MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

GREAT SEAL
STATE OF NORTH DAKOTA

ROLL NUMBER

DESCRIPTION

2298

2007 SENATE TRANSPORTATION

SB 2298

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2298**

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: # 1823

Committee Clerk Signature	Sharon Renfrow

Minutes:

Sen. Urlacher called the committee to order and opened the hearing on SB 2298.

Sen. Klein appeared as prime sponsor of the bill stating we need to address some issues that need tweaking such as sales tax, lower sales tax exemption and reduce kilowatts.

Cory Fong State Tax Commissioner appeared in support with written testimony. (See attached)

John Olson Ottertail Power Company appeared in support stating some concerns with tax credit to go to the first purchaser on a turn key operation. Also the statute relating to the definition of who can possibly take advantage of the tax credit which is limited to the installer. That wasn't intended to be that restricted.

Bob Graveline of the Utility Shareholders of ND appeared only to testify that they support the conditions specified by John Olson.

Gary Jacobson of the Great River Energy appeared in support for reasons presented by the Tax Commissioner and presented a handout. (See attached) Also stating that the coal conversion unit does qualify as a power plant.

Al Christianson of Great River Business Developer appeared to give information to the committee. The plant scheduled to be on stream first quarter of 2010, the ethanol plant will be about a year ahead of that with a time frame to build up about 18 months, permits should be issued sometime this Spring with construction on the ethanol plant June, July power plant later in the fall when the permit is issued. It's a 4 yr project.

Sen. Cook: where's the coal coming from?

Al: Coal Creek

Curtis Jabs: Basin Electric Power Cooperative appeared in support with written testimony. (See attached)

Sen. Cook: Do you support the whole bill or parts?

Curtis: we support the bill as a whole.

Sen. Triplett had concerns with this and SB 2141 and if they were close to the same?

Cory Fong: referred to Miles Vosberg but stated these two bills could be emerged if the committee was to consider it.

Miles Vosberg: Tax Dept. stated the new definition of a plant that is here is broader than the other bill and the size of the plant is also smaller and so I think the provisions of this bill would more than cover it. As far as the definition of the power plant that would be covered in this bill.

Sen. Urlacher: there's an estimated cost of 157 million over 2 biennium's, we should be able to get some idea of what this particular affect would be, would it not?

Miles: we can work with Great River Energy to see what's happening with that if you'd like.

Sen. Urlacher: we can do that

Sen. Cook: back to the fiscal note where you say a fiscal impact cannot be computed, probably more correct to say the total fiscal impact cannot be computed but we can guesstimate that at least this much of a fiscal impact.

Miles: certainly, but in its entirety we can't calculate but we could give you a piece of what we're currently aware of.

Curtis Jabs: commented that SB 2141 was a more narrowly focused bill just on recycled energy and it might be redundant because it seems that the ___ in this bill would cover that.

Dan Rouse: Tax Dept. stated that this bill and SB 2141 can be harmonized.

Hearing Closed.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2298**

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: # 2473

Committee Clerk Signature	Sharon Benson

Minutes:

Sen. Urlacher called the committee to order for discussion and action on SB 2298.

Miles Vosberg: Tax Dept. Appeared stating he received some information from Great River Energy regarding what they call the Spiritwood Energy plant and regarding their costs. Their equipment and material costs is approximately 122 million dollars so it would be a little over 6 million dollars would be the sales tax exemption impact on that particular plant. On that FN we had it was undetermined as to how much fiscal effect or impact would be there. We don't know what else is out there. On the discussion I had with Mark Faagen from Great River Energy today he indicated that 96% of that will be in the upcoming biennium.

Sen. Urlacher: so what is the true fiscal effect?

Miles: on 2298 on the one plant that we're aware of in Spiritwood it would be a little over 6 million dollars loss in sales tax revenues

Sen. Cook: are we going to get another FN?

Miles: we would rather not

Sen. CooK: you cannot project what's going to be lost?

Miles: we can redo this fiscal note with a statement of potential loss of 6 million that we are aware of at this point.

Sen. Urlacher: we can move forward and discuss with that information on whether you want to consider it.

Sen. Horne: this isn't the same bill that we were dealing with pipeline pumping, it's a broader bill.

Miles: that was part of the concern we had because we did include that in the FN for 2141, could potentially fall in here too.

Sen. Oehlke: if the bill passes you'd probably know for sure that your going to lose x number of dollars on one plant, but if it doesn't pass and other things don't get built because of that, you really don't know how much you might lose because you never had it in the first place and so is it a loss or not.

Miles: that's correct.

Sen. Urlacher and Sen. Tollefson: the plant will be built with or without the incentives.

Miles: we will amend this to include what we know at this time. It would be called a correction to the FN.

Sen. Tollefson: made a **Motion for DO PASS** seconded by Sen. Triplett.

Sen. Triplett: I think we could merged these 2 bills together.

Sen. Tollefson: they may be closely related but they are entirely 2 different types of projects.

Sen. Urlacher: What we're doing is giving a credit of 6 million dollars, the way it appeared to me is that plant is going to get built with or without this bill.

Sen. Triplett: it's an incentive to get more plants to come in.

Sen. Tollefson: the cost of the plant is reflected on the rates that they have to charge so somebody is going to pay for it.

Sen. Anderson: I just feel that ND needs to catch up and we need to offer incentives like this to catch up.

Roll Call Vote: 4-3-0

Sen. Oehlke: do plants get more concessions from local entities, counties, communities? Not sure

Sen. Tollefson will carry the bill.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2298**

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: # 2770

Committee Clerk Signature	Sharon Renfrow

Minutes:

Sen. Urlacher called the committee back to order for discussion on SB 2298 and handed out a new fiscal note.

Sen. Cook: If you read the FN it would tell us that we didn't even need to pass SB 2141.

Sen. Oehlke: Yes and I think that's because of the mega watt size of the plant that it was reduced to in here. Because that was the issue they had.

Sen. Urlacher: do we need to take further action?

Sen. Cook: we've already acted on the bill and I don't think we need to take any further action; they didn't put the 6.4 million up in the FN to have it in the narrative.

Sen. Oehlke: I think that reason is because you're not paying the tax your postponing, the way it is now, you'll still get it back its just that it's postponed until requirements ___ collected tax back.

Sen. Cook: that's correct, but the consistency wasn't here, then why was the $600,000 in the FN in 2141?

The committee decided to leave as is. Closed the discussion.

FISCAL NOTE
Requested by Legislative Council
02/27/2007

REVISION

Bill/Resolution No.: SB 2298

1A. **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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			($2,208,000)	($192,000)		
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **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 2298 authorizes the transfer of the income tax credit for geothermal, solar and wind energy devices to qualifying purchasers, redefines power plant capacity for the purposes of tax breaks, and changes the sales tax exemptions for certain power plant and ag processing facility construction.

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 allows, but does not require, the income tax credit for geothermal, solar and wind energy devices to be transferred to a purchaser if the sale occurs at the time the installation is complete and the device is fully operational. The amount of tax credits that may be transferred to purchasers, rather than being claimed by the original installer, is not known. This change accomodates the use of turn-key building contracts by the wind power generation industry.

Section 2 reduces the capacity requirement for a power plant to receive a sales tax exemption and creates a new category of power plants that qualify for a sales tax exemption. Currently, there are four plants that are under consideration that would qualify for this exemption. The fiscal impact of the sales tax exemption for these four plants is an estimated reduction in state general fund and state aid distribution fund revenues totaling $2.4 million for the 2007-09 biennium. (This amount is shown in the boxes, above.) Other qualifying plants may be constructed during the biennium, with an additional fiscal impact that cannot be determined.

Sections 3 and 4 deal with the sales tax exemption for power plants and agricultural commodity processing facilities. These provisions allow contractors to receive the sales tax exemption "up front" without requiring payment of tax by contractors, to be refunded to the plant owner at a later date as required in current law. This will benefit the contractors, the plant owners, and the Tax Department by reducing the administrative burden on each, and will result in no additional revenue loss to the state.

The full extent of the fiscal impact of the tax exemptions and tax credit provision of SB 2298 cannot be computed.

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.*

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
Phone Number:	328-3402	**Date Prepared:**	03/01/2007

FISCAL NOTE
Requested by Legislative Council
02/09/2007

REVISION

Bill/Resolution No.: SB 2298

1A. **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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **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 2298 authorizes the transfer of the income tax credit for geothermal, solar and wind energy devices to qualifying purchasers, redefines power plant capacity for the purposes of tax breaks, and changes the sales tax exemptions for certain power plant and ag processing facility construction.

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 allows the income tax credit for geothermal, solar and wind energy devices to be transferred to a purchaser if the sale is pending at the time of the installation. Section 2 reduces the capacity requirement for a power plant to receive a sales tax exemption. Sections 3 and 4 deal with the sales tax exemptions for agricultural processing facilities. It is not known if devices will be transferred, and how many qualifying power plants and ag processing facilities will be constucted so the entire fiscal impact cannot be computed.

This fiscal note has been revised to include the following:
Newly acquired information indicates, at a minimum, one plant under consideration will qualify for a sales tax exemption of approx. $1.8 million due to the provisions of this bill. (This plant also qualifies for a sales tax exemption of $4 million allowed under current law, which was erroneously referenced as part of this bill in a prior fiscal note). Additionally, three plants utilizing "waste heat" that were referenced in SB 2141 would also qualify for the sales tax exemption provided in this bill. The sales tax exemptions for these four plants will result in a reduction of state general fund and state aid distribution fund revenues of approx. $2.4 million. The full extent of the fiscal impact of the tax exemptions and tax credits provided in this bill are unknown.

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.*

   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
Phone Number:	328-3402	**Date Prepared:**	02/09/2007

FISCAL NOTE

Requested by Legislative Council
02/01/2007

REVISION

Bill/Resolution No.: SB 2298

1A. **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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **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 2298 authorizes the transfer of the income tax credit for geothermal, solar and wind energy devices to qualifying purchasers, redefines power plant capacity for the purposes of tax breaks, and changes the sales tax exemptions for certain power plant and ag processing facility construction.

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 allows the income tax credit for geothermal, solar and wind energy devices to be transferred to a purchaser if the sale is pending at the time of the installation. Section 2 reduces the capacity requirement for a power plant to receive a sales tax exemption. Sections 3 and 4 deal with the sales tax exemptions for agricultural processing facilities. It is not known if devices will be transferred, and how many qualifying power plants and ag processing facilities will be constucted so the entire fiscal impact cannot be computed.

This fiscal note has been revised to include the following:

Newly acquired information indicates, at a minimum, one plant under consideration will qualify for a sales tax exemption of approx. $5.8 million, and three additional plants utilizing "waste heat" that were referenced in SB 2141 would also qualify for the sales tax exemption provided in this bill. The sales tax exemption for these four plants will result in a reduction of state general fund and state aid distribution fund revenues of approx. $6.4 million. The full extent of the fiscal impact of the tax exemptions and tax credits provided in this bill are unknown.

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.*

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
Phone Number:	328-3402	**Date Prepared:**	02/03/2007

FISCAL NOTE

Requested by Legislative Council
01/17/2007

Bill/Resolution No.: SB 2298

1A. **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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **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 2298 authorizes the transfer of the income tax credit for geothermal, solar and wind energy devices to qualifying purchasers, redefines power plant capacity for the purposes of tax breaks, and changes the sales tax exemptions for certain power plant and ag processing facility construction.

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 allows the income tax credit for geothermal, solar and wind energy devices to be transferred to a purchaser if the sale is pending at the time of the installation. Section 2 reduces the capacity requirement for power plant to receive a sales tax exemption. Sections 3 and 4 deal with the sales tax exemptions for agricultural processing facilities. It is not known if devices will be tranferred, and how many qualifying power plants and ag processing will be constucted so the fiscal impact cannot be computed.

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.*

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
Phone Number:	328-3402	**Date Prepared:**	01/23/2007

Date: 1-31-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2298

Senate Finance & Tax Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Sen Tollefson Seconded By Sen Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher		✓	Sen. Anderson	✓	
Sen. Tollefson	✓		Sen. Horne	✓	
Sen. Cook		✓	Sen. Triplett	✓	
Sen. Oehlke		✓			

Total (Yes) 4 No 3

Absent 0

Floor Assignment Sen. Tollefson

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

REPORT OF STANDING COMMITTEE

SB 2298: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2298 was placed on the Eleventh order on the calendar.

2007 HOUSE FINANCE AND TAXATION

SB 2298

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2298A

House Finance & Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3803

Committee Clerk Signature DPenrose

Minutes:

Rep. Belter: Clerk read title of bill. We will open the hearing on SB 2298.

Sen. Jerry Klein: This bill is to tweak the current law, with the current changes and the work that we've done on a lot of the Ag commodity processing facilities, and electric generation facilities; they currently enjoy a sales tax exemption. This will provide that upfront rather than requiring them to apply for it at the end. The intent is to remove that upfront burden. It also will allow the owner of a geothermal, solar, or wind device to receive their income tax credit, which they are already granted by law, and then they can contract that with a third party to return accumulation share. It will also expand the sales and use tax exemption for electric generation plants to include smaller plants with electric generation capacity of at least 100 kilowatts and those plants producing those for electric resale. It's somewhat of a tweaking of the current laws.

Rep. Belter: Thank you. Further testimony in support.

Cory Fong, State Tax Commissioner: (see attached testimony #1).

Rep. Pinkerton: Can you give me a little more information about the past turn key relationship.

Cory Fong: Currently there is an income tax for geothermal, solar and wind devices, and that is allowed to be used by the owners. But there are some that would like to be able to use the income tax exemption but also have it billed through a third party for a turnkey operation, where they basically bring it up to performance testing and then turn it over to the owner. I know that there are some folks from industry that are here to explain that. This will essentially allow them to do that, because currently the exemption is only allowed for the owner, so we're just suggesting that we tweak the law so that those who want to work through a turnkey operation can still enjoy their income tax exemption.

Rep. Wrangham: You're testifying in support of the bill, I see your office also did the fiscal note on the bill, and there aren't any numbers on the top, but a quite lengthy explanation. I'm not sure that I follow some of it. Can you enlighten us a little bit on the fiscal note?

Cory Fong: I will attempt to do that. It's very difficult for us to put together a fiscal note on this bill, not understanding what the potential impact of future projects might be. What we did do, however, is look at a current project that is under construction to try and provide a snapshot of what the fiscal note would be. What we realized when we did that, however, is that particular project already is going to qualify for certain sales tax exemptions as a agricultural processing facility. Again, they are going to have to apply for it on the backside, which is what's inconvenient rather than having that on the front side. But we did remove that from the original fiscal note, so we're down to about $2.4 million dollars; but again, that's just based on the current project. We still don't know the future projects that might be in the works that would obviously have additional fiscal impact on the budget.

Rep. Drovdal: I guess you made the statement that the bill is common sense, but I think this fiscal note sure doesn't have any on it. When I look at it, and it says one plant will have approximately $1.8 million dollars and four other plants will have $2.4 million, that's a total of

$4.2 million dollars and why isn't the fiscal note reflecting at least the $4.2 million dollars plus, if you can already determine that.

Cory Fong: We don't know the future development in this area to be able to provide comprehensive fiscal note for the overall impact; however, trying to look at the existing project that we know, that we can take advantage of one portion of this bill, which is to allow the generation capacity to be lowered to 50 megawatts, we believe that the fiscal impact would be approximately $1.8 million dollars. Of course, there is also additional fiscal impact with some other of the components of the bill, which brings it up to $2.4 million dollars. Again, we have provided a snapshot of what this kind of fiscal impact would be for this kind of a project.

Rep. Froseth: This will not affect plants that are now committed to building or have been built or applied for this original tax credit, the new accelerated sales tax credit and the size of the plants, won't affect any in the process, right.

Cory Fong: The lowering of the threshold from 120 megawatts down to 50 would impact a project that is currently under construction, as I understand. Miles Vosberg would be able to explain that. But again, they would already also qualify for the sales tax exemption for the Ag. processing component of it, which is to the tune of approximately $4 million dollars? Of course, future projects would be impacted as well.

Rep. Pinkerton: The $4 million dollars tax credit that would apply to SB 2079, which is the bill we just heard.

Cory Fong: Currently there is a sales tax exemption in place for Ag processing facilities, that's what they are already able to take advantage of. SB 2079 there is no relationship to that particular bill.

Rep. Pinkerton: The bill that we heard about the Seed tax credit for agricultural processing plants for income tax credit, that same plant would be eligible for this, or would they have already received that credit.

Cory Fong: That would be a separate program, that's the income tax side that would be the Ag processing facility income tax credit. This is a sale tax exemption that we're talking about that an Ag processing facility would enjoy through the construction phase. So they are different programs. This bill just deals with sales tax as it relates to Ag. Processing facilities and electric generation.

Rep. Pinkerton: It would be eligible for a property tax reduction, a sales tax exemption, and then an income tax credit because of the agricultural processing, so it would be eligible for all three programs.

Cory Fong: That is correct.

Rep. Pinkerton: For this particular plant, I would assume it's this kind of plant that we're speaking of here.

Cory Fong: Correct.

Rep. Pinkerton: Is it possible for us to see these kinds of total numbers of plants getting tax credits, can we see an example.

Cory Fong: I know that members of the industry, from Spiritwood that are going to be testifying and perhaps they could shed some light on all the programs that they have used in the development of this project. I would invite Dee Wald from our staff to talk about the restraint that we would have in providing information on the overall numbers.

Rep. Froseth: On your explanation of #1, allows the owner of the device to use their income tax credit when contracting with a third party. Would that be the remainder of the credit they have allowable, like if someone sells or turns over to a third party halfway through a project, they use some of their income tax credits, and they have some credits left, this is the remainder of their credits, or how does that work.

Cory Fong: I am going to have Dee Wald address that question. She is in a better position to answer that.

Donnita Wald, Legal Counsel, ND Tax Department: Section 1 of this bill is attempting to fix a situation where, because of a number of reasons where electrical and utility companies contracts with someone else to build a device; build it up and then get it fully operational for Basin Electric. As soon as that process is complete, construction is complete, they turn it over, and they do a purchase. Basin is the one that contracted with them, but during the time of the construction, the construction company owned the facility. So what happened was, when we were approached with addressing who gets the income tax credit, the statute says that only the person who constructs or installs the project, gets the tax credit. So in that situation that I've just given, Basin, even though they contracted with them, it's their project, they didn't own it during the construction phase that they had. They had every intent to own it when it was done. This allows them to still get the income tax credit. You can get partial credit if it is transferred immediately upon completion.

Rep. Froseth: How can there be an income tax credit during construction period, there wouldn't be any.

Donnita Wald: But the contractor may have some income from other sources, he would be building this, he would incur expenses building this and say he does other kinds of constructions projects. So when the year is done, and he's adding it all up, he has some income and then he would have the tax credit.

Rep. Froseth: So this is income he's making off building the project, not going to come off the facility.

Donnita Wald: Any income, he can take a credit against any income he's made.

Rep. Weiler: Two questions, so in this particular scenario that you gave, income tax credit would be given to two different entities, or they would be given to the contractor and they would be given to Basin, is that correct.

Donnita Wald: Under this scenario, no I might not have been clear. Only Basin would get the credit, once the project is complete, that credit goes to Basin. The building contractor cannot take the credit.

Rep. Weiler: Is that under current law, or is that what would exist if we were to pass this.

Donnita Wald: If we were to pass this bill as is, that's what would happen. Currently, the contractor gets the credit, and that's not what the parties intended. Not what Basin intended as they were doing this.

Rep. Weiler: Were the contractors here to oppose this then on the Senate side.

Donnita Wald: No.

Rep. Weiler: Were they aware of it.

Donnita Wald: I don't know, I assume they have.

Rep. Weiler: Is it possible for us to get an updated fiscal note. I know it's kind of updated, but it's in the small print and I would like to see it where it normally is, about the true fiscal impact of this.

Donnita Wald: I'll have to defer to the Commissioner on that.

Rep. Belter: Dee, before you leave, just to get back to Rep. Froseth's question. The income credit can be taken on any income that the company has. It doesn't have to be taken on the income that is derived from this project.

Donnita Wald: That is correct. That's how all of our tax credits work.

Cory Fong: We will certainly work on providing a new fiscal note, if that's the wishes of the committee, as soon as we can, based on some of the new information that we have, we will also certainly work with the industry officials that are with us today, to come up with another fiscal note that perhaps projects a better picture.

Rep. Weiler: The future is one thing, but I would like to see these actual numbers up top, where they normally area, that would be my wish.

Rep. Belter: Thank you. Further testimony in support.

John Olson, Ottertail Power Company: Support, particularly section 1. Section 1, in our opinion, is kind of a housekeeping amendment. This past session, this income tax credit was allowed by the legislature and last session, in particular, a company like Ottertail which has a number of subsidiaries wasn't able to take advantage of a consolidated tax return so you amended the law to provide for a company like Ottertail to take advantage of a number of companies that don't have income to pass that income tax credit through. We thought we had this problem addressed. The point is that the contractor, who comes in and contracts with Ottertail to build this facility, and does a turnkey transfer to Ottertail, we found out that technically we didn't qualify under the Tax Department's interpretation, because it is only limited to the installer who built the facility before it was turned over. We think in this regard, that this amendment is critical to do what was always intended to be done, and that is for the purchaser of that wind tower facility during construction to take advantage of this income tax credit. I don't think there are any contractors out there who oppose this, this is all built into the contract for the purpose of installation of the facility. We would hope that you would recognize that this is important to Ottertail and some other companies to give them the income tax credit that I think was always intended for those companies.

Rep. Pinkerton: Didn't we pass through a tax credit on capital expenditures, 3% a year for five years that was tax credit that was negotiable. Is this similar to HB 1233.

Donnita Wald: No.

Rep. Wrangham: In the interim, have the tax credits been taken by the contractor and then passed on to the end user, the final purchaser.

John Olson: I'm not aware of any individual situation where this was done. We're really talking about project that are in the future.

Rep. Pinkerton: You're referring to that 3% per year for 5 years as an income tax credit, is that correct.

John Olson: I'm referring to the income tax credit, yes.

Rep. Pinkerton: 3% for 5 years, that is the tax credit that this is referring to comes from HB, so these two are interlocking.

John Olson: No, the other one deals with property tax. This one deals solely with income tax.

Rep. Belter: Thank you. Further testimony in support.

Bob Graveline, Utility Shareholders of ND: We support but our comments are related to only section 1 of this bill, as just explained by Mr. Olson.

Rep. Belter: Thank you. Further testimony in support.

Gary Jacobson, consultant for Great River Energy: (see attached testimony #2).

Rep. Belter: Thank you. Further testimony in support.

Curtis Jabs, Basin Electric Power Cooperative: We supports the passage of SB 2298 and I'll talk about sections 2 and 4 of the bill, which deals with the sales and use tax exemption for electric power generation. These sections were encouraged to develop new generation using technology and alternative fuels with the same incentives that we give to coal and wind today.

Up to now, these new types of generation have been handled on a case by case basis by the legislature when in session. The new types of generation we are referring to, include the waste or recycled heat capture, the biomass, the methane digest, hydrogen, land fill gases, these kinds of facilities are generally small and usually expensive to build. Basin Electric sees these provisions are proactive by the legislative assembly to encourage new renewable generation resources as a whole. Many of these technologies may be years from commercial development, but these provisions will allow the assembly to provide technically specific incentives for future development without having to resort to separate divisions in the Century Code every biennium. We are supporting SB 22998.

Rep. Belter: Thank you. Further testimony in support. Testimony in opposition or neutral. Maybe the Tax Department would like to clarify HB 1233 and SB 2178.

Rep. Pinkerton: In HB 1233, 3% for 5 years.

Dee Wald: HB 1233 deals with the same section of law as geothermal, solar, or wind energy tax credit as 3% for 5 years.

Rep. Pinkerton: So these two bills, this is where the credit is defined and this allows it to be passed through to the owner.

Dee Wald: The bills do two different things. Both of them allow a transfer of the credit in a sense. HB 1233 does, is allows the person who owns and probably builds a wind energy facility to sell the credit for additional consideration when the purchaser of the power from that facility. They don't have to transfer ownership of the facility, all they have to do is sell the electricity, and then they can sell the tax credit at any time. SB 2298, you take the credit and ownership of the facility transfer at the same time. So there is a difference between the two, although they do both involve transfers.

Rep. Pinkerton: Does HB 1233 allow, in the case of Ottertail, then to sell their tax credit.

Dee Wald: If Ottertail sold their electricity to another facility. The tax credit in electric and wind generating facilities have to go together, and sell the credit without also selling their electricity. (hard to understand)

Rep. Pinkerton: So SB 2298 would allow someone to capture the tax credit, whether they are building the facility, but then after it was captured by the utility that owned the facility, doesn't it have to be utility owned facility for it to be transferred.

Dee Wald: I don't know. Usually it is an electric utility company that owns both of them.

Rep. Pinkerton: Then after it is transferred, it could be sold (hard to understand).

Dee Wald: That's correct.

Rep. Drovdal: The fiscal note, or lack of fiscal note, had a $2.4 million dollars basically as I understand it, because we have lowered the kilowatts to qualify for building a plant from 100 kilowatts down to 50, it seems like in this day and age, that bigger is better and efficiency is in the bigger units. Where would we potentially have a location for plants between 50-100 kilowatts.

Dee Wald: I don't know, this is an area of the tax law I don't deal with this.

Al Christiansen, Great River Energy Business Developer: Any place that you would look at what would be considered a combined heat and power facility, where you are going to take steam from a facility that produces electricity and also supplies steam to either value added Ag refining or whatever. Also some of the things that you can look at is if you have a waste heat compressor that Basin has, where they are going to use their compressors out to the pipeline to take the waste heat and collect electricity. There are going to be a lot of issues that can answer that. If you look at a sweet spot in the transmission where you wouldn't have to build new transmissions, such as the Spiritwood, you would be able to size your facility to provide the steam to the value added Ag processing, but also to put the electricity on the grid without having to do major transmission upgrades. One of the questions was the efficiencies of these, at Coal Creek Station, which is our large base loaded facility, boiler efficiency for the energy in and energy outs are in the 35-40%. At Spiritwood, a proposed project at Spiritwood, because you are going to use the steam in value added Agriculture, the efficiency of that boiler goes up over 80%. So what you're actually seeing is that your bang for the buck is now in facilities where you have higher economics with using the steam for value added agricultural or other processing. So base loaded is not necessarily going to be the way you see it and that's why the number is dropped down.

Rep. Froelich: We've got basically two different sections of Code, the electric part and the ethanol part. Since we've got these bills that come forward in the last number of years, what kind of money have they saved, through all the different tax benefit plans.

Al Christiansen: At Blue Flint Ethanol, we were able to take advantage of the sales tax exemption on Blue Flint, because that is what they call an EPC, an Engineer Procure and Construct, so under the present law, we were able to take sales tax advantage upfront on Blue Flint. So you take a $90 million dollar project at 6% sales tax, you're looking at $5 million dollars, somewhere along there. We would either have been able to get that upfront or under current law, if it wouldn't have been an EPC contract, we'd have had to keep the receipts and then file for it. The thing that happens, when you go for a project where you have to go out and finance $90 million dollars, you are going to finance the sales tax too, so for these people to raise that extra $6 million dollars to build these processors is very tough. Plus the people who are building these plants, don't want to let you know, you have to have the original invoices to file, they don't want to let you know what they are actually paying for the equipment because in the case of somebody that builds 30 or 40 of these, because they are getting a deal. So they wanted over a quarter of a million dollars a year from us just to keep track of the invoices during the construction of Blue Flint, so we could do it. So under the current law, the way it was written, we were able to take it because it was an EPS contract where they didn't actually build it, they engineered and built it and constructed it and we don't own it until they approved it. So they were able to get the sales tax, they can actually have the sales tax exemption. They were the original owner under the law as it is now.

Rep. Froelich: Were there any other tax credits that you were able to take advantage of.

Al Christiansen: Not that I understand, although we did put in for a property tax exemption with McLean County and they gave us a five year 100% exemption.

Rep. Belter: So in this case the contractor took the sales tax credit.

Al Christiansen: The contractor had the exemption certificate, they were able to purchase the stuff without sales tax, so that lowered the price to Blue Flint LLC, so we didn't have to raise the money for financing the sales tax and we didn't have to keep track of the invoices to them go back to the state.

Rep. Schmidt: You got the sale tax exemption already, it was in code before, on line 11, page 3.

Al Christiansen: The law is already there for the value added agriculture, that didn't apply to power plants. This was just for Blue Flint which was already addressed in the law as it's written. So that's how we were able to take it. For Spiritwood, it would not be applicable except for certain percentage of the power plant at the present time, and that's what they are trying to change.

Rep. Schmidt: This would be for an environmental upgrade that's added sales tax that was exempt in code before? (hard to understand).

Al Christiansen: I don't think I can answer that.

Rep. Belter: Would the Tax Department like to address that. Thank you.

Cory Fong: That is already in existing law. What this bill does is simply lower the generating threshold from 120 megawatts down to 50 megawatts. With that change, as Al Christiansen said, with the trend being to build these smaller co-generation facilities, it will allow for the future expansion of both kinds of projects. Spiritwood as an example is Ag. Processing, a collective generation, it's ag processing in the form of Cargil Malt, it's all three of those things together. The new trend is, again, to create those smaller generation facilities and that's what this bill is. It has nothing to do with environmental upgrades; that's a totally different issue of law. This simply lowers that cost threshold that would qualify for sales tax exemption from 120,000 kilowatts down to 50. Again it would have an advantage for Spiritwood, a certain percentage of their operation is generation and they will be able to, with successful passage of this legislation, take advantage of that. But also in the future, other co-generation facilities like this, which I think is the trend and we want to encourage, would also be able to take advantage of that.

Rep. Belter: Thank you. Further testimony, neutral testimony. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2298B

House Finance & Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3877

Committee Clerk Signature DPenrose

Minutes:

Rep. Belter: We will take a look at SB 2298. What are the committee's wishes?

Rep. Drovdal: So on transfers, sales tax exemptions on smaller plants, fiscal impact. I think for a $1 million dollars, this would encourage these co-generation plants.

Rep. Belter: Are there more sections in this bill that need to be acted on all at once. Any amendments proposed.

Rep. Froseth: We had requested an updated fiscal note. The way it is now, it really doesn't have a fiscal note on it. This bill should probably go to Appropriations.

Rep. Headland: When it says the possibility of $1.8 million, is that directed at the Spiritwood Energy Park and that particular plant there.

Rep. Belter: Is it $1.8 or $4.2 million.

Rep. Headland: Then the case is that really would be a fiscal impact if they know. So there's really no reason why they can't move that way. There's no reason why it isn't a true fiscal note.

Rep. Grande: We know that plant, we already know they are going to do it.

Rep. Wrangham: It is suspicious to me when someone who is a proponent of the bill does the fiscal note. It should almost be a neutral person who prepares it.

Rep. Belter: We will hold this.

Rep. Grande: Please hold it.

Rep. Headland: The way this fiscal note is currently written, it does not have to go to appropriations?

Rep. Belter: No, I don't think so. I will check on that.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2298C

House Finance & Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4411

Committee Clerk Signature Denise

Minutes:

Rep. Belter: We will take a look at SB 2298. What are the committee's wishes?

Rep. Headland: I move a Do Pass and rereferral to Appropriations.

Rep. Brandenburg: Second.

Rep. Belter: Any discussion. It just extends the tax credit to those plants that are producing less than what 120 megawatts.

Rep. Froseth: This is the one we were actually waiting for them to do a fiscal note. Wasn't there some discussion.

Rep. Belter: Yes.

Rep. Headland: There are reasons to keep it at 50. The energy plant that is going to be built at the Spiritwood project is not 100 megawatts.

Rep. Wrangham: I think also, as we move forward in energy development, we are going to find more and more diversified plants, where they are smaller and more of them, rather than a big base load generating plants that we have now. I think it's not only Spiritwood, I think as we move forward, we are going to see more and more of this type of installation. Personally, I think it is a good deal, because it spreads things out around the state. I think it is important to see that we leave it at 50.

Rep. Brandenburg: I think we will find that this is not only going to be for Spiritwood, it's also for other projects across the state and it's not just one project.

Rep. Pinkerton: Just for clarification is it 50 or 100 megawatts in the bill. So we are not going to amend it out.

Rep. Belter: It is for 50.

Rep. Headland: I don't believe it would change the fiscal note if you amended it. Well it would for Spiritwood, but these other plants, these are just proposed plants. Spiritwood is the only one that is actually being built.

Rep. Brandenburg: I think the question and answer to Rep. Pinkerton; you're talking of an investment of $25 million dollars or $100,000 per megawatt. This is a large investment. (Hard to understand).

Rep. Belter: Gary Jacobson's testimony talked about 50 megawatts and crossed it out and put in 100.

Rep. Headland: I believe that he did mention that the plant is going to be 98 megawatts. I guess you can amend it to 100, but then down the road these other plants, how is that going to affect them. He testified on behalf of the Spiritwood Great River Energy Plant. He was covering his own bases.

Rep. Brandenburg: I think this language is looking for a large generation that ties together the ethanol plant people and some of these projects may only be 20 megawatts, and some only 30 megawatts, but this is commercial generation that should qualify for the incentives, but it's somebody out here putting in the power, or we may get a center of balance between somebody going out and putting it on the farm and qualifying for this or somebody who is putting a commercial generation. This requires an investment, and we're not going to have somebody put it out there on a farm (hard to understand).

Rep. Belter: Clerk will call the roll.

13 YES 0 NO 1 ABSENT **CARRIER: Rep. Headland**

DO PASS WITH REREFERRAL TO APPROPRIATIONS

Date: 3-6-07
Roll Call Vote #: 2298

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Finance & Tax Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ____________

Action Taken Do Pass and Rerefered to Appropriations

Motion Made By Rep. Headland Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich		
Vice Chairman Drovdal	✓		Rep. Kelsh	✓	
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande	✓		Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler	✓				
Rep. Wrangham	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Headland

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

REPORT OF STANDING COMMITTEE

SB 2298: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2298 was rereferred to the **Appropriations Committee.**

2007 HOUSE APPROPRIATIONS

SB 2298

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2298

House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/20/07

Recorder Job Number: 5345

Committee Clerk Signature Tonya A Voegele

Minutes:

2298

Chairman Carlson opened the hearing on Senate bill 2298.

Representative Headland spoke in support of the bill.

Carlson: These are income tax exemptions?

Headland: No, sales.

Carlson: Where does a majority of the funds go, to Spiritwood?

Headland: Because of the sheer size of the project it will.

Carlson: This would be retroactive for them because are they or are they not started?

Headland: As far as I understand they have not broke ground.

Carlson: It allows you to sell the tax credit is that correct?

Headland: I don't believe you sell the tax credit but the credit can be transferred from the purchaser, the constructor, the builder, who has to pay initially for the materials. It can be transferred to the actual owner of the facility.

Representative Brandenburg spoke in support of the bill.

Skarphol: Is there any likely that any other entities unbeknownst to us that could take advantage of this over the next biennium? How do we estimate the fiscal impact of that?

Brandenburg: We don't know what is going to be built.

Carlson: When they announced the plan to build Spiritwood, did they anticipate getting this tax credit?

Brandenburg: I think that looking at the projects I think it is built into the project the number they need to get together is tight.

John Olson, representing Ottertail Power Co, spoke in support of the bill.

Carlson: It just allows the contractor to transfer all of his purchases to you for a credit?

John: That is correct. At the time of the purchase.

Glassheim: Why is there no fiscal note?

Carlson: It just transfers it from the purchaser to the owner.

Gary Jacobson, Great River Energy, spoke in support of the bill.

Carlson: Somebody needs to explain the breakdown of the money.

Headland: If you look at the total on the fiscal note there is $2.2 in General funds and roughly $200,000 in other funds that is just the breakdown of how the sales tax exemptions would be distributed amongst them.

Carlson: Are the numbers based on estimates?

Headland: Yes.

Carlson: Mr., Niezwaag you are ok with both bills saying the same thing? (2141 and 2298)

Dale: Yes

Dale Niezwaag: Basin Electric, spoke in support of the bill.

Carlson: So one of the two can go away?

Niezwaag: Yes we just want to make sure that the tax exemption for the waste heat would carry through.

Carlson: I am confused to have two I believe we should have one when we are done.

Niezwaag: If the committee is going to support 2298 the other one can go away.

Todd Kranda, Alliance Pipeline, spoke in support of the bill.

Donita Wald, Council for Tax Dept, spoke neutrally on the bill.

Carlson: Does section one clarify any concerns you had about the original installer then the owner?

Wald: It is a problem that we discovered and we contacted their offices.

Carlson: And the mechanics of this there is no problem with the rest of the bill that you see?

Wald: The bill is fine as written.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2298

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 3-22-07

Recorder Job Number: 5486

Committee Clerk Signature	

Minutes:

Chairman Svedjan opened the hearing on SB 2298 that came from Government Ops.

Rep Kempenich: There are no amendments. This is a bill with regard to waste heat generators. This is a sales tax incentive. It's aimed at electrical generation and the sales tax on electrical generation. This bill lowers the requirement of the generating plant down to 100kw or more and then it addresses the waste heat on the bill we killed this morning (2141).The fiscal note on it is $2.2M to the general fund and $l92,000 to other funds. It's about a $2.4M fiscal note. This is a vehicle that we would like to see move forward addressing electrical generation and move a do pass.

Rep Kemenich moved a Do Pass

Rep Monson seconded the motion

Rep Bellew: I'm confused about the last line in the bill

Rep Kempenich: There's $1.6M that they figured that they would have. The waste heat generators that they are putting on the pipelines, they are basically funding three of them at $200,000 per each one. There could be more coming on line with this. We could theoretically have an impact of $2.if everybody that has one of these waste heat generators on their pipeline. The other company is not very far along with this project.

Rep Carlson: The good thing about this is that it is obviously a tax break and it reduces the amount of revenue that we would take in. The good news is that they have to actually be building the plant or nothing happens.

Rep Wald: Explain page a, lines 13 - 17.

Rep Skarphol: Typically the company that builds them, pays the costs associated with them and they in turn sell them to another entity. This gives them the ability to transfer that tax credit.

Rep Hawken: Will we eventually gain income from this investment?

Rep Kroeber: We are anticipating 300 additional people and 80-100 jobs.

Rep Hawken: I'm a little concerned that we have enough transmission and water to do all the things we are discussing and then I'm even more concerned about what the Human Services Committee has had to cut.

Rep Skarphol: Basin Electric is building three, they will be assessed property taxes and they will be paid to the counties. The hit that the state is taking will transfer into profit for the counties.

Rep Monson: I assume that income will be generated and that has not been factored into here. I do believe that this is going to be a winner if it actually comes to pass.

Roll Call Vote on Do Pass Motion on SB 2298

(yes) 23 (no) 1 (absent) 0

Carrier: Rep Headland

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2298

House Appropriations Committee
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/22/07

Recorder Job Number: 5495

Committee Clerk Signature Tonya J. Voegele

Minutes:

Chairman Carlson opened discussion on Senate Bill 2298.

Representative Glassheim: On the one we killed this morning, it had an effective date and an expiration date. I don't know if we need it or not I just noticed it as I was comparing the two bills.

Chairman Carlson: There is an effective date on 2298. If you look on page three line 11. But when the money is gone it is gone. I don't think we need a sunset.

A motion was made by Representative Skarphol, seconded by Representative Kroeber for a DO PASS recommendation to the full committee. The committee vote was 8 Yeas, 0 Nays and 0 Absent and Not Voting. The bill will be carried by Representative Kempenich.

Date: 3/22/07
Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

House Appropriations- Government Operations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Skarphol Seconded By Kroeber

Representatives	Yes	No	Representatives	Yes	No
Chairman Al Carlson	✓		Vice Chairman Ron Carlisle	✓	
Rep Keith Kempenich	✓		Rep Bob Skarphol	✓	
Rep Blair Thoreson	✓		Rep Eliot Glassheim	✓	
Rep Joe Kroeber	✓		Rep Clark Williams	✓	

Total Yes 8 No 0

Absent 0

Floor Assignment Kempenich

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

Date: 3/22/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2298

House Appropriations Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number —

Action Taken No Pass

Motion Made By Kempenich Seconded By Monson

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleson	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew		✓	Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 23 No 1

Absent 0

Floor Assignment Rep. Skadland

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

REPORT OF STANDING COMMITTEE

SB 2298: Appropriations Committee (Rep. Svedjan, Chairman) recommends **DO PASS** (23 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2298 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2298

STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

SENATE FINANCE AND TAX COMMITTEE
Senator Herb Urlacher, Chairman
Testimony from Tax Commissioner Cory Fong Re: Senate Bill 2298
January 24, 2007

I am here today in support of Senate Bill (SB) 2298 – a bill that represents common sense.

North Dakota's energy industry is experiencing a resurgence, especially in the area of renewables. We are emerging as one of the country's leading exporters of energy and we need to encourage this trend. It is not only good for our state; it is good for our entire nation.

Tax incentives, and the administration of those incentives, have played a critical role in spurring this activity. Over the years, especially during the most recent 2005 legislative session, numerous key tax incentives were put in place to stimulate growth in the renewable energy industry. The incentives target biodiesel and ethanol production and wind generation, and offer sales, income, and property tax credits.

These incentives are meaningful and they are having a profound impact on the development we are seeing around our state. Four ethanol and two biodiesel plants are under construction; another ethanol plant was announced just this week; new wind turbines are spotting our North Dakota landscape, all since the last legislative session. These incentives are working; they are creating jobs and opportunities in our rural communities.

Senate Bill 2298 represents more than a year's worth of work and collaboration between the Tax Department and members of our state's booming energy and value added agriculture industries to improve upon sales tax incentives that are already on the books and make them easier to use. This bill is a companion to legislation that improves upon the Agricultural Commodity Processing Facility Investment Tax Credit that has already passed through this committee and the full Senate.

Senate Bill 2298 essentially allows contractors working on agricultural commodity processing facilities and electric generation facilities to enjoy the sales and use tax exemption, already provided by existing law, up front instead of requiring the owner to apply for it at the end. This minor adjustment will significantly reduce the up-front financing for these large-scale projects, reduce the amount of development time, and ultimately encourage more activity. This is good for the industry and good for North Dakota.

(cont.) Testimony from Tax Commissioner Cory Fong Re: Senate Bill 2298

The bill also:

1. Allows the owner of a geothermal, solar, or wind device to use their income tax credit, already provided by law, when contracting with a third party for the construction of the device through a "turnkey" relationship.

2. Expands the sales and use tax exemption that already exists for electric generation plants by lowering the generating threshold to include plants with a generation capacity of at least 50 megawatts. Currently the threshold is 120 megawatts.

3. Expands the sales and use tax exemption for electric generation plants to include small plants, like waste heat generation plants, with a capacity of at least 100 kilowatts and producing electricity for resale or consumption in a business activity.

At a time when our nation is looking for ways to reduce dependence on foreign sources of energy. North Dakota needs to step up its efforts and encourage all forms of energy development, especially in the area of renewables. North Dakota's entire energy industry is booming and we need to set the stage for continued expansion in this vital industry.

Curtis Jabs - Basin Electric Power Cooperative
North Dakota Senate Bill No. 2298
Senate Finance and Taxation Committee
January 24, 2007

Mr. Chairman and members of the committee, my name is Curtis Jabs and I am here representing Basin Electric Power Cooperative. Basin Electric supports the passage of SB 2298.

In particular, Basin Electric supports sections 2 and 4 of the bill, which deal with sales and use tax exemptions for electrical power generation. These sections will encourage the development of new generation using new technology and alternative fuels with the same incentives currently afforded to coal and wind power. Up to now these new types of generation have been handled on a case-by-case basis by the legislature when in session. The new types of generation we are referring to include; waste or recycled heat, biomass, methane digesters, hydrogen, and landfill gas. These kinds of facilities are generally small and expensive to build.

Basin Electric sees these provisions as a proactive way for the Legislative Assembly to encourage new renewable generation resources as a whole. While many of these technologies may be years from commercial development, this provisions allow the Assembly to provide technology-specific incentives for future development without having to resort to separate revisions to the Century Code every biennium.

Again, Basin Electric is supporting this bill and would encourage a "Do Pass" recommendation by the committee. This concludes my testimony and I would be happy to try and answer any questions.

2-26-07
SB 2298-A
#1
9Am

STATE OF NORTH DAKOTA

OFFICE OF STATE TAX COMMISSIONER

Cory Fong, Commissioner

HOUSE FINANCE AND TAX COMMITTEE
Representative Wes Belter, Chairman
Testimony from Tax Commissioner Cory Fong Re: Senate Bill 2298
February 26, 2007

I am here today in support of Senate Bill (SB) 2298.

North Dakota's energy industry is experiencing a resurgence of activity, especially in the area of renewable energy. Tax incentives have played a critical role in spurring this activity. During the last legislative session, key tax incentives were put in place to stimulate growth in the energy industry. The incentives target biodiesel and ethanol production and wind generation, and offer sales, income, and property tax credits.

These incentives are meaningful and have a measurable impact on the development we see around our state. Four ethanol and two biodiesel plants are under construction; another ethanol plant was recently announced; a new electric generation facility is being built; and new wind turbines are spotting our North Dakota landscape, all since the last legislative session. These incentives are working; they are creating jobs and opportunities in our rural communities.

Senate Bill 2298 represents more than a year's worth of work and collaboration between the Tax Department and members of our state's energy and value-added agriculture industries to improve upon sales tax incentives already in state law.

Senate Bill 2298 allows contractors working on agricultural commodity processing facilities and electric generation facilities to enjoy the existing sales and use tax exemption "up front" instead of requiring the owner to apply for it at the end of the construction phase. The minor adjustments made here will significantly reduce up-front financing for large-scale projects, reduce the amount of development time, and ultimately encourage more activity. This is good for the energy industry and good for the state.

Senate Bill 2298 also:

1. Allows the owner of a geothermal, solar, or wind device to use their income tax credit, already provided by law, when contracting with a third party for the construction of the device through a "turnkey" relationship.

2. Expands the sales and use tax exemption that already exists for electric generation plants by lowering the generating threshold to include plants with a generation capacity of at least 50 megawatts. Currently the threshold is 120 megawatts.

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3. Expands the sales and use tax exemption for electric generation plants to include small plants, like waste heat generation plants, with a capacity of at least 100 kilowatts and which produce electricity for resale or consumption in a business activity.

At a time when our nation is looking for ways to reduce dependence on foreign sources of energy, North Dakota needs to step up its efforts and encourage all forms of energy development. North Dakota's entire energy industry is booming and we need to set the stage for continued expansion in this vital industry.

I urge you to support Senate Bill 2298 – a bill that represents common sense.

SB 2178

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HOUSE BILL-2298

Testimony of Gary Jacobson Legisla[illegible]onsultant GRE

before the House Commitee on Finance and Taxation

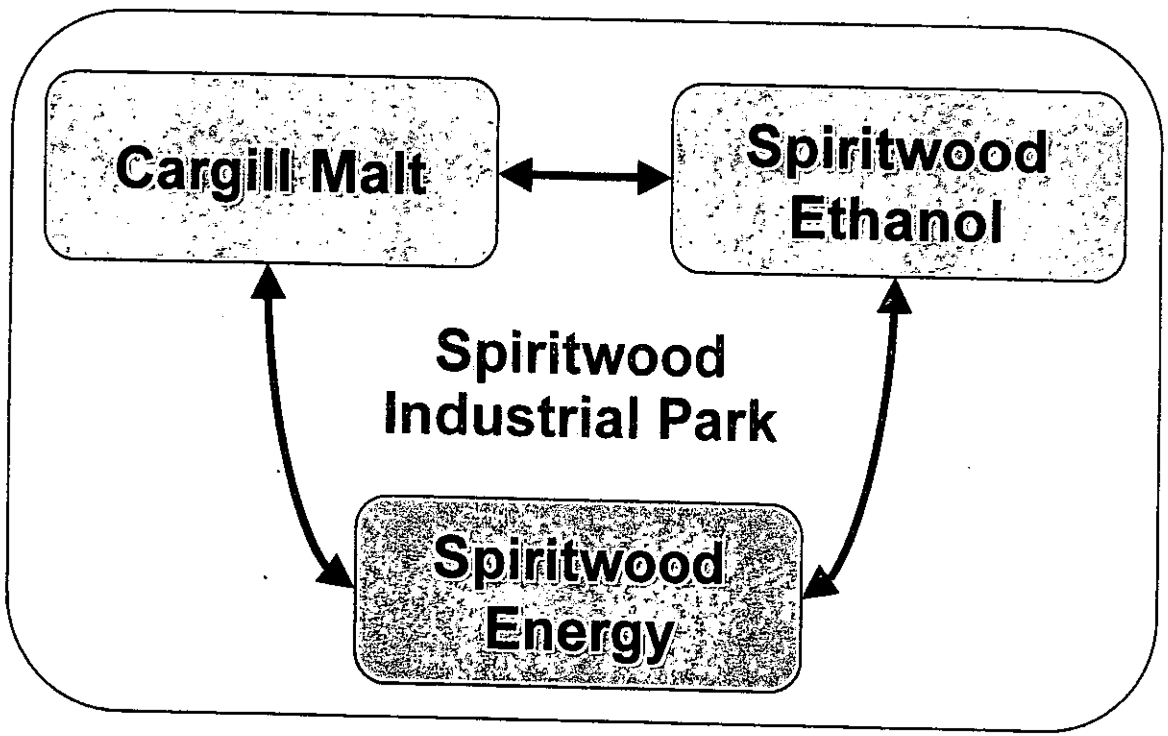
Chairman-Rep Wes Beltier

February 26, 2007

Mr. Chairman and the members of the House and Finance and Taxation Committee, my name is Gary Jacobson, legislative consultant for Great River Energy(GRE). GRE is a wholesaler of electricity to 28 electric distribution cooperatives throughout Minnesota and western portion of Wisconsin. It's generating stations are located at Stanton and Underwood N.D. and headquarters in Elk River Minnesota.

Senate Bill 2298 addresses a use tax exemption for power plant construction equipment and related tangible personal property; and related tangible property used to construct an agricultural commodity processing facility. GRE has already been fortunate to receive benefit of the existing law in the development of the Blue Flint Ethonal Plant built next to the Coal Creek Station. With the coming of ~~spring~~ Fall will start construction of a ~~50~~ 100 Megawatt state of the art electrical plant at Spiritwood, N.D. The power plant will reside next to the worlds largest malting plant (Cargil Malt) and a 100 million gal per year ethonal producer (Spiritwood Ethonal). Currently tax law provides use tax exemption for the constuction equipment related to the building of a 120 mw electrical power facilty. A major reason for the definition of a power facility being 120 mw was that it appeared at the time to be the smallest size base-load generation station meeting the economies of scale. The picture has changed in recent years. Smaller sized plants located closer to existing transmission lines with available capacity have been given greater attention. it is with this in mind that GRE would hope for the continued support of legislation that enhances the potential for new technologys and innova tive working arrangements benefiting the end use consumers of this state and region.

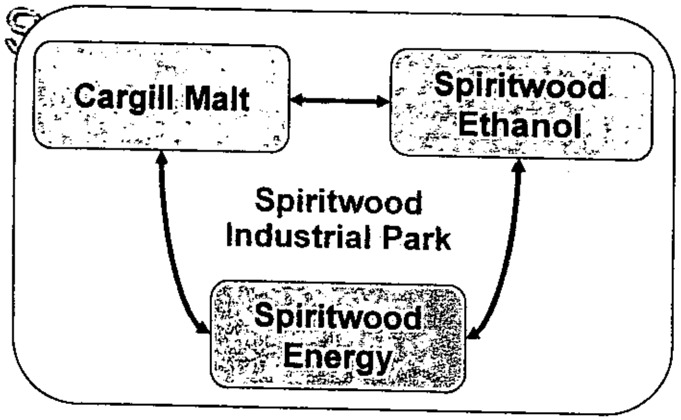
Spiritwood Industrial Park



GREAT RIVER ENERGY®
A Touchstone Energy Cooperative

Spiritwood industrial park vision

- Three major businesses with commitment to North Dakota operations
  - Cargill Malt
  - Great River Energy
  - Newman Group



- Environmental leadership
  - State of art environmental performance
  - Contribution to U.S. energy independence

GREAT RIVER ENERGY®
A Touchstone Energy® Cooperative

Spiritwood vision (cont)

- Plant investment
  - Spiritwood Energy - $157 million (split between three partners)
  - Spirit Ethanol - 100 million gallon/year ethanol plant
  - Malting plant capacity upgrade
- Three parts working in synergy
  - World's largest malting plant
  - 100 MGPY ethanol plant
  - Energy facility enables world class economics for all

Spiritwood Energy is termed a combined heat and power facility

- Energy facility designed to produce steam and electricity
- Why?
  - High efficiency
  - Low emission
  - Low cost steam
  - Low cost electricity
- Base load power plant economics at small size