

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2239

2005 SENATE JUDICIARY

SB 2239

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2239

Senate Judiciary Committee

Conference Committee

Hearing Date January 26 , 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 2700
Committee Clerk Signature <i>Mario L Solby</i>			

Minutes: Relating to wind option agreements, easements, and leasing.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen Robert Erbele, Dist #28 - Introduced the bill. Home of the only wind farm in ND. Wind development is one of the fastest emerging stars in our horizon that is developing. In 2001 we past legislation that created a better environment for wind energy at that time we went for 18% tax rate to just about nothing. The group got together to work on what was needed next. My group was involved with the land owners issues. This bill is for there protection in response to issues that have happened across our boarders. Reviewed the bill.

Rep. Brandenburg - Dist #28, Spoke in support of the bill. (meter 425)

Sen. Nelson asked how many wind turbines are their? 41 giving us \$65 Million in economic development. This year our property taxes actually went down.

Page 2

Senate Judiciary Committee

Bill/Resolution Number SB 2239

Hearing Date January 26, 2005

Jay Haley - Wind Energy Council (meter 620) Gave his testimony - Attment #1

Discussed other industries that have popped up due to this new industry. It cost \$1 million per mega watts. Senator Syverson questioned void part of agreement.

Brian Kramer - ND Farm Bureau Representatives (meter 1767) Gave Testimony - Att. #4.

Woody Barth - ND Farmers Union (meter 2080) gave testimony - Att #2.

Chuck Flemming on behalf of Roger Johnson.

Barb Price, Dakota Resource Council (meter 2500) Gave Testimony - Att #5.

Testimony in Opposition of the Bill:

none

Senator John (Jack) T. Traynor, Chairman closed the Hearing.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2239

Senate Judiciary Committee

Conference Committee

Hearing Date January 31, 2005

Tape Number	Side A	Side B	Meter #
1		X	3000 - 4220
Committee Clerk Signature <i>Mona L Solberg</i>			

Minutes: Relating to wind option agreements, easements, and leasing.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with committee work:

Senator Syverson stated having an issue with the word "potential" as being too broad of a term and removing it. Committee removed and replaced the word with production.

Sen. Trenbeath made the motion to make the amendment and **Senator Syverson** seconded the motion.

Senator Syverson made the motion to do pass SB 2239 as amended and **Senator Triplett** seconded the motion

Carrier: **Senator Syverson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 1/31/05

Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2239

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move to Amend

Motion Made By Sen Trenbeath Seconded By Sen. Syverson

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment _____

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

Date: 1/31/05
 Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2239

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move to Do Pass As Amended

Motion Made By Sen. Syverson Seconded By Sen Triplett

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor			Sen. Nelson			
Senator Syverson			Senator Triplett			
Senator Hacker						
Sen. Trenbeath						

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment Sen. Syverson

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

REPORT OF STANDING COMMITTEE

SB 2239: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2239 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "develop the potential to"

Page 1, line 11, remove "of the potential"

Page 1, line 12, replace "energy" with "option"

Page 2, line 2, remove "of the potential"

Page 2, line 8, remove "or potential production"

Page 2, line 13, remove "of the potential"

Renumber accordingly

2005 HOUSE NATURAL RESOURCES

SB 2239

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2239

House Natural Resources Committee

Conference Committee

Hearing Date **February 25, 2005**

Tape Number	Side A	Side B	Meter #
1	x		1605-5531
2		x	0-48
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

Chr. Jon O. Nelson: I will call the House Natural Resources Committee to order, and ask the clerk to call the roll. I will open the hearing on SB 2239 and ask Karen to read the title.

Sen. Robert Erbele, Distr. 28: The bill before you today deals with options, easements, and leases relating to wind. This bill originated in our district. In the past two sessions we've dealt quite a lot with wind-related issues and have the privilege of having the first wind farm in District 28. As a result of that we're trying to develop some legislation that is germane to the industry. Beginning last year, there was a stakeholders group formed that consisted of developers, industry leaders, the power company who planned all of it, farm organizations, etc. We divided that stakeholders group into smaller subgroups to (deal with) various issues concerning wind development. I was asked to chair the landowners part of that subgroup. We treated it much like we do our legislative interim studies. We had drafted a bill dealing with options and easements. We have what's before you today. We needed to define in code what an

option was, what an easement was. In all cases, as we worked with landowners, we felt that we needed a sunset for protection of the landowner if nothing happens. We chose a five-year period. If you sign an option to have some wind turbines on your property, but the companies don't come forward and actually begin doing anything within five years, you're released from the option. If there is someone else in the area doing business, you can deal with them. If you do sign an easement but the development doesn't happen, the same thing applies, that you're freed from that easement after five years if nothing has begun. In Section 4, as landowners, we didn't feel that you could trade wind rights such as mineral rights are being handled. You couldn't sever wind rights from the property. If the land is sold, there is no retaining them. As with all bills, more things come up. I respectfully ask you not to act on the bill as I believe there will be some amendments forthcoming that will deal with transferable credits which would also be germane to the bill and to the landowner issue.

Chr. Nelson: We'll hold the bill. Are there any questions?

Rep. Darrell D. Nottestad: The terminology on the definitions and easements, is this mirrored from other states or is it something specific to ND, particularly Section 4?

Erbele: The action agreement and the easement portion do mirror South Dakota law; we had looked at that to keep things as closely related as possible. We had to add it because both companies are working both states. In our case, they are very close to the border. There is a wind farm south of us, in South Dakota. I'm not sure about Section 4, whether it was a part of the SD law, (but) the stakeholders and landowners felt it should be a part of it.

Nottestad: You mirrored SD, which is also part of Florida Power. Did you look at other companies that have wind farms, such as Iowa and Minnesota, which are even larger than what they have in North and South Dakota?

Erbele: No, through the attorney that we had on the group and with Legislative Council we did look at Minnesota, Iowa and others, but chose to use more of the language of SD. They are all relatively similar. I'll address them later.

Rep. David Drovdal: In Section 1, I'm concerned, why do we need to be the big brother and put this in writing? In the oilfield, which I'm more familiar with, that's a negotiation topic between the landowner and the surface owner. They may lease for three years or five with another option for an additional two years, or whatever time frame they want. Why do you feel it's necessary that we need to put this restriction in writing in wind energy when we don't in the oil industry?

Erbele: I don't know anything about oil. This came about because of a horror story that was told to us about what happened in SD. A company had come in and had a 75-year option, while another company came in and actually did the development. There were people in the middle of that whole development who were signed up for 75 years and couldn't be a part of it because another company came in and did the development. There is nothing that would preclude renewing after five years if they wanted to. It's just so that you're not tied to a particular company.

Chr. Nelson: Are there any further questions?

Rep. Todd Porter: How was five years chosen?

Erbele: The group felt comfortable with a five-year term. If you sign an option, there should be some activity after five years. If there is not, and another company wants to develop, you're free to sign an option with someone else. Within that five-year period, development could happen and you'd move into Section 2 where you actually have the ongoing easement which then would last for the life of the turbines.

Porter: We had a similar bill last session. If somebody wanted to deal with this company for seven or ten years, they wouldn't be able to do that in the future if this bill was passed? Would there have to be a renewal in there someplace?

Erbele: I believe, at the end of five years, you would have to renew if you felt comfortable with the option that you had signed with the original company.

Porter: Typically, what value goes with one of these options? If someone is leasing a mineral right, they pay a set amount for the lease over a period of time. What is the typical dollar amount of a wind option?

Erbele: I don't have that figure at the top of my head. Rep. Kelsh was on the committee with me, he may know.

Porter: Rep. Brandenburg says he has it.

Chr. Nelson: Are there any further questions? Seeing none, thank you for your testimony.

Rep. Mike Brandenburg, Distr. 28: To answer Rep. Porter's question dealing with the value of wind options. The five-year option is usually \$1,000 per section. It's kind of a number in the industry. It's really not standard, it's a number that I've seen used. If you even had a quarter, for every person or option that was handed out, it was \$1,000. When it went to a section, it was still \$1,000. If it went over \$1,000, it was negotiated. The developer had the opportunity to drive and

look at the land to select the best sites to place towers. One of the reasons to have the wind option agreement for the five-year period is that some people tie up land (with leases). We have anywhere from three-year agreements to five-year, ten-year, and as high as 20-year agreements. As we looked at different spots to place the turbines or the wind farm, some of the land was tied up like a patch quilt. We had meetings in the area, telling people not to sign until you have a lawyer look at it. Make sure you're signing with the right company. You can't tell who the right company is (at the beginning). The Coteau Hills Wind Group, which is Edgely, Kulm, Ellendale, went together to form an LLC. We worked with a couple lawyers and came up with a three-year option agreement which we promoted. It had a six month portion in it that if somebody else came along and developed their wind farm, you'd have a six month out. It's not in here.

Through working with the stakeholder's group we came up with five years. Basically, if you have a serious developer, they're going to develop in a five-year period. If a person signs with the wrong group, you've made a mistake, you can get out of it and be in on the second round (of development). Regarding wind rights and severability, the wind rights do stay with the land. First, they have an option for five years, when it's developed, it goes into an easement which ties it up for 25 years. This is something we need to do to catch up with what they're doing in current standard contracts.

Chr. Nelson: Are there any questions?

Porter: Can you clarify something on the \$1,000 per section number. Is that per year of the contract, or over the term of the contract?

Brandenburg: That's for the term of the five-year period. These are negotiable. If it looks like it will be a site they really want the towers on, they pay more. Anything is negotiable.

Chr. Nelson: You may continue.

Porter: We had a bill last session from Rep. Kempenich that talked about this issue. What happened with that bill?

Brandenburg: I don't think it had enough power behind it. We're always dealing with new energy and development and trying to educate everybody about what's happening in this industry. Seven or eight years ago, we couldn't even get a study passed on wind energy. Now, we're dealing with wind energy that's being developed. Thinking of some of the bad cases, in my area, I know people who signed 10-year options, and 20-year options and they gave them a trip to Hawaii! Now, they're trying to sell those rights to developers for \$10 million. They're not going to buy it, but they've tied up their land for 20 years.

Porter: I look at those scenarios as being a willing buyer and a willing seller. I have a little trouble with the state stepping in to be the negotiator of all things. Is there any other place in the law where mineral rights and gravel rights and things that go with the ownership of land where we have stepped in as a state and put this protective umbrella around them that a person couldn't have on their own by hiring a lawyer, sitting down and determining what's best for himself rather than have the state determine what's best for him?

Brandenburg: That's an issue that we're all going to have to decide. Looking at mineral rights years ago when they were sold and transferred (oil, gravel, etc.), we have landowners who were broke and were selling the mineral rights for very little to bankers because they needed the money. Now, we're protecting the people, there is no question about it. You can't protect everybody from everything.

Rep. David Drovdal: I'm curious about the time frame that it would take a developer, from the time he signs his first lease, signs all the landowners up, and prepares and finances a package, and assembles a wind energy farm to the point where the lease agreement would start paying off. What would be the time from the first easement to actually be a completed project?

Brandenburg: Example in my area: The people were notified that there was a possibility of a wind farm coming into the area in the spring of 2001. Then they signed up the options for land. Florida Power and Light gathered the concerned landowners, gave them the option agreement, explained what they were going to do and those people signed up. A year later, in 2002, the wind farm was built. During that time frame, in the fall after they signed the options, they had another meeting where the landowners were informed what they wanted to do, where they wanted to put the wind tower(s). They had the agreement set up and gave it to the landowners. The landowners and developers, Florida Power and Light did pay the legal bill. They picked the lawyer of their (landowners) choice to have him look at the agreement they had with the 25-year life of the farm. I'd say that from the time they were notified, within a three to six-month period, they then signed the option agreement and within six months signed the easement agreement for the 25 years. It all happened within a year's time frame. I would say that five years is more than enough. When the serious developer decides they want to put up a wind farm, it happens from one to three years.

Drovdal: As this wind energy development keeps improving and we get transmission lines, there may be other ones who want to invest in it. I wonder if five years is enough time by the time they sign the first lease to the time they get all the money together and put the package together. Are we handtieving them?

Brandenburg: Those are the questions we asked at the stakeholders' meeting. Industry people were there, Ottertail Power, the Co-ops, Florida Power and Light, other developers, and others, and the five-year time frame seemed more than adequate since it happens even faster than that. There could be somebody who has trouble with transmission issues or (unintelligible). There are only about a dozen main players in the wind industry. There are a lot of other people involved. Then you have paper traders who tie up the land. We're trying to protect people from the paper traders who lease up the land and tie it up for 10 or 20 years. They might have a good site, close to transmission, close to the substation, but you can't use it because they have it tied up. I know of spots that are tied up right now.

Rep. Dawn Marie Charging: Have you had a chance to look at some of the other states and the legislation that they have passed?

Brandenburg: Yes, at the stakeholders' meeting, many other states were discussed. In some areas, we (try avoiding) mistakes that were made in other states. We're trying not to follow the same mistakes that were made. This industry is going to develop. Coal and wind are threatening to work together to drive the transmission issue that we need. We're just trying to set some parameters that would (stop companies) from taking advantage of people like happened in the mineral industry. I think this bill will set the parameters to protect those people from somebody taking advantage of them.

Charging: But to answer the question?

Brandenburg: Didn't I do that?

Charging: Is there similar legislation?

Brandenburg: Yes, there is similar legislation. We're using what they have, they're using what we have. It's coming from the people involved.

Keiser: We always have a challenge when we try to protect people. In reality, we might be hurting them. I look at the bill and think as an investor. I'm looking for flexibility. Yet, on Line 9, you're telling me that I'm going to have a five-year limit and that it's going to be at a fixed price. That takes away my opportunity as an investor to approach someone to say I want to sign a one-year option with an option to extend for seven years at an increasing price for each year of extension. Investors are going to look at this. A firm like Florida Power will go to locations where they have flexibility, where they won't tie up their resources at a fixed price, where they won't be committed. They can't go beyond five years here. They may want to have the option to go seven. Has there been a lot of discussion of how this can work in reverse in terms of the investor's standpoint?

Brandenburg: We discussed those same questions. What does happen is there are paper traders out there that have no intention of putting up a wind farm. They're buying up wind rights and the frustrating part is that they know where the substations are, tie up the nearby land with leases, and when companies come in to put in a wind farm, it stops development of the project. They tried to sell their holdings for \$10 million.

Keiser: That's really the issue. You're concerned about paper traders because they're overpricing and not providing the flexibility to the company. Yet, we are, in effect, becoming the paper trader in this bill. We are setting up standards that are relative to their pricing, floors that have to be met just as the paper traders are doing. I think that has the potential of driving away the investors.

Brandenburg: I can't disagree with you, but we can put some flexibility in. Do you think it needs to be seven or ten years or whatever it may be? The thing is, there is some protection to it. I think more important is that the group look at it not only as a value to the price of the options, but if the industry knows what the laws are in the state they are going to abide by the law that we have. You bring up good points, but I just hate to see people taken advantage of. We do have some amendments that Sen. Erbele brought up, that we'd like to bring forth if you would hold the bill.

Chr. Nelson: I'll hold it. Are there any further questions? Seeing none, thank you for your testimony. Is there further supporting testimony?

Woody Barth, ND Farmers Union: We stand in agreement of SB 2236 and with many of the statements brought forward today. It's a new industry and we want to make sure we do it right in ND. We've seen the abandoned wind towers in California and want to make sure that ND's resources are used wisely. We should move this industry forward now and two years from now we can work even more and change some words in this section of the code. **(Written testimony attached)**

Chr. Nelson: Are there any questions? Seeing none, thank you for your testimony. Is there further supporting testimony?

Brian Kramer, ND Farm Bureau: (Written testimony attached) We also participated in this consensus group that developed this bill. I'd like to express again that it wasn't just landowners, it wasn't just the developers, but it was a cross-representation of all of the stakeholders in this. As Rep. Porter asked what had happened to the bill last session, I think there were some concerns about how this was being put together. The industry itself, the developers had some concerns at

that point. Over the interim, we visited about a number of these issues and everyone at the table is quite comfortable with what is included in this bill. From that standpoint, the concerns that have been voiced about flexibility and those types of things, the developers, Florida Power and Light and some of those folks are very comfortable with the language and intent (of the bill). We would hope for a do pass. We have policy that goes well with it.

Chr. Nelson: Are there any questions?

Rep. Porter: Over the past couple of months, there have been plenty of issues about landowner rights. You guys have been all over the table, picking and choosing what truly is a landowner right. I look at this as the taking of one of my rights as a landowner. If I want to sign up for a seven year easement on the land that I own, who are you to tell me that I can't?

Kramer: We have always opposed perpetual easements and always supported the shorter term easements, whether it's for wildlife or for a situation like this. I think that is doing well in ND.

Porter: But you're still taking away one of my rights as a landowner. If I sit down and negotiate an agreement with whomever for whatever on my land for a period of seven years, and now you're supporting a law that says I can't do that, are you not taking away one of my rights?

Kramer: I guess with the language in this bill, and it has been stated before, that you can renegotiate that contract and continue it, I don't see that that is a restriction. Time frame certain, yes. But it's not a restriction on your right to exercise that option.

Chr. Nelson: Further questions? Seeing none, thank you for your testimony. Is there further supporting testimony?

Chuck Fleming, Marketing Dir., ND Dept. of Agriculture: I'm here to file a statement in support of this bill from Commissioner Roger Johnson who is in Fargo today and couldn't be

with you. Fifty plus years ago, oil was a new industry in ND. Wind is not new, they've been sailing ships with that for hundreds of years. But it's new to ND. It's important to do it right. There are unscrupulous people who are out there making leases. On the basis of this, we have to do it right. Our department is part of the stakeholders group, and if my memory is correct this was a unanimous agreement with the stakeholders. The unscrupulous people weren't there, but the people in the industry who are serious about it were part of this group. You need to know that the folks of all sectors of the industry that gathered think this bill and concept is important. We urge your support. **(Written testimony of Roger Johnson attached)**

Chr. Nelson: Are there any questions? Seeing none, thank you for your testimony. Is there further supporting testimony? Seeing none, is there any opposition to SB 2239? Seeing none, I will close the hearing on SB 2239. **(Change to Tape 1, Side B)**

Chr. Nelson: We'll call the House Natural Resources Committee back to order. I will form a subcommittee on SB 2239. It will consist of Rep. Duane DeKrey, Rep. Donald Clark, and Rep. Scot Kelsh. They will work on the amendments that will be coming forward from Sen. Erbele and the stakeholder group. With that, I will close the hearing on SB 2239.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2239

House Natural Resources Committee

Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1	x		0-508
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes: **SUBCOMMITTEE HEARING ON SB 2239**

Chr. Duane DeKrey: I will open the hearing of the subcommittee meeting on SB 2239.

Members present were Rep. DeKrey, Rep. Donald L. Clark and Rep. Bob Hunsakor. Rep. Mike Brandenburg, the sponsor of the bill, is here to present his amendment to the subcommittee.

Rep. Brandenburg: SB 2239 deals with wind options and easements. Back in the 2001 session we passed legislation dealing with investment tax credit, which allowed 3% for five years for an investment into a wind project, wind farm, wind facility. There has been a farm built in the Edgely/Kulm area. The problem that we have is that the investment tax credit has not been able to be used because the first 10 years of the wind turbines is needed to payoff the (infrastructure costs of) wind turbine. This amendment would allow those investment tax credits to be extended out to 15 years. In other words, they start taking advantage of the 3% over five years from 11-15. That way, they pay off, then have profit after those years. It would allow them to have that security. I was at the tax department and worked with them; they thought this

would be very workable. The bill has already passed; it's already figured into the fiscal note for the 2001 session; it's allowing them to actually take advantage of the bill that was passed but because of the way it's being used right now, there is no way that you would have enough profit in the wind turbine in the beginning years of the projects. Mr. Chairman, I would answer any questions that there are.

Chr. DeKrey: Any questions for Rep. Brandenburg?

Rep. Donald L. Clark: If the wind didn't blow for 10 years you wouldn't be able to use your tax credit at all?

Brandenburg: That's not really the problem. The problem is that the wind tower is a purchase agreement with the power company for 25 years. They always pay off the project first. It takes 10 years for the wind turbine to be paid off. There is not enough profit in the first three years for them to be able to use that tax credit. This would allow them to have up to 15 years to use this tax credit, where in the first five years of the project there is just not going to be enough income to be offset by the taxes that they pay. By carrying it out 15 years, it would allow them to be take that investment tax credit over the period of 15 years rather than the five years.

Clark: How many years does it take to depreciate one of these off?

Brandenburg: You would have to ask the tax department that question.

Chr. DeKrey: I'm guessing that they have about a 25-year lifespan.

Brandenburg: I don't know that answer. In the federal tax credit that you have, the first ten years they take a heavy depreciation or heavy tax credit on the federal side. The state incentives would follow after that. That's the problem that we have with it and why we want to extend it out for 15 years and do a carry forward.

Chr. DeKrey: I think it sounds fine. Did one of you want to move the amendment?

Rep. Hunskor: I will move the amendment.

Chr. DeKrey: Rep. Hunskor moves the Brandenburg amendment, dated March 10, 2005, 0303.

Any further discussion on the amendment? If not, we'll try a voice vote on the amendment. All those in the subcommittee in favor of the amendment say aye. Opposed? (Carried unanimously.)

We now have the bill before us as amended. What is your recommendation to the full committee?

Rep. Clark: I move a Do Pass.

Rep. Hunskor: Second.

Chr. DeKrey: It's been moved by Rep. Clark and seconded by Rep. Hunskor as a recommendation of a do pass to the full Natural Resources Committee. No further discussion on the bill before us. I ask the clerk to call the roll on a do pass motion as amended on SB 2239 recommendation to the full committee.

The do pass recommendation to the full committee on SB 2239 as amended passes. We'll take further action on the bill in the full committee. Adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2239

House Natural Resources Committee

Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1	x		3380-4639
Committee Clerk Signature <i>Loren Bonnet</i>			

Minutes:

Chr. Jon O. Nelson: Committee, let's take up SB 2239, Roll was taken, Rep. Solberg absent. Rep. Brandenburg, didn't you say you had the amendments and council (on SB 2239)?

Rep. Brandenburg, Dist. 28: Yes, I have some amendments to hand out.

Rep. DeKrey: Chairman Nelson, I have a procedural question. Our subcommittee on this bill met this morning and we went over these amendments and we placed them on the bill. I don't know if that is proper procedure or not.

Rep. Drovdal: You can't do that. You can recommend the amendment but not place them on the bill.

Rep. DeKrey: What we did was place them on the bill and recommended a do pass motion of the bill as amended to the full committee. I don't know if that is proper. The subcommittee did recommend these amendments.

Chr. Nelson: O.K., we'll make that change in the record. Will you explain the amendment?

Rep. DeKrey: I'll move the amendments dated March 10, 2005, .0303. The rationale for the amendments, as explained to us by Rep. Brandenburg, is that these wind turbines are extremely costly and as this tax credit was previously written, it won't do the wind generator orders any good because they won't be able to show a profit that soon to take advantage of this tax credit. We need to lengthen it to 15 years. It will actually amount to about a five-year tax credit because it will take them 10 years before they can even start to show a profit on one of these turbines.

Chr. Nelson: Who seconds that?

Rep. Kelsh: Second.

Chr. Nelson: Second by Kelsh. Committee discussion?

Rep. Porter: The other parts of the bill, as far as Section 1 and 2 and the easements...

DeKrey: We changed nothing. That's all in there, yet.

Porter: What was the reason behind underscoring those lines on the amendment?

DeKrey: Of the unused portion of any credit?

Porter: On the first part of the amendment, it says Pg. 1, underscore Line 7-12. Is that only because it's new language because we're now adding a piece of existing code?

DeKrey: I'm not sure. You will have to ask Rep. Brandenburg.

Rep. Brandenburg: As I understand it, in 2001 we passed an investment tax credit. I think that is what this pertains to in this sentence. It is referring to that chapter in the NDCCC. I think the new language is only added to the investment tax credit to show that it's being carried out up to 15 years because it takes the feasibility study and construction costs (a lengthy time). The payback of the wind turbine is at year 10 when it becomes profitable and they are able to have enough income to offset the tax benefit that we had given them in 2001.

Chr. Nelson: Rep. Brandenburg, these are all new sections of law, right?

Brandenburg: I'm not sure. I don't want to say yes or no. We may have to get the Legislative Council down here to make sure. I don't want to give the wrong answer. John Walstad did the language.

Porter: It appears that by adding Section 6, which is a piece of the existing code, they had to go back and underline all the rest of it because then it's showing that it's an addition to the existing code. That's why the underscores need to be throughout the bill, now. I couldn't figure why they were there until I started looking.

Chr. Nelson: I think that is fairly understandable. Is the committee comfortable with this or should we call John Walstad down?

Rep. Nottestad: The way this amendment is put in, it has to do with ND tax returns, correct? This is a company that would file a federal tax. Does that mean that if he was eligible to draw on the federal for an expense, that he could defer to ND? Or would he have to defer on the federal as well? Why would he want to defer it if he could draw it on the federal for the benefit of ND?

Brandenburg: The real issue is that in the wind turbine, they deal with the federal tax over the first ten years. They have heavy tax incentives in that first (trade?) on the federal return. This deals with the ND state returns and they don't have enough income in ND because in the process of the building of the turbine, which is over a 25-year life expectancy, the first ten years they don't have any or very little income, so they can't offset it with the investment tax credit that we gave. From years 10-15 they would be able to use this investment tax credit. What we're doing is saying that they have a 15-year period to use this adjusted tax credit.

Nottestad: That's my point. It would be claimed under federal returns. (Then) it could be deferred for 10 years on the state return.

Brandenburg: I don't think so. Maybe we need to get the tax department down to answer that question. I left a message for Dee but she was in another meeting.

Rep. Keiser: I don't know if it has any effect or not, the bill did not have a fiscal note on it. With this change, you should request a fiscal note. It may be zero, but it may be millions of dollars, depending on how they look at it. I don't think we can take action with the fiscal note.

Brandenburg: Should I get Dee and bring her down?

Chr. Nelson: We'll take care of the fiscal note. Karen, we'll need to send that up.

Porter: We need the amendment on the bill first before we can ask for a fiscal note.

Keiser: I was just clarifying that you don't want to take *action* on the bill until you have a fiscal note.

Nottestad: Could it also be run by the tax department at the same time, with the amendment?

Brandenburg: I think Mary could answer the question.

Chr. Nelson: We could try and get some clarification.

Mary Loftsgaard, Supervisor, Corp. Income Tax Section: The question is?

Chr. Nelson: Have you seen the proposed amendment to SB 2239? The question is, if we passed this amendment, can you make a determination off the cuff as to what the fiscal impact would be? Or do we need to send it up?

Loftsgaard: I think it would be better if you would send it up. I think it would not take long to get one done.

Chr. Nelson: That's what we'll do. We'll continue discussion on the proposed amendment at this time.

Hanson: Question.

Chr. Nelson: Question has been called on the proposed amendment, .0303. We'll try a voice vote on the proposed amendment. All those in favor, signify by saying aye. Opposed. Motion carried. (unanimous) O.K., Karen, we'll have to send that up for a revised fiscal note. That's all we can do on that one at this time. You could probably give it to her now. Mary, are you prepared to take that (bill) with you?

Loftsgaard: That's fine.

Chr. Nelson: With that, I will close the hearing on SB 2239.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2239

House Natural Resources Committee

Conference Committee

Hearing Date **March 18, 2005**

Tape Number	Side A	Side B	Meter #
1	x		55-1500
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

Chr. Jon O. Nelson: I will call the House Natural Resources Committee to order. Roll was called, Rep. Norland absent. We will take up SB 2239. We had a proposed amendment to this bill that were handed out at a previous meeting. Rep. Brandenburg, did you want to speak to the amendment?

Rep. Mike Brandenburg, Dist. 28: Would the committee like to hear the Tax Department's fiscal note to explain it? I want to save the bill, and I don't want to clutter it up with the carry forward on the investment tax credit. The Tax Dept. is here so if you want them to explain, I think that would be appropriate. We can go from there.

Chr. Nelson: O.K., please come to the podium.

Donnita Wald, Legal Counsel, State Tax Dept.: I talked with our fiscal analyst and looked at this amendment. We don't anticipate that there will be any fiscal impact for the carry forward.

The reason for that is that credit has already been assumed into the revenue forecast of the

budget. All this does is allow it to carry forward what they already earned and accounted for in the future biennium.

Chr. Nelson: Donnita, would you like to speak to the amendment on HB 1314 as well?

Donnita Wald: Yes, I can do that. An amendment was adopted by the Senate IBL Committee I believe, kind of doing the same thing on HB 1314. That bill is on the calendar today. What HB 1314 does is (similar). What the problem was is a lot of taxpayers who were able to take the credit, were unable to use the credit, because of the way they had set up their businesses, and because of the fact that some of these companies didn't have a tax liability in the state. They had some losses. ND has consolidated return filing and usually, when one member of that consolidated group earns a tax credit only that member can take advantage of that. One of the things that HB 1314's amendment does is allow them to take that credit against a consolidated group tax liability, not just that one member's, because that one member may have a loss. It also allows a 5-year carry forward instead of a 15-year carry forward for the unused credit. So, there are multiple things out there-this amendment, Rep. Brandenburg's amendment, and the HB 1314 amendment that are attempting to address the same issue-the inability to use the tax credit-just going about it differently.

Chr. Nelson: Are there any questions?

Rep. David Drovdal: Is the 5-year in HB 1314 going to take care of 99% of the tax payers that are covered under this one? Or do we need the 15-years?

Donnita Wald: It's hard to say. Five years might help some and might not help others. I really can't say. It depends on their taxes each year and what their situation is. Fifteen years allows for a longer use, there is no doubt about that.

Chr. Nelson: Further questions?

Rep. George J. Keiser: I'm confused on your fiscal note. If you read the current bill, and the amendment, and I'm assuming you're talking about .0303, As I read .0303, we're not just extending it. We're on the tax credit because it's in current law and then we're going to extend it. What percent of the tax credits have been used in the past?

Donnita Wald: We don't have exact numbers on that. It's been limited in some instances by the taxpayers tax liability.

Keiser: That's my concern. But that limit should change dramatically when we go from five to fifteen years so there should be a fiscal note. There should be a fiscal impact.

Donnita Wald: When this change was adopted in 2003, the fiscal note at that time accounted for the credits, assuming that all the credits earned would be able to be taken immediately. That's why we think there is no fiscal impact because it's already been accounted for in some manner.

Keiser: I understand, but that was for the last two years. We're now going into a new two years. So we're just going to extend the credit allowable. Is there a limit on the credit allowable?

Donnita Wald: The credit is 3% of your cost, and you can take 3% of those costs for five years. So that 15 years probably starts depending when the project was.

Keiser: It says effective...

Donnita Wald: I think there are some other limitations.

Keiser: We're just using the old fiscal note and saying that's what it's going to be in the future, even though we thought in the current biennium this much would be used, but it wasn't used,

we're still going to carry that forward and say that's how much it's going to be, now that we're going to 15 years. What is that total fiscal impact for the next 15 years?

Donnita Wald: I talked to Kathy Strombach, the fiscal analyst, and the base already had it out. It depends on how many businesses come in and build these type of projects.

Keiser: It's any tax payer. As I see this, I could do it at my home.

Donnita Wald: That's correct. You can install a renewable energy source.

Keiser: So where is the fiscal note? There should be one.

Donnita Wald: We can't make assumptions like that. We don't know how many people will be seek the incentive of this particular bill, if any. That's why a lot of these things have no fiscal impact or it cannot be determined. That's the situation with this.

Keiser: My concern is, for the last two years, you have a track record that you can use and say this is how much was used in those two years, let's now assume that a lot more will be using the (credit) in 15 years. Two years ago, you couldn't possibly tell us, but I would assume you could do a fiscal note based on two years experience.

Chr. Nelson: Further questions?

Rep. Duane DeKrey: I move a do pass on engrossed SB 2239.

Rep. David Drovdal: Second.

Chr. Nelson: A motion by Rep. DeKrey to move a do pass on the engrossed SB 2239. Second by Rep. Drovdal. Discussion.

Rep. Todd Porter: I am still going to oppose the bill as I did last session. I think that we're hamstringing the ability of landowners to come to an agreement with a company that wants to rent or have an easement on their land. If they want seven years, they can't do it anymore. If

Page 5

House Natural Resources Committee

Bill/Resolution Number **SB 2239**

Hearing Date **March 18, 2005**

they want to do ten years that's their right between a landowner and whoever they are doing the lease with. I think it is perfectly acceptable for someone to sit down with their land or business and sign a contract. I just cannot understand why we as their big brothers seem to think we have to stick our noses into their business. I think this goes too far. Now I'm a landowner and want to enter into a seven-year easement with a company and you're telling me I can't because you know more about my land and my business than I do. I can't support this bill.

Chr. Nelson: Is there any further discussion? Seeing none, I'll ask the clerk to call the roll on a do pass motion on engrossed SB 2239.

Do pass, vote:

8-Yeas; 3-Nays; 3-Absent; CARRIER: Kelsh

Per Subcommittee Minutes Tape 1A:0-508, of today

Date: 11 Mar 05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2239

House NATURAL RESOURCES Committee

Check here for Conference Committee

Legislative Council Amendment Number : _____

Subcommittee Action Taken : Do Pass as Amended (to the Nat Res. Committee) ^{Recommendation}

Motion Made By : Clark Seconded By : Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson			Rep. Lyle Hanson		
Vice Chairman - Todd Porter			Rep. Bob Hunskor	✓	
Rep. Dawn Marie Charging			Rep. Scot Kelsh		
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg		
Rep. Duane DeKrey	✓				
Rep. David Drovdal					
Rep. Dennis Johnson					
Rep. George J. Keiser					
Rep. Mike Norland					
Rep. Darrell D. Nottestad					

Total (Yes) 3 No 0

Absent 0

Floor Assignment n/a

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

50078.0303
Title.

Prepared by the Legislative Council staff for
Representative Brandenburg
March 10, 2005

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2239

Page 1, line 3, after "leases" insert "; to amend and reenact subsection 1 of section 57-38-01.8 of the North Dakota Century Code, relating to an income tax credit for installation of geothermal, solar, or wind energy devices; and to provide an effective date"

Page 1, underscore lines 7 through 12

Page 1, underscore lines 15 through 18

Page 1, underscore lines 21 through 24

Page 2, underscore lines 1 and 2

Page 2, underscore lines 5 through 8

Page 2, underscore lines 11 through 13

Page 2, after line 13, insert:

"SECTION 6. AMENDMENT. Subsection 1 of section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter. The unused portion of any credit under this subsection may be carried forward for up to fifteen years after the taxable year in which the credit accrued.

SECTION 7. EFFECTIVE DATE. Section 6 of this Act is effective for taxable years beginning after December 31, 2004."

Re-number accordingly

Date: 3/11/05
 Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2239

House NATURAL RESOURCES Committee

Check here for Conference Committee

Legislative Council Amendment Number : _____

Action Taken : ^{Motion to} Accepted Rep. Brandenburg's amendment 50078.0303

Motion Made By : DeKrey Seconded By : Kelsh

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	✓		Rep. Bob Hunsakor	✓	
Rep. Dawn Marie Charging	✓		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg		Absent
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	✓				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 13 No 0

Absent 1 - Solberg

Floor Assignment N/A - waiting on knowledge of fiscal impact of amendment, to be determined by the State Tax Dept.

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

Date: 3/18/05
 Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2239

House NATURAL RESOURCES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken : Do Pass as engrossed

Motion Made By : DeKrey Seconded By : Drovdal

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson		✓
Vice Chairman - Todd Porter		✓	Rep. Bob Hunskor	✓	
Rep. Dawn Marie Charging	<i>Absent</i>		Rep. Scot Kelsh	✓	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	<i>Absent</i>	
Rep. Duane DeKrey	✓				
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser					
Rep. Mike Norland	<i>Absent</i>				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 8 No 3

Absent 3

Floor Assignment Kelsh

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

REPORT OF STANDING COMMITTEE (410)
March 18, 2005 11:25 a.m.

Module No: HR-50-5429
Carrier: S. Kelsh
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2239, as engrossed: Natural Resources Committee (Rep. Nelson, Chairman)
recommends **DO PASS** (8 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING).
Engrossed SB 2239 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2239

Wind Energy Council

Growing the wind energy industry in the Upper Great Plains

3100 DeMers Ave.
Grand Forks, ND 58201
Phone: (701) 775-5507
Fax: (701) 772-5814

AH #1

Testimony of
Jay Haley
Founding Chairman
Wind Energy Council
SB 2239
Senate Judiciary Committee
Fort Lincoln Room
January 26, 2005

Good morning Chairman Traynor and members of the Judiciary Committee. My name is Jay Haley and I am here today representing the Wind Energy Council to testify in support of SB 2239.

The Wind Energy Council's primary objective is to promote and foster the development and growth of a vibrant wind energy industry in the Upper Midwest.

Members of the Wind Energy Council include wind farm developers, owners and operators, wind turbine manufacturers, wind turbine component manufacturers, and businesses providing goods or services to the wind industry.

The Wind Energy Council has endorsed SB 2239 which limits the term of wind option agreements and prohibits the severance of wind energy rights from the land.

The Wind Council encourages the Committee to look favorably upon SB 2239 and any other legislation that promotes the growth of the renewable energy industry in North Dakota. I'd be happy to answer any questions.

Chair

Mike Hohl
Whohle Management Solutions
mike@whohle.com

Secretary

Steve Scott
Energy Maintenance Systems
steve@energym.com

Treasurer

Craig Hoiseth
LM Glasfiber
cah@lmglas.com

North Dakota Farmers Union

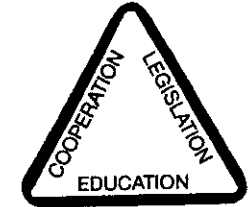
PO Box 2136 • 1415 12th Ave SE • Jamestown ND 58401

701-252-2340 • 800-366-NDFU

FAX: 701-252-6584

WEBSITE: www.ndfu.org

E-MAIL: ndfu@ndfu.org



SB 2239
Judiciary Committee

*Same
given
to House*

Chairman Traynor and Members of the Senate Judiciary Committee,

My name is Woody Barth; I am here representing over 35,000 members of North Dakota Farmers Union. I am here to testify in favor of Senate Bill 2239, which deals with wind options agreements, easements and leases.

North Dakota Farmers Union supports a comprehensive policy that protects landowners from speculation and unfair contracts in the development of natural resources such as wind development.

We believe in limiting length of lease options by limiting the term of lease options. This will prevent companies from tying up large tracts of land for extended periods, thus encouraging use of lease options for actual development instead of speculation.

Our members believe in the prohibition of severability of surface rights and wind rights. Land ownership should not be severed from natural resources associated with the surface.

When farmland is transferred to a new owner we feel that is unfair for the previous owner to retain contract rights. All rights should be transferred with the land purchase.

Thank you, Chairman Traynor and Members of the Senate Judiciary Committee, I will answer questions at this time.

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

Att #3

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

**Testimony of Roger Johnson
Agriculture Commissioner
Senate Bill 2239
Senate Judiciary Committee
Fort Lincoln Room
January 26, 2005**

Same given to H. Johnson

Chairman Traynor and members of the Senate Judiciary Committee, I am Agriculture Commissioner Roger Johnson and I support Senate Bill 2239, which allows property owners to grant a wind easement in the same manner as the conveyance of an interest in real property.

The provision in Section 3 of the bill voids the easement if development does not occur within five years after the easement is created. I believe this is a sound policy for the State of North Dakota.

There have been times in other parts of the country where unscrupulous wind energy developers have come in and secured easements with no intention of development, and then use that method to negotiate with legitimate developers to make a profit. By strategically buying up easements, they can effectively tie up some of the best sites for wind energy development

Mr. Chairman, the Senate will be seeing a number of bills this session that encourage the development of various forms of renewable energy. North Dakota ranks first in the nation in wind energy potential, but the industry is still relatively new to the state. This legislation provides a safeguard for landowners and provides a level playing field for legitimate wind developers. I urge you to give a "do pass" to Senate Bill 2239.

#4



Administration:
1101 1st Ave N
P.O. Box 2064
Fargo, ND 58107
701-298-2200 • 1-800-367-9668
Fax: 701-298-2210

State Headquarters:
4023 State St
P.O. Box 2793
Bismarck, ND 58502
701-224-0330 • 1-800-932-8869
Fax: 701-224-9485

North Dakota Farm Bureau

www.ndfb.org

*Same
given to
H. 0100*

**North Dakota Farm Bureau
Testimony on Senate Bill 2239
presented by
Brian Kramer**

Good morning Chairman Traynor and members of the Senate Judiciary Committee. I am Brian Kramer and I represent North Dakota Farm Bureau. We support Senate Bill 2239.

We participated in the group of wind energy interests seeking of consensus regarding the development of the North Dakota's wind energy industry. Many of the consensus items are included in SB 2239. In fact, North Dakota Farm Bureau has specific policy supporting limits of five years on wind lease options. We believe that five years are adequate to initiate the development of wind energy on a particular piece of property. If no activity occurs, the landowner can seek alternatives or renegotiate the option.

We also have policy that states, "We oppose allowing wind rights to be sold separately as mineral rights presently are." The problems associated with severed mineral rights and the difficulties incurred in trying to restore mineral rights to the surface land prompted this policy. The bill before you would ensure that wind rights would not be severed.

We also concur with the language in Section 5 that a wind lease is void if no activity commences to develop that resource. Again, five years are adequate to develop a wind energy project. Keep in mind that with this legislation the land could be under the control of the person or company that has leased the property for a period of ten years – the first five through the option to lease and the last five under the development lease before actual development of a wind energy project.

We believe SB 2239 is responsible, progressive legislation that provides landowners with options within a wind lease or option. It also provides developers with adequate timeframes to get a wind energy project up and running. We support the bill and ask that you give SB 2239 a “Do Pass” recommendation.

Thank you. I would try to answer any questions you may have.

Att 5

Dakota Resource Council
P. O. Box 1095, Dickinson ND 58602-1095
(701) 483-2851; www.drcinfo.com

Testimony on Senate Bill 2239
Judiciary Committee
January 26, 2005

Chairman Traynor and members of the committee.

Dakota Resource Council submits this testimony in support of SB 2239, which will create and enact wind option agreements, easements, and leases,

Some farmers and ranchers have signed very long option to lease agreements with prospective wind developers for the future right to develop the wind resource on their land in North Dakota. These long term options to lease can come at a very high cost to farmers and ranchers by preventing them from being in a position to enter into wind lease agreements when a viable wind developer is interested in placing a wind turbine or wind farm on their land. There are examples of individuals having option to lease agreements for twenty-five or more years.

This bill defines what wind option agreements and wind easements are and establishes the length of an option to lease agreement to five years if no wind development occurs. This prevents land from being tied up in a long-term agreement in case there is a possibility for a viable wind farm to be built on part or all of a landowners land.

This bill also establishes the non-severability of wind rights from surface rights. Whenever there is a severance of a resource from the rights of the surface owner there is an opportunity for disagreement or conflict to occur between these two interests. Non-severability of wind rights from surface rights will allow the building of healthy and interacting communities to occur.

This bill has the support of the wind stakeholders group, which includes the utilities, the state REC office, farm and ranch groups, other landowners and wind energy advocates in North Dakota.

Dakota Resource Council supports SB 2239 as a means to build strong local vibrant communities that will be able to benefit economically from utilizing our state's immense wind energy resource.