

2011 SENATE FINANCE AND TAXATION

SB 2031

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2031
1/19/2011
Job Number 13066

Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to the exemption from sales and use tax for construction materials used in a wind-powered electrical generating facility

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on SB 2031.

Tim Dawson, Legislative Council - I'm not here for or against this bill but merely to describe the bill. This bill came to the Energy Development and Transmission Committee from the Empower North Dakota Commission. Although long, it's fairly simple. It removes the expiration date, that is, makes permanent the sales and use tax exemption for production equipment and other property used for building, expanding, or upgrading wind facilities. When you look at this bill before you, on page 1 you can see effective through June 30, 2015. That is not the effective date we are dealing with. There is another section in the back that deals with past that time period. That effective date is in there because of beneficiated coal amendments done last session or the session before that, so that isn't what we are touching. The first section, 57-39.2-04.2 deals with sales tax. The "meat of the bill" is going to be on page 2 lines 5 and 6. We crossed off that date. You can see it says a power plant means a wind powered, electrical-generating facility, and then it had the limitation on it of January 1, 2015. That is the expiration date we are getting rid of. The second section on page 3 deals with the sales tax exemption for the period after June 30, 2015 and also has the exact same changes in it as we saw before. Then when you get to page 5 you will see the use tax and then you will see the use tax after that expiration date again on page 7. All that is just to change that over struck language in 4 sections of law, 2 of them relating to sales tax and 2 of them relating to use tax.

Chairman Cook- When was this legislation that put the January 15, 2015 sunset? Was that last session or earlier?

Tim Dawson – I do not have a direct recollection but I do think it was last session.

Paul Govig, Commerce Commissioner and Chairman of the EmPower North Dakota Commission – (See attached testimony A in support of SB 2031)

Senator Hogue – Can you provide any evidence that these sales tax exemptions motivate any of the producers to do what they do as opposed to the federal incentives that they have?

Paul Govig, Commerce Commissioner and Chairman of the EmPower North Dakota Commission – I don't have any specific information that would support that but how I would answer that is, it's one more tool that we can use to support this industry and the fact that it has a sunset and others that are very similar do not, does not seem consistent. It does not seem fair and so to ensure that we continue to support this industry it makes a lot of sense that we would in fact withdraw that sunset.

Senator Hogue – Can you speak to what Montana and South Dakota do? What's the extent of their sales tax exemptions?

Paul Govig, Commerce Commissioner and Chairman of the EmPower North Dakota Commission - I do not have that information but we can find that out.

John Olson – I am appearing on behalf of all 3 investor owned utilities today. Ottertail Power Company, MDU, and Xcel Energy. I'm also appearing on behalf of Nextera Energy which used to be known as Florida Power and Light. My comments will be on their behalf. This bill has been very important I think historically as one of the tools that was referenced in making North Dakota competitive for wind industry development. Let me just indicate where we are today with these companies. Nextera is a worldwide energy company; they have facilities including solar, hydroelectric, nuclear, and natural gas fired power plants as well as wind totaling 100 facilities and more than 18,000 net megawatts of generating capacity from electrical plants operating in 26 states and Canada. Their national wind power presence in America is 80 wind facilities in operation in 17 states and 3 Provinces in Canada totaling more than 8,000 megawatts of wind power with over \$11 billion invested. Today in North Dakota they have bought 1,000 megawatts of wind power in our state with over \$1.5 billion invested. They own about 850 megawatts of wind energy in North Dakota consisting of projects in Langdon, Valley City, Cooperstown, Center, Wilton, and Edgeley/Kulm. They have about 65 permanent employees in the state working for that company. Ottertail has about 138 megawatts of wind generation in Langdon, Lake Ashton/Beulah, and Luverne, North Dakota. They also purchase energy output of approximately 40 megawatts of additional wind generation near Edgeley and Langdon primarily owned by affiliates of Nextera Energy. All of Ottertail Power Companies owned wind energy and nearly all of its purchased wind energy is generated at facilities in North Dakota. In reducing sales tax on wind farm components, SB 2031, according to Ottertail, will continue to encourage North Dakota wind farm development and manufacturing by increasing cost competitiveness. This in turn will enhance opportunities for North Dakota companies with a presence in wind power energy in this state. I would add that Xcel Energy currently has 12 megawatts of wind power in the state and they are about on the horizon to purchase an additional 150 megawatts from Merricourt Development in northern North Dakota. MDU has I think right now 20 megawatts of wind power in the state. In answer to Senator Hogue's question, I think that these tools have been very important for attracting wind powered development in the state. Let me digress for just a second, and tell you what I know about Nextera Energy. Their presence obviously is global and nationwide and within the company itself, they have competing interests in the divisions which want to go to

North Dakota and other divisions that want to go to California or wherever else they have in the 18 or so states that they have in the United States. So it is very competitive and those economic considerations are always present to determine where that development is going to be, so I think it's important to keep this particular sales tax exemption in place and I think it's important for the long range planning and development of wind power in North Dakota.

Senator Dotzenrod asked how much a typical wind tower costs to build and how much sales tax would be involved in the construction of one today.

John Olson – I'm not really an expert to answer that kind of question. I can tell you that I think we are up to about 1.5 megawatts now for a wind tower or about 2 megawatts. So the facilities are growing.

Senator Hogue – You were speaking of Xcel Energy where there is going to be a sale of some wind assets. Would that ordinarily, without this law, trigger some type of sales tax? They may not own the real estate, but are these turbines considered personal property subject to sales tax upon transfer?

John Olson – I think someone from the tax department could answer that better than I can, but I would assume not. After the first sale, I don't know that there would be any sales tax involved after the initial components were purchased.

Chairman Cook asked for testimony opposed to SB 2031. No one came forward.

Chairman Cook asked for neutral testimony for SB 2031.

Myles Vosberg, Tax Department – I can answer the question about the sale of existing towers that are in place. They would not be subject to sales tax for two reasons. They are real property once they have been attached and installed and then they'd really be a casual sale anyway, not subject to tax.

Chairman Cook- Do you know how much tax is typically generated from one wind tower?

Myles Vosberg, Tax Department – I don't know. I know in the early days of this exemption we were looking at roughly \$1 million per tower but since the size has changed, it depends how much transmission line needs to be built in order to get it to the main transmission lines and so on. That was kind of a rule of thumb. When this exemption first started it was about \$1 million so you are talking \$50,000 in tax per tower, roughly.

No further action was taken.

Chairman Cook closed the hearing on SB 2031.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2031
1/26/2011
Job Number 13457

Conference Committee

A. Ritter

Explanation or reason for introduction of bill/resolution:

Relating to the exemption from sales and use tax for construction materials used in a wind-powered electrical generating facility

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2031.

Chairman Cook – Looks like the change in this bill is on page 2. It takes off the sunset on wind-powered electric generating facilities in regards to a sales tax exemption.

Vice Chairman Miller – I will move a Do Not Pass.

Seconded by **Senator Oehlke**.

Chairman Cook – Any discussion? If we Do Not Pass they continue to get their sales tax exemption for another 2 years and then they will be back next session asking us to remove it.

Vice Chairman Miller – I think that sums it up and we can leave it at that.

Senator Triplett – I did think it was interesting that the acting commissioner of the Department of Commerce was unable to answer Senator Hogue's question in the affirmative about whether there is any evidence that these exemptions motivate anyone. It does seem to me that before permanent exemption to have at least some evidence that they are working as expected. So given that this is in effect for 2 more years I am willing to support the Do Not Pass and wait for the evidence to come in and I'm sure you are right that they will be back in 2 more years.

Chairman Cook – Ask the clerk to take the roll on a Do Not Pass on SB 2031. (7-0-0)

Carried by **Vice Chairman Miller**.

FISCAL NOTE
 Requested by Legislative Council
 12/16/2010

Bill/Resolution No.: SB 2031

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 2031 removes the sunset on sales and use tax exemptions for construction materials used in wind-powered electrical generating facilities. Any fiscal impact will occur in the 2015-17 biennium and beyond.

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.*

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:	01/12/2011

Date: 1-26-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2031

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

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

2011 TESTIMONY

SB 2031

DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2031
JANUARY 19, 2011, 10:30 A.M.
SENATE FINANCE AND TAXATION COMMITTEE
LEWIS & CLARK ROOM
SENATOR DWIGHT COOK, CHAIRMAN

PAUL GOVIG – ACTING COMMISSIONER, ND DEPARTMENT OF COMMERCE

Mr. Chairman and members of the committee, I'm Paul Govig, acting Commissioner of the North Dakota Department of Commerce. As Commerce Commissioner I also serve as the chairman of the EmPower North Dakota Commission.

The Commission was established by the Legislature in 2007 and made permanent in 2009. Members are appointed by the Governor and it's an industry lead effort that encourages all of our energy sectors, both renewable and traditional, to have a voice in energy policy development.

On behalf of the EmPower ND Commission, I'm here today to speak in favor of Senate Bill 2031. This is a bill that was recommended by the Commission and approved by the interim Energy Development and Transmission committee. A complete list of bills recommended and supported by the Commission is below:

- Senate Bill No. 2030 – Biodiesel Plant Production Incentive.
- Senate Bill No. 2031 – Sales and Use Tax Exemption for Wind Towers.
- Senate Bill No. 2032 – Oil and Gas Research Council.
- Senate Bill No. 2033 – Energy Development Impact Office.
- Senate Bill No. 2034 – Green Diesel.
- Senate Bill No. 2196 – PSC Siting Threshold.

Senate Bill 2031 removes the sunset from the sales and use tax exemption for materials used in a wind-powered electrical generating facility. Currently, the wind power sales and use tax exemption is the only exemption that has a sunset. All other sales and use tax exemptions are permanent including exemptions for other energy industries such as coal-powered generation facilities, oil refineries, and gas processing equipment.

Therefore, the EmPower ND Commission supports this permanent sales and use tax exemption.

Mr. Chairman and members of the Finance and Taxation Committee, I encourage you to support Senate Bill 2031. That concludes my testimony and I'd happy to answer any questions.