

MINUTES  
**SENATE TRANSPORTATION COMMITTEE**

**DATE:** Tuesday, February 21, 2017

**TIME:** 1:30 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Brackett, Vice Chairman Nonini, Senators Keough, Winder, Hagedorn, Lodge, Harris, and Buckner-Webb

**ABSENT/ EXCUSED:** Senator Den Hartog

**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 1:33 p.m. He mentioned that Senator Den Hartog had a conflict and would not be in Committee. **Chairman Brackett** also reminded to the Committee that he and Representative Steve Hartgen were sponsoring a meeting on Wednesday, February 22, 2017 from 4:00 to 5:00 p.m. in the Lincoln Auditorium on Autonomous Vehicles.

**GUBERNATORIAL REAPPOINTMENT:** **Reappointment of Dwight Horsch of Pocatello Idaho to the Idaho Transportation Board to serve a term commencing January 31, 2017 and expiring January 31, 2023. Chairman Brackett** invited Jerry Whitehead, Chairman of the Idaho Transportation Board (ITB), to introduce Dwight Horsch.

**Mr. Whitehead** said he was reintroducing Mr. Horsch, who had volunteered for another six-year term on the ITB, to the Committee. He said Mr. Horsch was the only member of the ITB who was involved in the agricultural industry on a daily basis and as such, he brought that welcomed perspective to the ITB.

**Mr. Horsch** introduced his wife and said he was a farmer from Aberdeen, Idaho for 46 years. He had also been in the trucking business for 16 years. During the 20 years of his work in agriculture he was involved in the transportation industry.

He did not seek another term, but was asked by the Governor to serve another term. **Mr. Horsch** said yes because he considered the constituency of the region he represents, ITB District 5. He works well with the other ITB members; they all encouraged him to say yes and he feels comfortable with the decision.

**Senator Winder** thanked Mr. Horsch for agreeing to serve and asked him what was the biggest challenge facing the ITB. **Mr. Horsch** said that mostly the ITB is putting out fires. The data shows that the State highway system is in trouble and Idaho needs to play catchup just to maintain the roads. **Senator Winder** asked if the Idaho Transportation Department (ITD) had done a study about the winter weather and flood damage to the roads. **Mr. Horsch** said they were currently doing that district by district and the first draft would be available soon.

**Senator Hagedorn** asked about fuel efficiency in vehicles, even tractors have almost doubles their fuel mileage. How is the State going to collect tax revenue with less gasoline being sold to meet our needs? **Mr. Horsch** expressed his thought on the ton-mile tax as a method for government taxing road usage in order to generate funding for road construction and maintenance. He understood it was an administrative nightmare, but thought some kind of user fee taxing miles traveled needed to be considered. With tax revenue at the pump shrinking, a process to convert to new revenue streams somehow needs to be developed.

**Senator Keough** thanked Mr. Horsch for his service and was looking forward to seeing the list of damages to Idaho roadways as they continue to accrue. **Mr. Horsch** said that ITD was preparing that report.

**Chairman Brackett** thanked Mr. Horsch and said the Committee would vote on his appointment at the next Committee hearing.

**S 1052**

**Removes dyed fuels and dyed fuels tax exemption, keeping clear diesel fuel available for all users. Qualified users can apply for a refund as frequently as monthly. Chairman Brackett** invited Jerry Deckard, CapitolWest Public Policy Group, to present **S 1052**.

**Mr. Deckard** said he was representing himself only. When he visited the dyed fuel issue, his simple answer to gain compliance with the statutes was to eliminate dyed fuel in Idaho. Simply buy diesel, pay the tax on diesel fuel, and apply for a refund monthly or quarterly. It turned out not to be so simple. All States use dyed diesel fuel and some tax dyed fuel. He now knows more about the industries involved and what and who use dyed fuel. His conclusion was to ask the Committee to hold **S 1052** in Committee.

**UNANIMOUS  
CONSENT:**

**Chairman Brackett** mentioned that there was another contact person on the bill, but asked the Committee for unanimous consent to hold **S 1052** in Committee.

**Senator Winder** said this legislation was his idea which is why he was listed as one of the contacts on the Statement of Purpose. He said he had looked at the problems of dealing with enforcement of dyed diesel use and concluded getting rid of it was a viable alternative. Legitimate users can get a refund on a monthly basis. He has realized it is not so easy for those who use the fuel regularly. He thought this solution was one of the fairest ways to administer the program. **S 1052** is an attempt to deal with those who abuse the dyed diesel statutes. He supports enforcement, but thinks it generates more problems. He does not object to the unanimous consent to hold the bill.

With no objection to the unanimous consent request, **S 1052** will be held in Committee.

**PASSED THE  
GAVEL:**

Chairman Brackett passed the gavel to Vice Chairman Nonini.

**S 1072**

**Provides for a practical inspection method for dyed diesel fuel users. Vice Chairman Nonini** invited Chairman Brackett to present **S 1072**.

As part of a family ranching company that uses dyed diesel for off-highway use, **Chairman Brackett** declared he may have a conflict of interest under Senate Rule 39(H).

**Chairman Brackett** gave a quick history lesson from the Gem State Producer publication of the Idaho Farm Bureau, July 2015. The problem is that there is some illegal use of dyed diesel while driving on public highways. This was discussed in the Governor's highway findings task force and was included in H 312aa (2015) in order to raise revenue for maintenance for roads and bridges. The result was a report, "Enhanced Enforcement of the Federal Tax Law", of options to reduce use of untaxed fuels on Idaho roads and highways. It was jointly issued by the Idaho State Tax Commission (ISTC), Idaho State Police (ISP), and ITD. **S 1072** is not a new tax or a new law, it is simply an effort to enforce existing law. Many believe Idaho should enforce existing laws before it considers passing new ones.

In February 2016, a joint letter from the Idaho Farm Bureau (IFB) and the Idaho Associated General Contractors (Idaho AGC) listed 15 points they thought must be included in any proposal to enforce dyed diesel use. He gave a special thank you to the IFB and the Idaho AGC for being thorough and thoughtful in creating a starting point for legislation. **S 1072** includes 14 of the 15 points. The one point that was not included was the penalty to detainees refusing to allow their fuel to be tested; the report proposed a \$250 fine and **S 1072** sets the fine at \$1,000. He compared it to refusing to take a breathalyzer test. If a detainee refuses a breathalyzer, they lose their driver's license. The fine for abusing dyed diesel could be considered small compared to losing one's driver's license.

The Idaho Association of Commerce and Industry (IACI) wrote a white paper for the Food Producers of Idaho that concluded Idaho does not have a dyed diesel enforcement program. **Chairman Brackett** reminded the Committee that the illegal use of dyed diesel on highways is not a traffic violation, it is tax evasion. The purpose of **S 1072** is to increase compliance, not to generate revenue through fines and penalties. He concluded his presentation by going through the legislation section by section.

**Senator Winder** was grateful this issue had been brought. For those who use dyed diesel, is there any assurance that a violator's information will not be reported to federal agencies? **Chairman Brackett** referred to page 2, lines 18 and 19, that states there is no requirement that an agency of the State report violations to the federal government unless otherwise required to do so. He then read from a statement from the ISTC indicating they would not share dyed diesel violation information. **Chairman Brackett** said he believed the concern was covered. **Senator Winder** asked if a violation occurred with a commercial truck, would other trucks within the owner's fleet be required to be tested as well. **Chairman Brackett** said that references in two sections of the bill state that the inspection shall be limited to the vehicle being inspected.

**Senator Harris** asked what "other funding" on page 2, line 1 meant. **Chairman Brackett** said it is open ended and could even mean available grants.

**Senator Hagedorn** asked if there was a fleet of trucks and one had used dyed diesel on the highway, would the driver or the owner receive the violation. **Chairman Brackett** said the driver gets the citation, but if it was owned by someone else, the owner would be made aware. The fleet would not be inspected, inspection would solely be applied to the individual vehicle.

**TESTIMONY:**

The following individuals testified in support of **S 1072**: **Wayne Hammond**, Executive Director of the Idaho AGC; **Mike Brassey** representing Union Pacific Railroad; **Jim Riley** representing several forest groups from North Idaho as well as the Associated Logging Contractors of Idaho; **Julie Pipal**, President of the Idaho Trucking Association; **Michael Kane** representing AAA Idaho; **Stacey Satterlee**, Executive Director of the Idaho Grain Producers Association; and **Wyatt Prescott**, President of Food Producers of Idaho.

The following individuals representing the Idaho Farm Bureau (IFB) testified against **S 1072**: **Dennis Tannikuni**, IFB's Assistant Director of Governmental Affairs; and **Bryan Searle**, IFB's President.

**CLOSING  
REMARKS:**

**Chairman Brackett** thanked the Committee and offered to share the information and publications he referred to and/or read in his presentation. He believes this legislation is a very good common-sense and reasonable proposal to increasing compliance with Idaho's dyed diesel laws. He ended by urging the Committee's support by sending **S 1072** to the floor.

**MOTION:**

**Senator Hagedorn** moved to send **S 1072** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion.

Before the vote, **Senator Lodge, Senator Keough, and Senator Harris** declared they may have a conflict of interest under Senate Rule 39(H).

The motion to send **S 1072** to the floor with a do pass recommendation passed by **voice vote**. **Senator Harris** asked that his nay vote be recorded.

**PASSED THE  
GAVEL:**

Vice Chairman Nonini passed the gavel back to Chairman Brackett.

**ADJOURNED:**

With no other business before the Committee, **Chairman Brackett** adjourned the meeting at 2:59 p.m.

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Senator Brackett  
Chair

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Gaye Bennett  
Secretary