

SENATE BILL REPORT

SB 6785

As Reported By Senate Committee On:
Transportation, February 1, 2006

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

Brief Description: Modifying the administration of fuel taxes.

Sponsors: Senators Jacobsen, Swecker, Haugen and Benson; by request of Department of Transportation and Department of Licensing.

Brief History:

Committee Activity: Transportation: 1/26/06, 2/1/06 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 6785 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Jacobsen, Vice Chair; Poulsen, Vice Chair; Benson, Ranking Minority Member; Benton, Berkey, Eide, Kastama, Mulliken, Spanel and Weinstein.

Minority Report: Do not pass.
Signed by Senator Sheldon.

Minority Report: That it be referred without recommendation.
Signed by Senators Esser, Finkbeiner and Swecker.

Staff: David Ward (786-7341)

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.

On January 4, 2006, the U.S. 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. 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. The order, therefore, 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.

Summary of 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. References to retailers, as well as refunds and credits available to, or tax liability of, licensed fuel distributors are also removed. Amendatory language is included to define licensees as fuel suppliers, 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.

The Department of Licensing is authorized to enter into fuel tax compact agreements with tribes that currently do not have such compacts within one year of the effective date of the bill, or within one year of the opening of the first tribally licensed retail station. A formula for disbursing fuel tax refunds to tribal entities is based on average, annual gallons consumed, number of enrolled tribal members on or near the reservation, and the current fuel tax rate.

New sections are 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. A new tribal transportation planning grant program is also created. Funding for the grant program would be subject to Legislative appropriation.

Certain technical amendments are also addressed including: moving the racing fuel exemption from the special fuels to the motor fuels chapter, inserting IFTA provisions, and moving compliance language to more appropriate subsections of the two fuel tax chapters.

Substitute Bill Compared to Original Bill: Sections governing future taxable events between tribal suppliers and retailers as well as the tribal transportation planning grant program were eliminated. A severability clause was also added.

Appropriation: None.

Fiscal Note: Fiscal note requested on January 23, 2006.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The decision to explicitly place the incidence of taxation at the supplier level 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. Creation of the tribal grant program to assist in the coordination of tribal and state transportation planning issues is greatly needed. Two issues also addressed by the bill include the legal issue of tax incidence, which is supported by suppliers in the industry despite some minor additional costs imposed on suppliers, and the policy issue of state regulation of payment due dates within the industry, which is eliminated by this bill.

Testimony Against: Distributors agree the issue needs to be addressed but believe a bill that instead eliminates credits for distributors would also solve the problem. The State could keep the tax at the rack and impose the tax on distributors as a first possession tax upon removal from the rack. The Potawatami case in Kansas demonstrates that the float can be kept intact

without jeopardizing the State's ability to tax the sale of fuel. Also, elimination of the float doesn't benefit the State but rather benefits suppliers whose payment due date to the State remains unchanged. Distributors' cash flow is negatively impacted and that inability to offer credit downstream to farmers, contractors, and retailers will pinch small businesses. On the compact issue, there is an understanding that the State has an interest in working with the tribes, and crafting compacts modeled on the tribal cigarette compacts is a way to both ensure a level playing field and have a say in how the monies are spent. Sections three and twenty-seven of the bill create inequality for the tribes and are potentially unconstitutional. Intergovernmental concerns are not being addressed in the bill and, unlike the State, the tribes are not rushing to take advantage of the federal court ruling. The State should use this opportunity to work collectively with the tribes to find solutions to common state and tribal transportation interests.

Who Testified: PRO: Sharon Whitehead, Department of Licensing; Paula Hammond, Department of Transportation; Greg Hanon, Western States' Petroleum Association; Thor Nielsen, U.S. Oil and Refiners Company.

CON: Charlie Brown, Washington Oil Marketers Association; Bill Bellman, Sun Pacific; Tim Hamilton, AUTO; T.K. Benton, Washington Association of Neighborhood Stores; Randy Scott, Colville Tribes and Quinalt Nation.