

2009 SENATE FINANCE AND TAXATION

SB 2031

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2031

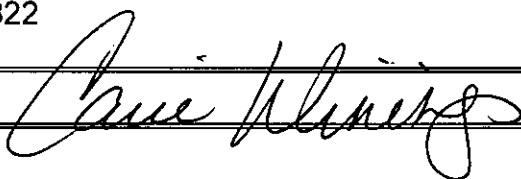
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/27/2009

Recorder Job Number: 7822

Committee Clerk Signature



Minutes:

Chairman Cook: Opened hearing on SB 2031.

Shane Goettle, Commissioner of the North Dakota Department of Commerce and chairman of the EmPower North Dakota Commission: Testified in support of the bill. See attachment #1.

Chairman Cook: asked if the incentive was at 1 ½%.

Shane Goettle: said yes, 1 ½ % of the assessed value then becomes subject to the property tax for projects that were built after June 30, 2006 and now before 2015.

Chairman Cook: he asked for residential property if you take the assessed value times .9 to come up with the taxable valuation and for wind projects you would take the assessed value times .015?

Shane Goettle: said yes that is his understanding that it is valued at 1 ½ % of the assessed value to determine the taxable value.

Chairman Cook: Before it was 1 ½ %, was it ever anything different?

Shane Goettle: for projects that would have been constructed prior to April 30, 2005 the taxable value would have been 3 % of the assessed value.

2.48 Chairman Cook: If this bill failed he asked what it would go too?

Shane Goettle: said the present law would stay in effect and the whole thing would expire.

Chairman Cook: if this bill fails and we reach expiration date, what will it go to?

Shane Goettle: said this whole section would expire and I am not positive what the default is after that.

Chairman Cook: said we will find out.

3.56 **Curtis Jabs, Basin Electric:** Testified in support of SB 2031. This will make us competitive with SD. It is his understanding that if this went away everything would be taxed at 10%. I believe the reason it went down is because a wind farm is about 30% efficient.

Chairman Cook: asked if there was ever a time they were paying 10%?

Curtis Jabs: I do not know

Senator Triplett: asked about fiscal note statement and whether there were any conversations with county or cities in terms of their buy in.

Curtis Jabs: I do not know.

6.50 **Senator Anderson:** said it states that it is for the duration of the purchased power agreement. He asked what a typical length of the agreement was.

Curtis Jabs: said typically 25 years. We are a cooperative and taxed on gross receipts. Basin Electric is anticipating building a wind farm in ND, the same model Power & Light used our subsidiary would be taxed under that.

Senator Oehlke: asked about efficiency of wind power in ND.

Curtis Jabs: he said North Dakota is ranked #1 in wind energy.

8.25 **Chairman Cook:** That gives us a competitive advantage.

Vice Chairman Miller: Is there some portions of this that we do not need any more that we can amend out to clean up the code?

Curtis Jabs: gave examples of what SD and Montana have.

Vice Chairman Miller: My point in reading some of this, can it be simplified.

Curtis Jabs: It has to stay.

Bruce Eckre, Hartland Wind Farm: testified in support of bill.

10.46 **Chairman Cook:** Any other testimony? No opposing testimony.

Dan Rause, Tax Department: Appeared to answer questions.

Chairman Cook: asked how much property tax is generated.

Dan Rause: We do not have that ability right now.

11.40 **Senator Triplett:** Can we leave this hearing open and give someone from the Association of Counties and League of Cities the opportunity to weight in if they want to.

Senator Cook: said he could do this.

Senator Dotzenrod: A little confusing – in Section 1, he questioned on exemption and time.

Rause: That is not correct. There is that window of time.

13.25 **Senator Dotzenrod:** Do you have to meet all the requirements?

Dan Rause: Have to read the entire subsection.

Senator Dotzenrod: you have to meet all of the requirements?

Dan Rause: With regard to Subsection 1 you have to meet all.

Senator Dotzenrod: Subsection 2.....why is the purchase power agreement reference there at all?

Dan Rause: I will defer, I have only recently become familiar with this language.

16.40 **Senator Triplett:** explained Section 1 and staying in code and reference to the purchase power agreement.

Dan Rause: Yes

Shane Goettle: explained the differences and answered Senator Dotzenrod's question.

Senator Triplett: said the assumption must have been that when the first section was put in place that a larger incentive was needed to get wind power up and running and when the second one was put in place there was an acknowledgement that there was wind development going and they didn't need quite as much of a tax incentive.

18.13 **Shane Goettle:** I believe that is a fair assumption but I don't know that as a fact.

Senator Hogue: The entire section was created and amended in 2007.

Senator Triplett: some of us should remember what we did.

Shane Goettle: I don't know, I don't have the history.

Vice Chairman Miller: Closed hearing on SB 2031.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2031

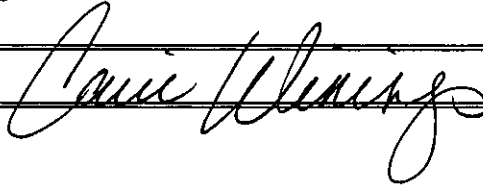
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/28/2009

Recorder Job Number: 8040

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened hearing on SB 2031.

Senator Triplett: There are no issues from the counties on this one.

Chairman Cook: Committee, your wishes on SB 2031?

Vice Chairman Miller: Motioned for a Do Pass.

Senator Dotzenrod: Seconded the motion.

Chairman Cook: Discussion?

Senator Triplett: Curtis Jabs from Basin Electric testified that the theory of the basic 3% for the centrally assessed asset rather than 10%, was because wind is about 30% efficient nationwide, but in North Dakota it is generally considered to be 39-40%. I am thinking that if he knows what he is talking about, then we should be looking at 4% as the base, not 3%. The underlying assumption in what he said is that something somewhere is 100% efficient. All electric generation is less than 100% efficient. You would think that he would know that.

Chairman Cook: I think he does, but he didn't want us to know that in his argument for this bill.

Senator Triplett: The other issue is if this is part of what we are trying to undo with the REC bill; to change from central assessment of wind turbines to the production mode. So maybe this would be irrelevant?

Chairman Cook: I don't think so. The REC bill will only affect four turbines. This will not conflict.

Senator Triplett: I thought we were changing in the REC from centrally assessed wind turbines to production methodology.

Chairman Cook: No, but I think we should clarify that.

Senator Triplett: Not that we can't pass conflicting legislation.

Senator Triplett: I am going to clarify something, but we can go ahead and act on this.

Chairman Cook: We have a motion for a Do Pass and it has been seconded.

A Roll Call vote was taken: Yea: 7, Nay: 0, Absent: 0

Senator Triplett will carry the bill.

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. 2031

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, or school districts. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

John Walstad
Code Revisor

Date: 01/28/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. :

2031

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	/		Sen. Arden Anderson	/	
Sen. Joe Miller - Vice Chairman	/		Sen. Jim Dotzenrod	/	
Sen. David Hogue	/		Sen. Constance Triplett	/	
Sen. Dave Oehlke	/				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Triplett

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

REPORT OF STANDING COMMITTEE

SB 2031: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2031 was placed on the Eleventh order on the calendar.

2009 HOUSE FINANCE AND TAXATION

SB 2031

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2031**

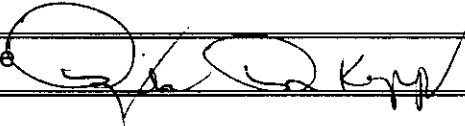
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder No. 9708

Committee Clerk Signature



Minutes:

Chairman Belter: We will open the hearing on SB 2031.

Tim Dawson, Legislative Council: The bill extends the reduction in taxable value from 3% to 1.5% of assessed value for centrally assessed wind turbines, electric generation units with a name-plate generation capacity of 100 kilowatts or more from January 1, 2011 to January 1, 2015. This bill came from the Energy Development and Transmission Committee, which I staff. We got the bill from the Empower North Dakota Commission. That is why I am here—because I staff the Energy Development and Transmission Committee, of which Senator Wardner was the chairman. I think that if you look at it that the main change is on page 1, line 20, the overstrike of 2011 and then immediately thereafter you see the underscore of 2015. The rest is clean up.

Representative Weiler: I thought I heard in your opening remarks that it changes it from 3% to 1½%.

Tim Dawson: It would otherwise be, if this exception wasn't in here, 3%. It doesn't change it; that is what it would be otherwise.

Representative Weiler: Because all I see is that it would change the date and that is fairly all, correct?

Tim Dawson: Yes, you are just changing the date. If you crossed out 1 and 2 there altogether and removed the law completely, it would be 3%.

Representative Weiler: Oh, I see. If completed before January 1, 2011 so we have to do it this session; otherwise it is going to expire. Is that the reason? We don't have next session to change it because the date of January 1.

Tim Dawson: Right, it will expire... a turbine that is completed before January 1, 2011 would be at that 3% unless you switch it to 2015.

Representative Weiler: Got it. Mr. Chairman, I was just thinking that we had til next session, but the closer I read, (inaudible.)

Chairman Belter: Any further testimony in support of SB 2031?

Shane Goettle, ND Department of Commerce: (Testimony 1) I am here on 2031, 2032, 2035 and 2037. Rather than pepper you with a whole bunch of paperwork related to all these bills, I have submitted just one piece of testimony that would apply to each of the bills as they come before you this morning. This document has unanimous endorsement of all of the members of the Empower Commission. The proposals you see in front of you were also unanimously endorsed, voted upon and approved by the commission as well and presented to the Energy and Transmission Committee during the interim for their consideration and yours today. We have provided a list of all the bills that have the specific endorsement of the Empower ND Commission that are still in front of the ND legislative session. The one in front of you today and the next two, 2032 and 2033, all relate to the state's tax incentives for wind energy development. We really looked at them all together in terms of what would help us remain competitive with our neighbors in regard to wind development. My staff has assembled the incentives available in other states, and I think, in the previous half of the legislative session you received some of that information in another hearing, but we still have it and the

Tax Department has some of that as well. It may have been distributed to you. All of this, the property tax incentives along with the sales and income tax incentives, were gauged to help us remain competitive. This particular bill simply extends the sunset that presently exists in the law and kicks it out to 2015. That is consistent with what we are attempting to do with the income tax incentives as well. With that, Mr. Chairman, I will entertain any questions.

Representative Froseth: Are there any wind farms now, any wind generating units, that pay the full 3% rate or all they all at a reduced rate?

Shane Goettle: I am not positive about that question. I know that most of the development would have occurred under the new rate, but I think the Tax Department would probably be in the best position to tell you if there were any projects prior to this law that would be at the old rate. I am not positive how this applies to the older projects.

Chairman Belter: Any further testimony in support of 2031? If not, any opposition to 2031? Marcy, would you want to address Representative Froseth's question please.

Marcy Dickerson, State Supervisor of Assessments, Tax Department: There are two wind farms that are being taxed at the 3% rate which were built prior to the 1½% rate being put into place; North Dakota Wind Farm at Lamoure and Velva Wind Farm are paying the 3% because they were constructed at the time that was the law.

Representative Weiler: Marcy, is the 3% what they started with or was it changed from 7% to 3%?

Marcy Dickerson: We started with 3% for wind farms; that was the initial reduction for wind farms; otherwise they would be at 10% like other electric property.

Representative Pinkerton: About how much does it amount to on \$3 million?

Marcy Dickerson: Without my calculator, I wouldn't be able to tell you, but it comes to 85%-- at least the 3% needs a 70% reduction what their tax otherwise would be. The ones that are at 1 ½% have an 85% reduction from what their tax would be.

Representative Pinkerton: Would the tax only be like a residential tax—\$20 per thousand?

Marcy Dickerson: That is about right, a little bit less probably because the wind farms are out in the townships where the mill rates are generally lower than in the cities where most of the residential properties are located.

Representative Pinkerton: So normally the tax rate is \$20 per thousand, \$20,000 per million, so \$60,000 on the tower, 3% rate would be a 70% reduction, and a 1½% rate is an 85% reduction. So that would amount to 85% of \$60,000, which would be \$55,000. Of that, half goes to the school, 25% to the township and 25% to the county; would that be correct?

Marcy Dickerson: It would probably be a little less to the township. There may be some to a fire district or some other district, a small amount to an ambulance district or something, but generally the school would be 50-55% or actually a higher percent where you have townships as opposed to cities. The county tax would be your next largest, and a city tax would be greater; but since it is not in the city, the township tax is generally pretty low. Schools might be getting about 60% of it.

Representative Pinkerton: So every percentage decrease, say on a \$60,000 property, 1% would be \$6,000; would 55% of that would be about \$3,000?

Marcy Dickerson: 10% of \$60,000 would be the full assessment. Yes.

Representative Weiler: You said the normal tax is 10% on electric.

Marcy Dickerson: All centrally assessed property and commercial property—the taxable value is ordinarily 10% of assessed value.

Representative Weiler: When was it changed from 10% to 3%? 2007?

Marcy Dickerson: That was back around 2003 when you first came up with a special rate for the wind towers. It might have been 2001. The change to 1½% was just for the ones who have a purchase power agreement in place and were built in a certain time frame, a certain window, I believe that took place in 2005 or that might have been 2003. 2005 was when it went to 1½% for all of them, either 2005 or 2007, but I think it was 2005.

Chairman Belter: Any other questions? If there is no further testimony, I will close the hearing on SB 2031.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2031**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9954 (Also contains SB 2033)

Committee Clerk Signature



Minutes:

Chairman Belter: Let's go back to last week, SB 2031, relating to the taxable valuation of centrally assessed wind turbines. 2031. We have a motion for a **"do pass" from**

Representative Froseth and a second from Representative Brandenburg. Is there any discussion? (1:40 – 04:12 were on SB 2033)

Representative Winrich: Are you talking about 2033? 2031 is just about central assessments of wind generators.

Representative Pinkerton: Oh, I am sorry. I jumped ahead. I apologize.

Chairman Belter: We will play it back. Representative Weiler.

Representative Weiler: Most of what a utility or company is assessed at is 10% and these wind turbine electric generation units; they are already receiving a 7% discount. They are centrally assessed at I believe 3% and they are asking in this bill to go to 1½%; am I correct in that?

Representative Brandenburg: To explain right now, this bill says 1½% and they are currently at 1½%; they were at 3%, Representative Weiler, until last session when we moved it from 3% to 1½%. Just to kind of give you a reason why, first of all, when we were looking at the wind turbines in Minnesota, South Dakota and other states, in order for us to be

competitive with Minnesota and South Dakota, we needed to be at 3%. What happened then was Minnesota and South Dakota put on more incentives which caused us to go to 1½%. (5:53) What caused the reason for going from 3% to 1½% was it used to cost \$1 million of megawatts to put up a wind tower; now that costs over \$2 million. The justification I guess for going from 3% to 1½% was that the cost doubled so you could still be in the same playing field. Now in Minnesota it is not just property tax, they have green credits and South Dakota does not tax; the only thing they tax is on the ground; they don't tax anything above the ground so that is how SD compares to ND. Dollar wise now all three states are real close and that is why we moved to 1½%. The thought process is they do pay property tax so each tower is paying about \$5,000 in property taxes, depending upon the mills out there each year for 25 years per tower. They are paying about \$4,500 payment to the land owners every year for 25 years or whatever the purchase power agreement is. It could be 20 years, 25 or 30 years and then also the jobs that they create when they build so you have economic development out there. It was just a matter of putting everything on an equal playing field is why they went from 3% to 1½% and now we are going to extend it for another four years.

Representative Wrangham: I think we need to give these folks all the tax credits we can possibly give them because any time you are producing something that is costing four times as much as the standard rate of producing it, they need all the help they can get. How the hell do they market it the way it is, especially (inaudible)? We have got to give them a credit so I am going to vote no on the bill.

Chairman Belter: Let's see, do we have a motion? Any other discussion? If not, will the clerk read the roll for a "do pass" on SB 2031. **(A roll call vote resulted in 8 ayes, 5 nays, and 0 absent/not voting. Representative Froseth will carry the bill.)**

Date: March 2, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2031

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Froseth Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich		/
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton		/
Representative Froseth	/		Representative Schmidt		/
Representative Grande	/		Representative Winrich	/	
Representative Headland	/				
Representative Weiler		/			
Representative Wrangham		/			

Total (Yes) 8 No 5

Absent 0

Floor Assignment Rep Froseth

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

REPORT OF STANDING COMMITTEE

SB 2031: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). SB 2031 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2031

#1

**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILLS 2032, 2031, & 2033
JANUARY 27, 2009, 9:00 A.M.
SENATE FINANCE AND TAXATION COMMITTEE
LEWIS AND CLARK ROOM
SENATOR DWIGHT COOK, CHAIRMAN**

SHANE GOETTLE – COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Shane Goettle, Commissioner of the North Dakota Department of Commerce. I also serve as chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bills 2032, 2031, and 2033. All three of these bills have been recommended by the Commission and were approved by the interim Energy Development and Transmission committee. A complete list of bills recommended and supported by the Commission is below:

- House Bill No. 1032 - Siting Jurisdiction for Certain Gas Pipelines.
- House Bill No. 1352 – State Energy Policy.
- Senate Bill No. 2031 - Property Tax Reduction for Wind Towers.
- Senate Bill No. 2032 - Sales and Use Tax Exemption for Wind Towers.
- Senate Bill No. 2033 - Income Tax Credit for Renewable Energy Devices.
- Senate Bill No. 2034 - Oil Extraction Tax Exemption for Tertiary Recovery Using Carbon Dioxide.
- Senate Bill No. 2035 - Sales and Use Tax Exemption for Beneficiated Coal Plant and Severance Tax Exemption for Beneficiated Coal in Agricultural Commodity Processing.
- Senate Bill No. 2036 - Coal Conversion Tax Exemption for Repowering Beneficiated Coal Plant.
- Senate Bill No. 2037 - Sales and Use Tax Exemption for Gas From Oil Wells.

You have three of these bills before you today that extend or make permanent tax incentives for wind energy. The EmPower ND Commission felt it was important to extend these key incentives that have allowed North Dakota to be competitive with neighboring states.

SB 2032 makes permanent the sales and use tax exemption for wind towers. This mirrors other industries that also have permanent sales and use tax exemptions. SB 2031 and SB 2033 extend the sunset dates to 2015 for the reduced property tax valuation and the income tax credit. Periodic reviews are in order and the sunset of 2015 will allow a future consideration of whether these incentives are still appropriate.

Mr. Chairman and members of the Finance and Taxation Committee, I respectfully request your favorable consideration of Senate Bills 2032, 2031, and 2033. That concludes my testimony and I am happy to entertain any questions.

**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILLS 2031, 2032, 2033, 2035, & 2037
FEBRUARY 25, 2009, 9:00 A.M.
HOUSE FINANCE AND TAXATION COMMITTEE
FORT TOTTEN ROOM
REPRESENTATIVE WES BELTER, CHAIRMAN**

SHANE GOETTLE – COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Shane Goettle, Commissioner of the North Dakota Department of Commerce. I also serve as chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bills 2031, 2032, 2033, 2035, and 2037. All five of these bills have been recommended by the Commission and were approved by the interim Energy Development and Transmission committee. A complete list of bills recommended and supported by the Commission is below:

- House Bill No. 1032 - Siting Jurisdiction for Certain Gas Pipelines.
- House Bill No. 1352 – State Energy Policy.
- Senate Bill No. 2031 - Property Tax Reduction for Wind Towers.
- Senate Bill No. 2032 - Sales and Use Tax Exemption for Wind Towers.
- Senate Bill No. 2033 - Income Tax Credit for Renewable Energy Devices.
- Senate Bill No. 2034 - Oil Extraction Tax Exemption for Tertiary Recovery Using Carbon Dioxide.
- Senate Bill No. 2035 - Sales and Use Tax Exemption for Beneficiated Coal Plant and Severance Tax Exemption for Beneficiated Coal in Agricultural Commodity Processing.
- Senate Bill No. 2036 - Coal Conversion Tax Exemption for Repowering Beneficiated Coal Plant.
- Senate Bill No. 2037 - Sales and Use Tax Exemption for Gas From Oil Wells.

Senate Bills 2031, 2032, and 2033 extend our state's tax incentives for wind energy development to 2015. The combination of favorable property tax treatment, sales and use tax exemptions, and income tax credits has allowed North Dakota to be competitive with neighboring states as companies decide where to locate new wind farms. Periodic reviews are in order and the sunset of 2015 will allow a future consideration of whether these incentives are still appropriate.

SB 2035 gives equal tax treatment to beneficiated coal as coal in its natural form.

SB 2037 clarifies that the sales and use tax exemption for gas gathering equipment applies to oil wells.

Mr. Chairman and members of the Finance and Taxation Committee, I respectfully request your favorable consideration of Senate Bills 2031, 2032, 2033, 2035 and 2037. That concludes my testimony and I am happy to entertain any questions.