

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2299

2001 SENATE FINANCE AND TAXATION

SB 2299

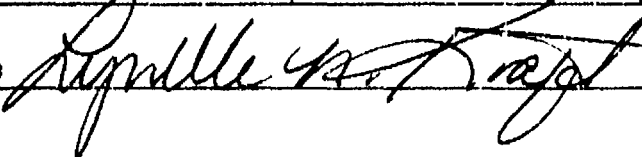
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2299

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 1/29/01

Tape Number	Side A	Side B	Meter #
1		x	36.1-49.4
2	x		0-35.8
1/30/01 - 1	x		0-11.9
2		x	36.5-49
2/12/01 - 1	x		25.4-32.6
Committee Clerk Signature 			

Minutes:

Senator Urlacher: Opened the hearing on SB 2299, relating to sales and use taxes on coal.

Senator Gary Nelson: Co-sponsored the bill, testified in support. The legislature has been very sensitive to the fact that we must keep lignite competitive if we are to keep the jobs, the economic activity, and the tax revenue in our state. We have passed previous legislation dealing with the competitive position of lignite and our ability to tax out of state coal. That legislation was found to be unconstitutional. This bill was developed with the cooperation with the industry, the tax dept., and the attorney general. This bill deserves favorable consideration for 3 reasons: Makes our low BTU lignite more competitive with out of state coal, shifts the severance tax to a more reliable tax, the conversion tax, and this is a win-win situation for the state as it guarantees more revenues. I would urge the committee to vote favorably on 2299.

Senator Aaron Krauter: Co-sponsored the bill, testified in support. Written testimony attached.

Rick Clayburgh: ND Tax Commissioner, neutral. Refers to *Kennecot vs. North Dakota*. Talks about out-of state companies and offers amendment. Meter number 43.4-49.4.

Carmen Miller: Attorney General's Office, state support of the Office.

John Dwyer: President, Lignite Energy Council, testified in support. Written testimony attached. Explains testimony and answers questions from Senator Wardner and Senator Nichols. Through meter number 17.5.

Representative John Mahoney: Thank you for your indulgence, Mr. Chairman. I'm here to testify, I would say, I guess neutral to extremely cautious at this point on this bill. Frankly, this bill in its current form, I have to say it scares me. When this concept was first brought up in November and December, I liked the idea, ah, it seemed to be something that was going to perhaps address what we've been trying to do for two sessions. John talked about the bill, the bills of the last two sessions, I did, I was a sponsor of the bill two sessions ago that kind of got the ball rolling on trying to do something to equalize the taxes on out of state coal and in state coal but we know what's happened with that. It, it, had constitutional problems. And now with that, this thing has rolled along and here we are with this, which is an absolutely incredible change in the structure of taxing an industry that pays something like \$75 million in taxes a year. And not to mention the uncounted dollars, millions of dollars, in taxes for all the employees and the economic benefits and everything else that the coal industry provides. I suppose I should be able to say that, yeah, I'll jump on the bandwagon, I'm wholeheartedly in favor of this because it's going to lead to political subdivisions revenue neutral or even give us an extra \$7,000, but I feel my obligation down here at the legislature is not simply to my political subdivision, ah, political subdivisions up in my district, but I owe, I owe the state, I have the obligation to the state to try to look out for them as well. Um, by the way I don't even know if I mentioned my

name. I'm Representative John Mahoney from District 33, which is in the heart of the coal and energy industry. Ah, anyway, I think it's worth while to, to back up and take a look at the taxing structure as its gone over the years. Ah, some of you may remember back in 1975 out of a study during the interim between 73 and 75 the initial tax structure came about and it was set at \$.50 a ton the severance tax was with an escalated clause of \$.3, excuse me, \$.1 for every 3 point increase in the whole bill, prices for all commodities. That was changed in 77 to \$.65 a ton, with a 1 to 1 escalator. In 79, that was changed to \$.85 a ton and those of you who were around, remember, there was some very, very heated battles over the tax structure for the industry. Ah, in fact, ah, Byron Dorgan has achieved a lot of success in politics and I think that was one of the first good battles that he had here in the, this capitol, was over this coal tax structure. Um, what the escalator, the tax reached a high of \$1.04 a ton which was the way it was until 1987. In 1987, we set the tax at \$.75 a ton, plus we set up a \$.02 a ton for lignite research. Um, the privilege tax, the conversion tax, that is as John said \$.25, a half a mill actually works out to be \$.25 that is assessed amount in a quarter has that %60 tax. Ah, now a couple things concern me and I hope this committee will take a real hard look at this bill. First of all, we had battles about changing the tax 10 cents here, 5 cents here, 2 cents here, we battled for the 2 cents in the research fund, which I think is tremendous. Um, I think this body has been good to the industry, the industry has been good to us, it's been beneficial, it's been a win-win situation. I'd like to see it continue that way. Ah, we're taking, cutting the \$.07 in half, I mean, that's incredible. I mean that's an incredible shift. And by doing that, uh, we're kind of putting all our eggs in one basket. Everybody, with all the investments going on, everybody talks about diversified portfolios, I hate that word, I don't think I have a portfolio even though I have investments. Um, to do that, we're depending on a lot of variables. Um, and this supposedly is geared toward equalizing the tax for

out of state coal and in state coal. But there's a lot of things to consider. For example, there's a %60 tax on the conversion tax on the one quarter mill. Uh, and that supposedly is going to be an incentive for the plants to operate entire capacity. Now, when I look at that and consider a half a billion dollar power plant and the tremendous demand for energy, am I going to make my decision on whether to run that plant %50, %70, %90, or %100 on what the tax structure is if we're able to have a profit on that? Maybe so, maybe not. We can hear from industry experts on that. Um, for that additional capacity, is that going to be all in state coal? There's nothing saying it has to be. From 60-100 percent, maybe it's all out of state, tax-free coal for all we know. Just some things to think about. Uh, there was a mention of the study that was done a couple years ago by Mr. Ramseth. In that study, which is in our, came into, came in our uh, legislative report from the legislative council, there's also a statement that Mr. Ramseth made and I'll quote it. Dr. Ramseth said, and I'll quote the legislative council report, "It is important to remember that ND tax and regulatory policies for the coal industry is not what has created the current economic problems faced by the lignite industry. Price reductions in sub bituminous coal address transportation costs have been so significant that they are responsible for the competitive prices faced by the industry. With that in mind, I just want to say that I think this is perhaps going in the right direction but it is a huge step. And whether or not it's revenue neutral to our political subdivisions, this body does have a responsibility to the state. I think that the state, legislators from all over the state, have been very considerate and compassionate to the things that we've gone through in our areas. Um, we have a tremendous amount of impact, and we share a tremendous amount of tax dollars with the other districts. The conversion tax for example, the 1 quarter mill goes entirely to the state, the other quarter mill goes %65 to the state, and %35 to the political subdivisions. The 7%, we take %35, 15% goes to the trust fund, %50 to

the state. We share with the state, the state shares with us, the industry is very good, we are facing real competition, I'm denying that from the sub bituminous coal. And it's something that's certainly worth looking at. If we can work a bill that's going to protect the state, um, be good for the industry, be good for the political subdivisions, great. If we can't come up with something, and if we're jumping in with both feet, or if we're diving off a cliff, we better see how deep the water is and I hope this committee will take a real hard look at the numbers I presented to you, like I say, they're based on speculation. We don't know what's going to happen in the future. I would ask you to look a hard look at the numbers and proceed with caution. With that, I'd be open to answer any questions.

Senator Wardner: What is your feelings on the future use of Powder River Coal?

Representative John Mahoney: Well, Mr. Chairman, Sen. Wardner, it is a threat. I think that now we're at the point where it's my understanding that coal actually is, for BTU, somewhat cheaper than our lignite coal. And whether the tax difference is going to make or break the competitiveness of it, I don't know, but I think that the plants here, I would hope, want to use the closer coal and the plants that are here are designed for lignite. I'm sure the boilers could probably be refitted but as I understand it, sub bituminous coal is a lot hotter and these plants can only burn a certain mix of that coal, is my understanding, but I'd like to think that they're going to support our industry with the great volume of lignite coal that we have. And if we don't use it all up in the 1,000 years that we have it, then maybe there could be some, but it took millions and millions of years to make that stuff and I think we want to be careful once we disperse it or let it go. Thank you.

René Pfeuning: ND Building & Construction Trade Council & ND Electrical Workers Council, testified in support.

Harlan Fuglesten: ND Assoc. Of REC's, testified in support.

Dale Anderson: Greater ND Assoc., testified in support.

Illana Jeffcoat-Sacco: Public Service Commission, neutrally testified. Written testimony attached.

Senator Urlacher: Closed the hearing. Action delayed.

Subcommittee met 1/30/01. Meter number 0-11.9. Senators Wardner, Christmann, and Nichols present.

John Dwyer: Reappeared to explain amendment.

Dennis Boyd: MDU Resources, appeared to explain another amendment.

Motions made to accept amendments and to combine them into one.

Dale Niezwaag: Basin Electric, explains that they're still working on an amendment but will introduce it when this bill goes to appropriations.

AMENDMENT ACTION:

Motion made by Senator Christmann, Seconded by Senator Nichols, to move amendment from PSC to combine with amendment from the Tax Commissioner. Voice Vote taken. All in favor.

Discussion held later in full committee. Meter number 36.5-49.

AMENDMENT ACTION:

Motion made by Senator Wardner, Seconded by Senator Christmann, to move amendment numbered 10666.0301. Voice Vote taken. All in favor, amendment adopted.

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Senate Finance and Taxation Committee

Bill/Resolution Number 2299

Hearing Date 1/29/01

COMMITTEE ACTION: 1/30/01

Motion made by Senator Christmann for a DO PASS AS AMENDED & REREFFERED TO APPROPRIATIONS, Seconded by Senator Wardner. Vote was 6 yeas, 0 nays, 0 absent and not voting. Bill carrier was Senator Christmann.

Discussion held 2/12/01. Meter number 25.4-32.6.

John Dwyer: Appeared to explain the amendment he will be proposing in Appropriations.

FISCAL NOTE

Requested by Legislative Council
03/16/2001

Bill/Resolution No.:

Amendment to: Reengrossed
 SB 2299

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$55,000			
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

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 with House Amendments, Reengrossed SB 2299 is expected to increase state general fund revenues by a net amount of \$55,000 during the 01-03 biennium.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Department
Phone Number:	328-3402	Date Prepared:	03/16/2001

FISCAL NOTE
 Requested by Legislative Council
 03/12/2001

REVISION

Bill/Resolution No.:

Amendment to: Engrossed
 SB 2299

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$751,000)		(\$887,000)	
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2299 Second Engrossment reduces the coal severance tax by 50% and increases the coal conversion tax by a similar amount.

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.*

The coal severance rate reductions and coal conversion rate increases contained in the bill are expected to increase state general fund revenues by \$445,000.

County revenues are "held harmless" under the provisions of the bill. For most counties, the revenue stream will be similar to current law. One exception is Mercer County, the recipient of revenues from Dakota Gasification Company. Because of current high natural gas prices resulting in unusually high coal conversion revenues, Mercer County will receive historically high payments in the next few months. These high actual collections which Mercer County will receive from January through June, will establish the benchmark to which SB 2299 holds it harmless for all future years. This will cost the state general fund as much as \$1.378 million per biennium.

The bill also subjects the Heskett Plant in Morton County to coal conversion tax. This is expected to increase state general fund revenues by \$540,000 during the 01-03 biennium, and \$762,000 during the 03-05 biennium. Morton County continues to get the amount it received when Heskett was subject to property tax. This reduces state general fund revenue by -\$358,000 in the 01-03 biennium, and -\$716,000 in the 03-05 and subsequent biennia.

Overall, SB 2299 is expected to reduce state general fund revenues by -\$751,000 in the 01-03 biennium, and -\$887,000 in the 03-05 biennium.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Department
Phone Number:	328-3402	Date Prepared:	03/12/2001

FISCAL NOTE
 Requested by Legislative Council
 02/16/2001

Bill/Resolution No.:

Amendment to: Engrossed
 SB 2299

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$454,000			
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$7,000					

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2299 Second Engrossment reduces the coal severance tax and increases the coal conversion tax.

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 2299 Second Engrossment is expected to increase state general fund revenues by \$454,000 during the 01-03 biennium. County revenues are expected to increase by \$7000 during the 01-03 biennium.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Kathryn L. Strombeck	Agency: Tax Department
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Phone Number:

328-3402

Date Prepared: 02/20/2001

FISCAL NOTE

Requested by Legislative Council

01/23/2001

Bill/Resolution No.: SB 2299

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$553,000)	(\$1,000)		
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$7,000					

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2299 cuts the coal severance tax rate in half and increases the coal conversion tax rates. It also removes the sales tax on all coal, and levies a coal conversion tax on a small power plant previously subject to property tax.

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.*

The first sections of the bill eliminate the sales tax on coal. This reduces state general fund revenues by \$15,000 and the state aid distribution fund by \$1000 in the 01-03 biennium. The reduced coal severance tax rate and the increased coal conversion tax rates are expected to reduce state general fund revenues by \$180,000 and increase county revenues by \$7000 during the 01-03 biennium. The provisions that hold the counties equal to the prior year's revenue are expected to reduce state general fund revenue by \$358,000 during the 01-03 biennium, to reimburse Morton County for property taxes on its power plant.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the*

executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn L. Strombeck	Agency:	Tax Department
Phone Number:	328-3402	Date Prepared:	01/26/2001

Developed by PSC/MDU
1/29/01

Proposed Amendment to SB 2299

Page 2, line 5, delete the words "the automatic adjustment" and insert after the word "in" the following:

"the base rates and the inclusion in the automatic adjustment clause of any of these costs not in base rates."

Page 2, line 6, delete the word "clause".

PROPOSED AMENDMENTS TO SENATE BILL NO. 2299

Page 4, line 29, remove the overstrike over "g."

Page 4, line 31, after the overstruck period insert "Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants."

Page 5, line 18, after "coal" insert ", including coal", and remove the overstrike over "~~used in agricultural processing or sugar beet~~"

Page 5, line 19, remove the overstrike over "~~refining plants located within this state~~"

Page 11, line 1, overstrike "~~and for purchases of coal~~"

Page 11, overstrike line 2

Page 11, line 3, overstrike "~~beet refining plants located within this state or adjacent states,~~"

Page 15, line 29, overstrike "4995" and insert immediately thereafter "2001"

Re-number accordingly

Date: 1/30/01
Roll Call Vote #: |

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2299

Senate Finance and Taxation Committee

Subcommittee on 2299

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendment from PSC/INDU to
combine w/ Amendment from Tax Commissioner
Motion Made By Christmann Seconded By Nichols

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman					
Senator Wardner-Vice Chairman					
Senator Christmann					
Senator Stenehjem					
Senator Kroeplin					
Senator Nichols					

Total (Yes) 3 No 0

Absent 0

Floor Assignment _____

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2299

Page 2, line 5, after the second "the" insert "base rates and the inclusion in the"

Page 2, line 6, after "clause" insert "of any of these costs not in base rates"

Page 4, line 29, remove the overstrike over "~~g. Coal~~" and insert immediately thereafter "mined in this state and", remove the overstrike over "~~used for heating buildings~~", after the overstruck "and" insert ", except for", and remove the overstrike over "~~coal used in agricultural~~"

Page 4, line 30, remove the overstrike over "~~processing or sugar beet refining plants~~"

Page 4, line 31, remove the overstrike over the period

Page 5, line 18, after "coal" insert ", including coal" and remove the overstrike over "~~used in agricultural processing or sugar beet~~"

Page 5, line 19, remove the overstrike over "~~refining plants located within this state~~"

Page 11, line 1, overstrike "and for purchases of coal"

Page 11, overstrike line 2

Page 11, line 3, overstrike "beet refining plants located within this state or adjacent states,"

Page 15, line 29, overstrike "1995"

Page 15, line 30, after the overstruck "2000" insert "2001"

Renumber accordingly

Date: 11/30/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2299

Senate Finance and Taxation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 10666.0301

Action Taken Move Amendment (Voice Vote)

Motion Made By Wardner Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman					
Senator Wardner-Vice Chairman					
Senator Christmann					
Senator Stenejem					
Senator Kroeplin					
Senator Nichols					

Total (Yes) 0 No 0

Absent 0

Floor Assignment _____

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

Date: 1/30/01
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2299

Senate Finance and Taxation Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number 101666.0301

Action Taken to Pass As Amended (referred to Appropriations)

Motion Made By Christmann Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman	✓				
Senator Wardner-Vice Chairman	✓				
Senator Christmann	✓				
Senator Stenehjem	✓				
Senator Kroeplin	✓				
Senator Nichols	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Christmann

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

REPORT OF STANDING COMMITTEE

SB 2299: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2299 was placed on the Sixth order on the calendar.

Page 2, line 5, after the second "the" insert "base rates and the inclusion in the"

Page 2, line 6, after "clause" insert "of any of these costs not in base rates"

Page 4, line 29, remove the overstrike over "~~g. Coal~~" and insert immediately thereafter "mined in this state and", remove the overstrike over "~~used for heating buildings~~", after "and" insert ", except for", and remove the overstrike over "~~coal used in agriculture~~"

Page 4, line 30, remove the overstrike over "~~processing or sugar beet refining plants~~"

Page 4, line 31, remove the overstrike over the period

Page 5, line 18, after "coal" insert ", including coal" and remove the overstrike over "~~used in agricultural processing or sugar beet~~"

Page 5, line 19, remove the overstrike over "~~refining plants located within this state~~"

Page 11, line 1, overstrike "and for purchases of coal"

Page 11, overstrike line 2

Page 11, line 3, overstrike "beet refining plants located within this state or adjacent states,"

Page 15, line 29, overstrike "1995"

Page 15, line 30, after "2000" insert "2001"

Renumber accordingly

2001 SENATE APPROPRIATIONS

SB 2299

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2299

Senate Appropriations Committee

Conference Committee

Hearing Date February 12, 2001

Tape Number	Side A	Side B	Meter #
Tape #1		x	27.5-45.0
Committee Clerk Signature <i>Janice Pritchard</i>			

Minutes:

Senator Nething opened the hearing on SB2299.

Senator Gary Nelson, District 22, Cass County and Majority Leader, spoke on the bill and offered an amendment (#10666.0501) for the engrossed version. Basically this is to allow lignite coal to be competitive with other coals.

Senator Andrist: Would the House bill be likely to restore dollars -- carbon dioxide ?

Senator Gary Nelson: Not familiar with the House bill.

Rod Backman, Director of the Office of Management and Budget, testified in support of the amendment.

John Dwyer, President, Lignite Energy Council, testified in support of SB2299 (a copy of his written testimony is attached).

Senator Nething: This is really all about shifting?

John Dwyer: Yes.

Page 2

Senate Appropriations Committee

Bill/Resolution Number SB2299

Hearing Date February 12, 2001

Senator Grindberg: Checked with Industry Committees?

John Dwyer: Industry is more competitive -- this is low grade moving to be as competitive as possible. Industry and Business didn't look didn't look at this part of the bill.

No additional testimony time requested, for or against SB2299.

Senator Solberg moved the adoption of the amendment. Senator Grindberg seconded.

Discussion; verbal vote-motion carried.

February 14, 2001 Full Committee Action (Tape 1, Side A, Meter No. 0.0-3.2)

Senator Netting reopened the hearing on SB2299. The amendment had been approved on April 13, 2001. Discussion on the bill. Senator Solberg moved a DO PASS AS AMENDED; Senator Grindberg seconded. Floor assignment will be given to Senator Christmann, original carrier.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2299

Page 1, line 1, after "Act" insert "to create and enact a new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code, relating to coal conversion facility gross receipts,"

Page 12, after line 17, insert:

"SECTION 8. A new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

Prior to January 1, 2010, any revenue received by the operator of a coal gasification plant to the extent the quotient of the gross receipts realized by the operator divided by the synthetic natural gas produced and sold during a month, in units of one thousand cubic feet [28316.85 units] of synthetic gas, exceeds the ceiling price. For calendar years 2001 and 2002, ceiling price means \$4.25 for each thousand cubic feet [28316.85 liters] of synthetic natural gas produced and sold; and the ceiling price for 2003 is \$4.35; for 2004, \$4.45; for 2005, \$4.55; for 2006, \$4.65; for 2007, \$4.75; for 2008, \$4.86; and for 2009, \$4.97."

Page 12, line 25, replace "six-tenths" with "one-tenth"

Page 14, line 30, after "57-60-02" insert "and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02"

Re-number accordingly

Date: 2-14-01

Roll Call Vote #: _____

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2299

Senate Appropriations Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number 10666.0501

Action Taken As passed amended

Motion Made By Sen Solberg Seconded By Sen Grindberg

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Senator Christmann

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

REPORT OF STANDING COMMITTEE

SB 2299, as engrossed: Appropriations Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2299 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code, relating to coal conversion facility gross receipts;"

Page 12, after line 17, insert:

"SECTION 8. A new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

Prior to January 1, 2010, any revenue received by the operator of a coal gasification plant to the extent the quotient of the gross receipts realized by the operator divided by the synthetic natural gas produced and sold during a month, in units of one thousand cubic feet [28316.85 units] of synthetic gas, exceeds the ceiling price. For calendar years 2001 and 2002, ceiling price means \$4.25 for each thousand cubic feet [28316.85 liters] of synthetic natural gas produced and sold; and the ceiling price for 2003 is \$4.35; for 2004, \$4.45; for 2005, \$4.55; for 2006, \$4.65; for 2007, \$4.75; for 2008, \$4.86; and for 2009, \$4.97;"

Page 12, line 25, replace "six-tenths" with "one-tenth"

Page 14, line 30, after "57-60-02" insert "and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02"

Renumber accordingly

2001 HOUSE FINANCE AND TAXATION

SB 2299

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2299

House Finance and Taxation Committee

Conference Committee

Hearing Date March 13, 2001

Tape Number	Side A	Side B	Meter #
1	X		49
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. AL CARLSON, CHAIRMAN Opened the hearing and read the fiscal note.

SEN. GARY NELSON, DIST. 22 Introduced the bill as the prime sponsor. Made a few comments stating that in the twenty two years he was in the Senate, he has watched very closely the development of tax policy on the abundant lignite resource. The Legislature has been very sensitive to the fact that we must keep lignite coal competitive in order to keep jobs and the economic activity and tax revenue in our state. Because of the fact that imported coal is being used in some of our power plants, we attempted to tax out-of-state coal. Both efforts, 1997 and the 1999 session, were held to be unconstitutional. Therefore, we come forward with this bill. The industry, the Tax Department and the Attorney General have worked together to address the constitutional concerns as well as the competitive concerns. This is a good approach which deserves your favorable consideration for three reasons: It will make low BTU lignite more competitive with out-of-state coal, secondly, it shifts the severance tax to a more reliable source,

the conversion tax. That will guarantee that the counties will receive the same amount of revenue as you read in the fiscal note. Finally, it is probably more important, that it is a WIN WIN situation for this state, it also guarantees the state more revenue, no matter what type of coal is burned. He gave a background on the fiscal note.

SEN. AARON KRAUTER, DIST. 35 Testified in support of the bill as a co-sponsor. See written testimony.

REP. WES BELTER, DIST. 40, Testified in support of the bill. Because of the low BTU, high moisture quality of the God given lignite resources we have, compared to higher quality coal in Montana and Wyoming, one thing that has been clear over the years, just like agriculture, we have to make sure the product is competitive or we won't sell it. If we don't sell it, we lose the jobs and the tax revenues that we want. When I chaired the interim committee, Dr. David Ramsett, Director of the Division of Economics & Public Affairs of the University of North Dakota, did a study. See pages 344 and 345 of the 2001 Report of the North Dakota Legislative Council, showing the competitiveness of the lignite industry. The Tax Department and the Attorney General support the industry and have jointly worked to make this constitutional. There are some things that have to be worked out. Working in that committee, I did have the opportunity to meet with President Bush, and one of the things he emphasized was the need for electrical energy for the United States, and with our vast resources of coal, I think we can certainly be a player in that business. It is very imperative that we stay on top of this issue and that we insure that our lignite industry here, remains a strong and viable industry.

REP. MERLE BOUCHER, DIST. 9 Testified in support of the bill. Also reflected on what Rep. Belter said. See attached written testimony.

REP. JOHN MAHONEY, DIST. 33 Testified in support of the bill. His district is in the heart of the coal country. He stated he had advised caution on the bill, but also stated it is a good bill. It is something we need to do to stay competitive with Montana and Wyoming coal. We are seeing some of the variables that are coming up. One concern he pointed out is that we are talking about guaranteeing payments to the political subdivisions, that was a real selling point to the coal conversion counties who have wholeheartedly endorsed this bill, because of those guarantees. If you look at HB 1121, that was the bill introduced at the urging of OMB saying we can no longer afford to guarantee the payments on the CO2 pipelines. That was supposed to be a ten year exemption, and they are already talking about taking that out. When we do a guarantee like this, it is fine for this biennium and next biennium for Morton and Mercer Counties, but what is going to happen in four, six or ten years down the road. That is a concern for the political subdivisions perspective. This is an excellent concept, and with some work, it will be a step in making lignite more competitive. I hope we can work something out so it is more revenue neutral without putting a bunch of obligations on the state from here forward.

JOHN DWYER, PRESIDENT OF THE LIGNITE ENERGY COUNCIL, Testified in support of the bill. See written testimony which gave the mechanics of the bill.

REP. CARLSON Asked whether this was in response to the bill we had earlier regarding the CO 2 pipeline exemption?

JOHN DWYER Yes, that is correct, the exemption was worth approximately two million dollars for the biennium.

REP. CARLSON All the players were involved in this?

JOHN DWYER All the players willingly and unwillingly, were involved.

REP. CARLSON Asked Mr. Dwyer to explain the reasoning behind the sixty percent of the nameplates.

JOHN DWYER Gave a brief history of how that came about.

REP. WINRICH Related to Subsection 2 and 3, of Section 10, are underlined, is there any similar guarantee in current law?

JOHN DWYER I am not certain of that, there is a guarantee since HB 1121 was defeated, that pertained to the CO 2 pipeline.

REP. WINRICH It seems unusual to me that we are making changes which, supposedly, stabilized the revenue, by moving it toward a more certain source, etc., it would stabilize the structure, and yet, we are adding a guarantee, which seems to be saying that we are not so sure, do you have a reaction to that?

JOHN DWYER The State of North Dakota, is really the one that is getting more of a guarantee. It is taking fifty percent of the severance tax and replacing that with a conversion tax, which will basically, stay the same. The counties are the ones who are going from thirty five percent to seventy percent, depending totally on the coal severance tax. They are the ones taking the risk.

RICK CLAYBURGH, STATE TAX COMMISSIONER Testified in support of the bill. He focused on Sections 2 through 6. We have been involved in litigations, over the past three and a half years, starting with the Legislature four years ago, when it passed legislation regarding tax on the use of burning out-of-state coal in North Dakota and dealing with the sales tax. As time went on, we came up with the conclusion that we really had to come up with a better solution on tax issues regarding the out-of-state coal. That is where we are today. This is good tax policy

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House Finance and Taxation Committee

Bill/Resolution Number SB 2299

Hearing Date March 13, 2001

and good legislation. Also addressed the fiscal note and some of the misconceptions. He stated as they get more actual numbers, they will draft a new fiscal note.

ROD BACKMAN, OFFICE OF MANAGEMENT AND BUDGET Testified in support of the bill. He spoke briefly on the fiscal note, and stated they would be working on amendments for the bill.

CARMEN MILLER, ASSISTANT ATTORNEY GENERAL Testified in support of the bill.

Stated she agreed with Rick Clayburgh. She said this bill is a product of efforts between the Lignite Industry, the Attorney General's Office and the Tax Commissioner's Office.

VICKY STEINER, EXECUTIVE DIRECTOR, COAL CONVERSION COUNTIES

ASSOCIATION Testified in support of the bill. See written testimony.

HARLAN FUGLESTEN, GOVERNMENTAL RELATIONS DIRECTOR FOR THE

NORTH DAKOTA ASSOCIATION OF ELECTRICAL COOPERATIVES, Testified in support of the bill. See written testimony.

JOHN DWYER Returned to the podium again and gave an overall explanation of what the industry will do for the state. Gave an account of the Lignite Industry using a chart. The number one concept is the competitiveness of the industry and what it does for the state and the counties. Counties are more interested in the coal conversion tax.

REP. CARLSON Asked whether we are burning a blend of coal in our plants today.

JOHN DWYER There is about two hundred and fifty thousand tons right now in the Leland Olds Station.

REP. CARLSON Are we getting any revenue off of that coal when it comes in, being our laws were defeated?

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JOHN DWYER As was pointed out by Sen. Krauter, one hundred percent of zero is zero. The fact that it is unconstitutional, we don't levy it.

REP. WINRICH Related to the "hold harmless clause" and his response that doubling the portion that comes from the severance tax, that that is the risky portion, he felt that the reason the fiscal note went negative is because of the high natural gas prices right now, and that is the portion which comes from the conversion tax, isn't it?

JOHN DWYER That is correct.

REP. WINRICH Is there some way we can guarantee the risky part, without assuming the bonus of the inflated gas prices?

JOHN DWYER I think the Tax Department will address that in their amendments.

I think the effort of everyone will be to treat the counties and the state fairly.

ILLONA A. JEFFCOAT-SACCO, DIR. OF PUBLIC UTILITIES DIVISION OF THE

PUBLIC SERVICE COMMISSION Testified in a neutral position. See written testimony.

REP. SCHMIDT TO JOHN DWYER Other than Montana and Wyoming coal, do you have any other concerns and other complications regarding this?

JOHN DWYER We compete against all forms of energy, natural gas, hydro power, etc. We can't compete with hydro power. The good news is, all forms of energy have limited viability.

REP. SCHMIDT There is a line coming down from Canada, is that a coal burning plant, producing that line?

JOHN DWYER Is that the Estevan Plant you are talking about? All of these plants are tied together. We would compete with Canadian lignite as well as hydro power. One of our

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House Finance and Taxation Committee

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problems with lignite, they don't have the reclamation standards, we have a buck and a half tied up in reclamation standards. They also don't have the air pollution standards that we do.

With no further testimony, the hearing was closed.

COMMITTEE ACTION, 3-14-01, TAPE #2, SIDE A, METER #5125

REP. CARLSON Reviewed the bill with committee members.

Amendments were presented to committee members.

JOHN DWYER Appeared before the committee to explain the amendments #10666.0604.

These amendments will provide for a fiscal note of a plus fifty one thousand dollars. By changing the base year, it leaves this fiscal note. The amendments will exclude the year 2001 from the "hold harmless provision". The amendment also puts the bill in sync with the way revenue is allocated to the counties. That is done on a monthly basis. There will also be a continuing appropriation.

REP. RENNERFELDT Made a motion to adopt the amendments as presented.

REP. RENNER Second the motion. **MOTION CARRIED BY VOICE VOTE.**

KATHRYN STROMBECK Appeared before the committee and submitted handouts which showed the revised fiscal impact to Morton and Mercer Counties.

ROD BACKMAN Appeared before the committee and agreed with what every one said.

SEN. RANDY CHRISTMANN Also appeared before the committee and stated he approved the amendments as presented.

REP. GROSZ Made a motion for a **DO PASS AS AMENDED.**

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House Finance and Taxation Committee
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REP. DROYDAL Second the motion. **MOTION CARRIED**

14 YES 0 NO 1 ABSENT

REP. RENNER Was given the floor assignment.

Date: 3-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2299

House FINANCE & TAXATION Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep. Grosz Seconded By Rep. Drovdal

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN	✓		NICHOLAS, EUGENE	✓	
DROVDAL, DAVID, V-CHAIR	✓		RENNER, DENNIS	✓	
BRANDENBURG, MICHAEL	✓		RENNERFELDT, EARL	✓	
CLARK, BYRON	✓		SCHMIDT, ARLO	✓	
GROSZ, MICHAEL	✓		WIKENHEISER, RAY	✓	
HERBEL, GIL	✓		WINRICH, LONNY	✓	
KELSH, SCOT	✓				
KROEBER, JOE	✓				
LLOYD, EDWARD	✓				

Total (Yes) 14 No 0

Absent _____

Floor Assignment Rep. Renner

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

REPORT OF STANDING COMMITTEE

SB 2299, as reengrossed: Finance and Taxation Committee (Rep. Carlson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2299 was placed on the Sixth order on the calendar.

Page 1, line 10, after the semicolon insert "to provide a continuing appropriation;"

Page 15, line 7, after "revenue" insert "- Continuing appropriation"

Page 15, line 18, replace "received by" with "certified to the state treasurer for each"

Page 15, line 19, remove the first "the" and after "year" insert ", except that through December 31, 2009, the portion of the revenue allocation to each county which is attributable to a coal gasification coal conversion facility must exclude consideration of calendar year 2001, and be based on calendar year 2000 or the appropriate year after 2001, whichever is greater"

Page 15, line 20, replace "it received" with "the amount certified to the state treasurer for that county"

Page 15, line 24, after "subsection" insert "to the county."

Page 15, line 25, replace "the general fund to the county" with "collections received under section 57-60-02," and after the underscored period insert "The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments."

Renumber accordingly

2001 TESTIMONY

SB 2299

S.B. 2299

Presented By: Illona A. Jeffcoat-Sacco
Director, Public Utilities Division
Public Service Commission

Before: Senate Committee on Finance and Tax
Honorable Herbert Urlacher, Chairman

Date: 29 January 2001

TESTIMONY

Chairman Urlacher and members of the Senate Finance and Tax Committee, I am Illona Jeffcoat-Sacco, director of the Public Service Commission's Public Utilities Division. The Commission is neutral on this bill, but asked me to appear today to point out one minor issue regarding a utility's recovery of these taxes in rates.

Currently, as I understand it, the amount of severance tax attributable to the coal used by a North Dakota investor owned utility to generate electricity is included in the utility's cost of fuel, and therefore changes in the severance tax will be recovered directly from ratepayers, or returned directly to ratepayers, by means of the utility's monthly fuel adjustment clause. On the other hand, while the amount an electric utility pays in conversion tax is also recovered from ratepayers, that recovery is part of base rates, established at the conclusion of a rate proceeding. Consequently, changes in the conversion tax would not be directly recovered from or returned to ratepayers until a new rate case establishes a new conversion tax amount in base rates. It is my understanding that the purpose of section one of SB 2299 is to guarantee that changes in the conversion tax also flow directly through to ratepayers.

The language of the bill appears to require that the costs of both taxes flow through the fuel adjustment. That is not a problem with the severance tax and that is how the severance tax costs are recovered now. However, recovery of a certain level of conversion tax paid by any utility is already incorporated into the base rates for that utility, therefore only the incremental change in the conversion tax should be flowed through to ratepayers through the fuel adjustment, and then only until new base rates are set. In other words, only the amount of conversion tax attributable to changes made by this bill should be recovered through the fuel adjustment mechanism, and then only until new base rates are established. When new rates are set, the full impact of the conversion tax, including the amount attributable to changes made by this bill, can be recovered in base rates.

We believe the best approach would be to allow the Commission more flexibility in determining the method by which the conversion tax should be recovered from ratepayers. Additional flexibility would not only address the issue just mentioned, but also allow the Commission to determine the appropriate mechanism to use to recover these amounts for utilities currently operating under alternative regulatory plans. For utilities under alternative plans, such as performance based regulation, the impact of tax changes must be flowed through to ratepayers but the fuel adjustment clause may not necessarily be the best mechanism for doing so.

Thank you for the opportunity to bring this matter to your attention. This completes my testimony. I would be happy to answer any questions you may have.

Testimony of John W. Dwyer
President, Lignite Energy Council
On
Senate Bill 2292
January 29, 2001

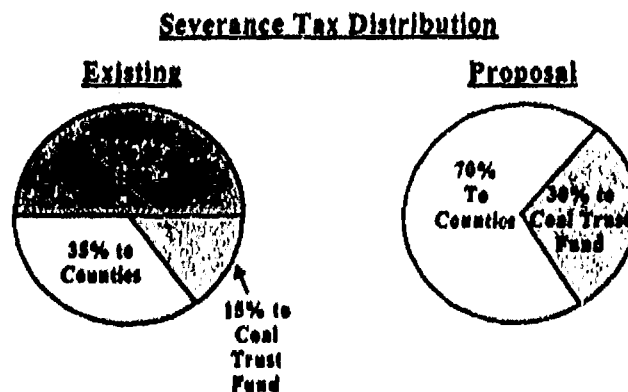
I. Background

- A. Concern over competitiveness of lignite and loss of revenue to state and political subdivisions from loss of coal production
- B. Previous laws passed by 1997 and 1999 Legislature that taxed out of state coal were held unconstitutional
- C. Requested by Attorney General and Tax Commissioner to develop proposal that meets constitutional objectives and loss of revenue to state and political subdivisions

II. What does the bill do?

- A. Reduces severance tax in half (from 75¢ to 37.5¢) but keeps 2¢ R&D tax . Total tax would be 39.5¢ per ton
- B. Increases fixed coal conversion tax component from .25 mills/KWH to .65 mills/KWH on 60% of electrical plant nameplate capacity and increases coal conversion tax on Great Plains (may need to adjust Great Plains based on natural gas forecasts)
- C. Changes allocation in severance tax to reflect reduction in coal severance tax

Severance Tax Allocation Changes



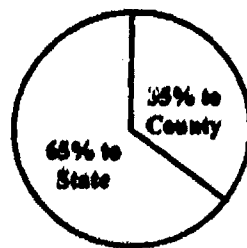
II. What does the bill do? (Cont.)

- D. Changes allocation of coal conversion tax to reflect increases in coal conversion tax

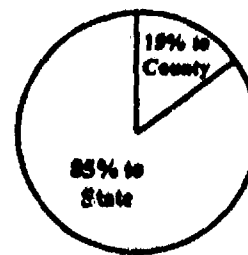
Coal Conversion Tax Allocation Changes

Coal Conversion Tax Distribution

Existing



Proposal



- E. Subjects Heskett Station in Morton County to coal conversion tax instead of local property tax, effective January 1, 2002
- F. Will cover other provisions in section by section explanation of bill

III. What are objectives of bill and why is it good tax policy? What is in it for the local political subdivisions? What is in it for the state?

- A. Review of simple principles
1. 100% of zero is zero
 2. Coal production moves depending on competitive position
 3. Existing plants will not move

III. What are objectives of bill and why is it good tax policy? What is in it for the local political subdivisions? What is in it for the state? (Cont.)

B. Objective to keep local political subdivisions whole and reduce risk of loss of revenue

1. Bill provides same dollar amount potential on severance tax for political subdivisions by doubling county share
2. Bill reduces the risk of declining lignite production by shifting the tax from a more speculative source (coal production) to a more secure source (plant)
3. Bill would insure political subdivisions receive no less revenue than previous year – “guarantee” provided for in Section 9

C. Objective to make lignite as competitive as possible to protect existing production and enhance new production

1. **Ramsett Study (August, 1998) - Competition in North Dakota's Coal-Electric Utility Industry: Lignite Vs. Sub-Bituminous Coal, Dr. David Ramsett, August 1998**

“...The conclusion is, given the various factors that must be considered, declining coal prices and transportation costs for western sub-bituminous coal gradually are increasing the incentive for North Dakota electric power producers to substitute imported sub-bituminous coal for lignite. This is an unfortunate circumstance that North Dakota businesses producing lignite-based electric power, as well as North Dakota political decisionmakers, cannot choose to ignore...”

2. **Sinor Study (June, 1999) - Update to Market Assessment for North Dakota Lignite, J.E. Sinor Consultants, Inc., June 30, 1999**

“If current trends continue, the entire North Dakota lignite market could be lost to cheaper Powder River Basin coal....”

3. Reducing severance tax helps address lignite competitive concerns that are well documented in professional studies
4. North Dakota's competitive policy sends strong signal to encourage development of Lignite Vision 21 Project

III. What are objectives of bill and why is it good tax policy? What is in it for the local political subdivisions? What is in it for the state? (Cont.)

D. Objective to protect existing state revenue and fully develop potential revenue stream

1. Puts more of total coal tax on permanent source (plant);
2. Reduces "50% risk" to state that is a part of coal severance tax and which depends on domestic coal production
3. Allows state to recover tax revenue if out of state coal is burned
 - 100% tax on lost production is zero
 - Proposed tax is recovered regardless of type of fuel burned
4. Fixed tax on 60% of nameplate capacity creates tax incentive to produce more coal, generate more KWs, increase state revenue

IV. Explanation of Bill by Section (Attachment 1) – page 5 of Testimony

V. Explanation of Fiscal Note (Attachment 2) – page 6 of Testimony

Explanation of Senate Bill 2299
By Lignite Energy Council

- Section 1**
(pages 1 & 2) Provides that an investor owned utility (IOU) can recover the coal conversion tax, which presently is not covered by the fuel adjustment clause allowing IOUs to pass through increased or decreased costs. This is not an issue for Generation and Transmission Cooperatives (G&Ts) since they are not regulated by the PSC.
- Section 2 thru 6**
(pages 2 to 12) Repeal of certain provisions enacted last session that were declared unconstitutional;
- Section 7**
(page 12) Brings the Heskett Station under the provisions of the coal conversion tax;
- Section 8**
(pages 12 & 13) Raises the coal conversion tax for Great Plains and all electrical generating stations to offset the reduction in funding resulting from the reduction in the coal severance tax; also, maintains current tax incentives for a new plant (bottom page 13, top of page 14);
- Section 9**
(pages 14 & 15) Changes the allocation to the counties from the coal conversion tax to reflect increased revenues coming from the coal conversion tax and reduced revenues from the coal severance tax. Also guarantees that no coal county (subsection 2) and Morton County (subsection 3) shall receive less revenue than they received in the preceding calendar year;
- Section 10**
(page 15) Reduces the coal severance tax from 75 cents to 37 ½ cents;
- Section 11**
(pages 15 & 16) Maintains the tax incentive for shipping beneficiated coal out of state and gives counties the authority to provide an incentive for the county share;
- Section 12**
(pages 16 to 20) Doubles the share of severance tax that goes to the trust fund and to the counties in recognition of the fact that Section 10 reduces the severance tax in half. Has the effect of keeping the counties whole so they receive the same amount of severance tax revenue as they received previously;
- Section 13**
(page 20) Repeals the small boiler exemption passed previously that reduced coal used in the Stanton and Heskett Stations to 37 ½ cents as Section 10 in effect maintained the exemption at the same level; and
- Section 14**
(page 20) In recognition of the fact that Heskett pays a local property tax on a calendar year basis, the effective date of Heskett being subject to the coal conversion tax does not begin until January 1, 2002, to allow for a transition period. The rest of the bill is effective July 1, 2001.
- Fiscal Note:** With the Tax Department's amendments, the fiscal note is estimated to be a negative \$538,000 to the general fund and a plus \$7,000 to the counties. The Lignite Energy Council believes the tax incentive created for the plants (generation above 60 percent of nameplate capacity) will make the proposal revenue neutral to the state as well.

Comparison of Forecasted Coal Revenues
Under Current Law (0.75 Severance & 0.25 mills installed capacity)
and Proposed (0.375 Severance & 0.65 mills installed capacity)

Severance Tax	Allocation Proposal 70% County / 30% Trust Fund		
	<u>Current Law</u>	<u>Proposed</u>	<u>Difference</u>
Fiscal Year 2002			
Coal Counties	\$7,987,832	\$7,987,832	\$0
Trust Fund	\$3,423,357	\$3,423,357	\$0
State General Fund	\$10,874,588	\$0	(\$10,874,588)
Lignite Research	\$608,597	\$608,597	\$0
Total	<u>\$22,894,373</u>	<u>\$12,019,785</u>	<u>(\$10,874,588)</u>
Fiscal Year 2003			
Coal Counties	\$7,924,556	\$7,924,556	\$0
Trust Fund	\$3,396,238	\$3,396,238	\$0
State General Fund	\$10,784,195	\$0	(\$10,784,195)
Lignite Research	\$603,776	\$603,776	\$0
Total	<u>\$22,708,765</u>	<u>\$11,924,670</u>	<u>(\$10,784,195)</u>
2001-03 Biennium			
Coal Counties	\$15,912,388	\$15,912,388	\$0
Trust Fund	\$8,819,595	\$8,819,595	\$0
State General Fund	\$21,658,783	\$0	(\$21,658,783)
Lignite Research	\$1,212,372	\$1,212,372	\$0
Total	<u>\$46,603,138</u>	<u>\$23,944,356</u>	<u>(\$21,658,783)</u>

Conversion Tax:	Allocation Proposal 85% State / 15% County		
	<u>Current Law</u>	<u>Proposal</u>	<u>Difference</u>
Fiscal Year 2002			
Coal Counties	\$2,814,009	\$2,806,347	(\$7,662)
State General Fund	\$12,613,597	\$23,200,214	\$10,586,617
Total	<u>\$15,427,606</u>	<u>\$26,006,561</u>	<u>\$10,578,955</u>
Fiscal Year 2003			
Coal Counties	\$2,814,009	\$2,828,443	\$14,434
State General Fund	\$12,613,597	\$23,415,425	\$10,801,829
Total	<u>\$15,427,606</u>	<u>\$26,243,869</u>	<u>\$10,816,263</u>
2001-03 Biennium			
Coal Counties	\$5,628,018	\$5,634,791	\$6,772
State General Fund	\$25,227,193	\$46,705,639	\$21,478,446
Total	<u>\$30,855,211</u>	<u>\$52,340,430</u>	<u>\$21,485,218</u>
Fiscal Note Impact			
Counties			+\$6,772
State General Fund			(\$180,337)
Payment to Morton County			(\$358,000)
Total General Fund			<u>(\$538,339)</u>

Note: Effective Date 7/1/01 except Heskett tax effective 1/1/02



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0380



Minority Leader

for Aaron Krauter
District 35
Box 27
Bismarck, ND 58505-9721

Senate Bill 2299

For the record, I am Senator Aaron Krauter, District 35, Senate Minority Leader.

I agreed to co-sponsor this bill as I think it important that appropriate tax policy be adopted that protects the State of North Dakota and our local political subdivisions.

I represent an area that is near the previously operated Gascoyne mine in southwestern North Dakota. The State of North Dakota learned the hard way that a 77 cent severance tax times zero production means zero revenue. Unfortunately, the Gascoyne mine near Scranton, North Dakota, closed in the mid-1990s because it was not competitive, costing this area jobs, business volume and tax revenues.

Thus, to the extent we can shift a production tax to a more stable source of revenue that is not based on volatile production, we should do so.

This bill guarantees the local political subdivision the same amount of revenue they had previously, it helps protect state revenue, and provides a tax incentive to help recoup any general fund impact.

I urge your favorable consideration of SB 2299.

For pages 1-6 see testimony on Jan 29, 2001

Explanation of Engrossed Senate Bill 2299
By Lignite Energy Council

- Section 1**
(pages 1 & 2) Provides that an investor owned utility (IOU) can recover the coal conversion tax, which presently is not covered by the fuel adjustment clause allowing IOUs to pass through increased or decreased costs. This is not an issue for Generation and Transmission Cooperatives (G&Ts) since they are not regulated by the PSC.
- Section 2 thru 6**
(pages 2 to 12) Repeal of certain provisions enacted last session that were declared unconstitutional;
- Section 7**
(page 12) Brings the Heskett Station under the provisions of the coal conversion tax;
- Section 8**
(pages 12 & 13) Caps the gross receipts subject to the coal conversion tax by providing for a ceiling price of \$4.25 per 1000 cubic feet of SNG produced and sold so that Great Plains does not pay tax on revenues going to DOE under its purchase agreement. Ceiling price is indexed.
- Section 9**
(pages 13 to 15) Raises the coal conversion tax for Great Plains (from 2.5% to 4.1% of gross receipts) and on all electrical generating stations (from .25 mills/kwh to .65 mills/kwh) to offset the reduction in funding resulting from the reduction in the coal severance tax; also maintains current tax incentives for a new plant (pages 13 & 14);
- Section 10**
(pages 15 & 16) Changes the allocation to the counties from the coal conversion tax to reflect increased revenues coming from the coal conversion tax and reduced revenues from the coal severance tax. Also guarantees that no coal county (subsection 2) and Morton County (subsection 3) shall receive less revenue than they received in the preceding calendar year;
- Section 11**
(page 16) Reduces the coal severance tax from 75 cents to 37 ½ cents;
- Section 12**
(pages 16 & 17) Maintains the tax incentive for shipping beneficiated coal out of state and gives counties the authority to provide an incentive for the county share;
- Section 13**
(pages 17 to 21) Doubles the share of severance tax that goes to the trust fund and to the counties in recognition of the fact that Section 11 reduces the severance tax in half. Has the effect of keeping the counties whole so they receive the same amount of severance tax revenue as they received previously;
- Section 14**
(page 21) Repeals the small boiler exemption passed previously that reduced coal used in the Stanton and Heskett Stations to 37 ½ cents as Section 11 in effect maintained the exemption at the same level; and
- Section 15**
(page 21) In recognition of the fact that Heskett pays a local property tax on a calendar year basis, the effective date of Heskett being subject to the coal conversion tax does not begin until January 1, 2002, to allow for a transition period. The rest of the bill is effective July 1, 2001

**Comparison of Forecasted Coal Revenues
 Under Current Law (0.75 Severance & 0.25 mills installed capacity)
 and Proposed (0.375 Severance & 0.65 mills installed capacity)**

Severance Tax	Allocation Proposal 70% County / 30% Trust Fund		
	<u>Current Law</u>	<u>Proposed</u>	<u>Difference</u>
Fiscal Year 2002			
Coal Counties	\$7,987,832	\$7,987,832	\$0
Trust Fund	\$3,423,357	\$3,423,357	\$0
State General Fund	\$10,874,588	\$0	(\$10,874,588)
Lignite Research	\$608,597	\$608,597	\$0
Total	<u>\$22,894,374</u>	<u>\$12,019,786</u>	<u>(\$10,874,588)</u>
Fiscal Year 2003			
Coal Counties	\$7,924,556	\$7,924,556	\$0
Trust Fund	\$3,396,238	\$3,396,238	\$0
State General Fund	\$10,784,195	\$0	(\$10,784,195)
Lignite Research	\$603,776	\$603,776	\$0
Total	<u>\$22,708,765</u>	<u>\$11,924,570</u>	<u>(\$10,784,195)</u>
2001-03 Biennium			
Coal Counties	\$15,912,388	\$15,912,388	\$0
Trust Fund	\$6,819,595	\$6,819,595	\$0
State General Fund	\$21,658,783	\$0	(\$21,658,783)
Lignite Research	\$1,212,373	\$1,212,373	\$0
Total	<u>\$46,603,139</u>	<u>\$23,944,356</u>	<u>(\$21,658,783)</u>

Conversion Tax:	Allocation Proposal 85% State / 15% County		
	<u>Current Law</u>	<u>Proposal</u>	<u>Difference</u>
Fiscal Year 2002			
Coal Counties	\$3,243,551	\$3,136,099	(\$106,452)
State General Fund	\$13,411,318	\$24,464,210	\$11,052,892
Total	<u>\$16,654,869</u>	<u>\$27,602,309</u>	<u>\$10,947,440</u>
Fiscal Year 2003			
Coal Counties	\$3,243,551	\$3,356,003	\$112,452
State General Fund	\$13,411,318	\$24,464,210	\$11,052,892
Total	<u>\$16,654,869</u>	<u>\$27,820,213</u>	<u>\$11,165,344</u>
2001-03 Biennium			
Coal Counties	\$6,487,102	\$6,494,102	\$7,000
State General Fund	\$20,822,636	\$48,928,420	\$22,105,784
Total	<u>\$33,309,738</u>	<u>\$55,422,522</u>	<u>\$22,112,784</u>

Fiscal Note Impact
 Counties +\$7,000

Gross State General Fund +\$454,000

**Note: Effective Date 7/1/01 except
 Heskett tax effective 1/1/2002**

FISCAL NOTE

Requested by Legislative Council
 02/15/2001

Bill/Resolution No.:

Amendment to: Engrossed
 SB 2299

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.

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$454,000			
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$7,000					

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

SB 2299 Second Engrossment reduces the coal severance tax and increases the coal conversion tax.

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 2299 Second Engrossment is expected to increase state general fund revenues by \$454,000 during the 01-03 biennium. County revenues are expected to increase by \$7000 during the 01-03 biennium.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name: Kathryn L. Strombeck Agency: Tax Department
 Phone Number: 328-3402 Date: 02/20/2001

**House Finance and Taxation Committee
March 13, 2001
Testimony of Harlan Fuglesten,
Communications and Government Relations Director
North Dakota Association of Rural Electric Cooperatives
on Senate Bill 2299**

Mr. Chairman and Members of the House Finance and Taxation Committee. My name is Harlan Fuglesten, Communications and Government Relations Director for the North Dakota Association of Rural Electric Cooperatives. Our Association's board of directors includes representatives from each of the 17 distribution cooperatives and five generation and transmission cooperatives based or doing business here in North Dakota. Together, our members are responsible for nearly 90 percent of the investment in electricity generation from lignite coal in North Dakota, and our members sell more than 40 percent of the retail electricity in the state.

I would like to report to the committee that our board of directors, after hearing a presentation from the Lignite Energy Council, voted to support SB 2299 to change the coal severance and coal conversion tax formulas to make lignite coal more competitive while maintaining revenue neutrality for both the state and for the political subdivisions in the coal impact counties.

On behalf of the North Dakota Association of Rural Electric Cooperatives, I urge a DO PASS on Senate Bill 2299.

Statement of Representative Merle Boucher
House Minority Leader
On
Senate Bill 2299

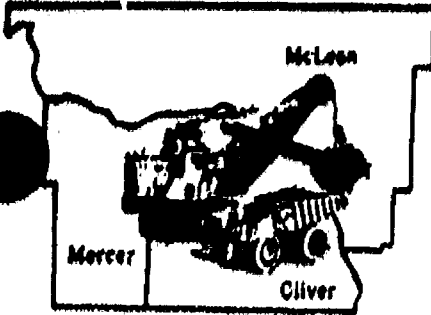
For the record, I am Representative Merle Boucher for District 9, House Minority Leader.

It's not often that I appear before the House Finance and Taxation Committee on a coal severance/coal conversion tax bill. In fact, it's probably never happened in my legislative career.

But as one of the legislative leaders, I think it's appropriate we attempt to enact sound tax policy. The lignite industry in this state is important to all of us, regardless of political party, for the good paying jobs, economic activity and tax revenue it brings to the state.

All of us are interested in our power plants using our native, abundant lignite resource. Obviously, none of us benefits if imported Wyoming or Montana coal is used. Thus, tax policy that makes North Dakota's products more competitive should be encouraged.

While others here will explain the various details of this bill, I would urge the Committee to give this bill your favorable consideration.



Coal Conversion Counties

McLean, Mercer and Oliver Counties

P.O. Box 717 • Hazen, ND 58545

March 13, 2001

Chairman Carison and Members of the House Finance and Tax committee. My name is Vicky Steiner. I am the Executive Director for the North Dakota Coal Conversion Counties Association.

The Association consists of three counties, McLean, Mercer and Oliver and their cities and schools. I appear before you today in support of Senate Bill 2299. The Coal Conversion Counties Association supports a do-pass recommendation on Senate Bill 2299.

Thank you for your consideration.

S.B. 2299

Presented By: Illona A. Jeffcoat-Sacco
Director, Public Utilities Division
Public Service Commission

Before: House Committee on Finance and Tax
Honorable Al Carlson, Chairman

Date: 13 March 2001

*Sorry about the
Typo - I'll revise + send down to you this afternoon!*

TESTIMONY

Chairman Carlson and members of the House Finance and Tax Committee, I am Illona Jeffcoat-Sacco, director of the Public Service Commission's Public Utilities Division. The Commission is neutral on this bill, but asked me to appear today to support the House amendments reflected in Section One of the engrossed bill.

Currently, the amount of severance tax attributable to the coal used by a North Dakota investor owned utility to generate electricity is included in the utility's cost of fuel, and therefore any changes in the severance tax will be recovered directly from ratepayers, or returned directly to ratepayers, by means of the utility's monthly fuel adjustment clause. On the other hand, changes in the conversion tax would not be directly recovered from or returned to ratepayers until a new rate case establishes a new conversion tax amount in base rates. It is my understanding that the purpose of section one of SB 2299 is to guarantee that changes in the conversion tax also flow directly through to ratepayers.

The language of the original bill appeared to require that the costs of both the severance and the conversion taxes flow through the fuel adjustment. Since recovery of a certain level of conversion tax paid by any utility is already incorporated into the

base rates for that utility, only the incremental change in the conversion tax need be flowed through to ratepayers through the fuel adjustment, and then only until new base rates are set. When new rates are set, the full impact of the conversion tax, including the amount attributable to changes made by this bill, can be recovered in base rates.

We asked the House to allow the Commission more flexibility in determining the method by which the conversion tax should be recovered from ratepayers. The amendments adopted by the House do just that and the Commission appreciates and supports the changes that were made.

Thank you for the opportunity to testify about this issue. This completes my testimony. I would be happy to answer any questions you may have.

Kathryn Strombeck
Handout during Committee
Action

**SB 2299 Second Engrossment
Summary of Revised SGF Fiscal Impact and
Possible Amendment**

01-03 Biennium

Revised SGF Fiscal Impact SB 2299 2nd Engr.

Sev. & Conv. Rate Changes	\$ 445,000
Mercer County Hold Harmless	(1,378,000)
Morton County Coal Conversion SGF	540,000
Morton County Hold Harmless	<u>(358,000)</u>
Total Revised Fiscal Impact SB 2299 2nd Engr.	(751,000)

**Possible Amendment: Hold Mercer County harmless based on
CY 2000 Actuals rather than CY 2001**

Sev. & Conv. Rate Changes	445,000
Mercer County Hold Harmless	(572,000)
Morton County Coal Conversion SGF	540,000
Morton County Hold Harmless	<u>(358,000)</u>
Total Rev. SB 2299 2nd Engr w. Amendment	55,000

KATHRYN Strombeck

Mercer County Share of
Dakota Gasification Company's
Coal Conversion Tax Revenues

Prod. Month	State Revenue Month	County Revenue Month	CY 2002	CY 2001 Est.	CY 2000	CY 1999	CY 1998	CY 1997	CY 1996	CY 1995
			Under SB 2299							
Nov	Dec	Jan	81,200.00	100,281.84	93,005.24	80,850.00	88,215.19	96,039.39	87,520.91	96,539.76
Dec	Jan	Feb	81,200.00	121,963.49	83,545.00	83,545.00	84,364.75	103,750.10	91,285.95	97,998.60
Jan	Feb	Mar	81,200.00	186,027.36	180,872.48	83,545.00	87,497.92	116,567.82	91,956.88	93,389.52
Feb	Mar	Apr	81,200.00	186,200.00	84,807.22	75,460.00	76,520.34	91,612.33	87,740.10	82,320.80
Mar	Apr	May	81,200.00	186,200.00	90,745.12	83,545.00	88,609.85	58,055.07	93,135.56	91,458.38
Apr	May	Jun	81,200.00	186,200.00	120,656.03	86,385.59	95,806.36	80,850.00	89,253.52	95,057.03
May	Jun	Jul	81,200.00	186,200.00	114,696.09	45,920.53	83,545.00	83,545.00	88,489.86	92,575.85
Jun	Jul	Aug	81,200.00	186,200.00	80,012.31	70,374.41	72,144.71	74,247.28	87,974.40	88,961.74
Jul	Aug	Sep	81,200.00	81,200.00	99,390.24	25,984.95	83,545.00	75,951.18	94,232.28	91,456.10
Aug	Sep	Oct	81,200.00	81,200.00	91,185.26	83,545.00	83,545.00	83,807.28	98,072.12	91,216.17
Sep	Oct	Nov	81,200.00	81,200.00	103,253.34	85,577.84	80,850.00	68,200.75	92,629.46	90,074.65
Oct	Nov	Dec	81,200.00	81,200.00	119,065.53	84,110.30	83,545.00	98,101.24	91,837.18	91,210.81
			974,400.00	1,664,072.69	1,261,233.86	888,843.62	1,008,189.12	1,030,727.14	1,094,138.22	1,102,260.41