17.0469.01000

FISCAL NOTE
Requested by Legislative Council
01/05/2017

Revised
Bill/Resolution No.: SB 2133

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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			$1,055,000	$(193,000)		
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties		$(682,000)	
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).*

SB 2133 proposes a change to the taxation of certain facilities subject to the coal conversion tax.

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

Section 1 of SB 2133 changes the definition of gross receipts for coal conversion tax purposes. Section 2 of SB 2133 reduces the tax rate from 4.1% to 2%. Section 3 provides limits on the carbon dioxide capture credit.

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.*

Using industry supplied statistics, if enacted, the provisions of SB 2133 are expected to increase total coal conversion tax revenues from the coal gasification plant by a net amount estimated to total $181,000 in the 2017-19 biennium. These impacts are due to the net effect of the company's product mix, the proposed lower tax rate, the removal of an existing tax credit, and the definition of the tax base proposed in the bill. This fiscal impact includes a net increase in state general fund revenues expected to total approximately +$1,055,000. The net impact for the county is an estimated biennial reduction of -$682,000. The net impact for the lignite research fund is an estimated biennial reduction of -$193,000.

Note: Despite the reduction in county revenues assumed if this bill is enacted, there is still anticipated year-over-year growth in county revenues overall, so the hold-harmless provisions likely will not be utilized and are not considered in this fiscal note.

This fiscal note was revised on 1/18/2017 to reflect timing differences from incorrect assumptions about fiscal v. calendar years. Corrected assumptions were supplied by industry representatives.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 01/18/2017

17.0469.01000

FISCAL NOTE
Requested by Legislative Council
01/05/2017

Bill/Resolution No.: SB 2133

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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			$1,427,000	$(203,000)		
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties		$(715,000)	
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).*

SB 2133 proposes a change to the taxation of certain facilities subject to the coal conversion tax.

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

Section 1 of SB 2133 changes the definition of gross receipts for coal conversion tax purposes. Section 2 of SB 2133 reduces the tax rate from 4.1% to 2%. Section 3 provides limits on the carbon dioxide capture credit.

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.*

Using industry supplied statistics, if enacted, the provisions of SB 2133 are expected to increase total coal conversion tax revenues from the coal gasification plant by a net amount estimated to total $509,000 in the 2017-19 biennium. These impacts are due to the net effect of the company's product mix, the proposed lower tax rate, the removal of an existing tax credit, and the definition of the tax base proposed in the bill. This fiscal impact includes a net increase in state general fund revenues expected to total approximately +$1,427,000. The net impact for the county is an estimated biennial reduction of -$715,000. The net impact for the lignite research fund is an estimated biennial reduction of -$203,000.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 01/09/2017

2017 SENATE FINANCE AND TAXATION

SB 2133

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2133
1/11/2017
Job #: 26777

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Jana Bellamy

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 8 of section 57-60-01, subsection 1 of section 57-60-02, and section 57-60-02.1 of the North Dakota Century Code, relating to the coal conversion facilities privilege tax; and to provide an effective date.

Minutes:

Attachments 1-3

Chairman Cook: All Senators present. Opened the hearing on SB 2133.

Senator Unruh: SB 2133 to modify coal conversion tax structure for coal gasification plants in state, Dakota Gasification Company (**DGC**) in Beulah, is only commercial coal gasification facility in the state. Operations at DGC have outgrown the statute. This change modifies existing tax structure to accurately reflect plant operation, simplify the tax structure to be more reasonable and easier to apply, will eliminate existing tax deductions DGC currently uses. SB 2133 will simplify the code, implement flat 2% gross receipt tax from all products at Dakota Gas. Allows tax code to grow with the facility and changing commodity prices. Still results in taxes over next 5 years. Fiscal note is positive. Hope a positive consideration.

Chairman Cook: Questions for Senator Unruh?

Vice Chairman Bekkedahl: On the fiscal note, positive to general fund, counties and Lignite research fund will be decreased. Have they been consulted?

Senator Unruh: It will be answered by the Dakota Gas people testifying behind me.

Chairman Cook: Further testimony and support?

Dale Niezwaag, Dakota Gasification Company: Presented testimony #1 in support of SB 2133. Handed out testimony #1A with further information on the Plant Investment, mentioned while on page 8 of testimony #1, finished testimony #1.

Vice Chairman Bekkedahl: CO2 emissions, 54% since 1999, do you have the capability to reduce the CO2 further if had outside markets to sell it to, or at max capacity right now.

Dale Niezwaag: We have capacity for more but not on a steady basis. Every month 54% sometimes more or less, could do more capture, but would need an invest in the plant.

Chairman Cook: What percentage are you at now?

Dale Niezwaag: 30-35% due to drop in oil prices, production has gone down.

Chairman Cook: Petronova started up successfully yesterday.

Dale Niezwaag: Petronova is a facility outside of Houston, Texas. Large complex of 4 or 5 coal gasification plants. One of the plants has CO2 capture technology. All done within a fifty-mile radius, came online on time, under budget, had investments from federal, international, and state money. $50 oil was feasible.

Chairman Cook: 25% side stream?

Dale Niezwaag: I don't remember.

Vice Chairman Bekkedahl: Part on coal conversation tax increasing, will urea production addition or will the same amount of coal. Where does the increases come from? Are some of the exemptions coming off at some point? 86% increase. What's driving the increase of the tax.

Dale Niezwaag: Lots of things are driving the tax. With the urea plant, always uses 18 thousand tons of coal a year. Always does the 150 million cubic feet per day. That doesn't change. The by-products that are made from the synthetic natural gas. The big increase is the coming off of the exemptions, extra revenue created from selling more products, depending on commodity prices (currently down), price go up, sales go up, tax revenue to state goes up. Exemptions that come off and increasing products sold.

Chairman Cook: Questions? I see the fiscal note is calculating by using industry supplied statistics. So they used your numbers.

Dale Niezwaag: Correct, the projection that we used are similar to the state, as far as gas and by-product productions.

Chairman Cook: How volatile are they?

Dale Niezwaag: I don't have a good answer for that.

Senator Laffen: Confused on the net tax effect, are they the same? The net effect of the bill a plus or negative for the citizens of North Dakota?

Dale Niezwaag: It is a plus for the first two years, negative from that point on. Increase of $180,000 for this biennium, decrease $3 million for the next biennium and into the future.

Senator Laffen: How to explain we gave a change in tax code lost us revenue? What's the reason?

Dale Niezwaag: The plant is worth keeping on line, 800 jobs, $10 million in revenue that comes into the state. Good employment base, with high paying jobs. Company has invested $1.4 billion to keep it going. If Basin Electric wouldn't have invested any money, just used for synthetic gas, based on prices wouldn't be running. Or price of produce gas is about twice as high as being sold for on the market. Second, even though taxes being paid will be less than under the existing statute, there will be more money coming in the state treasury going forward.

Senator Laffen: It increases every year but still a negative loss.

Dale Niezwaag: Proposing a change in the rate of increase, currently taxes going up 86% next 5 years, with the change going up 64%. Still increase of taxes, not as high.

Chairman Cook: Further questions?

Dale Niezwaag: Continued testimony in support of SB 2133 from testimony #2. Talked to the coal conversion counties. Not wild, but understand a valuable asset for the plant to run, and remain neutral on the bill.

Chairman Cook: The fiscal note is accurate? Why numbers different.

Dale Niezwaag: The fiscal note is accurate. Our calculations were June to July. Tax did calendar year and didn't include the whole harmless provision.

Chairman Cook: Should the tax department recalculate to include the harmless?

Dale Niezwaag: That would be a question for the tax department. I don't know. Testimony #3 is a one-page summary of the information from the power point. Will answer any more questions, it is complex.

Chairman Cook: Questions? Further testimony in support of SB 2133.

David Straley, North American Coal: 500 coal miners support the DGC plant and are interested in helping our customer maintain profitability of the plant, at least keep it online when it's not. Any general questions.

Chairman Cook: Questions? Further testimony in support of SB 2133, testimony opposed, neutral testimony?

Geoff Simon, Western Dakota Energy Association: We represent the oil, gas, and coal producing counties in North Dakota, as well as cities and school districts in those counties. Basin Electric explained the changes to us, thoroughly. Basin gave presentation in November, hoped for December meeting to take a position on the legislation. Weather prevented getting together, the group is remaining neutral in support of SB 2133. Appreciate Basin's investment, but decline in coal production, and Great River Energy closing of Stanton station. We don't know the right number of taxation, but we appreciate the money that comes in.

Chairman Cook: Any questions?

Dale Niezwaag: One thing that is in the bill, with the CO2 capture being eliminated early, the bill does make provisions that any other facility adding CO2 capture to their plant qualify, Dakota Gasification won't qualify again. If Antelope Valley, Milton R Young, or Coyote Station put on carbon capture. Want to make sure we're out, and not anybody else.

Chairman Cook: Any other neutral testimony? Close the hearing on SB 2133.

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

Senate Bill 2133
1/18/2017
Job #: 27332

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Jana Bellamy

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-60-14 of the North Dakota Century Code, relating to the allocation of coal conversion tax revenue collections; and to provide an effective date.

Minutes: | No Attachments |

Chairman Cook: Committee work on SB 2133. Going to explain this fiscal note or just all of us read try to read it.

(0:00:10-0:00:45) Senator Unruh: I can attempt to explain the fiscal note. The two items to look at are the note from the second paragraph at the bottom and also the change in assumptions. The last paragraph on the bottom made some adjustments on the totals, if you'd like a more in-depth explanation to the changes, I know Basin Electric is in the room and I'm sure they'd be happy too.

(0:01:10-0:03:30) Dale Niezwaag, Dakota Gasification Company: The fiscal note as you see before you now, we talked about during the hearing, we talked about the harmless clause, one county will from one year to the next not see a decrease. That is true, but it happens before July 1, 2017. What you see there is the addition to the general fund and the county portion is still $682,000. They will receive $300,000 less than current law. We get into the same situation we do with the state, where there is less money coming into the state. The counties are getting less money than they would have, but the counties are getting more money in the next two biennia than they received the biennium before or even the years before.

When we look at the spreadsheet provided during the testimony **(January 11, 2017, Job No: 26777, Testimony #2 page 1)** it shows a 3-year and 5-year average. If you look at the averages the counties receive over a 3 or 5-year period, they still receive more money than they have on average. 3 year average they receive 9% more dollars per year than they have before. If you look at the 5-year average, it's 5% more than per year before.

Yes, there are less dollars than before. They were looking at a 25-30% increase in dollars under the existing law. That 25-30% is now 5-9%.

(0:03:31) Chairman Cook: The 682 thousand, is that all coal conversion money?

Dale Niezwaag: The whole tax bill only addresses coal conversion dollars.

Chairman Cook: Again, the coal conversion dollars are split how?

Dale Niezwaag: Coal conversion are 85% to the state, minus 5% to the Lignite research fund council, and the county gets 15%.

Senator Unruh: Of that 15%, 40% to the county, 30% divided amongst incorporated cities, and 30% to the school districts.

Chairman Cook: So the county, cities, and schools are all going to get less money?

(0:05:05) Don Boehm: While that is a correct statement, they are going to get less than the current law. By revising the law, they will get more year after year, but not as much as it would be under current law. While the fiscal note does have a $682,000 short. When comparing 2015, 16, and 17, the reduction is really only $50,000 with this bill. 682,000 based on existing law, not that much

Vice Chairman Bekkedahl: When I read this fiscal note and I see counties, reduction of $682,000, that is the 15% county share, that's not state and counties. That's the 15% portion.

Don Boehm: Counties get 15%, lignite research fund gets 5% of the states 85%.

Chairman Cook: is it 5% of the total 85, or 80 and 5.

Don Boehm: It's 5% of the remaining 85, would be a net of about 4.25.

Chairman Cook: It's the math that's getting me fouled up. 193,000 is estimated reduction of lignite research fund. I should take that times 20 and get the reduction in general funds. That's offset with increases to the general fund.

Don Boehm: Under the existing law we get tax credits for capturing carbon. The carbon tax credit goes off of the state portion, the lignite research fund gets 5% of the remainder, which is why it's hard to explain.

Senator Dotzenrod: The spreadsheet shows county share, at 15%. In 2011 was 1.79 million, 2012 it was 1.75, declined in 2013 to 1.6, and then a little decline two years later to 1.4 in 2015. It hasn't been continuously going up or continuously coming down. Is that because of the value of some of the commodities or the raw product being produced at the plant. Some revenues are related to the price of the commodity. If the commodity goes down the state gets less revenue. I assume that there's something going on at the plant that resulted in revenues going up quite a bit or dropping off quite a bit.

Don Boehm: The decrease and increase has everything to do with commodity prices, when you see in 2011 up 1.8 million, that's when gas and fertilizer prices were at its height. It fluctuates a lot. When we have plants in outage, they don't produce as much, there's not as much revenue being taxable, that is the reason for the decrease.

Senator Dotzenrod: You have an estimate for 2016 with quite a large drop there, going from 1.4 million down to 900 thousand, is it commodity phenomena?

Don Boehm: In 2016 we also had black plant, where the plant was out of service. So not only the commodity, natural gas prices, fertilizer prices are down, we have a black plant as well. 2016 estimate is extrapolated to the full 12 months. The drop from 2015 to the 2016 portion goes down from 1.4 to 935,000. And that's where the whole harmless provision comes into play.

Chairman Cook: Any other questions? **(0:11:15 ended)**

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

Senate Bill 2133
1/24/2017
Job #: 27329

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Jana Bellamy

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-60-14 of the North Dakota Century Code, relating to the allocation of coal conversion tax revenue collections; and to provide an effective date

Minutes:

No Attachments

Committee discussion on the status of previously heard bills (0:00:00-0:1:15:00)

Chairman Cook: Let's go to SB 2133.

Senator Unruh move a do pass to Appropriations

Senator Laffen seconded

Chairman Cook: Does the committee remember this bill?

Senator Laffen: Had a lot of conversation with the coal guys and was trying to understand why we would lower the overall tax rate. The business has changed and they're doing a lot of things they weren't doing before. What in effect has happened is, their taxes are going to go up 86% because of parts of their business that didn't used to get taxed are all coming into getting taxed now. What this bill is doing is lowering their increase in tax from 86% to 64%. To me that seems reasonable. I don't think that's to unrealistic to ask.

Senator Unruh: from a local prospective, we as a community really appreciate all of the investments that Basin Electric has made in Dakota Gasification. It's been a struggle for them to keep that company up and running and it really is vital to our community. To see them diversifying their coal products the way that they have I think is really important and I think it's appropriate for us to adjust the tax code to reflect those investments that they've made in the plant. That's why I brought this bill forward. I appreciate the committee's discussion and interest in it.

Chairman Cook: Anyone else?

Senator Dotzenrod: When I looked at this bill and thought about it, this industry, one of the great resources we have is coal. It's not an easy business, they're handling a lot of volume, compared to natural gas that you can put in a pipeline. For them to be successful and continue to find ways to be successful is a great story. They are going to continue to be paying taxes at higher and higher rates. With this bill, it's a little bit of a deceleration, but a significant amount of taxes the state is getting out of it. If we can keep something that's a North Dakota product and continue to find ways to be profitable and usable. And to have out in rural North Dakota an employer of this size, I think it's worth a lot to us. It's a success story.

Chairman Cook: Anyone else? We've got the sponsors. We have a motion for do pass on SB 2133, and rerefer I suppose.

Senator Unruh: Yes, my apologies please. I would like my motion to reflect a rerefer to appropriation.

Chairman Cook: Ok, motion for a do pass and rerefer on SB 2133.

Roll Call Vote was taken: 6 yeas, 0 nays, 0 absent.

Senator Unruh will carry the bill.

Date: 1-24-17
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2133

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description:

Recommendation:
☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☒ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Unruh Seconded By Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chair Brad Bekkedahl	X				
Senator Lonnie J. Laffen	X				
Senator Scott Meyer	X				
Senator Jessica Unruh	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Unruh

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

REPORT OF STANDING COMMITTEE

SB 2133: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2133 was rereferred to the **Appropriations Committee**.

2017 HOUSE FINANCE AND TAXATION

SB 2133

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2133
3/6/2017
28708

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the coal conversion facilities privilege tax.

Minutes:

Attachment #1, 2, 3

Chairman Headland: Opened hearing on SB 2133.

Senator Unruh: Introduced bill. Provided written testimony, see attachment #1. Ended testimony at 3:02.

Chairman Headland: Are there any questions?

Representative B. Koppelman: If the current practice is to charge 4.1%, which can be a large number compared to the 2%, wouldn't the fiscal note be based on if we did nothing versus if we do this bill? If all these would be charged at 4.1%, if the bill passed, how can we have an increase in the fiscal note?

Senator Unruh: There is a rate for natural gas for taxation and a rate for all other products. This would take all the products and put them under the flat 2% rate. Right now the trend line is gradually increasing but as they diversify their products to more coal products it increases. This bill would allow them to keep that same rate of taxation along with diversifying their products and making investments in the facilities. It decreases the rate of increase of taxation but still increases over time.

Chairman Headland: One of the next presenters will get into the details of that. We'll take testimony in support of SB 2133.

Dale Niezwaag, Basin Electric: Distributed testimony, see attachments #2 and 3. Representative B. Koppelman, in answer to your previous question, along with the tax change there is elimination of several deductions we currently receive that we will not receive in the future and that is where we get the positive revenue. It's also a timing issue. Mr. Niezwaag went over the attachments with the committee. Ended this review at 20:30. In section 1 lines 9-11 of the bill you're talking about eliminating some of the tax exemptions that are out there and the same on lines 17-24 where you're talking about eliminating the existing tax exemptions that we currently receive. Section 2 is where the tax changes from 4.1% down to 2 percent. In section 3 we want to make sure everyone else is available for this same tax exemption as Dakota Gas. If a power plant puts a carbon capture system on their plant they will still be eligible for that 10-year tax exemption for capturing CO2. This says Dakota Gasification can no longer qualify for that tax deduction because they already got it once. We didn't want to prohibit some of the other utilities or companies from obtaining it.

Representative Steiner: You're saying coal production will increase at DGC because of the urea plant? Is the coal production changing at all?

Dale Niezwaag: No, the coal production will not change. It's just taking a lower value product and making it a more expensive product in the urea. Since the conversion tax is based on the revenue we receive from the product sold the taxes will go up.

Representative B. Koppelman: Our fiscal note shows the counties will receive $682,000 less because of the bill? How does that fit in with what you were saying about the counties?

Dale Niezwaag: It's a timing issue with the taxes.

Don Boehm, Manager of Multi-State Tax for Basin Electric: While it is $682,000 less it is reduced by the amount of the hold harmless provision. The hold harmless provision takes that out. Some of that is because the state fiscal note is the state fiscal year versus the county fiscal year. The hold harmless provision reduces that but it also, at the end of the year, is only $43,000 less to the county but the state will get an additional $1 million. Overall, it's pretty much a wash of nine million dollars.

Representative B. Koppelman: In your chart you had $400,000 something that was the hold harmless provision to the state, in order to fund that, the state would receive $1 million more and $470,000 of that would go to the counties to keep them whole. Would the state net $600,000?

Don Boehm: To a degree that is correct but the $472,000 does get paid out of the state general fund in the current biennium but the next biennium is where the additional $1 million ends up going to the state because of the difference of the fiscal years.

Chairman Headland: Further testimony in support? Is there any opposition? Are there any questions for tax?

Representative B. Koppelman: I like flat taxes. **MADE A MOTION FOR A DO PASS.**

Representative Schobinger: SECONDED

Chairman Headland: Is there any discussion?

ROLL CALL VOTE: 13 YES 0 NO 1 ABSENT: MOTION CARRIED

Representative B. Koppelman will carry this bill.

Date: 3-6-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2133

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: ______

Recommendation:
☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions:
☐ Reconsider ☐ ______

Motion Made By Rep. Koppelman Seconded By Rep. Schobinger

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓		Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	AB				
Representative Schobinger	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

SB 2133: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2133 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2133

BASIN ELECTRIC
POWER COOPERATIVE
A Touchstone Energy® Cooperative

Proposed Change of Coal Conversion Taxes on Coal Gasification Plants

1/11/2017 SB 2133 Testimony #1 pg 1

BASIN ELECTRIC
POWER COOPERATIVE
A Touchstone Energy® Cooperative

1/11/17 SB 2133 #1 pg 2

Dakota Gasification Company (DGC) Great Plains Plant: A Unique Facility

- Only commercial coal gasification facility producing synthetic natural gas
- Liquid chemicals production
- Fertilizer production
- Carbon Dioxide (CO_2) Capture & transportation

BASIN ELECTRIC
POWER COOPERATIVE
A Touchstone Energy® Cooperative

1/11/17 SB 2133 #1 pg 3

DGC Today

- Work Force: approx. 750 people
  - With Urea plant online: 800 people
- Coal Usage: approx. 18,000 tons daily
- 2015 State & Local Taxes: $10.3 million
- Environmentally Compliant
- CO_2 Emissions Reduced up to 54% Since 1999

BASIN ELECTRIC POWER COOPERATIVE
A Touchstone Energy® Cooperative

1/11/17 SB 2133 #1 pg 4

Why Are We Here

- DGC's operation has outgrown the existing statutes
  - Existing statute based on production of synthetic natural gas (SNG).
  - DGC produces more fertilizer & by-products than SNG
- Existing statute is complex
- DGC's coal conversion taxes will increase 86% in the next 5 years. ($7.7 million)

BASIN ELECTRIC POWER COOPERATIVE
A Touchstone Energy® Cooperative

What is Coal Conversion Tax

- Coal conversion tax is paid in lieu of property tax
- On a **Power Plant**: the tax is based on the production of the plant.

  i.e. capacity and generation
- On a **Gasification Facility**: the tax is based on the revenue earned from the products produced.

  i.e. SNG and by-products

BASIN ELECTRIC
POWER COOPERATIVE
A Touchstone Energy® Cooperative

1/11/17 SB 2133 # 1 pg 6

What Is Being Proposed

- Modifying the tax structure to more accurately reflect plant operation
- Simplifying the tax structure to make it more reasonable and easier to apply.
- Eliminating existing tax deductions

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What Has Happened at the Plant

1. $1.37 billion has been invested since 1988 to diversify the plant and keep it operating.
   a. $805 million from 1988-2015
   b. $566 million in progress 2016-2017

When purchased in 1988, 98% of DGC's revenue was from SNG production

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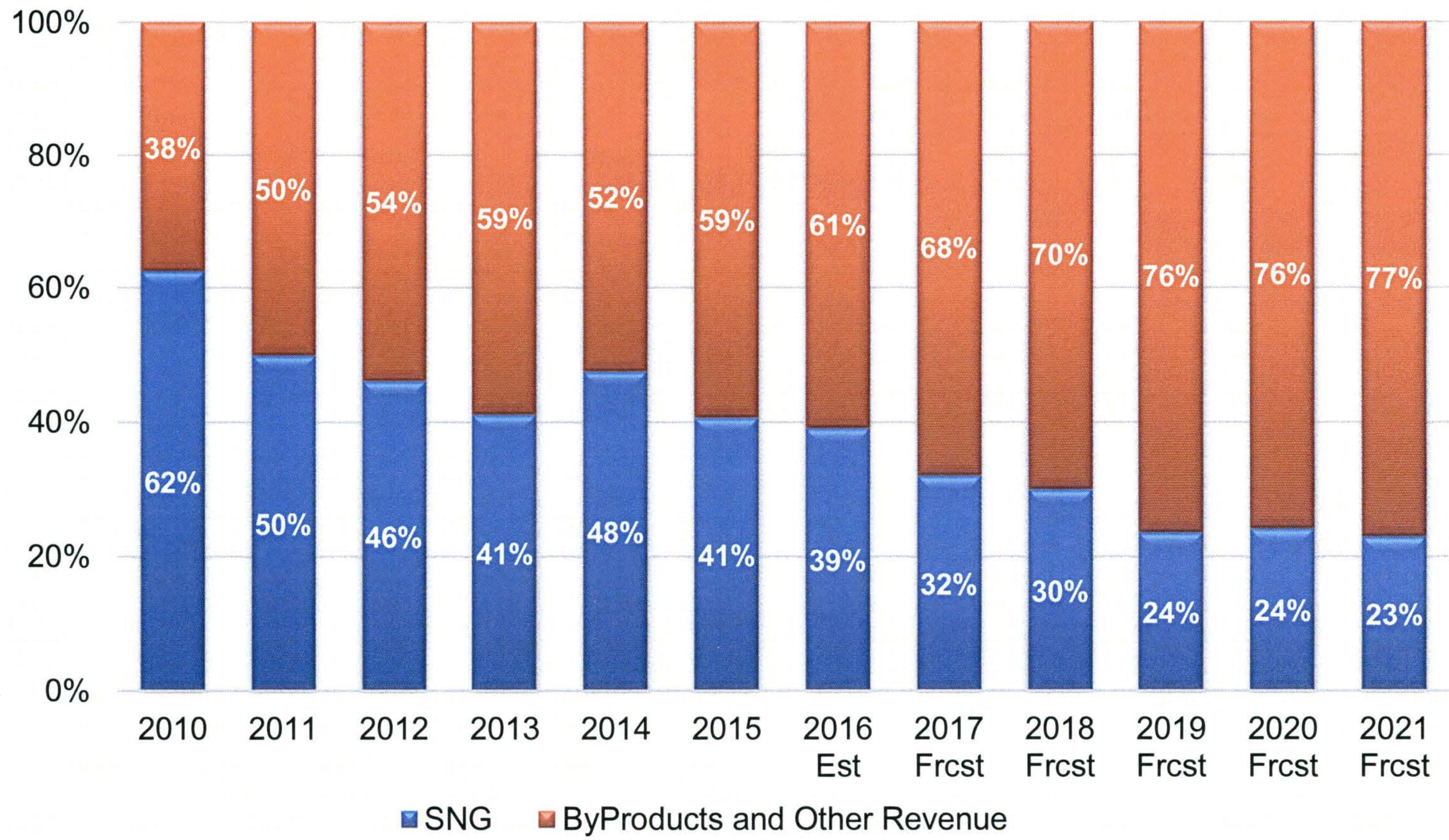
2017-2026 Financial Forecast

DGC Total Revenue



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What Has Happened at the Plant

2. SNG that was previously tax exempt has shifted to a taxable product.
   - Until 1999 avg. daily production of SNG was 150 MMcf/d
   - Tax statutes capped the taxable SNG at 110 MMcf/d, to provide a fair coal conversion tax amount.
   - Diversification of plant will eliminate the nontaxable production of the SNG above 110 MMcf/d and put taxable products in its place.

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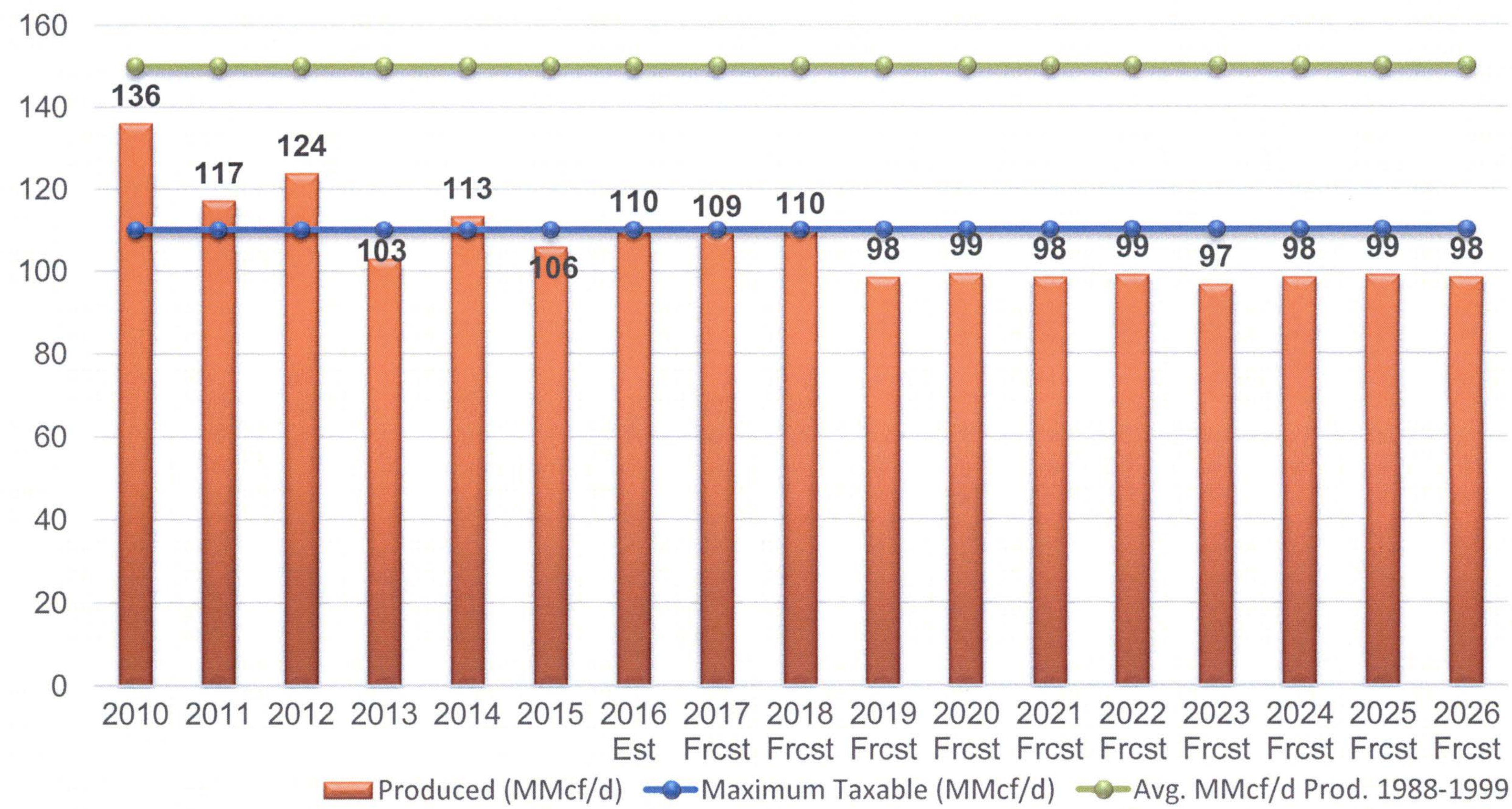
1/11/17 SB 2133 #1 pg 10

DGC SNG Volumes



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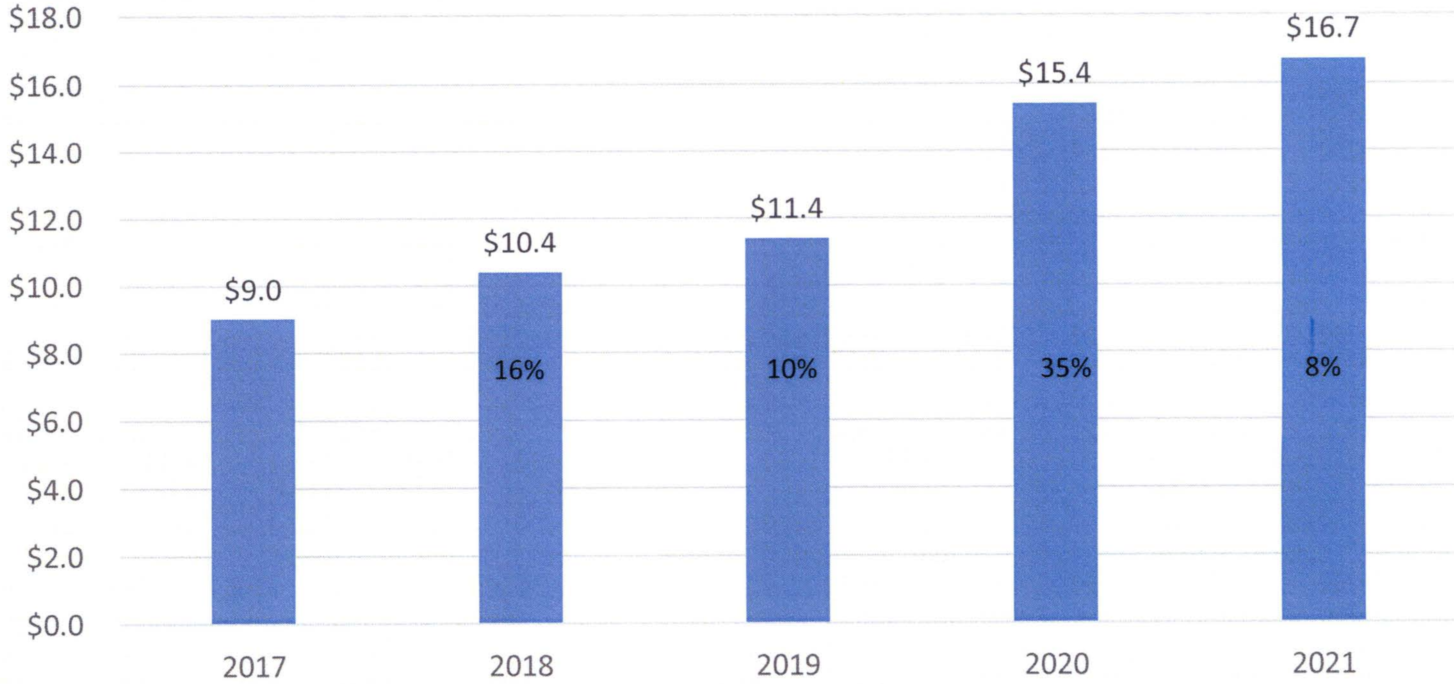
1/11/17 SB 2133 #1 pg 11

Current Coal Conversion Tax Projection (86% increase)



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1/11/17 SB 2133 #1 Pg 12

Proposal

- Change the existing tax to a flat 2% on all gross receipts from the production of products. *(64% increase)*
- Eliminate existing tax deductions.
  - Carbon dioxide capture exemption
  - Gross receipts from the sale of carbon dioxide
  - Transportation & other costs associated with the sale of products.
  - 20% deduction of total gross receipts of all products

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Effect of the Proposal

- Elimination of Current Tax Deductions (Calendar Yr.)
  - CO2 capture exemption (17-19) - $7.2 Million
  - Gross receipts CO2 sales(17-19) - $2.2 Million
  - Transportation & other costs (17-19) - $5.8 Million
  - 20% of products gross receipts (17-19)- $7.7 Million
  - Total - $22.9 Million

- Fiscal note on the change (Biennium)
  a. 2017-2019 = $181 thousand benefit
  b. 2019-2021 = $3.0 million less

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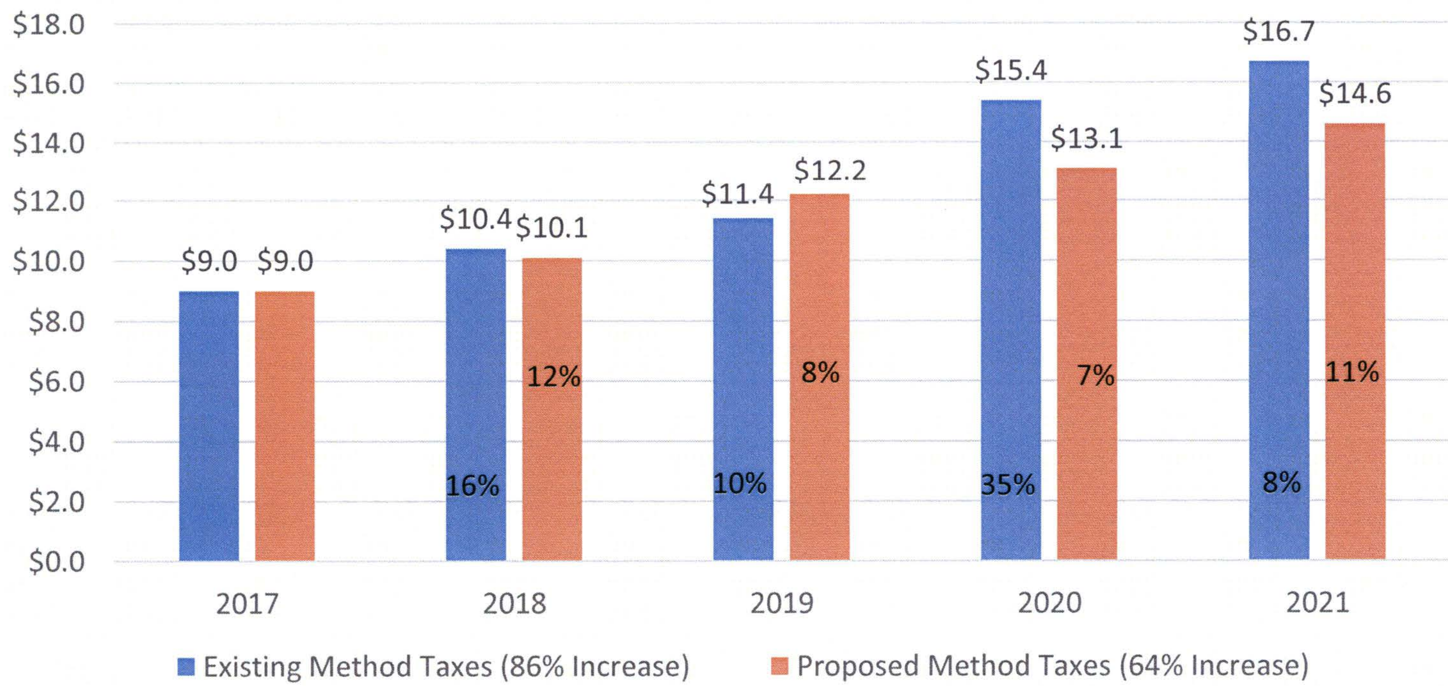
DGC Coal Conversion Tax Projections



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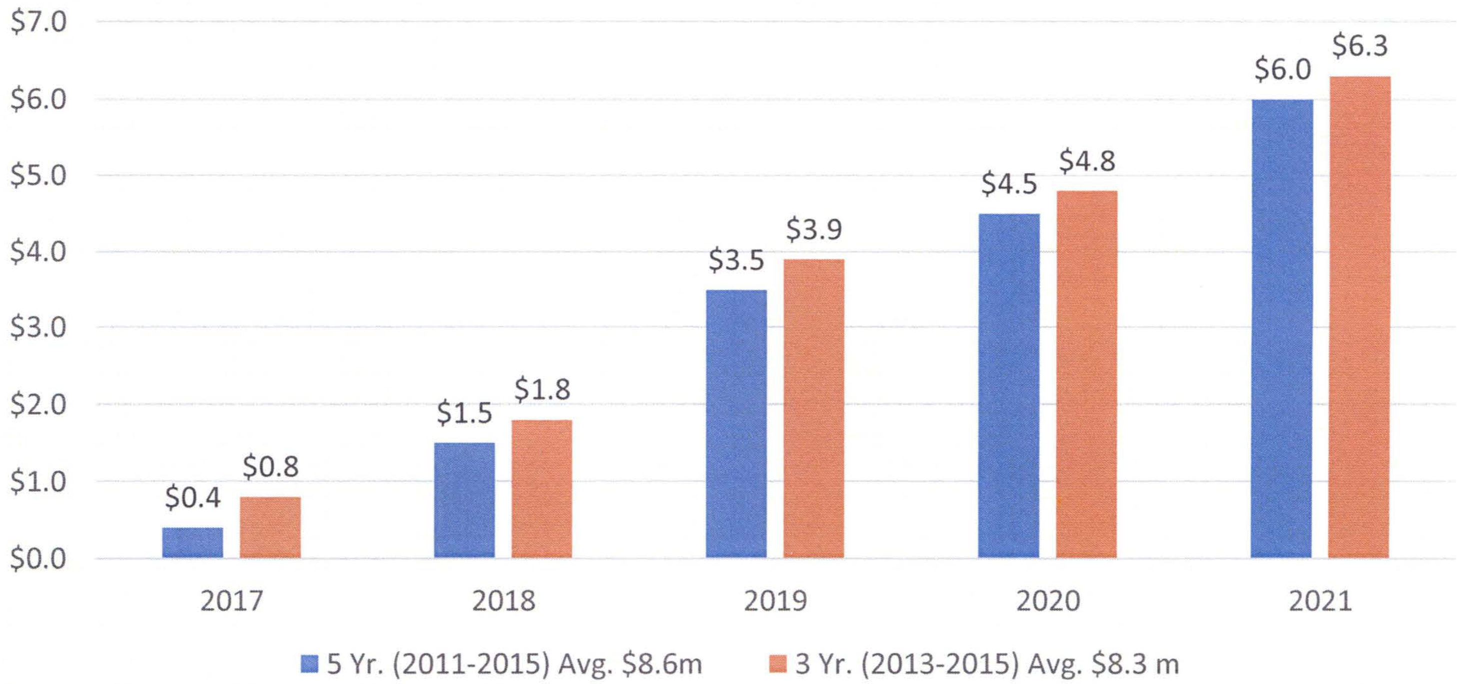
1/11/17 SB 2133

Pg 15

Proposed Coal Conversion Tax
Increase Above Previous Avg.



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OB . 1/11/17 SB 2133 Testimony # 1.A

Dakota Gasification Company
Plant Investment
Inception through June 15, 2016

Capital Investment through December 31, 2015	Expansion	Replacement	Total
Anhydrous Ammonia Storage	39,004,520	0	39,004,520
Anhydrous Ammonia Production	114,956,195	14,317,852	129,274,046
Ammonium Sulfate Production	38,925,226	8,762,078	47,687,304
CO2 Compressors & Pipeline	115,124,726	1,713,205	116,837,931
DGC to AVS Natural Gas Pipeline	6,418,742	0	6,418,742
Phenol Production	76,330,374	198,109	76,528,483
Phenol/Naptha Production & Storage	650,461	499,506	1,149,967
Multiple Plant Projects	137,799,489	126,885,650	264,685,138
Clean Cooling Water Project	66,359,529	453,483	66,813,012
Railcars, Locomotives & RailSpur	12,400,606	1,094,391	13,494,997
Xenon/Krypton Production	3,950,923	0	3,950,923
SNG Hebron Compressor	2,485,531	0	2,485,531
SNG Hebron Pipeline	16,946,307	0	16,946,307
Tar Oil Production	19,734,867	79,812	19,814,679
Total Capital Investment through December 31, 2015	**651,087,496**	**154,004,085**	**805,091,581**

Construction Work in Progress as of June 15, 2016	Expansion	Replacement	Total
Anhydrous Ammonia Production	11,662,965	20,200,095	31,863,060
Phenol Production	249,967	0	249,967
Multiple Plant Projects	24,244,444	7,694,976	31,939,420
Tar Oil Production	1,298,947	0	1,298,947
Urea Production	500,961,737	0	500,961,737
Total Construction Work in Progress as of June 15, 2016	**538,418,060**	**27,895,071**	**566,313,131**
Total Plant Investment	**$1,189,505,557**	**$181,899,156**	**$1,371,404,712**

Dakota Gasification Company
Distribution of Coal Conversion Taxes
Actual for Calendar Years 2011-2015 and Estimated for Calendar Years 2017-2021

Past Tax Distribution:	2016 Est.*	2015	2014	2013	2012	2011	3 Year Average 2015-2013	5 year Average 2015-2011
State share 85% less Lignite Research Fund	$3,748,848	$5,645,110	$6,906,347	$6,059,109	$6,539,367	$7,191,607	$6,203,522	$6,468,308
County share 15%	$935,436	$1,407,520	$1,833,627	$1,614,305	$1,750,225	$1,790,330	$1,618,484	$1,679,201
Lignite Research Fund 5% of 85%	$265,040	$398,797	$519,528	$457,387	$495,897	$507,260	$458,570	$475,774
Total	$4,949,324	$7,451,427	$9,259,502	$8,130,801	$8,785,489	$9,489,197	$8,280,576	$8,623,283

Future Tax Distribution with Existing Statutes:	2017	2018	2019	2020	2021
State share 85% less Lignite Research Fund	$6,859,170	$7,943,213	$8,637,417	$12,465,340	$13,484,234
County share 15%	$1,633,524	$1,891,692	$2,168,208	$2,315,543	$2,504,811
Lignite Research Fund 5% of 85%	$462,832	$535,979	$614,326	$656,071	$709,697
Total	$8,955,526	$10,370,884	$11,419,950	$15,436,954	$16,698,742

Future Tax Distribution with Proposed 2% Tax:	2017	2018	2019	2020	2021
State share 85% less Lignite Research Fund	$7,306,689	$8,179,727	$9,827,830	$10,577,583	$11,760,916
County share 15%	$1,357,280	$1,519,454	$1,825,603	$1,964,876	$2,184,690
Lignite Research Fund 5% of 85%	$384,563	$430,512	$517,254	$556,715	$618,996
Total	$9,048,532	$10,129,693	$12,170,687	$13,099,174	$14,564,601

* - Estimate based upon January thru September actual and estimates for October, November and December.

Coal Conversion Shortfall Mechanism Applies. North Dakota statute 57-60.14.2 provides for an annual distribution to cities, schools and county general fund of coal conversion counties in an amount that would prevent the county from receiving less coal conversion tax in a calendar year than the amount that county received in the preceding calendar year.

1/11/2017 SB 2133 #2 pg 1

1/11/17 SB 2133 Testimony # 3 pg1

SB 2133 is a bill to modify the coal conversion tax structure for coal gasification plants in the state. Currently this bill would only apply to Dakota Gasification Company (DGC) in Beulah as it is the only commercial coal gasification facility in the state.

When DGC was purchased by Basin Electric in 1988, 98 percent of the revenue from the plant was from Synthetic Natural Gas (SNG) sales, since that time nearly $1.4 billion has been invested into the plant in order to diversify production into additional by-products and liquid chemicals such as naphtha, xenon and tar oil, fertilizers such as anhydrous ammonia and soon to be added urea fertilizer, as well as carbon dioxide capture and transport to Canada.

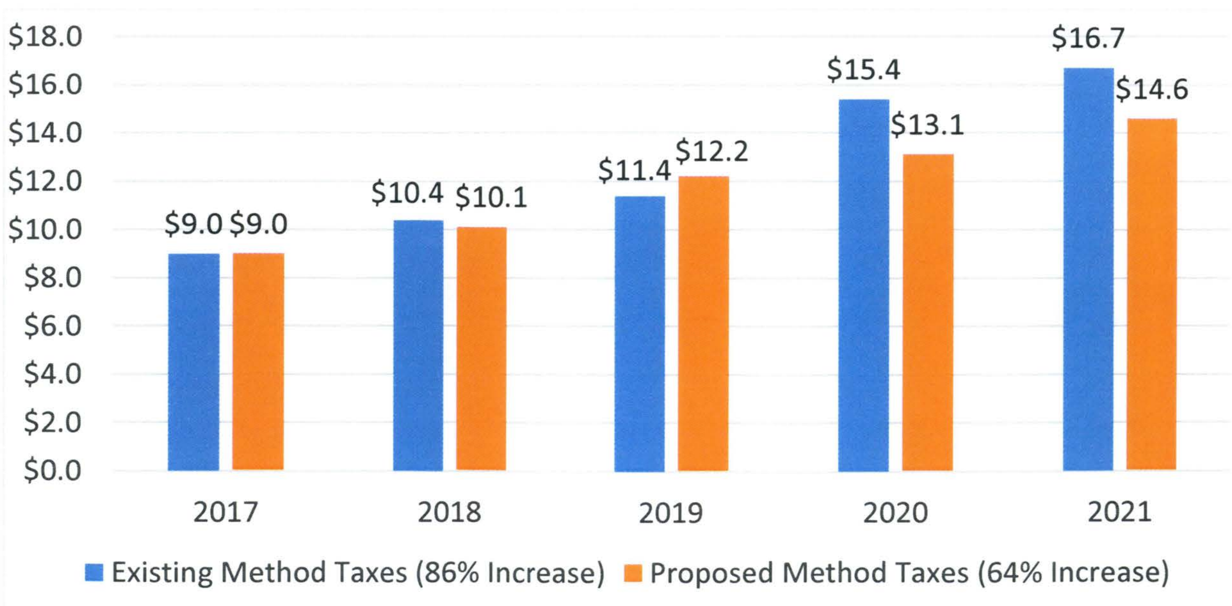
The plant, with the addition of the urea production will employ approximately 800 people, uses approximately 18,000 tons of coal daily and in 2015 paid more than $10 million in state and local taxes.

By diversifying the plant and keeping it viable, operations at DGC have outgrown the existing statute. This situation will result in the coal conversion taxes paid by the plant increasing 86 percent over the next five years. This is mainly because the syngas that was previously tax-exempt is now being used to make taxable by-products.

This bill will do three things: 1) it will modify the existing tax structure to more accurately reflect the plant operation, 2) simplify the tax structure to make it more reasonable and easier to apply, and 3) eliminate existing tax deductions currently used by DGC.

SB 2133 will change the existing tax of 4.1 percent on the gross receipts of non-exempt syngas and by-products to a flat 2 percent tax on **all** gross receipts from the production of **all** products. In addition the bill eliminates all existing coal conversion tax exemptions currently used by DGC. The credit DGC receives on the capture of carbon dioxide is due to sunset at the end of 2019, however, this bill eliminates the CO2 capture credit for DGC two years early in order to provide a more reasonable escalation of tax over the next five years without creating a lasting deficit to the state

This change still results in taxes increasing 64 percent over the next five years, but that is a more reasonable rate of increase than an 86 percent increase under the current method. The fiscal note for SB 2133 for the 2017-19 biennium will result in a net increase to the state of nearly $200,000. The following biennium there would be a $3 million decrease to the state. The differences in state budget impact are projected in the orange bars below:



#1
SB 2133
3-6-17

North Dakota Senate Bill 2133
Senator Jessica Unruh

SB 2133 is a bill to modify the coal conversion tax structure for coal gasification plants in the state. This bill would only apply to Dakota Gasification Company (DGC) in Beulah as it is the only commercial coal gasification facility in the state.

Operations at DGC have outgrown the existing statute, as the company has made significant investments in the plant to allow for it to more competitively compete in a constantly changing commodity market. Historically, the plant produced a lot of natural gas. The price of this commodity forced the company to take a look at further diversifying their products, resulting in an investment of hundreds of millions of dollars to expand production of fertilizer products. The investment Dakota Gasification made in their facility expands the plant's longevity and presence in the community, continuing to provide good paying jobs for the community even further into the future.

This is the reason the tax code for the facility needs to be simplified - they've invested in diversifying their products and as a result, their taxes have increased much more drastically than they would have if they continued business as usual. The simplification lowers the increase of taxes Dakota Gasification will pay into the future by eliminating exemptions and deductions and special rates for specific products and replaces it with a flat rate on all products produced.

But specifically, this bill will do three things: 1) it will modify the existing tax structure to more accurately reflect the plant operation, 2) simplify the tax structure to make it more reasonable and easier to apply, and 3) eliminate existing tax deductions currently used by DGC.

SB 2133 will change the existing tax of 4.1 percent on the gross receipts of non-exempt syngas and by-products to a flat 2 percent tax on **all** gross receipts from the production of **all** products. It simplifies the tax code and allows the tax code to grow with the facility.

This change still results in increased taxes over the next five years, but at a more reasonable rate in comparison to the current method. The fiscal note is positive and I hope that results in your positive consideration.

#2 p. 1
SB 2133
3-6-17

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Proposed Change of Coal Conversion Taxes on Coal Gasification Plants

#2.p.2

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#2 p.3

Dakota Gasification Company (DGC) Great Plains Plant: A Unique Facility

- Only commercial coal gasification facility producing synthetic natural gas
- Liquid chemicals production
- Fertilizer production
- Carbon Dioxide (CO_2) Capture & transportation

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#2 p.4

DGC Today

- Work Force: approx. 750 people
  - With Urea plant online: 800 people
- Coal Usage: approx. 18,000 tons daily
- 2015 State & Local Taxes: $10.3 million
- Environmentally Compliant
- CO_2 Emissions Reduced up to 54% Since 1999

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#2 p. 5

Why Are We Here

- DGC's operation has outgrown the existing statutes
  - Existing statute based on production of synthetic natural gas (SNG).
  - DGC produces more fertilizer & by-products than SNG
- Existing statute is complex
- DGC's coal conversion taxes will increase 86% in the next 5 years. ($7.7 million)

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#2e.9

What is Coal Conversion Tax

- Coal conversion tax is paid in lieu of property tax
- On a **Power Plant**: the tax is based on the production of the plant.

  i.e. capacity and generation
- On a **Gasification Facility**: the tax is based on the revenue earned from the products produced.

  i.e. SNG and by-products

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#2 p.7

What Is Being Proposed

- Modifying the tax structure to more accurately reflect plant operation
- Simplifying the tax structure to make it more reasonable and easier to apply.
- Eliminating existing tax deductions

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#2 p.8

What Has Happened at the Plant

1. $1.6 billion has been invested since 1988 to diversify the plant and keep it operating.
   a. $805 million from 1988-2015
   b. $805 million in progress 2016-2018

When purchased in 1988, 98% of DGC's revenue was from SNG production

BASIN ELECTRIC
POWER COOPERATIVE
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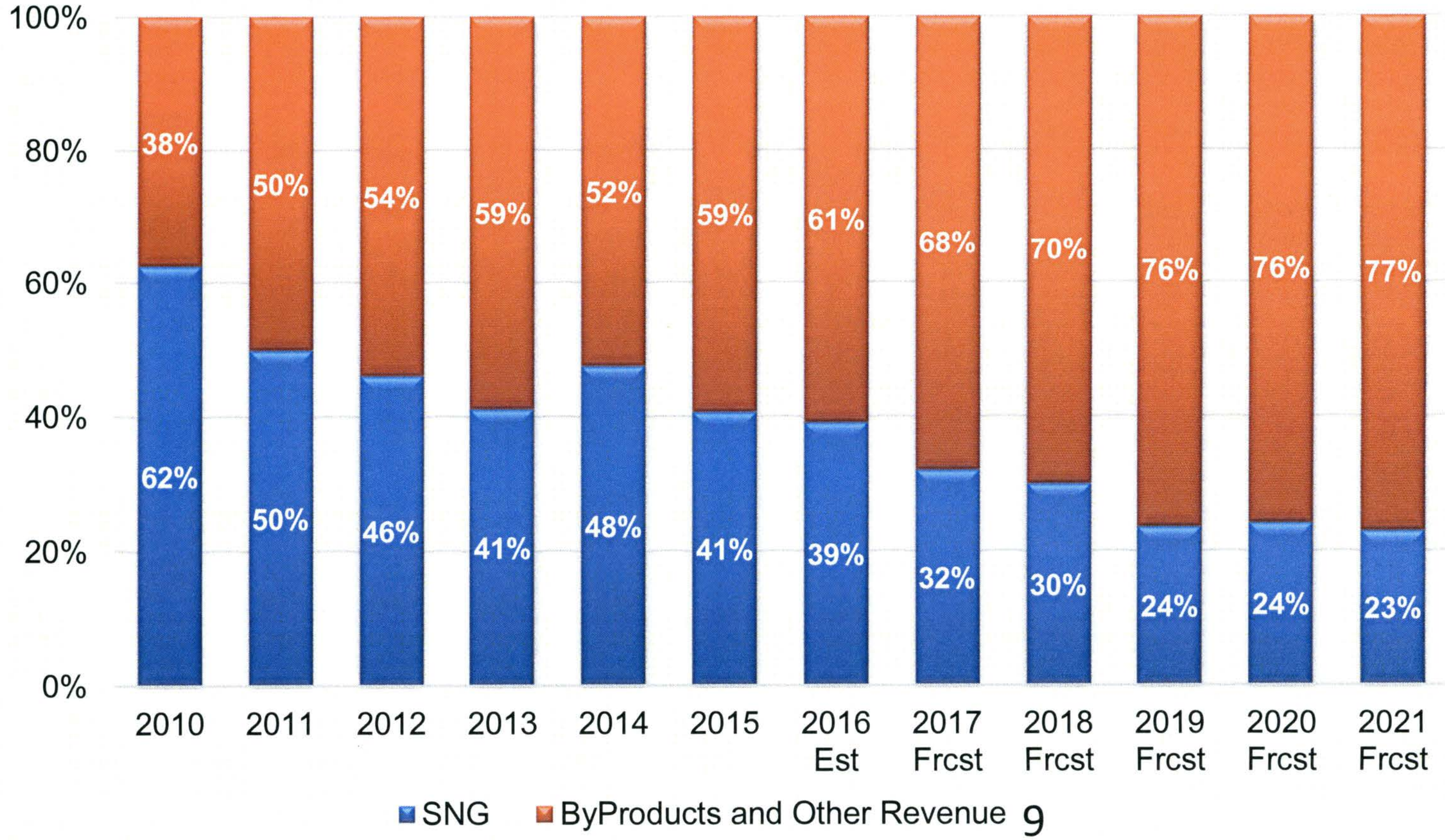
#2 p.9

2017-2026 Financial Forecast

DGC Total Revenue



#2p.10

What Has Happened at the Plant

2. SNG that was previously tax exempt has shifted to a taxable product.
   - Until 1999 avg. daily production of SNG was 150 MMcf/d
   - Tax statutes capped the taxable SNG at 110 MMcf/d, to provide a fair coal conversion tax amount.
   - Diversification of plant will eliminate the nontaxable production of the SNG above 110 MMcf/d and put taxable products in its place.

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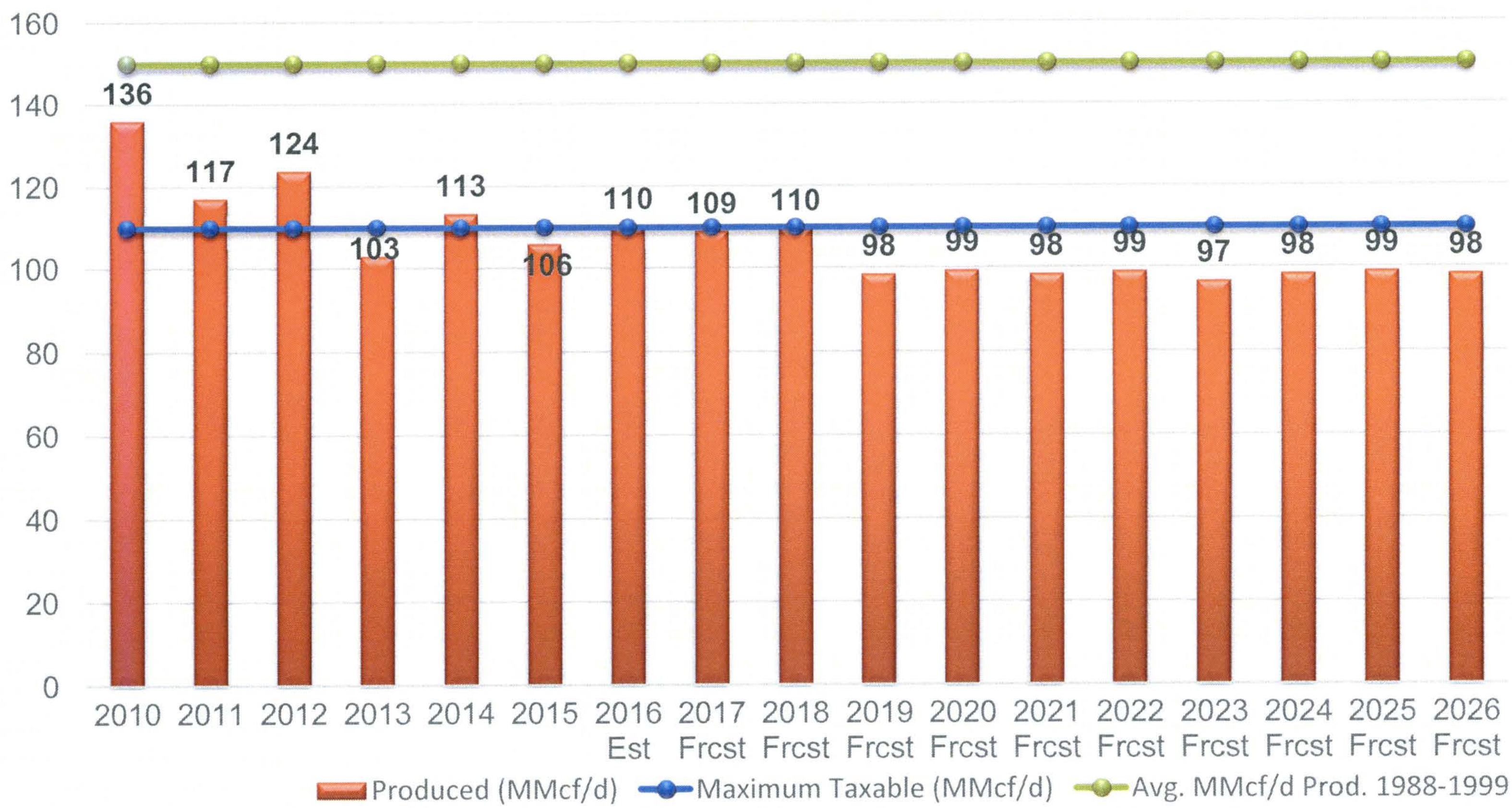
#2 p. 11

DGC SNG Volumes



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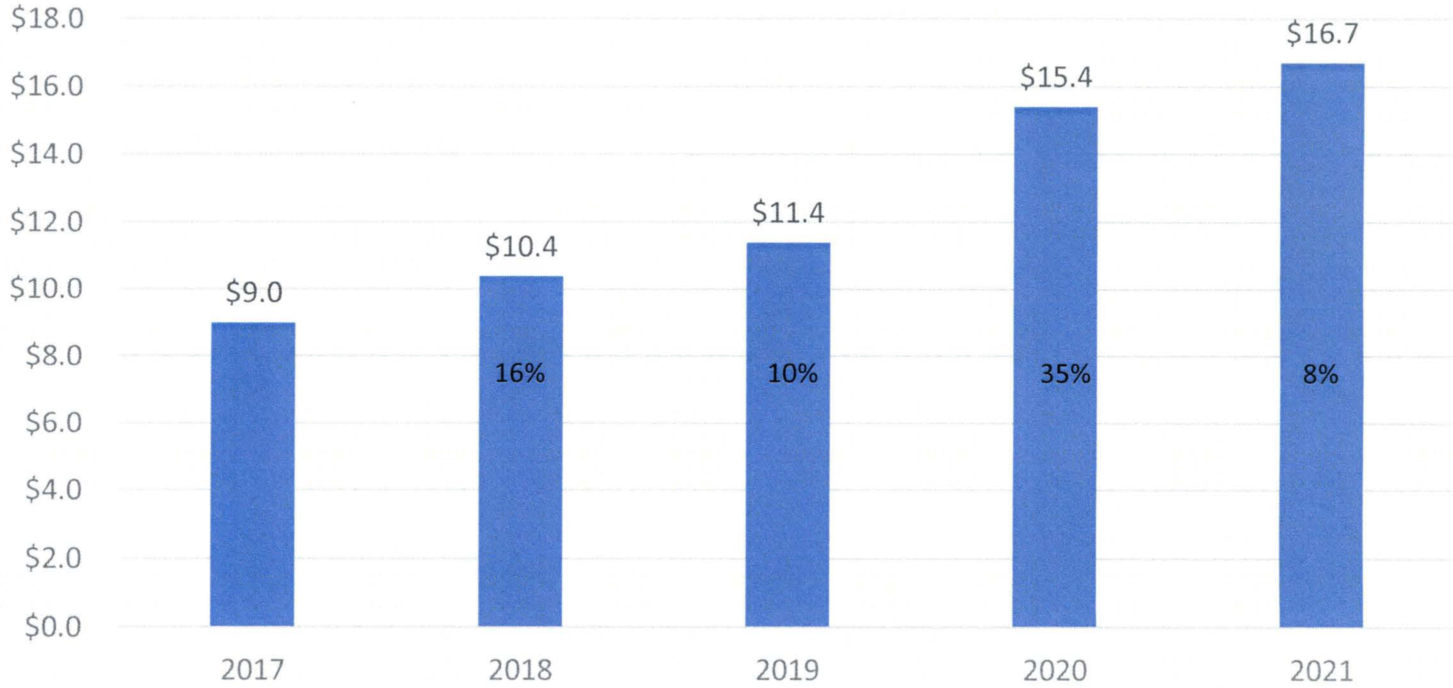
#2 p. 12

Current Coal Conversion Tax Projection (86% increase)



BASIN ELECTRIC POWER COOPERATIVE

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#2 p.13

Proposal

- Change the existing tax to a flat 2% on all gross receipts from the production of products. *(64% increase)*
- Eliminate existing tax deductions.
  - Carbon dioxide capture exemption
  - Gross receipts from the sale of carbon dioxide
  - Transportation & other costs associated with the sale of products.
  - 20% deduction of total gross receipts of all products

BASIN ELECTRIC POWER COOPERATIVE
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#2 p.14

Effect of the Proposal

- Elimination of Current Tax Deductions (Calendar Yr.)
  - CO_2 capture exemption (17-19) - $7.2 Million
  - Gross receipts CO_2 sales(17-19) - $2.2 Million
  - Transportation & other costs (17-19) - $5.8 Million
  - <u>20% of products gross receipts (17-19)- $7.7 Million</u>
  - Total - $22.9 Million

- Fiscal note on the change (Biennium)
  - 2017-2019 = $1,055,000 benefit to General Fund

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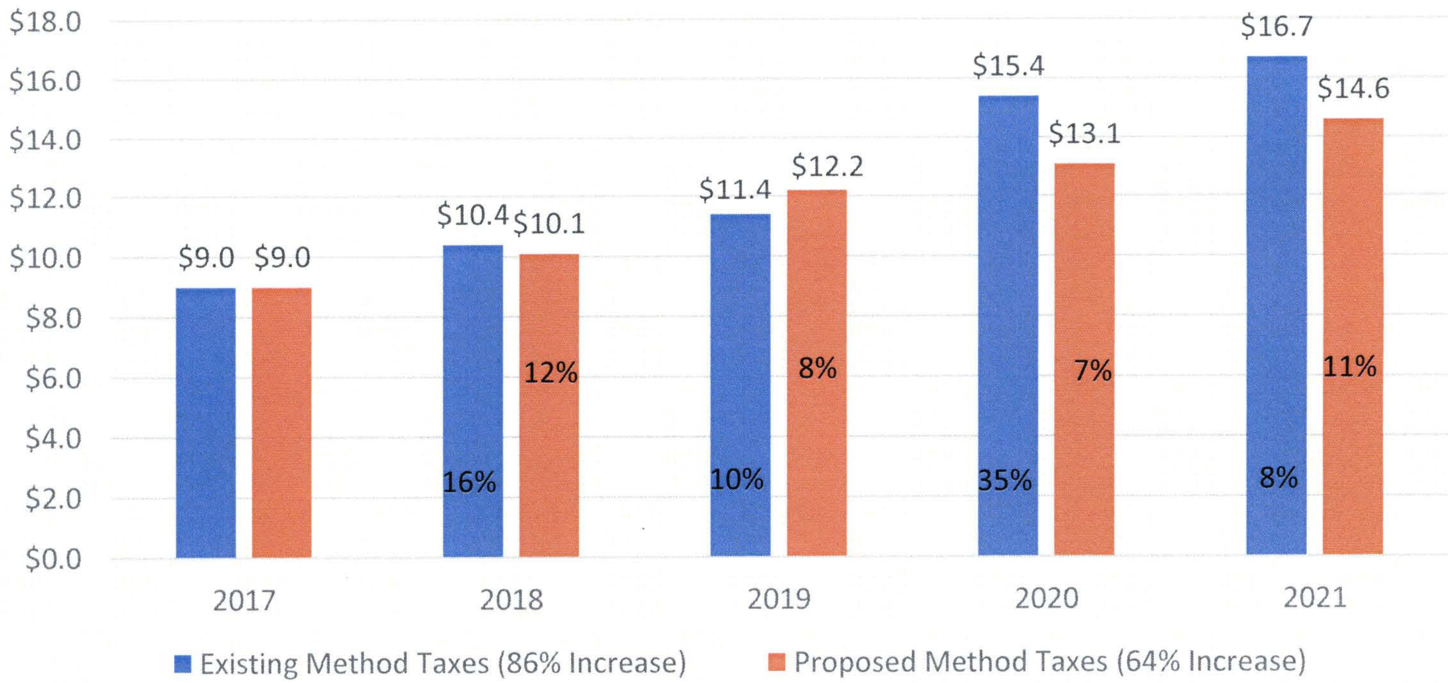
#2p.15

DGC Coal Conversion Tax Projections



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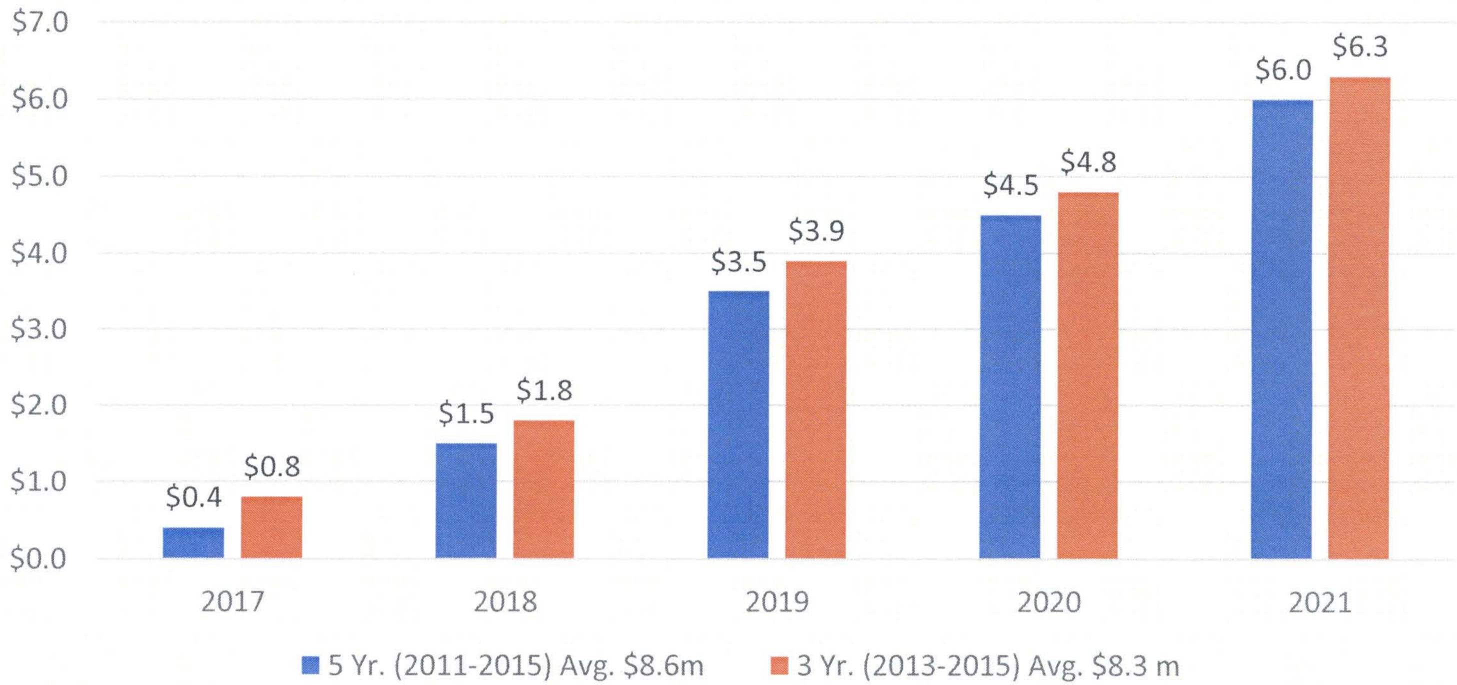
#2 p.16

Proposed Coal Conversion Tax
Increase Above Previous Avg.



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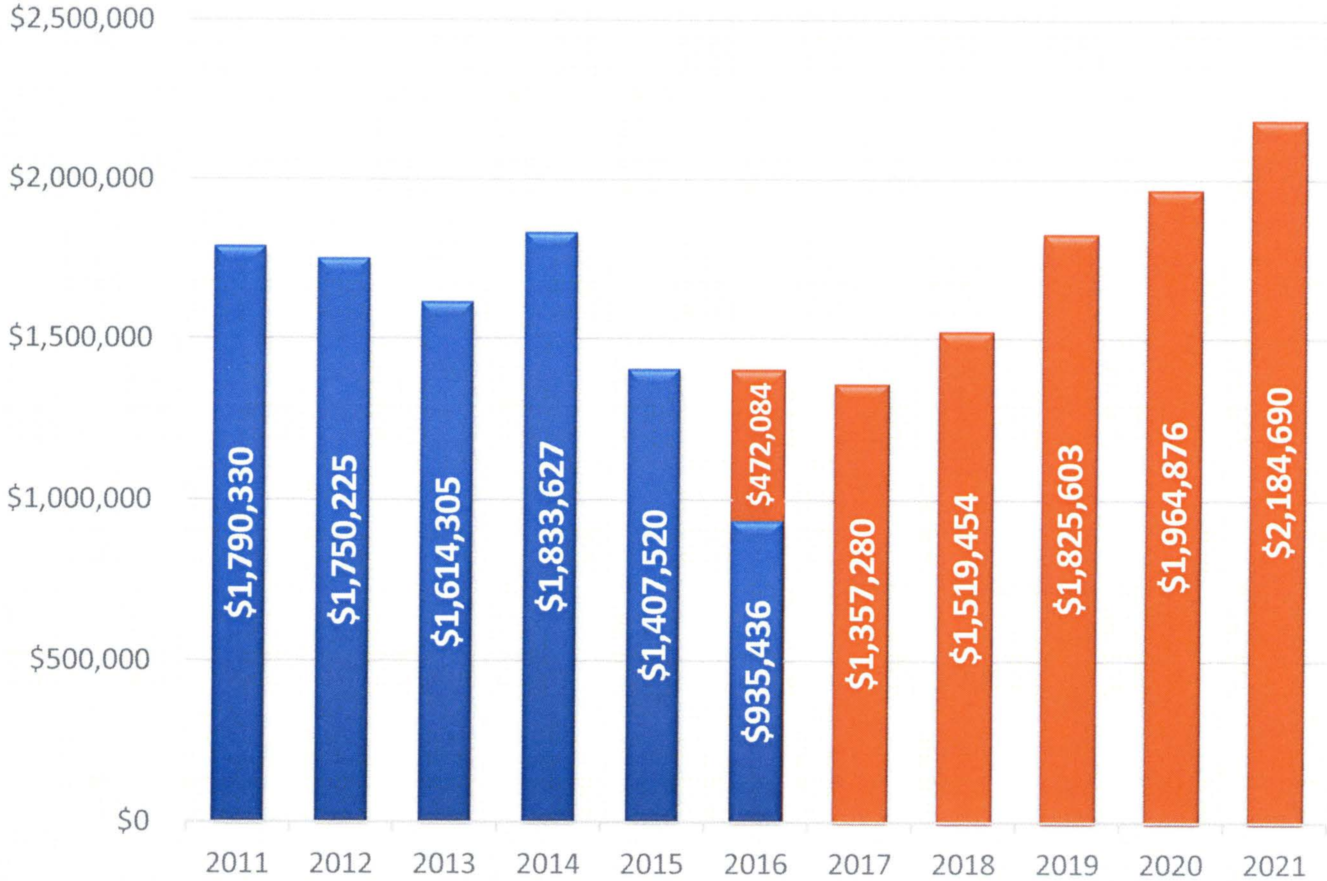
#2 p.17

Mercer County

Coal Conversion Tax Dollars



BASIN ELECTRIC POWER COOPERATIVE

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#3
SB 2133
3-6-17

Dakota Gasification Company
Plant Investment
Inception through June 15, 2016
Amended January 24, 2017

Capital Investment through December 31, 2015	Expansion	Replacement	Total
Anhydrous Ammonia Storage	39,004,520	0	39,004,520
Anhydrous Ammonia Production	114,956,195	14,317,852	129,274,046
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Urea Production	740,000,000	0	740,000,000
Total Construction Work in Progress as of June 15, 2016	**777,456,323**	**27,895,071**	**805,351,394**
Total Plant Investment	**$1,428,543,820**	**$181,899,156**	**$1,610,442,975**