of fuel  
10 delivered to a retail station wholly owned and operated by a tribe,  
11 tribal enterprise, or tribal member licensed by the tribe to operate a  
12 retail station located on reservation or trust property. The agreement  
13 may provide mutually agreeable means to address any tribal immunities  
14 or any preemption of the state motor vehicle fuel tax.

15 (2) The provisions of this section do not repeal existing  
16 state/tribal fuel tax agreements or consent decrees in existence on May  
17 15, 2007. The state and the tribe may agree to substitute an agreement  
18 negotiated under this section for an existing agreement or consent  
19 decree, or to enter into an agreement using a methodology similar to

1 the state/tribal fuel tax agreements in effect on May 15, 2007. For  
2 any state/tribal fuel tax agreement in existence as of the effective  
3 date of this section, the governor must by no later than May 15, 2013,  
4 complete such actions as are permitted under those agreements to  
5 renegotiate their terms to conform to those required by subsection (3)  
6 of this section. Any new agreement or modified existing agreement  
7 negotiated after the effective date of this section must contain terms  
8 as required in subsection (3) of this section.

9 (3) (~~If a new~~) Any agreement (~~(is negotiated, the agreement)~~)  
10 must:

11 (a) Contain certification by the state and the tribe that legal  
12 incidence of the tax under this chapter falls on the tribe;

13 (b) Require that the tribe or the tribal retailer acquire all motor  
14 vehicle fuel only from persons or companies operating lawfully in  
15 accordance with this chapter as a motor vehicle fuel distributor,  
16 supplier, importer, or blender, or from a tribal distributor, supplier,  
17 importer, or blender lawfully doing business according to all  
18 applicable laws;

19 (~~(b)~~) (c) Provide that the tribe will expend fuel tax proceeds  
20 (~~(or equivalent amounts on: Planning, construction, and maintenance of~~  
21 ~~roads, bridges, and boat ramps; transit services and facilities;~~  
22 ~~transportation planning; police services; and other highway-related~~  
23 ~~purposes;~~

24 (~~(c)~~) on highway purposes as set forth in Article II, section 40 of  
25 the Washington Constitution;

26 (d) Include provisions for audits or other means of ensuring  
27 compliance to certify (~~(the number of gallons of motor vehicle fuel~~  
28 ~~purchased by the tribe for resale at tribal retail stations, and the~~  
29 ~~use of fuel tax proceeds or their equivalent for the purposes~~  
30 ~~identified in (b) of this subsection. Compliance reports must be~~  
31 ~~delivered to the director of the department of licensing)) the tribe is  
32 in compliance with (b) and (c) of this subsection. The auditor must be  
33 selected jointly by the director of the department of licensing and the  
34 tribe. Auditor reports verifying compliance with this act must be  
35 delivered by the tribe to the director of the department of licensing  
36 within time frames established by the department.~~

37 (4) The legislature must appropriate the funds necessary to  
38 implement the agreements in this section.

1       (5) Information from the tribe or tribal retailers received by the  
2 state or open to state review under the terms of an agreement (~~shall~~  
3 ~~be deemed to be personal information under RCW 42.56.230(3)(b) and~~  
4 ~~exempt from public inspection and copying~~) is subject to chapter 42.56  
5 RCW.

6       (~~(5)~~) (6) The governor may delegate the power to negotiate fuel  
7 tax agreements to the department of licensing.

8       (~~(6)~~) (7) The department of licensing (~~shall~~) must prepare and  
9 submit an annual report to the legislature on the status of existing  
10 agreements and any ongoing negotiations with tribes.

11       **Sec. 2.** RCW 82.38.310 and 2007 c 515 s 31 are each amended to read  
12 as follows:

13       (1) The governor may enter into an agreement with any federally  
14 recognized Indian tribe located on a reservation within this state  
15 regarding special fuel taxes included in the price of fuel delivered to  
16 a retail station wholly owned and operated by a tribe, tribal  
17 enterprise, or tribal member licensed by the tribe to operate a retail  
18 station located on reservation or trust property. The agreement may  
19 provide mutually agreeable means to address any tribal immunities or  
20 any preemption of the state special fuel tax.

21       (2) The provisions of this section do not repeal existing  
22 state/tribal fuel tax agreements or consent decrees in existence on May  
23 15, 2007. The state and the tribe may agree to substitute an agreement  
24 negotiated under this section for an existing agreement or consent  
25 decree, or to enter into an agreement using a methodology similar to  
26 the state/tribal fuel tax agreements in effect on May 15, 2007. For  
27 any state/tribal fuel tax agreement in existence as of the effective  
28 date of this section, the governor must by no later than May 15, 2013,  
29 complete such actions as are permitted under those agreements to  
30 renegotiate their terms to conform to those required by subsection (3)  
31 of this section. Any new agreement or modified existing agreement  
32 negotiated after the effective date of this section must contain terms  
33 as required in subsection (3) of this section.

34       (3) (~~If a new~~) Any agreement (~~is negotiated, the agreement~~)  
35 must:

36       (a) Contain certification by the state and the tribe that legal  
37 incidence of the tax under this chapter falls on the tribe;

1       **(b)** Require that the tribe or the tribal retailer acquire all  
2 special fuel only from persons or companies operating lawfully in  
3 accordance with this chapter as a special fuel distributor, supplier,  
4 importer, or blender, or from a tribal distributor, supplier, importer,  
5 or blender lawfully doing business according to all applicable laws;

6       ~~((b))~~ **(c)** Provide that the tribe will expend fuel tax proceeds  
7 ~~((or equivalent amounts on: Planning, construction, and maintenance of~~  
8 ~~roads, bridges, and boat ramps; transit services and facilities;~~  
9 ~~transportation planning; police services; and other highway-related~~  
10 ~~purposes;~~

11       ~~(e))~~ on highway purposes as set forth in Article II, section 40 of  
12 the Washington Constitution;

13       **(d)** Include provisions for audits or other means of ensuring  
14 compliance to certify ~~((the number of gallons of special fuel purchased~~  
15 ~~by the tribe for resale at tribal retail stations, and the use of fuel~~  
16 ~~tax proceeds or their equivalent for the purposes identified in (b) of~~  
17 ~~this subsection. Compliance reports must be delivered to the director~~  
18 ~~of the department of licensing))~~ the tribe is in compliance with (b)  
19 and (c) of this subsection. The auditor must be selected jointly by  
20 the director of the department of licensing and the tribe. Auditor  
21 reports verifying compliance with this act must be delivered by the  
22 tribe to the director of the department of licensing within time frames  
23 established by the department.

24       **(4)** The legislature must appropriate the funds necessary to  
25 implement the agreements in this section.

26       **(5)** Information from the tribe or tribal retailers received by the  
27 state or open to state review under the terms of an agreement ~~((shall~~  
28 ~~be deemed personal information under RCW 42.56.230(3)(b) and exempt~~  
29 ~~from public inspection and copying))~~ is subject to chapter 42.56 RCW.

30       ~~((5))~~ **(6)** The governor may delegate the power to negotiate fuel  
31 tax agreements to the department of licensing.

32       ~~((6))~~ **(7)** The department of licensing ~~((shall))~~ must prepare and  
33 submit an annual report to the legislature on the status of existing  
34 agreements and any ongoing negotiations with tribes.

35       NEW SECTION. Sec. 3. This act is necessary for the immediate  
36 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 immediately.

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