

# HOUSE BILL REPORT

## SB 5272

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### As Passed House - Amended:

April 6, 2007

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

**Brief Description:** Modifying the administration of fuel taxes.

**Sponsors:** By Senators Haugen and Sheldon; by request of Department of Licensing.

### Brief History:

#### Committee Activity:

Transportation: 3/22/07, 3/30/07 [DPA].

#### Floor Activity:

Passed House - Amended: 4/6/07, 83-11.

### Brief Summary of Bill (As Amended by House)

- Eliminates language indicating the state's fuel tax is imposed on the end user.
- Removes references to retailers, as well as refunds and credits available to, or tax liability and payment date of, licensed fuel distributors.
- Defines licensees as fuel suppliers, 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.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass as amended. Signed by 20 members: Representatives Clibborn, Chair; Flannigan, Vice Chair; Jarrett, Ranking Minority Member; Appleton, Armstrong,

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*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.*

Curtis, Dickerson, Hailey, Hankins, Hudgins, Lovick, Rolfes, Sells, Simpson, Springer, B. Sullivan, Takko, Upthegrove, Wallace and Wood.

**Minority Report:** Do not pass. Signed by 1 member: Representative 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.

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**Summary of Amended 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 and payment date 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.

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.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Under federal law, states are prohibited from imposing taxes on a tribe or its members for sales made on tribal lands. The bill is in response to a law suit by the Squaxin and Swinomish in the United States District Court, where the judge ruled that the incidence of the fuel tax in the state was at the retail level and not the fuel supplier level. The bill removes the references to retailers, as well as the refunds and credits along with payment terms outlined in the statutes within the distribution chain. The bill has the least risk for the state since it removes all credits and allowances. If some of the credits and allowances are left in, it would need to be determined by a court whether a judge may find that the incidence of the fuel tax is at a different point in the distribution chain besides the supplier level. The tribal compacting language has been agreed to and the parties are pleased with the language in the bill.

(Opposed) By removing the distributor handling loss allowance and payment terms between the fuel suppliers and distributors, there will be a financial impact to the distributors since the distributors presently are not required to pay the fuel tax to suppliers until seven business days prior to the 26th day of the month following the month in which the fuel was purchased.

**Persons Testifying:** (In support) Sharon Whitehead, Allan Haight, and Art Farley, Department of Licensing.

(Opposed) Charlie Brown, Washington Oil Marketers Association; Bob Ogan, Wenatchee Petroleum; Tom Hemingway, Broadway Truck Stops; and Rob Smith, R.H. Smith Petroleum

**Persons Signed In To Testify But Not Testifying:** None.