

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2281

2005 SENATE FINANCE AND TAXATION

SB 2281

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2281

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 31, 2005

Tape Number	Side A	Side B	Meter #
# 1	X		0.3 -7.7
Committee Clerk Signature <i>Sharon Ruyra</i>			

Minutes:

SEN. URLACHER: called the committee to order and opened the hearing on SB 2281.

SEN. KLEIN: appeared as prime sponsor of the bill stating this is an attempt to make Chapter 57 which is the agricultural investment tax credit more user friendly. What we Found in the past is that companies have been trying to access dollars for startups and haven't been use this bill because of some of the restrictions it had in it. We changed some of the definitions in qualifying business and it's going to include a corporation and partnership, that is the hope to expand it a bit. We also are asking the Securities Commission to be more careful as they look at the filings and make sure that these companies have certified under the rules that they are supposed to. We also ask that the Commodity group that has a facility here or intends to locate one.

SEN. URLACHER: Each individual investor can get the credit?

ANSWER: each individual qualifying investor can get the credit for a maximum of \$50,000 per year for up to \$250,000.

DAVE STRAYLE: Economic Development Assoc. of North Dakota appeared in support with written testimony.

SEN. URLACHER: there was reference made that this wasn't workable, that they were tapping into other programs, what are those other programs?

LINDA BUTZ: Director of Economic Development Assoc. answered as we have 2 seed tax credits in statute right now, one is called seed tax credit which original intent was to help small start up businesses, and ag seed tax credit.

SEN. URLACHER: They couldn't utilize both programs then? NO

LINDA BUTZ: asked the committee to look at page 2, 3D; we have put 2 caps on this, 1 for fiscal, a financial cap and the other for the first 10 businesses. Suggests clarification on this section as to when you would like us to begin counting.

JOEL GILBERTSON: representing the ND Corn Council appeared in support stating that the Corn Council working with some of their members, ran into some significant fund raising problems for a proposed new ethanol plant, thus far unsuccessful and one of the real big stumbling blocks was that 51% rule or limitation, so this would alleviate that.

NO OPPOSITION. Closed the hearing.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2281

Senate Finance and Taxation

☐ Conference Committee

Hearing Date February 7, 2005

Tape Number	Side A	Side B	Meter #
1	X		-4,037-END
		X	1-96
Committee Clerk Signature			

Minutes:

Chairman Urlacher called the meeting to order to discuss SB 2281. All Senators were present.

Senator Wardner introduced the amendment to SB 2281. The amendment deals with seed capital.

Donnita Wald of the Tax Department- Last session changes to the seed capital investment tax credit with a \$2.5 million cap for the biennium. We reached that level this past May. Red Trail Energy qualified under the seed capital tax investment credit. The bill takes away qualifications that make it difficult for entities like Red Trail to qualify for this tax credit. The intent of the amendments is to put these credits in the Ag investment tax credit. The Economic and Finance Department does not have to re-certify the businesses that get moved over to the Ag investment credit. Funds in escrow accounts do not qualify for the tax credit.

Senator Cook- When is the effective date for the first ten businesses?

Donnita- It is after December 31, 2004.

Senator Cook- Are the seed capital tax credit and the ag investment tax credit, are they credits to corporate tax and personal income tax?

Donnita- The bill amends it to also allow corporations.

Senator Cook- How much credit could actually be taken, \$2.5 million per year?

Donnita- That amount was supposed to be forever, but SB 2032 might be changing that.

Senator Cook- What is the difference between the seed capital tax credit, and the ag investment tax credit?

Donnita- The major difference is that the ag investment tax credit was just for commodity processing facilities. 51% of its owners had to be producers. There was also some investment limitations.

Senator Cook- So, a person could possibly qualify for both tax credits?

Donnita- Yes.

Senator Cook- Is there any cap on the ag investment tax credit?

Donnita- The cap is \$50,000 annually, and a forever cap of \$250,000. SB 2032 has amendments that have not been adopted that would clarify ag processors are out of a particular chapter.

Senator Wardner- The economic development committee from the interim brought SB 2032 in, it then went through the Industry, Business, and Labor Committee and now is in the Senate Appropriations Committee.

Senator Bercier- I believe we need more information before we act on this bill.

Senator Cook- This bill is going to affect income tax collectors in ND, this bill is tied directly to SB 2032, we need to find out what the entire fiscal impact is going to be on this.

Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2281

Hearing Date February 7, 2005

Senator Wardner- I will check with Senator Grindberg to find out where Appropriations is with SB 2032.

Chairman Urlacher closed the meeting on SB 2281. No action was taken.

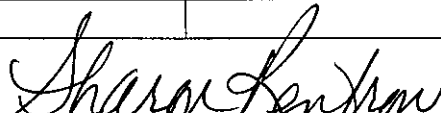
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2281**

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date **February 8, 2005**

Tape Number	Side A	Side B	Meter #
#2	X		16.1 - 28.5
Committee Clerk Signature 			

Minutes:

SEN. WARDNER: we do have amendments (50731.01tx)

DONNITA WALD: Tax Dept. appeared to explain the amendments stating these amendments or the amendments to SB 2032 and these amendments they are only throwing over the ethanol production facility into this chapter. The second thing that is different from what we talked about yesterday is page 8, there is a new subsection 8, this is a fix, what we are doing is saying that if you made a qualified investment in an ethanol production facility before January 1 of this year, we're gonna give you something. What were giving them is 30% of the amount that they, a tax credit of 30% of the investment which can only take it up to $\frac{1}{4}$ of that each taxable year and it can be carried forward for 5 taxable years. So to some extent it is a retroactive fix for those people who made those investments

SEN. COOK: This 2 $\frac{1}{2}$ million dollar cap, is that one time or can that be extended or is it 2 $\frac{1}{2}$ million dollars a year or?

ANSWER: the seed capital investment tax credit as it was written for 2004 was 2-½ million dollars period. 2032 is saying 2 ½ million a year if that passes in the form that it is now

SEN. WARDNER: I kept saying that limiting factor is ½; you can only take ½ of the State tax liability, that's in this one too. So this does limit it and you get a 5-year carry forward on this one but it all is around what's your tax liability, the more your tax liability, the more the fiscal note will be. Remember there is a limit on it, its limited to 11 and if you took the maximum which is \$250,000 that anyone entity can get over time and take that times 11 and that gives you your fiscal note. But it isn't necessarily a fiscal note per biennium; it's a fiscal note over time.

SEN. COOK: the debate of the inability to put a fiscal note to a policy, so to solve that problem they put a cap out there, 2 ½ million dollars. But how do you then realize when you've reached the cap? That's the problem that we've ran into here now we find out after the fact, after the people have made the investment that the cap has been reached and it was reached I believe in January, so now we sit here with this dilemma of people who made an investment thinking they were going to get a credit and there is no credit left.

DONNITA: No, there is only one coming over, some of those other ones that I talked about, so there would be 11 total.

SEN. COOK: if were going to have a 2-½ million cap in 2232 per year, how do we keep that same problem from happening in that field?

SEN. WARDNER: I think Sen. Cook brings up a good issue, are we going to go through this again next biennium where they exceed the cap, then we come in and we've got to do a look back to bring these people on and I will surely ask. What's fair for this one, why wouldn't it be fair for that, because this limits how many entities can be involved. Why wouldn't we at least limit

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Senate Finance and Taxation Committee

Bill/Resolution Number SB 2281

Hearing Date February 8, 2005

in the seed capital one, how many entities could take advantage of that then that would take care of that problem.

SEN. EVERY: made a **MOTION TO ADOPT THE AMENDMENTS**, seconded by Sen. Bercier.

VOICE VOTE: 6-0-0 **MOTION CARRIES**

SEN. WARDNER: made a **MOTION FOR DO PASS AS AMENDED AND REFER TO APPROPRIATIONS**, seconded by Sen. Every.

FISCAL NOTE
Requested by Legislative Council
03/24/2005

Amendment to: Engrossed
SB 2281

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 SB 2281 with House Amendments broadens the agricultural investment tax credit to include investments made by corporations and pass-through entities. The bill limits the number of agricultural commodity processing facilities in which taxpayers can invest to the first ten new projects that qualify, and one existing project that was previously certified. The bill does not limit the number of taxpayers who can claim the tax credit.

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

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

Currently, this agricultural processing tax credit is available only to individuals who invest in qualifying projects. The fiscal impact of expanding it to corporations and other types of businesses cannot be determined. Nor is it known the potential size of the qualifying ten projects.

Section 4 provides a tax credit for individuals who had previously invested in an ethanol production facility and who did not qualify for the tax credit due to the statutory tax credit limitation. This provision is expected to result in a reduction in state general fund revenues of \$1.05 million for each of the next two 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	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	03/25/2005

FISCAL NOTE

Requested by Legislative Council
02/09/2005

Amendment to: SB 2281

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 SB 2281 broadens the agricultural investment tax credit to include investments made by corporations and pass-through entities. The bill limits the number of agricultural commodity processing facilities in which taxpayers can invest to the first ten new projects that qualify, and one existing project that was previously certified. The bill does not limit the number of taxpayers who can claim the tax credit.

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

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

Currently, this agricultural processing tax credit is available only to individuals who invest in qualifying projects. The fiscal impact of expanding it to corporations and other types of businesses cannot be determined. Nor is it known the potential size of the qualifying ten projects.

Section 3 provides a tax credit for individuals who had previously invested in an ethanol production facility and who did not qualify for the tax credit due to the statutory tax credit limitation. This provision is expected to result in a reduction in state general fund revenues of \$1.05 million for each of the next two 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	Agency:	Office of Tax Commissioner

Phone Number: 328-3402

Date Prepared: 02/10/2005

FISCAL NOTE
Requested by Legislative Council
01/19/2005

Bill/Resolution No.: SB 2281

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.*

SB 2281 broadens the agricultural investment tax credit to include investments made by corporations and pass-through entities. The bill limits the number of agricultural commodity processing facilities in which taxpayers can invest to the first ten projects that qualify, however it does not limit the number of taxpayers who can claim the tax credit.

Currently, this tax credit is available only to individuals who invest in qualifying projects. The fiscal impact of expanding it to corporations and other types of businesses cannot be determined.

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

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

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

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, 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	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/28/2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2281

Page 1, line 1, replace the second "and" with ", 57-38.6-02," and after "57-38.6-03" insert "and 57-38.6-04"

Page 2, line 3, after the period insert "This subdivision does not apply to a business that was previously certified as a qualified business under chapter 57-38.5."

Page 2, after line 5, insert:

"SECTION 2. AMENDMENT. Section 57-38.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-02. Certification - Investment reporting by qualified businesses.
The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses. The director does not have to recertify a business as a qualified business under this chapter if the business was previously certified by the director as a qualified business under chapter 57-38.5.

Page 3, line 10, after the period insert "Investments placed in escrow do not qualify for the credit."

Page 3, after line 22, insert:

"SECTION 4. AMENDMENT. Section 57-38.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-04. Taxable year for agricultural business investment tax credit.
The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which ~~full consideration for~~ the investment in the qualified business was received by the qualified business."

Page 3, line 23, replace "This" with "Section 1 of this Act is effective for businesses certified by the director after December 31, 2004. Sections 2, 3 and 4 of this"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2281

Page 1, line 1, replace the second "and" with ", 57-38.6-02," and after "57-38.6-03" insert "and 57-38.6-04"

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57-38.6-02. Certification - Investment reporting by qualified businesses.

The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses. The director does not have to recertify a business as a qualified business under this chapter if the business was previously certified by the director as a qualified business under chapter 57-38.5. "

Page 3, line 10, after the period insert "Investments placed in escrow do not qualify for the credit."

Page 3, after line 22, insert:

- "8. An investment in an ethanol production facility made before January 1, 2005, that did not qualify for the tax credit because of the two million five hundred thousand dollar credit limitation in section 57-38.5-02, is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount of thirty percent of the amount invested by the taxpayer in a qualified business subject to the following:
- a. The aggregate investment for which a taxpayer may obtain a credit under this subsection is not less than five thousand dollars and not more than two hundred fifty thousand dollars.
 - b. In any taxable year, a taxpayer may claim no more than one-fourth of the credit under this subsection which is attributable to investments made before January 1, 2005.
 - c. Any amount of credit under this subsection not allowed because of the limitations in this section may be carried forward for up to five taxable years after the taxable year in which the investment was made.

SECTION 4. AMENDMENT. Section 57-38.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-04. Taxable year for agricultural business investment tax credit.

The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in

which ~~full consideration for~~ the investment in the qualified business was received by the qualified business."

Page 3, line 23, replace "This" with "Section 1 of this Act is effective for businesses certified by the director after December 31, 2004. Sections 2, 3 and 4 of this"

Renumber accordingly

Date: 2-8-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *SB 2281*

Senate	Finance and Taxation	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken adopt Amendments

Motion Made By Gray Seconded By Berrier

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

Date: 2-8-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2201

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50731.01TX #2

Action Taken DP as Amended & refer to Approps.

Motion Made By Wardner Seconded By Every

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Bercier	✓	
Sen. Wardner	✓		Sen. Every	✓	
Sen. Cook		✓			
Sen. Tollefson	✓				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Wardner

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

REPORT OF STANDING COMMITTEE

SB 2281: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2281 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the second "and" with ", 57-38.6-02," and after "57-38.6-03" insert ", and 57-38.6-04"

Page 2, line 3, after "subsection" insert ", but not a business that was previously certified as a qualified business under chapter 57-38.5."

Page 2, after line 5, insert:

"SECTION 2. AMENDMENT. Section 57-38.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-02. Certification - Investment reporting by qualified businesses.

The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses. The director is not required to recertify a business as a qualified business under this chapter if the business was previously certified by the director as a qualified business under chapter 57-38.5."

Page 3, line 10, after the period insert "An investment placed in escrow does not qualify for the credit."

Page 3, after line 22, insert:

"8. An investment in an ethanol production facility made before January 1, 2005, that did not qualify for the tax credit because of the two million five hundred thousand dollar credit limitation in section 57-38.5-02, is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount of thirty percent of the amount invested by the taxpayer in a qualified business subject to the following:

- a. The aggregate investment for which a taxpayer may obtain a credit under this subsection is not less than five thousand dollars and not more than two hundred fifty thousand dollars.
- b. In any taxable year, a taxpayer may claim no more than one-fourth of the credit under this subsection which is attributable to an investment made before January 1, 2005.
- c. Any amount of credit under this subsection not allowed because of the limitations in this section may be carried forward for up to five taxable years after the taxable year in which the investment was made.

SECTION 4. AMENDMENT. Section 57-38.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.6-04. Taxable year for agricultural business investment tax credit.

The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which ~~full consideration for~~ the investment in the qualified business was received by the qualified business."

Page 3, line 23, replace "This" with "Section 1 of this Act is effective for any business certified by the director after December 31, 2004. Sections 2, 3, and 4 of this" and replace "is" with "are"

Renumber accordingly

2005 SENATE APPROPRIATIONS

SB 2281

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2281

Senate Appropriations Committee

☐ Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
1	a		432
Committee Clerk Signature <i>James D. Smith</i>			

Minutes:

Chairman Holmberg called the hearing to order with the roll call and announcements. The hearing on SB

Senator Jerry Klein, District 14, Fessenden, testified on SB 2281. He discussed how he became involved with the bill and indicated this law in Chapter 57 was not being utilized by the agency because of the difficulty in some of the applications. The idea behind the bill is to make this particular section of law more functional. Additions include corporations and partnerships and the Security Commission be very careful as to whether the particular ventures are put together properly and amount of dollars be limited. The fiscal note came about because some of the investors were not covered because the money ran out. This would cover all investors in the Red Trail to get a tax credit.

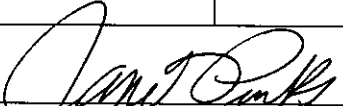
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2281

Senate Appropriations Committee

☐ Conference Committee

Hearing Date February 11, 2005

Tape Number	Side A	Side B	Meter #
1		b	
Committee Clerk Signature 			

Minutes:

Chairman Holmberg indicated Rick Clayburgh, State Tax Commissioner wanted to clarify an issue on SB 2281.

Rick Clayburgh, State Tax Commissioner, indicated he received an answer on **2281**. The fiscal note of \$1 million for the two biennium is only due to the aspect of the hold harmless of the Red Trail aspect. The reason it was put into the lower aspect of the bill, the bill has a fiscal impact on the ag credit concept, but it is unknown if any projects will be implemented under the new program. At this time a fiscal impact cannot be put into the graph area. We do know the hold harmless does have a \$1 million dollar impact. So the fiscal note on the bill itself potentially good be a lot of money.

Our policy on fiscal notes is to put down information we know.

Questions were raised about the fiscal impact.

Senator Grindberg testified in **support of SB 2281**. He gave a historical perspective of SB 2281 and indicated that three things have been done 1) have a look back pass so these projects are covered, 2) define what the seed tax program is and how it should be used and 3) this bill.

Senator Rich Wardner, District 37, testified in **support of SB 2281**, indicating he was baby-sitting this bill out of finance and tax and has done a lot of work on it. If you don't have anyone here who wants to carry this on the floor, I will for a do pass.

Rick Clayburgh, Tax Commissioner, testified in **support of SB 2281**, indicating staff was present to address any specifics and working of the bill. He gave information about the basis for the bill and indicated their concern is with the taxpayers and the problems that arose with running out of credits.

Senator Krauter raised a question about the fiscal note. The response will be forthcoming, but it will be a reduction in revenues.

Senator Thane, clarified the process on behalf of the taxpayers entitlement.

Senator Grindberg had the fiscal impact clarified.

Rick Clayburgh indicated that in this particular case we know the potential impact on the economy but in the fiscal notes we tell you what we know.

Senator Lindaas asked if there was more than one business involved.

Rick Clayburgh indicated this bill is a fix to one situation. However, there are other companies participating in other credits.

Senator Andrist asked what happens when a business fails.

Rick Clayburgh indicated that the purpose is to get investors involved in more risky projects and if the business goes under the taxpayer still gets the credit.

Page 3

Senate Appropriations Committee

Bill/Resolution Number 2281

Hearing Date February 11, 2005

Senator Tallackson as I understand only a certain percentage of investors got the credit.

Rick Clayburgh indicated this bill will fix those individuals for the 2005 year.

No other testifiers.

Chairman Holmberg closed the hearing on SB 2281.


2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2281

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 02/14/05

Tape Number	Side A	Side B	Meter #
3	x		967-1584
Committee Clerk Signature 			

Minutes: **Chairman Holmberg** opened discussion on SB 2281.

Sen. Grindberg moved a **DO PASS** seconded by Sen. Fischer.

Sen. Grindberg gave an overview of bill.

Sen. Lindaas (1146) This pertains to one business and one business only, correct?

Sen. Andrist: My understanding is that this bill relates to tax credits for investors.

Sen. Grindberg: That is correct.

Sen. Lindaas: I am going to oppose this bill.

Sen. Krauter: This is one of those fiscal notes that is only half done. I wanted to point out the inconsistency there.

Sen. Christmann: What is the impact if passed?

Legislative Council stated that if this bill was approved we would work with the tax department.

Page 2

Senate Appropriations Committee

Bill/Resolution Number SB 2281

Hearing Date 02/¹⁴~~11~~/05

The roll call vote was taken, on a DO PASS the vote was 9 to 6. Sen. Wardner will carry the bill.

Chairman Holmberg closed meeting on SB 2281.

Date 2-14-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2281

Senate SENATE APPROPRIATIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass

Motion Made By

Grindberg

Seconded By

Fischer

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	SENATOR KRAUTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VICE CHAIRMAN BOWMAN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	SENATOR LINDAAS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VICE CHAIRMAN GRINDBERG	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SENATOR MATHERN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR ANDRIST	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SENATOR ROBINSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR CHRISTMANN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SEN. TALLACKSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SENATOR FISCHER	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SENATOR KILZER	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SENATOR KRINGSTAD	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SENATOR SCHOBINGER	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
SENATOR THANE	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
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Total (Yes) 9 No 6

Absent _____

Floor Assignment

FIN

Wardner

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

REPORT OF STANDING COMMITTEE (410)
February 14, 2005 5:04 p.m.

Module No: SR-29-2852
Carrier: Wardner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2281, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (9 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2281 was placed on the Eleventh order on the calendar.

2005 HOUSE FINANCE AND TAXATION

SB 2281

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2281**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 7, 2005**

Tape Number	Side A	Side B	Meter #
1	X		213
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

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

SEN. JERRY KLEIN, DIST. 14, Introduced the bill. Stated he got involved with the bill when the Department of Commerce were looking for a sponsor because the agricultural investment tax credit program hasn't been used. It was cumbersome and there were some major issues in there. What we tried to do here, is try to make it more user friendly. Hopefully, as we move toward the future, this particular section of code could be used for providing some of those value-added type arrangements as they appear here in the state. A couple of changes we made is in Section 1, number 3, we got it to where it is corporation and partnership. In B of that section, we wanted to make sure that these corporations, partnerships, cooperatives, limited liability corporations, are certainly certified by the securities commissioner. We are also stating that whatever this processing plant is, it must be located here in the state. One of the sections has been deleted on the top of page 2, where the majority of the ownership needed to be in

unprocessed commodities. In Section 3, we are attempting to keep it at \$50,000, and no taxpayer will have to pay more than \$250,000 in credits under this section over any combination of taxable years. The maximum is \$250,000. The major section was added in the Senate, on page 4, line 8. There is a Red Trail Ethanol facility, was out there using the Seed Capital Tax Investment credit, they ran out of money in that particular fund, and a lot of investors felt sort of jilted, that they didn't get to be made whole, number 8, attempts to make those investors whole. There is another amendment that we need to put on this bill, to make sure that we understand it was investors before the end of the year, and it is referring to the 2004 tax year.

REP. BELTER Referred to the fiscal note, it is estimated at just a little over a million?

SEN. KLEIN That is correct. We hoped for 2.5 million so we would get those projects. This takes some time, these projects aren't just going to leap out there. Since we have been using none of it, it will take some time.

REP. SCHMIDT On line 18, it says, capable of being raised in this state, this wouldn't keep you from getting the corn from South Dakota, if we run out of corn?

SEN. KLEIN I think it would leave that door open.

DAVID STRALEY, GREATER NORTH DAKOTA CHAMBER OF COMMERCE

REPRESENTING THE ECONOMIC DEVELOPMENT ASSOCIATION OF NORTH

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

LINDA BUTTS, DIRECTOR OF THE ECONOMIC DEVELOPMENT AND FINANCE

FOR THE NORTH DAKOTA DEPARTMENT OF COMMERCE Testified in support of the bill. She gave a brief background as to why they were testifying on the bill. This was designed for small entrepreneurial startups. She explained what happened last biennium. They

put these tax credits on the short form from the long form. We are here today to clear up the confusion that resulted from this. She explained what happened with the Valley City project, they looked at the two tax credits, and decided they would use the ag tax credit, but felt their ability to raise capital was severely compromised. The second ethanol plant in Richardton, looked at the two tax credits and said, there is no way we can meet the fifty one percent threshold, we are going to go to the C tax credit, which was not really the legislative intent. We tried to simplify the process with this bill.

DONNITA WALD, STATE TAX DEPARTMENT Testified in a neutral position. She presented amendments to the bill. The amendment would give those investors on Red Trail the ability to take their tax credit. We needed legislation to clarify that because the investment was made in 2004, that they can take it on their 2004 tax form. That is what this amendment does.

REP. BELTER How many of these Red Trail investors do you anticipate might come back?

DONNITA WALD The amount of the dollars on the fiscal note, the 1.05 million, that's how many available credits are out there. Based on the activity already taken, the ability to take these credits has been severely limited by the taxpayers tax liability. They don't have enough taxes to take that credit again. There is a 1.2 million dollars in credit equity claimed, but because of the tax liability issue, only about 370,000 have been claimed. While the fiscal note says 1.05 million, we think that will be reduced.

REP. BELTER There is also the nonagricultural seed capital credit, will Red Trail qualify under that also?

DONNITA WALD No, not agricultural processing types of facilities. Referred to Page 2, lines 3-4, and lines 12-14, which says that if you were an ag processing facility, under the seed capital,

Page 4

House Finance and Taxation Committee

Bill/Resolution Number **SB 2281**

Hearing Date **March 7, 2005**

now under here, you are not one of the ten, you don't have to be certified again. The other investors, the non ag, they are being addressed in SB 2018.

With no further testimony, the committee hearing was closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2281**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 14, 2005**

Tape Number	Side A	Side B	Meter #
1	X		44.5
Committee Clerk Signature			

Minutes:

COMMITTEE ACTION

REP. BELTER Presented amendments to committee members for page 4, line 3. We need this amendment, according to the State Tax Department, because we want this for all agricultural commodities and not just ethanol. This bill can then fit with other legislation which is already on the books. It is a correction type amendment.

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

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

Another amendment from the State Tax Department #50731.02tx, was presented to the committee.

REP. BRANDENBURG Made a motion to adopt this amendment as presented.

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

REP. BRANDENBURG Made a motion for a **DO PASS AS AMENDED**.

Page 2

House Finance and Taxation Committee

Bill/Resolution Number **SB 2281**

Hearing Date **March 14, 2005**

REP. IVERSON Second the motion. **MOTION CARRIED**

12 Yes 1 No 1 Absent

REP. BRANDENBURG Was given the floor assignment.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2281

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date **March 22, 2005**

Tape Number	Side A	Side B	Meter #
1	X		30.1
Committee Clerk Signature			

Minutes:

COMMITTEE ACTION

REP. BRANDENBURG Made a motion to reconsider the action by which the bill was passed out of committee.

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

REP. BELTER Presented amendments to committee members. The amendments cover the ag processing companies' concerns and the tax department's concerns. The amendment also covers the Red Trail Plant, which will allow them an investment tax credit.

REP. HEADLAND Made a motion to remove the previously adopted amendments and adopt the new amendments .0202 as presented.

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

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

REP. OWENS Second the motion. **MOTION CARRIED. 12 YES 0 NO 2 ABSENT**

Date: 3-14-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2281

House FINANCE & TAXATION

☐ Check here for Conference Committee

Legislative Council Amendment Number 50731.0201

Action Taken Do Pass as Amended

Motion Made By Rep. Brandenburg Seconded By Rep. Iverson

Representatives	Yes	No	Representatives	Yes	No
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	✓				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Brandenburg

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

Date: 3-22-05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2281

House FINANCE & TAXATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

50731.0203

Action Taken

Do Pass As Amended

Motion Made By

Rep. Headland

Seconded By

Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
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	✓				

Total (Yes)

12

No

0

Absent

2

Floor Assignment

Rep. Brandenburg

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

REPORT OF STANDING COMMITTEE

SB 2281, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2281 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on pages 1118 and 1119 of the House Journal, Engrossed Senate Bill No. 2281 is amended as follows:

Page 1, line 1, after "to" insert "create and enact a new subsection to section 57-38.6-03 of the North Dakota Century Code, relating to agricultural business investment income tax credits; to"

Page 4, replace lines 3 through 17 with:

"SECTION 4. A new subsection to section 57-38.6-03 of the North Dakota Century Code is created and enacted as follows:

A taxpayer whose investment in an agricultural commodity processing facility was made before January 1, 2005, and did not qualify for the tax credit because of the two million five hundred thousand dollar credit limitation in section 57-38.5-02, is entitled to a credit against state income tax liability under section 57-38-29 or 57-38-30.3 in the amount of thirty percent of the amount invested by the taxpayer in a qualified business, subject to the following:

- a. The aggregate investment for which a taxpayer may obtain a credit under this subsection is not less than five thousand dollars and not more than two hundred fifty thousand dollars.
- b. In any taxable year, a taxpayer may claim no more than one-fourth of the credit under this subsection which is attributable to an investment made before January 1, 2005.
- c. Any amount of credit under this subsection not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made."

Page 4, line 25, replace "4" with "5"

Page 4, line 26, after the period insert "Section 4 of this Act is effective for tax year 2004 and is thereafter ineffective, except any unused credit may be carried forward as provided in section 4 of this Act."

Renumber accordingly

2005 TESTIMONY

SB 2281



**Testimony of David Straley
Greater North Dakota Chamber of Commerce
Presented to the
Senate Finance and Taxation Committee
January 31, 2005**

SB 2281

Mr. Chairman and members of the Senate Finance and Taxation Committee, my name is David Straley. I am here today representing the Economic Development Association of North Dakota (EDND) to urge a **Do Pass** for SB 2281

EDND believes this bill is good for economic development in North Dakota. This bill attempts to provide capital to value added agricultural projects. The requirement that 51 percent of the investors must grow the commodity processed has been removed as it has proved to be unworkable. Also current projects are finding the many other North Dakotans want to invest in such projects, but they may be local business people.

The definition of the "qualified business" has been expanded to include all legal entities including corporations and partnerships and this will open the door for more opportunity. The definition of the taxpayers has been expanded to include corporations, partnerships, or LLC's.

Last, the maximum credit any single taxpayer may take in a given year is \$50,000 with a lifetime cap of \$250,000. This puts a cap on large corporations coming in using a lot of tax credits, but still allows family or small business corporations to invest. For all the above reasons, EDND supports this bill.

Thank you, Chairman Urlacher and members of the Senate Finance and Taxation Committee, for this opportunity to discuss SB 2281. We urge a **DO PASS** for SB 2281. Thank you and I would be happy to answer any questions at this time.



**Testimony of David Straley
Greater North Dakota Chamber of Commerce
Presented to the
House Finance and Taxation Committee
March 7, 2005**

SB 2281

Mr. Chairman and members of the House Finance and Taxation Committee, my name is David Straley. I am here today representing the Economic Development Association of North Dakota (EDND) to urge a **Do Pass** for SB 2281.

EDND believes this bill is good for economic development in North Dakota. This bill attempts to provide capital to value added agricultural projects. The requirement that 51 percent of the investors must grow the commodity processed has been removed as it has proved to be unworkable. Also current projects are finding the many other North Dakotans want to invest in such projects, but they may be local business people.

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Thank you, Mr. Chairmen and members of the House Finance and Taxation Committee, for this opportunity to discuss SB 2281. We urge a **DO PASS** for SB 2281. Thank you and I would be happy to answer any questions at this time.