

2011 SENATE TRANSPORTATION

SB 2197

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee  
Lewis and Clark Room, State Capitol

SB 2197  
January 20, 2011  
13145

☐ Conference Committee

Committee Clerk Signature

*Hauge*

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

**Minutes:**

One attached testimony

**Senator G. Lee** opened the hearing on SB 2197 relating to licensing requirements for the special fuels tax; and to provide an effective date.

**Kevin Schatz**, State Tax Commissioner office testified in regard to SB 2197.  
Written testimony #1

**Senator Mathern** asked if dyed fuel was used in both non motor vehicles and motor vehicles off road.

**Mr. Schatz** said dyed fuel has to be used in off road vehicles but it is available at some retail locations. He stated that it can be available in a blender pump where there are multiple options to purchase.

**Senator Mathern** asked if that fuel used in a blender pump comes out visually dyed.

**Mr. Schatz** said that the fuel is dyed at the terminal. It is put in a separate tank and if they wanted to blend it with biodiesel they would just blend the biodiesel with the already dyed diesel.

**Senator Oehlke** said he recalled from a previous session that some semi-trucks have two tanks, one for driving down the road and one for the heating and cooling of whatever they are hauling. He asked if that fuel was a separate kind of fuel. He asked if that was the 4 cent tax on that.

**Mr. Schatz** said that was passed in the last session and it was referred to as the refrigeration bill and it allowed for a refund.

**Senator Sitte** wanted to clarify if she was correct in saying that dyed diesel is primarily off road therefore, it is farming and construction and drilling an oil well.

**Mr. Schatz** said that is correct. Dyed fuel is dyed for federal tax purposes and specifically for off road vehicles and can't be used for motor vehicle on the road. As long as it is off road equipment like tractors, construction equipment, rigs that have a motor that is not connected to a semi are all allowed to use dyed diesel.

**Senator Sitte** said she was asked why on water drill rigs they can't use dyed diesel.

**Mr. Schatz** clarified that if the drilling rig operates off the engine of the truck and pulls out of the fuel tank of the truck they cannot use dyed fuel. If it has a standalone engine with a separate tank then they are allowed to use dyed fuel.

**Mr. Rud**, President of the North Dakota Petroleum Marketers testified in support of 2197.

No opposing testimony.

**Senator Mathern** wondered why no sponsors showed up and what the motivation was to bring this bill before the committee.

**Mr. Schatz** answered that the request came from the Tax Department and they asked for sponsorship. One of the main reasons was to eliminate the reporting requirements and bonding requirements which were a cost to the retailers. He said that it will eliminate a lot of work on the part of the Tax Department and saves the retailers license fees and cost of bonding or letters of credit from their banking institutions.

**Senator Lee** asked if there should be a fiscal note if there is a savings of some kind.

**Mr. Schatz** said that the money being saved is actually being saved by the retailers.

**Senator Lee** summarized his understand that no one is being taxed additionally or less, it is just an efficiency process that they are trying to put into place.

**Mr. Schatz** concurred.

**Senator Lee** closed the hearing on SB 2197.

**Senator Mathern** moved a **Do Pass** on SB 2197.

**Senator Sitte** seconded the motion.

Roll call vote 5-0-1. **Motion passed.**

Carrier is **Senator Mathern**.

Date: 1-20-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2197

Senate Transportation 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 Mathern Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator Tim Mathern	✓	
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething					
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Mathern

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

**REPORT OF STANDING COMMITTEE**

**SB 2197: Transportation Committee (Sen. G. Lee, Chairman)** recommends **DO PASS**  
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2197 was placed on the  
Eleventh order on the calendar.

**2011 HOUSE TRANSPORTATION**

**SB 2197**

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Transportation Committee Fort Totten Room, State Capitol

SB 2197  
03/10/11  
Job # 15279

☐ Conference Committee

Committee Clerk Signature

*Jeanette Cook*

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

SB 2197 is a bill relating to licensing requirements for the special fuels tax; and to provide an effective date.

### Minutes:

Attachment #1

**Kevin Schatz**, Supervisor of Motor Fuels, Oil and Special Taxes with the Office of State Tax Commissioner, spoke to support SB 2197 and provided written testimony. See attachment #1.

**Chairman Ruby**: Is this mainly for dyed fuel or bio-fuel?

**Kevin Schatz**: It is for the dyed fuel.

**Chairman Ruby**: Is all biodiesel taxed at the \$0.23 rate?

**Kevin Schatz**: Biodiesel is taxed based on whether it is clear or dyed. If the biodiesel is mixed with a dyed product, the rate is \$0.04 per gallon. If it is mixed with a clear product, it is taxed at the same rate as the clear product.

**Chairman Ruby**: Are there any other cost differences as far as not having the special licensing?

**Kevin Schatz**: If they are required to be licensed, they have to pay the \$20.00 license fee in addition to a bond or letter of credit which costs the retailer as well. They also have to maintain the bond. This would be a change, and they would not have to do either one of those.

**Chairman Ruby**: Are there not that many retailers?

**Kevin Schatz**: All of the retailers that are dispensing dyed diesel at the 2% rate still have a license. They still carry a bond. If this bill is passed, we would take their license and suspend it. We would then return the letter of credit or the cash bond that they have provided and tell them that they can release their bonds that they have held for securities.

**Mike Rud**, President of North Dakota Petroleum Marketers, spoke to support SB 2197 and asked for a DO PASS.

There was no further support for SB 2197.

There was no opposition to SB 2197.

The hearing was closed on SB 2197.

**Representative R. Kelsch** moved a DO PASS on SB 2197.

**Representative Delmore** seconded the motion.

**A roll call vote was taken on SB 2197. Aye 12 Nay 0 Absent 2**

**Representative Weisz** will carry SB 2197.



Date: 3/10/11

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

## 2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2197House TRANSPORTATION Committee☐ Check here for Conference Committee

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

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By R. Kelsch Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby	X		Representative Delmore	X	
Vice Chairman Weiler	X		Representative Gruchalla	X	
Representative Frantsvog	X		Representative Hogan	X	
Representative Heller	X		Representative Onstad	X	
Representative R. Kelsch	X				
Representative Louser					
Representative Owens	X				
Representative Sukut	X				
Representative Vigasaa					
Representative Weisz	X				

Total (Yes) 12 No 0Absent 2Floor Assignment Weisz

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

**REPORT OF STANDING COMMITTEE**

**SB 2197: Transportation Committee (Rep. Ruby, Chairman)** recommends **DO PASS**  
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2197 was placed on the  
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2197

#1

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
SENATE TRANSPORTATION COMMITTEE**

**January 20, 2011**

Chairman Lee and members of the Senate Transportation Committee, I am Kevin Schatz, Supervisor of Motor Fuels, Oil and Special Taxes with the Office of State Tax Commissioner. I am here to testify with regard to SB 2197.

Century Code Chapter 57-43.2 relating to special fuels, which includes both clear and dyed diesel fuel, requires suppliers, distributors, and retailers to be licensed to sell this fuel to a customer. To be licensed these entities must submit an application with a \$20 license fee and provide a security such as a bond or letter of credit that would cover any unpaid tax liability.

Dyed diesel at one time was taxed at the rate of 2% of the value and the tax was determined at the time it was sold to a customer by the retailer. The tax rate was changed in a previous legislative session and dyed diesel is now taxed at the flat rate of \$.04 per gallon.

Licensed suppliers, distributors, and retailers are required to be licensed and submit monthly reports and pay the tax. Monthly reports allow for the tracking of fuel from the time of purchase from the terminal to the point the fuel is sold to a customer or used and becomes taxable. Because the tax is now a flat rate per gallon the tax can be determined at the time the retailer purchases the fuel from the distributor similar to purchases of motor vehicle fuel such as gasoline or gasohol. Tax on motor vehicle fuel is collected, reported, and the tax is paid by the distributor thus not requiring the retailer to be licensed. Motor vehicle retailers have no requirement to submit monthly reports and pay the tax.

SB 2197 would allow a retailer selling special fuel to conduct business in the same manner as they do for motor vehicle fuel by paying the tax to the distributor. The retailer would not have to maintain the security requirements and it would eliminate the reporting requirements. This bill would also provide the Tax Commissioner the discretion to determine on a case by case basis if it is necessary for a retailer to be licensed.

An example that would require a retailer to be licensed would be when a retailer dispenses dyed fuel at a blender pump when they were blending dyed fuel taxed at \$.04 per gallon with a clear biodiesel type fuel taxed at \$.23 per gallon. Because these fuels are taxed at a different rate at the time the fuel is sold to a customer the proper tax can't be determined at the time it is purchased from a distributor. The retailer would report and pay the tax based on the sale of the blended dyed fuel at the rate of \$.04 per gallon and report the adjustment of the clear fuel inventory he maintains at \$.23 per gallon on the monthly tax report.

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
HOUSE TRANSPORTATION COMMITTEE**

**March 10, 2011**

Chairman Ruby and members of the House Transportation Committee, my name is Kevin Schatz, Supervisor of Motor Fuels, Oil and Special Taxes with the Office of State Tax Commissioner. I am here to testify in support of SB 2197.

**Background:**

North Dakota Century Code Chapter 57-43.2 relating to special fuels, which includes both clear and dyed diesel fuel, requires suppliers, distributors, and retailers to be licensed to sell this fuel to a customer. To be licensed these entities must submit an application with a \$20 license fee and provide a security such as a bond or letter of credit that would cover any unpaid tax liability.

Dyed diesel at one time was taxed at the rate of 2% of the value and the tax was determined at the time it was sold to a customer by the retailer. The tax rate was changed to a flat rate of \$.04 per gallon for dyed diesel in the 2007 Legislative Session.

Licensed suppliers, distributors, and retailers are required to be licensed and submit monthly reports and pay the tax. Monthly reports allow for the tracking of fuel from the time of purchase from the terminal to the point the fuel is sold to a customer or used and becomes taxable. Because the tax is now a flat rate per gallon the tax can be determined at the time the retailer purchases the fuel from the distributor similar to purchases of motor vehicle fuel such as gasoline or gasohol. Tax on motor vehicle fuel is collected, reported, and the tax is paid by the distributor thus not requiring the retailer to be licensed. Motor vehicle retailers have no requirement to submit monthly reports and pay the tax.

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**Conclusion:**

The intent of this bill is to reduce the paperwork burden on special fuel retailers and the Tax Department. Except in specific situations, this bill would eliminate the requirement that a retailer of special fuel must apply for a special fuel license, pay the license fee, provide the appropriate security, and submit monthly motor fuel reports. This bill would provide consistency in the way retailers conduct business with regard to motor vehicle fuel and special fuel. The Tax Commissioner's Office recommends a do pass on SB2197.