

2013 HOUSE FINANCE AND TAXATION

HB 1410

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee

Fort Totten Room, State Capitol

HB 1410
February 5, 2013
Job #18295

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill relating to sales tax exemption for liquefied natural gas used for railroad purpose; exemption from sales and use and special fuels tax for liquefied natural gas used for railroad purposes and materials used to liquefy natural gas.

Minutes:

Attached testimony #1 and amendment #2

Chairman Belter: Opened hearing on HB 1410.

Representative Thoreson: Introduced bill. This bill will be a significant step in allowing Burlington Northern Santa Fe to construct a plant here in North Dakota and if built this facility would produce liquefied natural gas which would be used for fuel on their railroad equipment. By doing so I think we would have two significant things gained; by capturing and processing flare gas from the state we would turn it into something useful and productive and cut down on the amount of flaring which is a consideration in our state. They will use this on their equipment and find ways to use it along with traditional fuel sources and by doing so we could create more job opportunities in our state which would help our economy.

Representative Drovda: Are we giving whoever is building this plant a tax break as we did for the refinery in Mandan and is the local area giving them a property tax exemption for building this plant.

Representative Thoreson: I do not have that information at this time but I could certainly get this for you.

Representative Zaiser: Do you know of any potential users of liquefied natural gas that this would apply too?

Representative Thoreson: It's my understanding that this would be used specifically for this area.

Representative Kelsh: Is there a section in this bill that specifically limits this exemption to a facility that is built within the borders of North Dakota?

Representative Thoreson: I don't know that there is language in the bill that specifies that and that is the intention. There is a section in the bill that has the boundaries of North Dakota listed.

Chairman Belter: Further support of 1410?

John Olson, representative for BNSF Railway: See attached testimony #1 and amendment #2. I would also like to say that BNSF is a major player in the Bakken. There are six facilities that handle unit trains now. There's 100 million gallons of oil that were transferred out of the state in 2012 and I think they are running about seven trains a day at the current time so they have a huge presence in North Dakota. I think it is an exciting prospect that they would consider building such a plant here in North Dakota. I've been told the cost of that facility would probably be around \$300-400 million which adds another substantial investment to the state. Right now for keeping up with the enhanced oil productivity in western North Dakota they are talking about another \$200 million of infrastructure investments to keep this play going.

Representative Klein: Did you say BNSF runs seven oil trains a day or a week?

John Olson: I think a day. The average size of the train is about 100 or 101 cars. The unit train itself can run up to 120 cars.

Representative Froseth: Would this have to be processed to a different standard or quality than any other engine could use?

John Olson: I know right now BNSF is working with Caterpillar and GE in trying to retrofit these engines. This is kind of in the incubator stage at this point and we're here early to make sure North Dakota gets really a serious look in turning this natural gas into liquefied natural gas if they move ahead with this project.

Representative Froseth: This wouldn't be specific to BNSF? Canadian Pacific is picking up oil in the northwest through my home town so any railroad that travels through North Dakota could take advantage of this?

John Olson: That may be true. I can't really address that. We are trying to build a facility here and make sure this fuel is used for our own purpose and that is where the exemption would apply. I don't know if there's any other interest by any other company to do that. I think the incentive is necessary to our company to move ahead.

Representative Zaiser: Are there any questions about whether there is an appropriate market or need to make a plant feasible on a long term basis?

John Olson: I assume they are exploring that right now in Fort Worth. Biodiesel is a much more expensive process than the liquefaction to natural gas which is why they are looking at this process.

Representative Drovdal: Is liquefied natural gas the same as petroleum?

John Olson: You're asking the wrong guy.

Representative Drovdal: We gave a sales tax exemption to Mandan Refinery a number of years ago. Is that definition not usable for this type of refinery?

John Olson: It may or may not be, we just want clarification. An answer to your last question, I think there's research being done on blending liquid natural gas with diesel fuel. I think that could be a possibility.

Representative Drovdal: Do you know what the special tax is on this gas currently?

John Olson: I don't know.

Representative Drovdal: There is no sales tax on it if it's built outside of North Dakota and the gas is sold outside of North Dakota. So really they don't need one if it's built out of state.

Representative Trottier: You mentioned seven trains a day; do you know how that compares to grain?

John Olson: I would say that it is probably seasonal and it is probably less. Half the oil that is being transported is by rail.

Chairman Belter: Further testimony in support to 1410? Any opposition to 1410? Any neutral testimony to 1410?

Dave Leftwich, Deputy Director for Business Sport for North Dakota Department of Transportation: The current fiscal note is correct; there's no economic impact currently because they won't start using it this next biennium. This current biennium the di-diesel that is used in a locomotive for all railroads amount to \$6.8 million that go into the highway tax distribution fund for the cities, counties, and rest of the folks. With this bill that tax would go away.

Representative Klein: You mentioned the \$6.8 million this is the special fuels tax that you charge the railroad now?

Dave Leftwich: That is basically the \$.04 on the di-diesel that they are using now.

Representative Drovdal: That \$6.6 would go away only if they replace all the diesel with the liquefied gas and that would not happen in two years I wouldn't think.

Dave Leftwich: That is correct. The fiscal note that is currently out from the tax department says there's no fiscal affect this next biennium and that is true.

Chairman Belter: Any other neutral testimony?

Myles Vosberg, Tax Commissioner's Office: We are neither opposed nor supportive of this bill. In section 2 of the bill which adds the liquefy language on line 17 "or sourced" that

section of the law is the current sales tax exemption that applies to gas gathering, compressing, and processing so it covers all the way up to a processing plant for processing gas that is gathered from the oil and gas wells in North Dakota. I'm a little unclear on what the "or sourced" language means at the end of line 17 and I'm not sure what the intent is there. I think if the intent of this bill is to exempt from sales tax or that section 2 a new liquefaction facility perhaps it would be better to create a new section for that type of a facility rather than to add it in here because I'm not sure what would all be covered under the sales tax exemption if you just add liquefy in there. I don't know what other processes are out there that liquefy gas or exactly what liquefy gas means. The gas that is proposed to being used for the locomotives I'm not sure if that's gas that's already processed or if it's pipeline quality gas used somewhere. I'm not opposing this but if you want to go forward with this proposal maybe some more clear language or even a different section might make it clearer.

Representative Drovdal: It was pointed out earlier that the special tax is \$.04 a gallon. Is there sales tax on there and is that the amount?

Myles Vosberg: That is the special fuels tax; there is no sales tax on fuel because it's subject to another special fuel.

Chairman Belter: Any other neutral testimony? If not, we will close the hearing on HB 1410.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1410
February 11, 2013
Job #18708

☐ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A Bill relating to sales tax exemption for liquefied natural gas used for railroad purpose; exemption from sales and use and special fuels tax for liquefied natural gas used for railroad purposes and materials used to liquefy natural gas.

Minutes:

Amendments #1

Vice Chairman Headland: Distributed amendments #1.

Myles Vosberg, Tax Commissioner's Office: HB 1410 does two things: it creates an exemption on special fuels used for railroad purposes and that would be sales, use, and special fuels taxes. It also creates an exemption for all tangible personal property used to construct a processing facility that produces the liquefied natural gas. The administrative concerns the tax department had on this bill was relating to the sales tax exemption for the plant. In section 2 of the bill its comingled with the existing exemption that is used for compressing, processing, gathering, or refining gas which deals with gas gathered at the well and then taken to a processing plant. We were a little uncomfortable with the language and not quite sure that there may be some unintended consequences there so we drafted in the amendment that section 2 of the bill is replaced in this amendment with a new section 2 and 3 which just creates a separate exemption for the tangible personal property that goes into the plant. The language is very similar to other exemption language we have for other plants like the manufacturers and wind generation and so on. It doesn't change the intent of the bill it just pulls that out of one section and creates a new and separate exemption for the materials and equipment that go into the plant. There was another proposed amendment during the hearing that would impact the effective date of the bill and our understanding was that the intent was on the fuel itself not go into place until the plant is constructed so the amendment reflects that. The exemption for the materials that go into the plant would become effective July 1 but the exemption for the fuel that is used for railroad purposes would not go into effect until the plant contacts the tax commissioner's office and says it's up and ready to go. That's what the amendments do.

Chairman Belter: Any questions on the amendments?

Vice Chairman Headland: The point you made on exempting the fuel after the plant was built, was that the Carlson amendment?

Myles Vosberg: It probably is, I think there was only one amendment that was provided for the hearing. If there were two then I'm not familiar with the other amendment.

Vice Chairman Headland: I was just looking through the amendment Myles gave us so I think this is an addition.

Chairman Belter: Have you seen the Carlson amendment?

Myles Vosberg: It appears it's the same topic but I believe this is another amendment just worded a little differently.

Chairman Belter: If you want some time to go over that go ahead.

Myles Vosberg: It appears this would make the entire effective date for the bill the date the plant was constructed. It creates a little bit of a conflict because we'd like to see the exemption for the materials that go into the plant effective sooner so they can request that exemption and they don't have to pay the tax on it and go through a refund process but still maintain the exemption for the fuel after the plant is up and running and that is what the amendment does that we proposed.

Chairman Belter: Are you saying that we probably don't need these other set of amendments?

Myles Vosberg: Yes, that would be my opinion. They are both trying to change the effective date of the bill but we do it in two time frames; the plant exemption right away so they can get that before they build and the fuel after the plant is ready.

Chairman Belter: This small amendment is probably a duplicate?

Myles Vosberg: It's probably a duplicate, just slightly different.

Chairman Belter: Your amendment accomplishes what this is trying to do here?

Myles Vosberg: It does and it makes it clear that the exemption for the materials that go into the plant would be effective right away so they could request that exemption and we could approve it before the construction starts.

Vice Chairman Headland: It would also assure in order to get a tax credit on the fuels tax the plant would need to be constructed, correct?

Myles Vosberg: Correct. On page 1 subsection 1 it talks about a processing facility in this state so the exemption applies to a facility that would be constructed in North Dakota.

Representative Hatlestad: Where does it say that the fuel tax exemption will not go into effect until after the plant has been completed?

Myles Vosberg: If you look at page 2 the last item, page 3 line 19 where it talks about sections 1, 4, and 5 of this act are effective upon receipt by the tax commissioner from the plant owner that construction of the gas liquefaction plant is complete.

Chairman Belter: Any other questions on 1410? No further questions.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1410
February 11, 2013
Job #18757

☐ Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to sales tax exemption for liquefied natural gas used for railroad purpose; exemption from sales and use and special fuels tax for liquefied natural gas used for railroad purposes and materials used to liquefy natural gas.

Minutes:

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Chairman Belter: Is there agreement on this; we don't use the Carlson amendment we just adopt the tax commissioner amendment?

Vice Chairman Headland: I would so move to adopt the tax commissioner's amendments.

Representative Klein: Seconded.

Chairman Belter: Any discussion?

Representative Froseth: Does this take off the exemption for the fuels tax?

Representative Klein: On line 17 I circled "or sourced" because there was a question on what that meant. Did we ever get that answered?

Chairman Belter: That replaced lines 12-24.

Representative Klein: Ok.

Representative Hatlestad: You don't think it's necessary to put a sunset on this?

Chairman Belter: Every session can be a sunset. This is a pretty big deal and I would be inclined not to sunset this.

VOICE VOTE: MOTION CARRIED TO ADOPT AMENDMENTS.

Representative Klein: Motion made for a DO PASS AS AMENDED.

Representative Owens: SECONDED.

House Finance and Taxation Committee

HB 1410

February 11, 2013

Page 2

**ROLL CALL VOTE: 13 YES 0 NO 1 ABSENT
DO PASS AS AMENDED**

Representative Klein will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1410

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1410 provides sales & use, and special fuels tax exemptions for liquified natural gas used for railroad purposes.

- 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.*

Sections 1 and 2 of HB 1410 create sales and use tax exemptions for the sale of liquified natural gas and the materials used to liquify the gas. Sections 3 and 4 create special fuels tax exemptions for liquified natural gas used for railroad purposes.

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.*

This is emerging technology and not likely to result in revenue decreases in the 2013-15 biennium.

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

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, 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

Telephone: 328-3402

Date Prepared: 02/03/2013

February 12, 2013

✓
2/12/13
1702

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1410

Page 1, line 1, after "enact" insert "a new section to chapter 57-39.2 and"

Page 1, line 2, remove "a"

Page 1, line 2, replace "exemption" with "exemptions for materials used to construct a processing facility to produce liquefied natural gas and"

Page 1, line 3, replace "section 57-39.2-04.5" with "subsection 4 of section 57-40.2-03.3"

Page 1, remove lines 12 through 24

Page 2, replace lines 1 through 16 with:

"SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for materials used to construct a processing facility to produce liquefied natural gas.

1. Gross receipts from sales of tangible personal property used to construct or expand a processing facility in this state to produce liquefied natural gas are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. To receive the exemption at the time of purchase, the owner of the processing facility must receive from the commissioner a certificate that the tangible personal property used to construct the processing facility which the owner intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.

SECTION 3. AMENDMENT. Subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

4. The tax imposed by this section does not apply to:
 - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized

or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;

- c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;~~or~~
- d. Tangible personal property used to construct to expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;or
- e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 2 of this Act."

Page 3, line 18, replace "This Act is" with "Sections 2 and 3 of this Act are "

Page 3, line 19, after the period insert "Sections 1, 4, and 5 of this Act are effective upon receipt of certification by the tax commissioner from the plant owner that construction of the gas liquefaction plant is complete."

Renumber accordingly

Date: 2-11-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1410

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
Tax Commissioner's 2-7-13
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Headland Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote
Motion Carried

Date: 2-11-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1410

House 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 Rep. Klein Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser	AB	
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovda	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Klein

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

REPORT OF STANDING COMMITTEE

HB 1410: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1410 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new section to chapter 57-39.2 and"

Page 1, line 2, remove "a"

Page 1, line 2, replace "exemption" with "exemptions for materials used to construct a processing facility to produce liquefied natural gas and"

Page 1, line 3, replace "section 57-39.2-04.5" with "subsection 4 of section 57-40.2-03.3"

Page 1, remove lines 12 through 24

Page 2, replace lines 1 through 16 with:

"SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for materials used to construct a processing facility to produce liquefied natural gas.

1. Gross receipts from sales of tangible personal property used to construct or expand a processing facility in this state to produce liquefied natural gas are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. To receive the exemption at the time of purchase, the owner of the processing facility must receive from the commissioner a certificate that the tangible personal property used to construct the processing facility which the owner intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.

SECTION 3. AMENDMENT. Subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

4. The tax imposed by this section does not apply to:
 - a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an

oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5; ~~or~~

- d. Tangible personal property used to construct to expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6; or
- e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 2 of this Act."

Page 3, line 18, replace "This Act is" with "Sections 2 and 3 of this Act are "

Page 3, line 19, after the period insert "Sections 1, 4, and 5 of this Act are effective upon receipt of certification by the tax commissioner from the plant owner that construction of the gas liquefaction plant is complete."

Renumber accordingly

2013 SENATE FINANCE AND TAXATION

HB 1410

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee

Lewis and Clark Room, State Capitol

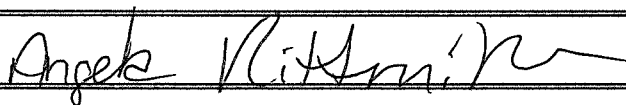
HB 1410

3/18/2013

Job Number 20029

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 57-39.2 and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to sales tax exemptions for materials used to construct a processing facility to produce liquefied natural gas and for liquefied natural gas used for railroad purposes; to amend and reenact subsection 4 of section 57-40.2-03.3, subsection 5 of section 57-40.2-04, and section 57-43.2-02.3 of the North Dakota Century Code, relating to exemption from sales and use and special fuels taxes for liquefied natural gas used for railroad purposes and materials used to liquefy natural gas; and to provide an effective date.

Minutes:

Testimony Attached

Chairman Cook opened the hearing on HB 1410.

Representative Thoreson introduced HB 1410.

John Olson, BNSF Railway - See attached testimony 1 in favor of HB 1410.

Senator Oehlke - At \$1.5 billion gallons let's say that, obviously everything wouldn't be converted over and it wouldn't totally be running on natural gas, but let's say it affected 20% of that, what do you calculate that would be in excise tax lost to the state of North Dakota?

John Olson - I know that the special fuels tax for BNSF is over a million a year, something to that effect.

Senator Triplett - Is there someone here today or can you describe for us at least in some simplified way what the technology is that you are talking about?

John Olson - I'm not sure I can. The technology is retrofitting those locomotive engines to burn liquefied natural gas so it's going to be in liquid form. They will burn both fuels for at while at least on the current technology, apparently the diesel fuel is still needed for ignition, for combustion and then the liquid natural gas could be used to power the locomotives.

Senator Triplett - Is that more efficient that using, say, the dry gas after the liquids have been stripped as a replacement for part of a diesel?

John Olson - I'm not sure I can answer that.

Senator Burckhard - If the railroad is hauling let's say 51% of the oil produced right now, would this change a lot if the pipeline companies build more capacity in you were only hauling 40% of the oil? Does that come in to play at all?

John Olson - I'm not sure it would. We've got 2 separate operations here and I think what they are looking at is to power their own locomotives.

Senator Dotzenrod - The bill has 6 sections to it, the effective date is the last one, and if you look through these sections the first one is very short, section 2 is the exemption for the materials to construct a facility to make the LNG. There is no reference in there to railroad. I think the same is true in section 3. There is no reference to railroad. It looks like there's really 2 parts to this bill. One is to have a sales tax exemption on any material used to build a plant, and that plant doesn't have to be a plant that is designed for the railroad, it's any plant built in the state for any purpose that is going to process and produce LNG. Then the other sections look like they just apply to the fuel itself and there it is restricted to only railroad use. I'm wondering is there any reason to restrict that tax exemption just to railroad purposes? If the argument is that we are flaring it off and wasting it and we need to find other places so we can use this up, why would we just restrict it to railroads?

John Olson - That's a good question. We came in here with a limited bill to make sure we had the tax environment here in North Dakota to incentivize BNSF to build a facility here. I can only tell you that our tax department worked closely with the state tax department in the language in this bill. I think it accomplished what we intended and that is that the facility would be built for railroad purposes and the exemptions would only apply if it was for railroad use. Although that was our intention when we brought in the bill in the House it didn't have that statement in there that the facility had to be built in North Dakota which is what we intended and that statement was clearly set forth in the bill. I certainly have no objection or problem with extending the use of flared gas for any such purpose if that's the direction this legislature wants to go.

Senator Dotzenrod - I could understand the logic and the following, but if we exempted the LNG for railroad purposes it would seem logical to assume that any other user of that fuel would come into the legislature in some future date and say we use quite a bit of this stuff for in our industry since the railroads don't have to pay taxes on it we'd like to be in that group too. Wouldn't that make sense?

John Olson - That may make sense. From our standpoint we are only asking for the exemption because we are using it ourselves. I think you are making a policy jump to open up the exemption for everybody.

Senator Dotzenrod - What I'm thinking of is industry specific. There might be another industry specific user. I don't know off the top of my head if there are other industries, it may be that these will reach a point in the future where commercial trucks can take their diesels and augment that fuel with LNG. Wouldn't it be logical for them to say we would like to have this exempted? I can understand the railroads point of view asking for the

exemption but it does seem like we are looking at that industry and providing an exemption and sort of ignoring the other users.

John Olson - That is a good policy discussion to have, but we are not going to be in the business of selling liquefied natural gas at retail. We are not interested in doing that. We are in the railroad business.

Senator Dotzenrod - Can we assume that if this section 2 was used, that the people that would be building the plant would be the railroad company. It wouldn't be a big independent energy company, we are talking about an exemption for a facility that is essentially from what you are telling me, we should anticipate that the people who are going to build this is the railroad company.

John Olson - That may or may not be the case. (20:28)

Senator Miller - This bill only addresses flaring in the fact that it creates a bigger market for natural gas and hopefully that will in turn reduce flaring, right?

John Olson - Correct.

Senator Triplett - Can you tell us what if any other states are competing for this potential project?

John Olson - I can't. I think that's going to be an executive decision at BNSF and they will indeed look at other states and the environment there and the tax climate and so forth.

Shane Goettle, MDU Resources - MDU asked me to appear here in support of this bill this morning. It's looking at the prospects of using LNG's as a transportation fuel and cease this initiative by BNSF as a very positive development potentially for that conversion. (22:40)

Ron Huff, Brotherhood of Locomotive Engineers - We are here in support of HB 1410. I had a real elaborate testimony prepared but Mr. Olson covered most of it already. But, we do think it's a good deal because we see it from the labor standpoint of increasing jobs. (24:20)

Senator Oehlke - I had asked Representative Thoreson about what a railroad purpose is. Can you share that with me?

Ron Huff - The railroads main use for liquefied natural gas will be the locomotives. They may have some other things that, they have what is called switch heaters they may or may not use that particular product for that operation but it's a possibility. The main thing that we see right now is for the locomotives.

Senator Oehlke - I know the railroad pays an awful lot of money in excise tax and fuels tax and somewhere between \$4.5 - 7 million depending on who is cranking the numbers. A significant amount goes to help support safe crossings and quiet rail and that type of thing, so when that gets reduced, where do we get the money for those kinds of things?

Ron Huff - At the present time that bill for safe crossings, that died. I don't know if that will be a moot point or not. The thing with the fuel excise that the railroads are paying now, they go into the D.O.T's highway distribution fund. Those funds may or may not be used for rail projects anyway. (26:46)

Myles Vosberg, Tax Department gave an overview of each section.

Chairman Cook - Senator Oehlke asked the question about the language for a railroad purpose.

Myles Vosberg - The way I read that, I don't know, it would be limited to just the locomotives.

Senator Miller - If we were to say in like section 4, we were to add that exemption per say in limiting it for like a year or 2 or 5 or whatever, that could be done right?

Myles Vosberg - Certainly that could be done.

Senator Dotzenrod - On special fuels tax, is that \$.04 a gallon?

Myles Vosberg - For road purposes its \$.23 per gallon, but for the industrial and off-road uses its \$.04.

Senator Dotzenrod - Have we exempted some uses from special fuels tax like home heating fuel?

Myles Vosberg - Yes, all heating fuel.

Senator Dotzenrod - Is that only for residential or business as well?

Myles Vosberg - It's all exempt.

Senator Dotzenrod - Do we have a sales tax exemption in law for the materials that are used to convert a vehicle from gasoline over to either LNG or CNG?

Myles Vosberg - We do not.

Vice Chairman Campbell - Line 23 where it doesn't exempt out current vehicles that are using propane or gas, what happened, it was a big thing back a few years ago a lot of vehicles were converting over and then it kind of died. Is it because of the cost? Do you know anything about that?

Kevin Schatz, Tax Department - There is a couple issues with that. A lot of it had to do with the price fluctuation between the price of gasoline and the price of propane. We still do see some propane used in motor vehicles which is taxed at \$.23 a gallon. (34:56)

Chairman Cook closed the hearing on HB 1410.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee

Lewis and Clark Room, State Capitol

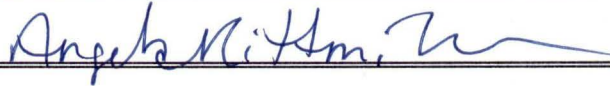
HB 1410

4/8/2013

Job Number 20993

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 57-39.2 and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to sales tax exemptions for materials used to construct a processing facility to produce liquefied natural gas and for liquefied natural gas used for railroad purposes; to amend and reenact subsection 4 of section 57-40.2-03.3, subsection 5 of section 57-40.2-04, and section 57-43.2-02.3 of the North Dakota Century Code, relating to exemption from sales and use and special fuels taxes for liquefied natural gas used for railroad purposes and materials used to liquefy natural gas; and to provide an effective date.

Minutes:

Chairman Cook opened discussion on HB 1410.

Shane Goettle proposed amendments numbered 13.0690.04002.

Chairman Cook - Why are we removing the current section 4?

Shane Goettle - We went through this with the Tax Department and someone from there might be in the best position to explain those changes.

Bill Schneider spoke about diesel consumption and LNG engineering.

Senator Dotzenrod - Would this fuel be a fuel free of taxes that would be in competition with fuel that is taxed? I'm assuming that diesel that is used for a railroad purpose is not subject to the find of taxes that are on diesel when it's used on a highway use but I think there probably still is some tax on diesel.

Bill Schneider - There is a separation between off road and on road taxes. On road you are looking at \$.23 per gallon and off road is \$.04. This amendment would just be asking for the off road.

Senator Dotzenrod - If this were somehow to be used as a fuel in an on road application the provisions of this bill would not allow for that to be tax free.

Bill Schneider - That is correct.

Chairman Cook - So the tax exemption that you are getting in section 5 is the \$.04 exemption.

Bill Schneider - Yes

Vice Chairman Campbell - If this ever happens you would be looking at some massive storage tanks wouldn't you?

Bill Schneider - When you make an LNG manufacturing facility the most expensive part of that project is the storage tanks. What you really find from financial feasibility is you really try to do it the best you can to minimize the storage tanks. (7:28)

Chairman Cook - Are you looking at a joint venture with Burlington or are you not privileged to answer that?

Bill Schneider - We are not at liberty to discuss our conversations.

Senator Triplett - Can you tell us what this tax exemption might be worth to MDU?

Bill Schneider - I can't answer that.

Senator Triplett - You just said upwards of 60% of the diesel in a diesel engine could be replaced by the LNG. Am I correct in believing that the price of liquefied natural gas is quite a bit less than the price of diesel?

Bill Schneider - You could safely say today it would be over \$1 gallon savings.

Senator Triplett - Why would not every oil company that powers their drilling rigs with diesel engines not want to use this just as a matter of obvious savings for themselves?

Bill Schneider - I think it's who is going to be first. I think what a lot of people want to do is be in the lower risk range. They want to see others step up and make that decision and the conversion. I would suggest that maybe some of the larger drilling companies will be more financially incentivized to do this.

Senator Triplett - It seems to me that this is one of these things that the market should be driving and that it is driving it already. There are companies already producing by-fuel engines for sale. This is not an after-market thing, there are corporations producing these engines that will run on a mix of diesel and LNG.

Bill Schneider - That is right but the thing I would add, I think the incentive though from the states perspective is with our issue with flare gas and our issue where we are not doing a gathering. (11:34)

Senator Triplett - Are you aware that on the Senate floor today that we passed a flaring bill that moves the decision date in terms of the economic analysis for whether an oil company

should be granted an exemption from a full one year down to 90 days and then they have to do their economic analysis at the 90 day point and then the Industrial Commission makes a decision about whether they can continue flaring or should be gathering. There are other things going on that are also encouraging by regulation the decision to be made earlier and other incentives that have been put out there.

Bill Schneider - We certainly can do that when we have all the information available.

Senator Dotzenrod - This industry, LNG, is this a developed industry in any part of the United States?

Bill Schneider - There is information out on the web that shows you where the LNG plants are built around the country. One of the more common uses is called a peaking plant, and for example we own through MDU a subsidiary out in Idaho. (15:22)

John Olson, BNSF - We are trying to make the economics work for this and that all relates to the technology that we should probably have some conclusions in a year or so. We don't have any objection to broadening the bill to incentivize other uses in other industries.

Chairman Cook - I think maybe it's important that we know what tax policy is in another state, preferably Texas. Could you have somebody from your department let us know how Texas would deal with this? If I was looking at spending \$300 million why would I want to spend it here in North Dakota if Texas had a more favorable climate?

Ryan Raushenberger, Tax Department - We can do that.

Senator Triplett - I would like it if you could give us the 2 minute broad overview of your perception of the current situation and the future situation in the next 4-5 years assuming drilling continues in terms in the amount of natural gas that we are looking at and what you perceive as potential ability to get it out of here by pipeline to get it to market versus how much we might be looking at needing to deal with it in state.

Justin Kringstad, North Dakota Pipeline Authority - We expect that obviously that the natural gas is produced along with the crude oil and so as we continue to increase oil production for the next 5-10 years, natural gas will rise along with it and actually likely at a little bit quicker pace than the crude oil because of some reservoir characteristics that go on. The question then becomes, do we have adequate means of moving that natural gas to market. (21:54)

Senator Triplett - Can you define the problem if the decision is made that we are not going to drop our prices to try to get the gas onto the system and move it out then can you define the size of the problem that we have with natural gas that will be available for use and how much we have to find markets for within the state?

Justin Kringstad - My expectations are that we will be producing 2 to 2.5 billion cubic feet of natural gas in the early 2020's. We are a large net exporter, we can't consume that locally so a majority of it is still going to get put on those pipeline systems but the additional markets that we can develop here is going to help take up as much of that gas as possible.

Senator Burckhard - With natural gas you either have to put it in a pipeline or use it here right, you can't transport it by rail?

Justin Kringstad - No, it's pipeline, consumed locally or flared.

Senator Triplett - You said theoretically the existing pipelines could carry what we have currently if we were to displace the Canadian Wyoming gas, and you also said we are working at getting more pipelines, then you said 2.5 billion cubic feet by the early 2020's and the majority will still move on pipelines, so is that to say that you are anticipating pipeline capacity to increase to a certain extent but no more by the early 2020's? Do you have a handle on how much pipeline capacity we are in the process of developing over the next 5-7 years?

Justin Kringstad - Publically I know that it's very quiet but internally there are a lot of companies looking at additional export options. (25:58)

Chairman Cook - Where is there a shortage of natural gas? Where is it that this is going to be piped to and why there?

Justin Kringstad - Our pipeline systems lead down to the Iowa, Minnesota and Illinois markets and that is just because that's where the pipelines go. I wouldn't say that any place is short on natural gas.

Senator Triplett - The expectation clearly is that within the very near future the US will be a net exporter of natural gas so ultimately it's going to the coasts for export.

Justin Kringstad - Correct there are several export facilities in the works.

Myles Vosberg, Tax Department - You had asked regarding section 4 why that language has been struck from the bill and the answer is really, it's been replaced with other language that does the same thing but is a little cleaner. (27:53)

Chairman Cook closed discussion on HB 1410.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee

Lewis and Clark Room, State Capitol

HB 1410

4/9/2013

Job Number 21012

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 57-39.2 and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to sales tax exemptions for materials used to construct a processing facility to produce liquefied natural gas and for liquefied natural gas used for railroad purposes; to amend and reenact subsection 4 of section 57-40.2-03.3, subsection 5 of section 57-40.2-04, and section 57-43.2-02.3 of the North Dakota Century Code, relating to exemption from sales and use and special fuels taxes for liquefied natural gas used for railroad purposes and materials used to liquefy natural gas; and to provide an effective date.

Minutes:

Chairman Cook opened up discussion on HB 1410.

Grant Levi, Department of Transportation has no concerns with the proposed amendments for the next biennium but it should be looked at next session.

Senator Triplett - The bill as it's currently proposed doesn't have a sunset clause on it so if we give an exemption in sales tax and then 2 years later we come back and take it off then we get criticized for raising taxes. If you are saying you don't have concerns for it now but you might in the future then that would say to me that if we pass this we should put a sunset clause on it or we should just kill it and ask them to come back next time around but we should pass the bill that has no sunset giving away a tax and then thinking we might have to come back and put it on later.

Grant Levi - What I'm here to offer to the committee to consider is that as technology changes and as things change you are going to have to have a conversation. We are going to have a conversation about how to fund transportation in general. (4:37)

Senator Dotzenrod - One thing this bill has in it is an addition to our exemptions. Currently we do provide some exemptions for special fuel. I was surprised to see in here that special fuel; even diesel fuel can be a special fuel. Are you aware for the revenues that come in to the D.O.T to fund highways, it's mostly the tax on gasoline and diesel fuel but is there some part of that revenue that comes from special fuel, is there any kinds of special fuel that currently are taxed and the money ends up in D.O.T.?

Grant Levi - Yes, there is funding from the special fuels fund that does come in to the highway tax distribution fund. This is part of the overall funding package that funds transportation.

Senator Dotzenrod - So when we exempt special fuels and create another exemption are we taking revenue out of that D.O.T. and other road funds?

Grant Levi - Any time that an exemption is created on a tax that presently goes in to the highway tax distribution fund, yes, you are reducing the highway tax distribution fund collections. (8:36)

Senator Dotzenrod - It appears that the terms we are using in this bill are agricultural, industrial or railroad and if there was a standard per gallon tax of \$.23 per gallon that under those uses they would be exempted.

Grant Levi - There is what I will call for the sake of discussion an off road tax. If it's off road there's \$.04 and that also goes into the highway tax distribution fund.

Vice Chairman Campbell - Are taxes going up because there is more driving going on that offsets that and if so that means roads are being driven on more? I'm surprised you're not more concerned, aggressive ahead of this, increasing the taxes because of those situations with the increased mileage of cars.

Grant Levi - North Dakota is in a unique position in a sense. The revenues coming in because of the strong economic growth the revenues coming in to our highway tax distribution fund are growing. We are anticipating collecting more revenue next biennium than we are collecting presently. (11:19)

Senator Burckhard - Is it still true today that for every dollar of highway fuel tax that we send to the federal government we get \$2 back?

Grant Levi - It's somewhere in that neighborhood. Presently right now given the fact that the federal highway tax distribution fund is in it is, that is true for pretty much all states. They are getting more back than what they are putting in. (12:42)

Myles Vosberg, Tax Department - Regarding the sales tax exemption for the plant, I talked some folks in Texas. They have a general manufacturing exemption similar to what we do which would cover some parts of this type of a facility so it's the equipment that makes a direct change on the product that is being manufactured that qualified for the exemption. Otherwise they don't have anything specific to the LNG plants.

Senator Triplett - Do you know if Texas offers anything similar in terms of the exempting the sales of natural gas from any tax that they may have otherwise on it?

Myles Vosberg - Regarding the fuel itself generally speaking they tax on road diesel fuel at \$.20 on road LNG at \$.15 and all of their off road uses for diesel and LNG are essentially exempt from tax under their current law.

Senator Burckhard - I'd like to move 13.0690.04002.

Seconded by **Senator Miller**.

Senator Triplett - I'm okay with the amendments but I think I will probably vote for a do not pass on the bill unless other people were willing to get rid of section 1. I guess I'm okay with the sales tax exemption for constructing processing facilities but just to give an open ended sales tax exemption on the liquids when we already have such a very low tax. The testimony did not convince me that it was a necessary incentive. It just feels like a hand out with no particular business plan that says we need this extra to make something cash flow.

Chairman Cook - We have a motion to amend .04002.

Roll Call on Amendment 13.0690.04002 - 6-1-0

Senator Triplett - I would move to further amend by deleting sections 1 & 4 of the bill.

Seconded by **Senator Dotzenrod**.

Senator Triplett - I've heard a lot of things (also serving on the Natural Resources Committee) about natural gas and its potential uses upcoming in the next couple of years. We have already put some additional dollars \$6 million into the oil and gas research fund encouraging our State Oil and Gas Research Council to solicit proposals and try to sort out what are the appropriate technologies that would make natural gas able to be commercially used in North Dakota. We have put a separate \$300,000 appropriation into the Department of Commerce to go out and study those kinds of issues. We have changed up rules to incentivize the oil companies to reduce flaring by requiring them to actually plan their economic case for exemption much earlier in the process rather than waiting a full year when most of the gases have already been flared. I think we are making progress in a variety of fronts and what I heard in this was nothing even approaching a business plan and in fact, folks said we are thinking about it over the next 2 years we might come up with something, and I don't know why we would pick winners and losers when there are so many ideas out there for the possible use of it. This whole oil play is developing so quickly that I think we are having a little bit of hard time getting information in a timely way to make good decisions. I don't feel like I have enough information to say that this is a good decision.

Chairman Cook - If either Burlington or MDU realized as they move forward and study this issue that it is wise for them and beneficial for them to build a liquid gas plant and starts running liquid gas instead of diesel fuel do you think there is a benefit for having that plant in North Dakota?

Senator Triplett - I think they will choose to build it in North Dakota or Texas depending on where they see the need for transporting. It will be a business decision based on their internal logistics. I think that tax policy is sometimes overrated as a motivation given the large amounts of dollars that we are talking about. If someone needs diesel in central or western North Dakota they will choose to build it here. They won't build it Texas to transport it here. If they find the need is in Texas they certainly won't built it here to transport it there.

Transportation costs are huge as railroads know better than anyone and so they will build it where they perceive the need to be and the opportunity for the use of their capital.

Senator Burckhard - If we build it here we have less emissions, less flaring of natural gas, it adds value to the product, and the only way you can use it is either put it in a pipeline or use it here so why not use it here.

Senator Triplett - I have no problem at all with using it here. I think I have said lots of things that we want people to use it here. I think it's a little soon for us to be picking the winners and losers with the limited amount of knowledge that we have. That is why I'm more in favor if things like the money we are giving to the Oil and Gas Research Council to help sort out the ideas and certainly they can come back 2 years from now with recommendations for us given what they have learned, or we could do this and put a sunset on it for 2 years so people understand that it's not a tax increase if it turns out that we need more dollars for the D.O.T. (22:12)

Senator Oehlke - I want to make sure that everyone remembers that sections 1, 4 & 5 are not effective until a plant would be complete and certified.

Senator Dotzenrod - I have been trying to decide too how this affects competing fuels and competing energy supplies. It seems to me most of these taxes that we assign to a fuel source, that most of those taxes are put on to pay for something. I think that it may be the best thing is not to tax the fuel because of this plant is built here, if it's going to be a lot of economic activity that's going to go with it, I'm trying to understand if you taxed the fuel exactly what would be the way you would use that? It must be a sort of specific idea in mind. We are talking about the \$.04 here.

Chairman Cook - We are talking about the sales tax.

Senator Dotzenrod - Isn't this gross receipts from sales of liquefied gas?

Chairman Cook - Sales tax, 57-39.2 is the sales tax imposition. Section 4 is the use tax.

Discussion followed.

Chairman Cook - We have a motion to amend by taking out sections 1 & 4.

Roll Call Vote to remove sections 1 & 4.

Senator Oehlke - Do Pass as Amended.

Seconded by **Senator Burckhard**.

Roll Call Vote 5-1-1

Carried by **Chairman Cook**.

FISCAL NOTE
Requested by Legislative Council
04/09/2013

Amendment to: HB 1410

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1410 First Engrossment with Senate Amendments provides sales & use, and special fuels tax exemptions for liquified natural gas.

- 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.*

Sections 1, 2, and 3 of HB 1410 First Engrossment with Senate Amendments create sales and use tax exemptions for materials used to construct a processing facility to produce liquefied natural gas and for the sale of liquified natural gas. Section 5 creates a special fuels tax exemption for liquified natural gas.

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.*

This is emerging technology and not likely to result in revenue decreases in the 2013-15 biennium.

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

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, 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

Telephone: 328-3402

Date Prepared: 04/10/2013

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1410

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **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 HB 1410 provides sales & use, and special fuels tax exemptions for liquified natural gas used for railroad purposes.

- 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.*

Sections 1, 2, and 3 of engrossed HB 1410 create sales and use tax exemptions for materials used to construct a processing facility to produce liquefied natural gas and for the sale of liquified natural gas used for railroad purposes. Section 5 creates a special fuels tax exemption for liquified natural gas used for railroad purposes.

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.*

This is emerging technology and not likely to result in revenue decreases in the 2013-15 biennium.

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

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, 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

Telephone: 328-3402

Date Prepared: 02/15/2013

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1410

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1410 provides sales & use, and special fuels tax exemptions for liquified natural gas used for railroad purposes.

- 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.*

Sections 1 and 2 of HB 1410 create sales and use tax exemptions for the sale of liquified natural gas and the materials used to liquify the gas. Sections 3 and 4 create special fuels tax exemptions for liquified natural gas used for railroad purposes.

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.*

This is emerging technology and not likely to result in revenue decreases in the 2013-15 biennium.

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

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, 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

Telephone: 328-3402

Date Prepared: 02/03/2013

April 8, 2013


4-9-13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1410

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "57-39.2-04" insert ", and a new subsection to section 57-40.2-04"

Page 1, line 2, after "sales" insert "and use"

Page 1, line 4, after "for" insert "agricultural, industrial, or"

Page 1, line 5, remove ", subsection 5 of section 57-40.2-04,"

Page 1, line 6, remove "sales and use and"

Page 1, line 7, after "for" insert "agricultural, industrial, or"

Page 1, line 12, after "for" insert "agricultural, industrial, or"

Page 2, after line 27, insert:

"SECTION 4. A new subsection to section 57-40.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of liquified natural gas used for agricultural, industrial, or railroad purposes as defined in section 57-43.2-01."

Page 2, remove lines 28 and 29

Page 3, remove lines 1 through 3

Page 3, line 28, replace "a" with "an agricultural, industrial, or"

Page 4, line 2, after "plant" insert "eligible for the exemptions under sections 2 and 3 of this Act"

Renumber accordingly

Date: 4-9-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1410

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0690.04002

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

Motion Made By Senator Burckhard Seconded By Senator Miller

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett		X
Senator Joe Miller	X				
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment _____

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

Date: 4-9-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1410

Senate Finance & 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 Dotzenrod

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook		X	Senator Jim Dotzenrod		X
Vice Chairman Tom Campbell		X	Senator Connie Triplett	X	
Senator Joe Miller					
Senator Dave Oehlke		X			
Senator Randy Burckhard		X			

Total (Yes) 1 No 5

Absent 1

Floor Assignment _____

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

Further amend deleting Sections 1 & 4

motion failed

Date: 4-9-13
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1410

Senate Finance & 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 Oehlke Seconded By Senator Burckhard

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook		<input checked="" type="checkbox"/>	Senator Jim Dotzenrod		<input checked="" type="checkbox"/>
Vice Chairman Tom Campbell		<input checked="" type="checkbox"/>	Senator Connie Triplett	<input checked="" type="checkbox"/>	
Senator Joe Miller					
Senator Dave Oehlke		<input checked="" type="checkbox"/>			
Senator Randy Burckhard		<input checked="" type="checkbox"/>			

Total (Yes) 5 No 1

Absent 1

Floor Assignment Senator Cook

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

REPORT OF STANDING COMMITTEE

HB 1410, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1410 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "57-39.2-04" insert ", and a new subsection to section 57-40.2-04"

Page 1, line 2, after "sales" insert "and use"

Page 1, line 4, after "for" insert "agricultural, industrial, or"

Page 1, line 5, remove ", subsection 5 of section 57-40.2-04,"

Page 1, line 6, remove "sales and use and"

Page 1, line 7, after "for" insert "agricultural, industrial, or"

Page 1, line 12, after "for" insert "agricultural, industrial, or"

Page 2, after line 27, insert:

"SECTION 4. A new subsection to section 57-40.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from sales of liquified natural gas used for agricultural, industrial, or railroad purposes as defined in section 57-43.2-01."

Page 2, remove lines 28 and 29

Page 3, remove lines 1 through 3

Page 3, line 28, replace "a" with "an agricultural, industrial, or"

Page 4, line 2, after "plant" insert "eligible for the exemptions under sections 2 and 3 of this Act"

Renumber accordingly

2013 TESTIMONY

HB 1410

HB 1410: LNG Taxes

HB 1410 creates new opportunities for the production and use of liquefied natural gas (LNG) for use in railroad locomotives. Its passage is being sought by BNSF Railway Company, which is exploring the use of LNG as an alternative to diesel fuel. The bill would help position North Dakota as an attractive location for the construction of a liquefaction processing facility to produce LNG to fuel railroad locomotives.

Approximately one-third of the natural gas produced in the Bakken region is being flared. If a liquefaction plant were to be constructed in North Dakota to produce locomotive fuel, production of LNG would increase demand for the capture and sale of North Dakota gas that is presently being flared off, reducing growing concerns over emissions and air quality in the State. In addition to contributing to the reduction in flaring, the conversion of locomotives from diesel to natural gas would have other environmental benefits. For example, once converted to natural gas, locomotives are expected to emit less carbon dioxide than their diesel counterparts.

BNSF currently uses approximately 1.5 billion gallons of diesel fuel each year; it is the company's single largest cost. As a result, in recent years BNSF has explored the use of alternative fuels, such as biodiesel and hydrogen fuel cells. Later this year, BNSF will begin testing two prototype hybrid fuel locomotives that will be able to burn a combination of diesel fuel and LNG (Those tests will be in another part of the BNSF system.). If those tests prove successful, BNSF plans to retrofit its locomotive fleet to use a hybrid of diesel/LNG fuel, and BNSF seeks to construct a liquefaction plant (either on its own or through a third party) to produce and use LNG as a locomotive fuel.

HB 1410 will encourage investment for construction of an LNG plant in North Dakota for railroad purposes by the doing the following three things:

- First, it clarifies a sales and use tax exemption on construction materials to include gas liquefaction plants for gas sourced from North Dakota,
- Second, it exempts the sale and use of LNG for railroad purposes from North Dakota sales and use taxes, and
- Third, it exempts the sale and use of LNG for railroad purposes from North Dakota special fuels tax.

Finally, the amendment being offered today would make the exemptions from the sales, use and special fuels taxes contingent on a plant being built in North Dakota to process LNG for railroad purposes. BNSF Railway fully supports that amendment.

Submitted on behalf of BNSF Railway by John Olson
(701) 426-9393

13.0690.03001
Title.

Prepared by the Legislative Council staff for
Representative Carlson
January 28, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1410

Page 1, line 6, replace "an" with "a contingent"

Page 3, line 19, replace "June 30, 2013" with "the date on which construction has commenced on a liquefaction gas processing facility in this state to produce fuel for railroad use and the tax commissioner certifies to the governor and the legislative council that qualifying construction has commenced in this state"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1410

Page 1, line 1, after “enact” insert “a new section to chapter 57-39.2 and”

Page 1, line 2, remove “a”

Page 1, line 2, replace “exemption” with “exemptions for materials used to construct a processing facility to produce liquefied natural gas and”

Page 1, line 3, replace “section 57-39.2-04.5” with “subsection 4 of section 57-40.2-03.3”

Page 1, replace lines 12 through 24 with:

“SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for materials used to construct a processing facility to produce liquefied natural gas.

1. Gross receipts from sales of tangible personal property used to construct or expand a processing facility in this state to produce liquefied natural gas are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. To receive the exemption at the time of purchase, the owner of the processing facility must receive from the commissioner a certificate that the tangible personal property used to construct the processing facility which the owner intends to purchase qualifies for the exemption. If a certificate is not received prior to the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section.

SECTION 3. AMENDMENT. Subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

4. The tax imposed by this section does not apply to:

#1
P. 2

- a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
- b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
- c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5; or
- d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6; or
- e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 2 of this Act."

Page 2, remove lines 1 through 16

Page 2, line 17, replace "3" with "4"

Page 2, line 22, replace "4" with "5"

Page 3, line 18, replace "5" with "6"

Page 3, line 18, replace "This Act is" with "Sections 2 and 3 of this Act are"

Page 3, line 19, after the period insert "Sections 1, 4, and 5 of this Act are effective upon receipt by the tax commissioner from the plant owner that construction of the gas liquefaction plant is complete."

Renumber accordingly

HB 1410: LNG Taxes

HB 1410 deals with taxes related to the production and use of liquefied natural gas (LNG) for use in railroad locomotives. Its passage is being sought by BNSF Railway Company, which is exploring the use of LNG as an alternative to diesel fuel. The bill would help position North Dakota as a location where an LNG plant could be built to serve a portion of the BNSF network.

BNSF currently uses approximately 1.5 billion gallons of diesel fuel each year; it is the company's single largest cost. As a result, in recent years BNSF has explored the use of alternative fuels, such as biodiesel and hydrogen fuel cells.

Later this year BNSF will begin testing two prototype locomotives that will be able to burn a blend of diesel fuel and LNG. It is anticipated that over time the technology will evolve to allow using higher percentages of LNG. (Those tests will be in another part of the BNSF system) If those tests prove successful, BNSF may decide within a year to move forward with using LNG as a fuel. That would involve retrofitting much of its locomotive fleet. It may also invest significant funds (likely in excess of \$300 million) to construct a plant in North Dakota to process LNG. Because BNSF could make the decisions on whether and where to build a plant before the next legislative session, it is important to address the issue this year.

Use of LNG would help increase demand for North Dakota gas that is presently being flared off, resulting in growing concerns over emissions and air quality in the State.

HB 1410 essentially does three things:

- First, it adds natural gas liquefaction plants to the list of natural gas recovery and processing facilities exempt from state sales tax,
- Second, it exempts the sale of the gas from the state's sales and use taxes
- Third, it exempts LNG used in railroad locomotives from the state's special fuels tax.

Finally, it would make the exemptions from the sales, use and special fuels taxes contingent on the construction of a plant in North Dakota to process LNG for locomotive use. BNSF Railway fully supports that provision.

Submitted on behalf of BNSF Railway by John Olson

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