

MINUTES
SENATE TRANSPORTATION COMMITTEE

DATE: Thursday, January 21, 2016

TIME: 1:30 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Brackett, Vice Chairman Hagedorn, Senators Keough, Winder, Nonini, Vick, Den Hartog, Buckner-Webb and Lacey

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Brackett** convened the meeting of the Senate Transportation Committee (Committee) at 1:35 p.m. **Chairman Brackett** welcomed Matt Morrison, Executive Director of the Pacific NorthWest Economic Region (PNWER), to the Committee and asked him to begin his presentation.

PRESENTATION: **Mr. Morrison** thanked the Committee and said he had a short presentation, after which he would ask Senator McKenzie, President of PNWER, to make a few remarks before standing for questions. PNWER is a statutory public/private nonprofit created in 1991 by the states of Alaska, Idaho, Oregon, Montana and Washington and the Canadian provinces of British Columbia, Alberta, Saskatchewan and the Yukon and Northwest Territories. Its mission is to increase the economic well-being and quality of life for all citizens of the region, while maintaining and enhancing the region's natural environment.

Mr. Morrison began by stating that there is an increasing interest in recognizing that the region's infrastructure is aging. It's not just roads and bridges; all of the region's infrastructure is in great need of upgrading and replacement. Infrastructure financing is the problem, but some regions have implemented private/public partnerships, also known as P3s. Alternative methods of financing help share the burden of development across users, and in many cases projects finish on time and under budget.

PNWER has created an Infrastructure Finance Task Force that will work to explore financing options, identify possible financial options in each state and share best practices from Canada's successful projects. The task force's goals are: (1) establish a regional advisory task force; (2) develop an inventory of resources; and (3) identify a legal framework for infrastructure funding in each jurisdiction.

The task force will pursue federal funding through the U.S. Department of Transportation's Regional Infrastructure Accelerator program. PNWER is offering a webinar series to educate and share case studies. The webinars will begin in early February.

PNWER is looking at each state and province for the latest information on needs and financing. Another piece being explored is whether to establish a regional program that identifies available regional experts. They are developing field visits to successful projects to assess how their specific public/private relationship works together for cross border savings. PNWER has been working with Brian Ness, Director of the Idaho Transportation Department (ITD), and Jerry Whitehead, Chairman of the Idaho Transportation Board (ITB). **Mr. Morrison** introduced Senator McKenzie.

Senator McKenzie asked the Committee to keep in mind the time Idaho funded projects with Grant Anticipation Revenue Vehicle (GARVEE) bonds, tax-exempt federal debt financing tools. GARVEE bonds were used to fund very large projects, but the program has not been reauthorized by Congress. **Senator McKenzie** gave examples of how public/private financing, with an emphasis on Canadian projects, has been successful at significant savings. **Senator McKenzie** said that Senator Winder was chair of PNWER's transportation committee; they were recently in Washington, D.C., where they met with members of the Pacific Northwest's Congressional delegation. He concluded by stating that ITD will be part of the February 9 webinar. **Senator McKenzie** said that he and Mr. Morrison would stand for questions.

Chairman Brackett thanked Senator McKenzie and shared that the Senate was very pleased that he was the Chairman of PNWER this year.

Senator Winder commented that he appreciated the opportunity to serve as the co-chair of PNWER's transportation committee. As states are strapped for money to fund infrastructure projects, P3s are a great alternative funding opportunity. **Senator Winder** used Micron's facility expansion during President Clinton's administration as an example of their benefit to Idaho. That project was completed in one year rather than the longer time it takes when utilizing only public funds. Pipeline capacity is an interesting issue for P3s as well. Determining how to build a cooperation agreement regionally is being addressed by PNWER. ITD has been asked to be PNWER's point organization on some issues. **Senator Winder** offered his thanks and congratulations to Senator McKenzie for making P3s his specialty while chairing PNWER.

Chairman Brackett added that he appreciated the good briefing on oil transport by rail at the summer PNWER transportation meeting. Although construction of the pipeline is currently blocked, oil still needs to be transported. He also liked learning that the main interstate infrastructure projects were being completed. **Senator McKenzie** addressed the safety challenges for transporting oil. **Mr. Morrison** added that Idaho is located at the crossroads of the oil transportation issue and is the centerpiece for the region.

In conclusion, **Chairman Brackett** shared that with Congressional approval, Idaho is considering opening up its interstate system to trucks weighing 129,000 pounds or less.

Chairman Brackett thanked Senator McKenzie and Mr. Morrison and invited Ken Roberts, Chairman of the Idaho State Tax Commission (STC), to the Committee to begin his presentation on Enhancement of Dyed Fuel Enforcement.

PRESENTATION: **Mr. Roberts** thanked all the agencies that helped STC prepare this study, including ITD, the Idaho State Police (ISP) and the Idaho Department of Agriculture (IDA). Individuals representing those agencies were present at the hearing and prepared to answer questions that pertain to their input.

H 312aaS,aaS, passed and enacted in 2015, is the reason STC undertook the analysis of dyed diesel fuel in Idaho. **Mr. Roberts** read the section of the legislation addressing dyed diesel, to wit: It is the intent of the Legislature that ISP and STC shall, no later than the first day of the 2016 Legislative Session, provide recommendations to the two legislative transportation committees on greater enforcement of the prohibition of dyed fuel and other untaxed fuel use on Idaho roads and highways. **Mr. Roberts** said this presentation of the report fulfills that requirement.

Mr. Roberts explained that dyed diesel is fuel marked with red dye to show it is exempt from fuel taxes. Idaho adopted federal requirements for using red dye in 1995. Dyed diesel fuels can be used in equipment for nontaxable purposes such as farming, mining and logging. Also state and federal government vehicles such as school buses and highway department vehicles can use dyed diesel. Sales tax may apply on dyed diesel.

It is illegal to use dyed diesel in vehicles on Idaho highways unless the vehicle is exempt. Those using dyed diesel in non-exempt vehicles are not paying taxes: 24.4 cents in federal tax and 32 cent in state tax per gallon. One 10,000-gallon tanker load of diesel pays \$3,200 in tax to the state of Idaho. The problem when dyed diesel is used illegally is the loss in tax revenue. In 2006, with a dyed diesel enforcement program in place, Montana estimated a revenue loss of 16 percent. If Idaho is losing a similar amount, in fiscal year 2015 Idaho would have lost \$11.4 million. **Mr. Roberts** talked about the enforcement programs in Washington and Montana and the ways to deter illegal use.

Current Idaho enforcement activities include: (1) STC audits some licensed consumers to ensure dyed diesel is not used illegally; (2) STC makes assessments when Idaho residents notify them of violations; and (3) ISP may cite violators under specific circumstances. **Mr. Roberts** went through nine options on how Idaho might improve enforcement. He concluded by recommending the state allow inspection of main vehicle supply tanks. **Mr. Roberts** went through the survey results shown on page 25 of the report. He added that the results from the exercise on page 6 would be an indicator of whether Idaho would be able to enhance its enforcement of dyed diesel use. (A copy of the report is part of the permanent record on file in the Legislative Services Library.) **Mr. Roberts** thanked the Committee and stood for questions.

Chairman Brackett commented on the Montana study with the suggestion that Idaho could be losing more than \$11 million in tax revenue. The Governor's Task Force suggested that number was between \$8 million and \$9 million. He shared a letter regarding convenience stores in Payette and how their dyed diesel sales were not being monitored during the day, resulting in tracking problems.

Senator Lacey asked if there was a different type of diesel in the late 1980s and if there were enforcements in place then. **Mr. Roberts** deferred the question to Don Williams, STC's Tax Policy Specialist. **Mr. Williams** said the federal government began dying diesel red in 1993; Idaho adopted the federal program in 1995. There is no state enforcement; the Internal Revenue Service (IRS) focuses on terminals and not individual violators.

Chairman Brackett asked whether probable cause or consent was a better enforcement model. **Mr. Williams** said that Montana used probable cause, meaning they need a reason to investigate. Texas uses consent.

Senator Hagedorn asked what dipping a tank meant. **Mr. Williams** deferred to Captain Tim Horn of ISP's Commercial Vehicle Safety Unit. **Captain Horn** said that a large straw-like tube is placed in the tank, a finger is placed over the end and the liquid is checked for red coloring. The process takes about one minute. **Senator Hagedorn** asked if a determination could be made if red dyed diesel had ever been used in a vehicle. **Captain Horn** said that the fuel filter would show if red dye had ever been used. He said that Washington has the best laws for enforcing dyed diesel violations. If the fuel measures two parts per million or over of red dye, then the vehicle is in violation of the law.

Senator Winder asked if there had been past programs where vehicle tanks at ports of entry were checked. **Captain Horn** replied that there have not. **Senator Winder** said that when he was a freshman legislator, he was told that a dyed diesel violation incurred a \$1,000 fine. He wanted to know why this was not being enforced. **Mr. Williams** referred to the chart on page 22 in the report showing that in 18 years, STC has collected \$76,223.16 for 157 violations. **Senator Winder** asked if there were collection reports for ports of entry. **Mr. Williams** replied that the only reporting is from the sources listed on the chart. **Chairman Brackett** added that the penalty doubled the fine, but it was not enforced.

Senator Vick asked for a definition of the resource titled "observation" on the chart. **Mr. Williams** was unsure but later shared that these are reports made by Idaho residents who observed licensed dyed diesel purchasers who were using the fuel for non-exempt purposes. Of the 43 reported, 29 were not pursued after investigation; the remaining 14 were issued a Notice of Deficiency Determination (NODD), which can be appealed.

Vice Chairman Hagedorn followed up with Captain Horn on whether there were states that did not use a machine to measure the parts per million of red dye in diesel and if measuring revealed more incidences of violation than visual observation did. **Captain Horn** said states that used measuring equipment generally were not able to utilize the equipment throughout the entire state. Those regions without the equipment used the visual methodology of observing if the fuel looked red; if so, they were in violation of the law.

Chairman Brackett commented that Montana has had an effective program for many years, and Nevada's program is more recent. He asked Captain Horn to share his views of these two programs. **Captain Horn** said that Montana has an excellent program. Nevada's program was lacking because of the way the law was written, allowing them to stop commercial vehicles only. He described an accident in which red dyed fuel poured out of the personal vehicle involved. With that incident, they started stopping all vehicles, but the law only affected commercial vehicles. The state was being sued so the program was completely stopped. They are doing away with enforcing dyed diesel violations even though they have the measuring equipment. **Captain Horn** continued that Montana's program was like Washington's, which in his opinion is the best program. He does not recommend stopping every vehicle. All states utilize the skills of the state police, who have the ability to inspect all vehicles that use diesel fuel. In Montana, there has to be a primary offense in order to inspect for dyed diesel; the improper use of dyed diesel is a secondary offense. After stopping a vehicle for a primary offense, state police can ask to check for dyed diesel. If the driver refuses, then a \$1,000 fine is imposed. If they do not refuse, the officer takes a sample of the fuel that is sent to the tax commission for evaluation. He indicated that once Montana started testing vehicles, motorists stopped using dyed diesel in non-authorized vehicles.

Chairman Brackett asked if a statutory change in Idaho law would align Idaho with Washington's program. **Captain Horn** said it would. Washington has the best, safest and easiest program. Idaho's laws do not allow ISP to dip tanks. Idaho also has exempt commodities, which would have to change if inspections were allowed. As an example, he said that dyed diesel licensed farmers sometimes confuse farm vehicles with personal use vehicles. **Chairman Brackett** said that many farmers have two tanks, one for dyed diesel fuel and one for highway fuel, and they are careful to use each properly.

Chairman Brackett asked if states check vehicle tanks at ports of entry. **Captain Horn** said that all ports in Washington are run by their state police who are all trained to dip for dyed diesel. The state's tax commission pays the state policemen's wages to have that expertise. Some of the funding comes from the federal government. Completed violation forms are sent to their tax commission. **Chairman Brackett** asked if that was the case with roving ports. **Captain Horn** said it was.

Senator Nonini asked if dipping occurred at North Idaho ports. **Captain Horn** said testing takes place for interstate trucks, not intrastate trucks at Washington ports in Idaho.

Senator Winder wondered if there was any discussion or data from Washington showing any increase in revenue once enforcement began. He wanted to know the impact enforcement had and if it justified costs to other departments. **Captain Horn** said there had been an impact. He said enforcement and violations were high at a 2:1 ratio. Peoples' behavior changed when they knew they might get caught for driving on dyed diesel and possibly face a \$1,000 fine.

Chairman Brackett thanked Mr. Roberts, Mr. Williams and Captain Horn for their input. He said once this presentation was made to the members of the House Transportation and Defense Committee, he hoped to get the members together to move forward with legislation.

ADJOURNED: With no further business before the Committee, **Chairman Brackett** adjourned the meeting at 3:00 p.m.

Senator Brackett
Chair

Gaye Bennett
Secretary