2009 SENATE FINANCE AND TAXATION

SB 2413

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2413

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/03/2009

Recorder Job Number: #3

Committee Clerk Signature

Troy Schuchard

Minutes:

Chairman Cook: Opened hearing on SB 2413.

Senator Rich Wardner, District 37: Testified in support and is a sponsor of SB 2413.

2.20 **Representative Frank Wald, District 37:** See attachments #1 and #2 for testimony and proposed amendment to the bill.

4.30 **Ron Ness, North Dakota Petroleum Council:** Testified in support of the bill. This is a win/win opportunity. This is a new idea, and it makes good sense. It is currently not being done. Capturing the gas and selling back to the company is a great idea.

5.37 **Senator Oehlke:** You mentioned selling the electricity back to the grid?

Ron Ness: It is being put back into the system, but I cannot be specific.

Vice Chairman Miller: When you flare gas you drill a new well, do you try to do something with it right away or do you waste it?

Ron Ness: It is a system that the infrastructure is not catching up. This addresses an issue, environmentally. You want to catch it as soon as possible.

Vice Chairman Miller: Do you think it would allow you to utilize that resource quickly?

Ron Ness: Yes, this is cutting edge technology.

8.15 **Senator David O'Connell, District 6:** Testified in support of the bill. I think anything we can do, it is a help for the state.

9.04 **Dennis Hill, NDREC:** Testified in support of the bill. We see this bill as an insentive bill to give us some tools that industries, oil and gas, can utilize. This takes that resource and turns it into something we can use. It is a win/win situation. This is a marriage that makes so much sense.

Chairman Cook: In the partnership, you would own the generator?

Dennis Hill: No, the oil producing companies would.

Vice Chairman Miller: Is there a benefit in the REC's having ownership in that?

Dennis Hill: I think the idea is "we will just buy it from the other guy".

12.00 **Robert Harms, President, Northern Alliance of Independent Producers:** Testified in support of the bill. Flaring is a wasted resource that we would like to see used. It is a result of a host of issues, so we have a way to stop that. We think there are a variety of reasons to look at this as a new and innovative way to save energy.

14.18 **Lynn Helms, Director, Department of Mineral Resources:** Testified in support of the bill. See attachment #3 for information with testimony.

20.**03 Chairman Cook:** Give me those restricted #'s again.

Lynn Helms: unrestricted flared gas at 200 barrels-for 60 day, then 150 barrel-60, 100 barrels until you get the well connected

Chairman Cook: Did I see that there is a point that they pay a tax on the gas they are flaring?

Lynn Helms: There is, at the end of the first year. It exempts royalties, not taxes.

Chairman Cook: Is the amount of gas being flared easily measured?

Lynn Helms: Yes it is, and it is reported to us monthly.

Senator Hogue: I want to get a feel for how many exemptions you receive and subsequently accept or deny?

Lynn Helms: Nine out of ten are approved. They provide us with an estement of the cost to connect, distance to the closest pipeline system, an analysis of the well in terms of its reserves. If the total cost exceeds 1.1 times the value of the reserves, then they are granted an exemption.

23.28 **Vice Chairman Miller:** Do you have any idea what a generator costs?

Lynn Helms: No I do not. They are not very large. Each generator has to be tuned to the gas on that well. Many jobs would be generated.

25.07 **Senator Triplett:** On page 1, lines 14-16, is the producer in that sentence the oil well company? Is this a liability statement? Can you explain this sentence to me?

Lynn Helms: I am not the right one to answer that question.

Senator Dotzenrod: The amendment we have refers to electric generators that consumer 75% of the gas from the well is exempt. Do you in vision a situation that you cannot use all of the gas? What happens to the portion that isn't used?

Lynn Helms: The reason for the # is that a certain amount of the gas that is used on the site and also every well is allowed to have an emergency flare on the site. We have to allow for 25% that will be consumed.

27.55 **Senator Wardner:** It would be the gas producer. We would have no problem proposing an amendment to clarify this.

Senator Triplett: Why is the sentence there?

Senator Wardner: Clarifying who owns the equipment.

Senator Triplett: I am confused why that is necessary.

Senator Wardner: This just says that it belongs to the entity that is producing the energy.

Kirk Wald: We wanted to help introduce and foster this bill. One should say that the equipment belongs to the energy producer so that the capital cost is not put upon the oil producers because if they have to incur a capital cost to make use of the resource, it may not be in their best interests. So we are trying to remove barriers so the companies may be more apt to have this equipment on site.

30.30 **Senator Triplett:** Is there a reason that that could not be left to between the parties?

Kirk Wald: I would like to make sure that the oil producers are not responsible for the cost of this.

Lynn Wald: One advantage of the language on being the way it is is it would be exempt from property tax. There is a real economic advantage to the owner of the generators. If you take it out of the bill, one might be open to property tax and then be assessed by local and county property tax.

Chairman Cook: It would have to be owned by the actual oil company?

Lynn Helms: It would have to be considered property of the oil company to be exempt from that property tax

32.55 **Ron Ness:** I think that Senator Triplett is right here. The last thing you want to do is make a DIS-incentive to the operator to want to do this. We would prefer that the sentence be scratched.

Dan Rause, Tax Commissioner, Legal Council: I can get additional information on that and get back to you.

33.40 **Chairman Cook:** Closed hearing on SB 2413.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2413

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/04/2009

Recorder Job Number: 8589

Committee Clerk Signature	

Minutes:

Chairman Cook: Reopened discussion on SB 2413.

Dan Rause, Tax Department Legal Council: We have a very small amendment to that bill by taking out four words on lines 15 and 16. It would be revised to take out the words "the" in front of personal property, "of the" at the end of that line, and "producer" on line 16. The purpose of that is to answer both of the questions that seem to be concerns yesterday. By taking out those words, it eliminates assigning who is responsible for owning the property – that is up to the business relationship that was created.

Chairman Cook: Those are coming down?

Dan Rause: Yes

Chairman Cook: Suspended discussion on SB 2413.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2413

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/04/2009

Recorder Job Number: 8668

Committee Clerk Signature	

Minutes:

Chairman Cook: Reopened discussion on SB 2413.

Senator Triplett: Moved Amendments 90979.0102 and 90979.0101

Senator Hogue: Seconded.

Chairman Cook: Discussion?

A voice vote was taken: 7 yeas, 0 nays, 0 absent.

Senator Triplett: Moved Do Pass As Amended.

Senator Dotzenrod: Seconded.

A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.

Senator Oehlke will carry the bill.

FISCAL NOTE

Requested by Legislative Council
03/16/2009

Amendment to: Engrossed SB 2413

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engrossed SB 2413 with House Amendments provides a gross production tax exemption for gas consumed by a generating unit that produces electricity.

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

Section 3 allows gas from an oil and gas well to be exempt from the gross production tax if the gas is used to generate electricity at the well. There is no information available to compute any potential revenue loss.

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

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

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

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

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	03/17/2009

FISCAL NOTE

Requested by Legislative Council
01/27/2009

Bill/Resolution No.: SB 2413

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

SB 2413 provides a sales tax exemption for electrical generating units that use flared gas or waste heat.

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

Section 1 allows gas from an oil and gas well to be exempt from the gross production tax if the gas is used to generate electricity. There is no information available to compute this revenue loss.

Section 2 provides a sales and use tax exemption for the sale of machinery used directly in the generation of electrical energy from waste heat or from natural gas that would otherwise be flared. There is no information available to determine how many of these units are likely to be installed, and what the corresponding reduction in sales tax might be.

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

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

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

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

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	02/02/2009

#\

90979.0101
Title.

Prepared by the Legislative Council staff for
Representative Wald
January 30, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2413

Page 1, line 1, remove "subsection to" and replace "57-39.2-04" with "to chapter 57-51"

Page 1, line 2, replace "a sales and use" with "an oil and gas gross production" and replace "equipment" with "certain gas"

Page 1, line 3, remove "from waste heat or flared gas"

Page 1, line 18, remove "Gas used for electrical"

Page 1, remove line 19

Page 2, replace lines 4 through 10 with:

"**SECTION 2.** A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

Exemption of gas for electrical generation at well site. Gas burned at the well site to power an electrical generator that consumes at least seventy-five percent of the gas from the well is exempt from the tax under section 57-51-02.2."

Renumber accordingly

90979.0102
Title.

Prepared by the Legislative Council staff for
Senator Wardner
February 4, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2413

Page 1, line 15, remove the first "the" and remove "of the"

Page 1, line 16, remove "producer"

Renumber accordingly

Date: 02/04/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2413

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90979.0101 and 90979.0102

Action Taken ☐Do Pass ☐Do Not Pass ☐Amended

Motion Made By Triplett Seconded By Hogue

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller – Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

All in favor

Total: Yes 7 No 0

Absent

Floor Assignment

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

Date: 02/04/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : ~~SB~~ 2413

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90979.0103

Action Taken ☑ Do Pass ☐ Do Not Pass ☑ As Amended

Motion Made By Senator Triplett Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller – Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SB 2413: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2413 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection to" and replace "57-39.2-04" with "to chapter 57-51"

Page 1, line 2, replace "a sales and use" with "an oil and gas gross production" and replace "equipment" with "certain gas"

Page 1, line 3, remove "from waste heat or flared gas"

Page 1, line 15, remove the first "the" and remove "of the"

Page 1, line 16, remove "producer"

Page 1, line 18, remove "Gas used for electrical"

Page 1, remove line 19

Page 2, replace lines 4 through 10 with:

"**SECTION 2.** A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

Exemption of gas for electrical generation at well site. Gas burned at the well site to power an electrical generator that consumes at least seventy-five percent of the gas from the well is exempt from the tax under section 57-51-02.2."

Renumber accordingly

2009 HOUSE FINANCE AND TAXATION

SB 2413

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2413

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: #10161

Committee Clerk Signature	Marlys Kienzle

Minutes:

Chairman Belter: Opened the hearing for SB 2413.

Sen Wardner: I am a Senator from District 37 in Dickinson. We bring before you SB 2413. This bill has to do with using the flared gas out in the oil patch and hopefully to develop an industry that the gas can be used almost on site or close proximity where it can be turned into electricity. We would have gas turbines that would produce electricity. That is what this bill is encouraging.

Rep Wald: I am a Representative from District 37 in Dickinson. If you have driven through the oil patches you will see flaring gas burning up in the atmosphere. We feel this would be good for the environment, good for the economy and what the bill would do is capture the flared gas to the generators and would sell the developed electricity to the power plants. It is my understanding that the rural electric companies can use this because of the heavy loads of the energy activity that was going on.

To explain the amendments from the first engrossed bill, starting on line 13, 14, 15 and 16 the new language that was added by the Senate Finance and Tax Committee.

Also Section 2 There is also a sales Tax exemption. These generators are about $200,000 to $250,000 a copy and it is my understanding that the fiscal impact was not estimated but I think it is minimal.

Attachment #1 of the engrossed amendment as Rep Wald read the changes

Attachment #2 offered this to the committee and read it.

Rep Winrich: I noticed that the gas from these wells can only be flared for one year. Then it could be capped or gathered or something like that. During the time that the gas is flared is it being taxed under the extraction tax?

Rep Wald: I would refer that question to someone from the Tax Department.

Rep Winrich: I am not sure I understand this as classified as recycled energy. What does that do?

Rep Wald: I think what we are saying here is taking the gas that is energy product and manufacturing electricity from it, so what we are doing is converting gas into electricity.

Rep Winrich: The section of code that you passed out in the amendment appears to have something to do with the Public Service Commission. Where does that fit into that?

Rep Wald: In section 40-02-25 that you are referring to, there are other types of gas such as solar, hydro-electric, biomass and so forth. The last is recycled energy which is the flared gas.

Rep Winrich: Does this apply something special as to the way the PSC regulates this?

Rep Wald: Not to my knowledge.

Ron Ness: I am from the North Dakota Petroleum Council. This is a solution that has come along from a couple of entrepreneurs. We have a situation in North Dakota where we have a lot of flared gas, for sure since the Bakken moved further east than any of the infrastructure existed. There is really nothing to do with that gas until that infrastructure that the gas plants catch up. There is no tax paid on that flared gas. It is a wasted resource. What these gentlemen have come along with this idea the last few months to do is trying to do is to make a portable capture unit to capture the gas and put it right on the grid right there. The market on this is going to be at a minimum. Some of what is provided for in this bill is to be considered as a green energy rather than venting this in the atmosphere. Dennis Hill attended the hearing on the Senate side and one of the thinks he stated was that this was a tool for both industries to use. Right now in Mountrail County you are having a problem providing a load for the oil industry. We have wells in these specific counties that are non pipeline or quality gas that has no value and can't be put into WBI or MDU pipeline because it has low BTU content.

Will this work for those turbines that is all for a question to be seen.

Lynn Helm: Director of the Human Resources North Dakota Industrial Commission.

See Testimony Attachment #3 of effective numbers

What you can see here very quickly is that we have almost 28 billion cubic feet of gas being vented and flared every year in the state of North Dakota. You can see in Mountrail County where there was no gas gathering infrastructure, 6 out of every 8½ thousand cubic feet are being flared at this time. This is a temporary situation to allow flaring. What we envisioning is a fleet of 100 to 150 of these units that are being drilled and are not connected to a pipeline yet and once that well is connected to a pipeline that unit will be moved to the next well. This will be a rolling fleet. They generate about 150 kwh each and cost about $200,000 each and no bigger than about a filing cabinet.

They contain a small jet engine that burns the gas and that power can be put right on the grid. With the green tag this will get federal assistance.

Rep Weiler: You mentioned the flaring is a necessary part of the project. Am I right on that?

Lynn Helm: The reason that it is necessary is that the cost to connect to a gas gathering system is running in the neighborhood of $90,000 per inch mile to lay a pipeline. Typically you are laying a 4 inch gathering line, we are talking here a mile gathering line to get it into the ground would cost $360,000. So initially you have to put the well head into production to see how much gas it will produce. That is what the first two months are going to do is to see what the well will produce. After we see how much the well will produce we can purchase the materials for the pipeline and go to the gas gathering company and set up a contract. The delivery of the material is 12 up to 18 months, so I need to continue to producing the well while I see how much gas I have, negotiate a contract and wait for the piping equipment so that I can get the gas into a gathering system. During that time I am developing that well and paying off the mineral owners. So I cannot shut it down.

Rep Weiler: So this fleet of turbine generators, they are kind of taking the place and capture that and to store it or pass it on to the electric companies.

Lynn Helm: That is exactly correct. During those 12 to 18 months these generators are producing electricity. This can produce 400 megawatts which is an entire power plant.

Rep Weiler: After a year they have to cap that gas that is flared.

Lynn Helm: It is tricky reading of the bill. They either have to cap or start paying taxes and royalties.

Rep Weiler: Why can't they cap it right away and not have it sent out into the atmosphere.

Lynn Helm: There is a need to maintain a cash flow of the oil well to pay off the 7 million dollars investment. That is why we step it down every two months instead of putting cap on it right away.

Rep Weiler: So it is very costly.

Lynn Helm: It is extremely costly. Unaffordable.

Rep Weinrich: What is the rational for the 75% threshold?

Lynn Helm: That was arrived at due to the fact that the oil companies use some of the gas on the lease to fire there heating equipment. We didn't want to take away the operators gas to do this and that is why they decided on the 75%.

Rep Pinkerton: Is it correct that if you don't have gas coming out you don't have oil coming out either is that correct?

Lynn Helm: That is correct.

Rep Froseth: You would have to capture enough gas to generate electricity wouldn't you?

Lynn Helm: Yes. In Bottineau and Renville County the oil has migrated from the center of the Basin. So the process of getting there most of the gas got eaten up by bacteria and moss. So those well produce a very small amount of oil. As a result no well up there could maintain or sustain one of these generators.

The consumption of one of these units is somewhere between half a million and a million cubic feet of gas a day. That is in that neighborhood.

In Bottineau and Eastern Burke Counties there would probably be one of these units for every 70 to 100 wells.

Rep Weiler: By doing this they are able to produce more oil so effectively so the tax break would be beneficial to the state of North Dakota as well.

Lynn Helm: That is absolutely correct. I cannot find a looser in this game here. Unless they would make lousy contracts and do not get enough for their electricity.

Vice Chair Drovdal: How do the royalty owners fare from all these and do they get paid from the revenue from the electricity? Are they protected in this field?

Lynn Helm: My understanding is that this company is going to paying some small amount money for the gas collected. That will be negotiated at that time. They will get their royalty from the money that flows from this company to the operator.

Rep Pinkerton: Once this gas is burned is this pretty much CO2, gas and water?

Lynn Helm: We don't allow venting in North Dakota. If we catch someone venting we fine them and make them correct it. To vent the gas we would mean we would be putting hydrogen sulfide and methane into the atmosphere, which are far worse green house gases than carbon dioxide and much more toxic to humans. The products off of the flaring are carbon dioxide, water vapor and sulfur dioxide. The Health Department monitors the flare length to see how much sulfur dioxide is being put in the atmosphere and make sure it is not dangerous for human health.

Curtis Jabs: I am a representative for Basin Electric.

We think this is a good idea. Both Basin Electric and the Rural Electric Cooperatives need the power of 400 megawatts from the study we did. We are in the process of building more transmission lines that would get the power to where we need the power at the oil fields.

The way we would do that is that we have a standardize purchase of power agreement.

We have a set rate to purchase the power that rate is good for any generation.

Now about the green credit, we pay would maybe pay ½ of cent more if it had a green tag than if it did not have a green tag. This green tag can only be use in North Dakota to satisfy the renewable objective so it has a limited benefit.

Chairman Belter: Closed the hearing on 2413.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2413**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10642

Committee Clerk Signature

Minutes:

Chairman Belter: Let's go to SB 2413. Did I pass out the amendments? We have a motion to move the .0201 amendments by Representative Grande and a second from Representative Headland. Any discussion? **The motion carried by a voice vote.** Committee, what are your wishes on SB 2413. We have a motion for a **"do pass as amended"** from Representative Grande and a second from Representative Weiler. Any discussion? **A roll call voted resulted in 12 ayes, 0 nays, 1 absent/not voting (Froelich). Representative Weiler will carry the bill.**

90979.0201
Title.0300

Prepared by the Legislative Council staff for Representative Wald
March 4, 2009

VR 3/11/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2413

Page 1, line 3, after "38-08-06.4" insert "and subsection 7 of section 49-02-25"

Page 1, line 4, after "gas" insert "and renewable electricity and recycled energy"

Page 2, after line 2, insert:

"**SECTION 2. AMENDMENT.** Subsection 7 of section 49-02-25 of the North Dakota Century Code is amended and reenacted as follows:

7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity <u>unless the generation system consumes wellhead gas that would otherwise be flared, vented, or wasted</u>."

Page 2, line 8, replace "This" with "Section 3 of this"

Renumber accordingly

Date: March 10, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2413

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .0201

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Grande Seconded By Headland

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

Motion Carries

Date: March 10, 2009

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2413

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Grande Seconded By Weiler

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Representative Froelich		
Vice Chairman David Drovdal	✓		Representative Kelsh	✓	
Representative Brandenburg	✓		Representative Pinkerton	✓	
Representative Froseth	✓		Representative Schmidt	✓	
Representative Grande	✓		Representative Winrich	✓	
Representative Headland	✓				
Representative Weiler	✓				
Representative Wrangham	✓				

Total (Yes) 12 No 0

Absent 1 (Froelich)

Floor Assignment ~~[illegible]~~ Weiler

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

REPORT OF STANDING COMMITTEE

SB 2413, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2413 was placed on the Sixth order on the calendar.

Page 1, line 3, after "38-08-06.4" insert "and subsection 7 of section 49-02-25"

Page 1, line 4, after "gas" insert "and renewable electricity and recycled energy"

Page 2, after line 2, insert:

"**SECTION 2. AMENDMENT.** Subsection 7 of section 49-02-25 of the North Dakota Century Code is amended and reenacted as follows:

7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity <u>unless the generation system consumes wellhead gas that would otherwise be flared, vented, or wasted</u>."

Page 2, line 8, replace "This" with "Section 3 of this"

Renumber accordingly

2009 TESTIMONY

SB 2413

Wald, Francis J.

From:	Helms, Lynn D.
Sent:	Friday, January 30, 2009 4:16 PM
To:	Wald, Francis J.
Subject:	flared gas info
Attachments:	gasrate.pdf; gas12675.pdf

Hi Frank,

The tax department publication on natural gas tax rate is attached. The rate is $0.1476 per MCF. They pay this on gas flared after one year.

I also attached one of the latest gas flaring orders to show they value the gas at $6.72 per MMBTU and plan to flare over 45 MCF per day. After the first year they have to pay royalties of 1/8-20% on the flared gas.

Lynn D. Helms
Director
North Dakota Industrial Commission
Department of Mineral Resources
Phone (701) 328-8020
Fax (701) 328-8022

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

Gas Tax Rate Notice

To: **North Dakota Gas Producers and Purchasers**

From: **Office of State Tax Commissioner - Oil and Gas Tax Section**

Date: **June 1, 2008**

Subject: **Notification of Gas Tax Rate for Fiscal Year 2009**

In keeping with the provisions of North Dakota Century Code § 57-51-02.2, the Tax Commissioner has determined that the gas tax rate for the fiscal year beginning July 1, 2008, through June 30, 2009, is $.1476 per mcf. The gross production tax on gas produced during this time period must be calculated by taking the taxable production in mcf times the $.1476 gas tax rate.

For your information, the gas tax rate for fiscal year 2009 was determined by the following steps:

STEP 1 -The annual average of the gas fuels producer price index, commodity code 05-3, as published by the U.S. Department of Labor, Bureau of Labor Statistics, for calendar year 2007 was computed from the data shown below.

January	236.3
February	279.9
March	286.2
April	283.1
May	299.2
June	297.8
July	278.1
August	253.8
September	242.4
October	273.7
November	307.9
December	314.2
Annual Average	279.4

STEP 2 -A gas base rate adjustment of 3.6909 was computed by dividing the annual average price index by the denominator specified in the statute, i.e., 279.4 divided by 75.7.

STEP 3 -The gas tax rate of $.1476 was computed by multiplying $.04 times the gas base rate adjustment of 3.6909, with the resultant rounded to four places after the decimal.

The gas tax rate is also published on the Office of State Tax Commissioner's web site located at: ***www.nd.gov/tax***. If you have any questions regarding this notification, please contact the Oil and Gas Tax Section at 701.328.3657 or by email at ***oiltax@nd.gov***.

600 E. BOULEVARD AVE., DEPT. 127, BISMARCK, NORTH DAKOTA 568505-0599
701.328.2770 FAX: 701.328.3700 HEARING/SPEECH IMPAIRED: 800.366.6888 WWW.ND.GOV/TAX TAXINFO@ND.GOV

Source: S.L. 1953, ch. 339, § 2; 1957, ch. 368, § 1; R.C. 1943, 1957 Supp., § 57-5102; S.L. 1991, ch. 689, § 2.

Exemption from Tax.

Federal land bank's royalty interest in produced oil and gas was exempt, pursuant to the state constitution, from the tax imposed by this chapter, and state failed in its burden to prove that such tax was upon real estate, which if proven, would have constituted congressional waiver, pursuant to 12 USCS 2055, of the tax exemption. Federal Land Bank v. State, 274 N.W.2d 580 (N.D. 1979).

Legislative Intent.

The legislature intended to levy the gross production tax on the current fair market value of the gas produced regardless of whether the gas is sold pursuant to a long-term purchase contract. Amerada Hess Corp. v. Conrad, 410 N.W.2d 124 (N.D. 1987).

Measurement.

The tax commissioner properly interpreted this section and N.D.C.C. § 57-51.1-02 as allowing him to use downstream metered measurements of oil volume and, if those measurements disclosed a larger volume of oil than oil company had reported and paid taxes on (using a hand-gauging measurement method at the well), to tax that volume gain, with the value of that volume gain oil at the well being determined by averaging, on a monthly basis, the prices company paid to its producers during the period 1980 through 1983. Koch Oil Co. v. Hanson, 536 N.W.2d 702 (N.D. 1995).

57-51-02.1. Type of tax. For purposes of interpreting chapter 785 of the 1987 Session Laws, relating to federal land bank taxation and to the taxation of other governmental entities if their immunity from taxation has been waived, the gross production tax is a real property tax on oil-producing and gas-producing mineral estates and interests.

Source: S.L. 1989, ch. 731, § 1.

57-51-02.2. Gross production tax — Gas. A gross production tax is levied upon all gas produced within North Dakota except gas that is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. The gas tax rate is four cents times the gas base rate adjustment for each fiscal year as calculated under subsection 2.
2. a. The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for each fiscal year beginning on July first.
   b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.
   c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed on or before June first.
   d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate

adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.

e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

Source: S.L. 1991, ch. 689, § 3; 2001, ch. 549, § 1; 2003, ch. 524, § 7.

57-51-02.3. Valuation of oil — Alternatives — Exceptions. The gross value at the well for oil is the price paid for the oil under an arm's-length contract between the producer and the purchaser less, when applicable, transportation costs associated with moving the oil from the point of production to the point of sale under the contract. In the absence of an arm's-length contract, the gross value at the well for oil is established by the first applicable of the following methods:

1. The price paid under an arm's-length contract, to which the person paying the tax is a party, for the purchase or sale of oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, when applicable, transportation costs associated with moving the oil from the point of production to the point of sale.
2. The price paid under an arm's-length contract, between parties other than the person paying the tax, for the purchase or sale of oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, when applicable, transportation costs associated with moving the oil from the point of production to the point of sale.
3. The value determined by consideration of the posted price relevant in valuing oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, when applicable, adjustments for transportation costs to reflect the differential between the value at the point of production and the value at the location reflected in the posted price.

Source: S.L. 1991, ch. 689, § 4.

57-51-02.4. (Effective through June 30, 2007) Shallow gas — Gross production tax exemption. Shallow gas produced during the first twenty-four months of production from and after the date of first sales of gas from a well completed or recompleted in a shallow gas zone after June 30, 2003, is exempted from the gross production tax levied under section 57-51-02.2. Gas produced from such a well during testing prior to well completion or connection to a pipeline is also exempt from the gross production tax.

#2

Please Support SB 2413

Transforming Wasted Flare Gas into Electricity for our Local Utilities

Together, We All Win:

North Dakota's Taxpayers will receive **more tax revenue** from increased oil production

Our Utilities, both Public and Private, **desperately want more clean, green** electricity produced locally, for local use

Locally produced electricity is **less expensive** and bypasses critical transmission bottlenecks

Our Utilities can purchase more of their electricity made from **clean, efficient** and ***reliable*** **natural gas,** which is less polluting than coal.

Help enable our Oil & Gas Producers to extract their products **more efficiently** and do it **with less waste**

Our Oil & Gas Producers need the electricity for operations and can benefit from tax credits

Major Oil & Gas Producers support the global initiative to reduce the **unnecessary flaring** of natural gas and **lower greenhouse gas emissions**.

New, Clean & Long-Term Jobs are created for our local economy

Our Local Businesses will supply a **smart, clean and stable new** industry

PLUS

Our ***Environment wins*** because natural gas and waste heat can be cleanly transformed into useful and needed electricity, ***instead of being utterly wasted by flaring!***

Every kilowatt produced from waste heat or wasted flare gas can reduce the need for electricity produced from coal.

It helps North Dakota meet its Renewable Energy Target:

10% of our electricity from renewable or green sources by 2015
(49-02-28 State renewable and recycled energy objective)

This is the wave of the future -- help North Dakota **lead by example** with ***realistic,*** **sustainable** and **clean** alternative energy solutions!

This timely and progressive bill has many allies and no opposition!

#3

Senate Bill 2413

February 3, 2009

Senate Finance and Taxation

Lynn D. Helms, Director
Department of Mineral Resources
North Dakota Industrial Commission

Gas Production Totals By County 2005

County Name	*MCF Produced*	*MCF Sold*	*Lease Use*	*Vent Flared*
BILLINGS (63 pools)	6,127,360	5,403,931	598,715	124,710
BOTTINEAU (53 pools)	109,680	0	52,242	57,439
BOWMAN (28 pools)	8,804,948	4,697,716	223,047	3,884,186
BURKE (45 pools)	2,138,944	1,977,353	109,598	51,992
DIVIDE (41 pools)	1,595,185	1,421,871	109,195	64,121
DUNN (39 pools)	1,144,182	882,013	129,640	132,527
GOLDEN VALLEY (21 pools)	649,600	378,072	155,014	116,516
HETTINGER (1 pool)	0	0	0	0
MCHENRY (2 pools)	0	0	0	0
MCKENZIE (191 pools)	12,818,402	11,853,432	766,252	120,221
MCLEAN (3 pools)	30,490	0	28,648	1,842
MOUNTRAIL (15 pools)	1,483,351	1,437,038	13,667	32,646
RENVILLE (35 pools)	105,681	0	71,796	33,885
SLOPE (3 pools)	335,043	123,922	4,927	206,194
STARK (29 pools)	1,209,236	1,131,169	52,995	25,072
WARD (10 pools)	10,232	0	7,457	2,775
WILLIAMS (95 pools)	21,592,830	21,262,278	250,125	80,427
StateTotal	***58,155,164***	***50,568,795***	***2,573,318***	***4,934,553***

Gas Production Totals By County 2008

County Name		*MCF Produced*	*MCF Sold*	*Lease Use*	*Vent Flared*
BILLINGS (74 pools)		5,023,015	4,526,051	479,249	115,665
BOTTINEAU (53 pools)		99,491	0	48,990	50,536
BOWMAN (30 pools)		22,614,868	6,455,058	749,977	15,350,962
BURKE (47 pools)		2,557,822	2,257,122	195,067	105,997
DIVIDE (50 pools)		1,540,433	1,127,908	165,555	246,969
DUNN (55 pools)		3,061,639	2,639,099	107,269	315,270
GOLDEN VALLEY (21 pools)		638,933	472,449	147,268	19,216
HETTINGER (1 pool)		0	0	0	0
MCHENRY (2 pools)		0	0	0	0
MCKENZIE (212 pools)		14,078,389	12,812,066	786,071	397,430
MCLEAN (3 pools)		13,519	0	13,519	0
MOUNTRAIL (29 pools)		6,512,515	1,781,235	109,080	4,502,000
RENVILLE (34 pools)		68,982	165	47,320	21,707
SLOPE (3 pools)		1,413,299	200,122	931	1,212,246
STARK (28 pools)		634,165	583,152	35,639	15,374
WARD (10 pools)		13,960	0	9,235	4,725
WILLIAMS (107 pools)		22,344,706	21,662,589	292,989	389,128
	StateTotal	*80,615,736*	*54,517,016*	*3,188,159*	*22,747,225*

NORTH DAKOTA
OIL AND GAS DIVISION

The Bowman and Slope county gas is very low heat value from the high pressure air injection.

In 2008 in Divide, Dunn, McKenzie, and Mountrail and Williams counties 5.4 billion cubic feet of new Bakken gas was flared while waiting on plant connections to be built. As drilling continues into new areas this could continue, at a reduced level, for a decade.

1000 cubic feet

The average ND home consumes 35 MCF gas per year. This flared volume would heat 155,000 homes for a year.

The law allows flaring with restricted production. At today's posted prices the average restricted Bakken well flowing 100 barrels of oil per day generates oil revenue of $3058/day flaring 100 MCF gas with a market value of less than $412.

Testimony 3

Senate Bill 2413

March 4, 2009

House Finance and Taxation

Lynn D. Helms, Director
Department of Mineral Resources
North Dakota Industrial Commission

Gas Production Totals By County for 2008 OFFICE USE ONLY

County Name	*MCF Produced*	*MCF Sold*	*Lease Use*	*Vent Flared*
BILLINGS (74 pools)	5,313,959	4,732,347	517,668	162,052
BOTTINEAU (53 pools)	103,206	0	51,496	51,745
BOWMAN (30 pools)	24,648,636	6,860,589	764,893	16,964,284
BURKE (48 pools)	2,768,447	2,416,947	211,097	140,417
DIVIDE (51 pools)	1,699,190	1,151,799	184,738	362,652
DUNN (55 pools)	3,371,981	2,848,260	117,018	406,706
GOLDEN VALLEY (21 pools)	681,162	495,398	159,709	26,055
HETTINGER (1 pool)	0	0	0	0
MCHENRY (2 pools)	0	0	0	0
MCKENZIE (214 pools)	14,887,140	13,450,341	850,221	503,781
MCLEAN (3 pools)	14,315	0	14,315	0
MOUNTRAIL (29 pools)	8,420,535	2,025,462	138,700	6,136,173
RENVILLE (34 pools)	72,741	165	49,935	22,642
SLOPE (3 pools)	1,761,031	261,602	1,054	1,498,375
STARK (28 pools)	664,496	610,708	37,403	16,385
WARD (10 pools)	12,585	0	7,782	4,803
WILLIAMS (110 pools)	22,650,573	21,873,695	317,647	459,231
StateTotal	***87,069,997***	***56,727,313***	***3,423,676***	***26,755,301***

Page 2 Same as
Seven to Senate

The Bowman and Slope county gas is very low heat value from the high pressure air injection. Additional technology improvements will be needed to make that work.

In 2008 in Divide, Dunn, McKenzie, and Mountrail and Williams counties 7.4 billion cubic feet of new Bakken gas was flared while waiting on plant connections to be built. As drilling continues into new areas this could continue, at a reduced level, for a decade.

The average ND home consumes 35 MCF gas per year. This flared volume would heat 212,000 homes for a year.

The law allows flaring with restricted production. At today's posted prices the average restricted Bakken well flowing 100 barrels of oil per day generates oil revenue of $3,058/day flaring 100 MCF gas with a market value of less than $412.