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NO. 85661-3

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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AUTOMOTIVE UNITED TRADES ORGANIZATION,

Appellant,

v.

STATE OF WASHINGTON, CHRISTINE GREGOIRE, LIZ LUCE,

Respondent.

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AMICUS CURIAE MEMORANDUM OF THE WASHINGTON  
POLICY CENTER IN SUPPORT OF PETITION FOR REVIEW

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## I. INTRODUCTION

Washington Policy Center (“Policy Center”) is an independent, non-profit, non-partisan think tank in Washington State that promotes sound public policy through researching and publishing studies, sponsoring events, and otherwise educating our region’s organizations and individuals on vital public policy issues. Among the Policy Center’s focuses of study are transportation, open government, governmental budgets and taxes, and small business development.

Policy Center submits this memorandum in support of Automotive United Trades Organization’s (“AUTO”) petition for review. This case satisfies RAP 4.2 because it presents a fundamental and urgent issue of broad public importance that requires prompt and ultimate determination. Without review by this Court and reversal the trial court’s decision to dismiss AUTO’s claim, illegal actions by the Governor and the Department of Transportation will be immune from all judicial review. Moreover, the rationale of the trial court’s decision appears to immunize from judicial review *any* contract between the Governor or executive branch officer and an Indian tribe, regardless of blatant illegality or unconstitutionality. Here, the unconstitutional compacts have significant detrimental consequences for fair competition, our economy, and the state’s deficit.

## II. REASONS FOR GRANTING REVIEW

Direct review by this Court of superior court decision is appropriate in a case “involving a fundamental and urgent issue of broad public import, which requires prompt and ultimate determination.” RAP 4.2(a)(4); *see also* RAP 13.4(b)(4) (Court will grant discretionary review “[i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court.”).

The Superior Court’s decision is unsound as a matter of law and equity. Because appellant AUTO has thoroughly briefed the legal issues, Policy Center will focus on equitable and policy implications of the lower court’s decision.

### A. Public Concern Is Growing Over the Compacts and the Harm They Do.

The trial court’s decision to allow the Governor and executive officers to enter into illegal agreements that transfer millions of dollars to Indian tribes, free from judicial oversight, comes as public concern over the compacts with Indian tribes is growing. Multiple news outlets are running stories describing the compacts’ detrimental effects on small business owners, the compacts’ legal shortcomings, and the compacts’ adverse economic effects on Washington society as a whole.<sup>1</sup> These

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<sup>1</sup>*See, e.g.,* Scott Gutierrez, *Lawsuit: State Illegally Giving Gas Tax Money to Tribes*, SEATTLEPI.COM, Feb. 6, 2011, <http://www.seattlepi.com/local/article/Lawsuit-State->

reports raise questions in the public mind not only about the propriety of funneling Motor Vehicle Fund money to tribes in a time of massive deficits but also about the secrecy and lack of accountability surrounding the state's actions.

Perhaps in response to these growing concerns, the Governor's office prepared an "informational brief" regarding the compacts earlier this year (after AUTO filed this lawsuit) in an attempt to justify the compacts and their adverse impact on governmental budgets and the economy. Governor's Informational Brief from Liz Luce on Tribal Fuel Tax (March 24, 2011), *produced herein as Appendix E.*

**B. The State's Payments of Motor Vehicle Fund Monies to Indian Tribes for Non-Highway Purposes Violates the Washington Constitution and Harms Local Economies.**

Available evidence demonstrates that the state's compacts with Indian tribes violate the Eighteenth Amendment to the Washington Constitution. Indian tribes have admitted using funds, designated by the state constitution for highway purposes, for non-highway projects. Now it appears the tribes are also using these funds to subsidize fuel sales and to

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*illegally-giving-gas-tax-money-to-1000241.php* (last visited July 28, 2011), *produced herein as Appendix A*; Erik Smith, *State Will Give Tribes \$427 Million in Gas Tax Money Over 10 Years, While Transportation Budget Runs a Billion Short*, WASHINGTON STATE WIRE, April 4, 2011, <http://www.washingtonstatewire.com/home/8565-state-will-give-tribes-427-million-in-gas-tax-money-over-10-years-while-transportation-budget-runs-a-billion-short.htm> (last visited July 28, 2011), *produced herein as Appendix B*; Tracy Vedder, *What a Waste: State Keeping Secrets with Our Gas Tax*, KOMO 4 NEWS, May 5, 2011, <http://www.komonews.com/news/problemsolvers/121371074.html> (last visited July 28, 2011), *produced herein as Appendix C.*

undercut nearby non-Indian gas stations, a violation of the Washington Constitution *and* the state compacts.

The Eighteenth Amendment requires that all monies deposited into the state Motor Vehicle Fund “be used exclusively for highway purposes.” Wash. Const. art. II, § 40. If a statute or compact provides for alternative uses for Motor Vehicle Fund monies, it violates the constitution and is unlawful. But the state has given monies from the Motor Vehicle Fund to Indian tribes, who have used the funds for a variety of non-highway purposes, including utility infrastructure, CP 300, collateral for a loan (purpose unknown), CP 302-03, improvements on a non-motorized hiking and biking trail, CP 309, housing developments, CP 309-11, habitat remediation, *id.*, and general law enforcement, CP 311.

More concerning, some tribes appear to be using Motor Vehicle Funds to manipulate the retail gasoline market, clearly a non-highway purpose and contrary to sound public policy. News reports are full of examples of non-tribal gas stations being unable to match tribal prices. *See* Appendices A, D. A representative of the Puyallup Tribe asserts no manipulation exists; instead, “we’re just good business people.” Appendix A. The facts suggest otherwise. The Policy Center is conducting a study of fuel prices statewide. Although the study is not complete, preliminary findings from eighteen tribal gas stations across

Yakima, Tacoma, Spokane, Bremerton, and Olympia indicate that tribal gas stations beat the regional gas price average by as much as twenty-two (22) cents per gallon and the regional diesel gas price average by as much as forty-seven (47) cents per gallon. These numbers suggest that tribes are using Motor Vehicle Fund payments from the states to off-set gas prices. This puts private, non-tribal gas stations who do not receive such public subsidies at a serious competitive disadvantage, which ultimately could drive non-tribal competitors out of business.

This conduct is harmful to small businesses and market-based competition in general, two pillars of our local economy. With every day that passes without judicial review of the legality of the state's actions, more and more taxpayer money is being sent to tribes and spent illegally.

**C. The Secrecy Inherent in the Government's Compacts Is Improper and Anathema to Washington's Established Values of Open Government.**

Transparency and openness in government are central to accountability and public confidence in elected officials. In Washington, these values are embodied in, *inter alia*, the Public Records Act, RCW 42.56.001 *et seq.*, enacted to ensure accountability of our elected government. Lack of accountability in government administration can lead to abuses in power. *Report of the Commission on Protecting and Reducing Government Secrecy*, S. Doc. No. 105-2, 103rd Cong. (1997), at

XXI, <http://www.access.gpo.gov/congress/commissions/secretcy/index.html> (1997) (last visited July 28, 2011); *see also* Christina E. Wells, “National Security” Information and the Freedom of Information Act, 56 Admin. L. Rev. 1195, 1221 (2004) (lamenting ability of executive branch to engage in excessive secrecy). Further, excessive secrecy can undermine the public’s confidence in government, especially when available evidence suggests governmental secrecy is hiding illegal activity.

Despite the fundamental importance of openness and accountability to Washington State government, state officials have erected barriers to transparency regarding the compacts with Indian tribes. First, the state denies the public access to compact details by exempting the compacts from the Public Records Act. RCW 82.36.450(4). Now, the state is trying to prevent a co-equal branch of government from ensuring that elected officials have not overstepped their authority. The state may have some need for secrecy while contracts are being negotiated to encourage frank discussion and prevent posturing. But now that the compacts are in force, there is no reason why the public and the judiciary should be prohibited from examining the compacts’ details to understand whether elected officials are acting properly.

The Governor argued below that judicial review of the compacts is not necessary, because the statutes at issue require the tribes to submit

annual audits to demonstrate that they are owed the funds they claim under the compacts and to show that they are spending those funds in compliance with the 18<sup>th</sup> Amendment. But the audits provided for under the compacts are exempt from the Public Records Act, RCW 82.36.450(4); Appendix C.

In addition, some tribes fail to comply with the audit requirements. See Tracy Vedder, *State Seeks \$11 Million in Unpaid Gas Taxes from Yakama Tribe*, KOMO 4 NEWS, May 20, 2011, <http://www.komonews.com/news/problemsolvers/122370864.html> (last visited July 28, 2011), *produced herein as* Appendix D. For example, the Yakama Nation did not file an audit for 2007, 2008, or 2009. Earlier this year (only after AUTO filed this lawsuit), the state demanded the Yakama Nation return \$11 million in Motor Vehicle Fund monies paid under a compact because the Yakama Nation failed to comply with the compact auditing requirements. Appendix D. The Puyallup Tribe reported in its 2008 audit that it spent \$4 million on a road in Fife, and that additional funds were spent in 2009 and 2010. Appendix C. However, a visit to this road reveals only a stretch of gravel ending in a field with a road closure sign. *Id.*

The decision below dismissing AUTO's claims allows the executive branch to exercise its powers—and to grant favors by

transferring funds that may be spent illegally—under a cloak of secrecy, free from any realistic oversight or checks and balances. In the interest of open and honest government, this Court should grant review and reverse the Superior Court’s decision so the judiciary may determine whether the state’s actions are legal.

**D. The State Cannot Afford to Unnecessarily Provide Indian Tribes With Constitutionally Protected Transportation Funds.**

The decision below shields from any judicial review the unconstitutional actions of state officials, transferring millions of dollars out of the Motor Vehicle Fund at time when those funds are desperately needed. In 2010, amidst a struggling economic recovery and plans to begin several massive public transportation projects, the state paid Indian tribes approximately \$43 million (\$11 million of which the state is attempting to recover from the Yakama Nation). Appendix D. The Washington Department of Transportation estimates that over \$620 million will be paid out to Indian tribes over the next seventeen years. Appendix C. These numbers assume tribal gas stations’ market share does not increase. *See id.*

Recently Governor Gregoire announced that tax revenues for transportation were insufficient and tax increases were necessary to fund upcoming transportation projects. *See, e.g., Mike Baker, Gregoire to Ask*

*for More Transportation \$*, SEATTLEPI.COM (May 16, 2011), <http://www.seattlepi.com/local/seattle-history/article/Gregoire-to-ask-voters-for-more-transportation-1382238.php> (last visited on July 28, 2011), *produced herein as Appendix F*. Such taxes will burden our state's struggling economic recovery and cause hardship for individuals across the socioeconomic spectrum.

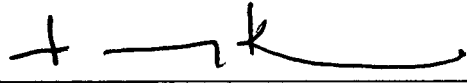
To ask taxpayers to bear such a burden when massive, apparently illegal payments are made to Indian tribes who appear to be using these funds to manipulate the marketplace, compete unfairly, and pay for non-highway projects is improper. To do so while preventing Washington citizens and a co-equal branch of government from reviewing the legality of the payments under the compacts is unconscionable. This court should reverse the Superior Court so the judiciary may determine whether these questionable compacts are legal.

### **III. CONCLUSION**

For the foregoing reasons, this Court should grant the petition for direct review and reverse the decision of the trial court.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of August, 2011.

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Attorneys for Amicus Curiae  
Washington Policy Center

By   
\_\_\_\_\_  
Harry Korrell  
WSBA #23173

# APPENDIX A



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## Lawsuit: State illegally giving gas tax money to tribes

By SCOTT GUTIERREZ, SEATTLEPI.COM STAFF  
Published 10:00 p.m., Sunday, February 6, 2011

The state Supreme Court will be asked to hear a lawsuit against Gov. Chris Gregoire and the state Department of Licensing over \$90 million in fuel tax money that gas station owners say has been unlawfully given to Indian tribes.

A Grays Harbor County Superior Court judge dismissed the case Friday on a separate legal question, yet acknowledged a higher court may want to take a look.

The lawsuit, filed by the Automotive Trades United Organization, or AUTO, seeks to stop DOL from paying millions each year to tribes in refunds on the state's motor vehicle fuel tax. Tribal members are exempt from the tax on fuel purchased at reservation gas stations, but the lawsuit alleges the state is issuing refunds for taxes that tribes didn't pay.

The lawsuit alleges the payments enable tribal gas stations to sell fuel at cheaper prices, "in the range of 5 cents or more per gallon," creating unfair competition. It argues the payments violate the state Constitution, which stipulates the motor vehicle fuel tax is to be reserved "exclusively for highway purposes," such as road construction, maintenance or ferries.

The case was dismissed over the issue of tribal sovereignty. Tribes weren't named in the lawsuit because they can't be sued in state or federal court.

Thus, state officials argued the case can't move forward because tribes are "indispensable parties" to the legal dispute, which means the issue can't be fully and fairly considered without their participation. The judge agreed.

AUTO's lawyers say it presents a "Catch 22" with unacceptable implications. They plan to appeal and will petition directly to the state Supreme Court.

"From a legal standpoint, it still boggles my mind -- that there would be no recourse to challenge illegal acts of Washington state officials because the matter touches in some fashion on Indian tribes," said Phil Talmadge, one of AUTO's attorneys and a former state Supreme Court justice. "That just doesn't make any sense."

Rene Tomisser, an assistant attorney general handling the case, said comparable disputes involving gambling and tobacco revenue have been decided by appellate courts in a similar manner. Courts have consistently ruled tribes are not subject to state or federal jurisdiction, he said.

The lawsuit arises from changes that state legislators made to the gas tax law in 2007 to resolve years of litigation between the state and tribes. After losing in a lawsuit filed by two tribes over the gas tax in 2006, lawmakers authorized DOL to negotiate compacts with federally-recognized tribes

that operate or licenses gas stations on tribal lands. The state and tribes agree to share gas tax revenue. Under most of the compacts, the tribes get 75 percent back. (The gas tax is currently at 37.5 cents per gallon).

A key requirement is that tribes spend the money on "transportation planning, construction, and maintenance of roads, bridges, boat ramps, transit services and facilities, police services and other highway-related purposes," according to legislative records.

"One of the difficulties in contributing to infrastructure within the reservation was the lack of basic transportation dollars," said Kelly Croman, general counsel for Marine View Ventures, the economic development arm of the Puyallup Tribe of Indians in Pierce County.

Puyallup tribal members operate four gas stations and are opening a fifth, a 12,000-square foot gas station, liquor store and food mart in Fife. Retail gas stations have provided jobs and tax revenue for tribal governments, she said.

"We find it really interesting that the focus has been on the tribes," she said. "The allegations about subsidizing fuel prices just aren't true. Frankly, we're just good business people running our businesses very well in a very tough market, where the real pressure is not from the tribe."

1 | 2 Next »

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# APPENDIX B

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## State Will Give Tribes \$427 Million in Gas Tax Money Over 10 Years, While Transportation Budget Runs a Billion Short

Cost of Gas-Tax Deal Finally Becoming Clear –  
Republicans Call it a Giveaway



By Erik Smith  
Staff writer/ Washington State Wire

OLYMPIA, April 4.—Over the next ten years, the state can expect to distribute over \$427 million in gas tax money to Indian tribes — while the state transportation budget runs a billion dollars short.

It's the jaw-dropping punchline to a deal the state made with Indian tribes four years ago. The latest projections from the state Department of Transportation are an enormous jump from last year's numbers, and they may understate the scope of the problem. If the tribes get into the lucrative truck-stop business, many believe \$427 million will be the low end.

What makes it worse, Republican critics say, is that it is a deal the state didn't have to make — a giveaway of public funds. Chalk it up to the growing political power of the tribes, they say, fueled by their lucrative state-supported monopoly on casino slot machines. Republicans are starting to raise a stink this session about the deals the state has been making with the tribes, on gasoline, gambling, cigarettes and everything else. So Democrats this year want to talk about tax loopholes? "The largest tax loopholes we can find are the ones we give to the tribes," said House Minority Leader Richard DeBolt, R-Chehalis.

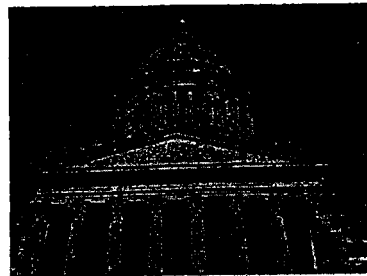
Not that their bills are likely to go anywhere in the Democrat-controlled Legislature. But even if you leave the politics aside, those tribal fuel-tax distributions may pose a big public-policy problem in the future. How can you ask voters to increase gas taxes if they know the tribes are a big part of the reason?

"Why do you think I'm against raising gas taxes?" asks state Rep. Mike Armstrong, R-Wenatchee, ranking Republican on the House Transportation Committee.

### A Controversial Deal

Under the deal, the state gives tribes an amount equal to 75 percent of the gas-tax revenue generated by tribal stations. The legalities get a little complicated, but the tribes don't actually collect any taxes from customers, and no law or court decision says the state has to give the tribes a dime. The deal amounts to a state payment of 29.5 cents for every gallon of gasoline they sell.

### Spotlight



Going for the Adjournment! – New Strategy From House Dems Hints At Budget Deal, but Could Run Out Clock on Workers' Comp

By: Erik Smith | Washington State Wire | May 19, 2011

The House is coming back to work this weekend after all — and the simple one-paragraph announcement from the House Dems Wednesday night tells us plenty about how the Legislature's endgame will play out. The biggest question remains workers' comp, and whether moderate Democrats in the House — the 'Roadkillers' — will dare to challenge their party's leaders.



While Labor Argues Against Business Tax Loopholes, Unions Enjoy a Big Tax Break of Their Own

By: Erik Smith | Washington State Wire | May 18, 2011

It's the damndest thing! Labor and its allies have been attacking business tax breaks all session long. But what no one seems to realize is that unions enjoy a big off-the-books exemption of their own. Unions don't pay B&O tax, and the break is worth about \$9 million a year.



House Should Allow Vote on Worker-Comp Reform

By: Richard Davis | Washington Research Council | May 18, 2011

In this column, Richard Davis, president of the Washington Research Council, outlines the case for the worker-comp bill that is being blocked in the House.

Twenty-three of Washington's 28 federally recognized tribes have taken the state up on the deal. And as you might imagine, since 2007 tribal gas sales have exploded. They've gotten into the fuel business in a big way, building and expanding stations. Some are on "trust land" along busy highways far removed from reservations.

Critics have been complaining about the deal ever since it was struck. They say Indians are getting an unfair advantage — the state payments allow them to undercut nearby non-Indian stations. The tribes aren't supposed to do that — the money is supposed to go to reservation road projects. But the tribal gas-station books aren't open to public inspection, so no outsider can tell. It becomes an issue of public concern because the state constitution says all gas-tax money must be spent for highway purposes. A lawsuit from the state's independent service-station operators is challenging the deal on those grounds. It was rejected at the Superior Court level, and the service-station operators are appealing to the state Supreme Court.

What's new here is the Department of Transportation projection. The department has changed its forecasting methods to more accurately reflect sales trends. Last month it added \$150 million to its 10-year projection for tribal payments, for a total \$348 million. But its numbers don't count the Yakama tribe. The Yakamas get the same deal through a slightly different tax-collection method mandated by a court decree. If the Yakamas are included in the projection and the same growth rate is applied, the 10-year distribution figure rises to \$427 million.

### Big Money

Here's one way of looking at it. Over the next ten years, the state expects to collect \$12.9 billion in fuel-tax revenue. The tribes will get 3.2 percent of it.

That might not sound like much. But here's another way to look at it that makes the impact clear. Over the last year, total transportation revenue projections have been decreased by \$1.1 billion. The gas-tax distributions to the tribes are 38 percent of that amount. And that shortfall is one reason transportation-minded lawmakers are talking about going to voters for a tax increase, sometime in the next few years.

There's something else about those numbers. DOT basically took current growth in gas-tax distributions and drew a straight line into the future. "We're just trying to project forward some of the growth we've seen for the last couple of years," said Doug Vaughn of the Department of Transportation.

But the numbers don't take into effect what will happen if the tribes open or purchase truck stops along freeways, on reservation land or on property that is converted to tribal trust land. Right now that lucrative business is dominated by non-Indian sellers, and 100 percent of the fuel-tax revenues go to the state. If 75 percent of that money goes away, the state loses big. Exactly how much is at stake is unclear — the state's diesel sales statistics don't answer questions like that. But Tim Hamilton, executive director of Automotive United Trades Organization, the service-station operator group, has been arguing that the tribal cut could double or more.

"The question becomes how many more stations will they build? What happens if they get a couple of truck stops on I-5 or I-90? It could be equal to what they're getting now. The question becomes, where does it stop?"

Said Armstrong, "I wouldn't be surprised if it goes to three-quarters of a billion. Or at least two-thirds."

### Settled a Lawsuit

Actually, the biggest question might be whether the state had to make the deal in the first place. It was triggered by a federal lawsuit from the Swinomish and Squaxin Island tribes that challenged the state's right to collect gas taxes from tribally owned gas stations.

The tribes won that one. Federal law says states don't have the right to tax tribal businesses for sales to tribal members on tribal land. But it wasn't clear about sales to non-Indians. A 2006 ruling in

### Parent Power

By: Melvin G. Ashton | Contribution to WSW | May 18, 2011

Even if you put the issue on the side, here is an example of appropriate and affective local involvement. Who runs the schools?

[Comments \(0\)](#) [Read more...](#)

### Of Polls, And Rolls, And Tolls and Roles: Odds and ends on a sleepy Wednesday

By: Jim Boldt | Washington State Wire | May one/one, two thousand one/one

1058 issue: "90 percent would vote same way!"...is the roadkill dead? Has it been killed?...Looks like a watered down, do-nothing medical pot bill has been fired up again...Jay Manning is running for AG when McKenna moves to the Mansion??

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### Parents Should Protest As Much As SEIU: The Reason K-12 is Upside Down is Because it is Backward

By: Jim Boldt | Washington State Wire | May 9, 2011

For example, Kitsap county is about 40 miles long and a few miles wide. There is a full component of administrators, doing the same what-ever-they-do every eight miles. Nothing screams out for centralized admin like schools districts.

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### Make Believe Pot-HUH? SB 5954 Big Words: Cannabimimetics (cool)

By: Jim Boldt | Washington State Wire | May, 3 2011

Now these ungodly mimics will go in the law book right between the butene cousins, diethylthambutene, and his sister Ethal, as in ethylmethylthambutene.

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By: Department of Employment Security



**Lawmakers Struggle for Workers' Comp Deal**  
Meeting is Held in Governor's Office but No News to Report  
By: Associated Press

**Sound Transit Looking to Delay Light Rail South of SeaTac**  
Be Patient, Agency Says — Just 22 Years

the case held that the tribal gas stations couldn't be required to charge state gas tax to non-Indian customers.

The state solved that problem easily enough. By changing a few words in the law, it changed the point at which the tax is collected. Instead of charging end-customers at the pump, on Indian land, it started collecting the tax when the fuel is sold by a refiner to a distributor. That sale takes place before the gas gets to Indian country. No problem there. A similar maneuver by the state of Kansas was upheld by the U.S. Supreme Court.

The thing is this. The same law that changed the wording also gave the governor the right to strike deals with the tribes that give them a 75 percent cut. How come?

### Ways Around the Law

Kelly Croman, general counsel to Marine View Ventures, the economic development arm of the Puyallup tribe, laid out the public-policy reason for the House Transportation Committee last month. Her explanation was a little more direct than the usual committee testimony on the issue. Croman said that if the state hadn't made a deal, the tribes would have found a way around the rules.

The tribes could have declared themselves to be distributors and arranged to take deliveries on reservations, she said. Some tribes are located on state or national borders, or on ports, and they might be able to import fuel without ever crossing state land. There's a pipeline that runs through Puyallup trust lands — her tribe might have tapped into that. There are refineries on Puyallup land that her tribe might have purchased.

But if the state was offering 75 percent of the gas-tax revenue — why bother?

"There is no way to require tribes to not to move into those positions, but you can provide incentives," she said. "The idea was that a 75-25 split would be a sufficient incentive for most tribes, and I think the proof is in the pudding. I think that most tribes are staying at the retail level by and large. And with all the opportunity that we have explored at Puyallup for that extra 25 percent, we have been sitting still as well all these years."

### Does it Make Sense?

And it's all a lot of hooey, Hamilton says. Any tribe would spend tens of millions to hundreds of millions of dollars to buy a refinery or develop a tanker or pipeline terminal. It wouldn't make sense for a tribe to spend that kind of money in order to service a handful of gas stations on its own reservation. Even if it did, it would also have to find a refiner willing to undercut all the non-Indian stations it serves in the same market — which wouldn't make a whole lot of sense.

"Everybody knows why this is happening," he said. "It's because the tribes are willing to put up money for campaigns."

Republicans are beginning to do more than complain. Armstrong introduced a bill last month that would require renegotiation of the tribal compacts. Last week, state Rep. David Taylor, R-Moxee, introduced bills that would do that and more, allowing cardrooms to install the same type of electronic gambling devices that are permitted in Indian casinos, overturning gas-tax and cigarette-sales compacts, and requiring legislative approval for any new deals between the governor and the tribes.

Call it a little gutsy on Taylor's part. His district includes the Yakima reservation. But if he gets dumped next year because of it, so be it, he says.

"Our constitution says no law should be passed that confers special privileges on an individual or corporation, and yet that's what we've been doing with these compacts."

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By: The News Tribune



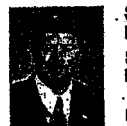
**McKenna-Inslee Race Would Start as a Tossup, Poll Says**

Two Are Considered Likely Gubernatorial Candidates  
By: Jim Brunner/Seattle Times



**Redistricting Commission Told to Work Faster**  
As First Public Testimony is Heard in Olympia, Commissioners are Reminded of the Snail-Paced 2001 Effort

By: Brad Shannon/The Olympian



**Senate Votes to Let Go of 'Upside-Down' Tax-Deferral Program**

Schoester Says Program Costs More to Run Than it Provides in Benefits

By: Senate Republican Caucus



**Traffic-Camera Company Executive Suspended**

Posed as Herald Reader, Posted Comments on Newspaper Website in Favor of Red-Light Cameras

By: The (Everett) Herald



**Nothing Happens in Worker-Comp Talks**

House Speaker Asked if Any Progress, Responds 'Not Yet'

By: Jerry Cornfield/The (Everett) Herald



**Meet Reader 'W. Howard,' Traffic Cam Exec**

Online Comments on Herald Red-Light Camera Stories Can be Traced to Scottsdale Firm

By: The (Everett) Herald



**Memo to Gregoire: Don't Veto Teacher-Performance Bill**

Editorial: Bill Would Base Layoffs on Performance, Not Seniority

By: Seattle Times



**Majority Should Hold Firm on Workers' Comp**

Editorial: Speaker Frank Chopp Seems to be Willing to Thwart a Reasonable Compromise

By: The (Everett) Herald

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Posted On: 5/6/2011 9:13:34 AM  
 Posted By: Stephen (Guest)

Washington state deficit is obviously caused by incompetence, and they want to impose an income tax that will later be extended to middle and lower classes... The correct course of action wouldn't be to introduce a new tax but rather vote the idiots out of office that are mis-managing money.

Why don't we open up the HOV lane on I5 and 405 to speedpass this should effectively solve the budget problems for road and highway repairs. Combined with legislature preventing the Indian gas monopoly we wouldn't have transportation issues anymore.

We voted against the income tax and they attack only days later by announcing the cut backs and closures as a result of our unwillingness to cooperate... We shouldn't pay for their mistakes, they should, vote them out of office.



Posted On: 4/30/2011 10:32:48 AM  
 Posted By: Black Burks

The Swinomish tribes Chevron station boasts being one of the highest volume Chevron stations on the west coast. They have dramatically damaged my small Mom & Pop Gas station in LaConner by being able to retail gas at as much as .25 cents per gallon below my wholesale cost. Less than 4 miles from my little store the Casino's station is close enough for locals to go there to fill up. To make matters worse they are actually building another station within the small village less than one mile from my store. Why would they go into competition with themselves you may ask? Easy. Tax free gas and possibly built with tax payers dollars. No expense, no risk. The cost of building a gas station is very high, establishing one within a very small population base could only have one purpose in mind. Huge tax benefits and consumption of our towns only surviving gas station of 80 years. 10 local, non tribal people will loose their jobs. La Conner will loose its only remaining gas station. Predatory? Ya think? They even has the nerve to try and solicit my employees away to come work for them. Is this good for our states economy? Do we wish to allow them to destroy surrounding non-tribe businesses that pay huge state and local taxes? The money was supposed to be used for road and transportation improvements within the Swinomish reservation. I live on the Reservation and there has been no evidence of road improvements anywhere except for a small section of perfectly good road that was repaved. Where is the money? It has to be huge? Hummm new resort hotel ground breaking ceremony now taking place @ the Casino today. When in history have we given so much to those who lost the war. This is messed up.

Add Comment

Your Name: \_\_\_\_\_

Your Email Address: (Not displayed with comment.) \_\_\_\_\_

Subscribe to this comment thread?

Comments: \_\_\_\_\_

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Remaining Gang of Six Deficit-Reduction Negotiators Struggle to Move Forward

The departure of U.S. Senator Coburn, a conservative known as a deficit hawk, could prove a fatal blow to hopes that an ad hoc set of senators could crack the code of deficit-reduction politics and find a compromise that has escaped party leaders.

By: Wall Street Journal

Report: Employers to See 2012 Medical Costs Jump

PwC found that medical costs are expected to rise 8.5 percent next year, which compares to an 8 percent increase it projected for 2011.

By: Bloomberg

Healthcare 'Compact' Advances in Two States

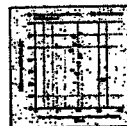
Oklahoma and Tennessee moved forward Wednesday on the healthcare "compact" that some states are pursuing as a challenge to the healthcare reform law.

By: The Hill

Feds Raid More Spokane Marijuana Dispensaries

Federal agents, assisted by Spokane Police, raided marijuana dispensaries on Wednesday. Federal agents hit seven dispensaries on April 29, but none of those cases have yet resulted in charges.

By: Spokane Spokesman-Review



The \$640 Billion Question — Why Does Cost-Effective Care Diffuse So Slowly?

Individual U.S. physicians and health care organizations deliver high-quality care at a cost roughly 20% lower than the average. If the rest followed their example, health care spending would drop from 17% of the gross domestic product to 13%.

By: New England Journal of Medicine



Baby's First Flame Retardants

A study released Wednesday in Environmental Science & Technology reveals that multiple chemicals that "pose significant health risks" are still to be found—sometimes in frightening amounts—in all kinds of "must-have" infant and baby supplies.

By: Sightline Institute



The CLASS Act

A new Health Policy Brief looks at the long-term care insurance program created by the Affordable Care Act which will be reshaped to address concerns about solvency.

By: Robert Wood Johnson Foundation

Swilling Coffee May Protect Men Against Prostate Cancer

Those who who drank the most coffee — regular or decaffeinated — have the least risk for prostate cancer, especially the deadliest forms of the disease.

By: MSNBC



**State Offers Free Nicotine Patches and Gum during May and June**

Washington residents who are ready to quit smoking can receive at least two weeks of free nicotine patches or gum if they call the state Tobacco Quitline in May or June at 800-QUIT-NOW or 877-2NO-FUME.

By: Seattle PI



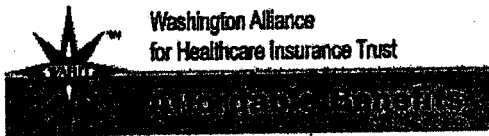
**Administration Offers New Path For ACO's**

Facing strong criticism of the proposed regulation for accountable care organizations, the Obama administration announced new options Tuesday to lure hesitant doctors and hospitals.

By: Kaiser Health News

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# APPENDIX C

## KOMO News

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# What a waste: State keeping secrets with our gas tax

Originally printed at <http://www.komonews.com/news/problemsolvers/121371074.html>

By [Tracy Vedder](#) May 5, 2011

While we're all feeling extra pain at the gas pump these days, a KOMO 4 Problem Solver investigation has discovered the state is keeping some million-dollar secrets about your gas taxes. Our investigation found the state is paying out millions from the state gas tax, and they won't tell us how the majority of it is being spent.

For whatever financial pinch you might feel when filling up, at least there's consolation knowing that for each gallon purchased, 35 cents goes to the state. That money adds up to the Motor Vehicle Fuel Tax Fund and it all pays for new highways, filling potholes, and fixing roads, right?

Wrong. This year alone, more than \$22 million of state gas tax money is heading off the books. It's going straight to local tribes operating their own gas stations.

"Now that just flap dab is wrong," says Tim Hamilton, Executive Director of AUTO, a gasoline retailers organization. "It's not only morally wrong, it's financially wrong."

In 2006, the state lost a local court battle that ruled tribes, as sovereign nations, don't have to pay the gas tax. To end future court battles, the legislature and Governor Gregoire signed off on a deal: for every gallon a tribe sells, the state pays them back 75 percent of the gas tax, or 28 cents a gallon.

As part of the deal, there's no limit on how many stations the tribes can own or how much gas they can sell. It's bad news for non-tribal stations.

**"There's no way we can compete"**

"For the first time in our lives, we have become scared," says Chris Angwood, who with her husband Larry run a mom-and-pop gas station in Grand Mound. "We are in survival mode."

The Angwood's business has been in the family for decades. But Larry Angwood says the nearby tribal stations undercut their prices by 9-to-10 cents a gallon.

"There's no way we can compete...we've gone down as low as I can go," Larry Angwood said. They've laid off employees and are working seven days a week themselves. But there's too few customers, and an uncertain future. "I mean if we lose this business," Chris Angwood said, "we lose everything we own."

Hamilton says it's the largest raid on a public treasury that he could ever imagine can happen.

"Hundreds of millions are on their way out of here," he said. In fact, over the next 17 years, the state Department of Transportation estimates it will give 22 tribes well over half a billion dollars of gas tax revenue - \$620,676,200.

Puyallup Tribal Attorney Kelly Croman says this is about the tribe being able to have a tax base to be able to perform governmental functions. She adds the state, "gained a lot of concessions from the tribes by making that compact."

**Details kept secret**

As part of the deal, the tribes are supposed to spend all the money on transportation. But when the Problem Solvers tried to check, we uncovered a disturbing fact: The state agreed to keep almost all the information about how that money is spent - secret.

"They have a duty to show us what they did with that money, and they won't,"

Hamilton said.

The tribes do provide audits to Department of Licensing, which administers the agreements. But when we asked for a copy of the audits, "unfortunately we can't release those," DOL Spokesman Brad Benfield told us. The tribal deals also keep those audits secret.

The state does release an annual report to the legislature, including background information on the number of tribes with agreements and the overall amount of money refunded to them. Some of the tribes do allow the state to include some information about the projects they're spending the money on but there is little detail and, in most cases, almost no way for an outsider to verify the expenditures.

One of the few projects we did find specifics for is first listed in the state's 2008 annual report. The Puyallup Tribe reportedly spent \$4 million to design and build a 3-lane arterial road on 59th Ave East between the Pacific Highway and 12th St East in Fife. The 2008 report said the construction would be finished in 2009. When we visited the site last month, it was a gravel road that ended in a field with a road closure sign. No sign of any construction. A Puyallup spokesman says the project was delayed because they couldn't acquire the land, but it showed up in reports to the state legislature in 2008, 2009 and 2010, each year with fewer details.

We also found that construction of another road, Grandview Avenue, was supposed to start in 2010. But again when we visited the site last month, it was littered with potholes and some of it was still just a gravel road. And we found no sign that any construction had begun.

We found two projects that the Puyallup Tribe did get finished: a parking lot for the tribe's headquarters and sidewalks and landscaping at their new mega gas station off I-5.

### **Good deal for taxpayers?**

We asked DOL how their oversight has provided any guarantee to taxpayers that the

gas tax money is being used appropriately.

"Well, I think that we are doing what we need to do under the law," Benfield said.

In reviewing the past three annual reports, the Problem Solvers found that other tribes don't give much more detail. Among other things, the gas tax money is paying for logging roads, a probation officer, transportation planners and road design work. Again we asked DOL how that's a good deal for taxpayers.

"I think that this allows taxpayers to know that the fuel taxes that are collected on tribal lands are being used for transportation projects," Benfield said.

As mentioned earlier, a state court ruled tribes don't have to pay the gas tax. However, a U.S. Supreme Court ruling seems to say the opposite. Because of that, Hamilton's AUTO organization is suing the state to end the rebate program.

And twice, Republicans in the state legislature have tried, but failed, to pass a law requiring more transparency to this program.

# APPENDIX D

## KOMO News

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# State seeks \$11 million in unpaid gas taxes from Yakama Tribe

Originally printed at <http://www.komonews.com/news/local/122370864.html>

By [Tracy Vedder](#) May 20, 2011

SEATTLE -- The state is demanding \$11 million in unpaid gas taxes from the Yakama Tribe. It's the latest battle in the ongoing controversy over Native Americans getting gas tax refunds, which last year alone totaled \$32 million.

The \$11 million hanging in the balance all started with a negotiated court settlement which splits gas taxes on the reservation 75-25, with 75 percent going to the tribe and 25 percent to the state. But the state says the tribe isn't living up to its end of the deal.

On the Yakama Reservation, you can easily tell which are the tribal stations. Gas prices are anywhere from pennies to as much as 12 cents a gallon cheaper. The prices are even cheaper than the bulk price at Safeway. That's because they get a 75 percent gas tax break for every gallon of gasoline.

The state Department of Licensing oversees these agreements. In a [letter to the tribe](#), DOL said the Yakamas aren't living up to their end of the deal.

"I would respectfully disagree with that," said Yakama Tribal Chairman Harry Smiskin. ([Read his response](#))

The state's letter contends that for three years, the tribe has missed deadline after deadline, and hasn't provided a single required audit for 2007, 2008 or 2009. Because there are no audits for those years, the state now says it's owed over \$11 million.

"I would respectfully disagree with the people that contend we have to pay that tax," said Smiskin, "because as I alluded to earlier, there are some provision in our treaty of 1855 that exclude us from those types of things."

Tim Hamilton, who heads up a nonprofit group of gas station retailers, says the Yakamas have intentionally ignored the state.

"They're stiffing the state," said the executive director of AUTO. "They're just simply grinning and stiffing the state. And for some reason, they (state officials) just simply cow-towed to the tribe, and would not stand up and enforce the agreement. Why they would do that is just incredulous."

That \$11 million is on top of the \$32 million the state paid other tribes last year in gas tax refunds. Transportation Secretary Paula Hammond says the state is already getting fewer tax dollars because of the growing number of tribal gas stations, and while \$11 million may be small in terms of the total budget, it's no small change.

"But \$11 million is a pretty good chunk of asphalt pavement you can have to freshen up and keep strong your highways somewhere," said Hammond.

The tribe and the state have a meeting schedule for next month at an undisclosed location to try and hammer out a settlement.

# APPENDIX E

**GOVERNOR'S INFORMATIONAL BRIEF***Reviewed by Chief of Staff* **DATE:** MARCH 24, 2011**FROM:** Liz Luce**PHONE:** 360-902-3600**ISSUE:** TRIBAL FUEL TAX**PURPOSE:** **INFORMATIONAL****BACKGROUND:****Executive Summary:**

In 2006, Judge Thomas Zilly enjoined the state from collection of fuel tax on deliveries of fuel made to tribally owned fuel stations on reservations. In 2007, SB 5272 provided the framework for the Department of Licensing and tribes to address taxation of fuel delivered onto tribal reservations or trust lands. The legislation clarified the incidence of taxation to the distributor level when fuel is removed from the rack. Prior to the legislation, tribal fuel tax issues often resulted in legal action in state or federal courts.

During the 2011 legislative session, much attention has been paid to the tribal fuel tax agreements. Department of Licensing employees have been asked to present the 2010 Tribal Fuel Tax Report to the Senate Transportation Committee and join a House Transportation Committee work session on tribal fuel tax agreements. Representative Mike Armstrong proposed HB 2013 which would require DOL to renegotiate all tribal fuel tax agreements to include stricter audit provisions, allow for public disclosure of tribal fuel tax audits and require the tribes to spend the refunds in accordance with the 18<sup>th</sup> amendment of the state constitution.

A lawsuit by the Automotive United Trade Organization (AUTO) questions the constitutionality of the fuel tax agreements.

There are three types of agreements:

- **Per Capita-** A formula for the annual amount of fuel tax refunded to a Tribe. The formula is based on the average per capita consumption of gasoline as determined by WSDOT, number of enrolled tribal members living on or near the reservation and the current state fuel tax rate.
- **75% Refund/25% State Tax Agreement -** Tribes purchase fuel with the state fuel tax included. Tribes report their purchases to the DOL and receive 75 percent of the state motor vehicle fuel tax revenue collected as a refund and the state retains 25 percent as state fuel tax.
- **Consent Decree-** Judicial decree issued by the court expressing voluntary agreement between parties to a dispute.

During the past few months a pattern of questions and misinformation has emerged. This brief will address the questions and misinformation.

- **Use of the Refunds for ~~Transportation Highway Funds~~ Purposes-** The 75%/25% agreements contain the same requirements for use of fuel tax proceeds as the 18<sup>th</sup> Amendment.

## GOVERNOR'S INFORMATIONAL BRIEF

In addition, as allowed by the statutes, the agreements allow for fuel tax proceeds to be utilized for boat ramps, transit services and facilities, and police services. To ensure compliance with the agreement, tribes are subject to an annual audit.

Through a voluntary submission of information regarding use of fuel tax proceeds by the tribes, several projects resulted in tribe's partnering with WSDOT or local jurisdictions on transportation projects.

- **Annual Audits-** Tribes with a Per Capita agreement do not have audit requirements. Tribes with a 75%/25% agreement must maintain the following for three years:
  - Invoices showing fuel purchases and detailed schedules of gallons claimed for refund.
  - Records documenting the use of the funds in accordance with SB5272 (referenced above).

The tribe shall cause an audit to be performed annually (or agreed upon interval) by a third party auditor who is a certified public accountant and in good standing. The auditor reviews the records to ensure compliance with the above requirements. The auditor's certification of records and list of expenditures will be sent to the Director of DOL.

- **Use of Funds to Offset Fuel Pricing-** DOL's administration of the Fuel Tax Agreements does not include review or audit of fuel pricing. Most of the 75%/25% agreements include intent language of comparable pricing. At a recent meeting of the Tribal Transportation Planning Organization, tribal representatives discussed public concerns with tribal fuel pricing and many of the tribes shared that they price their fuel in line with Costco and Safeway. Pricing of fuel will be impacted by the price of the fuel at time of delivery, volume purchased, how quickly fuel is sold and replaced (have prices of fuel risen or lowered since the last time a bulk fuel tank was filled), these variables have a significant impact on smaller or single owned fuel stations. Nothing in the agreements or SB5272 obligates the tribe to sell fuel at a particular price. The audits are intended to ensure the appropriate amount was refunded and fuel tax proceeds spent appropriately.

Due to the Zilly decision, Federal law prohibits states from collecting taxes on transactions on sales by a tribe on its reservation or trust land. Washington cannot collect fuel tax from tribal fuel retailers on a reservation or trust land. Judge Zilly determined the legal incidence of Washington's tax was on tribal retailer. Without SB5272, Washington would not collect fuel taxes from the tribes. Even with the changes, that SB 5272 made, if a tribe

The law could be changed so that it is argued that the incident of the tax does not fall on the tribal members or station owners. However, that could give tribe the incentive to purchase or built a refinery, or imported fuel directly to its reservation, the state would collect no tax on that fuel. The potential impacts on the state's fuel tax revenue would be immense, with likely litigation over the state's ability to impose the tax at the time the tribe attempted to distribute the fuel off-reservation, likely to other tribes. barge in fuel or tap into a pipeline. If that is the case, Washington will not collect any fuel tax.

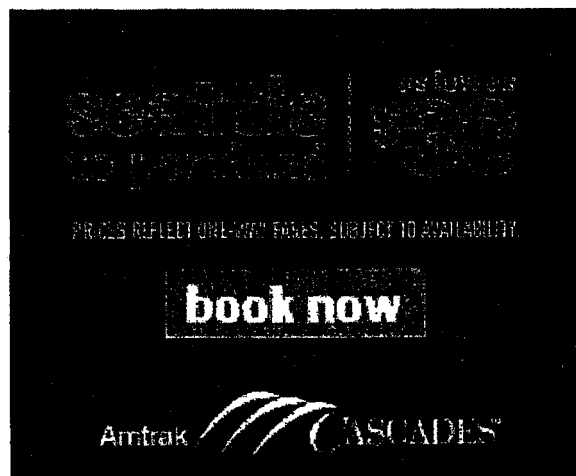
**NEXT STEPS:** Due to unfamiliarity of members on this issue, DOL would be willing to develop a legislative fact sheet to increase their awareness.

**GOVERNOR'S INFORMATIONAL BRIEF**

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**GOVERNOR'S COMMENTS:**

# APPENDIX F



## Gregoire to ask voters for more transportation \$

By MIKE BAKER, ASSOCIATED PRESS  
Published 06:45 p.m., Monday, May 16, 2011

OLYMPIA — Gov. Chris Gregoire wants a new source of revenue to pay for transportation projects, warning Monday that Washington state doesn't have the money for key expansions or road upkeep in the years to come.

New taxes, fees and tolls would be among the options on the table as state leaders explore ways to pay for growing transportation needs. Gregoire is forming an advisory panel that will help develop a plan to take to voters next year.

"I think the public sees the need, and I think they'll be willing to step up to it," Gregoire said.

Transportation packages approved in 2003 and 2005 increased the gas tax and other fees for a series of projects around the state. But those ongoing tax collections will now largely go toward debt payments on the ventures, which totaled about \$15 billion.

Meanwhile, there are major projects around the state that still need cash. That includes the 520 bridge linking Seattle and Bellevue, the Interstate 5 crossing over the Columbia River and the North Spokane corridor. The state is also in search of new revenue to support the ferry system, which faces a projected shortfall of \$1 billion over the next decade.

The 2003 and 2005 tax increases also didn't fund general road maintenance. Gregoire warned that pavement conditions around the state are poised to plummet in the years to come unless voters are willing to commit funds to preserving quality.

"We have got to show people across the state that if we don't invest in that, there are significant consequences," Gregoire said. She spoke during the signing of a transportation budget for the coming two-year budget cycle. Lawmakers have called it a bare bones plan.

Gregoire's pitch for new money is coming at the same time that initiative guru Tim Eyman is pressing to make it more difficult for the state to raise highway tolls. The two sides could end up with competing proposals on the 2012 ballot, with Eyman pushing a new initiative that would require the Legislature — and not the unelected state Transportation Commission — to set highway tolls.

Eyman believes lawmakers violated that requirement in the current transportation budget by re-delegating the ability to set toll rates to the commission, which is appointed by the governor. He said that voters are frustrated by the maneuver and may be less willing to consider the governor's pitch.

"The only way you're ever going to get the voters to give you more money is if they trust you," he said.

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