

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1268

2005 HOUSE FINANCE AND TAXATION

HB 1268

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1268**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **January 24, 2005**

Tape Number	Side A	Side B	Meter #
1	X		0.8

Committee Clerk Signature

Janice Stein

Minutes:

REP. WES BELTER, CHAIRMAN Called the committee hearing to order.

Rep. Belter introduced the bill. He made some opening comments and left the technical parts of the bill for others. He stated that several weeks ago, he was at an energy conference, and one of the things he brought home from this conference, is the amount of energy that we have in this country. North Dakota has the largest single source of lignite in the world. Nearly twenty five percent of the coal in the world, is here in the United States. That amount of coal is equivalent to the amount of oil that Saudi Arabia has. It is 1.3 times the oil of OPEC. When we talk about an energy crisis in this country, we maybe do have an energy crisis but it is self-inflicted by man. I think it is very important that an energy rich state like North Dakota, that we have laws and do everything we can to make sure our coal industry is competitive. At that conference, there was someone there from South Dakota, and he was introducing legislation which would remove the sales tax for development for power plants. It sounded like they were doing some of the things

we have already done. This bill will remove any sales tax on any new, clean coal improvement done by our plants.

SEN. DAVE O'CONNELL, DIST. 6 Testified in support of the bill as a co-sponsor. Rep. Belter did a good job of explaining the bill.

REP. JIM KERZMAN, DIST. 31, Testified in support of the bill as a co-sponsor. I think it is very important to North Dakota when we can refurbish a plant we already have existing, and upgrade it so it meets economic deficiencies and environmental standards. Coal is very important to this state. The plant I am familiar with, will make almost a million dollar investment, in doing so, it will produce an extra two hundred megawatts for the state of North Dakota.

SEN. RANDY CHRISTMANN, DIST. 33 Testified in support of the bill. We sometimes have to weigh the positive and negative impact of legislation. He stated there are eight positive impacts and no negative impact. See written testimony.

JOHN DWYER, PRES. OF THE LIGNITE ENERGY COUNCIL Testified in support of the bill. See attached written testimony. Also submitted amendments to the bill.

REP. WRANGHAM Did you say that the decision of the fifteen percent would still remain with the counties under this bill?

JOHN DWYER That is correct. Mr. Dwyer went on to explain his amendments, which he stated were housekeeping amendments.

DALE NIEZWAAG, REPRESENTING BASIN ELECTRIC POWER COOPERATIVE
Testified in support of the bill. See attached written testimony.

REP. WEILER I noticed the fiscal note doesn't mention anything about the upcoming biennium, are there any numbers or figures you might have as to the cost?

DALE NIEZWAAG For this biennium, there would be no cost. We hope to make some decisions at the end of this year or beginning of next year. We really don't know what we will be doing, at this time, at Leland Olds, we just know something needs to be done.

REP. WEILER Is there any idea of future costs?

DALE NIEZWAAG If we put scrubbers in we are looking at a two to three hundred million dollar investment, if there is a three hundred million dollar investment, I believe the sales tax incentive would be about seven and a half million dollars in sales tax. If you went with a repowering option, the state gets 2.1 million dollars per year. A five year coal conversion exemption would be about a ten million dollar exemption over a five year period, if we would repower.

REP. WEILER That is for one plant?

DALE NIEZWAAG That is for Leland Olds Unit 2.

REP. DROVDAL Do you know of any other plants who may take advantage of this legislation?

DALE NIEZWAAG I would refer back to John Dwyer's testimony, the Heskitt Station, Leland Olds Station, Stanton Station, and Young station.

REP. SCHMIDT Because there is no fiscal note in the next biennium, that doesn't mean you are not going to work on the plant before two years are up?

DALE NIEZWAAG That is correct. Right now, we are in the process of evaluating technologies and doing planning. We figure a three to four year construction period to get these things done. Construction activity probably wouldn't start until 2008.

REP. KELSH The potential passing of this bill could influence what your plans are?

DALE NIEZWAAG That is correct. I can't stand before you and say, if this legislation is passed, that we will repower, and I can't say if it doesn't pass that it won't happen. This is one of the things we will take into consideration as we evaluate technology.

REP. WRANGHAM Obviously, there will be an influx of dollars into this state, this fiscal note, in reality, by the time that comes in, with the influx of sales tax money, with this rollover of revenue, have you done anything to calculate whether this would actually be a wash?

DALE NIEZWAAG We looked at what the return to the state is, with the additional jobs, there is an increase in dollars, after the five year period on repowering, but as far as considering, each option and considering what the increase could be to the state on sales tax and wages, versus the options, no we haven't done that.

MARCY DICKERSON, STATE TAX DEPARTMENT Testified in a neutral position.

See written testimony.

DAVID PORSBERG, CHAIRMAN OF THE NORTH DAKOTA COUNTIES ASSN.

Testified in support of the bill. See attached written testimony.

REP. DROVDAL You heard the testimony from Marcy regarding the exemption, but if this exemption provides for in lieu of currently receiving taxes, if the state wanted to remove that in lieu of dollars, is it your feeling the counties would still allow the fifteen percent exemption?

DAVID PORSBERG That is kind of a tough question. At the county we are situated the same as you are at the state. A couple of our school districts have concerns that they are already at the maximum mill levy, and if we let some of this conversion tax go, we will have to make that up elsewhere.

With no further testimony, the committee hearing was closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1268**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **February 2, 2005**

Tape Number	Side A	Side B	Meter #
1	x	x	49.4 to side B

Committee Clerk Signature

Minutes:

COMMITTEE ACTION

REP. BELTER presented two sets of amendments to the committee members. 50589.0103 and 50589.0101

REP. DROVDAL Made a motion to adopt the amendments as presented.

REP. OWENS Second the motion. Motion carried by voice vote.

REP. WRANGHAM Made a motion for a **do pass as amended**.

REP. BRANDENBURG Second the motion. **Motion Carried.**

13 yes 0 no 1 absent

REP. SCHMIDT Was given the floor assignment.

FISCAL NOTE
Requested by Legislative Council
02/08/2005

Amendment to: HB 1268

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

2003-2005 Biennium			2005-2007 Biennium		2007-2009 Biennium	
General Fund	Other Funds		General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed HB 1268 provides a sales tax exemption and a coal conversion tax exemption and reduced rate schedule for coal conversion facilities that engage in the environmental upgrade and repowering of a power plant.

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.*

Based on available information, is it unlikely that Engrossed HB 1268 will have any impact in the 2005-07 biennium. The first qualifying environmental upgrade is currently scheduled to occur beyond this 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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Kathryn L. Strombeck
Phone Number: 328-3402

Agency: Office of Tax Commissioner
Date Prepared: 02/09/2005

FISCAL NOTE
Requested by Legislative Council
01/12/2005

Bill/Resolution No.: HB 1268

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

2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues					
Expenditures					
Appropriations					

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1268 provides a sales tax exemption and a coal conversion tax exemption and reduced rate schedule for coal conversion facilities that engage in the environmental upgrade and repowering of a power plant.

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.*

Based on available information, is it unlikely that HB 1268 will have any impact in the 2005-07 biennium. The first qualifying environmental upgrade is currently scheduled to occur beyond this biennium. There will be some testimony that will address some of the particulars that may occur with power plant upgrades in subsequent biennia.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Kathryn L. Strombeck
Phone Number: 328-3402

Agency: Office of Tax Commissioner
Date Prepared: 01/21/2005

Date:

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES

House

Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

Representatives
BELTER, WES, CHAIRMAN
DROVDAL, DAVID, V-CHAIR
BRANDENBURG, MICHAEL
CONRAD, KARI
FROELICH, ROD
GRANDE, BETTE
HEADLAND, CRAIG
IVERSON, RONALD
KELSH, SCOT
NICHOLAS, EUGENE
OWENS, MARK
SCHMIDT, ARLO
WEILER, DAVE
WRANGHAM, DWIGHT

Yes

No

Representatives

Yes No

Total (Yes)

No

Absent

Floor Assignment

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

REPORT OF STANDING COMMITTEE

HB 1268, as amended, 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 1268, as amended, was placed on the Sixth order on the calendar.

Page 2, remove lines 6 through 8

Page 3, remove lines 24 through 26

Page 5, line 10, replace "replacing the existing process of converting lignite from its" with "an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting lignite coal from its natural form into electric power."

Page 5, remove lines 11 through 14

Page 5, line 31, replace "added" with "completed"

Page 6, line 19, replace "added" with "completed"

Page 7, line 12, after the period insert "If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted."

Renumber accordingly

2005 SENATE FINANCE AND TAXATION

HB 1268

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1268**

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 8, 2005**

Tape Number	Side A	Side B	Meter #
# 1		X	24.0 - 56.3

Committee Clerk Signature



Minutes:

CHAIRMAN URLACHER CALLED THE COMMITTEE TO ORDER AND OPENED THE HEARING ON HB 1268.

REP. BELTER: Prime sponsor of the bill appeared in support stating what the bill does is to provide sales of use tax relief for regeneration of our power plants and to bring them up to environmental standards which would be so important with a lot of new clean coal technology that's coming forward. I think we are constantly competing with coal from Montana and Wyoming and so in order for our coal plants to remain competitive we need to provide an environment for them to compete and hopefully this bill will do that.

SEN. CHRISTMANN: cosponsor of the bill appeared in support stating this is legislation to get a sales tax and perversion tax incentives to encourage you to repowering our environmental upgrades at the power plants. This would not take affect immediately so there is no immediate

economic impact and does not apply to very small maintenance type jobs, so this only on big environmental upgrades or hopefully a complete repowering of one of these plants.

REP. KERZMANN: cosponsor of the bill appeared in support stating this makes so much sense as stated before on upgrading and by doing so they up what they put out, the return dollars many fold in the State.

JOHN DWYER: Lignite energy Council appeared in support with written testimony.

SEN. WARDNER: the exemption in the bill, I didn't see any, is that for the 85%? Is that 5 years?

ANSWER; yes, that's for a 5 year period on the conversion tax on the sales tax it would be permanent if you will.

SEN. BERCIER: your effective date starts June 30, 2005 and there is no sunset?

ANSWER: that's correct.

SEN. EVERY: I'd like to know, the first qualifying environmental upgrade is currently scheduled to occur beyond the biennium, what's that? First of all, what is the first qualifying environmental upgrade? And give us an example of what they might cost us.

ANSWER; referring to chart he handed out, recognizing that we have compliance until 08, that would probably be the first major upgrade. (page 2 of testimony) It doesn't cost you anything, if you don't provide the incentive and the project doesn't occur, the option of what its going to cost you, is probably a lot of jobs and a lot of lignite production. In terms of cost or amount on the high side, if you repower _____ its like building a new power plant, so the price tag is projected at 800 million dollars and 5% x 800 million dollars is 40 million dollars. But the alternative is no plant, big cost to the State.

Page 3
Senate Finance and Taxation Committee
Bill/Resolution Number HB 1268
Hearing Date March 8, 2005

DALE NIEZWAAG: of Basin Electric appeared in support with written testimony.

DAVID PORSBORG: County Commissioner for Oliver County and Chairman Urlacher called the Committee to order and opened the hearing on of the Coal Conversion County Organization appeared in support with written testimony.

MARCY DICKERSON: Tax Dept. Appeared neutral on the bill with written testimony.

Closed the hearing.

SEN. O'CONNELL: could not make to the hearing but asked to be noted on the record as supporting this bill.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1268**

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 9, 2005**

Tape Number	Side A	Side B	Meter #
# 2	X		20.7 - 24.0

Committee Clerk Signature



Minutes: **COMMITTEE WORK**

SEN. TOLLEFSON: I don't think we have much of a choice. We have a bunch of old power plants and if we want them to stay there, we're gonna have to help them along.

SEN. URLACHER: its our bread and butter.

SEN. EVERY: You know where I stand on this.

SEN. WARDNER: DO PASS seconded by Sen. Cook.

ROLL CALL VOTE: 5-1-0 Sen. Wardner will be the carrier of the bill.

Date: 3-9-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1268

Senate

Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Wardner

Seconded By

Cook

Senators
Sen. Urlacher
Sen. Wardner
Sen. Cook
Sen. Tollefson

Yes No
✓
✓
✓
✓

Senators
Sen. Bercier
Sen. Every

Yes No
✓
✓

Total (Yes)

5

No

1

Absent

0

Floor Assignment

Wardner

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

REPORT OF STANDING COMMITTEE (410)
March 9, 2005 3:39 p.m.

Module No: SR-43-4562
Carrier: Wardner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1268, as engrossed: Finance and Taxation Committee (Sen. Urlacher, Chairman)
recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed
HB 1268 was placed on the Fourteenth order on the calendar.

110

2005 TESTIMONY

HB 1268

HOUSE FINANCE & TAXATION COMMITTEE

Rep. Wes Belter, Chairman

January 24, 2005

HB 1268

Positive impacts of HB 1268:

- 1 Development of brownfields, not new land
- 2 Development in areas that are already prepared for large scale construction activity
- 3 Creation of construction jobs
- 4 Creation of permanent jobs
- 5 Increased mineral revenues for state and local governments as well as landowners
- 6 Increased revenues from power sales
- 7 More dependable and affordable electricity on the market
- 8 Less emissions.

Negative impacts of HB 1268:

This is a great economic opportunity for North Dakota!

Give HB 1268 a "Do Pass" recommendation!

Sen. Randy Christmann

**Testimony of John W. Dwyer
President, Lignite Energy Council
Before the House Finance & Taxation Committee**

- I. Lignite is a major contributor to North Dakota's economy
 - A. Creates 22,000 direct & indirect jobs
 - B. Generates personal income of over \$575 million
 - C. Generates over \$1.7 billion of business volume
 - D. Generates \$75 million of state tax revenue annually / \$150 million over biennium

- II. North Dakota Units Facing Environmental Challenges (Older Units)
 - A. 1954 – Heskett Station Unit 1, 25 megawatts
 - B. 1963 – Heskett Station Unit 2, 75 megawatts
 - C. 1966 – Leland Olds Station Unit 1, 216 megawatts
 - D. 1967 – Stanton Station Unit 1, 200 megawatts
- Stanton Station has two boilers and one generator, which has a nameplate capacity of 200 MWs
 - E. 1970 – Milton R. Young Station Unit 1, 257 megawatts
 - F. 1975 – Leland Olds Station Unit 2, 440 megawatts

- III. HB 1268 introduced for three reasons
 - A. Protect the jobs and coal production in Coal Country, especially those which are derived from our older plants
 - B. Encourage environmental and efficiency upgrades so that lignite is the fuel of choice; and
 - C. Utilize latest clean coal technology to position future of lignite industry so we can continue to produce jobs, economic activity and tax revenue we all enjoy and rely on

- IV. Stringent environmental standards are forcing changes in operations of older plants
 - A. Timeline: Electric Power Sector Faces Numerous CAA Regulations

Timeline: Electric Power Sector Faces Numerous CAA Regulations

NSR Permits for new sources & modifications that increase emissions

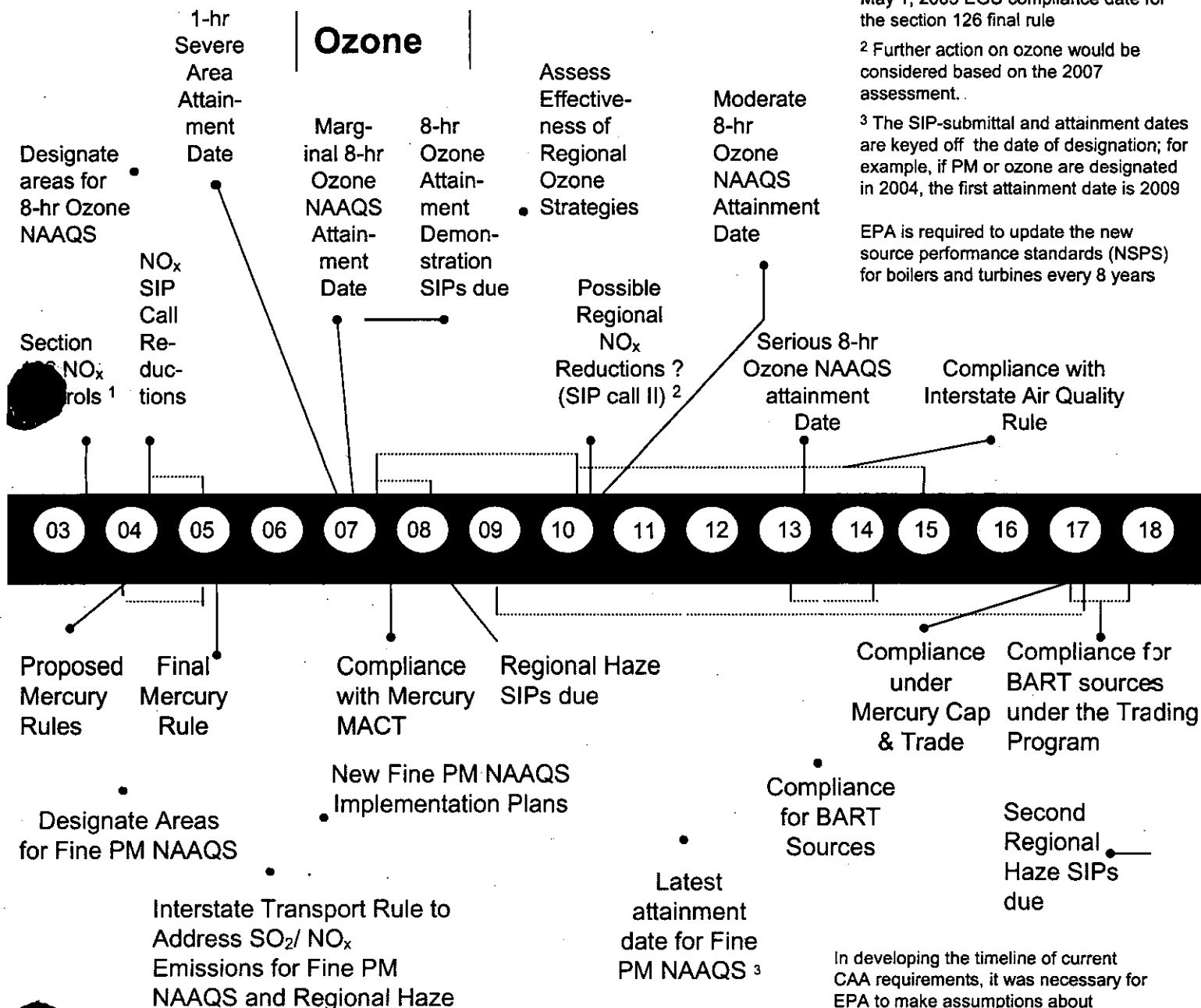
Note: Dotted lines indicate a range of possible dates.

¹ The D.C. Circuit Court has delayed the May 1, 2003 EGU compliance date for the section 126 final rule

² Further action on ozone would be considered based on the 2007 assessment.

³ The SIP-submittal and attainment dates are keyed off the date of designation; for example, if PM or ozone are designated in 2004, the first attainment date is 2009

EPA is required to update the new source performance standards (NSPS) for boilers and turbines every 8 years



Source: U.S. EPA –
Updated by LEC 5/04

**Acid Rain, Haze,
Toxics, PM_{2.5}**

In developing the timeline of current CAA requirements, it was necessary for EPA to make assumptions about rulemakings that have not been completed or, in some cases, not even started. EPA's rulemakings will be conducted through the usual notice-and-comment process, and the conclusions may vary from these assumptions.

- V. Two Basic Choices
 - A. Shut down or switch to another fuel source other than lignite
 - B. Invest in existing plants through environmental/efficiency upgrades/or repowering improvements
 - C. Investment is only prudent choice for North Dakota and that is why HB 1268 is important because it provides incentives to invest in older plants

- VI. Explanation of HB 1268
 - A. Section 1 & 2 – Defines threshold for determining upgrade that will be exempt from sales and use tax
 - 1. \$25 million or \$1,000 installed nameplate capacity is exempt from sales or use tax
 - a. Leland Olds II (largest unit) – \$25 million threshold
 - b. Heskett I (smallest unit) - \$2.5 million threshold
 - B. Repowering threshold is \$200 million or \$1 million per megawatt of installed capacity
 - 1. Leland Olds II - \$200 million
 - 2. Heskett I - \$25 million
 - C. Section 3, 4 & 5 provide same coal conversion tax exemption for repowering as for new plants
 - 1. 85% is exempt from state
 - 2. 15% is discretionary with county (state, city, county)

- VII. Housekeeping Amendments
 - A. Eliminates exemption for non-coal or waste heat – Not imminent at this time (pages 2 & 3)
 - B. Makes re-powering definition under Section 1 and Section 4 consistent (pages 2 & 5)
 - C. Would require repowering to be “completed” before exempt from coal conversion tax (pages 5 & 6)

- VIII. We urge a “Do Pass” vote on HB 1268, as proposed to be amended.

**Dale Niezwaag - Basin Electric Power Cooperative
North Dakota House Bill No. 1268
House Finance and Taxation Committee
January 24, 2005**

Mr. Chairman and members of the committee, my name is Dale Niezwaag and I am here representing Basin Electric Power Cooperative. Basin Electric supports the passage of HB 1268.

The lignite industry in North Dakota is faced with several challenges. Two of them being increased environmental regulations and aging plants. This legislation provides incentives to utilities that chose to make significant investments in existing plants to reduce their emissions and extend their life while continuing to use North Dakota lignite as their fuel source.

Using our oldest plant, the Leland Olds Station (LOS) near Stanton I can give you a real example of the situations faced by utilities in the state with older lignite plants. If no changes are made to LOS, the plant could be forced to shut down by 2013 in order to comply with EPA's regional haze rules. Some of the options currently being considered include:

- Shutting down the plant and building a new plant in the region
- Switching to subbituminous coal
- Adding environmental controls (scrubbers)
- Replacing the boilers
- Repowering using coal gasification

In each case, as the cost of the solution increases, the length of time the problem is solved increases. If we switch to subbituminous coal the cost is relatively inexpensive but the plant life is only extended by several years. If scrubbers are added to the plant, the cost is \$200-\$300 million and the plant life is extended approximately 20 years. If a new plant is built the cost is over \$1 billion but the life of a new plant is approximately 50 years.

One provision of the proposed legislation provides a sales tax exemption for the purchase of environmental control equipment if a substantial investment is incurred.

In the case of repowering, the legislation provides for a sales tax and coal conversion tax incentive. These incentives are the same ones provided to new coal plants under existing law. This legislation treats a repowered plant the same as a new plant because the repowering envisioned would extend the life of the plant almost as much as a new plant. We estimate a repowered LOS would operate until 2052, an extension of 40 years.

With a 5-year coal conversion exemption for an existing facility there would be an impact to the current state budget in 2012 or whenever the repowered plant came on line. But by repowering the plant it would also mean an additional 40 years of current employment at 124 employees, plus coal severance and conversion taxes of approximately \$2.1 million per year paid to the state. Repowering LOS with the

technology we are evaluating would also include an additional 15 employees and 500,000 more tons of lignite needed at the plant. Expanding and continuing the operation of the plant would allow the state to recoup their investment several times over.

Again Basin Electric is supporting this bill and would encourage a "Do Pass" recommendation by the committee on HB 1268. This concludes my testimony and I would be happy to try and answer any questions.

HOUSE FINANCE AND TAXATION COMMITTEE

January 24, 2005

Testimony of Marcy Dickerson, State Supervisor of Assessments

HOUSE BILL No. 1268

Mr. Chairman, Members of the Committee, for the record my name is Marcy Dickerson and I am employed as State Supervisor of Assessments and Director of the Property Tax Division by the State Tax Commissioner.

House Bill No. 1268 contains provisions relating to sales and use taxes and coal conversion facility privilege tax. My testimony concerns coal conversion facility privilege tax only. This bill adds to the definition of "coal conversion facility" a gas-fired electrical generating facility, and all additions to the facility, which generates electrical power through the consumption of gas produced by the conversion of lignite from its natural form into gas and has a capacity of 10,000 kilowatts or more. It also provides for a five-year coal conversion tax exemption for all electrical generating plants that begin added repowering. "Repowering" means replacing the existing process of converting lignite from its natural form into electrical power at an existing generating plant to a process that reduces emissions, increases efficiency, and involves an investment of over \$200 million or \$1 million per megawatt of installed nameplate capacity, whichever is less."

I have been told that one plant is under consideration for repowering - Leland Olds Unit 2, located in Mercer County. The project will not begin for about three years. The existing plant will not be shut down but will continue to operate while the new process is constructed adjacent to it. At completion of repowering, the new unit will begin to operate. Under this scenario, this bill will have no effect on coal conversion tax for the 2005-2007 biennium.

For production during FY 2004, Leland Olds Unit 2 paid \$2,266,262.65 in coal conversion taxes. Of that amount, \$226,100.16 went to Mercer County and \$2,040,162.49 went to the State General Fund.

The repowered plant is expected to have increased capacity of 200 megawatts, to 640 megawatts. The new plant would pay 45 percent more in nameplate installed capacity tax, which is allocated 15 percent to Mercer County and 85 percent to the State General Fund. I estimate a similar increase in production tax, which is allocated 100 percent to the State General Fund.

The proposed five-year exemption from the State General Fund portion of the coal conversion tax for added repowering would, in my opinion, apply only to the additional 200 megawatts. The installed capacity tax, which is allocated 15 percent to the county and 85 percent to the State General Fund, would still be paid on the original 440 megawatts. I believe the repowered plant would be exempt from 45 percent of the production tax that goes entirely to the State General Fund. The revenue to the State General Fund would be similar to what it is now. However, I think it needs to be better clarified in the bill whether the exemption applies only to the additional megawatts or to the entire plant.

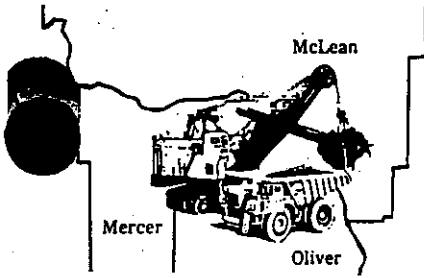
If the county decided to grant exemption from its 15 percent allocation of the installed capacity tax, I think Mercer County would still receive the tax on 440 megawatts; the exemption would apply only to the new 200 megawatts. Again, this needs to be clarified.

I believe N.D.C.C. § 57-60-14(2), which provides that coal conversion tax allocation to each county may not be less in each calendar year than the amount certified to the state treasurer for each county in the immediately preceding calendar year, requires attention. As written, I believe that subsection would require the State General Fund to make payments indefinitely to a county in which a coal conversion facility ceased to operate. There is no provision anywhere in

Chapter 57-60 that addresses what happens if a coal conversion facility shuts down. If there is a time lag between the shutdown of Leland Olds Unit 2 and the first taxable production from the repowered Leland Olds Unit 2, will the State General Fund be required to pay Mercer County, even though the State General Fund is receiving no revenue from the plant?

Another concern regarding § 57-60-14(2) is what would happen if a county agreed to give a plant an exemption of the county's 15 percent allocation of the installed capacity tax. If the exemption in this bill is for only the new, additional capacity, there is no problem. If this bill is interpreted to offer an exemption on the entire plant, not just the new addition, the county's voluntary exemption could cause that county to receive less in a calendar year than in the immediately preceding calendar year. Would the State General Fund then be required to make up the difference to the county for revenue it voluntarily gave up?

This concludes my prepared testimony. I will be happy to try to answer any questions.



Coal Conversion Counties

McLean, Mercer and Oliver Counties

P.O. Box 717 • Hazen, ND 58545

January 24, 2005
House Bill 1268
House Finance and Tax Committee
9 AM Central Time

Provdahl
Vice Chairman ~~Belter~~ and Committee Members:

My name is Dave Porsborg. I am an Oliver County Commissioner and Chairman of the North Dakota Coal Conversion Counties Association. The Coal Conversion Counties are the counties, cities and school districts within Oliver, Mercer and McLean Counties.

As we understand House Bill 1268, this bill encourages the additional use of lignite coal which is important not only to the state but to our area as well. It encourages Basin Electric to invest in an aging coal plant and to make it burn cleaner, cause less air pollution and to be more efficient with the resource of lignite. We certainly support the continued use of lignite as a fuel stock of choice for our North Dakota power plants. The lignite mines provide valuable jobs in our communities and we want to grow the mining industry for the next generation. We're not sure if all the details of the bill have been ironed out but we support the concept to allow a "repowered" plant with at least a \$200 million dollar investment to be eligible for incentives as if it were a new plant.

Thank you.

**Testimony of John W. Dwyer
President, Lignite Energy Council
Before the Senate Finance & Taxation Committee
HB 1268**

- I. Lignite is a major contributor to North Dakota's economy
 - A. Creates 22,000 direct & indirect jobs
 - B. Generates personal income of over \$575 million
 - C. Generates over \$1.7 billion of business volume
 - D. Generates \$75 million of state tax revenue annually / \$150 million over biennium

- II. North Dakota Units Facing Environmental Challenges (Older Units)
 - A. 1954 – Heskett Station Unit 1, 25 megawatts
 - B. 1963 – Heskett Station Unit 2, 75 megawatts
 - C. 1966 – Leland Olds Station Unit 1, 216 megawatts
 - D. 1967 – Stanton Station Unit 1, 200 megawatts
 - Stanton Station has two boilers and one generator, which has a nameplate capacity of 200 MWs
 - E. 1970 – Milton R. Young Station Unit 1, 257 megawatts
 - F. 1975 – Leland Olds Station Unit 2, 440 megawatts

- III. HB 1268 introduced for three reasons
 - A. Protect the jobs and coal production in Coal Country, especially those which are derived from our older plants
 - B. Encourage environmental and efficiency upgrades so that lignite is the fuel of choice; and
 - C. Utilize latest clean coal technology to position future of lignite industry so we can continue to produce jobs, economic activity and tax revenue we all enjoy and rely on

- IV. Stringent environmental standards are forcing changes in operations of older plants
 - A. Timeline: Electric Power Sector Faces Numerous CAA Regulations

Timeline: Electric Power Sector Faces Numerous CAA Regulations

NSR Permits for new sources & modifications that increase emissions

Note: Dotted lines indicate a range of possible dates.

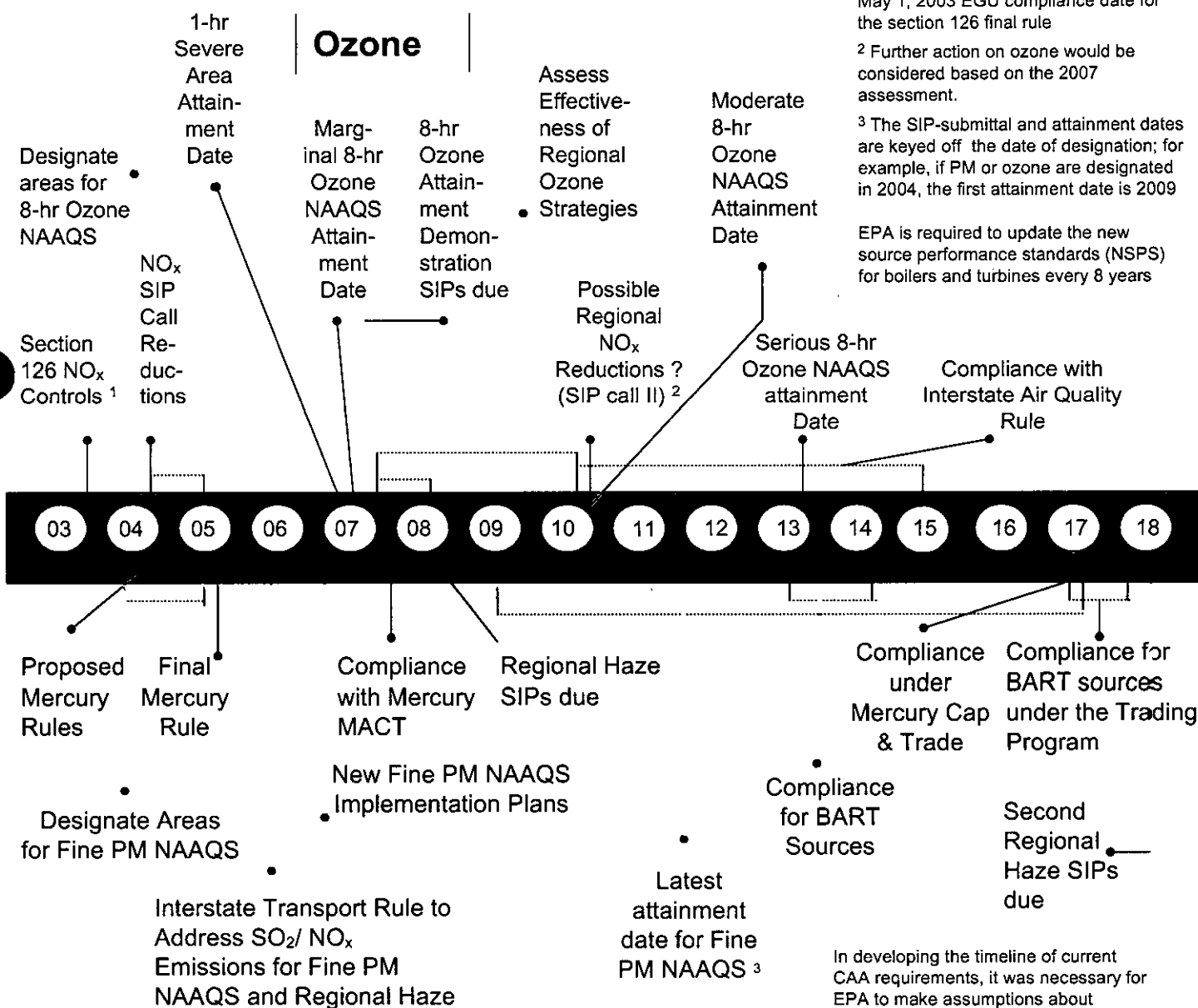
¹ The D.C. Circuit Court has delayed the May 1, 2003 EGU compliance date for the section 126 final rule

² Further action on ozone would be considered based on the 2007 assessment.

³ The SIP-submittal and attainment dates are keyed off the date of designation; for example, if PM or ozone are designated in 2004, the first attainment date is 2009

EPA is required to update the new source performance standards (NSPS) for boilers and turbines every 8 years

Ozone



Source: U.S. EPA –
Updated by LEC 5/04

**Acid Rain, Haze,
Toxics, PM_{2.5}**

In developing the timeline of current CAA requirements, it was necessary for EPA to make assumptions about rulemakings that have not been completed or, in some cases, not even started. EPA's rulemakings will be conducted through the usual notice-and-comment process, and the conclusions may vary from these assumptions.

- V. Two Basic Choices
- A. Shut down or switch to another fuel source other than lignite
 - B. Invest in existing plants through environmental/efficiency upgrades/or repowering improvements
 - C. Investment is only prudent choice for North Dakota and that is why HB 1268 is important because it provides incentives to invest in older plants
- VI. Explanation of HB 1268
- A. Section 1 & 2 – Defines threshold for determining upgrade that will be exempt from sales and use tax
 - 1. \$25 million or \$1,000 installed nameplate capacity is exempt from sales or use tax
 - a. Leland Olds II (largest unit) – \$25 million threshold
 - b. Heskett I (smallest unit) - \$2.5 million threshold
 - B. Repowering threshold is \$200 million or \$1 million per megawatt of installed capacity
 - 1. Leland Olds II - \$200 million
 - 2. Heskett I - \$25 million
 - C. Section 3, 4 & 5 provide same coal conversion tax exemption for repowering as for new plants
 - 1. 85% is exempt from state
 - 2. 15% is discretionary with county (state, city, county)
- VII. ~~Housekeeping Amendments~~
- ~~A. Eliminates exemption for non-coal or waste heat – Not imminent at this time (pages 2 & 3)~~
 - ~~B. Makes re-powering definition under Section 1 and Section 4 consistent (pages 2 & 5)~~
 - ~~C. Would require repowering to be “completed” before exempt from coal conversion tax (pages 5 & 6)~~
- VIII. We urge a “Do Pass” vote on HB 1268, as ^{engrossed} proposed to be amended.

Senate Finance and Tax Committee HB 1268

Chairman Urlacher and committee members, I am David Porsborg. I currently serve as a county commissioner from Oliver County. I am also the chairman of the Coal Conversion Counties Organization. The Coal Conversion counties are Mercer, McLean and Oliver, which are the major counties in North Dakota that convert coal to electricity. Directors for the organization consist of one county commissioner, one city representative and one school representative from each county.

Coal Conversion Counties supports HB 1268 because we feel it will help the lignite industry compete with other forms of coal. In the gasification process lignite coal works the best. Coal Conversion Counties and North Dakota need to keep our power plants continuing to use our own lignite coal and that is why we support HB 1268. Thank you for your time.

David Porsborg

Coal Conversion County Chairman

**Dale Niezwaag - Basin Electric Power Cooperative
Supporting House Bill No. 1268
Senate Finance and Taxation Committee
March 8, 2005**

Mr. Chairman and members of the committee, my name is Dale Niezwaag and I am here representing Basin Electric Power Cooperative. Basin Electric supports the passage of HB 1268.

The lignite industry in North Dakota is faced with several challenges. Two of them being increased environmental regulations and aging plants. This legislation provides incentives to utilities that chose to make significant investments in existing plants to reduce their emissions and extend their life while continuing to use North Dakota lignite as their fuel source.

Using our oldest plant, the Leland Olds Station (LOS) near Stanton I can give you a real example of the situations faced by utilities in the state with older lignite plants. If no changes are made to LOS, the plant could be forced to shut down by 2013 in order to comply with EPA's regional haze rules. Some of the options currently being considered include:

- Shutting down the plant and building a new plant in the region
- Switching to subbituminous coal
- Adding environmental controls (scrubbers)
- Repowering by adding coal gasification or replacing the boilers

In each case, as the cost of the solution increases, the length of time the problem is solved increases. If we switch to subbituminous coal the cost is relatively inexpensive but the plant life is only extended by several years. If scrubbers are added to the plant, the cost is \$200-\$300 million and the plant life is extended approximately 20 years. If a new plant is built the cost is over \$1 billion but the life of a new plant is approximately 50 years.

One provision of the proposed legislation provides a sales tax exemption for the purchase of environmental control equipment if a substantial investment is incurred.

In the case of repowering, the legislation provides for a sales tax and coal conversion tax incentive. These incentives are the same ones provided to new coal plants under existing law. This legislation treats a repowered plant the same as a new plant because the repowering envisioned would extend the life of the plant almost as much as a new plant. We estimate a repowered LOS could operate until 2052, an extension of 40 years.

With a 5-year coal conversion exemption for an existing facility there would be an impact to the current state budget in 2012 or whenever the repowered plant came on line. But by repowering the plant it would also mean an additional 40 years of current employment at 124 employees, plus coal severance and conversion taxes of approximately \$2.1 million per year paid to the state. Continuing the operation of the plant would allow the state to recoup their investment several times over.

Again Basin Electric is supporting this bill and would encourage a "Do Pass" recommendation by the committee on HB 1268. This concludes my testimony and I would be happy to try and answer any questions.

SENATE FINANCE AND TAXATION COMMITTEE

March 8, 2005

Testimony of Marcy Dickerson, State Supervisor of Assessments

HOUSE BILL No. 1268

Mr. Chairman, Members of the Committee, for the record my name is Marcy Dickerson and I am employed as State Supervisor of Assessments and Director of the Property Tax Division by the State Tax Commissioner. My testimony concerns House Bill 1268 as it relates to the coal conversion facilities privilege tax.

It is my understanding that one plant is under consideration for repowering - Leland Olds Unit 2, located in Mercer County. The project will not begin for about three years. The existing plant will not be shut down but will continue to operate while the new process is constructed adjacent to it. At completion of repowering, the new unit will begin to operate. Under this scenario, this bill will have no effect on coal conversion tax for the 2005-2007 biennium.

For production during FY 2004, Leland Olds Unit 2 paid \$2,266,262.65 in coal conversion taxes. Of that amount, \$226,100.16 went to Mercer County and \$2,040,162.49 went to the State General Fund.

The repowered plant is expected to have increased capacity of 200 megawatts, to 640 megawatts. The new plant would pay 45 percent more in nameplate installed capacity tax, which is allocated 15 percent to Mercer County and 85 percent to the State General Fund. I estimate a similar increase in production tax, which is allocated 100 percent to the State General Fund. Under this bill, the repowered plant would be exempt from the production tax for five years.

The issue I addressed in prior testimony regarding § 57-60-14(2) is no longer a concern because of the amendment that was added in the House Finance and Taxation Committee. If a

board of county commissioners grants a partial or complete exemption from the county's portion of the installed capacity tax for a coal conversion facility, that voluntary exemption will not require the state general fund to make up the difference to the county for revenue the board voluntarily gave up.

This concludes my prepared testimony. I will be happy to try to answer any questions.