

2009 SENATE FINANCE AND TAXATION

SB 2427

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2427

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/03/09

Recorder Job Number: 8459

Committee Clerk Signature

Minutes:

Tom Schuchard

Chairman Cook: Opened hearing on SB 2427, all members present.

Senator Connie Triplett, District 18, testified as a sponsor and in support of the bill. She walks through the explanation of the bill. Some of this may be required as part of the federal stimulus package and that is why we need to look at this.

8.00 Chairman Cook: Are you going to explain the differences between the energy conservation code and the international energy conservation code?

Senator Triplett: No, but someone else will. It does give choices to the local government (Page 2 of the bill). It is a directive, they can if they want, but they have to use the one mandated. You want uniform building codes.

Chairman Cook: This moving target with the stimulus package, we do not know exactly what is in it, or what strings are attached, and the amount of dollars that would be required to sustain it in the future. You feel it important to put in legislation in now contingent on the if and buts of federal stimulus package.

Senator Triplett: Energy efficiency and conservation is important to me

Chairman Cook: If the stimulus package did not does not contain the \$5million, this money would not be available.

Senator Triplett: I put it in there for matching funds. So if there wasn't anything to match, than it would be ineffective.

11.30 **Senator Hogue:** Section 2, It appears to me that you want every commercial building to comply with an energy conservation code.

Senator Triplett: Yes.

12.20 **Bill Kalanek, North Dakota Alliance for Renewable Energy:** See Attachment #1 in support of the bill. Also see attachment #2 for proposed amendment.

15.48 **Chairman Cook:** I have one question regarding NDARE; do they represent all of these groups in paragraph 2 of your testimony?

Bill Kalanek: Not all members,

Chairman Cook: Do you own a high definition TV?

Bill Kalanek: Yes I do.

Chairman Cook: Are you aware of how much energy they take?

Bill Kalanek: Yes I am.

17.26 **Mary Mitchell, Dakota Resource Council:** See Attachment #3 in support of bill.

19.22 **Harlan Fuglesten:** representing North Dakota Association of Rural Electric Cooperatives. We are members of the Alliance for Renewable Energy, and energy efficiency is one of the goals we support. We support building code energy efficiency standards. We think that at some point the state needs to put some money towards the promotion of energy efficiency.

21.30 **Senator Oehlke:** What is the most single energy efficient thing that we can do as homeowners?

Harlan Fuglesten: I think that insulation is the most important. Secondly...lighting. Beyond that, geothermal.

Chairman Cook: To what degree would these force property owners to spend money that they would not have to spend with this bill? Are we requiring owners to make an investment?

Harlan Fuglesten: I believe it is for new construction. It is a pay me now or pay me later.

23.52 **Senator Hogue:** It was indicated by Senator Triplett that she had asked various companies with regards grants and matching funds. I was wondering if your member companies incent consumers to install energy efficient devises.

Harlan Fuglesten: One of the programs we have are BRC loans and they are loans for energy efficiency projects, weatherization projects, and there are millions of dollars each year that our cause provides to consumers which they pay back with 5% interest. I believe tha is one key thing, also our member services regularly work with our customers and promote things like geothermal heating and cooling systems, they also provide energy audit services and advice on how to save energy and promote energy efficiency.

Senator Hogue: Can you explain smart metering?

Harlan Fuglesten: It is a way to give consumers more information with respect to real-time cost to the energy they are currently consuming and have 2-way communication between consumer and company.

26.32 **Doreen Riedman, Executive Officer, North Dakota Association of Builders:** See Attachment # 4 for testimony on bill.

32.58 **Vice Chairman Miller:** Are there any laws on the books already concerning geothermal heating?

Doreen Riedman: On the Federal level, there is a tax credit if it meets the energy star rating.

Vice Chairman Miller: Do you have an idea of what a geothermal unit will cost.

Doreen Riedman: \$15,000-\$20,000,

Senator Dotzenrod: If we don't include Sections 1 and 2....do the cities have a right to adopt a more stringent building code.

Doreen Riedman: Yes

Senator Hogue: You mentioned having to insulate the basement as being additional requirements if cities were forced to adopt the code.

Doreen Riedman: I can't give you any examples.

Chairman Cook: Do you support SB 2427

Doreen Riedman: We support with NDAB amendments.

37.15 Randy Matthern, Owner of Comfort Zone Heating and Air: Testified in support of the bill. I am a certified and accredited installer of geothermal heating and cooling systems.

Geothermal is the most efficient heating and cooling systems available today. Unlike fossil fuel systems that burn energy, geothermal systems transfer energy stored naturally in the ground to the above ground system.

39.40 Gardel Yochum, Northern Plains Plumbing and Heating in Bismarck: Gave an example of his own savings with geothermal heating. Stated that the system pays for itself in 7-10 years.

41.04 Senator Hogue: Are there places for your customers to get financing to install geothermal on existing properties?

Gardel Yochum: Not at this time.

Senator Hogue: Virtually all your customers who install this are getting their financing through the electric companies?

Gardel Yochum: Yes

Senator Triplett: Can you give us a comparison of cost for installing geothermal into a new home construction vs. retrofitting into an existing home.

Gardel Yochum: Retrofit system on a 2000 sqf home is about \$12,000 - \$13,000, On new construction it runs about 15K more than the conventional forced air system.

Senator Triplett: Retrofitting is less expensive?

Gardel Yochum: Yes, because you have most of the ductwork and stuff in place.

Vice Chairman Miller: Is that including labor cost and equipment?

Gardel Yochum: Yes

43.20 **Hapt Hildebrandt**, representing North Dakota Association of Builders and North Dakota Builders on the State Building Code Advisory Committee, testified in support of the bill.

One of the challenges we have found, is that we are concerned about enforcement in inspections. More employees will be needed and more visits. The tools are available right now to do this.

47.05 **Earl Reineky, Self:** I went to a seminar on energy. One of the topics that was discusses was building codes. The group was concerned about upgrades. They were also encouraging geothermal systems. I also attended the energy expo here in Bismarck and talked about smart metering with someone, and they stated that energy companies can monitor usage. It is beneficial if you because the energy company can know when your energy is out. It provides a two way benefit. We talked about geothermal energy, it is the thing to do, but it is expensive. One of the schools in town did put in geothermal energy. I would hope that this would move us in the direction as being a leader in energy efficiency.

51.47 **Cal Steiner, Department of Commerce:** See Attachment #5 for Testimony in neutral position to this bill.

54.47 **Senator Triplett:** Can you distinguish for us some of the concerns already stated with regards to commercial vs. home construction.

Cal Steiner: If there are some languages in there that are of concern, they can be amended.

Senator Anderson: I have been hearing about additional funding, do you have any information with regards to that because I am not familiar with it.

Cal Steiner: I do not have that information.

Senator Anderson: Do you feel that is a lot of money.

Cal Steiner: It could be.

56.52 **Mark Dougherty:** Membership services director for ABC of North Dakota and I also represent the commercial contractors on the state building code advisory committee. I am not sure what position I hold on this bill. There are a lot of parts to this bill. I believe that the costs will be key for builders. The one concern I have is with Sections 1 and 2. When it says "equal to international building codes", I think that means all of it. There are parts that I believe that don't fit for North Dakota. We just did take the model energy code out, and when we put things like this in the code, we have no guarantee that they will be updated. The inspection costs on this are also of concern. I am not sure there is a need for this.

1.01.02 **Senator Hogue:** In residential properties are there other ways the contractor would have to build the houses in order to comply with the international building code.

Mark Dougherty: I can't really answer that. It is such a big code and I have not gotten through all of it.

Senator Oehlke: Would there be restrictions in that code, for instance if the heating system goes out in an old building?

Mark Dougherty: I don't think it would cover repair. I think you would have a choice. You would have to meet certain parts of code in existence.

Senator Oehlke: If there was a fire and it destroyed the heating system, would you have to update the whole thing?

Mark Dougherty: Not necessarily, if it didn't cause the fire then probably no.

Senator Oehlke: Will you have to bring it up to date if it goes out and requires service?

1.05.25 **Senator Triplett:** We are at the bottom heap as far as energy code. Can you address that issue for us?

Mark Dougherty: I have not seen that and cannot speak to that.

Chairman Cook: I think that we should live by a code that is done by North Dakota people not elsewhere, but what do we do with some of the communities that don't live by a building code?

Mark Dougherty: That is an issue that we would have to contend with.

Chairman Cook: Closed hearing on SB 24.27

Committee Clerk Signature

Minutes:

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2427

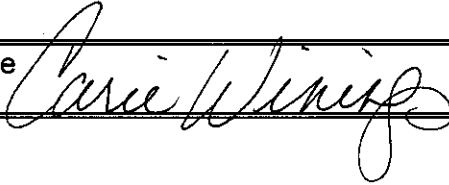
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/04/2009

Recorder Job Number: 8669

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on SB 2427. States that he can only support section 3.

Discussion: A discussion occurred on what should be removed from the bill, and whatever else needed to be done.

Senator Triplett: Are you opposed to spending any money on energy conservation?

Chairman Cook: I think the wisest use of public funds that we can do is spending money that will keep the price of electricity low.

Senator Triplett: That is what I am thinking about with the Smart Meters.

Chairman Cook: I think the consumer has some responsibility here too. I do what I can to keep our usage down and I think most people do. I did have a bill drafted for a sales tax holiday for energy star products just to draw attention to the people of North Dakota that what you buy directly effects the electricity you use. But I despise holidays – so I never introduced it.

Senator Triplett: We cannot ask people to take responsibility if they do not have the knowledge base.

Chairman Cook: As electricity starts going up they will figure out something needs to be done.

Senator Triplett: It is kind of late at that point. I think that it is important that we have some legislation that come out this session that spends some amount of dollars on something that relates to energy conservation.

Discussion: on Page 2, Section 3, relating to the tax forms they use, our ranking on energy conservation and how difficult it is to get the IECC regulations done in construction.

Chairman Cook: Don't you think that right now there are commercial builders that are already building to the IECC codes?

Senator Dotzenrod: They can be.

Senator Triplett: Let's keep sections 3 and 7, and on 6 can we split it up half and half between the industrial commission for this grant program and the other half use the words "for the purpose of encouraging energy consumers to reduce energy consumption through support for weatherization programs"

Chairman Cook: So you are saying change the 5 million to 2.5?

Senator Triplett: 2.5 for the Industrial Commission to do a grant program and 2.5 million for the Department of Commerce to do weatherization projects.

Senator Hogue: One of my problems with Section 6 was that there is not a program but just one on one with customers.

Senator Triplett: I probably approached them too late. If nobody wants the grant program, then the money just doesn't get spend and then we have a bigger ending balance at the end of the biennium. Appropriations will do something with the dollar amounts I am sure.

Senator Oehlke: How much are we spending on weatherization now?

Senator Triplett: Not very much.

Chairman Cook: This bill does not speak to weatherization.

Senator Triplett: That is what I want.

Senator Triplett: I move for the amendments already stated. (Remove section 1, 2, 4, 5, Section 6 change the 5 million dollars to 2.5 million, and then a section added that would reflect the amendments offered by Bill ? for a 2.5 million dollar appropriation).

Senator Anderson: Seconded.

Chairman Cook: There really should be some rules put in there. Let's see where this goes.
Clarifies amendments.

A Roll Call vote was taken: 3 yeas, 4 nays, 0 absent. Motion Failed.

Senator Hogue: A new motion to amend by removing Sections 1, 2, 4, 5, and 6.

Vice Chairman Miller: Seconded.

A Roll Call vote was taken: 4 yeas, 3 nays, 0 absent.

Senator Hogue: Moved a Do Pass As Amended and Re-Refer to Appropriations.

Vice Chairman Miller: Seconded.

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

FISCAL NOTE
Requested by Legislative Council
02/09/2009

Amendment to: SB 2427

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$375,000)			
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2427 allows the existing individual income tax credit for installation of a geothermal energy device to be claimed on the state's main individual income tax filing method, Form ND-1.

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

Engrossed SB 2427 allows the geothermal energy device installation credit on Form ND-1. This is expected to reduce state general fund revenues by an estimated \$375,000 in the 2009-11 biennium.

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/14/2009

FISCAL NOTE
Requested by Legislative Council
01/28/2009

Bill/Resolution No.: SB 2427

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$375,000)			
Expenditures						
Appropriations			\$5,000,000			

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2427 allows the existing individual income tax credit for installation of a geothermal energy device to be claimed on the state's main individual income tax filing method, Form ND-1. Additionally, the bill sets forth energy conservation standards in new building construction.

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

Section 3 of SB 2427 allows the geothermal energy device installation credit on Form ND-1. This is expected to reduce state general fund revenues by an estimated \$375,000 in the 2009-11 biennium.

There may be some costs to the state and/or political subdivisions associated with building standards contained in Sections 1 and 2. We have no information upon which to determine the fiscal impact, if any.

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Section 4 and 5 are appropriation sections that may or may not have a fiscal impact contingent upon some potential occurrences. Section 6 contains a \$5 million appropriation to the industrial commission from the state general fund, and is shown above.

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/02/2009

Roll Call Vote #:

Amendment

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 2427

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee

Sections
Remove 1, 2, 4, 5

Legislative Council Amendment Number

Section 6 ~~\$5 million~~ to \$2.5
~~another added w/~~ 2.5 million Approp.
 reflect language

Action Taken

☐ Do Pass☐ Do Not Pass☐ Amended

Motion Made By

Triplet

Seconded By

Anderson

[illegible]

Total: Yes

Yes

24

No

3

Absent

Floor Assignment

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

Roll Call Vote #: 2

Amendment

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 24122

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee

Delete 1, 2, 4, 5 & 6
Sections

Legislative Council Amendment Number

Action Taken

☐ Do Pass☐ Do Not Pass☐ Amended

Motion Made By

Hague

Seconded By

Miller

[illegible]

Total: Yes

No

Absent

Floor Assignment

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

Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2427

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee *AS Amended*

Legislative Council Amendment Number Refer Appropriation

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ^{AS}

Motion Made By Senator Hogue Seconded By Senator Miller

[illegible]

Total: Yes 7 No 0

Absent ☒

Floor Assignment

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

REPORT OF STANDING COMMITTEE

SB 2427: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2427 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "to amend and reenact sections"

Page 1, remove lines 4 and 5

Page 1, line 6, remove "appropriation;"

Page 1, remove lines 8 through 24

Page 2, remove lines 1 through 9

Page 2, remove lines 13 through 30

Page 3, line 1, replace "3" with "1"

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2427

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2427

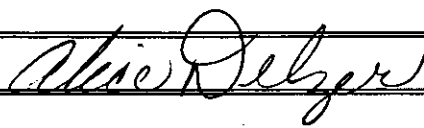
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-16-09

Recorder Job Number: 9529

Committee Clerk Signature



Minutes:

Chairman Holmberg called the committee hearing to order at 11:00 am in reference to SB 2427 in regards to relating to allowance of income tax credit on the form ND-1 income tax return for installation of geothermal energy devices.

Senator Triplett, District 18, Grand Forks testified in favor of SB 2427.

Some discussion followed.

Senator Mathern moved a DO PASS. **Seconded by Senator Wardner**. Discussion followed.

A ROLL CALL VOTE WAS TAKEN WITH 9 YEAS, 5 NAYS, 0 ABSENT. Senator Hogue from Finance and Tax will carry the bill.

Chairman Holmberg closed the hearing on SB 2427.

Date: 2/16/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2427

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Mather Seconded By Wardner

Representatives	Yes	No	Representatives	Yes	No
Senator Krebsbach	☒	☒	Senator Seymour	☒	☒
Senator Fischer	☒	☒	Senator Lindaas	☒	☒
Senator Wardner	☒	☒	Senator Robinson	☒	☒
Senator Kilzer	☒	☒	Senator Warner	☒	☒
V. Chair Bowman	☒	☒	Senator Krauter	☒	☒
Senator Christmann	☒	☒	Senator Mather	☒	☒
V. Chair Grindberg	☒	☒			
Chairman Holmberg	☒	☒			

Total Yes 8 No 5

Absent _____

Floor Assignment F. & Tap

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

Hogue-Carrier

REPORT OF STANDING COMMITTEE (410)
February 16, 2009 11:56 a.m.

Module No: SR-30-2865
Carrier: Hogue
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2427, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2427 was placed on the Eleventh order on the calendar.

2009 HOUSE FINANCE AND TAXATION

SB 2427

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2427

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03-11-09

Recorder Job Number: 10702

Committee Clerk Signature

Lori Engelson

Minutes:

Chairman Belter opened the hearing on SB 2427.

Sen. Connie Triplett: Connie Triplett, District 18, Grand Forks. I'm here in support of SB 2427, and it's a very simple bill. This bill is identical, word for word, to HB 1277 which has already been passed. I'll tell you a little bit about the history of this. When you were working on 1277 it came out of the committee with a mixed review. Someone told me it might not get passed. That was a week before the deadline for filing on the senate side. So I put in that identical bill on the senate to make sure we had two shots at this. Given that they are identical, and the one on the house side, 1277, has now passed both the house and the senate, the logical conclusion probably would be just to do a do not pass. But the reason I'm here is because one of our other committee members in Finance and Tax noticed a discrepancy that I think we need to fix. This happened after we had passed out our version of 2427 and while we were discussing 1277 on the senate side. So we were uncomfortable amending that one because we didn't want to take the chance of it not passing. As you know since you've heard this bill before it refers to providing a tax credit on the ND-1 for geothermal energy device installation, and it refers back to Section 57-38-01.8 which is a longer section of the code that describes in detail how the credit for a period of years now has been available on

the long form. We didn't notice until recently that there is a sunset in 57-38-01.1 (57-38-01.8?). It is in a scheduled sunset on January 1, 2011. What I have here are copies of that section that is referred to, and what I am proposing here, if you are in agreement, would be a very simple amendment that would just amend that section of code, 57-38-01.8, by deleting the words "before January 1, 2011". (See Attachment #1.) That would have the effect of leaving the credit in place for the long term. If the wisdom of the committee is that it should have a sunset on it, I would ask you to pick a different sunset otherwise it's a pretty short-lived bill.

Rep. Weiler: So the bill that passed in the senate was untouched? Was it amended at all in the senate or was it exactly like 2427 stands right now.

Sen. Triplett: Word for word identical. The copy that I is are in slightly different type styles so the words end up on different lines, but they are the same.

Rep. Weiler: So the problem with that bill is that it has a sunset, and you would like us to pass this bill with an amendment that removes the sunset. Is that correct?

Sen. Triplett: Correct. Both of them in the form they are in now simply refer to the other section. They are putting a new subsection into the ND-1 form but reference back to the credit that has been in place for awhile.

Rep. Weiler: So then my question is we would have to amend this, pass it on the house. It goes to the senate, and the senate would pass it. Now we've got two bills that have passed. What are we going to do? Just ask the governor to veto the first one?

Sen. Triplett: I think the last one has to take priority.

Rep. Weiler: The last one that passes?

Sen. Triplett: If there is a discrepancy between two bills.

Rep. Kelsh: We passed SB 2033, which is 57-38-01.8, which extended the sunset from 2011 to 2015.

Sen. Triplett: Well then that probably takes care of my issue.

Rep. Kelsh: It has passed intact, unchanged, in the house.

Rep. Weiler: Was that the same similar

Rep. Kelsh: 2033.

Sen. Triplett: I'm hearing from the Tax Department that it does extend the sunset out for four additional years.

Rep. Pinkerton: Maybe before we do away with one of these bills that is just kind of floating around, is that the stimulus bill is like \$25 million more for retrofitting houses for energy efficiency. It might be nice to have one of these bills here that there might be things that we can do that would make the contractors have a better (inaudible) when they try to reach that money.

Chairman Belter: Well, if we need to we can always create a new bill for whatever. Any more testimony on 2427.

Mary Mitchell: I am Mary Mitchell with Dakota Resource Council. I represent our members, and we do support this bill, and we also support the other bill as well.

Chairman Belter: Any other testimony on 2427. Any opposition to 2427. Committee members, do you have any questions for the Tax Department? So the conclusion of the Tax Department then is we can kill this bill then? Everything is taken care of?

Unidentified Speaker: I would say so.

Rep. Brandenburg: I don't think we need to have this bill because it's not going to do any good.

Chairman Belter: Well my question is whether we can resurrect a do not pass.

Donnita Wald: We're waiting for the concurrence that we need for a two date correction.

Rep. Grande: In case we decide to hog house something.

Chairman Belter: Well, should we hold this until after lunch?

The hearing was closed by Chairman Belter.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2427**

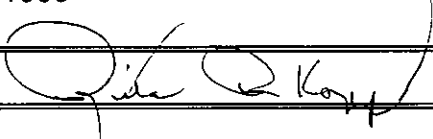
House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 16, 2009

Recorder Job Number: 11009

Committee Clerk Signature



Minutes:

Chairman Belter: We have a motion for a “**do not pass**” from Representative Drovdal and a second from Representative Headland. Any discussion?

A roll call vote resulted in 10 ayes, 2 nays, 1 absent/not voting. Representative Froseth will carry the bill.

Date: March 16, 2009

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2427

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 Drovdal Seconded By Headland

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) 10 No 2

Absent 1

Floor Assignment Representative Froseth

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

REPORT OF STANDING COMMITTEE (410)
March 16, 2009 1:22 p.m.

Module No: HR-47-4944
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REPORT OF STANDING COMMITTEE

SB 2427, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2427 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2427



**Testimony on Senate Bill 2427
Senate Finance & Tax Committee
Bill Kalanek
North Dakota Alliance for Renewable Energy**

Good Morning Chairman Cook and members of the Senate Finance & Tax committee. My name is Bill Kalanek and I'm here today representing the North Dakota Alliance for Renewable Energy (NDARE).

NDARE comprises representatives from commodity groups, farm organizations, investor-owned utilities, rural electric cooperatives, state agencies, economic development groups, universities, banks, manufacturers, and conservation and environmental organizations. Partnerships among these stakeholders are central to NDARE's approach. Several of NDARE's members also served on North Dakota's EMPOWER Commission.

As NDARE prepared its policy recommendations for this session, the item of top priority became the goal of securing and expanding state funding for renewable energy and energy efficiency. Within that goal NDARE identified the need for increased funding for weatherization assistance, renewable energy grants, public school energy efficiency grants, and development of an energy efficiency education program. With your indulgence I would like to suggest an amendment to the bill that would better identify those goals within the bill.

Efficiency offers many opportunities to make North Dakota businesses more competitive in national and international markets. Furthermore, using energy efficiently is the most cost effective way to reduce the impact of rising energy costs for North Dakotans.

Senate Bill 2427 if amended looks to a need for greater efficiency in our daily lives to reduce energy consumption and lessen our need for increased production. Furthermore, the bill supports the goals of the Empower Commission report which states under the Policy section for energy efficiency, "Develop a state energy building code" and prior to that states that "The state energy building code should be reviewed."

The North Dakota Alliance for Renewable Energy supports the adoption of a state energy code for buildings and encourages the state's support for energy efficiency initiatives. NDARE would like to encourage the committee to support the proposed amendment and the bill. Through these efforts NDARE feels that the state of North Dakota can increase its output by decreasing its intake and improve the quality of life for all North Dakotans.

Thank you.



Proposed Amendment to SB 2427
Bill Kalanek
North Dakota Alliance for Renewable Energy
February 3, 2009

Strike from Section 6 lines 29 and 30 and replace

~~Electric utility corporations or cooperatives for the purpose of encouraging residential electric energy consumers in efforts to reduce overall energy consumption and reduce peak demand.~~

Be administered by the Department of Commerce for the purpose of encouraging energy consumers to reduce energy consumption through support for weatherization programs, energy efficiency grants for public schools, renewable energy and efficiency grants for energy demonstration and deployment projects and energy efficiency and conservation educational programs.

#3



drc

Dakota Resource Council
"Organizing North Dakotans Since 1978"
P.O. Box 1095 ~ Dickinson, ND ~ 58602-1095
701-483-2851
www.drcinfo.com

Testimony in support of SB 2427
Senate Finance and Taxation Committee
February 3, 2006

Chairman Cook and members of the Committee,

Dakota Resource Council supports this bill. Currently, the state's energy code for new construction is outdated.

Energy conservation is the fastest and cheapest way to cut energy use and save the consumer money. Not only does the consumer see an immediate benefit, but cutting down on energy consumption slows the need for building costly new generation, which impacts all utility ratepayers.

Modern energy codes level the playing field and save the consumer money and grow the economy by stimulating purchases of new equipment and by creating new jobs installing it. The cost benefits of better energy codes can be even greater in states like North Dakota where there are big swings in temperatures.

The payback period per building can be relatively short. An Arizona study showed that a new home in Phoenix built to modern energy codes would cost an average of \$1,517 more than one that does not meet code, but the difference would be made up in a mere 3.9 years.

We think this bill is very important and ask for your support.

Respectfully submitted,

Mary Mitchell
Dakota Resource Council

"Members of Dakota Resource Council use grassroots actions to influence public opinion and shape public policy to protect agriculture, natural resources, livelihoods and community well-being."



Building Codes for Energy Efficiency

This fact sheet highlights the benefits of building energy codes and describes several steps that parties working under the National Action Plan for Energy Efficiency can take to advance cost-effective energy efficiency through the adoption, implementation, and enforcement of codes.

Overview

Parties working to create a sustainable, aggressive national commitment to energy efficiency under the National Action Plan for Energy Efficiency are exploring the opportunities for increased energy efficiency through new or improved building energy codes. Energy codes require new and existing buildings undergoing major renovations to meet a set of minimum requirements for energy efficiency. For parties pursuing energy efficiency as a cost-effective resource, codes can be a critical piece of a comprehensive approach.

Energy consumption in buildings accounts for one-third of all the energy used in the United States and two-thirds of the total electricity demand. To address this demand, building codes have been used for nearly three decades and are a cost-effective strategy to overcome barriers to energy efficiency in buildings. In combination with appliance standards, energy codes that are well-designed, implemented, and enforced can lock in cost-effective energy savings of 30 to 40 percent at the time of building construction compared to standard practices.¹ In addition to lowering energy bills, energy codes can reduce load growth and the need for new energy generation capacity while limiting air pollution and greenhouse gas emissions. Recognizing these benefits, a majority of states have adopted building energy codes in some form for residential and commercial construction (DOE, 2006).

Benefits of Building Energy Codes

Building energy codes provide states and municipalities across the country a range of energy, environmental, and economic benefits. Highlights from several jurisdictions are summarized below and in Table 1.

Energy

Energy benefits of building codes include saving on energy bills, reducing peak energy demand, and improving system reliability. For example, California's building standards have helped save businesses and residents more than \$15.8 billion in electricity and natural gas costs since 1975, and these savings are

About Building Energy Codes

Energy codes typically specify requirements for "thermal resistance" in the building shell and windows, minimum air leakage, and minimum efficiency for heating and cooling equipment. These measures can help eliminate inefficient construction practices and technologies with only modest increases in up-front project costs.

New construction and major renovation represent cost-effective times to incorporate energy-efficiency measures into buildings because these improvements save energy throughout the life of those buildings and can be expensive to adopt later.

Building energy codes are typically developed at the national level, adopted at the state level, and implemented and enforced by local governments.

expected to climb to \$59 billion by 2011 (CEC, 2003). When fully implemented, the state's new 2005 building efficiency standards are expected to yield peak energy use reductions of 180 megawatts (MW) annually—enough electricity to power 180,000 average-sized California homes (Motamedi et al., 2004).

According to the U.S. Department of Energy (DOE), if all states adopted and fully implemented American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1-1999, a model energy code for commercial buildings, then building owners and tenants would lower their utility bills by \$110 million the first year and save \$5.7 billion over 10 years. The country would save 16 trillion British thermal units (Btu) of energy that first year and almost 800 trillion Btu cumulatively over 10 years. The magnitude of each state's savings depends on many factors: the efficiency of its current building practices;

the stringency of the code it adopts; its population, climate, and building construction activity; and the effectiveness of code training and enforcement (DOE, 2007).

Environment

States and municipalities are also finding that energy codes can improve the environment by reducing air pollution and greenhouse gases. For example, the New York Energy Conservation Construction Code is estimated to reduce carbon dioxide (CO₂) emissions by more than 500,000 tons annually and sulfur dioxide (SO₂) by nearly 500 tons per year (DOE, 2002). Similarly, the 2001 Texas Building Energy Performance Standards are projected to reduce nitrogen oxide (NO_x) emissions statewide by more than 2 tons each "peak" day and more than 1 ton each average day, which helps the state meet Clean Air Act requirements for non-attainment areas (Haberl et al., 2003).

Economics

Building energy codes can also help grow the economy. States and municipalities benefit from greater investment in energy-efficient capital equipment and new jobs installing equipment and monitoring building compliance. While spending on energy services typically sends money out of state, dollars saved from efficiency tend to be re-spent locally (Kushler et al., 2005; Weitz 2005a). Codes become even more cost-effective during periods of high heating and cooling fuel prices.

At the building level, the "payback period" on any increase in upfront costs is typically short. A Nevada study estimated that upgrading the energy efficiency of commercial buildings to comply with the code would cost about \$1.60 per square foot but would result in \$0.68 per square foot of energy bill savings per year, meaning a simple payback of about 2.4 years (Geller et al., 2005). Similarly, it is estimated that

Table 1. Benefits of Building Energy Codes

Jurisdiction	Building Energy Code	Projected Energy and/or Demand Savings	Other Information	Reference
California	2005 Title 24 Building Efficiency Standards for residential and commercial construction	180 MW reduction in annual energy demand (equivalent to the electricity requirements of 180,000 average-sized California homes)	\$43 billion in electricity and natural gas savings by 2011	www.energy.ca.gov/title24/
Phoenix, Arizona	2004 IECC Supplement for residential construction	18 percent reduction in residential energy consumption; 21 percent reduction in electricity use; 10 percent decrease in natural gas use	Increase in upfront cost is \$1,517; payback period is 3.9 years (based on simple payback); life-cycle cost savings is \$11,228 per home	www.epa.gov/cleanenergy/pdf/gta/guide_action_chap4_s3.pdf
Texas	2001 IECC for residential and commercial construction, including a solar heat gain standard for windows	1.8 billion kilowatt-hour savings over 20 years; 1,220 MW of peak demand avoided	Code is approved for 0.5 tons per day of NO _x emissions credits in its state plan for improving ozone pollution	www.seco.cpa.state.tx.us/sa_codes.html
All 50 States	2006 IECC for residential and commercial construction	Savings potential if all states adopted IECC is 6.6 quadrillion BTUs over 20 years	Would reduce more than 100 million metric tons of carbon equivalent emissions	www.bcap-energy.org/

While a new home built to the International Energy Conservation Code (IECC) in Phoenix, Arizona, will cost an average of \$1,517 more than a home built without the code, the difference will be repaid to homebuyers in 3.9 years (based on simple payback). The life-cycle cost savings associated with improved energy efficiency from adopting the IECC is \$11,228 per home (Kinney et. al., 2003).

While the upfront costs of code compliance can be recouped over short payback periods, the savings do not always accrue to the entity paying the initial compliance costs. This "split incentive" occurs when a developer or builder sees higher costs that are repaid over time to the building owner or occupants.

State, Local, and Utility Action

The status of state adoption of residential and commercial codes is provided below in Figures 1 and 2.

State Codes: Residential Sector

In 1978, California became the first state to include energy requirements in its code. Today, 40 states and the District of Columbia use a version of the Model Energy Code (MEC) or IECC model energy code, or their own equal-or-better code for residential buildings. Eleven of these 40 states are using the most stringent version of the IECC approved by DOE. While nine states have not adopted a statewide code, several large municipalities within some of these states have adopted the 2003 IECC (BCAP, 2007a).

Figure 1: Status of Commercial State Energy Codes

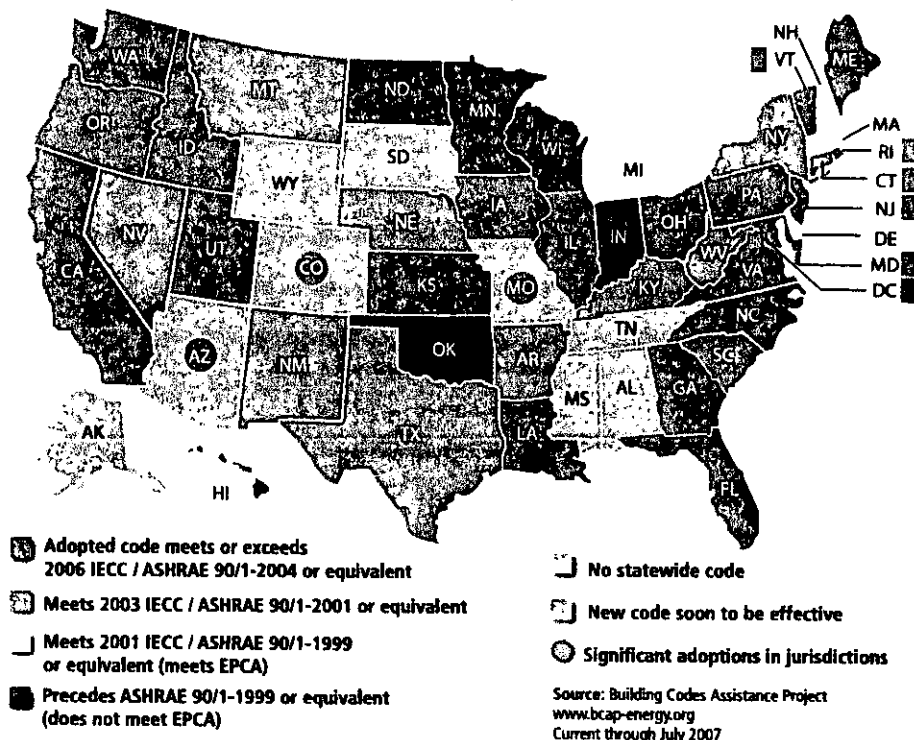
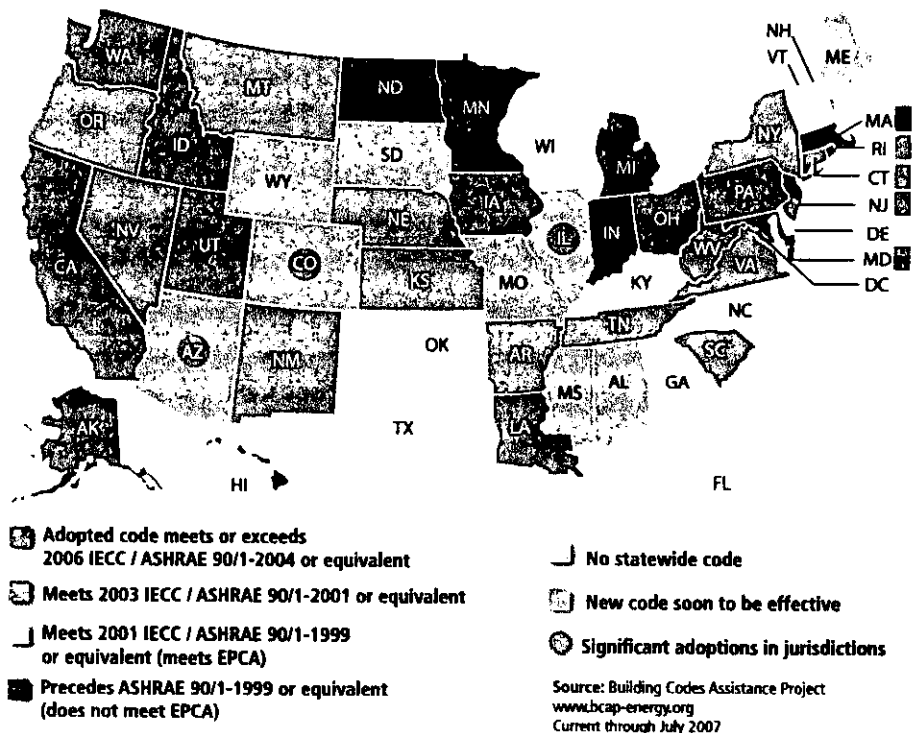


Figure 2: Status of Residential State Energy Codes



State Codes: Commercial Sector

A total of 40 states and the District of Columbia use a version of the ASHRAE or IECC model energy code for commercial buildings. Of these, 19 states are using the most recent code that DOE has approved. Nine states have not adopted a commercial building code, although several large municipalities within three of these states have adopted the 2003 or 2006 IECC.

Local Codes

In states with "home rule" laws (in which municipalities are granted greater self-government), local officials can adopt their own codes. For example, two Arizona cities—Phoenix and Tucson—are taking this approach and thereby affecting a large portion of the state's overall building stock. Alternatively, home rule states can revise existing law to allow for statewide building energy codes. Texas followed this approach, primarily in an effort to improve the state's air quality.

Utility Actions

Utilities can play several roles in support of building energy codes. One key role is partnering with states and localities during code adoption or modification to fill information gaps, provide analytic support, and engage stakeholders. Utilities can help educate the building and enforcement communities about specific requirements contained in new codes.

Model Building Energy Codes

States have adopted a wide array of commercial and residential model energy codes across the country. The energy code that applies to most residential buildings is the International Energy Conservation Code (IECC), which supersedes the Model Energy Code (MEC). The federal Energy Policy and Conservation Act (EPCA) of 1992 requires states to review and adopt the MEC (and its successor, the IECC), or submit to the Secretary of Energy its reasons for not doing so.

Most commercial building energy codes are based on ASHRAE/IESNA Standard 90.1, jointly developed by ASHRAE and the Illuminating Engineering Society (IES). EPCA requires states to adopt the most recent version of ASHRAE Standard 90.1 that the U.S. Department of Energy (DOE) has determined will save energy, currently 90.1-1999. Alternatively, states can follow the commercial building provisions of the IECC.

Role for Utilities

Support effective implementation of codes:

- Educate stakeholders about key provisions, incentives, and compliance options.
- Partner with jurisdictions to sponsor code compliance training.
- Provide technical assistance to builders, contractors, architects, and code officials.

Integrate codes into resource planning:

- Explicitly account for codes in base case load forecast of long-term resource planning.

- Support efforts to gather and analyze data.

Advocate for adoption of stronger codes:

- Work proactively with state and local code jurisdictions.
- Provide analysis to support stronger code adoption.
- Propose code amendments that further strengthen provisions for reduced peak demand.

For example, electric and gas utilities in Washington state spearheaded a Utility Code Group (UCG) in the mid-1990s to inform stakeholders about key code provisions, incentives, and compliance options. UCG developed a training program and disseminated information to industry audiences through an initiative to advance innovative enforcement and evaluation mechanisms. This precedent laid the groundwork for subsequent success—a recent construction practice survey found that 94 percent of homes in Washington met or exceeded code requirements for the building envelope (Ecotope, 2001).

Another important role for utilities is to integrate codes into the resource planning process. As utilities develop long-term plans, they can explicitly quantify their base case load forecast to account for codes and standards, along with the impacts of ratepayer-funded energy efficiency programs. This is accomplished by forecasting the impacts of a new national or state building code, then making assumptions about compliance, and finally applying it to estimates of new construction. The Northwest Power and Conservation Council and the California Energy Commission (CEC) both incorporate these savings into their planning process.

An additional role for utilities is to strengthen existing model codes. In California, utilities have long partnered with state officials to support the improvement of the pioneering Title 24 building standards. For their efforts, California utilities receive

credit on shareholder incentives for building standard enhancements that they propose and that are adopted by the CEC. The resulting savings count toward their energy efficiency targets and are incorporated into overall forecasts of energy and demand savings.

Opportunities for Additional Energy Savings With Building Codes

While substantial progress has been made, state and local governments can continue to incorporate new technologies and features into their codes (Prindle et al., 2003; BCAP, 2007b; Weitz 2005b). The American Council for an Energy-Efficient Economy (ACEEE) estimates that upgrading residential building codes could save an "average" state about \$650 million in homeowner energy bills over a 30-year period (Prindle et al., 2003). With energy consumption expected to rise 20 percent in the

residential sector and 19 percent in the commercial sector by 2020, the potential energy savings from further building code improvements can be significant.

For states that have building codes but are interested in achieving additional cost-effective energy efficiency, the following best practices are recommended:

- *Update building energy codes* to ensure that recent technological and design improvements are captured.
- *Establish monitoring, evaluation, and enforcement procedures* to improve the effectiveness of existing codes.
- *Engage key stakeholders*, including local building officials, homebuilders, utilities, building supply companies, and contractors for insulation, heating, and cooling equipment.
- *Hold regular education and training sessions* for homebuilders and building officials before and after the effective date of the new energy code requirements.

Steps to Achieve Energy Savings Through Building Codes

- Adopt building codes that capture the cost-effective savings as technologies advance and reflect the state's prevailing climate conditions.
- Train homebuilders and building officials.
- Establish monitoring, evaluation, and enforcement procedures.
- Consider pursuing "beyond code" building programs, such as ENERGY STAR.
- Leverage other energy efficiency funding sources.
- Take advantage of DOE technical and grant assistance.

Source: EPA, 2006

Consider pursuing "beyond code" building programs, such as ENERGY STAR®, that achieve additional cost-effective energy efficiency.

- Leverage other clean energy funding sources to support building energy codes. For example, New York and Wisconsin are using public benefits funds to support implementation and enforcement. California is using utility resource procurement dollars to advance its code.
- Take advantage of DOE technical and grant assistance to states to

facilitate building code adoption and implementation.

For states without energy codes, a typical starting point is to hold stakeholder discussions and launch formal studies to determine whether codes make sense in their area. Adopting a consensus-driven approach can minimize legal disputes and avoid delays in code implementation.

For jurisdictions with unique circumstances not addressed by model codes, it may make sense to add or remove certain code provisions that are not

cost-effective or otherwise appropriate for local circumstances. In all cases, successful energy code programs require sufficient budget and staff resources to involve stakeholders, support implementation, and evaluate progress.

Stakeholders can go beyond codes and lock in even greater energy savings through advanced appliance standards. In recent decades, this approach has been used in tandem with codes to ensure that equipment installed in homes and buildings is energy-efficient.

Notes

1. Determined using the Building Codes Assistance Project (BCAP) calculator that compares each state's current code to the 2006 International Energy Conservation Code (IECC) for residential and commercial construction. The sum of savings in all 50 states produces a 30 to 40 percent savings range.

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NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS

Testimony on Senate Bill 2427 Senate Finance & Taxation Committee February 3, 2009

Doreen Riedman, Executive Officer
North Dakota Association of Builders

Chairman Cook and members of the Senate Finance & Taxation Committee, the North Dakota Association of Builders (NDAB) **supports Section 3** of Senate Bill 2427 which provides tax credits for geothermal systems. Also, we encourage you to **consider amendments (attached) to eliminate Sections 1 and 2.**

The NDAB represents over 2,000 members statewide with employees numbering approximately 43,000. We are affiliated with five local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, and Minot; and are all part of a larger federation, the National Association of Home Builders (NAHB), which has over 200,000 members.

We believe in energy efficiency, green building, stewardship, and conservation. Today's homes are considerably more energy efficient, with the industry making advances in building sciences - including technologically-advanced heating and air conditioning systems, siding, windows, insulation, and appliances. We do everything we can to make homes more energy efficient when the payback for the cost of these proposals is responsible and fair to homeowners. Building the best homes we can, while keeping housing affordable is the balance for which we strive.

Eliminate Sections 1 and 2:

- Energy standards came before the interim Energy Development and Transmission Committee. In response, our organization worked with Senator Wardner to initiate legislation (*Senate Bill 2352 - has a Do Pass 6-0 from Senate Political Subdivisions Committee, attached*) to update this section of law and make it consistent with the State Building Code.
- Removes the outdated reference to the 1989 Council of American Building Officials (CABO) Model Energy Code which is no longer published or maintained.
- The International Energy Conservation Code (IECC) is a stringent code that is written for engineers. It is overkill for residential construction, and is not written for home building.

- Mandating the IECC as a standard is not practical or necessary – the International Building Code (commercial) and International Residential Code (IRC) have chapters on energy efficiency, portions of which may someday be adopted by the State Building Code Advisory Committee. Chapter 11 of the IRC, dealing with energy efficiency, has been reviewed closely by our organization, and there are parts of it that we believe are acceptable to the home building industry. One requirement that would seriously hamper housing affordability would be that of requiring basements to be insulated. Many starter homes for young families are built without finished basements so that they can be done later on down the road.
- Who would inspect and enforce such codes across the state? Right now, building permits are required only in jurisdictions that have set up inspections and enforcement departments. Rural areas in the state have no such requirements for permits, codes, etc.
- This would put an added burden on already stressed building inspections departments. Contractors and subcontractors are already experiencing long wait times in getting some inspections completed during construction.
- Such requirements would raise costs:
 - Inspections – permit fees would go up; expensive testing for energy ratings
 - Verifications – 3rd party verifications of standards may be necessary
 - Extend the building timeframe – time is money
 - Require professional services – interpretation by engineers, architects
- You will hear that our state will now be without energy standards. There are plenty of energy efficiency standards that can be voluntarily used as guidelines – EnergyStar, National Association of Home Builders (NAHB) Green Home Building Guidelines, U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) standards, and more.
- You'll also hear that it will have an effect on the potential federal stimulus package. If anyone is concerned about that, the home building industry is. We have been in constant contact with our congressional delegation offices and our national association, who is working closely with Congress on this package. All are well-aware of the codes we operate under, and we have good assurances that our current codes will not be detrimental to any stimulus dollars coming to our state. I've also attached a memo from our National Association of Home Builders that clarifies the energy code requirements for states *(highlighted on the second page)* as it relates to the stimulus package.
- New home construction only adds about one percent to the total residential housing stock each year. The new homes being built in our state are being built with good windows, doors, and insulation – it's what consumers demand with the climate we have. We believe more time and energy could be expended into upgrading existing homes and ensuring that they become more energy efficient. New homes are already voluntarily being built with energy efficient products and practices.

We respectfully ask this committee to eliminate Sections 1 and 2 of Senate Bill 2427, since NDCC 54-21.2-03 is being amended with Senate Bill 2352. We support Section 3 of Senate Bill 2427 to include geothermal tax credits on the ND-1 tax form.



Proposed Amendments to Senate Bill 2427

(provided by the North Dakota Association of Builders)

We recommend that:

- Section 1 (NDCC 54-21.2-03) and Section 2 (NDCC 54-21.2-04) be eliminated from this bill.



90863.0100

Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO. 2352

Introduced by

Senators Wardner, Holmberg, Horne

Representatives Carlson, Klein, S. Meyer

1 A BILL for an Act to amend and reenact section 54-21.2-03 of the North Dakota Century Code,
2 relating to energy conservation standards for new buildings.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 54-21.2-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-21.2-03. Energy conservation standards.** The standards for energy conservation
7 in new building construction, for thermal design conditions and criteria for buildings, and for
8 adequate thermal resistance in regard to the design and selection of mechanical, electrical
9 service, and illumination systems and equipment which will enable the effective use of energy in
10 new buildings, must ~~at least equal the Energy Conservation Code based on the Council of~~
11 ~~American Building Officials Model Energy Code, 1989 Edition. The department of commerce~~
12 ~~shall adopt rules to implement, update, and amend the Model Energy Code~~ be consistent with
13 the state building code.



To: NAHB State EOs

From: Elizabeth Odina, Federal Legislative Director, Green Building/Global Climate Change
Amy Chai, NAHB Staff Counsel

Re: Energy Code Provision in House Economic Stimulus Bill (H.R. 1)

Date: February 2, 2009

In response to a series of questions from various State EOs regarding a press release from the International Code Council (ICC) indicating a mandate for the 2009 IECC as part of the economic stimulus legislation, NAHB has carefully reviewed the language and hope to dispel some of the misleading details that are circulating about what is actually in the legislation and its potential impact upon enactment.

The House economic stimulus legislation (H.R. 1), which passed last week on a party-line vote, contains a provision to provide an additional \$3.4 billion in incentive funding to states to help improve building energy efficiency. The Senate version of this legislation (S.1) has a similar provision, but it has not yet been marked so the amount and potentially some programmatic requirements, are still subject to change prior to enactment. The provision as a whole, however, is unlikely to be removed.

First, and most importantly, there is no specific reference to the 2009 IECC in the energy code provision of H.R. 1 and it should be noted that the 2009 IECC has not yet been published. While poor drafting makes it impossible to make a definitive statement, there is a strong argument that use of the phrase "most recently published" in section 6001(a)(2)(A) [of H.R. 1] means that version most recently published at the date of enactment, which for purposes of this legislation, should it be signed tomorrow or any time before the 2009 IECC is published, would be the 2006 version. If the intent of the drafters is to adopt by reference a standard that does not yet exist, significant constitutional issues are raised. Congress is limited by the Constitution on what powers it can 'delegate' to other entities (states, agencies, etc.), which is known as the nondelegation doctrine. Congress is allowed to delegate certain responsibilities to agencies and states, and Congress and federal agencies are allowed to incorporate by reference privately created standards. However, those standards must be available and are presumably reviewed by Congress before they are incorporated into the act. If the standard does not exist (e.g., has not been published), Congress obviously cannot review it and therefore potentially has delegated its legislative powers to a third party, in violation of the doctrine.

It is also important to note that nothing in this provision would prevent a state from adopting the 2009 IECC. This provision allows the state (or local authority) to adopt a building code that "meets or exceeds" the most recently published IECC, or to use a building code other than the IECC as long as it achieves "equivalent or greater" energy savings (e.g. Title 24 in California). Thus, even if "most recently published" is correctly interpreted to be the 2006 version, this provision does not necessarily prevent a state from adopting the 2009 code. When "most recently published" is interpreted as the 2006 version (which is the interpretation

supported by the Constitution and principles of statutory construction), states would have access to the funds authorized in the act without having to adopt the 2009 code.

Finally, it should be noted that the provision stipulates that a governor "will seek" to implement a series of options, the energy code being one of them, and nothing in the provision "requires" states to adopt specific residential building codes. Exactly how a governor is supposed to prove his or her intention to "seek" with a request for proof of 90% compliance in eight years is not illustrated anywhere in the language. Furthermore, it is extremely important to note that this language is not a mandatory code requirement. The provision offers additional funding (grants) to states whose governors voluntarily choose to "seek" these options, but there is not an explicit requirement or mandate that a state or local government adopt a specific code.

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DEPARTMENT OF COMMERCE TESTIMONY ON SB 2427

February 3, 2009, 8:00 A.M.

SENATE FINANCE AND TAXATION COMMITTEE

LEWIS AND CLARK ROOM

SENATOR COOK, CHAIRMAN

**CAL STEINER – DIVISION OF COMMUNITY SERVICES, NORTH
DAKOTA DEPARTMENT OF COMMERCE**

Good morning Chairman Cook and members of the Senate Finance and Taxation Committee. I'm Cal Steiner, with the Division of Community Services within the Dept. of Commerce. It is within this department that the state energy code is overseen.

The Department of Commerce, while neither supporting nor opposing this bill, would like to point out four relevant observations given the information we have at this time.

- 1.) This bill, as it is written, will update the current energy conservation code, and will make it more consistent with the other 'I' codes or International Codes that have been adopted by the state. These are specifically the International Building Code, International Residential Code, International Mechanical Code and the International Fuel Gas Code.

At the present time, the North Dakota state building code does not contain energy conservation standards. Through the building code amendment process the chapters addressing energy conservation were deleted. The adoption of this bill would move the state closer to federal regulations, which are outlined below in paragraphs 2 and 3, requiring a state energy conservation code.

- 2.) The federal Energy Policy and Conservation Act (EPCA) of 1992 requires states to review and adopt the Model Energy Code (and its successor the International Energy Conservation Code, IECC) or submit to the Secretary of Energy its reasons for not doing so. Since the existing statute was adopted the energy code in North Dakota has not been updated. While the potential exists, thus far there have been no consequences associated with non-compliance.



3.) Within the federal stimulus bill, currently making its way through congress, there is language that will tie additional funding from the Department of Energy, for state renewable energy and efficiency programs, to state energy building codes. At this time the details in the proposed legislation are not finalized.

4.) Senate Bill 2352, which was referred to the political subdivision, makes amendments to the same section of the North Dakota Century Code as the bill being discussed here today.

The Department of Commerce is available to provide additional assistance that may be needed or required.

Thank you and I will try to answer any questions you may have.



normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the state department of public instruction, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through the twelfth grades.

4. For purposes of this section, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed in section 57-38-34 for filing the return for that taxable year, including extensions granted by the commissioner.

57-38-01.8. Income tax credit for installation of geothermal, solar, wind, or biomass energy devices.

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, wind, or biomass energy device installed before January 1, 2014, 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, wind, or biomass energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
 - a. "Biomass energy device" means a system using agricultural crops, wastes, or residues; wood or wood wastes or residues; animal wastes; landfill gas; or other biological sources to produce fuel or electricity.
 - b. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.
 - c. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.
3. If a geothermal, solar, wind, or biomass energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, wind, or biomass energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, wind, or biomass energy device is installed.
4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, wind, or biomass energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit

determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.
6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.
7. All or part of the unused credit allowed under this section may be sold, assigned, or otherwise transferred by the taxpayer to the purchaser of the power generated by the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.
 - a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
 - b. The tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.
 - c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. The purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law which may have expired for the purchaser.

- d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.
 - e. The total amount of credits that can be sold by all taxpayers is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.
 - f. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
 - g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
 - h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.
8. For geothermal, solar, wind, or biomass energy devices installed after December 31, 2006, if ownership of a device is transferred at the time installation is complete and the device is fully operational, the purchaser of the device is eligible for the tax credit under this section. Subsequent purchasers of the device are not eligible for the tax credit.

~~57-38-01.9. Deduction of contributions to individual retirement account. Repealed by S.L. 1983, ch. 630, § 2.~~

~~57-38-01.10. Deferral of crop disaster payments and proceeds of livestock sold on account of drought. Repealed by S.L. 1983, ch. 630, § 2.~~

~~57-38-01.11. Reporting net operating loss. Repealed by S.L. 1983, ch. 630, § 2.~~

~~57-38-01.12. Reporting of investment credit carryback for prior taxable years. Repealed by S.L. 1983, ch. 628, § 2.~~

~~57-38-01.13. Taxation of the gain or loss resulting from the sale of a principal residence. Any gain or loss resulting from the sale or exchange of a principal residence in this state by a taxpayer who reinvests in another principal residence outside of this state must be treated in the same way for state income tax purposes as it is treated for federal income tax purposes.~~

~~57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer. If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for income tax purposes.~~