

2011 SENATE FINANCE AND TAXATION

SB 2368

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2368
February 4, 2011
13713

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to an individual and corporate income tax credit for surface owners of property on which oil or gas wellheads are located.

Minutes:

You may make reference to "attached testimony."

Committee Work

Senator Cook opened the hearing on SB 2368 relating to an individual and corporate income tax credit for surface owners of property on which oil or gas wellheads are located.

John Walstad: What the question is if a refundable income tax credit creates a problem under the gift provision of the Constitution, and I think the answer is yes, the state can provide tax credits to individuals and businesses pretty much on any basis it wants. The state can forgive tax liability on that basis all the way down to zero. When the state has eliminated someone's tax obligation their income liability is down to zero, any additional help from the state is a gift in my opinion.

Senator Dotzenrod: Is there a specific sentence in the Constitution that bears out what you say?

John Walstad: It doesn't say that precisely, but right at the top of Article 10, Section 18 "neither the state nor any political subdivisions shall make donations to or in aid of any individual, association or corporation except for reasonable support of the poor". Charitable donations are okay. But, just as a matter of course, and this happens a lot, example given. A refundable credit means once the liability of the individual or business is zeroed out, we're still going to give them some money. When that happens we're not giving them some of their money back, we're giving them some money out of the public treasury.

Senator Cook: Is there a definition of poor? Income level, we won't support them. **John Walstad:** No. It's a word in the Constitution that I guess changes with the times.

Senator Dotzenrod: If the committee wanted too we could pass a bill out of here that it does give them a tax credit and they could get a reduction in their taxes and we could set some limits as to how far they could have their taxes. **Senator Cook:** Take refundable out.

Senator Dotzenrod: But you can't refund, you can't go down to the point where you're at zero and then start going past that and actually refunding money. **John Walstad:** That is exactly right. When zero is the number anything further is a problem and as Senator Cook stated, just removing the word refundable eliminates that. It stops the credit at zero liability.

Senator Cook closed the committee discussion on SB 2368.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2368
2/7/2011
Job Number 14079

Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

Relating to an individual and corporate income tax credit for surface owners of property on which oil or gas wellheads are located.

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2368.

Senator Triplett – I would start by reminding the group that we had concerns when we discussed this previously about the constitutionality of a refundable credit that is not dedicated toward helping the poor.

Chairman Cook – Yes, we did.

Senator Dotzenrod – If they had a tax liability of \$2,000 and the state gave them \$200 per well head and they had 2 well heads, if their taxes then became \$1,600 would the state have made a donation or provided aid to an individual?

Chairman Cook – I would believe that the only way that comes in to play is if they get money back.

Senator Dotzenrod – If their liability gets down to zero and then we go beyond that.

Vice Chairman Miller – I'll move a Do Not Pass.

Seconded by **Senator Oehlke**.

Senator Hogue – I do have to respectfully disagree with Legislative Council on this idea that a tax credit in excess of your tax liability is somehow a gift. Last session I did review that 1938 case and I don't think it's on point at all, and just to remind the committee that it takes 4 of our Supreme Court justices, 4 out of 5 to invalidate anything that the legislature does as unconstitutional. There is also a presumption in favor of anything that we do is being constitutional so I think when it's a closed question the legislature's act prevails. We had one in Senate Natural Resources that wasn't a closed question. The bill was properly defeated on the floor because it was a bill that would have imposed a, taken a portion of

the royalty owners minerals and given it directly to the surface owners and so it was a transfer of revenue from one private individual to another. That's not a tax, that's just a taking and redistribution. This I think is perfectly constitutional and I think it's a reasonable response to the problems that the surface owners are having. I understand we all take an oath to uphold the constitution but I think this is constitutional and I support it.

Chairman Cook – I will probably vote in favor of the Do Not Pass but it has nothing to do with the question of constitutionality on refundable or not. I look at this in a little different light than you do. I certainly have sympathy for surface owners who do not have mineral rights but it's a buyers' market, it's a contract made between a willing buyer and a willing seller who I would also argue that we probably have land being sold out there today that doesn't have mineral rights and someone who is willingly paying the price for that land.

Senator Triplett – While I certainly respect Senator Hogue's opinion I think given that we have received advice that this is possibly unconstitutional in its present form, it seems to me that before we vote on the do not pass, and maybe I just wasn't quick enough today to get myself in order but it would be a useful thing to remove the word refundable just so at least we have proven that we have done our best at making the bill as good as it can be before it goes down to defeat. So, if it's still in order I would move that we amend on line 10 by striking the word refundable.

Vice Chairman Miller – I understand why Senator Triplett offered the amendment and I would agree with that premise but the only thing about this bill that makes it somewhat fair and reasonable is the fact that it's a refundable tax credit. Otherwise it's entirely pointless, in my opinion.

Chairman Cook – Ask the clerk to take the roll on the amendment. (6-1-0)

Chairman Cook – We still have a motion for Do Not Pass as amended.

Senator Dotzenrod – I do think that the sponsors of the bill have correctly identified a big problem but the thing I'm concerned about with this bill is that you could have other circumstances where there is developments and things done on the surface that create troubles for people, a lot of those are taken care of with an agreement. It does seem to me that we are setting a precedent. If we do this we are sort of saying that we can use North Dakota general fund revenues to compensate surface owners for disturbances in their neighborhood. I kind of like the idea even though it was unconstitutional to take some of the royalty money and give it to the surface owner. It's clearly not something you can do; you are kind of interfering there with a contract too. I do think if you solve it this way you are setting a precedent that would be useful in the future for other disturbances on the surface that people could use.

Senator Oehlke – In my area we've got about 83,000 acres of inundated land that can't be farmed anymore right now and maybe I should vote for this bill, maybe that would be the camel's nose under the tent to get reimbursement for all those land owners on that land that can't produce anything.

Senator Triplett – My concern is that it just doesn't feel like this is the right way to take care of the problem. I agree with what Senator Dotzenrod just said. The sponsors of the bill have clearly identified a problem and we've seen it here and the 3 of us that also serve on Natural Resources have heard an equal number of bills over there. We heard the Division of Mineral Resources is working hard at beefing up their staff and beefing up their regulatory regime to make sure that they can adequately respond to the complaints of surface owners.

Vice Chairman Miller – Echoing some of what Senator Triplett said, this bill in my mind puts the government between the surface owners, the mineral rights owners, and the companies doing the work and what this does is turns the government in to the appeaser for any kind of bad action on part of the oil companies or any companies involved in that. I don't think that's a place we want to be. I think what Senator Triplett was discussing is the direction we need to go because this bill doesn't do enough to address every impact on every situation with a surface owner. They can do other things and this takes a broad brush approach and doesn't quite narrowly focus what that needs to be.

Chairman Cook – Is it not still legal today for a land owner to sever his mineral rights and sell just the surface rights? It happens today yet.

Chairman Cook – We have a Do Not Pass as Amended on SB 2368. Ask the clerk to take the roll. (6-1-0)

Carried by **Vice Chairman Miller**.

FISCAL NOTE
 Requested by Legislative Council
 02/09/2011

Amendment to: SB 2368

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 2368 creates an individual and corporate income tax credit for surface owners of property on which an oil or gas wellhead is located.

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.*

Engrossed SB 2368 establishes an income tax credit of \$200 per taxable year for owners of real property on which one or more wellheads are located.

Currently there are approximately 5100 wells in North Dakota, with at least an additional 2400 expected to be drilled in the next biennium. Therefore, there may be as many as 7500 wells on private property that would be allowed to claim this credit.

The credit is limited to the income tax liability of the property owner, and the amount of total income taxes paid by the owners that could be offset by this credit is unknown. If all property owners affected have sufficient income tax liabilities, the fiscal impact of Engrossed SB 2368 could be up to \$3 million in the 2011-13 biennium.

Section 1 of the bill reimburses the state general fund the amount of this tax credit out of revenues from the lands and minerals trust fund. Recently, available revenues from the lands and minerals trust fund are transferred to the general fund anyway, so ultimately, the reduction in revenue would be to the state general fund.

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:	02/10/2011

FISCAL NOTE

Requested by Legislative Council
01/26/2011

Bill/Resolution No.: SB 2368

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$3,000,000)			
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 2368 creates a refundable individual and corporate income tax credit for surface owners of property on which an oil or gas wellhead is located.

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.*

SB 2368 establishes an income tax credit of \$200 per taxable year for owners of real property on which one or more wellheads are located. Currently there are approximately 5100 wells in North Dakota, with at least an additional 2400 expected to be drilled in the next biennium. Assuming there will be 7500 wells located on private property for which this refundable tax credit could be claimed, SB 2368, if enacted, could be expected to reduce state general fund revenues by an estimated \$3 million in the 2011-13 biennium.

Section 1 of the bill reimburses the state general fund the amount of this tax credit out of revenues from the lands and minerals trust fund. Recently, available revenues from the lands and minerals trust fund are transferred to the general fund anyway, so ultimately, the reduction in revenue would be to the state general fund.

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

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

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

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

continuing appropriation.

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/28/2011

11.0731.02001
Title.03000

Adopted by the Finance and Taxation
Committee

February 7, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

Page 1, line 10, remove "refundable"

Renumber accordingly

JCS
2-7-11

Date: 2-7-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2368

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Triplett Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

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

Verbal vote

Date: 2-7-11
 Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2368

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman	X		Jim Dotzenrod	X	
Joe Miller - Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue		X			
Dave Oehlke	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

SB 2368: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2368 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "refundable"

Renumber accordingly

2011 TESTIMONY

SB 2368

January, 2011

ANALYSIS OF THE LANDS AND MINERALS TRUST FUND

This memorandum provides information on the lands and minerals trust fund and information on leased land of the lands and minerals trust fund. The following table shows the balance history of the lands and minerals trust fund for the 2005-07 and 2007-09 bienniums and projections for the remainder of the 2009-11 biennium, the 2011-13 biennium, and the 2013-15 biennium based on information provided by the Land Department:

	2005-07 Biennium		2007-09 Biennium		2009-11 Biennium		2011-13 Biennium		2013-15 Biennium	
Beginning balance		\$6,820,579		\$14,056,683		\$32,586,643		\$213,931,550		\$79,205,750
Add estimated revenues										
Production royalties	\$8,093,726		\$23,017,314		\$41,802,122		\$71,832,000		\$76,212,000	
Mineral leases	430,036		382,874		704,742		694,412		500,000	
Oil and gas bonuses	5,415,344		10,915,471		173,852,266		40,000,000 ¹		40,000,000 ¹	
Investment earnings	1,219,422		1,416,649		1,863,500		2,650,126		2,648,900	
Loan repayments from facilities providing services to the developmentally disabled (1983 SB 2020; 1985 SB 2249)	974,439		953,784		464,174		203,727		100,000	
Total estimated revenues		16,132,967		36,686,092		218,686,804		115,380,265		119,460,900
Total available		\$22,953,546		\$50,742,775		\$251,273,447		\$329,311,815		\$198,666,650
Less estimated expenditures and transfers										
Payments to common schools trust fund - Developmentally disabled loan fund Nos. 2 and 3 (2005 SB 2013 - Continuing appropriation)	\$1,652,538 ²		\$1,417,504 ²		\$697,344 ²		\$306,065 ²		\$150,000 ²	
Industrial Commission - Oil and Gas Division contingency (2005 SB 2014; 2007 HB 1014; 2009 SB 2014)	142,000 ³		248,186 ³		314,242 ³					
Transfer to the general fund	6,883,000		15,000,000		35,000,000		239,000,000 ¹		10,000,000 ²	
Career and technical education and academic scholarship program										
Office of Management and Budget - Heritage Center expansion (2007 SB 2341)			1,000,164 ⁶		499,835 ⁶					
State Historical Society - Cold War missile sites (2007 SB 2018)			250,000							
Administrative costs/other fees	219,325		240,278		830,476		800,000		800,000	
Total estimated expenditures and transfers		8,896,863		18,156,132		37,341,897		250,106,065		950,000
Estimated ending balance		\$14,056,683		\$32,586,643		\$213,931,550		\$79,205,750		\$197,716,650
Restricted fund income					\$53,049,169 ⁷		\$57,049,169 ⁷		\$61,049,169 ⁷	
Ending balance - Undesignated		\$14,056,683		\$32,586,643		\$160,882,381		\$22,156,581		\$136,667,481

¹The Land Department estimates \$5 million will be collected in oil and gas bonuses per lease sale, with eight lease sales per biennium. This estimate assumes some land currently leased will become available for lease sales as lease contracts expire during the 2011-13 and 2013-15 bienniums.

²Payments to common schools trust fund - North Dakota Century Code Section 15-08.1-09 provides an annual continuing appropriation from the lands and minerals trust fund of the amount necessary to make payments of principal and interest to the common schools trust fund for loans made to developmentally disabled loan fund Nos. 2 and 3.

	Lands and Minerals Trust Fund Acres	Acres Currently Leased	Unleased Acres	2009-11 Biennium Lease Sales August 2009 Through November 2010		
				Acres Leased	Oil and Gas Bonus	Average Oil and Gas Bonus Per Acre
Stark	13,032	7,997	5,034	825	69,353	84
Ward	29,689	13,246	16,443	348	63,120	181
Subtotal	73,199	43,425	29,772	9,338	\$4,256,701	\$456
Other oil-producing counties						
Bowman	18,517	5,873	12,644	640	\$62,412	\$97
McHenry	21,273	1,132	20,141	919	19,593	21
McLean	35,707	11,052	24,654	240	45,600	190
Mercer	17,725	10,215	7,510	20	100	5
Slope	11,955	2,730	9,224	750	37,861	50
Subtotal	105,177	31,002	74,173	2,569	\$165,566	\$64
Total oil-producing counties	370,418	256,716	113,701	96,045	\$163,772,802	\$1,705

Testimony on SB2368

Mr. Chairman and members of the committee

My name is Galen Peterson from Maxbass, and I farm in western Bottineau County.

I support this bill because of its concept and intent. It is not only the well sites that cause property value loss, it is the access roads, and it is also the runoff from the sites that cause additional lost acreage and production. Therefore, the credit is justified.

The attached aerial photo is of my sister's quarter of land. It has 4 oil wells, a tank battery, access roads, and a salt water disposal on it. Notice the dark areas next to the roads and well sites. That is standing water that would not be there without the oil development.

However, I have several concerns with this bill. I am wondering if the term 'wellheads' includes temporary abandoned wells, salt water injection wells, and injection wells that are used in water flooding a unitized field. If not, I believe these type of wells should be considered since they have a similar footprint on the property. Also, tank batteries should be considered, because they can, in some instances, be located on a different property than the production wells.



Farm 6285

35-162-82

USDA Farm Service Agency
Bottineau County, North Dakota



Field Boundaries

Wetland Points

Section Lines

