

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1/365

2007 HOUSE FINANCE AND TAXATION

HB 1365

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1365 A

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1790 21min 17sec

Committee Clerk Signature

Nickie Schmidt

Minutes:

Vice Chairman Drovdal: We'll open the hearing on HB 1365. We do have a fiscal note, but it shows no effect on the budget at all.

Chairman Belter: I did want to make a couple of comments. I think that over my 20 some years that I've been in the Legislature, I've grown to appreciate the resource of coal that the State of ND has. We truly are the Saudi Arabia of Lignite. We have the largest reserves in the world. I can't say enough about the importance of that to our energy independence as well as a wonderful asset for the people of ND. So therefore I would like to support this Bill.

Vice Chairman Drovdal: Any further testimony in support of 1365.

Sen. Randy Christman: In the host area to mineral development like this has some negatives and some very real costs from that sort of thing. Overall, we're happy to have the industry here. Coming from that area and assure you that I certainly favor this Bill.

Sen. O'Connell: I have passed out an amendment, **(See attachment #1)** and it explains what the Bill basically does. I am completely for this Bill.

Sandy Tabor, General Counsel for Lignite Energy Counsel: **(See attachment #2)**

Representative Weiler: When you produced this Bill, has there been any conversation with Kennecott Energy Company to see if they were going to have a problem with this? Is the same thing going to happen in 2 years or is this going to be Ok?

Sandy Tabor: I haven't talked to Kennecott but, the old Bill says lignite coal and we've taken out the reference to lignite. So now coal can be defined as anything and we think that will take care of it.

Representative Grande: When we switch it to coal, are they planning on building a power plant. What is their objection?

Sandy Tabor: Kennecott's objection was that if you left lignite coal in, then lignite coal was getting the entire tax break, however Basin wouldn't qualify for any of it. I don't know what their plans may or may not be, but the point was, because of our statute it left them at an uncompetitive disadvantage, and the courts have found that, including the United States Supreme Court.

Representative Grande: When we put in an effective date and the emergency clause, are they not conflicting with each other? Do you want the effective date to go into effect right away?

Sandy Tabor: It's my understanding that in order to have the January effective date, you have to have the emergency clause.

Rep. Kerzman: I hope you can support this clean up of the legislation that we passed a couple of years ago. It addresses a lot of legalities and coal is a major industry in this State and we have to do what we can to keep it going.

Chairman Belter: Is there further testimony on 1365?

Marcy Dickerson, State Supervisor of Assessments of the Tax Department: The property tax division does administer the code for severance taxes and that's why I'm here. I've been

asked to explain the changes in sections 4-6 of the Bill. These changes have to do with the Coal Conversion Tax. **(See Bill 1365 for changes)** On the top of pg. 9, where it refers to completed repowering after June 30, 1991, we have changed "completed to complete" and taken out the "June 30, 1991 date," that's just an expired date; it is no longer relevant in any way to the Coal Conversion Tax. This is a clean up just like we do in housekeeping Bills. The next thing, the underscored language on line 10, under the current Bill appears on page 10, line 13. What happened was this amendment was approved and amended into the Bill last session. The amendment was fine and what the amendment says is fine. The only problem was when it got inserted into the Bill; it got inserted into the wrong section. It was inserted under the portion that deals with other types of coal conversion facilities, not electrical generating plants. Since this refers to repowering of electrical generating plants, that's the section that it belongs in. It is not new language in this Bill. On pg. 10, at the top, we have crossed out "or for a period of five years from April 20, 1987, whichever is later." We're just removing absolute language there. On pg. 10, line 13; that is the language that we have moved out of that section back onto the previous page, page 9, line 10. At the bottom of page 10, line 27; we're just taking out obsolete language here. We're removing the language about the credit for the taxes imposed by 57-33 and 57-33.1, because those taxes have not been imposed on this type of plan for 30 years. The Coal Conversion Tax superseded 57-33.1 and anyone who would have been required to pay on a plan under 57-33. At the time, Coal Conversion Tax took effect, there were tax's due from those other chapters and the credit was created so the companies would not be paying double on that one year. Since that's 30 years old, we just removed that language. Those companies no longer have any liability under those other chapters; they're only liable for the Coal Conversion Tax. On pg. 11, line 16-17, it refers to those same 30 year old taxes that no longer apply so we have deleted that language. So

really all those sections do is clean up housekeeping issues that we might have done just in a housekeeping Bill.

Chairman Belter: Is there further testimony in support of 1365?

Curtis Jabs, representing Basin Electric Power Cooperative: (See attachment #3)

Vice Chairman Drovdal: Do we have any other type of coal besides lignite that can be commercially harvested in ND?

Curtis Jabs: No, lignite coal is the coal in ND. Some coal is brought in from other States, like Wyoming and Montana.

Vice Chairman Drovdal: What's the difference between sub-bituminous coal and lignite coal?

Curtis Jabs: Lignite coal has a lower heating value, about 6500 BTU's per pound and it's higher in moisture. Sub-bituminous coal gets up to that 12-13000 BTU's per pound. Lignite is a lower grade of coal. It's still very useful.

Representative Schmidt: Have you heard about liquefying coal, how far off are we from seeing that?

Curtis Jabs: It certainly is being looked at. However there are probably newer technologies that are more efficient and so we're looking for that next generation of gasifier.

Chairman Belter: Is there any further testimony in support of 1365? Any opposition? Any Neutral? If not, we will close the hearing on HB1365.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1365 B

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1791 -1min 30sec

Committee Clerk Signature *Mickie Schmidt*

Minutes:

Chairman Belter: We will open the hearing on HB 1365. I would entertain a motion.

Representative Weiler: I move a Do Pass

Representative Brandenburg: I second it.

Chairman Belter: Is there any discussion? Hearing none, will the clerk read the role on a Do Pass for 1365? 11-y, 0-n, 3-absent, with Rep. Wrangham carrying it.

FISCAL NOTE
 Requested by Legislative Council
 01/15/2007

Bill/Resolution No.: HB 1365

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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).*

HB 1365 redefines "lignite" to the broader term "coal" for the purposes of the reduced rate and exemption for power plant construction, production, environmental upgrade and repowering equipment.

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.*

It is uncertain if the change in the term "lignite" to "coal" changes the fiscal impact.

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:	01/23/2007

Date: 1-24-07
Roll Call Vote #: 1365

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House _____ Finance & Tax _____ Committee

Check here for Conference Committee

Legislative Council Amendment
Number _____

Action Taken Do Pass

Motion Made By Rep Weiler Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich	✓	
Vice Chairman Drovdal	✓		Rep. Kelsh	0/	
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande	0/		Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler	✓				
Rep. Wrangham	0				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Wrangham

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

REPORT OF STANDING COMMITTEE

HB 1365: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1365 was placed on the Eleventh order on the calendar.

2007 SENATE FINANCE AND TAXATION

HB 1365

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1365

Senate Finance & Tax Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4839

Committee Clerk Signature

Jody Houze for Sharon

Minutes:

Senator Tollefson opened the hearing on HB 1365 relating to the definition of Power plant, repowering, and coal conversion facility for sales; the powers of the privilege tax purposes, the imposition of taxes on coal conversion facilities, the powers of the commissioner, and allocation of revenue from coal conversion facilities; and to declare an emergency. There were 7 committee members present and 0 absent.

Representative Belter the prime sponsor for HB 1365 introduced the bill. He said it was basically a technical correctional bill dealing with our coal industry.

Sandy Tabor, Lignite Energy Council spoke in support of HB 1365. Her written testimony is enclosed. This bill also has an emergency clause.

Senator Cook said that Sandy indicated that their were power plants that had made decisions to spend money; are these power plants that were buying coal from outside of ND or are they buying lignite.

Sandy Tabor said she would let the companies answer that question.

Senator Cook asked if because it was challenged it made it so no one could get the exemption.

Sandy Tabor said that it is the interpretation of the Tax Department that it was void in regard to those tax exemptions.

Senator Tollefson said if the word lignite is in there, is that duplication.

Sandy Tabor said that if you take lignite out, you are just talking about coal. So coal from outside of the state is put on the same playing field as coal from within the state and that was the issue. If you have lignite in there, you are giving an unfair pricing advantage to lignite coal.

Representative O'Connell testified in support of HB 1365. His written testimony is enclosed and he supports a do pass on HB 1365.

Dale Niezwaag, Basin Electric Power Cooperative spoke in support of HB 1365. His written testimony is enclosed.

Senator Cook asked Mr. Niezwaag what kind of coal they burn.

Mr. Niezwaag said that they burn almost all lignite. He said they bring in about 200,000 ton of out of state coal to meet environmental code.

Senator Christmann spoke in support of HB 1365. He said it was imperative that we do everything we can as a legislature to make ND the best possible place for energy companies to do business.

Senator Cook asked if this would take away efforts to protect our lignite industry.

Senator Christmann said we do the best we can.

Senator Horn asked if we would see more out of state coal.

Sen. Christmann didn't think it would lead to more. The coal coming in has to do with environmental code.

Senator Tollefson asked Sen. Christmann if this was just a housekeeping bill to take care of the legality.

Sen. Christmann said yes, it is either do this or go back to where we were before we had the bill that we are trying to change the word lignite on.

Marcy Dickerson, Tax Department explained the housekeeping issues on the bill.

Senator Triplett moved a Do Pass on HB 1365.

Senator Oehlke seconded the motion.

The clerk called the roll – 7-0-0.

Senator Tollefson will carry the bill.

Date: 3-12-07

Roll Call Vote #: _____

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1365

Senate Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Triplett Seconded By Sen. Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Anderson	✓	
Sen. Tollefson	✓		Sen. Horne	✓	
Sen. Cook	✓		Sen. Triplett	✓	
Sen. Oehlke	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Tollefson

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

REPORT OF STANDING COMMITTEE (410)
March 12, 2007 12:17 p.m.

Module No: SR-46-4950
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1365: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1365 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1365

#1 HB 1365

1-24-07

HB 1365

Senator David P. O'Connell

A bill relating to the definition of a power plant, repowering, coal conversion facility for sales, use, and privilege tax purposes, the imposition of taxes on coal conversion

Section 1

- A) Defines "environmental upgrade"
- B) Defines "operator"
- C) Defines "power plant"

Section 1 – 3

1. Line item 23, page 1, line item 14, page 2, line items 21 & 26, page 8 removes the term "lignite", relating to coal.
2. Line item 15, page 2, line items 8-9, page 4, line items 25-26, page 5, line items 17-18, page 7 specifies that equipment delivered on or after January 1, 2007 is exempt from the tax imposed by this chapter.

Section 4

Line item 1 & line item 6, page 9 removes a date in which plants must begin construction.

Line items 1 & 25, page 9 changes the word "completed" to "complete"

Line items 10 – 14, page 9 states if a board of county commissioners grant a partial or complete exemption for a specific coal conversion facility, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted.

Line items 1-2, 13-17 and 27-31 are removed from page 10. The changes remove a date deadline in which a coal production facility must operate in order to receive a tax credit. The changes also remove provisions that allow commissioners to grant a facility an exemption and removes a tax credit for facilities.

Section 6

Line item 10, page 11 changes the word "development" to "conversion".
Line item 16-17, page 11 does not allow the state treasurer to allocate money received from conversion facility taxes.

HB 1365

#2 1-24-07

Testimony of Sandi Tabor
General Counsel
Lignite Energy Council

HB 1365
January 24, 2007

Same given to Sena R

HB 1365 is a reenactment of a bill the Legislature passed in 2005 ... HB 1268. The bill was passed last session to encourage environmental and efficiency upgrades in existing power plants in order to ensure the future of the lignite industry. In particular, the bill provided sales and use tax exemptions for coal conversion facilities when the facilities made multi-million dollar investments to repower existing plants.

Unfortunately, a district court judge in Bismarck held that the bill was unconstitutional in February 2006. The basis of the Court's decision was that HB 1268 limited the tax incentives to "lignite" coal and as such violated the Commerce Clause of the United States Constitution. When a state enacts a statute that imposes a direct commercial advantage to local businesses at the expense of similar out-of-state businesses, the courts will find a constitutional violation. In this instance, Kennecott Energy Company, a producer of sub-bituminous coal, brought the action alleging that HB 1268 improperly promoted ND lignite over Powder River Basin sub-bituminous coal. They argued that the tax incentives provided in HB 1268 gave ND lignite coal a competitive price advantage over the out-of-state sub-bituminous coal. The district court agreed with their argument.

With the help of the Tax Department, we have addressed the constitutional issue by removing the word "lignite" from the act. You will see this change throughout sections 1, 2 and 3 of the bill. Sections 4 - 7 are amendments reflecting changes by the Tax Department to clean up chapter 57-60, and Marcy Dickerson is here to answer any questions regarding those changes.

After the passage of HB 1268 in 2005, the planning process began to determine how and when to begin the environmental upgrades. To ensure that equipment ordered for these upgrades receives the benefit of the incentives, we have added an effective date of January 1, 2007, and the emergency clause to the bill. Representatives from Basin Electric Power Cooperative are here to answer any specific questions you may have regarding the importance of the tax incentives to companies with existing facilities in North Dakota.

On behalf of the Lignite Energy Council, I urge a do pass on HB 1365.

HB 1365-A

#3 1-24-07

**Curtis Jabs - Basin Electric Power Cooperative
In Support of North Dakota House Bill No. 1365
House Finance and Taxation Committee
January 24, 2007**

Mr. Chairman and members of the committee, my name is Curtis Jabs and I am here representing Basin Electric Power Cooperative in support of HB 1365.

This legislation is a technical fix to the Century Code's sales and use tax exemptions for power plant construction, repowering, and environmental upgrades. The law applied to any power company in the state who install new environmental controls on their coal-based power plants which will allow those plants to keep operating and providing benefits to the state and the people of North Dakota. In 2006 a North Dakota District Court found portions of the law unconstitutional because it restricted the exemption to only those facilities that use lignite coal. HB 1365 will correct this problem and reenact the law as originally intended.

After the legislature enacted the incentive for environmental upgrades in 2005 and pursuant to Federal regulations, Basin Electric began planning for future upgrades at the Leland Olds Station. We plan to install scrubbers on both units of the power plant by 2011. The sales and use tax exemption is important to making this project financially viable for Basin or any other company looking to install environmental controls on its facilities. Our current plans call for the environmental upgrade of the Leland Olds Station to begin in the summer of 2007. Attaching an Emergency Clause to the bill will allow the law to cover materials that may be delivered before the legislation would normally become law.

Even with the sales and use tax exemption, costs of materials have already seen significant increases. Another serious problem we are facing is the ability to secure qualified contractors who are willing to bid and complete these types of projects. To keep the project on schedule, materials will likely be delivered in 2007. Without HB 1365, costs will increase even more.

#3

The Legislative Assembly understood the importance of providing incentives for environmental upgrades when it enacted the original statute in 2005 and that importance has not changed. We believe that the fix outlined by in HB 1365 is a reasonable approach, and will allow planning and purchasing for these projects to continue. It will restore the legislative intent of the Assembly, and encourage continued operation of all the coal-based power plants in the state.

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

HB 1365

Senator David P. O'Connell

HB 1365 redefines "lignite" to the broader term "coal" for the purposes of the reduced rate and exemption for power plant construction, production, environmental upgrade and repowering equipment.

Section 1

- A) Defines "environmental upgrade"
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- C) Defines "power plant"

Section 1 – 3

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Section 4

Line item 1 & line item 6, page 9 removes a date in which plants must begin construction.

Line items 10 – 14, page 9 states if a board of county commissioners grant a partial or complete exemption for a specific coal conversion facility, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific coal conversion facility for which the partial or complete exemption has been granted.

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Section 6

Line item 10, page 11 changes the word “development” to “conversion”.

Line item 16-17, page 11 does not allow the state treasurer to allocate money received from conversion facility taxes.

**Dale Niezwaag - Basin Electric Power Cooperative
In Support of North Dakota House Bill No. 1365
Senate Finance and Taxation Committee
March 12, 2007**

Mr. Chairman and members of the committee, my name is Dale Niezwaag and I am here representing Basin Electric Power Cooperative in support of HB 1365.

This legislation is a technical fix to the Century Code's sales and use tax exemptions for power plant construction, repowering, and environmental upgrades. The law applied to any power company in the state who installs new environmental controls on their coal-based power plants which will allow those plants to keep operating and providing benefits to the state and people of North Dakota. In 2006 a North Dakota District Court found portions of the law unconstitutional because it restricted the exemption to only those facilities that use lignite coal. HB 1365 will correct this problem and reenact the law as originally intended.

After the incentives for environmental upgrades were enacted in 2005 and pursuant to Federal regulations, Basin Electric began planning for upgrades at the Leland Olds Station. We plan to install scrubbers on both units of the power plant by 2011. The sales and use tax exemption is important to making these projects financially viable for Basin or any other company looking to install environmental controls on its facilities. Our current plans call for the environmental upgrade of the Leland Olds Station to begin in the summer of 2007. Attaching an Emergency Clause to the bill will allow the law to cover materials that may be delivered before the legislation would normally become law.

Even with the sales and use tax exemption, costs of materials have already seen significant increases. Another serious problem we are facing is the ability to secure qualified contractors who are willing to bid and complete these types of projects. To keep the project on schedule, materials will be delivered in 2007. Without HB 1365, costs will increase even more.

The Legislative Assembly understood the importance of providing incentives for environmental upgrades when it enacted the original statute in 2005 and that importance has not changed. We believe that the fix outlined by in HB 1365 is a reasonable approach, and will allow planning and purchasing for these projects to continue. It will restore the legislative intent of the Assembly, and encourage continued operation of all coal-based power plants in the state.

Again Basin Electric is supporting this bill and would encourage a "Do Pass" recommendation by the committee.