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February 2, 2016

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# WOMA Legislative Update: - January 31, 2016

*The 2016 legislative session* thus far can be described as “the one that didn’t need to happen” (Except for WOMA, but I’ll get to that later!). Due to the record long session last year, there is about zero energy among elected officials to be in Olympia which is evidenced by the fact that almost all activity ends on Thursday afternoons and everyone goes home. One colleague shared with me that the first day of session always feels like the first day back to school after summer vacation. It’s a time where there is anxious excitement knowing you would be seeing friends you hadn’t seen all summer, and getting back to work. For the first time in over 25 years, my colleague didn’t feel that way this year. That analogy probably best describes the mood in the state capital. Now that I’m done with the doom and gloom that is 2016 for most, this session has actually been very exciting for WOMA.

## PLIA Executive Request Legislation

As mentioned in our last report, we came flying out of the gate the first week of session with two bills, HB 2357 and SB 6193, to create a revolving loan program within PLIA for underground storage tank owners. Both bills had work sessions and public hearings in the House and Senate environment committees and were voted out by the end of the second week. The bills were then referred to fiscal committees where they are anticipated to pass through during the week of February 1st and then move to the floor of the House and Senate for a full vote of each body. Even in a short session, we are well ahead of rapidly approaching cut-off dates and anticipate these two bills will be among the first to see floor action when that begins full-time February 10<sup>th</sup>.

Many thanks to Steve Clark and Christophe Allen who represented themselves and WOMA in the two work sessions on these bills. They put a very good face on our industry by relating their very personal and compelling stories as to how the pilot to this program literally saved their multi-generation family businesses that provide essential services in their communities. There was no doubt that all of the committee members embraced the need for this program based on this testimony.

## Tribal Legislation Update

There are two bills in the legislature addressing tribal fuel tax issues; one good, one bad. HB 1631 returns from last year and would allow the state to enter into a fuel tax compact with the Samish Indian tribe. The Samish do not qualify for compact status because they do not have a federally recognized reservation. WOMA testified against the bill taking the opportunity to point out that the fuel tax compacts have been generally a disaster. Our message focused on unfair competition against non-tribal fuel stations, remittances being used outside the scope of the compacts and the 18<sup>th</sup> Amendment and the diversion of tax revenues from the state highway account to tribal coffers. As an aside, we also noted that the Samish tribe has no highway road system. Go figure!

*Continued*



TRIBAL/CARBON/OTHER

The bill came out of the House committee dealing with tribal issues on a party line vote. It is now in the House Transportation Committee where its fate is uncertain. What is certain is that we will kill this bill. When and where is the only question.

SB 6193 was introduced by Senator Curtis King of Yakima; Chair of the Senate Transportation Committee. The bill was designed as a shot across the bow at the Yakama tribe pertaining to the current fuel tax avoidance scheme being perpetrated by two of its members. Essentially, the bill would require non-tribal members to pay fuel taxes if they purchase fuel at a tribal station that does not have a fuel tax compact with the state.

Rod Smith and Mike Chandler travelled to Olympia and provided the Transportation Committee information on the Yakama tax evasion scheme. They provided photographic evidence of high capacity stations, clearly designed to serve more than tribal members. They also provided evidence of fuel prices far below what non-tribal operators can offer their customers.

While the bill is likely not to progress due to the fact that it would be summarily killed in the democrat controlled House, it did provide an opportunity to educate many legislators, most of whom have little or no knowledge of tribal fuel tax issues.

### **Carbon Issues**

There is not much new in the carbon world to report. The governor's carbon cap rule is still in its public comment period with very little support from affected industries. Some trade dependent industries are being offered a three-year grace period for implementation and are struggling to determine whether a slow death is any better than the quick death that others will face under the rule. At this point, it is really uncertain what will happen prior to the anticipated summer 2016 final adoption of the rule, but look for lawsuits in the near future challenging the governor and Department of Ecology on their respective authority to implement this policy through executive order and rulemaking.

It appears the legislature will take no action to either pass or amend I-732 which would create a revenue neutral cap and trade program. There have been a number of bills introduced that are intended as alternatives, but it does not appear there is much interest in passing a bill. Currently, we can expect to see I-732 on the ballot in November and perhaps a competing measure being threatened by the Alliance for Jobs and Clean Energy that was referenced in our January 6<sup>th</sup> report.

### **Other**

As stated earlier, the energy level in Olympia is very low, and due to the split majority between the House and Senate, any controversial legislation will face almost certain death in coming weeks. We have seen some hearings on the typical employee benefits issues and other anti-employer legislation but they aren't worth spending much time with because they will go nowhere.

At one time it was thought the legislature would take up the minimum wage issue to avoid costly ballot alternatives, but that effort has stalled as well. There are a number of minimum wage ballot measures that have been filed but not yet assigned numbers. We will continue to monitor these and provide information when it appears there is a credible entity backing a particular proposal.

Finally, it almost a given at this point that the session will end in its scheduled 60 days. The following is a calendar of key cut-off dates by which bills must progress that will provide some information on how quickly things progress in a short session and how close it already is to being over.

*Continued*

<b>January 11, 2016</b>	First Day of Session
<b>February 5, 2016</b>	Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) in house of origin, except House fiscal committees and Senate Ways & Means and Transportation committees.
<b>February 9, 2016</b>	Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) from House fiscal committees and Senate Ways & Means and Transportation committees in house of origin.
<b>February 17, 2016</b>	Last day to consider (pass) bills in house of origin (5 p.m.).
<b>February 26, 2016</b>	Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) from opposite house, except House fiscal committees and Senate Ways & Means and Transportation committees.
<b>February 29, 2016</b>	Last day to read in opposite house committee reports (pass bills out of committee and read them into the record on the floor) from House fiscal committees and Senate Ways & Means and Transportation committees.
<b>March 4, 2016*</b>	Last day to consider (pass) opposite house bills (5 p.m.) (except initiatives and alternatives to initiatives, budgets and matters necessary to implement budgets, differences between the houses, and matters incident to the interim and closing of the session).
<b>March 10, 2016</b>	Last day allowed for regular session under state constitution.

\* After the 54th day, only initiatives, alternatives to initiatives, budgets and matters necessary to implement budgets, matters that affect state revenue, messages pertaining to amendments, differences between the houses, and matters incident to the interim and closing of the session may be considered.

## New Fuel Tax Consolidation Law – Goes Into Effect July 2016

### ATTENTION FUEL TAX CUSTOMERS:

Your license will expire on June 30, 2016 – you must reapply and provide new bonds by July 1, 2016 in accordance with the new Fuel Tax Consolidation law.

(NOTE: This does not impact IFTA and IRP customers.)

The new Fuel Tax Consolidation Law:

- Simplifies and updates Washington state fuel tax statutes
- Consolidates 13 license types to 7;
- Establishes two new registration types - Fuel Carriers and Terminal Operators;
- Requires Terminal Operators to be licensed.

NOTE: Bonding requirements DO NOT apply to Fuel Carriers and Terminal Operators.

*Continued*



DEPARTMENT OF LICENSING

To review the Fuel Tax Consolidation history in 2013 and the requirements effective July 1, 2016, go to: <http://www.dol.wa.gov/vehicleregistration/ftconsolidation.html>

Additional Fuel Tax Consolidation Changes:

- Streamlines, updates, and eliminates obsolete language to promote uniformity in fuel tax laws;
- Eliminates fingerprint cards, background checks, and financial statements;
- Standardizes penalty rates,
- Requires fuel terminals in Washington to report fuel inventory, receipts, and disbursements.

Preparation for the above changes is underway and will be incorporated with the Taxpayer Access Point (TAP) development.

## Department of Licensing TAP – Coming May 2016!

The DOL Fuel Tax Services has a new system called GenTax. This new system offers an online website called “Taxpayer Access Point” (TAP) for customer use. This enhancement for Fuel Tax customers is underway and will make it possible to establish an account, pay fuel taxes and claim refunds electronically.

TAP will be installed in 2 releases:

- Release 1 took place on October 5th, 2015, and impacts our International Fuel Tax Agreement (IFTA) licensees and our International Registration Plan (IRP) customers.
- Release 2 impacts our Fuel Tax accounts and unlicensed refund customers; it will be available for registration in late May 2016.

The new TAP site will allow you to:

- Manage your fuel tax account(s) and customer information;
- File returns and pay fuel tax online;
- Claim fuel tax refunds online; and
- Report online.

You can read more about the upcoming changes at: <http://www.dol.wa.gov/vehicleregistration/fueltax.html>

## AUTO Petition: *Campaign Contributions by Tribal Governments*

Dear WOMA Members:

Attached for your review is a petition AUTO has filed with the Public Disclosure Commission that oversees elections and campaign contributions in state and local elections in Washington State. (<https://www.pdc.wa.gov/>). The issue is the historical use by tribal governments of “public funds” in making political contributions to influence non-tribal elections in Washington state and subsequently, the decisions coming out of the legislative process or the executive branch. The request, if granted, would result in the passage of a Washington Administrative Code (WAC) that carries the weight of law in the same fashion as the WACs for underground storage tanks passed by the Department of Ecology.

AUTO’s petition explains the concern shared by its members and other citizens that a quid pro quo has evolved wherein tribal governments are inserting tens of millions into political coffers. In return, officials in Olympia elected in non-tribal elections are providing special considerations back that include hundreds of millions out of the state’s treasury. An example used is the tribal motor fuel compacts that came on the scene in 2008 that over a decade will flow approximately \$354 million in motor fuel taxes into tribal government accounts. Former State Auditor Brian Sonntag confirmed the state has no independent ability to track how the state’s fuel taxes are being used by the tribal governments ([http://autowa.org/pdf/2014/Sonntag\\_Compacts\\_Report.pdf](http://autowa.org/pdf/2014/Sonntag_Compacts_Report.pdf)).

The quid pro quo is continuing on election after election and each session that follows. HB 1631 currently moving through the Legislature this session seeks to expand the compacts to tribal governments without a reservation and which subsequently, have no tribal roads to maintain. Other measures beneficial to tribal governments are common place. AUTO freely admits that the contributions by tribal governments to elected officials in non-tribal elections seem to be providing an excellent “return on investment” for tribal governments. Unfortunately, the return is delivered at the expense of the state’s tax payers, especially those paying the latest increase in fuel taxes passed by the legislature and collected at the pump with each fill-up.

The petition outlines AUTO’s legal position that a tribal government imposes taxes on non-tribal citizens and regularly receives taxes collected by the state of Washington and the federal government. All of the non-tax revenue of enterprises operated by these tribal governments

## DATES for Your Calendar:

**WPMA**  
**WPMA EXPO**

• One Team • One Mission • One Goal

February 16<sup>th</sup> – 18<sup>th</sup> 2016

at the Mirage in Las Vegas, NV

Register on line at [www.wpmaexpo.com](http://www.wpmaexpo.com)



June 20<sup>th</sup> – 23<sup>rd</sup> 2016

**WOMA Convention**

at Suncadia Resort,  
Cle Elum, WA

Go to [www.wpma.com/washington](http://www.wpma.com/washington)  
for more details

## ANNOUNCING!!!

**JIM ELLIS**

*Senior Consultant, PR/ISM*

Go to

<https://jimellisinsights.wordpress.com/about>

for everything you would  
want to know about our  
2016

WOMA Convention

**Keynote Speaker!**





# Wire

AUTO PETITION:  
CAMPAIGN CONTRIBUTIONS  
BY TRIBAL GOVERNMENTS

also rises to the definition of public funds. Casino revenue to a tribe is in the same category as the lottery proceeds to the state of Washington. As reinforcement of this position, AUTO quotes the statement posted on the website of the Washington Indian Gaming Commission “*Gaming revenue is tax revenue for tribal governments.*” More importantly, candidates, political parties and political action committees supporting or opposing ballot measures in state authorized elections are forbid from taking contributions of public funds “...*whether derived through taxes, fees, penalties or any other sources ....*” (RCW 42.17A).

AUTO’s petition spells out how the intention of the prohibition against using public funds was to prevent a larger government entity from using its tax base to influence elections in other jurisdictions. One example is the City of Seattle using its tax base to fund candidates or ballot measures to influence elections in nearby jurisdiction such as the city of Auburn. Additionally, the notion that candidates or political parties can somehow accept contributions from a tribal government due to tribal sovereignty is not supported by law. WA statues may not be enforceable on a tribal government when its operating on trust land within the boundaries of a reservation. However, such is not the case for candidates, political parties, and political action committees involved in Washington elections. The historical use of public funds to issue political contributions by tribal governments is no different than an attempt by the state of Oregon or City of Portland to use its public funds to influence an election across the Columbia River in Vancouver, Washington.

Another purpose of the prohibition was the concern that elected officials would exercise control over public treasuries and divert public funds to complement their own candidacy or affiliated political parties. Diverting public funds to a tribal government that returns a portion back to campaigns or parties of those controlling the diversion in the first place “*will not pass the smell test.*” Public funds do not somehow ripen into non-public funds upon receipt by a tribal government just prior to a transmission back to those that decided to open the wallets of Washington’s taxpayers to create a procession that reminds one of a merry-go-round.

The petition is lengthy, but an easy read. It is also candid and “*lays all the cards out on the table face up.*” What is the reason for the magnitude of the contributions flowing out of the tribal governments? AUTO’s answer matches the one commonly heard from the public. Simply put, those incredulously large contributions by tribal governments serve no rationale purpose other than to exercise an influence over state elections and the decisions of elected officials who possess the keys to the state’s treasury. Therein lies the root of the problem that is impacting the public’s faith in government and the explanation for how we all got stuck with the motor fuel compacts that have damaged some many to such an extent.

The 2016 election fund raising efforts are underway for candidates, political parties and political action committees. Accordingly, AUTO requests that the Public Disclosure Commission grant the petition and move forward to adopt a rule (WAC) in an expedited fashion.

Respectfully,  
  
Tim Hamilton  
Executive Director

Please read following Auto Petition letter



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PO Box 1420 McCleary, WA 98557  
(360) 495-4941 • Fax: (360) 637-3525 • Email: [tim@autowa.org](mailto:tim@autowa.org)  
[www.autowa.org](http://www.autowa.org)

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“Keeping the Wheels Rolling in Washington State”

February 1, 2016

Via email and fax (8) pages total

Evelyn Fielding Lopez, Executive Director  
Washington State Public Disclosure Commission  
711 Capitol Way, Rm. 206  
P. O. Box 40908  
Olympia, WA 98504-0908

**RE: Request For Adoption Of Rule**

Dear Ms. Lopez:

The Automotive United Trades Organization (AUTO) is a duly filed and recognized Washington corporation that is a nonprofit trade association representing small businesses that market and distribute motor fuel in the state. In my role as Executive Director, I am the contact person for the organization.

Attached for submission is an executed form created by the Secretary of State wherein AUTO requests adoption of a rule by the Washington Public Disclosure Commission (PDC). The issue is the receipt of contributions from tribal government entities by candidates, political action committees, political parties and others involved in elections within the state. AUTO's position is the treasuries of these contributing tribal governments contain public funds created by taxes collected by the tribal governments from non-tribal citizens and transfers from state or other public treasuries through actions of the legislative or executive branches of state government. A contribution from a tribal government therefore results in the use of “public funds” for political purposes. State law prohibits use of public funds for political purposes “...whether derived through taxes, fees, penalties or any other sources...”.<sup>1</sup>

This letter is an addendum to the previously referenced form and intended to further explain AUTO's position and request. Additionally, AUTO intends to provide extensive documentation to the record during the rule making process in accordance with the procedures set forth in the Administrative Procedures Act<sup>2</sup>.

Tribal sovereignty, tribal rights under historical treaties, and the state citizen rights of tribal members are unaffected by AUTO's request for rule making. The request is directed toward receipt of campaign contributions from a tribal government by those in support or opposition of a candidate or ballot initiative during an election held within the state of Washington. The request is therefore fully within the parameters of authority and duties of the PDC.

***The magnitude of the political contributions received from tribal governments***

Review of the data base maintained by the PDC show tens of millions of dollars have flowed

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<sup>1</sup> RCW 42.17A

<sup>2</sup> RCW 34.05

out of tribal government accounts into political parties and political action committees (pacs). Recipients include pacs supporting or opposing candidates for statewide office (governor, attorney general, supreme court, etc), legislative districts, and measures appearing on the ballot. As an example, from 2004-2010 tribal governments issued political contributions approaching \$10 million. A political action committee titled “Campaign For Tribal Self Reliance” of the Washington Indian Gaming Association funded by tribal governments and managed by tribal officials provided \$382,645 in contributions during 2009-2010.<sup>3</sup>

TRIBE	2004	2005	2006	2007	2008	2009	2010
Chehalis	\$ 170,450	\$ 1,500	\$ 9,300	\$ -	\$ 7,800	\$ 1,000	\$ 11,100
Coleville	\$ 20,700	\$ 2,750	\$ 8,050	\$ 85,050	\$ 19,950	\$ 2,700	\$ 18,300
Cowlitz	\$ 500	\$ -	\$ 750	\$ -	\$ 800	\$ -	\$ -
Jamestown S'Klallam	\$ 135,025	\$ 4,100	\$ 3,325	\$ 4,345	\$ 8,600	\$ 7,850	\$ 12,452
Lummi	\$ 112,300	\$ 5,550	\$ 4,050	\$ 6,000	\$ 9,100	\$ 17,750	\$ 13,150
Hoh	\$ -	\$ -	\$ -	\$ -	\$ 3,200	\$ 3,600	\$ 2,400
Kalispel	\$ 270,753	\$ 2,668	\$ 34,618	\$ 1,194	\$ 98,499	\$ 10,205	\$ 32,636
Lower Elwha Klallam	\$ 30,162	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500
Makah	\$ 31,700	\$ 675	\$ -	\$ -	\$ 50	\$ -	\$ 500
Muckleshoot	\$ 1,722,959	\$ 20,800	\$ 146,400	\$ 77,351	\$ 299,507	\$ 78,314	\$ 201,483
Nisqually	\$ 188,506	\$ 15,450	\$ 35,175	\$ 28,300	\$ 50,540	\$ 25,890	\$ 58,789
Nooksack	\$ 10,000	\$ 5,000	\$ 950	\$ 8,800	\$ 4,500	\$ -	\$ -
Port Gamble S'Klallam	\$ 26,250	\$ -	\$ 2,150	\$ 500	\$ 9,400	\$ 5,600	\$ 9,500
Puyallup	\$ 1,793,979	\$ 58,450	\$ 149,825	\$ 69,800	\$ 143,344	\$ 1,600	\$ 121,700
Quileute	\$ 10,000	\$ -	\$ 1,700	\$ -	\$ -	\$ -	\$ 1,500
Quinault	\$ 31,685	\$ -	\$ 2,225	\$ 36	\$ 2,050	\$ -	\$ 10,250
Samish	\$ 29,150	\$ 9,100	\$ 8,075	\$ -	\$ 48,000	\$ 5,400	\$ 24,000
Sauk-Suiattle	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500	\$ 2,000
Snoqualmie	\$ -	\$ -	\$ -	\$ -	\$ 191	\$ 547	\$ 260
Shoalwater Bay	\$ 15,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Suquamish	\$ 118,050	\$ 2,000	\$ 11,650	\$ 5,205	\$ 10,150	\$ 2,500	\$ 13,050
Skokomish	\$ -	\$ 320	\$ 5,075	\$ -	\$ 1,000	\$ -	\$ -
Spokane	\$ 500	\$ 2,000	\$ -	\$ 2,700	\$ -	\$ 200	\$ 2,120
Squaxin	\$ 108,445	\$ 3,300	\$ 9,150	\$ 4,550	\$ 5,000	\$ 250	\$ 6,100
Stillaguamish	\$ -	\$ -	\$ -	\$ 2,500	\$ -	\$ -	\$ 1,200
Swinomish	\$ 303,375	\$ -	\$ 12,725	\$ 5,250	\$ 65,450	\$ 9,100	\$ 29,820
Tulalip	\$ 1,550,951	\$ 61,866	\$ 194,117	\$ 107,605	\$ 320,539	\$ 17,443	\$ 33,600
Upper Skagit	\$ 55,850	\$ 1,350	\$ 6,200	\$ 3,000	\$ -	\$ 8,800	\$ 1,300
Yakama	\$ -	\$ -	\$ -	\$ -	\$ 4,800	\$ -	\$ 1,600
TOTAL	\$ 6,736,789	\$ 196,879	\$ 645,510	\$ 412,186	\$ 1,112,470	\$ 200,249	\$ 609,310
2004-2010 GRAND TOTAL							\$ 9,913,393

All data downloaded from WA State Public Disclosure Commission website and current as of 1/6/2011

As additional examples of the continuous flow of tribal government contributions, in 2013-2014 contributions to Governor Jay R. Inslee exceeded \$42,000. Attorney General Robert W. Ferguson received \$21,400 and Representative Derek C Stanford received \$9,250. As the legislature was set to convene, the Washington State Democratic Central Committee received \$50,000 from the Puyallup Tribe and \$25,000 from the Muckleshoot Tribe. The Harry S Truman Fund (House Democrats) received \$105,000 from different tribal governments. The Kennedy Fund (Senate Democrats) received \$155,500. In 2014, the Senate Republican Campaign Committee received \$950 from the Nisqually and \$500 from the Swinomish.

### **Political contributions from tribal governments utilize taxes and other public funds**

A tribal government receives its funding in numerous fashions. First, in the form of taxes passed by tribal government and collected primarily from non-tribal citizens (many tribes exempt their members from paying tribal taxes). Similar to a visitor to Seattle attending a

<sup>3</sup> <https://www.pdc.wa.gov/rptimg/default.aspx?batchnumber=100586792>

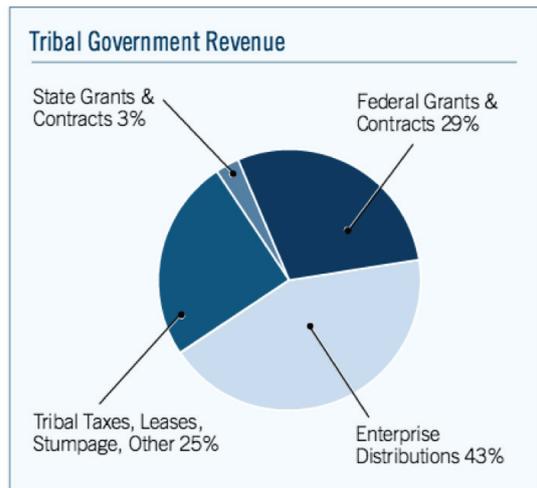
Seahawks game, non-tribal citizens pay taxes to tribal government enterprises located on a reservation operated directly by a tribal government or under a license agreement with the tribe. As an example, the visitor staying at the lodging facility near a casino will often see a “motel/hotel” tax on the bill. Same with a visit to a convenience store or restaurant. While many citizens assume the label of “tax” means it is a Washington state or city tax, the amount on the billing is typically a tax imposed by the tribal government.

“While individual Indians clearly pay taxes, tribes do not; they are governments. Tribes levy taxes. For example, the Squaxin Island Tribe charges a 10% tax on its hotel patrons.” *washingtonindiangaming.org*

Additional revenue sources for tribal governments are the contribution to the tribal governments by the state and federal governments. As an example, under compacts entered into with the Department of Licensing, a tribal government operating a retail motor fuel outlet receives a contribution equal to 75% of the state tax rate collected from the motor fuel supplier prior to the delivery to a tribal station location<sup>4</sup>. Since 2005, tribal governments have received approximately \$275 million dollars from the Motor Vehicle Fund where the state fuel taxes and vehicle license fees are deposited. The latest fuel tax rate increase passed by the Legislature in 2015 will increase the payments to the tribal governments in accordance with 75% of rate component in the compacts. Former State Auditor Brian Sonntag estimated the flow of public funds from the Motor Vehicle Fund to tribal governments will rise to over \$40 million dollars per year and could reach or exceed \$354 million over the next decade.<sup>5</sup> Sonntag earlier reviewed the compacts and determined the state has no ability to independently verify where these tens of millions of public funds were spent.<sup>6</sup>

A third source is proceeds derived from enterprises operated directly by tribal governments. Revenue from a tribe’s gaming or other type enterprise is taxation that flows public funds into the tribal government similar to the Washington State Lotto. The tribal governments do not pay federal income taxes on “net profits” of tribal enterprises though the tribal governments reimburse state and federal government for regulatory services provided to its gaming enterprises. *“Every dollar earned from tribal gaming is invested in public purposes – to improve people’s lives, Indian and non-Indian alike, in communities throughout Washington. Gaming revenue is tax revenue for tribal governments.”*<sup>7</sup>

When one recognizes all reported revenue streams flowing into a tribal government rise to the definition of public funds, the source into the tribal government is somewhat irrelevant. Receipt of a contribution from a tribal government is contrary to the intent and expressed language of the state statute forbidding use of public funds for political purposes.



Source: <http://www.washingtonindiangaming.org>

4 <http://www.dol.wa.gov/about/docs/2014-11-tribal-fuel-tax-rpt.pdf>

5 “Fuel Tax Update.PDF” (Sonntag, July 23, 2015)

6 Sonntag Compacts Report, March 18, 2014 ([http://autowa.org/pdf/2014/Sonntag\\_Compacts\\_Report.pdf](http://autowa.org/pdf/2014/Sonntag_Compacts_Report.pdf))

7 <http://www.washingtonindiangaming.org/images/content/FINAL%20CIR%20WEB%20VERSION.pdf>

**Tribal governments are considered similarly to a city or county government with the notable exception of utilizing public funds to providing political contributions**

An example of the recognition that tribal governments are considered in the same fashion as a city or county is the ability of a tribal government to enter into interlocal government agreements<sup>8</sup>. RCW 39.34 grants a “public agency” the ability to enter into said agreements.

*(1) “Public agency” means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. (underline added for emphasis).*

Tribal governments have sought out and received authority to act as an agent of the state in similar fashion to a city or county. One example is tribal law enforcement officers can seek out and arrest non-tribal citizens for violations of state law.<sup>9</sup>

*(1) Tribal police officers under subsection (2) of this section shall be recognized and authorized to act as general authority Washington peace officers. A tribal police officer recognized and authorized to act as a general authority Washington peace officer under this section has the same powers as any other general authority Washington peace officer to enforce state laws in Washington, including the power to make arrests for violations of state laws.*

The prohibition against using public funds in elections is clearly intended to prevent a government with taxing authority and control of a treasury from utilizing its treasury to provide political contributions. The statute does not exclude a tribal government. Neither is the prohibition limited in application to just the state or its subdivisions. The intent and purpose of the statute creates a prohibition applicable to a tribal government in the same manner the PDC would view a contribution from the state of Oregon or the City of Portland.

**Tribal governments do not hold an expressed right to influence non-tribal state or local elections**

The federal government “recognizes” the sovereign treaty rights of certain tribes that have adopted constitutions and forms of governmental in accordance with federal guidelines<sup>10</sup>. Tribal sovereignty effectively prevents state or local government from influencing elections held by a tribal governments. AUTO could locate no authority or right under federal or state statute or any provision set forth in a historical treaty that grants tribal governments in Washington an affirmative right to influence the elections of non-tribal governments. While citizens who are also a member of a tribe do hold this affirmative same as all other citizens of the state, such is not the case for a tribal government holding public funds.

**A tribal government is considered similar to a state under federal policies**

While some tribal and non-tribal citizens consider an “Indian Nation” to be similar to a

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8 <http://www.cityofanacortes.org/docs/Contracts/SamishMOU.pdf>

9 RCW 10.92.020

10 US Code: 25-INDIANS

foreign nation, the federal government and our system of laws do not. The US Constitution recognizes four sovereigns, the federal government, state governments, tribal governments, and foreign governments.

A tribal government is an entity that is aligned similar to a state. Federal laws apply to a tribal government but state laws are not enforceable on tribal land same as WA law is not enforceable in the state of OR or ID.

The same holds if one incorrectly considers a tribal government to be a

“sovereign nation” outside of US jurisdiction. *“The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.”*<sup>11</sup>

### ***The WA State Auditor’s Office can not typically detect an improper use of public funds by a tribal government***

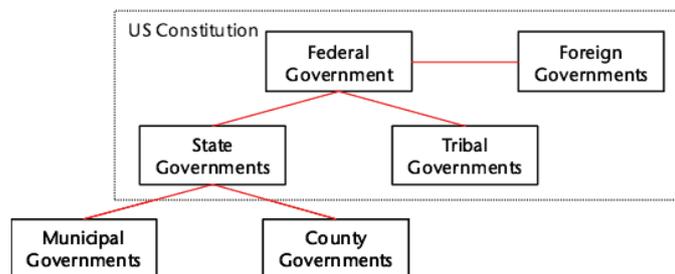
It is noteworthy to point out that cities, counties, or other local government entities are subjected to audits by the state Auditor’s Office. An improper campaign contribution by these entities would likely surface during the regular audits that are conducted. No political contributions by the local governments could be found in a review of the reports filed with the PDC.

Due to the sovereignty of tribal governments, tribal accounts holding public funds controlled and dispensed by tribal governments are not subject to similar audits by the Auditor’s Office. Therefore, the public is typically reliant upon the PDC to insure candidates, parties, and pacs honor the prohibition of using public funds for political purposes. While the PDC does not have control over the behavior of tribal governments operating on trust land within a reservation, the Commission clearly has authority over those receiving contributions intended for use in elections held within the state of Washington.

The prohibition on use of public funds insures that the City of Portland or the state of Oregon does not use its power of taxation to influence the elections across the Columbia River in Vancouver, Washington. In a similar fashion, the prohibition prevents the City of Seattle using its tax base to unfairly compete with a smaller city for legislative attention or even worse, determining the outcome of the city council races in a nearby city such as Auburn.

Another purpose of the prohibition was the concern that elected officials would exercise control over public treasuries and divert public funds to complement their own candidacy or affiliated political parties. Diverting public funds to a tribal government that returns a portion back to campaigns or parties of those controlling the diversion in the first place *“will not pass the smell test”*. Public funds do not somehow ripen into non-public funds upon receipt

Figure 2  
The US Constitution Explicitly Recognizes Four Sovereigns



Spilde, et al. (2002), 14.

11 [http://www.fec.gov/pages/brochures/statefed.shtml#When\\_Federal\\_Law](http://www.fec.gov/pages/brochures/statefed.shtml#When_Federal_Law)

by tribal governments that are also providing campaign contributions intended to benefit the same elected officials making decisions that result in the transfer public funds out of the state treasury over to the accounts of contributing tribal governments.

***Expedient action by the PDC is warranted and necessary to restore confidence of the public during the 2016 election cycle***

The intent, purpose, and effectiveness of the prohibition on using of public funds was severely negated when tribal governments decided to invest tens of millions in contributions into the non-tribal elections of the state over the last decade. Contributions for which there exists no apparent “common sense” explanation other than a desire by tribal governments to influence elections and the subsequent decisions of those elected to offices in non-tribal governments. Many citizens, including many AUTO members, believe a quid pro quo system has evolved wherein tribal governments use public funds to contribute with the full expectation of receiving a “good return on the investment” in the form of additional transfers out of the public coffers and legislative support for other matters of importance to the contributing tribal governments.

The fact that this activity has been ignored for a decade does not make the practice of accepting contributions of public funds by a tribal government allowable under state law in 2016. No “grandfather clause” exists in the prohibition statute. Further, for a tribal government to hold an exemption to the prohibition would require the law to be revised by the Legislature.

AUTO recognizes that the role of the PDC is oversight of election processes to insure public transparency and contributions are conducted in accordance with state statutes while leaving the decision of who is in office up to the voters. However, a simple legislative bill search on proposals effecting tribal governments currently under consideration in Olympia is telling. Especially, when one views the data bases at the PDC for the history of tribal contributions going out to sponsors and supporters.

Since the 2016 election cycle is underway, AUTO believes an expedient action by the PDC is in the public’s best interest to allow tribal governments and those who are actively seeking out contributions from a tribal government the clarification needed to maintain the public faith in Washington’s elections.

Respectfully,



Tim Hamilton  
Executive Director