

**2013 SENATE AGRICULTURE**

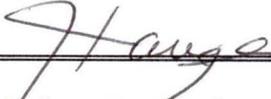
**SB 2294**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee  
Roosevelt Park Room, State Capitol

SB 2294  
January 31, 2013  
18064

Conference Committee



To help prevent misuse of dyed fuel.

**Minutes:**

*Written testimony*

**Chairman Miller** opened discussion on SB 2294 relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed fuel.

**Senator Dotzenrod** introduced SB 2294 and explained the need for this bill. There are three parts to the bill. The first part changes fines; second part allows other people or agencies to help with the enforcement of this law; third, the education part. He gave some history on how dyed fuel came into use and gave examples of what the fines are in surrounding states.

**Senator Heckaman** asked the current tax differential between dyed and clear fuel.

**Senator Dotzenrod** said it was around 43 or 44 cents with the Federal and State together.

**Senator Klein** asked if there was a federal penalty and if offenders get penalties at State and Federal levels.

**Senator Dotzenrod** said the Federal level can have some high penalties. He said he was not sure how they do it or who they send out to the states. He thinks they depend on the state.

**Kevin Schatz**, supervisor of Motor Fuel Tax Department representing Cory Fong, North Dakota Tax Commissioner, testified in support of SB 2294. He handed out and explained the statutes information regarding dyed fuel penalties from Montana, Minnesota and South Dakota. His second handout showed some statistics on use of dyed fuel in North Dakota over the last few years. He explained the handout and made reference to it. He stated that the Highway Patrol, Department of Transportation and the Tax Commissioners office had been receiving a number of complaints from the public on misuse of dyed fuel at retail location, plus people were stealing dyed fuel from well sites, construction sites or given the dyed fuel to go home on their off weeks. He said that the groups got together along with Mike Rud and determined it was time to enforce a dyed fuel program because of all the complaints. He explained the process including that they

signed an agreement with the Internal Revenue Service (IRS). IRS said that they would supply them free analyzes of all the samples if North Dakota did the enforcement. He explained the process of a violation and what they do and explained the penalties. He stated that the intent of the bill is not to go out and assess a bunch of fees; their intent is to have visibility out there so that it deters people from using dyed fuel on the road. He stated, "Our intent is to get people to pay the tax at the time they put the fuel in their vehicle not when we catch them."

**Senator Luick** asked what happens in an emergency. Is there any leniency?

**Kevin Schatz** answered that anytime there is dyed fuel in that vehicle the IRS standard is that you take a sample. The statute does allow for the commissioner to take things into consideration if they can provide the proper documentation.

Different situations were discussed and how they would be handled.

**Senator Klein** said that according to the charts, North Dakota overall seem to be doing well with minimal violations. He asked if he was reading it properly that there were 53 actual violations on the 3100 actual checks.

**Kevin Schatz** said that was correct. He gave reference that the statistics may not be correct because there were people driving by that did not stop and they had no extra highway patrol to chase them down.

The rule is anytime you drive a vehicle that is required to be licensed on any public roadway it has to have clear fuel in it.

Discussion followed on agriculture and construction use of dyed fuel and rules associated with them.

**Senator Heckaman** asked about data on second offenses and where the fines go.

**Kevin Schatz** said they had not had a second violation to date. He said the money collected goes to the state highway distribution fund.

**Senator Klein** asked how many people they provide to help the highway patrol with checks.

**Kevin Schatz** said that when they signed their agreement with the IRS, and they come into North Dakota and they find a violator; they send us the information so we have the opportunity to send out an administrator's fee to the violator. In turn, the tax commission sends their information to IRS so they can choose to send out their assessment to a violator. Mr. Schatz said they work with the Highway patrol and if they schedule some type of stop, the tax commissioner's office sends out four people to help with this. The people sent out are trained by IRS.

**Senator Miller** asked what the federal tax penalty was.

**Kevin Schatz** replied ten dollars per gallon or \$1000 whichever is more and doubles accordingly.

**Senator Miller** asked who the main violators were.

**Kevin Schatz** said it is mostly pickups, not so many large trucks.

Discussion followed on educational stickers for the pumps.

**Mike Rud**, President of the North Dakota Petroleum Marketers Association (NDPMA) testified in support of SB 2294. **Written testimony #2**

**Senator Larsen** had some concerns with the stickers and concern with the people that do not read English. He said maybe they need more uniformity.

**Mike Rud** said they would work with the tax department and come up with something that is proper and will work.

**Senator Larsen** asked if doing the testing would be more beneficial than increasing the fine to one thousand dollars.

**Mike Rud** said that there will be those that will continue to try to violate this and he sees the need to step up the fines. He stressed the need to do both, step up the compliance checks and increase the fines.

**Dan Rouse**, legal counsel to the North Dakota office of the state tax commissioner, clarified that the stickers only apply to retailers.

**Senator Heckaman** asked about the wording of administrative fees versus just calling it a fine.

**Dan Rouse** said that administrative fees language is existing language used from the beginning. The objective of the use of that language was intended to be an administrative fee versus a penalty or fine to indicate there are agency actions that have to take place after the tanks are dipped and there is cost associated with that. It was seen as a reimbursement.

**Senator Heckaman** said it was her understanding that none of this money is used for administration.

**Dan Rouse** answered, that is correct.

**David Leftwich**, North Dakota Department of Transportation, testified in support of SB 2294.

**Richard Schlosser**, North Dakota Farmers Union, testified in support of SB 2294.

**No opposing testimony**

**Senator Miller** closed the hearing on SB 2294.

**Senator Klein** said that what he has heard in testimony is that there are some abuses in the use of dyed fuel and this bill will help the tax department and highway patrol to enforce. He doesn't think that it's a major issue but is ready to move on and support it.

**Senator Larsen's** approach would be more of an education approach. He thinks the fines are too high for the first and second offense.

**Senator Klein** said that we probably need more time and we should wait for Senator Luick.

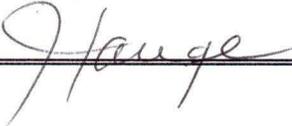
**Senator Miller** closed the hearing SB 2294.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee  
Roosevelt Park Room, State Capitol

SB 2294  
January 31, 2013  
18100

Conference Committee



*Discussion #2/ Do Pass vote*

## Minutes:

**Chairman Miller** opened discussion on SB 2294 relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed fuel.

**Senator Larsen** moved to adopt amendments 13.0717.01001 to SB 2294. These amendments will reduce the fines.

**Senator Klein** seconded for discussion.

**Senator Luick** missed part of the hearing so he asked questions of the tax department to inform him on what had been discussed in his absence.

Discussion followed on enforcement of what is already in statues and if there is a reason to raise fines and how much is appropriate. Senator Larsen has some concerns on why fines have to be raised to \$1000 on the first offense and argued that enforcement of the present law is what is needed.

**Chairman Miller** called for a vote on amendment 13.0717.01001.

**Amendment failed 1-4-0.**

**Senator Heckaman** moved a Do Pass and rerefer to Appropriations.

**Senator Klein** seconded.

Roll call vote for Do Pass on SB 2294 and rerefer to Appropriations: **4-1-0**

**Senator Miller** is the carrier.

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/21/2013**

Bill/Resolution No.: SB 2294

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$106,000		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2294 increases the fees for use of dyed special fuel in a licensed motor vehicle.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2294 increases by four-fold the fees associated with the use of dyed special fuel in a licensed motor vehicle.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2294 is expected to increase revenues in the highway distribution fund by an estimated \$106,000 during the 2013-15 biennium. This reflects the increased revenue from the higher fees only. There is also an increase in fuels taxes collected in the regular manner due to increased compliance as a result of the state's presence in the field, monitoring vehicles and enforcing dyed fuel usage requirements. The positive revenue associated with enforcement efforts cannot be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*



**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 01/30/2013



13.0717.01001  
Title.

Prepared by the Legislative Council staff for  
Senator Larsen

January 31, 2013

Failed

PROPOSED AMENDMENTS TO SENATE BILL NO. 2294

Page 1, line 16, after "~~two~~" insert "five"

Page 1, line 16, remove the overstrike over "~~hundred~~"

Page 1, line 16, remove "one thousand"

Page 1, line 17, replace "two" with "one"

Page 1, line 19, replace "four" with "two"

Page 1, line 21, remove the overstrike over "~~five~~"

Page 1, line 21, remove "ten"

Renumber accordingly

Date: 1-31-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number 13,0717,01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Senator Larsen Seconded By Senator Klein

Senators	Yes	No	Senator	Yes	No
Chairman Joe Miller		✓			
Vice Chairman Larry Luick		✓			
Senator Jerry Klein		✓			
Senator Oley Larsen .	✓				
Senator Joan Heckaman		✓			

Total (Yes) 1 No 4

Absent 0

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

Date: 1-31-13  
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294

Senate Agriculture Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Heckaman Seconded By Senator Klein

Senators	Yes	No	Senator	Yes	No
Chairman Joe Miller	✓				
Vice Chairman Larry Luick	✓				
Senator Jerry Klein	✓				
Senator Oley Larsen		✓			
Senator Joan Heckaman	✓				

Total (Yes) 4 No 1

Absent 0

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2294: Agriculture Committee (Sen. Miller, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (4 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2294 was rereferred to the Appropriations Committee.**

**2013 SENATE APPROPRIATIONS**

**SB 2294**

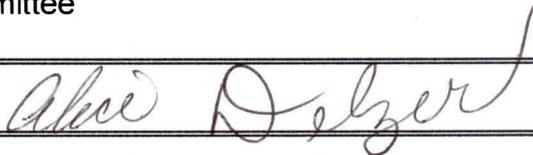
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2294  
02-05-2013  
Job # 18276

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact NDCC relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed special fuel.

### Minutes:

See attached testimony

Chairman Holmberg called the committee to order on Tuesday, February 05, 2013 in regards to SB 2294. All committee members were present.

Senator Dotzenrod, District 26 This is about dyed diesel fuel. On dyed fuel there is almost no tax collected, it is 4¢ compared to non-dyed diesel fuel which is 44¢. A share on the tax is federal and a share is state. The dyed fuel is for non-highway use, we have laws that tell people to use that fuel on non highway use, the difference in price now is 40 ¢ a gallon, there is a financial incentive to cheat and avoid paying the taxes. We have a law in the state, on page 1 line 16, there is a \$250 fine, what this bill does is raise to \$1,000, doubles it for the second offense, and doubles it again for the third offense. That would match us with the states around us. We would have a uniform system. It is a significant raise in the fee. This is an attempt to make our law say that this is the serious matter. In Page 2 removes the Highway Patrol on lines 14 and 16 so that other agencies can enforce the law, primarily the tax department. On page 3 the tax commissioner shall prescribe the size and contents of a sticker to be affixed to pumps dispensing dyed fuel to advice consumers of the administrative fee imposed on a licensed motor vehicle. I did not have this in mind. We found that the tax department has been doing this for years, the system works well; the level of compliance is high. I've heard stories people saying that's pretty flagrant. We do need to be as serious as the states around us. That's what the bill does. The tax department is here and can share information.

Senator Wanzek Could a private citizen make a report?

Senator Dotzenrod the tax department has gotten phone calls from citizens. You can see the dyed fuel; the stuff has a staining capability, you can see from the distance who is breaking the law. For \$250 don't bother that is not a disincentive, just let it go. It is not an issue with the semis; you can't grab the wrong one. I found myself surprised you have to look carefully to make the right choice; you may make the wrong choice. One says off road

use only, I would like to see something that jumps out at you and that says the dollar amount of fine and say, not for highway use.

Senator Wanzek why would there need to be dyed fuel at the retail station. What examples would there be.

Senator Dotzenrod At the Cennex station, bobcats, tractors pull in the township with their maintainer, so you have some off-road use. I don't know which fuel they use, the off-road diesel farm equipment from time to time.

Senator Carlisle: I am guessing the farmers are complaining. Most citizens, that's a call you can't miss. In the oil patch there is always a reason for the bill.

Senator Dotzenrod after hearing what the tax department is finding out there, more and more is being abused.

Chairman Holmberg no discussion on the fiscal note which is a \$106 thousand dollars of increased revenue some work around the state, tracking compliance. There are indications that people are bending the rules and cheating on this. Given the serious matter of roads, and how we really need to have the funds to take care of and maintain our roads, this bill was introduced to get this in front of the legislature and have a discussion about where do we want to be. At \$250 it looks like we are not serious about this matter. I remember being chairman on the tax committee on Senate side, representative Dorso, chair on the house side; we agreed everybody should pay the tax. At the end of the year people who had off road use, would ask for a refund. There is going to be cheating on this, we can't enforce it. I remember, 30,000 farmers in the state, hire extra people in the tax department, request for refunds. How do you separate out, using the fuel in the wrong place? We are going to have the dyed fuel available to the public, and not have to go through the refund process. The buyer is expected to follow the rules.

Kevin Johnson, Supervisor Motor fuel tax, Tax commissioner's office. The use of diesel fuel has increased over the last few years. (15.20)

Testimony attached # 1: Page one shows North Dakota Diesel Fuel Use; page two shows the dyed fuel sampling statistics and confirmed violations. Anything that is not clear is sent to the lab. A little history about dyed fuel, the federal government through the IRS implemented the use of dyed fuel in 1997 did that for tax purposes, for dyed fuel there is no fed tax in either ag, industrial or railroad use, North Dakota has an excise tax on dyed fuel which is 4¢/gallon rate, on clear fuel is 23¢/gallon, and the federal tax on clear fuel is 24.50¢/gallon difference between dyed fuel and clear fuel is 43.50¢ a gallon.

The tax commissioner, highway patrol and North Dakota Department of Transportation (DOT) got tips from customers; they were seeing a lot of vehicles using dyed fuel. We got together with petroleum marketers group, the highway patrol, North Dakota Department of Transportation (DOT) and the tax commissioner about what to do to enforce the requirements. Highway Patrol doesn't have the resources to do that. The tax commissioner and the Highway Patrol decided that if they did the traffic control and the safety issues for us we would actually do the dirty work and do the fuel dipping on their behalf we also signed an agreement with internal revenue service, in November of last year that when we are doing dyed fuel enforcement they would pay for our inspections at a

certified lab. There is no charge except the postage to get them to the lab and they send us the results. The intent to the enforcement effort was to have a presence out there and show people that we are checking. Our intent is to be out there so that they put in the correct fuel at the time they are filling. We are going to different parts of the state, so that we are not picking on one certain area. We found there are a lot of places that have dyed fuels at the pump. Many complaints at the western part of the state about out of state vehicle plates. We found that commercial drivers are complying. It is mostly pickups, We concentrated in some of those areas, we checked 492 vehicles no violations, we were at the old rest area where most of the diesel vehicles did not stop in spite of the sign saying all diesel vehicles must enter; otherwise we have had some success on our inspections. The states of MN and Mt both have the \$1,000 fee.

Senator O'Connell: I thought the federal law was \$5,000 fine the first time and then doubled. Where do the fines go at this time? I thought the fed was taking care of this.

Mr. Johnson every state has their own fuel enforcement with an administrative fee and the Internal Revenue has one for the federal side of the tax. Internal Revenue Service can go to an industrial contractor, they catch one of their, their penalties can be pretty stiff. Once we get the results from the sample if it exceeds, the minimum for the federal standard as the statute says we send out an administrative fee for \$250 and when we do an inspection we determine the size of the fuel tank and we charge them 19¢ a gallon, based on the size of the tank. We don't know how many times they have filled that tank.

Senator Erbele What triggers the sampling, Is there tolerance in there?

Mr. Johnson: when we pull that tube out and not clear, we send it in. People will dump oil into the fuel tank to mask the dye we were certified to conduct these inspections by the Internal Revenue Service. We also find in some of those cases the fuel is orange or yellow that is biodiesel. Anything not clear we send in to make sure there is no dye. There is a minimum allowance (.6) set by the IRS, if it is above that it is a violation; most cases we have seen 6 up to 15.

Mike Rud, President of North Dakota Petroleum Marketers, we stand in support of 2294. In 2010 we had a couple of members who called in saying what can we do about dyes? We got together with tax, North Dakota Department of Transportation (DOT) would like to touch on the fine for the marketer, IRS, if a marketer is knowingly allowing this on its premises is the same fine. We will continue to educate our members to make sure this is being done.

Senator O'Connell Is propane being used?

Mike Rud: (27.50) I don't know

Senator Mathern what type of diesel is green?

Mike Rud: I do believe a biodiesel. A different sulfur diesel. I am not sure.

Senator Gary Lee we've heard some pretty good information today moved a Do Pass.

Senator Wanzek second.

No discussion.

A roll call vote was taken. Yea: 11, Nay 1, Absent 1. Senator Miller will carry the bill.

Chairman Holmberg Motion carries bill goes back to agriculture committee.

The hearing was closed on SB 2294

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/21/2013**

Bill/Resolution No.: SB 2294

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$106,000		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2294 increases the fees for use of dyed special fuel in a licensed motor vehicle.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2294 increases by four-fold the fees associated with the use of dyed special fuel in a licensed motor vehicle.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2294 is expected to increase revenues in the highway distribution fund by an estimated \$106,000 during the 2013-15 biennium. This reflects the increased revenue from the higher fees only. There is also an increase in fuels taxes collected in the regular manner due to increased compliance as a result of the state's presence in the field, monitoring vehicles and enforcing dyed fuel usage requirements. The positive revenue associated with enforcement efforts cannot be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 01/30/2013

Date: 2-5-13

Roll Call Vote# 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 2294

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By Sen Lee Seconded By Wanzek

Senators	Yes	No	Senator	Yes	No
Chariman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	✓
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	<i>a</i>	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 14 No 1

Absent 1

Floor Assignment Ag com

If the vote is on an amendment, briefly indicate intent:  
Miller

**REPORT OF STANDING COMMITTEE**

**SB 2294: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS**  
(11 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2294 was placed on the  
Eleventh order on the calendar.

**2013 HOUSE AGRICULTURE**

**SB 2294**

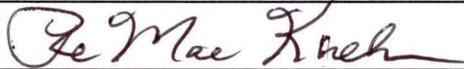
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

SB 2294  
March 8, 2013  
Job #19637

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

(Fiscal Note)

Relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed special fuel

## Minutes:

Attachments #1 & 2

**Senator Dotzenrod, Sponsor:** The pump in town has two choices with red dyed and clear. There is about 44 cents less cost to the dyed fuel. The highway-use fuel is clear and more expensive to pay which is for highway taxes. Tractors, construction equipment, generators, etc. can use red fuel because they are not used on road.

Page 1, line 16 changes the \$250 fine to \$1,000. Montana is \$1,000, Minnesota is \$1,000. The second offense doubles the fine and again on the third offense. At the fourth offense it is \$10,000. If we cheat on our income tax, the consequences are also severe. We need to keep roads up. Farmers are concerned about the cheating.

Page 2, line 5 has provisions that allow the highway patrol to use others to assist. The tax department can help enforce law.

Page 3, there is direction to the tax commissioner to create a sticker to go on the pump to advise the public of the violation and what the fine is. It isn't clear when pulling up to a pump to see the difference.

The reason I got involved is we had some testimony in the Senate Tax Committee. The Tax Department had done some surveys and they were concerned about the increasing use of the dyed fuel on highway applications.

The existing \$250 fine can be made up quickly just by cheating.

**Representative Headland:** Your pumps in town have red fuel?

**Senator Dotzenrod:** Yes. Semis are at a different location with only clear fuel.

**Representative Larson:** On the second page it talks about fuel sampling statistics. (See attached #1) Is this something where we would see like a DUI compliance where vehicles would be stopped to test the fuel.

**Senator Dotzenrod:** With cell phone technology today, people find out and start going around the stop. In the first hour some noncompliance is found.

**Representative Larson:** This would include any vehicle?

**Senator Dotzenrod:** Yes.

**Representative Fehr:** Explain again where you overstruck on page 2 and the purpose.

**Senator Dotzenrod:** On line 5 we added "and the assistance of." It makes it clear that the Tax Commissioner can be of assistance. They have done compliance checks but haven't had the authority in the law to be as involved as they would like to be.

**Representative Fehr:** The reason for the overstrike like in line 14 & 16 is because it is not just the highway patrol?

**Chairman Dennis Johnson:** Will we need more FTEs?

**Senator Dotzenrod:** I don't know? They are doing some work now with current FTEs.

**Chairman Dennis Johnson:** We are talking about state fines? Where is the IRS in this picture?

**Senator Dotzenrod:** The IRS gets some of this information from the state. The tax department can tell you.

**Chairman Dennis Johnson:** With my experience we would get the federal inspectors. The federal fines are \$10/gallon X the capacity of the unit on the first offense. The second offense is \$100/gallon X capacity of the unit. The state I am familiar with is Nebraska and that fine is \$1,000.

**Representative Belter:** How does the procedure of enforcement work? When they delivered fuel on my farm they mistakenly put dyed into road diesel. Do they test by percentage?

**Senator Dotzenrod:** The dye is persistent. It is hard to get out. Once the red fuel is in the fuel filter you need to change the filter.

**Representative Kiefert:** Some of these are less than a percent. Some are .93%.

**Senator Dotzenrod:** If you use red fuel and then use clear, it takes a long time. The tax department goes into the tank with a tube. If it looks clear, they will let that vehicle go. If it looks colored, they will take a sample. I don't know how many full tanks you have to go

through to get it out of the system. Most people have to drain their tanks and change the filter.

**Representative Kiefert:** We have a 200 gallon tank on the back of our truck for a service tank. A trace amount could set it off.

**Senator Dotzenrod:** You can't use the same containers.

**Kevin Schatz, Motor Fuel Supervisor with North Dakota Tax Department:**  
(See attached #1)

First page of attached #1, over five years clear fuel use increased by 82%. Dyed fuel increased by 91%. In 2012 the use of clear diesel increased. We are hoping a portion of this is due to our efforts.

Second page, those percentages have nothing to do with the amount of dye in the fuel. It is the percent of vehicles caught.

The IRS statute requires us to go by the amount that they determine. They have a minimum amount that you can have.

Second page has the locations and dates and numbers. The samples taken are those where the fuel has some type of color. We put a sample in a bottle and send the sample to a lab to have it tested.

Last page shows neighboring states and the Internal Revenue Service penalties. They vary a little. Some have criminal penalties and some don't. Minnesota, Montana, and the IRS have \$1,000 for a first time penalty. South Dakota has a \$250 penalty for pickups and cars and a \$500 penalty for a first violation for a large truck.

History about the enforcement program. The Highway Patrol officers were receiving complaints about illegal use of dyed fuel. It was mostly in the western part of the state. The Highway Patrol, the Dept. of Transportation, the Tax Commissioner, and Mike Rud and the Petroleum Marketers got together to look at doing an enforcement program. The Highway Patrol has the authority to stop and inspect vehicles. They do not have the resources. The Tax Commissioner's office signed an agreement where we would help by doing the dirty work. We would take samples when necessary and send them in. Dyed fuel saves 44 cents/gallon. It is a loss of 19 cents to the state and 24.5 cents/gallon for the federal tax which is actually a total of 43.5 cents. The intent of this bill is to deter the use of dyed fuel on the road.

We began enforcement in October of 2011. They always ask us along with weight and safety inspections. The Highway Patrol provides a safe environment.

North Dakota is also the 45<sup>th</sup> state to enter into an agreement with the IRS. They provide a free analysis and a certified lab to determine the concentration of the dye. They will have a presence here also mostly in the western part of the state. The inspectors have been certified by the IRS. The job can be done with the personnel we have.

**Chairman Dennis Johnson:** It is interesting with complaints from the public seeing red fuel being used. In Williston with 492 vehicles tested and 0% violation. Devils Lake is the highest with 18% violation.

**Kevin Schatz:** We have signs that we put out on the highway. On the day of the Williston stop, the Highway Patrol did not have an officer to stand out on the highway and direct traffic. We relied on the sign so a lot of them drove by. They don't pay attention unless there is an office out there directing them to come in.

**Chairman Dennis Johnson:** Can you go on private property like sale barns?

**Kevin Schatz:** We only test on public roadways. The IRS does have the authority to go on private property.

**Chairman Dennis Johnson:** The IRS, I believe, has zero tolerance. I ran out of fuel in Nebraska. We put 15 gallons in of dyed. Then added 200 gallons of clear fuel to what was left. Two weeks later we added clear again. A week later we were stopped. They pulled a sample and 9 months later we received a \$7500 fine. I got it reduced to \$1200 because I could prove with receipts for 2,000 miles of clear fuel.

**Kevin Schatz:** They do now have a small tolerance built in.

**Representative Rust:** From 2008-2009 I am wondering if the dyed diesel gallon decrease was due to land not being farmed. In our area we had counties that were seeding 10-15% of normal crop.

**Kevin Schatz:** That is what we attribute as well.

**Representative Rust:** I did have people call me about the number of vehicles filled with dyed fuel. Oil companies are filling their tanks with dyed fuel. On page 2 Williston had 492 vehicles and yet no samples taken?

**Kevin Schatz:** That was what I addressed previously. People were driving past because there was not an officer out on the highway.

**Representative Rust:** How can you have 492 tested and no samples taken?

**Kevin Schatz:** For the samples taken is where we find colored fuel and put a sample in a bottle. We stuck a tube in 492 vehicles and they were all clear fuel. If it is clear no sample is taken.

**Chairman Dennis Johnson:** Do you have to take a sample or can you check the exhaust pipe for sulfur?

**Kevin Schatz:** Any time we pull the tube out we have to pull a sample according to IRS standards.

**Representative Belter:** On the vehicles tested, was there a more common type with those in violation?

**Kevin Schatz:** We find very few trucks. It is mostly pickup trucks. What we've heard is that people working on the oil rigs fill with dyed fuel to drive home. In Minnesota they caught one from the rig going to Minneapolis with both saddle tanks and a tank on the back filled with dyed fuel and said his company foreman gave it to him so he could drive home and back. Most are from customers who see someone filling at the pump with dyed fuel.

**Representative Belter:** On the fiscal note there is \$106,000 revenue. In appropriations there is a funding bill to take care of the cost to start the program. Do you know what the amount is?

**Kevin Schatz:** We applied for a grant from the federal highway administration for compliance efforts for \$100,000 to provide for a pickup, equipment, maintenance, and sending auditors to training, compliance conferences.

**Representative Headland:** Do you have statistics that show repeat offenses. Is there evidence that suggests our fines are not enough of a deterrent?

**Kevin Schatz:** We have done this only for a year. We have not stopped somebody with multiple violations.

**Representative Kiefert:** You said standards are set federally. Do they have graduations in the penalties?

**Kevin Schatz:** The statute says by federal standards. So we go by IRS standards.

**Representative Kiefert:** Can we get a copy of the tolerance levels. Is there an emergency clause for on the road?

**Kevin Schatz:** The way we are enforcing that is if it exceeds the federal minimum standards, then we send out a notice of fee.

**Representative Heilman:** We have a state fine and then there is potential for federal fines. How often do they get slapped with both fines?

**Kevin Schatz:** A sample is treated like evidence. We forward it to the IRS lab and they send a copy of those results. We send out a notice of fee. The IRS fines are confidential so they don't let us know that. They do have the authority to go on property and assess a fee and check a tank.

**Chairman Dennis Johnson:** Is the reservation exempt?

**Kevin Schatz:** The statute for reservation special fuels tax does not address dyed fuel. We do assess for dyed fuel used by an individual on the reservation. The only exemption is if a vehicle is owned by tribe. We have an agreement with all tribes. They follow our statutes and then we do a share of that tax with them.

(42:55)

**Representative Larson:** If you catch someone with red dye fuel, do you just let them go again on the highway.

**Kevin Schatz:** They pull over, we take a sample and send it in for a test. We fill out an inspection report with license number, etc. When we receive the results that there is dye, a notice is sent to the registered owner.

**Representative Larson:** The fellow that had his tanks filled with red dyed fuel could also be pulled over again in Minnesota?

**Kevin Schatz:** We give them 24 hours to drain their tank and fill with clear. Minnesota sends us a list. They had one person they gave 24 hours and they caught him 30 hours later with red fuel so he got nailed twice in two days.

**Representative Fehr:** If this is passed, what will you do different?

**Kevin Schatz:** The testing would stay the same. We would not need an agreement with the Highway Patrol to assist them.

**Representative Fehr:** Do we need this law?

**Kevin Schatz:** The basic concept of this bill is to raise the fee from \$250 to \$1,000 for a first offense.

**Representative Fehr:** When will you have information about repeat offenders?

**Kevin Schatz:** I have no idea when that person will come through one of our inspection sites again.

**Representative Fehr:** Would it be a year or two years?

**Kevin Schatz:** As soon as someone goes through an inspection site two times. Our database would show a previous offense.

**Representative Fehr:** The reason you don't have re-offense data is because you just implemented the program. When you catch them the first time are they continuing to offend?

**Kevin Schatz:** Some states have the authority to check an offender anytime they want in a two year period. We don't have that authority. We have to rely on catching them at another site.

**Representative Fehr:** Just looking at the numbers, it looks like the system is working.

**Kevin Schatz:** Because there is such a short period of time that is correct.

**Representative Kiefert:** Can they put up a sign for a check station anywhere they like?

**Kevin Schatz:** I don't know the Highway Patrol's authority. They invite us along when they do weight and safety checks.

**Dan Rouse, Legal Counsel to the Tax Dept.:** Part of the reason is to change the fines. The other part is to enlarge the scope of what we can do.

We are not a law enforcement agency. We need the Highway Patrol to carry out our duties safely.

It is hard to predict where these violations will occur. We have tried to focus on reasonableness. We understand circumstances. If IRS says it is dyed, it is. But we don't want to surprise people.

We have samples of stickers. We want to remind people that if you are going to use the roads in North Dakota, you have a responsibility to help pay for that. We don't profile. There was a sign at one of the stops and a lady with a Mercedes pulled in with diesel car.

We can share the database when we determine what the trends are. I don't think there is a trend.

**Chairman Dennis Johnson:** Could you identifying pumps with a red stripe. Those tests do get sent to the IRS. Do other states' tax departments get involved with the Highway Patrol?

**Dan Rouse:** It has been a cooperative effort in other states. We need the assistance of the Highway Patrol. The Highway Patrol has brought a vehicle back to the check point if they drive by.

**Chairman Dennis Johnson:** The IRS checked in Oklahoma when I was on private property. They wanted my driver's license before they did it. I had the option to get checked or not but then they would pull my driver's license.

**Dan Rouse:** We heavily apply reasonableness. We can go on private land but we don't.

**Representative Headland:** I hope this doesn't imply that the agriculture community is abusing this.

Why would I support an increased penalty?

**Dan Rouse:** The statistics will show that the activity is occurring. It is not agriculture or oil and gas but across. That is why they have given us a grant for a pickup truck to observe more of that activity. The increased penalty gets more attention.

**Representative Headland:** I agree. But we don't have anything to suggest that this won't happen with the current fine structure. The people that get caught a second time will get a good penalty.

**Dan Rouse:** We are in the beginning stage of this process. We will start seeing a pattern. We are not out there every day, only at the invitation of the Highway Patrol.

**Representative Belter:** You are taking some of the responsibility away from the Highway Patrol and giving it to the tax dept.

**Dan Rouse:** Now we can't do anything without the Highway Patrol. We are looking to connect with other law enforcement agencies. We don't issue a citation, we issue a notice.

**Representative Belter:** If this passes, and there is red dye, the Highway Patrol has the authority to test without the tax dept.?

**Dan Rouse:** Yes in theory that authority exists, but mechanically they can't do that. Our staff is trained to do that as well as the IRS.

**Representative Belter:** Why can't we give that authority to the Highway Patrol?

**Dan Rouse:** I have asked that also and I don't have a good answer. The Highway Patrol has looked to us as a revenue-generating agency with our training. This is new for us. The Highway Patrol has chosen not to pursue this area. It has been on the law for decades.

**Representative Belter:** The Highway Patrol is the one out there all the time stopping trucks. If we want to enforce this, they are the ones with the opportunity. Every Highway Patrolman can carry a stick and a bottle. We can enhance our enforcement.

**Representative Larson:** How did it come about in the first place that the tax dept. became involved?

**Dan Rouse:** The law is in our title 57-43.2 which is the special fuels chapter of the Century Code. We are the tax department and we are supposed to collect taxes.

**Representative Larson:** When the Highway Patrol pulls over a vehicle and they suspect someone of driving under the influence, they don't have Human Services there. There is a special part of the code for being under the influence also which doesn't fall under Highway Patrol. Was it the tax department that offered or did they come to you?

**Dan Rouse:** This law has been on the books for decades. Over the years the Highway Patrol is heavily tasked. This is not a high priority of their many responsibilities. It had been pushed to the side. This was an opportunity for the tax dept. to cooperate with law enforcement to make sure people are paying the tax. This evolution slowly took place. We received the IRS training. It is low cost because the IRS pays for the testing.

**Representative Larson:** They deal with what is in plain sight unless they get a warrant. You don't have to have it in plain sight.

**Dan Rouse:** That is the point. We don't target or search. We do an inspection.

**Chairman Dennis Johnson:** We are starting with one pickup. Are you going to be back next session needing more pickups and FTEs?

**Dan Rouse:** No.

**Representative Kiefert:** The concern I have is regarding trace amounts. It goes into a graduated penalty or fine after a positive sample. How does the trace amount come into play? I would like to see some documentation.

**Dan Rouse:** Mr. Schatz will get that information. The circumstances are secondary. We will listen.

**Representative Kiefert:** Do we need stickers on our gas cans?

**Dan Rouse:** The stickers that we are talking about are for those on the pump.

**Representative Kiefert:** A teaspoon of red fuel, will that contaminate 5 gallons of clear fuel? Do we need separate cans?

**Dan Rouse:** If it is found dyed, it is. You have to manage what you do.

**Representative Fehr:** When there is compliance of the law, there are three things. One is that people understand the law. Two, there is a perception they may be caught. Three, what are the consequences. When you look at raising the fees, people need to see that they will be caught. If they get caught, they will be angry because they know the neighbor down the road who routinely runs dyed fuel. There needs to be a perception that if they take the risk that there is monitoring. Just raising the fine ignores the other two and doesn't increase compliance.

**Dan Rouse:** We have tried to increase the awareness. One of our focuses is education. We have issued press releases. People want to comply. They need a gentle reminder.

**Representative Belter:** Is there a penalty for the seller of fuel that knowingly sells dyed?

**Dan Rouse:** It has been talked about. That depends on you or is there another way to do this through education, inspection, and enforcement.

**Mike Rud, North Dakota Petroleum Marketers President:** (See attached #2) (No audio) There is an IRS Penalty. The decal will display the fine. A lot are not filling at the station but instead out of a service tank.

**Robin Rehborg, State Fleet Director for DOT:** We are in support of this bill due to increased revenues for the state highways.

**Opposition:** None

**Chairman Dennis Johnson:** closed the hearing

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

SB 2294  
March 15, 2013  
Job # 19994

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

### (Committee work)

Relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed special fuel

## Minutes:

**Chairman Johnson:** This bill is about raising the fines from \$250 to \$1,000 per incident.

**Representative Fehr:** The rate increase wasn't justified because they didn't produce the data that I was looking for in terms of repeat offenses.

**Chairman Johnson:** They are justifying going to \$1000 to have a bigger hammer and match with other states. When they send that sample to IRS what do they do with it? We didn't get that answered. The IRS usually goes with \$10 X capacity of tank for the first offense. The second offense is \$100 X capacity of tank. Going to \$1,000 is insignificant compared to getting involved with the IRS.

**Representative Trotter:** An individual in MN had a six-year old pickup. The IRS took the mileage from when he bought it and assumed he was using that fuel since he owned it.

**Chairman Johnson:** Our tax department likes to work with people. But the IRS is a whole different story.

One pickup and staff will bring them back with a need for more.

**Representative Belter:** My concern is they are going at this backwards. It should be the responsibility of the Highway Patrol. They want the tax department to get more involved. The Highway Patrol already has kits that they carry to test. Why do we need the tax department out there? I can't support it the way it is written.

**Representative Rust:** I had a constituent contacting me about a loss of state revenue. I went to the Highway Patrol and was informed that was not their mission. Then I went to the tax department and he was concerned about the number of staff members.

The Highway Patrol in our area has more priorities. We need the director here from the Highway Patrol to get his thoughts.

**Representative Belter:** The overstruck language is to take the Highway Patrol out of it. They all carry kits in their vehicle. The test is a very simple process. If we want to catch them, the Highway Patrol is the one with the most contact. The Appropriations Committee has taken the money out for the pickup.

**11:15 Chairman Johnson:** The pickup has been donated by the IRS.

**Representative Kiefert:** My concern was about trace elements. In a lab environment they can test parts per billion. What about the previous owner? I never did receive an answer on that?

**Representative Larson:** Why is this just the Highway Patrol and not all law enforcement?

**Representative M. Nelson:** It is not a criminal matter. It is a tax department issue. You would have to have an agreement between them and the tax department to do it.

**Chairman Johnson:** It started with Motor Carriers.

**Representative Headland:** In my county they have a truck regulatory person on staff and he has the ability to check for dyed fuel.

**Representative Fehr:** Do other entities also send samples to the IRS.

**Chairman Johnson:** My thought would be it all goes to IRS.

**Representative Belter:** If we are going to pass it, should there be language that holds responsibility to retailers if they knowingly know a pickup fills dyed fuel?

**Representative Heilman:** I was thinking about that also. For the bigger stations it would be hard for them. You would have to go to security tapes.

I agree it should be in the Highway Patrol's jurisdiction. I don't think we need to raise the fine, we need to enforce it.

**17:30 Chairman Johnson:** I talked to the HP one day. He said they have so many other issues.

**Representative Boschee:** A lot of this with enforcement is after the fact something's happened. Are there other states where everyone does something before where you have to have a permit or decal on your vehicle before filling up with this type of red dye?

**Chairman Johnson:** Not really, it's just common knowledge.

**Representative Fehr:** I'm thinking at the point of sale at the pump, a few years ago when gasoline switched to unleaded there was a different size nozzle. Are they the same size?

**Chairman Johnson:** The opening is large enough to go with either one.

**20:34 Representative M. Nelson:** I don't want to make it hard on the retailers because they will pull the pump out.

**Representative Trottier:** It sounds like there are a lot of problems with the bill. Does it have to be studied?

**Chairman Johnson:** My bulk dealer knows who is running red fuel.

**Representative Fehr:** We should be looking at point of sale as much, or more so than the enforcement that the Tax Department is looking at.

**22:52 Chairman Johnson:** The only hesitation is that stations are trying to get help. It goes back to the owner of that business and puts them in a tough position.

**Representative Rust:** How much of (point of sale) it happens at a gas station or is it more at the farm or business site with bulk tanks.

**Representative Belter:** Page 3 talks about the commissioner having a sticker. Don't the pumps have a sticker on the now?

**Chairman Johnson:** For road use only or for farm off road use only?

**24:49 Representative Belter:** I move a Do Not Pass.

**Representative Trottier:** Seconded the motion.

In regards to the point of sale and looking at a study things haven't been looked at, not just cameras. If it's point of sale, do all the pumps have stickers on? Could there be things done more efficiently in terms of the nozzle? Who buys bulk fuel? I think a study makes more sense.

**Representative Belter:** I am going to withdraw my motion. I would remove the overstrikes dealing with the Highway Patrol.

**Representative Boschee:** Line 4, page 2 does that help you feel better about the Highway Patrol already having the authority? They aren't issuing a citation. It's whatever agency that's providing the notice of violation.

**30:50 Representative Headland:** I'd like to move an amendment for Page 1, line 16 under Subdivision A. We should lower it to \$500 instead of \$1000. For the second penalty we could leave it as is.

**Representative Larson:** Seconded the motion.

Amendment passed on a voice vote.

**32:31 Representative Rust:** Any thought about cutting all of those in half?

**Representative Belter:** I am confused about the overstrike stuff.

**Representative Trottier:** The original statute has the current language in there about the Highway Patrol.

**Representative Belter:** I move to take out all the language on line 5, the overstrikes on line 14, reinstate all the old language on page 2.

**Chairman Johnson:** Some of the language in here is a stylistic change. To put it in the way it is in other parts of the Code.

**35:06 Representative Boschee:** There isn't a citation any more. It's a notice of violation. It allows the opportunity to dispute and wait for the results to come in. In the interim this is what you have to do.

**Representative Rust:** By leaving the Highway Patrol in that means anyone else who stops you it doesn't apply? It limits it to just that entity where there is a civil penalty. The Tax Department wants you to pull over it is not a big deal. If the Highway Patrol is out there now this kicks in. I like the strike in there. Item #4 only the Highway Patrol can issue the citation.

**37:41 Chairman Dennis Johnson:** Purpose of the bill was so the tax department could be on site at the same inspection.

**Representative Belter:** That is where there is a problem. The whole enforcement has to be the responsibility of the Highway Patrol. Testing the fuel has to be done by the officer who sends to the state lab. Then it is the responsibility of the tax department that enforces it. I want the Highway Patrol to be the primary source of getting the sample.

**Chairman Dennis Johnson:** The sample is sent to the IRS.

**Representative Belter:** I move a Do Not Pass.

**Chairman Johnson:** Motion of Do Not Pass as amended on SB 2294.

**Representative Kiefert:** Seconded the motion

**A Do Not Pass Roll Call vote: Yes = 5, No = 7, Absent = 1.**

Motion of Do Not Pass as amended failed.

**Representative Larson:** I move a Do Pass as amended.

**Representative Haak:** Seconded the motion

**A Do Pass Roll Call vote:** Yes = 6, No = 7, Absent = 0. Motion failed.

**Representative Kiefert:** This is going to add another agency looking for violators?

**46:24 Representative Headland:** If we pass this bill, the tax department will be pulling vehicles over. People won't understand this. This should be the Highway Patrol.

**Representative Heilman:** I don't care for the tax department having an enforcement vehicle going around doing this.

**Representative Trottier:** Is it possible to ask for the Highway Patrol to come in?

**Chairman Johnson:** We will reopen this bill next Thursday. Adjourned the committee.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

SB 2294--Committee Work  
March 22, 2013  
Job #20379

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

### Committee Work

(Fiscal Note)

Relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed special fuel

## Minutes:

Attachment #1

**Colonel James Prochniak:** The North Dakota Highway Patrol must review some of our responsibilities by looking for efficiencies in the way we conduct business. We have placed a heavy focus by getting back to the basics of our job. In the past year we have declined offers from Federal Motor Carriers, Federal Railway, and the U.S. Treasury. They offered extra money for us to work with their needs. We have had to concentrate on immediate traffic safety needs. As we review our operations, the goal of maximum visibility and patrol is always considered.

Two agency bill submissions have proposed law changes which can add efficiency and greater visibility. We can reduce unnecessary work load and risk to our officers. HB 1126 would remove the responsibility of troopers from conducting salvage vehicle inspections. Currently we cover about 6,000 to 6,500 vehicle inspections a year. This would place the responsibility in the hands of those who know vehicles which are mechanics. Another bill proposes eliminating reporting of crashes involved in undomesticated animals. Car-deer crashes are a collection of paper work that isn't used by the insurance industry.

Our current role of the dyed fuel collection:

We do truck saturations throughout the state. We may set up at any corner that is safe. When we schedule them, we notify the tax department. They may or may not show up. Our officers have no part in the dyed fuel sampling. They are dealing with the drivers and the mechanical components of the truck. The Highway Patrol doesn't follow up when a meat inspector goes to a locker or when the Health Department goes to a restaurant.

This is a fuel tax issue both at the state and at the federal level. It doesn't prevent a crash or change bad driving behavior. If we get involved with this, it will increase the work load that I am trying to reduce. It is not as simple as dipping the tank. Officers have to carry it

until they get to the regional office. At a rural location they may have to carry that sample for some time until they get to the regional office. It becomes a case with paperwork just like DUI. We have to keep the paperwork for seven years. It pulls the officer off of the road. We don't need this extra duty.

**Chairman Dennis Johnson:** In the past have you ever gotten involved in dipping tanks?

**Colonel James Prochniak:** Back in the 90's there was an IRS grant. We went into it lightly. We then found the involvement with it took time for people contesting. The new kits now are better. After the grant was up for renewal, we decided we didn't want to be involved any more. Then we entered an MOU with the tax department because the issue still existed. They were looking for a mechanism by which they could go about collecting these because they didn't have the enforcement arm to wave over a truck.

**Representative Belter:** Currently you do have kits for sampling?

**Colonel James Prochniak:** We no longer have those kits. That was back in the 90s.

**Representative Belter:** There are kits available that are better than what they used to be?

**Colonel James Prochniak:** The new kits are smaller in profile.

**Representative Belter:** Since the 1990s the Highway Patrol has done no enforcement of the dyed fuel law?

**Colonel James Prochniak:** We do not do that. If we see an obvious violation, we will forward that information to the tax department.

**Representative Belter:** We have an obligation to ensure that these taxes are paid. If we want to enforce this, the best way to give you the responsibility is to take the sample and then the sample is sent to the state tax department. You are the ones that have the most visibility. If the industry knows that it is your cars, it is the best way to get enforcement. I think the appropriations committee has already stripped out that grant money to get a vehicle. It is not getting enforced by the current plan. I am very adamant that it should be led by the Highway Patrol.

**Colonel James Prochniak:** If it is contested, we are the ones called in. I would rather not get involved.

(16:10)

**Representative Larson:** Have you noticed an increase in the amount of violent offenders that you need your patrolmen trained in approaching in a lot more safe ways? Do you notice an increase in your work load apart from this?

**Colonel James Prochniak:** Yes, the numbers of times weapons and force are used is increasing. With our current staffing, it is only a matter of time before one of our officers is seriously hurt.

**Representative Larson:** Do you need to prioritize your efforts for safety?

**Colonel James Prochniak:** That is what I am getting at. We do have to prioritize and get back to the basics. We have to have live action training. The day and age of being in a gun range and shooting at a target is long gone. We have officers moving, shouting, lights flashing, etc. You have to train like it is really going to happen.

**Representative Kiefert:** Would it be more favorable to have the Truck Regulatory Division and not everybody burdened with it?

**Colonel James Prochniak:** We have about 18 uniformed officers that deal with the motor carrier industry. They are sworn officers and go through the same training. This would only add to their work load. That group of officers, to me, would be the natural consideration because they deal with that industry.

**Representative Kiefert:** Maybe we should give it to the Sheriff's Department as a local thing.

**Colonel James Prochniak:** They would scream. Other law enforcement has the same issues.

**Representative Belter:** We understand the new world that your officers operate in. We need to enforce this law. We are not expecting the Highway Patrol to hunt for these. You have the random inspections where you are pulling all trucks over or the traffic violation where you are pulling someone over like for a speeding ticket. Is it that much of a burden to probe the vehicle and send it to the tax department? Yes, there could be some litigating. If the highway patrol is not enforcing this, who is? One pickup truck at a random stop is not the tool we need to enforce this law.

**Colonel James Prochniak:** It probably doesn't sound like a lot. I am hesitant to believe that is all that is involved.

**Representative Rust:** At home last week, the news had a shooting and a stabbing. In our area there are bigger fish to fry than dyed fuel.

**Colonel James Prochniak:** Prioritizing. We are in a response mode rather than a proactive mode. We enforce weight limitations which help infrastructure protection. The process of collecting dyed fuel would not be a priority for us.

**Representative Belter:** We are not asking you to check every vehicle. Is it such a burden to look at the cap and if they see red to check it? I suspect it is just a few people violating this.

(31:15)

**Colonel James Prochniak:** It is true we stop a lot of vehicles and our officers should be aware of what is happening around them. Our officers are dealing with the driver and registration. I would offer a solution, if our officer notices red fuel we will document that information and forward it to the tax department and not collect the sample.

**Representative Belter:** That might be a possibility. It is your presence that will have people abide by the law.

(34:09)

**Colonel James Prochniak:** I would also offer that we could make it well known through the media that if we notice this, we will let the tax department know. If we do alcohol saturation, we let people know. We would rather not arrest them.

**Representative Larson:** I can see that as a PR piece. But forwarding it to the tax department seems like seeing pot in a car and then forwarding that information to the drug unit. Without evidence it will not go very far.

How much overtime have you been logging?

**Colonel James Prochniak:** We are logging an extreme amount of overtime. In 2010 and 2011 we had 40,000 hours of overtime. We budget for 600 hours of overtime each month. That 600 hours is above project overtime. You can only maintain that pace for a while.

**Representative Fehr:** In current law, 57-43.2-41, it appears the Highway Patrol is the lead agency. (Reads from paragraph 3.)

**Colonel James Prochniak:** The wording in the law would appear that we do. We went through this process in the 90s and we realized it is not the best fit for our organization. So we had the tax department come to our saturations.

**Representative Fehr:** The amendments will still say, "For purposes of enforcing the provisions of this section, the highway patrol, by agreement with, and the assistance of, the commissioner, may:" So even under the amended language, the Highway Patrol would still be the lead agency. Is that your understanding?

**Colonel James Prochniak:** "May" yes. "Shall" would force our hand. If we come across an obvious violation we may get involved.

**Representative Fehr:** Who is the lead agency?

**Colonel James Prochniak:** When we receive questions, everything is referred to the tax department.

**Representative Fehr:** In order to comply with what you say is happening, we would need to do a rewrite and the amendment doesn't do that.

**Colonel James Prochniak:** I would say there could be a simple line that through a Memo of Understanding (MOU) with the tax department the Highway Patrol provides the mechanism and the tax department does the collection. I would be for an amendment

**Chairman Dennis Johnson:** What I envision is that your department is the one doing the inspections. The Highway Patrol has the truck pulled over already. Then the tax department can do their part.

**Representative Fehr:** The Highway Patrol is the lead agency. To what extent is there a problem with dyed fuel?

**Colonel James Prochniak:** I can't answer since we don't deal with that.

**Representative Fehr:** Since the Highway Patrol is the lead agency, is there a better way to do this?

**Colonel James Prochniak:** The tax department would be better suited. I can check with colleagues in other states that are similar to us.

**Representative Fehr:** I would appreciate it.

**Representative Kiefert:** In thinking about the Sheriff's Department, is there a chance?

**Colonel James Prochniak:** I can't speak for them. I don't think they want this.

**Representative Larson:** It occurs that this might be similar to it being our job to consider laws and we should also do the committee clerk's work and other things.

Attachment #1 from the Tax Department was handed out to the committee.

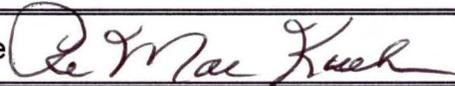
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

SB 2294  
March 28, 2013  
Job #20631

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

### (Committee work)

Relating to increased fees for use of dyed special fuel in a licensed motor vehicle and display of consumer advisory information on pumps dispensing dyed special fuel

### Minutes:

Amendment #1 & 2

**Chairman Dennis Johnson:** (attachment #1) This letter talks about what they are doing in surrounding states. Vice Chair John Wall has some amendments.

Vice Chair John Wall: (attachment #2) On page 1, I would leave everything the same including Representative Headland's amendment on the 1<sup>st</sup> offense.

Page 2, delete all overstrike which puts the patrol back into the mix. Omit all underlined new language on p. 2.

Page 3 no changes. Leave #7 the way it is with decals. The changes would put the Highway Patrol back in charge and take out notice of violation and leave it with citation.

**Representative Larson:** Adding "and the assistance of" on line 5 doesn't do anything. They are doing it with the agreement of the tax commissioner now. They just have to enter into a new agreement. It won't do any harm to leave that in.

**Representative Rust:** Leave everything on page 2 the way it is in current law? I thought the same, "and the assistance of" would have them forego having to get an annual Memorandum of Understanding.

**Vice Chair John Wall:** Since the amendment hasn't been moved, we can remove those words.

**Representative Headland:** We need to have it clarified what the assistance is. If the assistance is on the highway pulling them over, we need it clarified. If it is helping with the paperwork and the IRS, it is something else.

**Representative Larson:** They are on the highway. They are already doing this.

**Dan Rouse, Legal Counsel, State Tax Commissioner:** We did not ask for that language. The objective was to clarify that we are in an assistance role. We don't have police power so we can't pull people over.

**Representative Larson:** You have no problem with removing that language?

**Dan Rouse:** Correct.

**Representative Belter:** Are you now involved in some of these inspections with a mass inspection?

**Dan Rouse:** We find out from the highway patrol when they are doing safety inspections. While they conduct safety inspections, we inspect fuel tanks. We will not pull people over.

**Dan Rouse:** We have no problems with the amendments.

**Representative Fehr:** What do we want to accomplish? It sounds like we want to leave things as they are minus the decals and fees.

**Vice Chair John Wall:** Rather than turning it over to the tax department, we think the Highway Patrol should remain charged with it. Now with this bill maybe they will be more aggressive in checking the vehicles.

**Representative Fehr:** They don't see themselves as a lead agency. Why would things be different?

**Vice Chair John Wall:** It is part of their responsibility right now. Things offered by the committee to look for red stains, etc. along with decals will accomplish something.

**Chairman Dennis Johnson:** Two things we are accomplishing are raising the fine from \$250 to \$500. The petroleum group is interested in making sure the decals would be on the pumps for those who use the wrong fuel accidentally.

**Representative Fehr:** Just to clarify, the fees on the first page, line 16 are at \$500 from a previous motion. And leave off the words "and the assistance of"?

**Vice Chair John Wall:** Yes.

**Representative Headland:** The tax department is fine with taking it out.

Voice Vote taken on amendment. Passed.

**Representative Larson:** Moved Do Pass as amended.

**Representative Fehr:** Seconded the motion

House Agriculture Committee  
SB 2294--Committee Work  
March 28, 2013  
Page 3

**A Roll Call vote was taken: Yes   13  , No   0  , Absent   0  .**

Do Pass carries.

**Representative Fehr will carry the bill.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/01/2013**

Amendment to: SB 2294

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$53,000		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2294 with House Amendments increases the fees for use of dyed special fuel in a licensed motor vehicle.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2294 with House Amendments increases the fees associated with the use of dyed special fuel in a licensed motor vehicle.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2294 with House Amendments is expected to increase revenues in the highway distribution fund by an estimated \$53,000 during the 2013-15 biennium. This reflects the increased revenue from the higher fees only. There is also an increase in fuels taxes collected in the regular manner due to increased compliance as a result of the state's presence in the field, monitoring vehicles and enforcing dyed fuel usage requirements. The positive revenue associated with enforcement efforts cannot be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 04/02/2013

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/21/2013**

Bill/Resolution No.: SB 2294

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$106,000		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2294 increases the fees for use of dyed special fuel in a licensed motor vehicle.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2294 increases by four-fold the fees associated with the use of dyed special fuel in a licensed motor vehicle.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2294 is expected to increase revenues in the highway distribution fund by an estimated \$106,000 during the 2013-15 biennium. This reflects the increased revenue from the higher fees only. There is also an increase in fuels taxes collected in the regular manner due to increased compliance as a result of the state's presence in the field, monitoring vehicles and enforcing dyed fuel usage requirements. The positive revenue associated with enforcement efforts cannot be determined.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 01/30/2013

March 28, 2013

3/29/13  
CJW

PROPOSED AMENDMENTS TO SENATE BILL NO. 2294

Page 1, line 16, replace "one thousand" with "five hundred"

Page 2, line 5, remove ", and the assistance of,"

Page 2, line 14, remove the overstrike over "~~by the highway patrol~~"

Page 2, line 16, remove the overstrike over "~~The highway patrol may issue a citation covering any violation of this section, and the~~"

Page 2, line 16, remove "A"

Page 2, line 17, remove the overstrike over "~~citation~~"

Page 2, line 17, remove "notice of violation of this section"

Page 2, line 19, remove the overstrike over "~~citation~~"

Page 2, line 19, remove "notice of violation of this section"

Renumber accordingly

Date: 3/15/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294**

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Consent Calendar  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Belter Seconded By Rep. Trottier

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman John Wall			Rep. Jessica Haak		
Rep. Wesley Belter			Rep. Marvin Nelson		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Joe Heilman					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. David Rust					
Rep. Wayne Trottier					

*Withdrawn*

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3/15/13

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294**

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Consent Calendar  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Headland Seconded By Rep. Larson

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman John Wall			Rep. Jessica Haak		
Rep. Wesley Belter			Rep. Marvin Nelson		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Joe Heilman					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. David Rust					
Rep. Wayne Trottier					

*Vote Passed*

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**Page 1, line 16, Subsection a.**

**Lower fee to \$500 rather than \$1,000 for first violation**

**Subsection b. second violation remains the same**

Date: 3/15/13

Roll Call Vote #: \_\_\_\_\_

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294**

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Consent Calendar  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Belter Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman John Wall			Rep. Jessica Haak		
Rep. Wesley Belter			Rep. Marvin Nelson		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Joe Heilman					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. David Rust					
Rep. Wayne Trottier					

*No Second*

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Remove overstrike with Highway Patrol on page 2.

Reinstate all old language

Date: 3/15/13

Roll Call Vote #: 3

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294**

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Consent Calendar  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Belter Seconded By Rep. Kiefert

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson		X	Rep. Joshua Boschee		X
Vice Chairman John Wall	X		Rep. Jessica Haak		X
Rep. Wesley Belter	X		Rep. Marvin Nelson		X
Rep. Alan Fehr		X			
Rep. Craig Headland	X				
Rep. Joe Heilman	AB				
Rep. Dwight Kiefert	X				
Rep. Diane Larson		X			
Rep. David Rust		X			
Rep. Wayne Trottier	X				

*Failed*

Total Yes 5 No 7

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3/15/13

Roll Call Vote #: 4

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294**

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Consent Calendar  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Larson Seconded By Rep. Haak

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman John Wall		X	Rep. Jessica Haak	X	
Rep. Wesley Belter		X	Rep. Marvin Nelson	X	
Rep. Alan Fehr		X			
Rep. Craig Headland		X			
Rep. Joe Heilman		X			
Rep. Dwight Kiefert		X			
Rep. Diane Larson	X				
Rep. David Rust	X				
Rep. Wayne Trottier		X			

*Failed*

**Total** Yes 6 No 7

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3/28/13

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294**

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Consent Calendar  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Wall Seconded By Rep. Larson

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson			Rep. Joshua Boschee		
Vice Chairman John Wall			Rep. Jessica Haak		
Rep. Wesley Belter			Rep. Marvin Nelson		
Rep. Alan Fehr					
Rep. Craig Headland					
Rep. Joe Heilman					
Rep. Dwight Kiefert					
Rep. Diane Larson					
Rep. David Rust					
Rep. Wayne Trottier					

*Vote  
passed*

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**See attached #2**

Date: 3/28/13

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2294**

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Consent Calendar  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Larson Seconded By Rep. Fehr

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Chairman Dennis Johnson	X		Rep. Joshua Boschee	X	
Vice Chairman John Wall	X		Rep. Jessica Haak	X	
Rep. Wesley Belter	X		Rep. Marvin Nelson	X	
Rep. Alan Fehr	X				
Rep. Craig Headland	X				
Rep. Joe Heilman	X				
Rep. Dwight Kiefert	X				
Rep. Diane Larson	X				
Rep. David Rust	X				
Rep. Wayne Trottier	X				

**Total** Yes 13 No 0

Absent 0

Floor Assignment Rep. Fehr

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2294: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2294 was placed on the Sixth order on the calendar.

Page 1, line 16, replace "one thousand" with "five hundred"

Page 2, line 5, remove ", and the assistance of."

Page 2, line 14, remove the overstrike over "~~by the highway patrol~~"

Page 2, line 16, remove the overstrike over "~~The highway patrol may issue a citation covering any violation of this section, and the~~"

Page 2, line 16, remove "A"

Page 2, line 17, remove the overstrike over "~~citation~~"

Page 2, line 17, remove "notice of violation of this section"

Page 2, line 19, remove the overstrike over "~~citation~~"

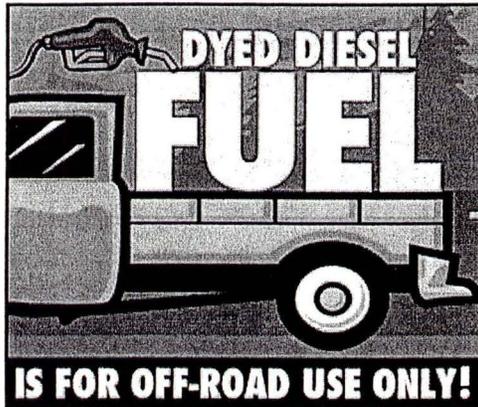
Page 2, line 19, remove "notice of violation of this section"

Renumber accordingly

**2013 TESTIMONY**

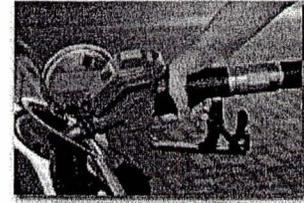
**SB 2294**

 Montana's Official State Website		<b>MONTANA DEPARTMENT OF TRANSPORTATION</b>			
About MDT	Traveler Information	Public Involvement	Doing Business	Publications	Search/Index



To report suspected violators call MDT's 24-hour toll free tip line at:

**1-888-FUEL-LAW**  
or email  
**REPORT VIOLATORS**



#### **FUEL TAXES**

- Overview
- City & County Allocations
- Fuel Tax Reporting
- Dyed Fuel Use
- FAQs
- Laws/Regulations

#### **HELPFUL INFORMATION**

- Forms
- IFTA website
- Manuals
- New Information for Special Fuel Users – Contractors

#### **REPORT VIOLATORS**

To report suspected violators call MDT's 24-hour toll free tip line at: 1-888-FUEL-LAW or email REPORT VIOLATORS

## **MDT Cracks Down on Dyed Fuel Misuse**

### **What is Dyed Diesel?**

Dyed diesel fuel is fuel that has not been taxed and is intended for off-road use only. When you fill your vehicle with undyed fuel at the pump, state and federal taxes are included in the cost. These taxes are used to help fund construction and maintenance of Montana's public roads.

Dyed diesel fuel is regular diesel fuel that has red dye added to it. This is done to identify the fuel as non-taxed and to help enforcement officials easily identify it. Dyed diesel is for off-road use only- examples include farm equipment and home heating.

If you fill your tank with dyed diesel and drive on Montana's public roads, you're breaking the law.

### **What are the consequences for using dyed diesel on the public roads?**

Using untaxed fuel (dyed diesel) in a licensed vehicle violates Montana's law and reduces the money available to build and maintain Montana state highways.

The penalties for using dyed fuel on public roads in Montana are:

#### **1st offense**

up to \$1,000.00 - Civil Penalty

#### **2nd offense**

up to \$5,000.00 - Civil Penalty

#### **3rd and subsequent offense**

Criminal Penalty - minimum fine \$535.00 - maximum \$1,000.00 or by imprisonment for not less than 30 days or more than 6 months, or both.

Montana law requires the use of "dyed diesel decals" on retail pumps containing dyed diesel fuel, and this law is enforced.

1  
2  
3  
4  
5

[Cameras, Roads & Weather](#)   [Maps](#)   [Contracting/Consulting](#)  
[Privacy & Security](#)   [Terms of Use](#)   [Accessibility](#)   [Contact Us](#)  
© Montana Department of Transportation



## MINNESOTA REVENUE

Petroleum taxes

Last Updated: 1/18/2013

### Letter about a Dyed Fuel Violation

This notice informs you that the Minnesota Department of Revenue has assessed a penalty against you for the illegal use of dyed diesel fuel. Dyed diesel fuel may only be used for specific tax-exempt purposes.

The penalty for illegal use of dyed fuel is \$10 per gallon or \$1,000, whichever is greater. The penalty is doubled for each offense. You may be criminally prosecuted for multiple offenses.

If you disagree with the tax order, you have 60 days to appeal or request a penalty abatement. The instructions for filing an appeal or penalty abatement are included with this letter.

It is important that the Highway Contractor examine fuel purchase invoices to ensure the sales tax was charged. If no sales tax has been charged, the Highway Contractor needs to pay the appropriated sales tax when sending in their quarterly Highway Contractor's Tax Return or report the use tax on line 14 of the Contractor's Excise Tax Return. If sales tax was charged and the fuel is used in a fuel taxable manner, a credit for the state sales tax is taken on the Highway Contractor's Tax Return and the fuel excise tax would be due. The city tax credit must be taken on the Contractor's Excise Tax Return.

No refund of fuel excise taxes will be paid for undyed (clear) diesel or biodiesel fuel used in movable machinery or equipment. For this reason, contractors are encouraged to use dyed diesel fuel in their equipment or machinery. Also, no refund will be paid for undyed fuel (gasoline, ethanol blend, undyed diesel, undyed biodiesel or any other undyed fuel) used in licensed vehicles, for any reason, in highway construction.

### **Penalties for Illegal Use of Dyed Fuel**

Penalties apply to anyone who uses dyed diesel or dyed biodiesel in a licensed motor vehicle operating on South Dakota roads and highways. Authorized personnel of the Department of Revenue, the Internal Revenue Service, and the Highway Patrol may withdraw fuel from licensed motor vehicles, machinery, equipment and storage facilities in sufficient quantities to test for compliance with the law. **Any person who refuses to allow an inspection of equipment or fuel as authorized by SDCL 10-47B-189 is guilty of a Class 2 misdemeanor.**

Penalties differ for qualified and unqualified licensed vehicles. A qualified vehicle is used, designed, or maintained for transportation of persons or property, and:

- Has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 lbs.; or
- Has three or more axles regardless of weight; or
- Is used in combination when the weight of such combination exceeds 26,000 lbs.

Persons using dyed diesel or dyed biodiesel in a qualified vehicle, such as a semi-truck and similar large truck, are subject to the following penalties:

- \$500 for the first violation
- \$1,000 for each subsequent violation

Persons using dyed diesel or dyed biodiesel in vehicles other than qualified vehicles, such as cars or pickup trucks, are subject to these penalties:

- \$250 for the first violation
- \$500 for each subsequent violation

**The first violation of the dyed-fuel law is a Class 2 misdemeanor; any subsequent violation is a Class 6 felony.**

The information in this section also applies to any other type of fuel that has had dyed added to it such as kerosene and biodiesel.

#1

### North Dakota Diesel Fuel Use

Fiscal Year	Clear Diesel Gallons	Dyed Diesel Gallons	Clear Diesel Gallon Increase	Dyed Diesel Gallon Increase
2008	207,505,950	192,100,846		
2009	210,009,603	191,976,066	2,503,653	(124,780)
2010	225,277,996	208,233,444	15,268,393	16,257,378
2011	278,569,396	283,943,398	53,291,400	75,709,954
2012	376,667,456	367,033,001	98,098,060	83,089,603
Increase 2008 - 2012	82%	91%		

#1

## Dyed Fuel Sampling Statistics

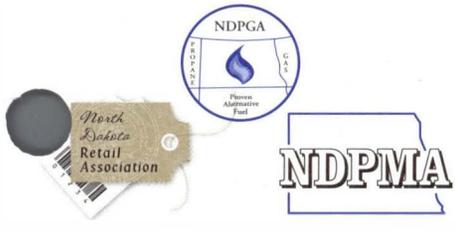
### Industry Type:

Ag = A  
 Commercial = C  
 Personal = P  
 Recreational = R  
 Other = O

### Vehicle Type:

Car = C  
 Bus = B  
 Pickup = P  
 Truck = T  
 Other = O

Location	Date	Vehicles Tested	Samples Taken	Confirmed Violations	Industry Type	Vehicle Type	Samples Mailed Date	Results Received Date	Sample Percent	Violation Percent
Killdeer	10/11/2011	213	2	2	C1 A1	P2	na		0.94%	0.94%
Grassy Butte	10/12/2011	342	6	5	C5	P3 T2	na		1.75%	1.46%
New Town	10/13/2011	359	12	12	A3 P5 C4	P11 T1	na		3.34%	3.34%
Williston	11/22/2011	375	5	4	A1 P1 C2	P3 T1	11/22/2011	12/7/2011	1.33%	1.07%
Berthold	5/8/2012	173	3	3	P2 C1	P3	6/7/2012	6/19/2012	1.73%	1.73%
Tioga	5/9/2012	127	4	3	P3	P3	6/7/2012	6/19/2012	3.15%	2.36%
Williston	5/10/2012	492	0	0			6/7/2012	6/19/2012	0.00%	0.00%
Devils Lake	5/16/2012	33	6	6	P3 A3	P6	6/7/2012	6/19/2012	18.18%	18.18%
Bismarck	5/17/2012	335	5	4	A4	P3 T1	6/7/2012	6/19/2012	1.49%	1.19%
Ellendale	6/13/2012	93	6	2	P2	P2	6/20/2012	7/30/2012	6.45%	2.15%
Watford City	7/26/2012	275	6	6	P1 C5	P6	7/30/2012	8/8/2012	2.18%	2.18%
Sykeston	10/10/2012	40	1	1	C1	P1	10/15/2012	10/25/2012	2.50%	2.50%
Carrington	10/10/2012	108	1	1	P1	P1	10/15/2012	10/25/2012	0.93%	0.93%
Grafton	10/11/2012	135	4	4	P1 A3	P1 T3	10/15/2012	10/25/2012	2.96%	2.96%
<b>Total</b>		<b>3100</b>	<b>61</b>	<b>53</b>					<b>1.97%</b>	<b>1.71%</b>



North Dakota Retail Association  
 ND Petroleum Marketers Association  
 North Dakota Propane Gas Association

# LEGISLATIVE BULLETIN

Testimony- SB 2294

January 30, 2013-Senate Ag Committee

Chairman Miller and Senate Ag Committee Members:

For the record, my name is Mike Rud. President of the North Dakota Petroleum Marketers Association. NDPMA and its 400 members urge a **DO PASS recommendation on SB 2294.**

NDPMA got seriously involved in this issue in late 2010. Our association office received several phone calls from marketers questioning what could be done to stop consumers from pulling the dyed diesel hose out of the service tank and simply sticking the nozzle into the vehicle they were filling at the pump. In fact, some customers at these stores who were filling their diesel vehicles with clear diesel were asking the same question.

We got together with the Tax Commissioner's Office and the ND State Highway Patrol and came up with a game plan to address the issue. The strategy developed was to step up enforcement through more compliance checks. I will let Mr. Schatz tell you about the success of that effort.

During this time, we also discussed beefing up the fines for violators. We believe the dollar amounts proposed in this bill are fair and should serve as a strong deterrent. I'm also sharing with you some of the decals we have available now and some possible options for dyed diesel decal warnings.

Again, NDPMA would ask for a **DO PASS recommendation on SB 2294** and will work with the Tax Commissioner's Office to get the decals in place on dyed diesel pumps.

Thank you for your time and consideration.

**Motor Fuels Compliance Checks to be Conducted**



The Office of State Tax Commissioner, North Dakota Highway Patrol, and the Department of Transportation today announced plans for their agencies to conduct joint dyed diesel fuel compliance checks throughout the state this summer.

“The purpose of the compliance effort is to make sure that drivers using North Dakota’s roads are paying the appropriate taxes,” said Tax Commissioner Cory Fong. “Some drivers are filling their diesel vehicle’s tank with fuel that has not been taxed at the full rate and that isn’t fair to those who have followed the law and paid the correct tax.”

Clear (undyed) diesel fuel is to be used in licensed roadway vehicles and is taxed at 23 cents per gallon. Dyed diesel fuel is to be used primarily for off road purposes such as industrial, construction and agricultural purposes, and is taxed at a reduced 4-cents per gallon. The cooperative effort of the Department of Transportation, the Highway Patrol, and Tax Department will enable the state to stop and test the tanks of diesel vehicles traveling on state, county or local roadways. Individuals found driving vehicles on roadways with dyed fuel in their tanks will be assessed fines. The fines range from a first violation fine of \$250 up to \$5,000 for subsequent violations. Any attempt to prevent, stop, or delay an inspection is subject to a civil penalty of \$1,000.

“These fuel tax dollars go directly toward funding our state, county, city, and township roads,” said Grant Levi, Deputy Director of Engineering for the Department of

Transportation. “The more vehicles driving the streets and highways without having paid the correct fuel tax means less money to help build and repair our state’s roads.”

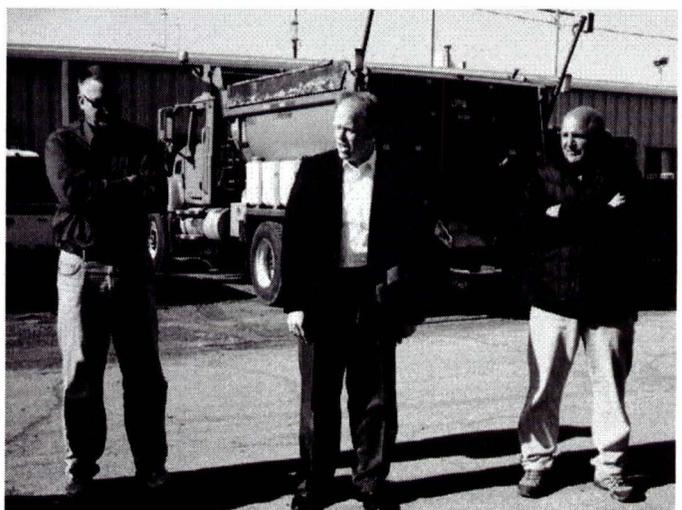
The Highway Tax Distribution Fund receives the fuel tax paid on gasoline and diesel fuel. Those funds are then distributed 61.3 percent to the state, 34.5 percent to the counties and cities, 2.7 percent to townships, and 1.5% allocated to public transportation.

“It is important to ensure that there are adequate funds to help keep our state and local roadways safe for drivers,” said Sergeant Brian Bonness of the Highway Patrol. “The safety of our citizens is important to us.”

The Minnesota Department of Revenue is assisting with this effort by performing training seminars with the Office of State Tax Commissioner and Highway Patrol. The seminars will cover the process of dipping diesel fuel tanks, obtaining samples, and testing those samples for traces of dyed fuel.

“Making sure that consumers are following the law is important to petroleum marketers, too,” said Mike Rud, President of the North Dakota Petroleum Marketers Association. “We look forward to working with the state to ensure our state fuel tax laws are being enforced.”

For more information, contact the Department of Transportation at 701-328-2500; State Highway Patrol at 701-328-2455; or the Tax Commissioner’s office at 701-328-3657.



# Pump Decal Order Form

1

EPA →

**ULTRA LOW SULFUR  
HIGHWAY DIESEL FUEL  
(15 ppm Sulfur Maximum)**

*Required for use in all highway diesel vehicles and engines.  
Recommended for use in all diesel vehicles and engines*

Affix to dispenser any time between June 1, 2010 & December 1, 2010.  
Must be affixed to dispenser no later than December 1, 2010.

2

EPA →

**ULTRA LOW SULFUR  
NON HIGHWAY DIESEL FUEL  
(15 ppm Sulfur Maximum)**

*Required for use in all model year 2011 and later non-road diesel engines.  
Recommended for use in all other non-highway diesel engines.*

**WARNING**  
Federal Law prohibits use in highway vehicles or engines.

Affix the following label to all 15-ppm non-highway ULSD dispensers by October 1, 2010.  
Use this label only if the sulfur content of the product in the tank is 15-ppm or less.

4

IRS →

This product is  
**UNDYED DIESEL FUEL**  
On Highway Use Only  
Legal for Motor Vehicle Use

5

IRS →

This product is  
**DYED DIESEL FUEL**  
Non-Taxable use only  
Penalty for taxable use  
Off Highway not legal for  
Motor vehicle use

6

IRS →

**Dyed Kerosene**  
Nontaxable use only  
Penalty for Taxable Use

7

IRS →

**Undyed Untaxed Kerosene**  
Non Taxable Use Only

Blocked pump

3

**! WARNING**

Under North Dakota Law, you must pay for your gas or you could:

- Be Fined \$1,000!
- Spend 30 Days in Jail!

-or-

- Lose your Driver's License!

This message brought to you by:  
ND Petroleum Marketers Association



8

**! WARNING**

<p align="center"><b>GENERAL</b></p> <ul style="list-style-type: none"> <li>• No Smoking</li> <li>• Stop Engine</li> <li>• Extremely flammable vapors may explode</li> <li>• Harmful or fatal if swallowed</li> <li>• Long term exposure to vapors has caused cancer in laboratory animals</li> <li>• Keep face, eyes and skin away from nozzle while refueling</li> <li>• Never siphon by mouth</li> <li>• For use as a motor fuel only</li> </ul>	<p align="center"><b>SELF SERVE</b></p> <ul style="list-style-type: none"> <li>• Don't overfill or "top-off" tank</li> <li>• Persons using dispensers with hold open latches must remain at the fueling point (outside and next to the vehicle) during refueling</li> <li>• Never jam open the hold open latch</li> </ul>
<p align="center"><b>PORTABLE CONTAINERS</b></p> <ul style="list-style-type: none"> <li>• Warning - it is unlawful and dangerous to dispense motor fuels into unapproved containers</li> <li>• Place container on the ground before filling. Do not fill a container that is in a vehicle or in a motorcraft</li> <li>• Keep the nozzle in contact with the portable container while filling</li> </ul>	<p align="center"><b>STATIC &amp; ELECTRIC SPARKS</b></p> <ul style="list-style-type: none"> <li>• Static and electrical sparks may cause vapors to explode</li> <li>• Do not get back in your vehicle while refueling. Re-entry could cause static electricity spark</li> <li>• Discharge potential static buildup by touching car metal away from the fueling point with your bare hand before touching the fueling nozzle</li> <li>• Turn off cellular phone and other electronic devices while refueling. Devices should be left in vehicle.</li> </ul>

Please fill in order quantity below:

- \_\_\_\_\_ #1 15 ppm Highway \$2.10
- \_\_\_\_\_ #2 15 ppm Non-Highway \$2.10
- \_\_\_\_\_ #3 Drive off Decal \$3.00
- \_\_\_\_\_ #4 Undyed Diesel Fuel \$2.10
- \_\_\_\_\_ #5 Dyed Diesel Fuel \$2.10
- \_\_\_\_\_ #6 Dyed Kerosene \$2.10
- \_\_\_\_\_ #7 Undyed Untaxed Kerosene \$2.10
- \_\_\_\_\_ #8 General Warning Decal \$4.25

Company \_\_\_\_\_

Address \_\_\_\_\_

City/ST/Zip \_\_\_\_\_

Return to:

**NDPMA**  
**PO Box 1956**  
**Bismarck, ND 58502**  
**or fax 701 223 5004**



Send no payment - invoice will be mailed with decals plus shipping

**This product is  
UNDYED DIESEL FUEL  
On Highway Use Only  
Legal For Motor Vehicle Use**

**This product is  
DYED DIESEL FUEL  
NON-TAXABLE USE ONLY  
PENALTY FOR TAXABLE USE  
NOT LEGAL FOR  
MOTOR VEHICLE USE**

**ULTRA-LOW SULFUR  
HIGHWAY DIESEL FUEL  
(15-ppm Sulfur Maximum)**

*Required for use in all highway diesel vehicles and engines.*

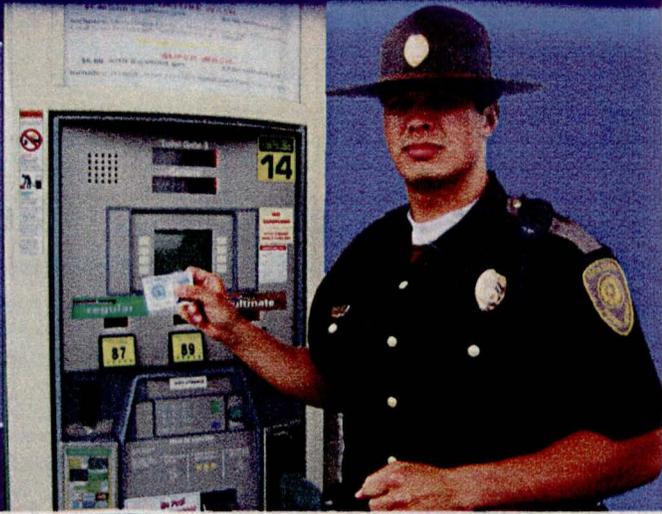
*Recommended for use in all diesel vehicles and engines.*

# WARNING

Under North Dakota Law, you must pay for your gas or you could:

- Be Fined \$1,000!
  - Spend 30 days in Jail!
- or -
- Lose your Driver's License!

*This Message brought to you by:  
ND Petroleum Marketers Association*



## North Dakota Diesel Fuel Use

Fiscal Year	Clear Diesel Gallons	Dyed Diesel Gallons	Clear Diesel Gallon Increase	Dyed Diesel Gallon Increase
2008	207,505,950	192,100,846		
2009	210,009,603	191,976,066	2,503,653	(124,780)
2010	225,277,996	208,233,444	15,268,393	16,257,378
2011	278,569,396	283,943,398	53,291,400	75,709,954
2012	376,667,456	367,033,001	98,098,060	83,089,603
<b>Increase 2008 - 2012</b>	<b>82%</b>	<b>91%</b>		

## Dyed Fuel Sampling Statistics

### Industry Type:

Ag = A  
 Commercial = C  
 Personal = P  
 Recreational = R  
 Other = O

### Vehicle Type:

Car = C  
 Bus = B  
 Pickup = P  
 Truck = T  
 Other = O

Location	Date	Vehicles Tested	Samples Taken	Confirmed Violations	Industry Type	Vehicle Type	Samples Mailed Date	Results Received Date	Sample Percent	Violation Percent
Killdeer	10/11/2011	213	2	2	C1 A1	P2	na		0.94%	0.94%
Grassy Butte	10/12/2011	342	6	5	C5	P3 T2	na		1.75%	1.46%
New Town	10/13/2011	359	12	12	A3 P5 C4	P11 T1	na		3.34%	3.34%
Williston	11/22/2011	375	5	4	A1 P1 C2	P3 T1	11/22/2011	12/7/2011	1.33%	1.07%
Berthold	5/8/2012	173	3	3	P2 C1	P3	6/7/2012	6/19/2012	1.73%	1.73%
Tioga	5/9/2012	127	4	3	P3	P3	6/7/2012	6/19/2012	3.15%	2.36%
Williston	5/10/2012	492	0	0			6/7/2012	6/19/2012	0.00%	0.00%
Devils Lake	5/16/2012	33	6	6	P3 A3	P6	6/7/2012	6/19/2012	18.18%	18.18%
Bismarck	5/17/2012	335	5	4	A4	P3 T1	6/7/2012	6/19/2012	1.49%	1.19%
Ellendale	6/13/2012	93	6	2	P2	P2	6/20/2012	7/30/2012	6.45%	2.15%
Watford City	7/26/2012	275	6	6	P1 C5	P6	7/30/2012	8/8/2012	2.18%	2.18%
Sykeston	10/10/2012	40	1	1	C1	P1	10/15/2012	10/25/2012	2.50%	2.50%
Carrington	10/10/2012	108	1	1	P1	P1	10/15/2012	10/25/2012	0.93%	0.93%
Grafton	10/11/2012	135	4	4	P1 A3	P1 T3	10/15/2012	10/25/2012	2.96%	2.96%
<b>Total</b>		<b>3100</b>	<b>61</b>	<b>53</b>					<b>1.97%</b>	<b>1.71%</b>

### North Dakota Diesel Fuel Use

Fiscal Year	Clear Diesel Gallons	Dyed Diesel Gallons	Clear Diesel Gallon Increase	Dyed Diesel Gallon Increase
2008	207,505,950	192,100,846		
2009	210,009,603	191,976,066	2,503,653	(124,780)
2010	225,277,996	208,233,444	15,268,393	16,257,378
2011	278,569,396	283,943,398	53,291,400	75,709,954
2012	376,667,456	367,033,001	98,098,060	83,089,603
<b>Increase 2008 - 2012</b>	<b>82%</b>	<b>91%</b>		

#1  
 3/8/13  
 Tax Dept.

## Dyed Fuel Sampling Statistics

### Industry Type:

Ag = A  
 Commercial = C  
 Personal = P  
 Recreational = R  
 Other = O

### Vehicle Type:

Car = C  
 Bus = B  
 Pickup = P  
 Truck = T  
 Other = O

Location	Date	Vehicles Tested	Samples Taken	Confirmed Violations	Industry Type	Vehicle Type	Samples Mailed Date	Results Received Date	Sample Percent	Violation Percent
Killdeer	10/11/2011	213	2	2	C1 A1	P2	na		0.94%	0.94%
Grassy Butte	10/12/2011	342	6	5	C5	P3 T2	na		1.75%	1.46%
New Town	10/13/2011	359	12	12	A3 P5 C4	P11 T1	na		3.34%	3.34%
Williston	11/22/2011	375	5	4	A1 P1 C2	P3 T1	11/22/2011	12/7/2011	1.33%	1.07%
Berthold	5/8/2012	173	3	3	P2 C1	P3	6/7/2012	6/19/2012	1.73%	1.73%
Tioga	5/9/2012	127	4	3	P3	P3	6/7/2012	6/19/2012	3.15%	2.36%
Williston	5/10/2012	492	0	0			6/7/2012	6/19/2012	0.00%	0.00%
Devils Lake	5/16/2012	33	6	6	P3 A3	P6	6/7/2012	6/19/2012	18.18%	18.18%
Bismarck	5/17/2012	335	5	4	A4	P3 T1	6/7/2012	6/19/2012	1.49%	1.19%
Ellendale	6/13/2012	93	6	2	P2	P2	6/20/2012	7/30/2012	6.45%	2.15%
Watford City	7/26/2012	275	6	6	P1 C5	P6	7/30/2012	8/8/2012	2.18%	2.18%
Sykeston	10/10/2012	40	1	1	C1	P1	10/15/2012	10/25/2012	2.50%	2.50%
Carrington	10/10/2012	108	1	1	P1	P1	10/15/2012	10/25/2012	0.93%	0.93%
Grafton	10/11/2012	135	4	4	P1 A3	P1 T3	10/15/2012	10/25/2012	2.96%	2.96%
<b>Total</b>		<b>3100</b>	<b>61</b>	<b>53</b>					<b>1.97%</b>	<b>1.71%</b>

## **Dyed Fuel Penalties - Other Jurisdictions**

### **Minnesota:**

The penalty for illegal use of dyed fuel is \$10 per gallon or \$1,000, whichever is greater. The penalty is doubled for each offense. A person may be criminally prosecuted for multiple offenses. Any person who refuses to allow an inspection is subject to a \$1,000 penalty.

### **South Dakota:**

The penalty for use of dyed fuel in vehicles such as a semi-truck or other similar large truck is \$500 for a first violation and a \$1,000 for each subsequent violation. The penalty for use of dyed fuel in a vehicle such as a car or pickup truck is \$250 for a first violation and a \$500 for each subsequent violation. The first violation of the dyed fuel law is a Class 2 misdemeanor; any subsequent violation is a Class 6 felony. Any person who refuses to allow an inspection is guilty of a Class 2 misdemeanor.

### **Montana:**

The penalty for a first offense for using dyed fuel on public roads is up to a \$1,000 Civil Penalty. The penalty for a second offense for using dyed fuel on public roads is up to a \$5,000 Civil Penalty. A third or subsequent offense is subject to a Criminal Penalty with a minimum fine of \$535 to a maximum of \$1,000 or imprisonment for not less than 30 days or more than 6 months, or both.

### **Internal Revenue Service:**

The Federal penalty for using dyed fuel on a public road is \$10 per gallon or \$1,000, whichever is greater, times the number of violations. Any person who refuses to allow an inspection will be fined \$1,000 for each refusal, in addition to any other penalty or tax that may be imposed.



North Dakota Retail Association  
 ND Petroleum Marketers Association  
 North Dakota Propane Gas Association

# LEGISLATIVE BULLETIN

## Testimony- SB 2294

March 8, 2013-House Ag Committee

Chairman Johnson and House Ag Committee Members:

For the record, my name is Mike Rud. President of the North Dakota Petroleum Marketers Association. NDPMA and its 400 members urge a **DO PASS recommendation on SB 2294.**

NDPMA got seriously involved in this issue in late 2010. Our association office received several phone calls from marketers questioning what could be done to stop consumers from pulling the dyed diesel hose out of the service tank and simply sticking the nozzle into the vehicle they were filling at the pump. In fact, some customers at these stores who were filling their diesel vehicles with clear diesel were asking the same question.

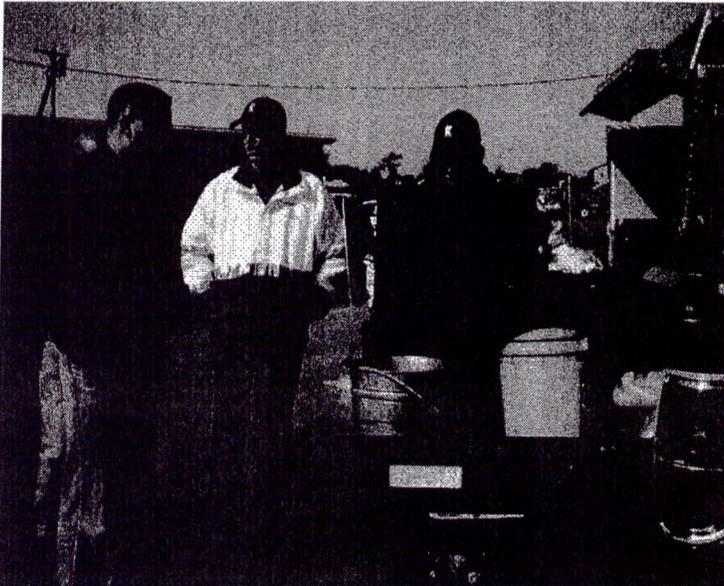
We got together with the Tax Commissioner's Office and the ND State Highway Patrol and came up with a game plan to address the issue. The strategy developed was to step up enforcement through more compliance checks.

During this time, we also discussed beefing up the fines for violators. We believe the dollar amounts proposed in this bill are fair and should serve as a strong deterrent.

Again, NDPMA would ask for a **DO PASS recommendation on SB 2294** and will work with the Tax Commissioner's Office to get the decals in place on dyed diesel pumps.

Thank you for your time and consideration.

### Motor Fuels Compliance Checks to be Conducted



The Office of State Tax Commissioner, North Dakota Highway Patrol, and the Department of Transportation today announced plans for their agencies to conduct joint dyed diesel fuel compliance checks throughout the state this summer.

“The purpose of the compliance effort is to make sure that drivers using North Dakota’s roads are paying the appropriate taxes,” said Tax Commissioner Cory Fong. “Some drivers are filling their diesel vehicle’s tank with fuel that has not been taxed at the full rate and that isn’t fair to those who have followed the law and paid the correct tax.”

Clear (undyed) diesel fuel is to be used in licensed roadway vehicles and is taxed at 23 cents per gallon. Dyed diesel fuel is to be used primarily for off road purposes such as industrial, construction and agricultural purposes, and is taxed at a reduced 4-cents per gallon. The cooperative effort of the Department of Transportation, the Highway Patrol, and Tax Department will enable the state to stop and test the tanks of diesel vehicles traveling on state, county or local roadways. Individuals found driving vehicles on roadways with dyed fuel in their tanks will be assessed fines. The fines range from a first violation fine of \$250 up to \$5,000 for subsequent violations. Any attempt to prevent, stop, or delay an inspection is subject to a civil penalty of \$1,000.

“These fuel tax dollars go directly toward funding our state, county, city, and township roads,” said Grant Levi, Deputy Director of Engineering for the Department of

Transportation. “The more vehicles driving the streets and highways without having paid the correct fuel tax means less money to help build and repair our state’s roads.”

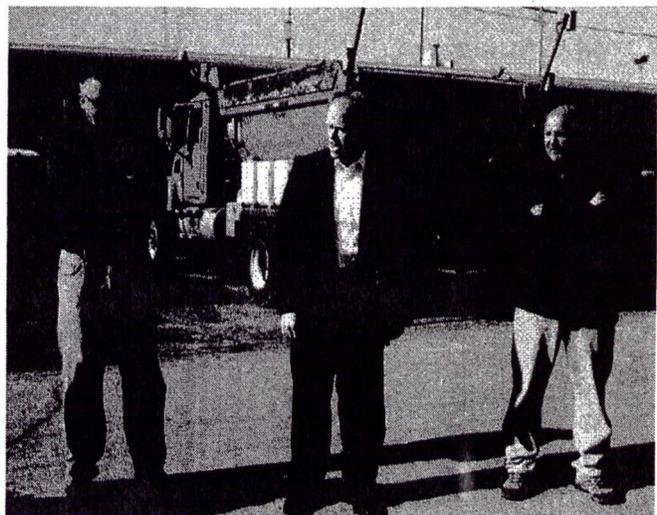
The Highway Tax Distribution Fund receives the fuel tax paid on gasoline and diesel fuel. Those funds are then distributed 61.3 percent to the state, 34.5 percent to the counties and cities, 2.7 percent to townships, and 1.5% allocated to public transportation.

“It is important to ensure that there are adequate funds to help keep our state and local roadways safe for drivers,” said Sergeant Brian Bonness of the Highway Patrol. “The safety of our citizens is important to us.”

The Minnesota Department of Revenue is assisting with this effort by performing training seminars with the Office of State Tax Commissioner and Highway Patrol. The seminars will cover the process of dipping diesel fuel tanks, obtaining samples, and testing those samples for traces of dyed fuel.

“Making sure that consumers are following the law is important to petroleum marketers, too,” said Mike Rud, President of the North Dakota Petroleum Marketers Association. “We look forward to working with the state to ensure our state fuel tax laws are being enforced.”

For more information, contact the Department of Transportation at 701-328-2500; State Highway Patrol at 701-328-2455; or the Tax Commissioner’s office at 701-328-3657.



# Pump Decal Order Form

1

**ULTRA LOW SULFUR  
HIGHWAY DIESEL FUEL  
(15 ppm Sulfur Maximum)**

EPA →

Required for use in all highway diesel vehicles and engines.  
Recommended for use in all diesel vehicles and engines

Affix to dispenser any time between June 1, 2010 & December 1, 2010.  
Must be affixed to dispenser no later than December 1, 2010.

2

**ULTRA LOW SULFUR  
NON HIGHWAY DIESEL FUEL  
(15 ppm Sulfur Maximum)**

EPA →

Required for use in all model year 2011 and later non-road diesel engines.  
Recommended for use in all other non-highway diesel engines.

**WARNING**  
Federal Law prohibits use in highway vehicles or engines.

Affix the following label to all 15-ppm non-highway ULSD dispensers by October 1, 2010.  
Use this label only if the sulfur content of the product in the tank is 15-ppm or less.

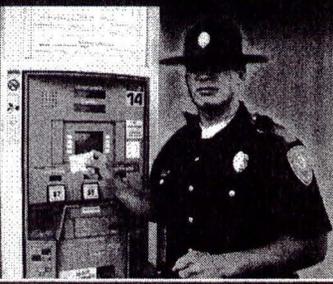
3

**! WARNING**

Under North Dakota Law, you must pay for your gas or you could:

- Be Fined \$1,000!
- Spend 30 Days in Jail!
- or-
- Lose your Driver's License!

This message brought to you by  
NDP Truckers Association



4

IRS →

This product is  
**UNDYED DIESEL FUEL**  
On Highway Use Only  
Legal for Motor Vehicle Use

5

IRS →

This product is  
**DYED DIESEL FUEL**  
Non-Taxable use only  
Penalty for taxable use  
Off Highway not legal for  
Motor vehicle use

6

IRS →

**Dyed Kerosene**  
Nontaxable use only  
Penalty for Taxable Use

7

IRS →

**Undyed Untaxed Kerosene**  
Non Taxable Use Only

Blocked pump

8

**! WARNING**

<p><b>GENERAL</b></p> <ul style="list-style-type: none"> <li>• No Smoking</li> <li>• Stop Engine</li> <li>• Extremely flammable, vapors may explode</li> <li>• Harmful or fatal if swallowed</li> <li>• Long term exposure to vapors has caused cancer in laboratory animals</li> <li>• Keep face, eyes and skin away from nozzle while refueling</li> <li>• Never sip/bite by mouth</li> <li>• For use as a motor fuel only</li> </ul>	<p><b>SELF SERVE</b></p> <ul style="list-style-type: none"> <li>• Don't overfill or "top-off" tank</li> <li>• Persons using dispensers with "load open" latch must remain at the fueling point (outside and next to the vehicle) during refueling</li> <li>• Never jam open the "load open" latch</li> </ul>
<p><b>PORTABLE CONTAINERS</b></p> <ul style="list-style-type: none"> <li>• Warning - It is unlawful and dangerous to dispense motor fuels into unapproved containers</li> <li>• Place container on the ground before filling. Do not fill containers that sit in a vehicle or in a marine craft</li> <li>• Keep the nozzle in contact with the portable container while filling</li> </ul>	<ul style="list-style-type: none"> <li>• Static and electrical sparks may cause vapors to explode</li> <li>• Do not get back in your vehicle while refueling. Re-entry could cause static electricity spark</li> <li>• Do not charge portable static buildup by touching car metal away from the fueling point with your bare hand before touching the fueling nozzle</li> <li>• Turn off cellular phone and other electronic devices while refueling. Devices should be left in vehicle.</li> </ul>

Please fill in order quantity below:

- \_\_\_\_\_ #1 15 ppm Highway \$2.10
- \_\_\_\_\_ #2 15 ppm Non-Highway \$2.10
- \_\_\_\_\_ #3 Drive off Decal \$3.00
- \_\_\_\_\_ #4 Undyed Diesel Fuel \$2.10
- \_\_\_\_\_ #5 Dyed Diesel Fuel \$2.10
- \_\_\_\_\_ #6 Dyed Kerosene \$2.10
- \_\_\_\_\_ #7 Undyed Untaxed Kerosene \$2.10
- \_\_\_\_\_ #8 General Warning Decal \$4.25

Company \_\_\_\_\_

Address \_\_\_\_\_

City/ST/Zip \_\_\_\_\_

Return to:

**NDPMA**  
**PO Box 1956**  
**Bismarck, ND 58502**  
**or fax 701 223 5004**



Send no payment - invoice will be mailed with decals plus shipping

SB 2294

#1

3/22/13

Schatz, Kevin R.

**From:** -Info-TAX Motor Fuel Tax  
**Int:** Thursday, January 24, 2013 11:11 AM  
**To:** Schatz, Kevin R.  
**Subject:** FW: McKenzie County Sheriff's Office

---

**From:** Gary Schwartzberger [mailto:GSchwartzberger@co.mckenzie.nd.us]  
**Sent:** Thursday, January 24, 2013 11:09 AM  
**To:** -Info-TAX Motor Fuel Tax  
**Subject:** McKenzie County Sheriff's Office

To Whom it May Concern:

By way of introduction; I am the lead investigator for our Sheriff's office and am inquiring on whether you could assist us in cleaning up the amount of truckers and diesel pickups using red-dyed diesel fuel on the roadways. Our department has been getting several tips that truckers are pulling up to fuel stations and filling up with off-road fuel because it is a few cents cheaper. I contacted the NDHP and was told that they turn it over to the tax department inspectors and your department just sends out fines. Is this correct, or are there other ways to enforce them to use the taxed fuel as they should? We, here in oilfield country are feeling the devastation of these trucks on our roads and if they are creating the damage and not paying the appropriate tax that ultimately should go back into the road repairs, shouldn't they then be held accountable? Please advise at your soonest. Thank you.

Deputy Gary Schwartzberger  
McKenzie County Sheriffs Department  
201 5th St NW  
PO Box 591  
Watford City ND 58854  
Office: 701-444-3654  
Fax: 701-444-2105

W

## Schatz, Kevin R.

---

**From:** Gary Schwartzberger [GSchwartzberger@co.mckenzie.nd.us]  
**Int:** Thursday, January 24, 2013 11:37 AM  
Schatz, Kevin R.  
**Subject:** McKenzie County Dyed Fuel Info

Kevin,

Great talking with you about the "Red-dye Enforcement Team" you have put together. Per our conversation; as of right now, the NDHP is the only agency that is authorized to assist your department in enforcing red-dye diesel fuel checks in North Dakota. I appreciate your efforts in the legislature about possibly changing the laws to allow other agencies to assist in this matter, since this directly effects our roadways. I will be in contact with you on any issues that come up here, such as; retailers selling red-fuel to over the road trucks and diesel pickups, as well as possibly getting some of our personnel trained in recognizing this type of fuel. Again, thanks for your time and information. Take care.

V/R,

Deputy Gary Schwartzberger  
McKenzie County Sheriffs Department  
201 5th St NW  
PO Box 591  
Watford City ND 58854  
Office: 701-444-3654  
Fax: 701-444-2105



# North Dakota Highway Patrol



Colonel James J. Prochniak, Superintendent  
State Capitol, 600 E Boulevard Ave. Dept. 504  
Bismarck, ND 58505-0240  
Telephone: 701-328-2455

Jack Dalrymple  
Governor  
State of North Dakota

March 22, 2013

Honorable Dennis Johnson  
Chairman  
House Agriculture Committee  
State Capitol  
Bismarck, ND 58505

Dear Representative Johnson:

In response to Representative Fehr's inquiry and as a follow-up to the email message sent to the Agriculture Committee members, the below information gathered from Kevin Schatz with the Tax Department, sheds light on how some of our neighboring states conduct the business of collecting dyed fuel. I'm afraid in my brief inquiry I did not come up with a new or streamlined method that would be less complicated. I hope you find the information useful.

There are 35 states that currently have a dyed fuel enforcement program. Most states collect motor fuel taxes through their revenue departments but some also collect them through their transportation departments. Based on information we have gotten at national motor fuel conventions, the revenue and transportation departments are trained to conduct fuel inspections with the assistance of law enforcement agencies who often have been trained as well.

MN Department of Revenue has staff that conducts dyed fuel compliance with the assistance of HP and motor carriers for traffic control and safety; officers are also trained to conduct fuel inspections. SD Department of Revenue has staff that conducts dyed fuel compliance with the assistance of any law enforcement officer for traffic control and safety; officers are also trained to conduct a fuel inspection if they have probable cause. MT Department of Transportation has staff that conducts dyed fuel compliance with the assistance of HP and motor carriers for traffic control and safety; officers are also trained to conduct fuel inspections.

The surrounding states basically conduct their inspections the same way we have been doing.

If I can be of any further assistance, please let me know.

Sincerely,

JAMES J. PROCHNIAK  
Colonel, NDHP  
Superintendent

jjp/gs

PROPOSED AMENDMENTS TO SENATE BILL 2294

# 2  
3/28/13

Page 2, line 5, remove ", and the assistance of,"

Page 2, line 14, remove overstrike on "~~by the highway patrol~~"

Page 2, line 16, remove overstrike on "~~The highway patrol may issue a citation covering any violation of this section, and the~~"

Page 2, line 17, remove overstrike on "~~citation~~"

Page 2, line 17, remove "notice of violation of this section"

Page 2, line 19, remove overstrike on "~~citation~~"

Page 2, line 19, remove "notice of violation of this section"