

HOUSE BILL REPORT

HB 1063

As Passed House:
March 6, 2017

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 Morris, Lytton, Fitzgibbon, Appleton and Sawyer.

Brief History:

Committee Activity:

Community Development, Housing & Tribal Affairs: 1/25/17, 1/26/17 [DP];
Transportation: 2/22/17, 2/23/17 [DP].

Floor Activity:

Passed House: 3/6/17, 53-45.

Brief Summary of Bill

- Allows the Department of Licensing 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 Ryu, Chair; Macri, Vice Chair; Reeves and Sawyer.

Minority Report: Without recommendation. Signed by 2 members: Representatives Barkis, Assistant Ranking Minority Member; Jenkin.

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 1 member: Representative McCabe, Ranking Minority Member.

Staff: Kirsten Lee (786-7133).

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 15 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Chapman, Gregerson, Hayes, Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Riccelli and Tarleton.

Minority Report: Do not pass. Signed by 9 members: Representatives Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Irwin, Pike, Shea, Stambaugh, Van Werven and Young.

Staff: David Munnecke (786-7315).

Background:

Under federal law, absent explicit congressional authorization, states may not impose taxes on a tribe or its members for sales made on tribal lands. In 2007 state legislation was enacted that authorized the Governor to enter into a motor vehicle fuel tax agreement with any federally recognized Indian tribe with a reservation in Washington. The Governor has delegated this authority to the Department of Licensing (DOL).

There are two types of fuel tax agreements:

Seventy-five Percent Refund/25 Percent (75/25) State Tax Agreement.

Under a 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.

Summary of Bill:

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 the Puget Sound, and has a population of at least 118,000, but less than 250,000 people.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2017.

Staff Summary of Public Testimony (Community Development, Housing & Tribal Affairs):

(In support) This bill is about fairness and equality. The original intent of the tribal fuel tax legislation was not to exclude Washington tribes with trust lands from participating in the fuel tax agreements, but instead to exclude non-Washington tribes with trust lands in Washington from entering into fuel tax agreements. The Samish tribe were a federally recognized Indian tribe, and their recognition was revoked and has since been reinstated. Because of the revocation of their status, they have lost opportunities for economic development. Allowing the Samish tribe to enter into fuel tax agreements would help to stimulate their economic growth.

(Opposed) The Legislature should review the tribal fuel policy because the tribes benefit from selling fuel to nontribal members. This was not the original intent of the policy.

Staff Summary of Public Testimony (Transportation):

(In support) This bill is for the Samish Tribe (Samish Tribe or tribe). In the past, many of the Samish Tribe were forced onto other reservations; however, they do have trust lands and, while they do not have a fuel station now, this bill would allow the tribe to develop property and offer fuel for sale on State Route 20.

The original legislation only allowed for tribes with reservations to enter into a fuel tax compact. It was an oversight to not structure the legislation to allow this tribe to enter into an agreement.

This is the third year that this bill has been introduced, and, in the last biennium, House Bill 1631 made it to the Senate.

The Samish Tribe was a signatory to the Treaty of Port Elliott, and was federally registered until the 1980s. The tribe received a determination in the 1990s from the Ninth Circuit Court that it was federally recognized.

The original legislation was meant to keep non-Washington tribes from entering into fuel tax compacts. This bill allows a tribe with 2,000 members to be included. The tribe has been trying to enter into a compact for 10 years, but it cannot because of the lack of a reservation. The Samish Tribe is just asking for the same rights, and would be subject to the same rules and regulations, so money from the refunds could only be used for transportation purposes.

This bill is narrowly tailored to allow the Samish Tribe to enter into a fuel tax compact. It would help the state and the tribe by allowing the tribe to build and fix roads. The tribe has already contributed funds to local projects, and it would continue to do so.

When the Samish Tribe was derecognized, it lost its treaty rights, including its fishing rights. For 30 years the tribe did not get federal funding for education, housing, health care, and

other things, and it is now trying to play catch-up. The tribe currently has 50 employees and will continue to grow.

(Opposed) There would not be an issue if this bill was just about tribal purchases on tribal lands, but this bill is about nontribal purchases. People cannot go to Oregon and purchase goods without paying taxes, but most of the fuel purchases at fuel tax compact stations are by nontribal purchasers.

The state needs to take a close look at how much fuel tax is remitted. People cannot get compact audit information from the Department of Licensing (DOL) because it is exempt from disclosure.

Many gas stations have been put out of business already, and a better path needs to be found.

(Other) The 75/25 fuel tax compacts have audit provisions. The audits are conducted by firms selected by the tribes, and all but two audits were completed for 2014. The audits are reviewed by the DOL to see if the remitted funds were used for transportation purposes.

Persons Testifying (Community Development, Housing & Tribal Affairs): (In support) Representative Jeff Morris, prime sponsor; and Tim King and Tamara Rogers, Samish Indian Nation.

(Opposed) Dave Ducharme, Washington Oil Marketers Association.

Persons Testifying (Transportation): (In support) Representative Morris, prime sponsor; and Tim King and Dana Mathews, Samish Indian Nation.

(Opposed) David Ducharme, Washington Oil Marketers Association.

(Other) Tony Sermonti, Department of Licensing.

Persons Signed In To Testify But Not Testifying (Community Development, Housing & Tribal Affairs): None.

Persons Signed In To Testify But Not Testifying (Transportation): None.