

# SENATE BILL REPORT

## ESB 5741

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As Passed Senate, May 2, 2017

**Title:** An act relating to clarifying the collection of fuel taxes within tribal jurisdictions.

**Brief Description:** Clarifying the collection of fuel taxes on motor vehicle fuel sold by businesses owned or operated by a tribe or member of the tribe.

**Sponsors:** Senator King.

**Brief History:**

**Committee Activity:** Transportation: 2/14/17, 2/21/17 [DP, DNP].

**Floor Activity:**

Passed Senate: 4/11/17, 49-0.

**First Special Session:** Passed Senate: 5/02/17, 41-4.

### Brief Summary of Engrossed Bill

- Provides that a person who purchases fuel from a business that is owned or operated by a federally recognized Indian tribe that does not have a fuel tax agreement with the state, and the person is not an enrolled member of that tribe, is liable for the fuel tax if it has not already been paid.

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass.

Signed by Senators King, Chair; Sheldon, Vice Chair; Baumgartner, Ericksen, Fortunato, Hawkins, O'Ban, Walsh and Wilson.

**Minority Report:** Do not pass.

Signed by Senators Liias, Assistant Ranking Minority Member; Cleveland, Saldaña and Van De Wege.

**Staff:** Kim Johnson (786-7472)

**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 1995, the Legislature authorized the Department of Licensing (DOL) to enter into

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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.*

agreements with federally recognized Indian tribes regarding taxation of fuel on the reservation. In 2007, legislation was enacted which moved the point of taxation for motor vehicle fuel tax collection to the fuel licensee—fuel supplier, importer, exporter, blender—and again 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 DOL. There are currently 29 federally recognized Indian tribes in Washington, 24 of which currently have a fuel tax agreement with DOL.

There are currently two types of fuel tax agreements:

1. *75 Percent Refund/25 (75/25) Percent State Tax Agreement - 20 Tribes.* 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.
2. *Per Capita Agreement - 4 Tribes.* 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 Engrossed Bill:** It is the Legislature's intent to honor the treaty rights of the Yakama Nation, while protecting the state's interest in collecting and enforcing its fuel taxes.

A person owes fuel tax when: (1) the person purchases fuel from a business owned or operated by a federally recognized Indian tribe or enrolled member of the tribe, that does not have a fuel tax agreement with the state; (2) the person is not an enrolled member of the federally recognized Indian tribe that owns or operates the station, and (3) the fuel tax has not already been paid.

DOL and the Washington State Patrol must develop rules to develop enforcement mechanisms for the collection of fuel taxes owed by a person that (1) purchases fuel from a business owned or operated by a federally recognized Indian tribe or enrolled member of the tribe, that does not have a fuel tax agreement with the state; (2) the person is not an enrolled member of the federally recognized Indian tribe that owns or operates the station, and (3) the fuel tax has not already been paid.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: I patterned this bill off of what we did with the cigarette tax. I really don't think that the entire Yakama Nation really supports essentially three people getting all the money in this deal. The Tribe is missing out on revenue that

could be helping their members and meeting their transportation needs. This is costing our transportation system thousands of dollars a day.

The Yakama Nation did have a fuel tax compact with the state, which they violated and still owe the state millions of dollars. Basically there is a tribally licensed fuel distributor, Cougar Den Inc., that is purchasing fuel, tax free in Oregon, and selling it to tribal fuel stations on the Yakama reservation. Cougar Den Inc. is not remitting any fuel taxes to Washington. This has led to the fuel stations on the reservation being able to undercut off reservation fuel station prices by nearly \$0.50. It is putting people out of business. This needs to be stopped. Oregon is taking this seriously and has a bill to try deal with this on their end. The Oregon bill would help, but Oregon's gas tax is still lower than Washington's and would result in a price break.

**Persons Testifying:** PRO: Senator Curtis King, Prime Sponsor; Dave Ducharme, WA Oil Marketers Association.

**Persons Signed In To Testify But Not Testifying:** No one.