

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2298

2007 SENATE TRANSPORTATION

SB 2298

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2298**

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: # 1823

Committee Clerk Signature

Sharon Ferguson

Minutes:

Sen. Urlacher called the committee to order and opened the hearing on SB 2298.

Sen. Klein appeared as prime sponsor of the bill stating we need to address some issues that need tweaking such as sales tax, lower sales tax exemption and reduce kilowatts.

Cory Fong State Tax Commissioner appeared in support with written testimony. (See attached)

John Olson Ottertail Power Company appeared in support stating some concerns with tax credit to go to the first purchaser on a turn key operation. Also the statute relating to the definition of who can possibly take advantage of the tax credit which is limited to the installer. That wasn't intended to be that restricted.

Bob Graveline of the Utility Shareholders of ND appeared only to testify that they support the conditions specified by John Olson.

Gary Jacobson of the Great River Energy appeared in support for reasons presented by the Tax Commissioner and presented a handout. (See attached) Also stating that the coal conversion unit does qualify as a power plant.

Al Christianson of Great River Business Developer appeared to give information to the committee. The plant scheduled to be on stream first quarter of 2010, the ethanol plant will be

about a year ahead of that with a time frame to build up about 18 months, permits should be issued sometime this Spring with construction on the ethanol plant June, July power plant later in the fall when the permit is issued. It's a 4 yr project.

Sen. Cook: where's the coal coming from?

Al: Coal Creek

Curtis Jabs: Basin Electric Power Cooperative appeared in support with written testimony.

(See attached)

Sen. Cook: Do you support the whole bill or parts?

Curtis: we support the bill as a whole.

Sen. Triplett: had concerns with this and SB 2141 and if they were close to the same?

Cory Fong: referred to Miles Vosberg but stated these two bills could be emerged if the committee was to consider it.

Miles Vosberg: Tax Dept. stated the new definition of a plant that is here is broader than the other bill and the size of the plant is also smaller and so I think the provisions of this bill would more than cover it. As far as the definition of the power plant that would be covered in this bill.

Sen. Urlacher: there's an estimated cost of 157 million over 2 biennium's, we should be able to get some idea of what this particular affect would be, would it not?

Miles: we can work with Great River Energy to see what's happening with that if you'd like.

Sen. Urlacher: we can do that

Sen. Cook: back to the fiscal note where you say a fiscal impact cannot be computed, probably more correct to say the total fiscal impact cannot be computed but we can guesstimate that at least this much of a fiscal impact.

Miles: certainly, but in its entirety we can't calculate but we could give you a piece of what we're currently aware of.

Page 3

Senate Finance and Taxation Committee

Bill/Resolution No. SB 2298

Hearing Date: January 24, 2007

Curtis Jabs: commented that SB 2141 was a more narrowly focused bill just on recycled energy and it might be redundant because it seems that the ___ in this bill would cover that.

Dan Rouse: Tax Dept. stated that this bill and SB 2141 can be harmonized.

Hearing Closed.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2298

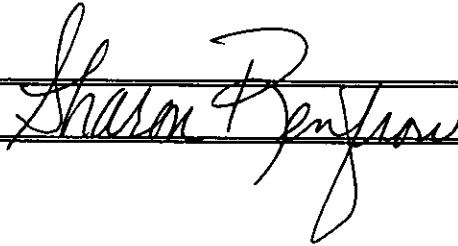
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: # 2473

Committee Clerk Signature



Minutes:

Sen. Urlacher called the committee to order for discussion and action on SB 2298.

Miles Vosberg: Tax Dept. Appeared stating he received some information from Great River Energy regarding what they call the Spiritwood Energy plant and regarding their costs. Their equipment and material costs is approximately 122 million dollars so it would be a little over 6 million dollars would be the sales tax exemption impact on that particular plant. On that FN we had it was undetermined as to how much fiscal effect or impact would be there. We don't know what else is out there. On the discussion I had with Mark Faagen from Great River Energy today he indicated that 96% of that will be in the upcoming biennium.

Sen. Urlacher: so what is the true fiscal effect?

Miles: on 2298 on the one plant that we're aware of in Spiritwood it would be a little over 6 million dollars loss in sales tax revenues

Sen. Cook: are we going to get another FN?

Miles: we would rather not

Sen. Cook: you cannot project what's going to be lost?

Miles: we can redo this fiscal note with a statement of potential loss of 6 million that we are aware of at this point.

Sen. Urlacher: we can move forward and discuss with that information on whether you want to consider it.

Sen. Horne: this isn't the same bill that we were dealing with pipeline pumping, it's a broader bill.

Miles: that was part of the concern we had because we did include that in the FN for 2141, could potentially fall in here too.

Sen. Oehlke: if the bill passes you'd probably know for sure that your going to lose x number of dollars on one plant, but if it doesn't pass and other things don't get built because of that, you really don't know how much you might lose because you never had it in the first place and so is it a loss or not.

Miles: that's correct.

Sen. Urlacher and Sen. Tollefson: the plant will be built with or without the incentives.

Miles: we will amend this to include what we know at this time. It would be called a correction to the FN.

Sen. Tollefson: made a **Motion for DO PASS** seconded by Sen. Triplett.

Sen. Triplett: I think we could merged these 2 bills together.

Sen. Tollefson: they may be closely related but they are entirely 2 different types of projects.

Sen. Urlacher: What we're doing is giving a credit of 6 million dollars, the way it appeared to me is that plant is going to get built with or without this bill.

Sen. Triplett: it's an incentive to get more plants to come in.

Sen. Tollefson: the cost of the plant is reflected on the rates that they have to charge so somebody is going to pay for it.

Sen. Anderson: I just feel that ND needs to catch up and we need to offer incentives like this to catch up.

Page 3
Senate Finance and Taxation Committee
Bill/Resolution No. SB 2298
Hearing Date: January 31, 2007

Roll Call Vote: 4-3-0

Sen. Oehlke: do plants get more concessions from local entities, counties, communities? Not sure

Sen. Tollefson will carry the bill.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2298**

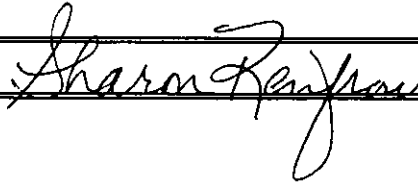
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: # 2770

Committee Clerk Signature



Minutes:

Sen. Urlacher called the committee back to order for discussion on SB 2298 and handed out a new fiscal note.

Sen. Cook: If you read the FN it would tell us that we didn't even need to pass SB 2141.

Sen. Oehlke: Yes and I think that's because of the mega watt size of the plant that it was reduced to in here. Because that was the issue they had.

Sen. Urlacher: do we need to take further action?

Sen. Cook: we've already acted on the bill and I don't think we need to take any further action; they didn't put the 6.4 million up in the FN to have it in the narrative.

Sen. Oehlke: I think that reason is because you're not paying the tax your postponing, the way it is now, you'll still get it back its just that it's postponed until requirements ___ collected tax back.

Sen. Cook: that's correct, but the consistency wasn't here, then why was the \$600,000 in the FN in 2141?

The committee decided to leave as is. Closed the discussion.

FISCAL NOTE
 Requested by Legislative Council
 02/27/2007

REVISION

Bill/Resolution No.: SB 2298

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			(\$2,208,000)	(\$192,000)		
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).*

SB 2298 authorizes the transfer of the income tax credit for geothermal, solar and wind energy devices to qualifying purchasers, redefines power plant capacity for the purposes of tax breaks, and changes the sales tax exemptions for certain power plant and ag processing facility 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 1 allows, but does not require, the income tax credit for geothermal, solar and wind energy devices to be transferred to a purchaser if the sale occurs at the time the installation is complete and the device is fully operational. The amount of tax credits that may be transferred to purchasers, rather than being claimed by the original installer, is not known. This change accomodates the use of turn-key building contracts by the wind power generation industry.

Section 2 reduces the capacity requirement for a power plant to receive a sales tax exemption and creates a new category of power plants that qualify for a sales tax exemption. Currently, there are four plants that are under consideration that would qualify for this exemption. The fiscal impact of the sales tax exemption for these four plants is an estimated reduction in state general fund and state aid distribution fund revenues totaling \$2.4 million for the 2007-09 biennium. (This amount is shown in the boxes, above.) Other qualifying plants may be constructed during the biennium, with an additional fiscal impact that cannot be determined.

Sections 3 and 4 deal with the sales tax exemption for power plants and agricultural commodity processing facilities. These provisions allow contractors to receive the sales tax exemption "up front" without requiring payment of tax by contractors, to be refunded to the plant owner at a later date as required in current law. This will benefit the contractors, the plant owners, and the Tax Department by reducing the administrative burden on each, and will result in no additional revenue loss to the state.

The full extent of the fiscal impact of the tax exemptions and tax credit provision of SB 2298 cannot be computed.

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:	03/01/2007

FISCAL NOTE
Requested by Legislative Council
02/09/2007

REVISION

Bill/Resolution No.: SB 2298

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).*

SB 2298 authorizes the transfer of the income tax credit for geothermal, solar and wind energy devices to qualifying purchasers, redefines power plant capacity for the purposes of tax breaks, and changes the sales tax exemptions for certain power plant and ag processing facility 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 1 allows the income tax credit for geothermal, solar and wind energy devices to be transferred to a purchaser if the sale is pending at the time of the installation. Section 2 reduces the capacity requirement for a power plant to receive a sales tax exemption. Sections 3 and 4 deal with the sales tax exemptions for agricultural processing facilities. It is not known if devices will be transferred, and how many qualifying power plants and ag processing facilities will be constructed so the entire fiscal impact cannot be computed.

This fiscal note has been revised to include the following:

Newly acquired information indicates, at a minimum, one plant under consideration will qualify for a sales tax exemption of approx. \$1.8 million due to the provisions of this bill. (This plant also qualifies for a sales tax exemption of \$4 million allowed under current law, which was erroneously referenced as part of this bill in a prior fiscal note). Additionally, three plants utilizing "waste heat" that were referenced in SB 2141 would also qualify for the sales tax exemption provided in this bill. The sales tax exemptions for these four plants will result in a reduction of state general fund and state aid distribution fund revenues of approx. \$2.4 million. The full extent of the fiscal impact of the tax exemptions and tax credits provided in this bill are unknown.

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:	02/09/2007

FISCAL NOTE
Requested by Legislative Council
02/01/2007

REVISION

Bill/Resolution No.: SB 2298

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).*

SB 2298 authorizes the transfer of the income tax credit for geothermal, solar and wind energy devices to qualifying purchasers, redefines power plant capacity for the purposes of tax breaks, and changes the sales tax exemptions for certain power plant and ag processing facility 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 1 allows the income tax credit for geothermal, solar and wind energy devices to be transferred to a purchaser if the sale is pending at the time of the installation. Section 2 reduces the capacity requirement for a power plant to receive a sales tax exemption. Sections 3 and 4 deal with the sales tax exemptions for agricultural processing facilities. It is not known if devices will be transferred, and how many qualifying power plants and ag processing facilities will be constructed so the entire fiscal impact cannot be computed.

This fiscal note has been revised to include the following:

Newly acquired information indicates, at a minimum, one plant under consideration will qualify for a sales tax exemption of approx. \$5.8 million, and three additional plants utilizing "waste heat" that were referenced in SB 2141 would also qualify for the sales tax exemption provided in this bill. The sales tax exemption for these four plants will result in a reduction of state general fund and state aid distribution fund revenues of approx. \$6.4 million. The full extent of the fiscal impact of the tax exemptions and tax credits provided in this bill are unknown.

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:	02/03/2007

FISCAL NOTE
 Requested by Legislative Council
 01/17/2007

Bill/Resolution No.: SB 2298

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).*

SB 2298 authorizes the transfer of the income tax credit for geothermal, solar and wind energy devices to qualifying purchasers, redefines power plant capacity for the purposes of tax breaks, and changes the sales tax exemptions for certain power plant and ag processing facility 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 1 allows the income tax credit for geothermal, solar and wind energy devices to be transferred to a purchaser if the sale is pending at the time of the installation. Section 2 reduces the capacity requirement for power plant to receive a sales tax exemption. Sections 3 and 4 deal with the sales tax exemptions for agricultural processing facilities. It is not known if devices will be transferred, and how many qualifying power plants and ag processing will be constructed so the fiscal impact cannot be computed.

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: 1-31-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2298

Senate Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass

Motion Made By Sen Tollefson Seconded By Sen Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher		✓	Sen. Anderson	✓	
Sen. Tollefson	✓		Sen. Home	✓	
Sen. Cook		✓	Sen. Triplett	✓	
Sen. Oehike		✓			

Total (Yes) 4 No 3

Absent 0

Floor Assignment Sen. Tollefson

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

REPORT OF STANDING COMMITTEE (410)
February 1, 2007 8:19 a.m.

Module No: SR-22-1728
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2298: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2298 was placed on the Eleventh order on the calendar.

2007 HOUSE FINANCE AND TAXATION

SB 2298

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2298A

House Finance & Taxation Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3803

Committee Clerk Signature

D. Penrose

Minutes:

Rep. Belter: Clerk read title of bill. We will open the hearing on SB 2298.

Sen. Jerry Klein: This bill is to tweak the current law, with the current changes and the work that we've done on a lot of the Ag commodity processing facilities, and electric generation facilities; they currently enjoy a sales tax exemption. This will provide that upfront rather than requiring them to apply for it at the end. The intent is to remove that upfront burden. It also will allow the owner of a geothermal, solar, or wind device to receive their income tax credit, which they are already granted by law, and then they can contract that with a third party to return accumulation share. It will also expand the sales and use tax exemption for electric generation plants to include smaller plants with electric generation capacity of at least 100 kilowatts and those plants producing those for electric resale. It's somewhat of a tweaking of the current laws.

Rep. Belter: Thank you. Further testimony in support.

Cory Fong, State Tax Commissioner: (see attached testimony #1).

Rep. Pinkerton: Can you give me a little more information about the past turn key relationship.

Cory Fong: Currently there is an income tax for geothermal, solar and wind devices, and that is allowed to be used by the owners. But there are some that would like to be able to use the income tax exemption but also have it billed through a third party for a turnkey operation, where they basically bring it up to performance testing and then turn it over to the owner. I know that there are some folks from industry that are here to explain that. This will essentially allow them to do that, because currently the exemption is only allowed for the owner, so we're just suggesting that we tweak the law so that those who want to work through a turnkey operation can still enjoy their income tax exemption.

Rep. Wrangham: You're testifying in support of the bill, I see your office also did the fiscal note on the bill, and there aren't any numbers on the top, but a quite lengthy explanation. I'm not sure that I follow some of it. Can you enlighten us a little bit on the fiscal note?

Cory Fong: I will attempt to do that. It's very difficult for us to put together a fiscal note on this bill, not understanding what the potential impact of future projects might be. What we did do, however, is look at a current project that is under construction to try and provide a snapshot of what the fiscal note would be. What we realized when we did that, however, is that particular project already is going to qualify for certain sales tax exemptions as a agricultural processing facility. Again, they are going to have to apply for it on the backside, which is what's inconvenient rather than having that on the front side. But we did remove that from the original fiscal note, so we're down to about \$2.4 million dollars; but again, that's just based on the current project. We still don't know the future projects that might be in the works that would obviously have additional fiscal impact on the budget.

Rep. Drovdal: I guess you made the statement that the bill is common sense, but I think this fiscal note sure doesn't have any on it. When I look at it, and it says one plant will have approximately \$1.8 million dollars and four other plants will have \$2.4 million, that's a total of

\$4.2 million dollars and why isn't the fiscal note reflecting at least the \$4.2 million dollars plus, if you can already determine that.

Cory Fong: We don't know the future development in this area to be able to provide comprehensive fiscal note for the overall impact; however, trying to look at the existing project that we know, that we can take advantage of one portion of this bill, which is to allow the generation capacity to be lowered to 50 megawatts, we believe that the fiscal impact would be approximately \$1.8 million dollars. Of course, there is also additional fiscal impact with some other of the components of the bill, which brings it up to \$2.4 million dollars. Again, we have provided a snapshot of what this kind of fiscal impact would be for this kind of a project.

Rep. Froseth: This will not affect plants that are now committed to building or have been built or applied for this original tax credit, the new accelerated sales tax credit and the size of the plants, won't affect any in the process, right.

Cory Fong: The lowering of the threshold from 120 megawatts down to 50 would impact a project that is currently under construction, as I understand. Miles Vosberg would be able to explain that. But again, they would already also qualify for the sales tax exemption for the Ag processing component of it, which is to the tune of approximately \$4 million dollars? Of course, future projects would be impacted as well.

Rep. Pinkerton: The \$4 million dollars tax credit that would apply to SB 2079, which is the bill we just heard.

Cory Fong: Currently there is a sales tax exemption in place for Ag processing facilities, that's what they are already able to take advantage of. SB 2079 there is no relationship to that particular bill.

Rep. Pinkerton: The bill that we heard about the Seed tax credit for agricultural processing plants for income tax credit, that same plant would be eligible for this, or would they have already received that credit.

Cory Fong: That would be a separate program, that's the income tax side that would be the Ag processing facility income tax credit. This is a sale tax exemption that we're talking about that an Ag processing facility would enjoy through the construction phase. So they are different programs. This bill just deals with sales tax as it relates to Ag. Processing facilities and electric generation.

Rep. Pinkerton: It would be eligible for a property tax reduction, a sales tax exemption, and then an income tax credit because of the agricultural processing, so it would be eligible for all three programs.

Cory Fong: That is correct.

Rep. Pinkerton: For this particular plant, I would assume it's this kind of plant that we're speaking of here.

Cory Fong: Correct.

Rep. Pinkerton: Is it possible for us to see these kinds of total numbers of plants getting tax credits, can we see an example.

Cory Fong: I know that members of the industry, from Spiritwood that are going to be testifying and perhaps they could shed some light on all the programs that they have used in the development of this project. I would invite Dee Wald from our staff to talk about the restraint that we would have in providing information on the overall numbers.

Rep. Froseth: On your explanation of #1, allows the owner of the device to use their income tax credit when contracting with a third party. Would that be the remainder of the credit they have allowable, like if someone sells or turns over to a third party halfway through a project,

they use some of their income tax credits, and they have some credits left, this is the remainder of their credits, or how does that work.

Cory Fong: I am going to have Dee Wald address that question. She is in a better position to answer that.

Donnita Wald, Legal Counsel, ND Tax Department: Section 1 of this bill is attempting to fix a situation where, because of a number of reasons where electrical and utility companies contracts with someone else to build a device; build it up and then get it fully operational for Basin Electric. As soon as that process is complete, construction is complete, they turn it over, and they do a purchase. Basin is the one that contracted with them, but during the time of the construction, the construction company owned the facility. So what happened was, when we were approached with addressing who gets the income tax credit, the statute says that only the person who constructs or installs the project, gets the tax credit. So in that situation that I've just given, Basin, even though they contracted with them, it's their project, they didn't own it during the construction phase that they had. They had every intent to own it when it was done. This allows them to still get the income tax credit. You can get partial credit if it is transferred immediately upon completion.

Rep. Froseth: How can there be an income tax credit during construction period, there wouldn't be any.

Donnita Wald: But the contractor may have some income from other sources, he would be building this, he would incur expenses building this and say he does other kinds of constructions projects. So when the year is done, and he's adding it all up, he has some income and then he would have the tax credit.

Rep. Froseth: So this is income he's making off building the project, not going to come off the facility.

Donnita Wald: Any income, he can take a credit against any income he's made.

Rep. Weiler: Two questions, so in this particular scenario that you gave, income tax credit would be given to two different entities, or they would be given to the contractor and they would be given to Basin, is that correct.

Donnita Wald: Under this scenario, no I might not have been clear. Only Basin would get the credit, once the project is complete, that credit goes to Basin. The building contractor cannot take the credit.

Rep. Weiler: Is that under current law, or is that what would exist if we were to pass this.

Donnita Wald: If we were to pass this bill as is, that's what would happen. Currently, the contractor gets the credit, and that's not what the parties intended. Not what Basin intended as they were doing this.

Rep. Weiler: Were the contractors here to oppose this then on the Senate side.

Donnita Wald: No.

Rep. Weiler: Were they aware of it.

Donnita Wald: I don't know, I assume they have.

Rep. Weiler: Is it possible for us to get an updated fiscal note. I know it's kind of updated, but it's in the small print and I would like to see it where it normally is, about the true fiscal impact of this.

Donnita Wald: I'll have to defer to the Commissioner on that.

Rep. Belter: Dee, before you leave, just to get back to Rep. Froseth's question. The income credit can be taken on any income that the company has. It doesn't have to be taken on the income that is derived from this project.

Donnita Wald: That is correct. That's how all of our tax credits work.

