MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

2310

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2003 SENATE NATURAL RESOURCES

SB 2310

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2310

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-13-03

Tape Number	Side A	Side B	Meter #
1	X		0.0 - end
		X	0.0-14.6
2	X		0.4 - 22.2
Committee Clerk Signature			

Minutes:

Senator Thomas Fischer, Chairman of the Senate Natural Resources opened the hearing on SB 2236, to provide for wind turbine siting requirements and wind energy development contract provisions.

Attendance was taken indicating all member of the committee were present except Senator John Traynor.

Senator Michael Every of District 23 introduced SB 2310 stating the bill came about because a large group of people have worked very hard on wind energy issues. This industry has a great potential both for the developers and the landowners. Discussion was held as to how do we protect our landowners and at the same time does not discourage the developers. This is not a perfect bill, but it is a beginning.

Senator April Fairfield of District 29 testified in support of SB 2310 stating wind energy is a very promising economic development opportunity to come to North Dakota for along time. This

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is a new source of revenue for landowners as a supplement to their income. The landowners are equal partners and should be able to negotiate in equal contracts.

Senator Joel Heitkamp asked what risk is there if nothing is done.

Senator Fairfield answered the risk is if we don't allow landowner to be on equal footing in contracts negotiations we run the risk of being in a situation where they are not treated equal.

Joe Richardson (8.6) representing the Harnessing Dakota Wind testified in support of SB 2310 (See attached testimony). He also submitted an article "Wind Wakes or Wind Shadows" (attached).

Brian Kramer (24.1) representing the North Dakota Farm Bureau testified in support of SB 2310 (See attached testimony). Amendments are included with his testimony (attached).

Mark Sitz (30.7) representing the North Dakota Farmer Union testified in support of SB 2310 stating they see the wind development as great potential for landowner income supplement.

David Brunsald (32.3) representing the Enxco Wind Power testified in support of SB 2310 stating his company is looking at doing projects in the state. They have concerns with the three year limit as any less would deter the development and have no problem with the contracts being public.

Dennis Anderson (38.1) representing the Coteau Hills Wind LLC testified in opposition to SB 2310. He stated his and the company's concern that requiring bonding will deter wind development companies. He submitted testimony from **Keith Monson** chairman of the Griggs County Developmenty Group (See attached).

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Mike Brandenburg (Tape 1, Side B, 3.1) representing the Coteau Hills testified in opposition to SB 2310. He stated some really good wind energy bills were passed last session. North Dakota is a coal power state and working with them for transmission of energy would be good.

Dale Niezwaag (4.4) representing Basin Electric Cooperative testified in opposition of SB 2310 (See attached testimony).

Tim Simmons of Crown Butte Wind Power testified in opposition to SB 2310. They are North Dakota company who does small projects. He listed his three concerns being 1). set backs and the location of the wind towers; 2). Bonds in escrow will increase the price of the turbine project; 3). disclosure of turbine size and type would be difficult as they don't always know as they use different companies.

Jay Haley, representing himself and the founding chairman of the Wind Energy Council testified in opposition to SB 2310. He stated he was delivering a message from Mike Holm the current chairman of the Wind Energy Council saying they would like this turned into study to deal with the landowner issues.

Illona A. Jeffcoat-Sacco, Director of the Public Utilities Division of the Public Service Commission testified in a neutral position of SB 2310 (See attached testimony).

Senator Fischer closed the hearing on SB 2310.

Tape #2, Side A, 0.4 - 22.2

Senator Fischer opened discussion of SB 2310.

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Senator Every presented an amendment and explained each change. He also stated that he could support any of the amendment submitted the Farm Bureau.

Senator Stanley Lyson asked how many years away the transmission lines would be available.

Senator Every responded it is several years away but if we don't start the process and set an objective, a commitment is made and things will fall into place.

Discussion was held as to the options in passing this bill or turning it into a study. This could be landmark legislation looked at by other states. There is a lot of good common sense in the bill, but if there is to be any compromise it should be developed by Senator Every.

Senator Fischer suggested rather than the committee acting on the bill at that time, Senator Every should go and talk to the groups involved before any action is taken. Senator Every agreed that he would do that.

Senator Fischer closed the discussion on SB 2310.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2310

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-14-03 Discussion and action

Tape Number	Side A	Side B	Meter #
2	X		4.4 -7.4
Committee Clerk Signature			

Minutes:

Senator Thomas Fischer opened the discussion on SB 2310.

This bill will be turned into a study with specific issues to be included in the study.

Senator Michael Every made a motion to accept Amendment 30719.0204.

Senator Joel Heitkamp second the motion.

Roll call vote #1 was taken indicating 5 YEAS, 0 NAYS AND 2 ABSENT OR 0 NOT VOTING.

Senator Heitkamp made a motion for Do Pass as Amended.

Senator Every second the motion.

Roll call vote #2 was taken indicating 5 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Heitkamp will carry SB 2310.

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Operator's Signature 10/22/03 Date

30719.0202
Title.

Prepared by the Legislative Council staff for
Senator Every
February 13, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2310

Page 1, line 12, replace "three" with "four"

Page 1, line 21, replace the colon with "a"

Page 1, line 22, remove "a. A"

Page 1, remove line 24

Page 2, remove lines 1 through 5

Page 2, line 6, replace "6." with "5."

Page 2, line 8, replace "7." with "6."

Page 2, line 10, replace "department of commerce" with "public service commission" and replace "thirty" with "one hundred twenty"

Page 2, line 11, remove "The department of commerce shall"

Page 2, remove lines 12 through 17

Page 2, line 18, remove "the data base."

Page 2, line 20, replace "8." with "7."

Page 3, line 11, replace "9." with "8."

Page 3, line 13, replace "10." with "9." and replace "two" with "four"

Page 3, line 14, remove "and three quarters"

Page 3, line 15, replace "the county where the wind turbine is located expressly authorizes" with "all owners of land located within four times the swept rotor-blade diameter of a proposed wind turbine agree in writing to allow a wind turbine to be placed closer to the property line. The maximum duration for an agreement allowing placement of a wind turbine closer to a property line may not be longer than fifty years. This subsection does not apply to wind turbines that are covered by power purchase agreements signed before February 1, 2003, and which are operational before January 1, 2004."

Page 3, replace lines 16 through 31 with:

"10. The public service commission shall establish rules for decommissioning wind turbine sites."

Page 4, remove lines 1 through 31

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Page 5, remove lines 1 through 8

Page 5, line 9, replace "12." with "11."

Renumber accordingly

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Operator's Signature 10/22/03 Date

30719.0204
Title.0300

Prepared by the Legislative Council staff for
Senator Every
February 14, 2003

2-14-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2310

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of wind energy development.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL - WIND ENERGY DEVELOPMENT STUDY. The legislative council shall consider studying, during the 2003-04 interim, issues related to wind energy development in this state, including wind turbine siting requirements, wind energy development contract provisions, the potential economic benefits of wind energy development for farmers and ranchers, the potential adverse impacts of wind energy development on landowners, and the impact of wind energy development on organized labor, especially in the energy industry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

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Operator's Signature 10/22/03 Date

Date: 2-14
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2318

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken accept Amendment 30719.0204

Motion Made By Every Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson					
Senator John T. Traynor					

Total (Yes) 5 No 0

Absent 2

Floor Assignment

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

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Operator's Signature 10/22/03 Date

Date: 2-14
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2310

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Heit Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson					
Senator John T. Traynor					

Total (Yes) 5 No 0

Absent 2

Floor Assignment Heitkamp

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

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Operator's Signature 10/22/03 Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 8:25 a.m.

Module No: SR-30-2855
Carrier: Heitkamp
Insert LC: 30719.0204 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2310: Natural Resources Committee (Sen. Fischer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2310 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of wind energy development.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL - WIND ENERGY DEVELOPMENT STUDY. The legislative council shall consider studying, during the 2003-04 interim, issues related to wind energy development in this state, including wind turbine siting requirements, wind energy development contract provisions, the potential economic benefits of wind energy development for farmers and ranchers, the potential adverse impacts of wind energy development on landowners, and the impact of wind energy development on organized labor, especially in the energy industry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

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2003 HOUSE NATURAL RESOURCES

SB 2310

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2310

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 20, 2003

Tape Number	Side A	Side B	Meter #
1	xx		0-end
1		xx	0-5450
Committee Clerk Signature			

Minutes:

Chair Nelson called the hearing on SB 2310 to provide for a legislative council study on wind energy to order.

Sen. Every: Introduced SB 2310. SB 2310 started out as a rather lengthy bill dealing with landowner rights with respect to wind energy development. The changes would create a study to look at implication and impact on landowners.

Rep. Gulleson: Testified in support of SB 2310 and introduced an amendment. Testified about the importance of energy policy in a time of war and the importance of not waiting for two more years. A few individuals have become incredibly powerful because they are in control of the worlds fuel supply. We should take that away from them. We don't see this as replacing anything that our current oil and gas industries provide. The need for fuel is increasing. I don't see this taking anything away. This will enhance our existing industries. If we can partner up so the two can work hand to hand. That overall would be the best thing we can do for the state. All

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of those fuels contain some form of additive. Ethanol and biodiesel are a logical blend. In Iowa they have 11 plants up and running. There are another 7 under construction. They have more than 13,000 Iowa jobs in this field. 1.7 billion in economic impact. Minnesota has 14 plants. 5,000 jobs. 47 million in economic impact. South Dakota just completed their ninth plant. 500 direct jobs. 300 Million to their states economy. The question has come up concerning the cost of switching this over to ethanol. I spoke to a service station about this. They said the cost would be about $.50 for that sticker labeling it ethanol. **(See Attached Testimony)**

Rep. Nottestad: Have you requested a complete fiscal note?

Rep. Gulleson: No

Rep. Nottestad: In small towns they have one pump for diesel fuels and one pump for gasoline. This bill would require them to change over that one pump.

Rep. Gulleson: It says retail sales of gasoline.

Rep. Keiser: The commission, why is it structured like this and not within the commerce department or a separate department of energy.

Rep. Gulleson: That is a good point. I would be comfortable swapping those out.

Sen. Heitkamp: Testified in support of SB 2310 with the amendment. Testified as to his concern about waiting 2 more years before taking action. Commented on success in neighboring states in this industry. This amendment is Economic Development. This should not take two more years.

Rep. Porter: How many bills relating to mandates on ethanol or biodiesel have passed this session?

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Sen. Heitkamp: None. We keep stumbling on that one word. The minute the word mandate appears it is shocking to people. Someone mandated that lead would not appear in gasoline as well. There were old-timers back then that were not in favor of that change. We can do things in North Dakota to fix the situation in world today.

Rep. Porter: In the fee collection, every agency would have to rent those vehicles in the state fleet. Is there a dollar amount replaced in every agency to pay for the fees to those agencies?

Sen. Heitkamp: Right now there are dollars being saved by using ethanol. There is a means from what you thought was being spent and what is being spent. It's Cheaper, burns clean, and we grow it.

Rep. Kelsh: Testified in support of SB 2310. Despite our oil and gas resources we still have the problem of wealthy people in the world that just don't like us. By doing this we remove their ability to conduct terrorism. I can think of no better way to cut Saddam Hussien and the Saudi Terrorists off at the knees.

Sen. Thane: Testified in support of SB 2310. I was asked to sponsor this amendment on behalf of ND Corn Growers. We need to break our energy dependence and this is one way to do it.

Roger Johnson: ND Agriculture Commissioner. **(See Attached Testimony)**

Rep. Keiser: E-85 and 10% fuel mix how does ethanol compare with the efficiency to regular fuel.

Rep. Porter: We are paying about 2 million per biennium in subsidies to ethanol plants in North Dakota. If we are mandating that everybody use ethanol, why aren't we taking those funds away? The Tesoro plant in Mandan is not subsidized at all.

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Roger Johnson: In many ways this is an emerging industry, especially in this state. Any time you have emerging industries, it takes long time to get on their feet. There is a big change that I see happening this session. Historically, you have given all the ethanol subsidies to 2 plants. The change is to reduce the subsidies to existing plants and giving it instead to new plants. I think that is sound public policy. If we are going to grow this industry we have to give incentives for new production facilities to come on line as well. Minnesota's system did not just happen because we turned the free enterprise system lose. There were a whole bunch of things that happened. The had mandates, production incentives, at the pump incentives, large educational campaign, and clean air act incentives. We have to use every tool we have available.

Rep. Porter: If mandates are a good thing, why don't we mandate that all gasoline sold in North Dakota must be produced in North Dakota?

Roger Johnson: This mandate does not say that this needs to be North Dakota ethanol. You folks issue mandates all the time.

Rep. Nottestad: Wouldn't this mandate be better from the Federal Government?

Roger Johnson: I would support it coming from the Federal Government too. The states usually have to nudge them along.

Rep. Nottestad: The discussion of foreign oil coming in, yet the vote was 52-48 against drilling in Anwar.

Chair Nelson: I remember giving the Tesoro plant an exemption in the 1999 session. That could also be considered a subsidy.

Rep. Keiser: Are you suggesting we reduce the subsidy to the two existing facilities and moving the funds.

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Roger Johnson: That is exactly what this legislative session is doing. And I concur with that strategy.

Terri Gerger: Farmer. Testified in support of SB 2310 as amended. Explained successes he has had with his own farm business with regard to the efficiency of the project despite the additional costs associated with both. In addition there are significant health benefits to biodiesel and ethanol use because of the cleaner burn in the engine.

Rep. Kelsh: What kind of capacity are talking about with these plants?

Terri Gerger: I believe we would have to produce 4-5 million gallons if we went all biodiesel. I don't think that included larger users like mining and railroads. It costs about 5-15 million dollars to produce a biodiesel plant. Most biodiesel plants are going along by selling all they produce. However, all of them have said that they can double and triple their production levels within 6 months.

Rep. Keiser: Does anything happen to the efficiency as the % of ethanol goes up?

Terri Gerger: My experience is that the according to my records was that there was no change. In fact many of my older tractors improved. We did not see a power loss.

Rep. Porter: You were talking about federal reductions in sulfur for fuel. In 2006 it goes down to 215. Does that apply to on and off-road use? At what time is off road use included in this?

Terri Gerger: All diesel fuel.

Ray Martinson: National Biodiesel Board. Testified in support of SB 2310 as amended. Testified about the National Biodiesel Board and explained the role of the organization.

Paul Thomas: ND Ag Coalition. Testified in support of SB 2310. We supported the wind energy portion of this bill. We support putting all of these ideas together. I think these

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provisions on SB 2310 does this. I do not want these things to die by a fiscal note.

Recommended putting a member from the petroleum board and retail board on this commission.

Jay Haley: ND Wind Energy Council. Testified in support of SB 2310. Other states have figured this out that renewable energy is the best form of rural economic development we have today. This is a good starting point.

Rep. Porter: When we moved towards the promotion of wind energy did we have any mandate?

Jay Haley: No, We corrected a tax inequity with our neighbors.

Chair Nelson: We did pass several tax incentives to spur development of wind energy.

Jay Haley: There was a personal property exemption of 2/3rds, Income tax credit of 6%, and sales tax exemption No mandates.

Richard Schlosser: Farmers Union. Testified in support of SB 2310 and amendments. Testified as to some of the projects having a positive effect on the economy.

Rep. Norland: Are the Cenex stations required to carry ethanol?

Richard Schlosser: Most of these do carry ethanol. I do not no about biodiesel.

Rep. Nottestad: Wouldn't that be an excellent example?

Richard Schlosser: The Cenex stations were the original supporters of ethanol.

Jocie Iszler: ND corn utilization Board. Testified in support of SB 2310. **(See Attached Testimony)**

Robert Foreward: Township Officers Association. Testified in support of SB 2310.

Rep. Nottestad: Are you in favor of the amendment of the original bill?

Robert Foreward: I am not authorized on behalf of the Township Officers Association. Personally I do.

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Dave MacIver: Bismarck-Mandan Chamber of Commerce and the Coalition Against Mandates.

(See Attached Testimony)

Rep. Kelsh: What about the mandate that removed lead from gasoline?

Dave MacIver: I am opposed to all mandates that affect our economy.

Ron Ness: ND Petroleum Council. Testified in opposition to the amendments to SB 2310. This started 2 years ago. Ethanol consumption was 12% to 13%. We said get out and market your product. Work with our retailers. We have heard a lot about partnerships. I would say that if the wind energy folks had tried to stick it in the ear of MDU and Basin Electric, the hurdles that have been overcome in the last two years would not have happened. There would have been an adversarial relationship between both sides. This amendment would cause distribution problems and would create an island out of North Dakota. California gas prices are at $2.40. The reason is because California has created it's own gasoline type. The refiners have a problem and the price will go up. Currently only Minnesota has mandated ethanol. They subsidize ethanol at 39 million dollars a year. It has worked fairly well in Minnesota. It took an investment to do that. North Dakota does not have a growing gasoline market.

Chair Nelson: Does North Dakota export petroleum products or are we an importer?

Ron Ness: We are both. We export the crude oil produced in the northern half of the state to refineries in Minneapolis and Duluth. We import gasoline and diesel fuel from Canada.

Ron Day: Tesoro Refinery. Testified in opposition to the amendment to SB 2310. We support he development of renewable fuels. Tesoro has spent $300 million to come to the state. Now we are hearing about mandates that take away 10% of that opportunity. This refinery along over the next five years will have to spend $70 million dollars. If we do not, that refinery will not exist

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Operator's Signature 10/22/03 Date

because of federal mandates. Our corporation sees Mandan as competing with other refiners for capital. The other states do not have mandates. We cannot put ethanol down our pipeline. We have to put storage tanks and blending capabilities at everyone of those terminals. That is millions of dollars.

Rep. DeKrey: Minnesota has the mandate. How do they do it?

Ron Day: They do not have crude oil production to compete with. They also have pipelines into the Chicago market. They can market outside their region.

Rep. Kelsh: Would you support the amendment if the mandate was taken out?

Ron Day: Yes, We support renewable fuels and economic stimulus to North Dakota. That is more customers for us.

Russ Hanson: ND Petroleum Marketers Association. Testified in opposition to the mandates to SB 2310 amendment. This is against consumer choice. Cenex stations do offer ethanol.

Rep. Nottestad: Why have the stations not gone the route of E-85?

Russ Hanson: It is still a newer product.

Mark Doughrety: Association of General Contractors. Testified in opposition to SB 2310 amendment. The Federal Government allows a $.053 tax break for ethanol. That cost the Federal Highway trust fund 1.1 billion dollars. North Dakota has less money because of it. This year it will grow to 1.7 billion.

Brian Kramer: ND Farm Bureau. Concerns about amendments. We support efforts to enhance use in ethanol and biodiesel. This will be beneficial to the entire state. We are concerned about the direction this is taking away from wind energy and towards renewable fuels. The amendment creates a renewable fuels commission. This is not a renewable energy commission.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2310

House Natural Resources Committee

☐ Conference Committee

Hearing Date March 27, 2003

Tape Number	Side A	Side B	Meter #
1			2,264-5715
Committee Clerk Signature Eri Mya			

Minutes:

Chair Nelson called the meeting on SB 2310 to order.

Rep. Kelsh: Introduced changes to the proposed amendment and the fiscal impact of the amendment.

Rep. Kelsh moved the amendments to SB 2310 seconded by **Rep. DeKrey**.

Rep. DeKrey: Why is the Ag Commissioner the Chair of the Commission?

Rep. Kelsh: We wanted it to be chaired by an elected official.

Rep. Keiser: Expressed concern over the fiscal authority of the commission.

Rep. Porter: Expressed concern over the issue of a commission taxing other agencies. Also there is some research that would support the cost effectiveness of renting the vehicles from a car rental agency rather than running an entire fleet of state vehicles.

Rep. Kelsh: Explained that the fleet is sitting on a 29 million dollar balance.

Rep. Porter: Expressed concern over overcharging.

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Rep. Keiser moved an amendment to clean up some of the language seconded by **Rep. DeKrey.**

Motion passed by voice vote.

Rep. Porter: Expressed concern with doing this late in the session. This should be funded with a general fund appropriations. I will resist this amendment.

Rep. Nottestad: Expressed concern with the type of government this amendment would create.

Rep. Kelsh: Stated that North Dakota is falling behind in the energy crisis. The sunset would mean it has to be revisited again in 2 years.

Rep. Drovdal: Stated that the same proposal has been made in other committees.

The amendment failed by a vote of 6-7-1.

Rep Porter moved a **Do Pass on SB 2310** Seconded by **Rep. Clark.** The motion passed by a vote of **13-0-1. Rep. DeKrey** will carry.

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10/22/03
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30719.0303
Title.

Prepared by the Legislative Council staff for
Representatives Gulleson, Nelson, S. Kelsh,
Nicholas, and Mueller and Senators Every,
Heitkamp, and Thane
March 18, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2310

Page 1, line 1, after "to" insert "declare the policy of the state regarding the development of renewable energy sources and to establish a renewable fuels development commission; to create and enact a new section to chapter 19-10, a new section to chapter 24-02, and a new section to chapter 57-38 of the North Dakota Century Code, relating to the sale of gasoline blended with ethanol, the criteria for purchase of state-owned licensed motor vehicles, and a corporate income tax credit for a portion of the cost of retrofitting a facility for selling diesel fuel containing biodiesel fuel; to amend and reenact subsection 1 of section 24-02-03.3 of the North Dakota Century Code, relating to the criteria for purchasing state-owned licensed motor vehicles; to" and after "development" insert "; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 2, insert:

"**SECTION 1.** A new section to chapter 19-10 of the North Dakota Century Code is created and enacted as follows:

Retail sale of gasoline blended with ethanol. An establishment that has more than one pump at which fuel for use in motor vehicles is offered for sale at retail must offer for sale from at least one pump gasoline that has an octane rating of eighty-seven and which is blended with ethanol at the rate of ten percent.

SECTION 2. AMENDMENT. Subsection 1 of section 24-02-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to registration under chapters 39-04 and 39-05. Upon the request of a state agency and an agreement between the agency and director for the use of the motor vehicle-related equipment, the director may purchase or lease motor vehicle-related equipment and include that equipment within the system. The director shall provide a uniform method of documenting the use and cost of operation of motor vehicles and motor vehicle-related equipment in the system. The director shall advise the director of the office of management and budget as to the need to acquire or dispose of system motor vehicles. A minimum of twenty-five percent of the motor vehicles purchased for the central vehicle management system must be able to use E-85 fuel. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent. Every state agency, institution, department, board, bureau, and commission unless exempted by the director must use the system. However, an agency, institution, department, board, bureau, or commission may authorize the use of an employee's personal motor vehicle pursuant to subsection 4 of section 54-06-09.

SECTION 3. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

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Renewable energy fee - Collection - Deposit in renewable energy fund - Continuing appropriation. Except for the highway patrol, each entity using the central vehicle management system shall pay to the director a renewable energy fee of two cents per mile for the use of each light vehicle. The director shall deposit quarterly all renewable energy fees collected under this section in a special fund in the state treasury known as the renewable energy fund. All funds in the renewable energy fund are appropriated to the renewable fuels development commission on a continuing basis for the purpose of carrying out its purposes.

SECTION 4. Renewable energy policy. It is the public policy of this state to stimulate the development of renewable energy within this state toward the goal of providing secure, diverse, sustainable, and competitive renewable energy supplies. It is the public policy of this state to promote the development of new technologies, provide innovative opportunities for farmers, create additional employment and wealth that contributes to rural development, decrease the dependence on foreign energy supplies, improve the environment, and encourage a renewable energy industry within this state that is competitive for both domestic and export markets. In furtherance of these public policies, the state is to provide assistance in the research, development, and marketing efforts necessary to meet these goals.

SECTION 5. Renewable fuels development commission.

1. The renewable fuels development commission consists of:

   a. The agriculture commissioner or the commissioner's designee, who is the commission's chairman;

   b. The director of the department of commerce or the director's designee, who is the vice chairman of the commission;

   c. The director of the state energy office;

   d. One member selected by the North Dakota soybean council;

   e. One member selected by the North Dakota oilseed council;

   f. One member selected by the North Dakota corn utilization council; and

   g. One member selected by the other members of the commission to represent wind energy interests.

2. The commission may appoint other nonvoting members.

3. The commission shall report periodically to the legislative council and also shall make a report of its activities, accomplishments, and recommendations to the fifty-ninth legislative assembly.

4. The commission shall:

   a. Provide at least six new refueling facilities during the 2003-05 biennium for E-85 vehicles;

   b. Work with the energy and environmental research center at the university of North Dakota and North Dakota state university to develop a long-term strategy to promote the biodiesel industry within the state, including conducting a feasibility study for construction of a biodiesel plant within the state;

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c. Develop a project resulting in the utilization of an existing wind turbine in this state to produce hydrogen for fuel and demonstrate its use to the public by powering a vehicle; and

d. Serve as a resource and promoter of other renewable fuel projects and assist in facilitating and moving forward economically viable projects developed by the private sector.

5. The commission shall administer and use the renewable energy fund to carry out its purposes.

6. The commission may accept federal and private funds to carry out its purposes.

SECTION 6. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Corporate income tax credit for biodiesel sales equipment costs. A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's costs incurred to adapt or add equipment to a facility to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to fifty thousand dollars in the accumulative amount of credits under this section for all taxable years."

Page 1, after line 11, insert:

"**SECTION 8. EFFECTIVE DATE.** Section 1 of this Act becomes effective on January 1, 2005, and section 6 of this Act is effective for taxable years beginning after December 31, 2002.

SECTION 9. EXPIRATION DATE. Section 5 of this Act is effective through July 31, 2005, and after that date is ineffective."

Renumber accordingly

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30719.0308
Title.

Prepared by the Legislative Council staff for
Representatives Gulleson, Nelson, S. Kelsh,
Nicholas, and Mueller and Senators Every,
Heitkamp, and Thane
March 26, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2310

Page 1, line 1, after "to" insert "declare the policy of the state regarding the development of renewable energy sources and to establish a renewable energy development commission; to create and enact a new section to chapter 24-02, and a new section to chapter 57-38 of the North Dakota Century Code, relating to a renewable energy fee for the use of state-owned licensed motor vehicles, and a corporate income tax credit for a portion of the cost of retrofitting a facility for selling diesel fuel containing biodiesel fuel; to" and after "development" insert "; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date"

Page 1, after line 2, insert:

"**SECTION 1.** A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Renewable energy fee - Collection - Deposit in renewable energy fund - Continuing appropriation. Except for the highway patrol, each entity using the central vehicle management system shall pay to the director a renewable energy fee of one-half cent per mile for the use of each light vehicle. The director shall deposit quarterly all renewable energy fees collected under this section in a special fund in the state treasury known as the renewable energy fund. All funds in the renewable energy fund are appropriated to the renewable fuels development commission on a continuing basis for the purpose of carrying out its purposes.

SECTION 2. Renewable energy policy. It is the public policy of this state to stimulate the development of renewable energy within this state toward the goal of providing secure, diverse, sustainable, and competitive renewable energy supplies. It is the public policy of this state to promote the development of new technologies, provide innovative opportunities for farmers, create additional employment and wealth that contributes to rural development, decrease the dependence on foreign energy supplies, improve the environment, and encourage a renewable energy industry within this state that is competitive for both domestic and export markets. In furtherance of these public policies, the state is to provide assistance in the research, development, and marketing efforts necessary to meet these goals.

SECTION 3. Renewable energy development commission.

1. The renewable energy development commission consists of:

   a. The agriculture commissioner or the commissioner's designee, who is the commission's chairman;

   b. The director of the department of commerce or the director's designee, who is the vice chairman of the commission;

   c. The director of the state energy office or the director's designee;

   d. One member selected by the North Dakota soybean council;

   e. One member selected by the North Dakota oilseed council;

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f. One member selected by the North Dakota corn utilization council;

g. One member selected by the North Dakota petroleum council;

h. One member selected by the North Dakota retail/petroleum marketers association;

i. One member of the senate selected by the chairman of the legislative council;

j. One member of the house of representatives selected by the chairman of the legislative council; and

k. One member selected by the other members of the commission to represent wind energy interests.

2. The commission may appoint other nonvoting members.

3. The commission shall report periodically to the legislative council and also shall make a report of its activities, accomplishments, and recommendations to the fifty-ninth legislative assembly.

4. The commission's responsibilities may include:

a. Providing ~~at least six~~ new refueling facilities during the 2003-05 biennium for E-85 vehicles;

b. Working with the energy and environmental research center at the university of North Dakota and North Dakota state university to develop a long-term strategy to promote the biodiesel industry within the state, including conducting a feasibility study for construction of a biodiesel plant within the state;

c. Developing a project resulting in the utilization of an existing wind turbine in this state to produce hydrogen for fuel and demonstrate its use to the public by powering a vehicle; and

d. Serving as a resource and promoter of other renewable fuel projects and assist in facilitating and moving forward economically viable projects developed by the private sector.

5. The commission shall administer and use the renewable energy fund to carry out its purposes.

6. The commission may accept federal and private funds to carry out its purposes.

7. The members of the commission ~~who are members of the legislative assembly~~ are entitled to compensation ~~from the legislative council for attendance at commission meetings~~ at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amount provided by law for state officers.

SECTION 4. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Corporate income tax credit for biodiesel sales equipment costs. A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's costs incurred to

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adapt or add equipment to a facility to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to fifty thousand dollars in the accumulative amount of credits under this section for all taxable years."

Page 1, after line 11, insert:

"**SECTION 6. EFFECTIVE DATE.** Section 4 of this Act is effective for taxable years beginning after December 31, 2002.

SECTION 7. EXPIRATION DATE. Section 3 of this Act are effective through July 31, 2005, and after that date is ineffective."

Renumber accordingly

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Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2310

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30719.0308

Action Taken Amendment

Motion Made By Kelsh Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	✓				
Vice-Chairman Todd Porter		✓			
Rep. Byron Clark		✓			
Rep. Duane DeKrey	✓				
Rep. David Drovdal		✓			
Rep. Lyle Hanson	✓				
Rep. Bob Hunskor	✓				
Rep. Dennis Johnson		✓			
Rep. George Keiser		✓			
Rep. Scott Kelsh	✓				
Rep. Frank Klein		✓			
Rep. Mike Norland	A				
Rep. Darrell Nottestad		✓			
Rep. Dorvan Solberg	✓				

Total (Yes) 6 No 7

Absent 1

Floor Assignment

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

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Operator's Signature 10/22/03 Date

Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2310

House House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Porter Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	✓				
Vice-Chairman Todd Porter	✓				
Rep. Byron Clark	✓				
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Lyle Hanson	✓				
Rep. Bob Hunskor	✓				
Rep. Dennis Johnson	✓				
Rep. George Keiser	✓				
Rep. Scott Kelsh	✓				
Rep. Frank Klein	✓				
Rep. Mike Norland	A	A			
Rep. Darrell Nottestad	✓				
Rep. Dorvan Solberg	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment DeKrey

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

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REPORT OF STANDING COMMITTEE (410)
March 27, 2003 11:52 a.m.

Module No: HR-55-5894
Carrier: DeKrey
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2310, as engrossed: Natural Resources Committee (Rep. Nelson, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2310 was placed on the Fourteenth order on the calendar.

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2003 TESTIMONY

SB 2310

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SB2310

Natural Resources Committee

Comments by Joe Richardson, Harnessing Dakota Wind, February 13, 2003

Section 1. (2) Severability

Reasons: A. Wind rights could be acquired and held off the market for whatever reason, depriving the local area of economic development benefits that might otherwise occur.

B. Future generations of landowners will not be invested in the wind industry and in fact could see it as an impediment to their farming. Thus, would be supporters of wind power development are turned into opponents. The is not good for developers or the local communities.

C. Fragmented ownerships creates an impediment to development due to raising the cost of leasing land relative to the revenue earned on a per turbine basis. Developers will go elsewhere.

Section 1. (3) Option Duration Limit - four years

Reasons: A. This provides a landowner with the ability to change from a developer who may initially seemed able to develop but failed to another who might be better able to complete a deal leading to operations.

B. A market can be developed in option right trading that has no real benefit in terms of actual development. Therefore, development that may otherwise have happened to the benefit of local communities does not occur or is greatly delayed. You just have outside speculation without development. Capping the time forces performance or at least increases the chance for development.

Section 1. (4) (a) nondisclosure or secrecy clause.

Quote: "16.2 Confidentiality. Owner shall not disclose to other (except Owner's family, legal counsel, prospective Mortgagees and Assignees, and financial advisors who recognize and agree to preserve and maintain the confidentiality of such information) the terms of this agreement and information about FPLE's methods, power production, or availability of Wind Farm Improvements unless the information is already in the public domain. Owner also agrees not to use such information for Owner's own benefit or permit its use by others for their benefit or the the detriment of FPLE."

Reasons: A. Unless you can prove that your family, legal counsel, banker, or financial advisor recognized and agreed to keep the terms of this agreement confidential you are liable for telling them. If you tell another farmer, you are liable. These constitute unknown liabilities that last as long as the contract does.

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B. When attempting to sell your land, advertising the wind revenue as a basis for a higher asking price would be in violation of this contract.

C. No where else in business that I know of has the renter typically prevented a landlord from divulging the rent.

D. Open market information leads to thriving free enterprise competition. A free market does not exist without open value or price information. The laws of supply and demand do not work when demand, which is always indicated by price, is not known.

E. Real estate values for appraisals are determined by looking up what comparable properties sold for recently. The information is public. Without being able to review "comps" you can not determine value. We look for the same with wind easement values.

F. Opponents say that landowners will simply bid up the land until it no deals could be done. Think about that. The fear is competition. We darn well know that landowners will not bid so high that no deals are done....landowners want to lease. If anything landowners are likely to be so hungry to do deals that they will take prices that are well below market...even if the knew what the market was.

G. Note that it is only the landowners who can not speak of the terms in contracts and not the developers. Newspaper articles have often quoted developers or agents saying that the price is $2,000 per turbine per annum. The developers who have been quoted saying $2,000 per turbine per year, will then tell you privately that they actually pay more than that. Why tell the press $2,000 per annum and pay more? To make you feel like you got a deal. "Listen Mr. Johnson, you know from the press that $2,000 per turbine is what is paid, but I am going to give you a couple hundred more." This is how the game is played. Developers can speak to each other through newspaper accounts, but landowners are gagged.

H. The American Wind Energy Association stated in their report for 2001 that 1,694 MWs of turbine capacity were erected that year providing $5 million in payments to landowners. That means on average each MW brought in $2,951. So, what is a megawatt and a half turbine worth on average: $2,000? Reports provided in Illinois and recently in Minnesota have 1.3 and 1.5 MW turbines going for $4,000 per annum. Yet, confidentiality clauses in contracts prevent one from seeing actual evidence. Are we really going along with attempts to establish secret markets for wind easements?

Section 7. Posting of Contract Value

Reasons: A. Commodities markets, stock and bond markets are all open with price and contract information instantly accessible. Posting provides access without forcing people to forage around in county records or other archives. If one

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agrees that it should be open, let's make it open. Perhaps we should stimulate the purest form of free enterprise with open-call easement auctions. This would catalyze dynamic competition.

B. 120 day filing deadline will allow a developer to complete wrapping up deals in a particular area before tipping his hand to competitors on where he is intending to develop.

Section 8. Stating Minimum Turbine Size in Leases

Reason: A. Otherwise option durations can be gamed by placing a very small residential-sized turbine on the land and invoking the underlying easement. This would be particularly injurious if the landowner is paid on a royalty basis.

Section 9. Annual Payments

Reasons: A. One time payments effectively remove the interest of the landowner in the industry and can make future owners of the land while an easement is still in force, opponents to the wind turbine rather than beneficiaries. It is simply in the best interest of the wind industry.

B. An unscrupulous developer could wait until some misfortune occurs with a landowner and offer a one-time deal that actually hurts the landowner's family while praying on a temporary incapacitation of the landowner.

Section 10. Setback four times rotor diameter (see Wind Wake document)

Reasons: A. Placement of a turbine on a neighbors property should not unduly deprive a landowner of the right to develop on their own land.

B. Any owner of land within four rotor diameters of the wind turbine has the right to be compensated for depreciation of their wind resource.

C. Establishing clear and scientifically based rules prior to development of the industry will avoid litigation and local conflicts thus actually encouraging growth of the industry.

Section 11. Decomissioning Standards and Removal of Last Resort

Quote: 9.11 Removal of Wind Farm Improvements. Owner shall have no ownership or other interest in any Wind Farm Improvements installed on the Easement Properties, and FPLE shall have the express right, at any time and in its sole discretion, to remove one or more Turbines or other Wind Farm Improvements from the Easement Properties. Owner expressly waives any statutory or common law liens to which Owner might be entitled. Upon full or partial termination of any of the Easements, FPLE shall remove all physical material pertaining to the Wind Farm Improvements from the affected Easement Properties to a depth of forty-eight inches (48") beneath the soil surface and restore the area formerly occupied by the Wind Farm Improvements to substantially the same physical condition that existed immediately before the construction of the Wind Farm Improvements (the "Removal

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Obligations"). If FPLE fails to complete its Removal Obligations within twelve (12) months of full or partial termination of the applicable Easement, Owner may do so, in which case FPLE shall reimburse Owner for reasonable costs of fulfilling FPLE's Removal Obligations incurred by Owner, less any

salvage value reasonably recoverable by Owner.

Reasons: A. All developers should have bonds or escrow accounts for removal of property upon decomissioning.

B. Standards for removal should be set statewide with such standards defining what has to be removed and what constitutes restoration of the property. Otherwise, vague language such as "substantially the same physical condition" and "reasonable costs" leaves great room for debate and litigation; however, such litigation may be expensive to landowners as FPLE could claim, under 12.1 that the Easement has been terminated.

"12.1 FPLE's Right to Terminate. FPLE shall have the right to terminate this agreement as to all or any part of the Easement Properties, or as to any Turbine or other Wind Farm Improvement, at any time effective upon thirty (30) days' written notice to Owner."

C. If bonds or escrow accounts are required, a landowner should be able to notify the state that equipment remains after removal as was required by the contract and the state should be able to collect on the bond or escrow account. Otherwise, 25 years after the Turbine Easement was signed, a landowner may have the unfortunate choice of expending a great deal of money tracking down the bonding agent or escrow account administrator and forcing them to perform an appropriate cleanup or, because of the cost in forcing action, just leaving the mess and farming around it. We all know that landowners in areas where the land is inexpensive and low in production may not have the money to force cleanup and will then just elect to leave the mess alone.

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10/22/03
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Wind Wakes

or

Wind Shadows

A Wind Rights Issue Requiring Resolution

By Joe Richardson, Harnessing Dakota Wind
wind@ndfb.org

February 5, 2003

For purposes of this writing "wind wake" refers to the zone of turbulent air behind and to the side of a wind turbine. This can significantly reduce the power conversion potential of wind. Appropriate spacing of turbines must be carefully considered to avoid one turbine from diminishing the performance of another.

It is probable that the placing of a large utility scale turbine on one quarter section of land will effect the wind on a neighboring quarter section. In order to protect the wind rights of landowners statutory consideration for fair spacing should be enacted.

> "Wind Energy Systems," second edition, December 2001, by Gary L. Johnson, Phd, Engineering. Dr. Johnson taught engineering for 26 years at KSU.
>
> "For the mid United States from Texas to North Dakota, it appears that a reasonable spacing is four rotor diameters between turbines in a row and ten rotor diameters between the rows. The rows would be aligned across the prevailing wind direction, usually in a east-west direction in this part of the world where strong winds are usually from the north or south. We will consider that spacings less that 3Dr [3 times the rotor diameter] in a row or 8Dr between rows will need special justification.
>
> Chapter 9, Wind Energy Systems

In addition to the above quote, John Dunlop, Standards Manager and Regional Manager for American Wind Energy Association has stated that AWEA accepts that wind wakes are eight times the rotor diameter.

Accepting the lower amount provided by Dr. Johnson and AWEA's as the best scientific understanding of the size of wind wakes, I propose that a statute requiring a setback of at least four times the rotor diameter would allow for orderly spacing with minimal infringement on the rights of neighbors. This also recognizes that quarter sections are the most common basic unit of agricultural land ownership in the Dakotas and that not much can

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be done to realistically for smaller units without their having to compensate neighboring landowners for any turbine placement on their property.

As it is now, some developers say that they compensate downwind landowners whose wind rights might be infringed by their turbine placements. Laudable as this voluntary practice, when practiced may be, a landowner should have the right to refuse in order to reserve the land for actual turbine placement themselves. Of course landowners can sell their permission to allow a developer to place a turbine closer to the adjoining property line if they so choose. It should be their choice.

When permission is provided by an adjoining landowner to allow a neighbor to have a turbine closer than the setback limit allows, that permission should not be in perpetuity as that could constitute severing the wind rights from the surface rights. Placing a fifty year limitation on such agreements would allow two turbine lives of 25 years each in the same location. It is likely that the turbine foundation would need to be replaced after fifty years allowing for a timely renegotiation of the placement issue.

Without attending to this basic property right issue, as more people learn that the value of their wind has been diminished by a turbine placed on their neighbor's property we should expect contentious litigation that could damage the image of the wind industry. As AWEA's John Dunlop said recently, "it is in the interest of the wind industry to resolve this issue early."

The Minnesota Environmental Quality Board requires wind parks to have setbacks of five times rotor diameter unless special approval. They also require that turbines be setback 500 ft. from any occupied dwelling.

See Actual Scale Turbine Layout Plates on Next 4 Pages

Note on Plate 3 that there is only slight conflict using a 4 x rotor diameter setback while there is major conflict potential with a 3 x rotor diameter setback.

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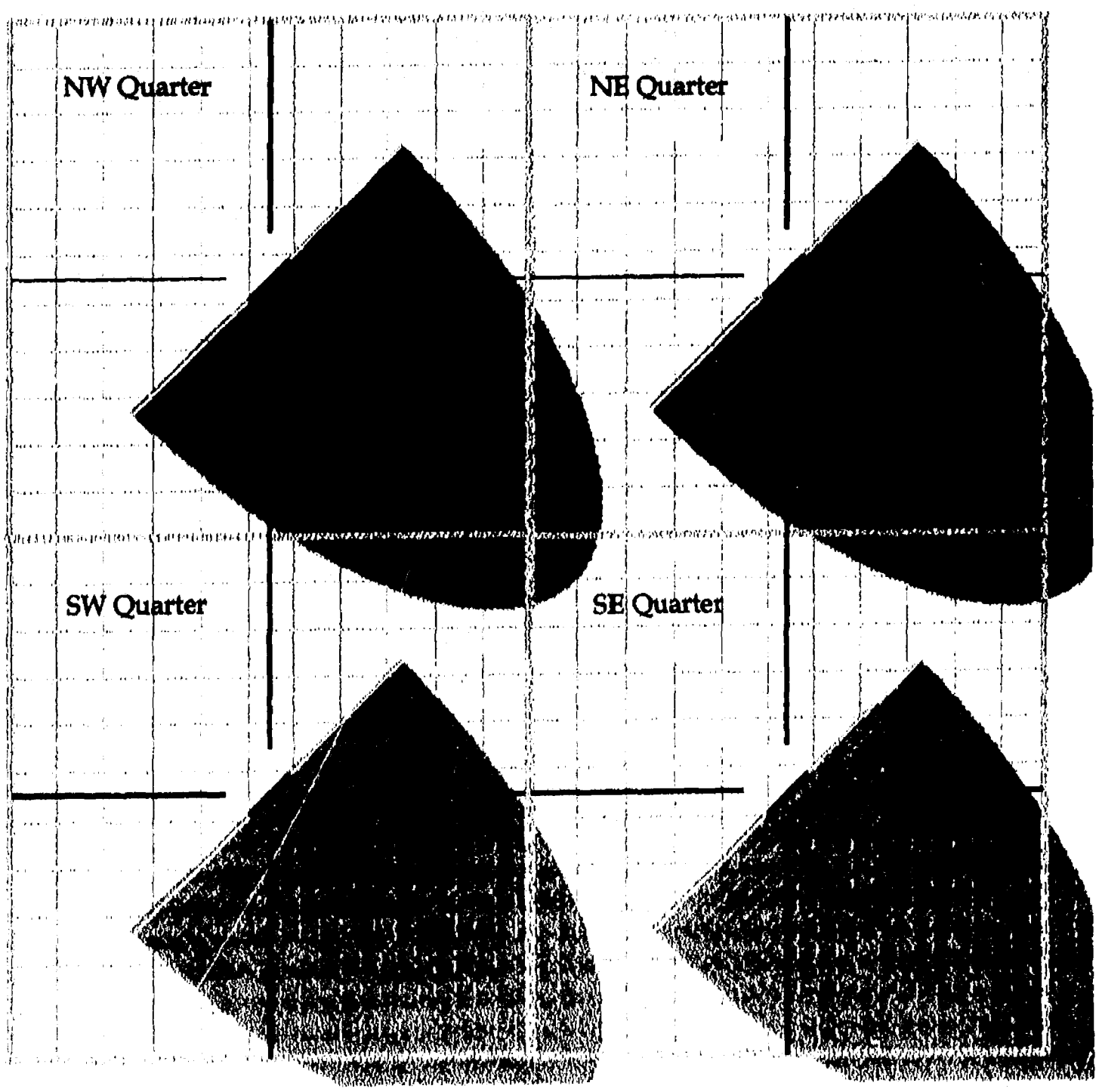
Turbines Placed Center of Quarter Section

Showing the Red 4x Rotor Diameter Setback Lines

NEG-Micon NM82 - 82 Meter Rotor Diameter **Blue half shells = wind wake**
Square mile layout, 1 square = 240ft.
Red = 4x rotor diameter
Green = 8x rotor diameter **Northwest Wind Configuration**
Black = rotor diameter
Wide Blue = Quarter Section Line



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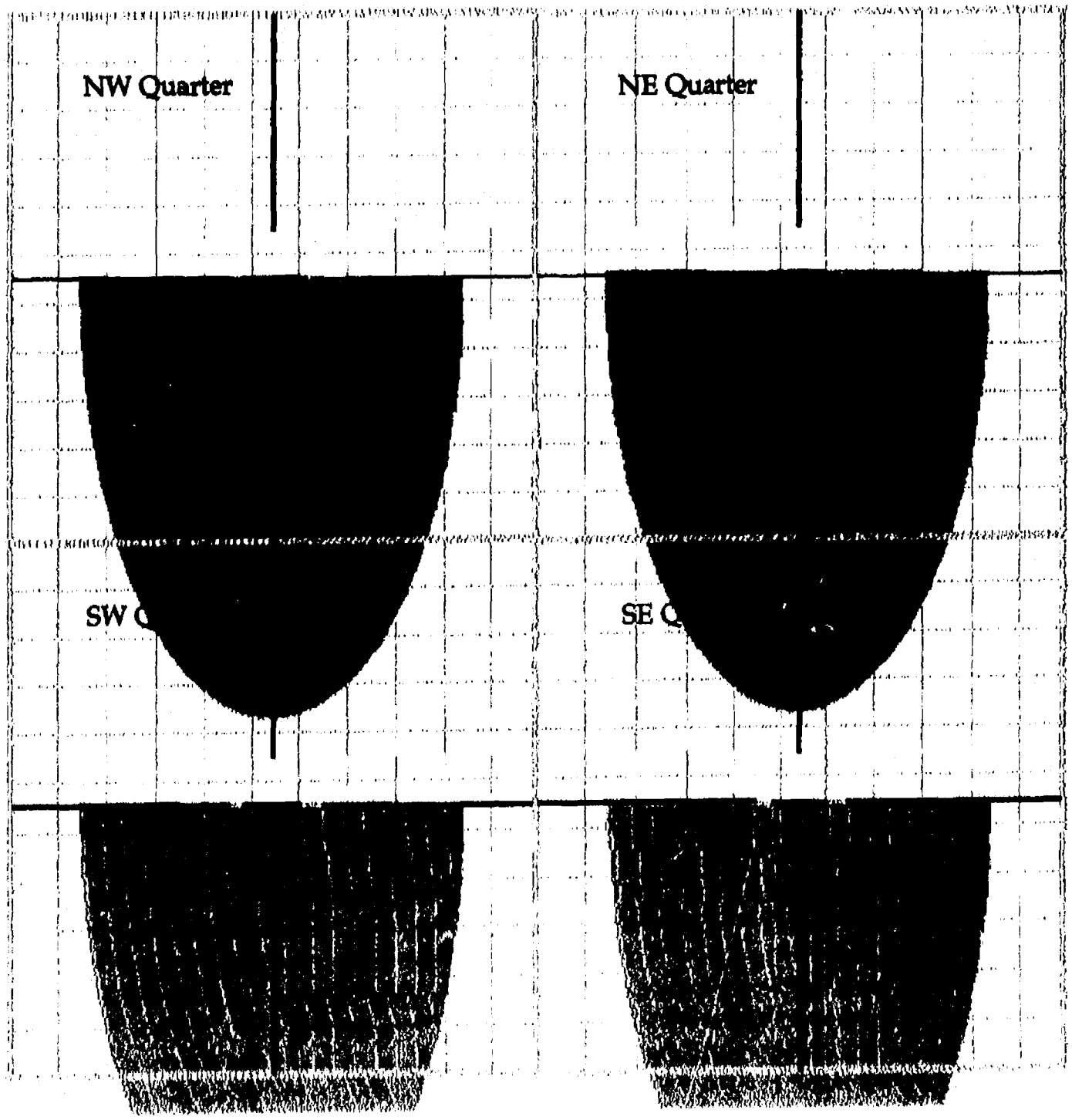
Turbines Placed Center of Quarter Section

Showing the Red 4x Rotor Diameter Setback Lines

NEG-Micon NM82 - 82 Meter Rotor Diameter
Square mile layout, 1 square = 240ft.
Red = 4x rotor diameter
Green = 8 x rotor diameter
Black = rotor diameter
Wide Blue = Quarter Section Line

Blue half shells = wind wake

North Wind Configuration



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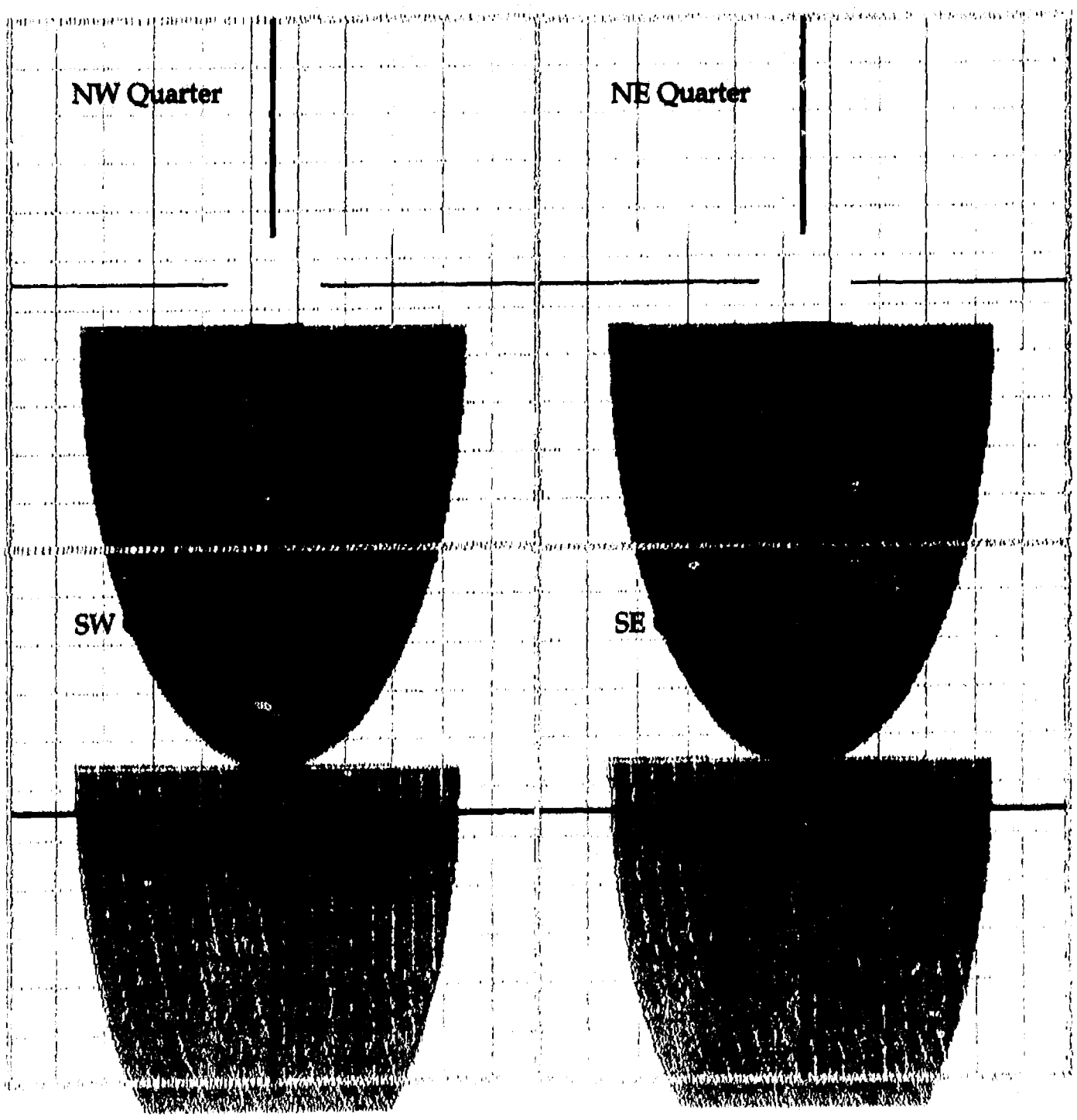
Turbines Placed on South Setback in North and North Setback in South -- slight overlap at 4x rotor diameter

NEG-Micon NM82 - 82 Meter Rotor Diameter
Square mile layout, 1 square = 240ft.
Red = 4x rotor diameter
Green = 8x rotor diameter
Black = rotor diameter
Wide Blue = Quarter Section Line

Blue half shells = wind wake

North Wind Configuration



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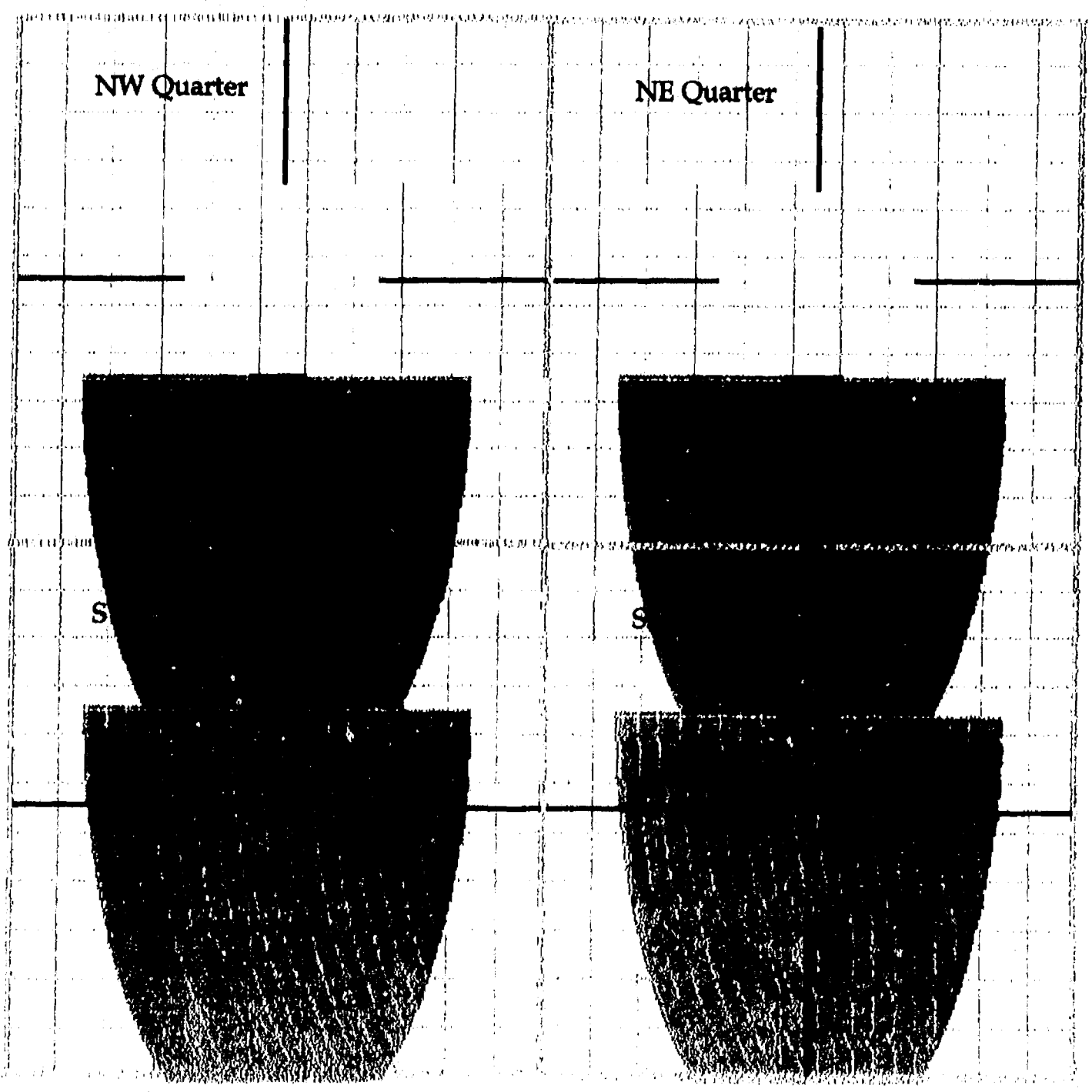
Conflict From 3 x Rotor Diameter Placement

NEG-Micon NM82 - 82 Meter Rotor Diameter
Square mile layout, 1 square = 240ft.
Red = 3x rotor diameter
Green = 8 x rotor diameter
Black = rotor diameter
Wide Blue = Quarter Section Line

Blue half shells = wind wake

North Wind Configuration



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Administration:
1101 1st Ave N
P.O. Box 2064
Fargo, ND 58107
701-298-2200 • 1-800-367-9668
Fax: 701-298-2210

State Headquarters:
4023 State St
P.O. Box 2793
Bismarck, ND 58502
701-224-0330 • 1-800-932-8869
Fax: 701-224-9405

North Dakota Farm Bureau

www.ndfb.org

North Dakota Farm Bureau
Testimony on SB 2310
Presented by
Brian Kramer

Good morning Chairman Fischer and members of the Senate Natural Resources Committee. My name is Brian Kramer. I am representing the 26,000 member families of North Dakota Farm Bureau in support of SB 2310.

We believe the protection of property rights is essential in the development of wind energy in this state. That is what this bill is about and why we support it. SB 2310 sets guidelines and rules to provide a level playing field for landowners who may wish to augment their income from the land by siting wind energy generation towers on their property.

The bill will set standards for easement options, payments, set-back distances, bonding requirements. It also provides that wind energy rights not be severed from the land and information disclosure.

We understand that amendments will be offered. Some of those we can understand, while others we have seen would effectively render the bill useless. We feel the SB 2310 can be amended to address many of those concerns while maintaining the integrity of bill.

One future. One voice.

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We can agree that the duration of an easement option of three years may be too short, however in no instance should it exceed five years. We believe four years would be a good compromise.

The nondisclosure provision provides an "open records" type situation that may not be desirable. We would suggest removing the language described is subsection 4 a. of Section 1 (page 1, lines 22-23). The arbitration provisions contained in subsection 4 b. (page 1, line 24) could serve to be in the best interest of the landowners by providing an option to litigation thus keeping expenses at a minimum.

The language in subsection 4 c. (page 2, lines 1-2) need not be included in the bill. If a landowner does not want to invest, the landowner can simply refuse the contract. The right of first refusal contained in subsection 4 d. (page 2, line 3) is standard in many contracts, however with the controls on option length and performance this is not needed.

We believe that the department of commerce in subsection 7 (page 2, lines 10, 11, 16) should be changed to the public service commission which is better equipped to provide oversight to this industry.

Subsection 8 has one provision that could be removed that being the sentence on page 3, lines 6-7. We suggest rewording line 8 on page 3 by striking "an amount equal to three times" and replacing it with "just compensation for" and adding "unless reclaimed by the lessee" to the end of the sentence (page 3, line 10).

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Subsection 10 should be changed to state that adjacent landowners shall consent to allow the turbine be placed next to their property line and be properly compensated. The agreement should valid for fifty years, the likely life span of the wind generating turbine foundation structure.

We support the bonding, cash, and/or certificate of deposit provisions that are contained in subsection 11. Landowners should be protected from insolvency or dishonest business practices of disreputable contractors. It is important that landowners are not required to track down the parties responsible for reclamation or expend great time and effort to have the land properly reclaimed in the event of bankruptcy or at the expiration of the lease.

We believe this legislation is warranted. We believe the proposed amendments make it workable. We support SB 2310 and hope that you will concur.

Thank you for allowing me this time. I would try to answer any questions you may have.

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Proposed amendments to Senate Bill 2310
Offered by North Dakota Farm Bureau

Page 1 line 6: insert new after all

Page 1 line 7: after section delete , insert , with the exception of private generation less than 100 megawatts

Page 1 line 12: delete ~~three~~ insert four

Page 1 line 21: delete ~~.~~ insert a nondisclosure clause prohibiting a party to the contract, lease, or option from disclosing the contents.

Page 1 line 24: delete entire line 24

Page 2 line 1: delete entire line 1

Page 2 line 2: delete entire line 2

Page 2 line 3: delete entire line 3

Page 2 line 10: ~~delete department of commerce~~ insert Public Service Commission

Page 2 line 10: delete ~~thirty~~ insert one hundred twenty

Page 2 line 11: delete ~~department of commerce~~ insert Public Service Commission

Page 2 line 16: delete ~~department of commerce~~ insert Public Service Commission

Page 3 line 6: delete ~~Equipment left on the land for more than one hundred twenty days~~

Page 3 line 7: delete ~~becomes property of the landowner.~~

Page 3 line 8: delete ~~an amount equal to three times~~ insert just compensation for

Page 3 line 13: delete ~~two~~ insert four

Page 3 line 14: delete ~~and three quarters~~

Page 3 line 15: delete ~~the county where the wind turbine is located expressly authorizes~~ insert consent is granted from and or compensation is made to the affected parties.

Page 3 line 16: delete entire line 16

Page 3 line 17: delete entire line 17

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10/22/03
Date

Dennis Anderson

From: "Keith Monson" <kmonson@accwireless.net>
To: <Undisclosed-Recipient:;>
Sent: Wednesday, February 12, 2003 4:08 PM
Subject: SB 2310

FYI

Mr. Every,

My name is Keith Monson from Cooperstown ND. I'm chairman of the Griggs/Steele Wind Development Group, Chairman of WIND (Wind Interests of North Dakota), a board member of WEC (Wind Energy Council), and a board member of SEED (Sustainable Energy for Economic Development) — Having defined where my comments might be coming from, I first need to apologize for the fragmented and quite honestly dysfunctional presentation of our best interests to the 2003 legislative process.

I was part of an AdHoc group that met for months in trying to define the needs for legislative action to move ND forward in this very important and promising industry. Most of those involved were volunteers working to forward wind energy production in ND, with no one quite honestly, coordinating the whole effort.

As it concerns SB 2310, we do in fact need a "bill of rights" or a document defining several of the issues contained within the current bill. Quite obviously, we don't have our own best interests defined. That is entirely our fault, and should have been hammered out and agreed upon over the summer and fall months of meetings.

My "day job" has me literally buried and unable to take the active role in this process I would like. The information I am getting from several directions, now leads me to believe it would be in our best interests to back away from this concept at this time. Maybe all the individuals and entities that now have their shorts in a knot over many of the provisions of this bill will find the time next time around, to come to the table in addressing this issue as we would move forward from here.

It is my concern that an amended or weakened bill would not adequately address the many issues that need to be covered. I would recommend a Study Resolution to force those interested parties to meet and define just what is in the best interest of ND.

I think the level of grass roots support for wind development in ND is amazing, and attests to the potentials of doing so. Unfortunately, that same diverse support through a large number of loosely organized groups also makes a general consensus difficult to arrive at. A study resolution would force ALL interested parties to participate in arriving at a consensus that is best for ND as a whole.

Thank you for your time, and again I apologize for my conspicuous absence in the process. Keith

2/12/2003

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Testimony in Opposition of SB 2310
Dale Niezwaag, Legislative Representative
Basin Electric Power Cooperative
Before the Senate Judiciary Committee
February 13, 2003

Mr. Chairman and Members of the Committee, My name is Dale Niezwaag, and I am here today representing Basin Electric Power Cooperative in opposition to SB 2310. Let me first say that Basin Electric appreciates the fact that the sponsors have given attention to energy development in the state and are concerned about the landowners in North Dakota.

As you are aware, Basin Electric has entered into a contract to purchase energy from a 40 MW wind farm that Florida Power & Light (FPL) Energy Corporation is building in the Edgeley, North Dakota area. The project is moving ahead and is projected to be complete before the end of 2003.

Basin Electric is very involved with wind development and concerned about how landowners are treated by wind developers. We have worked closely with FPL Energy, our members, and the landowners to make sure that this project is in the best interest of everyone involved and can be used as a model for future projects in the state.

We want to make sure that developers are treated fairly in North Dakota and are encouraged to do business here. Basin Electric is concerned with some of the provisions in SB 2310 and feel they have the potential to hinder future development in this state. Because of those concerns we would suggest that this issue be carefully studied before legislation is moved forward.

Thank you Mr. Chairman. I'll answer any questions you or the committee members might have.

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10/22/03
Date

SB 2310

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

Before: **Senate Natural Resources**
Honorable Tom Fischer, Chairman

Date: **13 February 2003**

TESTIMONY

Mr. Chairman and members of the committee, I am Illona Jeffcoat-Sacco, director of the Public Service Commission's Public Utilities Division. The Public Utilities Division administers the Commission's jurisdiction over telephone, gas and electric public utilities in North Dakota. The Commission is neutral on this bill, but asked me to appear here today to let you know that we see certain implementation problems with the bill as written.

Our implementation concerns focus mainly on the bonding requirement in subsection 11 of section one, although we do have concerns about other areas as well. We are concerned that the property damage provisions are vague, opening any recovery process to conflicting interpretations. We are also concerned with the provision stating that the bond proceeds would become the property of the Commission. While the Commission would resolve disputes concerning bond protections, the proceeds should not be considered Commission property. Although the bond must be automatically renewed, the bill does not specifically require bond coverage to continue for the life of the facility plus the period of site

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reclamation. Finally, we believe any hearing process on bond recovery should conform to that required by The Administrative Agencies Practice Act, Chapter 28-32. We do not believe that different procedural provisions should be required here.

These are some of the implementation problems we see with the bill. We would be happy to work with the sponsors and the committee to prepare amendments to address these concerns. This completes my testimony. I would be happy to answer any questions you may have.

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Testimony in support of Senate Bill 2310

Presented to Senate Natural Resource Committee

February 13, 2003

Chairman Tom Fischer and Members of the Committee,

Dakota Resource Council submits this testimony in support of SB 2310, which would enact much needed wind turbine siting requirements and wind energy development contract provisions.

North Dakotans have always placed great value on having strong landowner rights and protections. Past and current lease agreements have provided valuable experience and knowledge in establishing wind turbine siting requirements and contract provisions in North Dakota. The final outcome of any lease agreement must support the economic self-interest and the civil rights of farmers, ranchers, and landowners while eliminating divisions in communities.

Farmers, ranchers, and landowners deserve the protection of their rights as wind energy development comes to their communities. The importance of each provision of this bill is listed below.

1. This ensures that these provisions are applied equally to all wind turbines and contracts for the development of wind energy.
2. Past experiences from separating mineral rights from surface rights in North Dakota must teach us a lesson in how destructive separating wind rights from surface rights will be to rural communities in North Dakota.
3. This will prevent land to be held by wind developers that may never have an interest to develop the wind energy on this land but wish to prevent other developers from developing this land.
4. a. Allows parties to the contract, lease, or option to publicly talk about the lease contents so that other members in the community will have more information when entering into a contract, lease, or option agreement. This will also help everyone in the community to get fairer agreements.
   b. Prevents the parties from being forced into mandatory arbitration.
   c. Allows landowners to enter into a contract, lease, or option without being required to invest in the project.
   d. Allows either party to match the first equivalent or better offer.
5 Allows landowners to bargain collectively to get the best possible standard contract, lease, or option agreement.
6. Allows a landowner to void a contract, lease or option within three days after entering into a contract, lease or option upon coming to a conclusion that they do not want to do this.
7. This provides that basic information on every contract, lease, option, or other

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document that reserves the right or provides for the right to use land for wind energy development must be filed with the Department of Commerce within 30 days after execution of the contract, easement, or option and will be open records and considered public information. This ensures that basic records on wind energy development contracts, easements, leases, and options are public information.

8. This ensures that the size of the installed wind turbines must comply with what is stated in the contract. Also this ensures that a land lease or easement contract providing for payment based on productivity or sales receipt must include a minimum annual payment regardless of production or receipts.
9. This ensures that payments under a lease or easement agreement must be made on an annual or more frequent basis.
10. This establishes basic guidelines in siting a wind turbine near a property line so not to impact the rights of adjacent landowners.
11. This establishes a bonding system that will be administered by the Public Service Commission to cover costs that occur to landowners of property subject to wind energy development, including the state and its political subdivisions against physical damages to property, which may result from wind energy development, erection of wind turbines, and reclamation of wind turbine sites.
12. This ensures that wind energy developers or wind turbine operators must comply with North Dakota's anti corporate farm laws.

DRC urges that the committee vote a Do Pass on SB 2310.

Respectively submitted for Dakota Resource Council by

Terry Schaunaman, staff

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Fiscal Analysis of the Amendments to Engrossed SB2310
Prepared by the North Dakota Department of Transportation
March 21, 2003

There are essentially five types of fiscal impacts resulting from the amendments to SB2310. The first impact is the revenue generated for the renewable energy fund by the renewable energy fee created in section 1. The second impact is the costs associated with carrying out the mission of the renewable energy development commission. The third impact is the revenue loss from the corporate income tax credit as provided in section 4. The fourth impact is the economic impact to North Dakota. The final impact is the administrative costs that will be incurred by various state agencies to carry out the provisions of this bill. Following is a general discussion of each of these impacts.

I. Revenue generated from the renewable energy fee (Section 1)

It is estimated this bill, as amended, would generate approximately $546,000 of revenue per biennium, calculated as follows.

BiennialMileage – State Fleet Groups 1-15 (Excluding Group 7 – Highway Patrol)	
Based on FY 2002 mileage	54,671,446
Renewable energy fee (1cent per mile)	X.01
Total biennial revenue from renewable energy fee *	$546,714

$273,357
2) 546,714
4
18
14
6
11
10
14

* Note: While this estimate represents new revenue to the renewable energy fund, it also represents new, additional costs to the agencies using the state fleet. As such, these costs will ultimately be borne from a variety of sources, including general and specialfunds. However, they would not be eligible for federal funding.

II. Costs associated with carrying out the mission of the renewable energy development commission (Sections 2 and 3)

We have no way of determining, at this time, the amount of costs that will be incurred by the renewable energy development commission in carrying out its mission. However, Section 1 of the proposed legislation does provide that "all funds in the renewable energy fund are appropriated to the renewable fuels development commission on a continuing basis for the purpose of carrying out its purposes". As such, it can be assumed that it is intended the biennial expenses of the renewable fuels development commission will not exceed the revenue generated by the renewable energy fee which is currently estimated to be $546,714 per biennium, unless additional revenue sources are provided.

III. State revenue lost as a result of corporate income tax credits for biodiesel sales equipment costs (Section 4)

Through consultation with the ND State Tax Department, we have learned the Tax Department is uncertain how many entities would use the proposed tax credit, or what the associated costs would be. Therefore the fiscal impacts of the tax credits provided in Section 4 cannot be determined at this time.

IV. Economic impact on North Dakota

Section 2 of the proposed legislation provides a policy of state support for the renewable energy industry in the State of North Dakota, with the intent of fostering, among with other benefits, "...additional employment and wealth that contributes to rural development...". At this time, the DOT has no way of determining the economic impact this bill may have on North Dakota.

V. Administrative costs to state agencies

Implementation and continued administration of this legislation will likely result in associated cost increases for items such as computer programming changes, development and implementation of administrative practices and procedures, and audit functions. It is likely the Department of Transportation and the Tax Department will incur such costs, and possible that a few other agencies may as well. At this time, we do not have any reliable estimates of what the related

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costs may be.

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Coalition Against Mandates

The organizations listed below oppose government mandates. The free enterprise system should depend upon consumer choice and competition to determine the products offered in the marketplace.

Government mandating the offering of a certain product or service is not necessary as consumer demand will create self-sustaining markets.

We want to make it eminently clear that we are not against agriculture. We fully realize the importance of agriculture's vital role in the North Dakota economy.

However, we oppose bad economic policy. Mandates restrict competition, infringe on free-enterprise, and can result in supply/distribution problems in the economy. What economic development message is being sent if government tells business which products must be sold and to consumers which products must be purchased?

Once government mandates one product, what product or service would be next? Would the government next decide what type of tractors farmers must own? Would there be a government mandate indicating what type of meat a grocery store must sell?

Associated General Contractors	Bismarck/Mandan Development Association
Bismarck/Mandan Chamber of Commerce	Burlington Northern Santa Fe Railway Company
Caterpillar	Devils Lake Chamber of Commerce
E.W. Wylie Corporation	Greater North Dakota Association
Lewis Truck Lines	Midwest Motor Express
North Dakota Grocers Association	North Dakota Motor Carriers Association
North Dakota Retail Association	North Dakota Petroleum Council
Ottertail Power Corporation	National Federation of Independent Business
PACE Local 7-10	North Dakota Petroleum Marketers Association
Qwest Corporation	Tesoro Petroleum
Utility Shareholders of North Dakota	Xcel Energy

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TESTIMONY
To the
HOUSE NATURAL RESOURCES COMMITTEE
Of the
NORTH DAKOTA LEGISLATURE

RE: SENATE BILL 2310

By Jocie Iszler, Executive Director
CHAIRMAN, NORTH DAKOTA CORN UTILIZATION COUNCIL

March 20, 2003

Chairman Nelson and members of the committee. My name is Jocie Iszler and I am here on behalf of the ND Corn Utilization Council to comment on SB 2310. The ND Corn Utilization Council was established by state statute in 1992 for the purposes of expanding markets for corn.

The Corn Council feels that there are many good aspects of SB 2310. The Council supports the establishment of a Renewable Fuels Development Commission. We would respectfully suggest that it should be the commission that determines it duties rather than to prescribe such a specific set of tasks as described in Section 5 subsection 4 of the amendment. Our concern with the bill is that the mandate will kill an otherwise good bill.

Philosophically, the Corn Council agrees that a mandate is the least expensive, quickest way to increase market share for ethanol. But the mandate was defeated twice this legislative session. We do not believe that including the mandate in this bill will change the position of mandates in this legislative

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session. We feel that including the mandate will only jeopardize the good things in the bill.

The Corn Council suggests that the legislature look at how South Dakota has increased market share for ethanol through at the pump incentives. South Dakota taxes unblended gasoline at 22 cents per gallon. South Dakota's ethanol blend is taxed at 20 cents per gallon. This is a tax break that is close to the consumer. A study that the Corn Council did last summer showed that price is the number one factor influencing consumer choice at the pump. North Dakota's market share for ethanol blend is now at 30%. Part of this is due to the fact that more stations are carrying ethanol. We believe that work that the marketing director from the American Coalition for Ethanol has done with gasoline retailers has helped. The ACE marketing director has shown retailers at trade shows the advantages of carrying ethanol. There is much work to be done to undo years of negative messages that petroleum retailers have heard about carrying ethanol. But we have found that they are receptive to messages about how to improve their bottom line with ethanol.

Again, this is a good bill. We suggest that the mandate be deleted in order for it to pass.

I welcome any questions.

Thank you for your attention.

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Testimony of Roger Johnson
Agriculture Commissioner
North Dakota Department of Agriculture
Senate Bill 2310
House Natural Resources
Pioneer Room
March 20, 2003

Chairman Nelson and members of the House Natural Resources Committee. I am Agriculture Commissioner Roger Johnson and I am here in support of the amendments to Senate Bill 2310 offered by an eight member bipartisan group of legislators.

These amendments:

- Require any retail establishment that has more than one pump at which fuel for use in motor vehicles is offered for sale at retail to offer ethanol fuel.
- Require that the state fleet must have a minimum of 25 percent of vehicles that can utilize E-85 fuel.
- Provide for a renewable energy fund financed through a renewable energy fee of two cents per mile for all light vehicles in the state fleet.
- Declare that it is the public policy of this state to stimulate the development of renewable energy within the State of North Dakota.

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- Create a renewable fuels development commission with a four point agenda to be accomplished in the next two years.
- Provide an incentive to increase biodiesel sales in the state.

I would like to address several of the points in the amendments.

The public policy of the State of North Dakota should be to develop renewable energy sources. As our nation is heading for war in the Middle East, we are reminded almost constantly that we are even more dependent on foreign oil than we have been in the past. Not only can our farmers produce high quality food and fiber, they can also be in the forefront of meeting the energy needs of this country. For North Dakota farmers to be producers of two of the most essential needs of humankind - food and energy- is both exciting and doable.

I support the concept of funding this public policy through a surcharge applied to all of the state agencies except one, and I'm not sure that the Highway Patrol should be excluded. This will not be a hardship on any one agency, yet the two cent energy fee will provide the seed money to make things happen.

I believe that the seven member commission includes the major stakeholders in renewable fuels. It allows for the appointment of other members should that be necessary to carry out the duties prescribed in the amendments. These amendments provide for a focused agenda which allows the legislature to easily assess its accomplishments when you meet two years from now.

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One of the particularly important points about the commission is that most of the major players are sitting at the same table and are responsible for a broader agenda than each of their own individual roles. It is not healthy, nor in the best interest of farmers or the State of North Dakota, to have these different renewable energy groups looking only at their special areas of expertise. If the soybean and other oilseed interests were to oppose hydrogen development because it is a competing fuel with bio-diesel, the broad public purpose is not served. If the ethanol and bio-diesel interests jealously guard their own renewable fuel without looking at the overall benefit that North Dakota farmers and consumers will reap by developing both fuels, neither the farmers nor the State of North Dakota will gain the full benefits. The fact that these interests will be sitting together at the table, developing a comprehensive approach, is good for North Dakota.

I would like to comment on the particular agenda that is assigned to the commission.

E-85 Refueling Stations

The first agenda item calls for the commission to provide six new refueling facilities during the 2003-05 biennium for E-85 vehicles. I have attempted to use E-85 vehicles in my own travels when I use the state fleet, but with re-fueling sites only in Bismarck and Grand Forks, it does pose a major problem. Having more access points to purchase fuel is essential, and I think this is a laudable goal.

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The public in North Dakota needs to become more aware of the availability of E-85 vehicles. I was surprised at a legislative hearing earlier in the session at which a legislator did not know what an E-85 vehicle was and certainly did not know that there are several car manufacturers who sell E-85 vehicles that don't require any adjustments to utilize 85 percent ethanol blends. When we use 85 percent ethanol as opposed to the universal 10 percent blend, there is a huge increase in ethanol usage. Someone has suggested that perhaps the two cent energy fee might be waived to agencies that request and utilize the E-85 vehicles. This would be an incentive to increase demand for them within the state fleet. I will leave it to your good judgment as to whether that might help to increase the use of the E-85 vehicles. However that is worked out, the first key thing that needs to be done is to have better availability of the fuel.

Biodiesel Development

The fourth agenda item for the commission is to develop a long term strategy to promote bio-diesel in the state. Bio-diesel has great potential. One of the questions often asked is "how feasible is it to have a plant in our state?" Last fall, our department, working with the local economic development office in Carrington, commissioned NDSU to do research to determine if a small, integrated facility that included an oil crushing plant, a bio-diesel plant, a livestock confinement unit, a New Zealand style slaughter plant and a greenhouse would be economically feasible. The goal was to see if plants like these might be replicated in small communities across the state. (The concept was to be small enough so one wouldn't get snuffed out by the large corporate giants, but efficient by utilizing all available products in an efficient manner.)

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Thus the advantages of this total utilization could offset the problems with lack of scale. We are still waiting for the results of that study.

Wind and Hydrogen

The third item on the agenda is to develop a project using our wind resources to produce hydrogen. Most experts say that hydrogen is the fuel of the future, and we should be in the forefront in its development. President Bush has made it a top priority, and Senator Dorgan is a leader in the Senate favoring hydrogen development. We are late in the development of wind energy, considering our wind energy potential. We have problems getting our wind energy to out--of-state consumers via power lines. Perhaps we can find alternative ways to utilize our wind resources through hydrogen production. Much needs to be learned about this issue, but it would be a tremendous boost to our rural economy if North Dakota can become a leader in this area.

Focal point for other renewal fuel projects

The fourth agenda item for the commission is to serve as a resource to and promoter of economically viable projects developed by the private sector. The commission can be a focal point for innovative ideas that our citizens develop. I believe that one of the important things that the commission can do in this area is to become experts on the President's hydrogen initiative and find ways for North Dakotans to utilize some of the huge amounts of moneys that will be available for hydrogen research and development.

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There are several other proposed amendments to this bill. One calls for a requirement that every retail fuel establishment with more than one pump must offer ethanol. I support a mandated program for ethanol and have testified to that effect several times to various legislative committees this session

Mr. Chairman and members of the committee, I commend the efforts of those legislators who have given you the opportunity to pass some progressive and historic provisions on renewable fuels. These amendments are meaningful. The amended bill requires participation of all of state government. It codifies the commitment that I believe most of you have regarding the development of renewable fuels. It is action oriented. It will be easy for the next legislature to measure accountability through results.

I urge you to give a favorable recommendation to the amendments that have been presented to you today. I would be happy to respond to any questions.

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