

2011 SENATE POLITICAL SUBDIVISIONS

SB 2263

2011 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

SB 2263
January 28, 2011
13530

Conference Committee

Committee Clerk Signature

Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to reporting dates and allocation for electric generation, distribution taxes

Minutes:

See written testimony

Senator Laffen, Vice-Chair substituting for Senator Andrist opened the public hearing on SB 2263, relating to reporting dates and allocation for electric generation, distribution taxes.

Harlan Fuglesten North Dakota Association of Rural Electric Cooperatives, in support of SB2263 bill. Senator Cook asked me to introduce the bill to this committee. See written testimony.

Senator Olafson: Does the language in Section 3, does that constitute any change in tax rates or tax revenues? **Harlan Fuglesten**: No it does not.

Senator Lee: Does it make any difference to any changes in who gets the money, the tax distribution? **Harlan Fuglesten**: It really does not in our view. It just clarifies that. The issue would be what or how do you determine for example the production part of that formula. Our view is that should be determined based upon the entire production of the wind farm and then allocated according to the individual turbine based on their capacity rather than sub metering each of the turbines where that sub metering may be inaccurate and not of high quality metering like it would be for the output of the entire farm. In practical effects I don't think there is any change. **Senator Lee**: The reason for my question is because I had a conversation with one of our fellow legislators in the House who is talking about an issue in his area because revenue that had been coming to his area was now going to the place where the energy was produced. The revenue was now going to the area where the power was consumed. Is there any tie in with this at all, or is this an entirely separate discussion? **Harlan Fuglesten**: There is absolutely no tie in between how the fundamentals of the bill operate and this, or these changes at all. We understood that when the bill was brought, and this is a bill we support and that we helped put together. It was based on over ten years of study, that there would be revenue shifts. Those revenue shifts would be substantial in some respects. In addition, one of the purposes of the bill was to restrain the growth of the property taxes that we were paying which were based on gross receipts and if we saw our revenues increase due to necessary rate increases, we were seeing automatic tax increases. That had gone on longer than it should have to the point where were paying

far more in property taxes than we thought we should be paying. That was occurring at a time when most other property taxpayers were getting a 20% property tax reduction so our plan was designed to provide about the equivalent amount of property tax relief 21% by our estimates and in addition to that there was going to be some redistribution of that revenue among counties and political subdivisions. Under the old law, the primary redistribution occurred because all of the revenue was distributed to political subdivisions based upon miles of line and where those lines were located. Under the new law, 50% of the distribution would continue to be on the basis of where the lines were located and 50% would be based upon where the sales occurred. That would tend to move some revenue from rural to urban and suburban areas.

Senator Lee: I am certainly supportive of that change. I think that would be the fair thing to do. What I understand then, is that we're not talking about shifting in any way the dollars that are actually in play here, but rather just clarifying the way the determination is done as far as when metering. The money is still going where its' supposed to go. **Harlan Fuglesten:** That's correct.

Ryan Rauschenberger, North Dakota Tax Department, giving testimony of behalf of Sara Meier, see written testimony.

Senator Andrist: Closed hearing on SB 2263.

Discussion: We've had one request that we amend out the effective date and let the natural date be July 1st.

Senator Dotzenrod: Move that on Page 3, lines 11 and 12 be deleted, Section 4 of the bill be deleted.

2nd from Senator Olafson

5Yeas, 0No 0 Absent

Move the bill be sent forward as amended

Senator Olafson: I move Do Pass recommendation as amended

2nd Senator Dotzenrod

5 Yeas, 0 No, 0 Absent

Carrier: Senator Dotzenrod

FISCAL NOTE

Requested by Legislative Council
01/21/2011

Bill/Resolution No.: SB 2263

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 2263 has no fiscal impact. Section 1 changes the dates by which reports are required. Section 3 clarifies existing language relative to how revenue from taxes on wind generators is to be allocated to political subdivisions.

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:	01/26/2011

Date: 1-27-2011
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2263

Senate Political Subdivisions 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 Si. Dotzenrod Seconded By Senator Olafson

Senators	Yes	No	Senators	Yes	No
Senator John Andrist	✓		Senator Curtis Olafson	✓	
Senator Lonnie Laffen	✓		Senator Jim Dotzenrod	✓	
Senator Judy Lee	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Date: 1-27-2011
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2263

Senate Political Subdivisions 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 Si. Olafson Seconded By Si. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Senator John Andrist	✓		Senator Curtis Olafson	✓	
Senator Lonnie Laffen	✓				
Senator Judy Lee	✓		Senator Jim Dotzenrod	✓	

Total (Yes) 5 No 0

Absent 0

Floor Assignment Si. Dotzenrod

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

REPORT OF STANDING COMMITTEE

SB 2263: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2263 was placed on the Sixth order on the calendar.

Page 3, line 12, replace "2011" with "2010"

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2263

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2263
March 8, 2011
#15094

Conference Committee

Committee Clerk Signature *Mary Bruckler*

Explanation or reason for introduction of bill/resolution:

A bill relating to reporting dates and allocation for electric generation, distribution, and transmission taxes; and to provide an effective date.

Minutes:

See attached testimony #1, #2

Harlan Fuglesten, ND Association of Rural Electric Cooperatives: Introduced bill. Support. Please refer to attached testimony #1.

Sara Meier, Property Tax Specialist for the Office of State Tax Commissioner: Support. Please refer to attached testimony #2.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2263.

Vice Chairman Craig Headland: Motion for DO PASS.

Representative Mark S. Owens: Seconded.

**A roll call vote was taken: YES 13 NO 0 ABSENT 1
MOTION CARRIED FOR DO PASS.**

Representative Mark S. Owens will carry SB 2263.

Date: 3-8-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2263

House 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 Rep. Headland Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Owens

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

REPORT OF STANDING COMMITTEE

SB 2263, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2263 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2263

SB 2263
Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Senate Political Subdivisions Committee
January 27, 2011

Mr. Chairman and members of the committee, my name is Harlan Fuglesten with the North Dakota Association of Rural Electric Cooperatives. I am here today to speak in support of SB 2263, and to provide a short explanation for this bill.

This bill makes two minor technical changes to a major property tax reform law passed by the legislature in 2009. Among other things, that legislation changed the in lieu property taxes electric co-ops pay to counties, cities and other taxing districts. Under the old tax system, co-ops primarily paid a 2% gross receipts tax as an in lieu property tax. The new law replaced the gross receipts taxes with a tax of \$1 per megawatt hour of retail electric sales, established a progressive transmission line mile tax schedule that increases with voltage levels, and created new in lieu generation taxes for co-ops on wind and other forms of non-coal generation. Tax revenue raised under the new law is distributed to taxing districts based on the location of distribution and transmission power lines, retail sales, and where wind or other non-coal generators are located.

The State Tax Department provided great assistance in implementing this new law which required new forms and reporting procedures for our cooperatives and the county auditors. The new property tax law became effective for the 2010 tax year, so we have been through the first year under the new tax law. We believe that implementation of the new law went well.

SB 2263 arises from suggestions made by the Tax Department to modify a couple reporting dates and provide clarification for one part of the new law. Sections 1 and 2 of the bill change reporting dates to the county auditors and the Tax Department. The current law provides that transmission and distribution companies report power line location information to county auditors by May 1 and on the same date they report all tax information requested by the Tax Department. SB 2263 changes the

reporting date to the county auditors from May 1 to April 15 for the line location information and changes the reporting date to the Tax Department for all required tax information from May 1 to June 1. The reason for changing these dates is to give county auditors a chance to review and correct any line location information provided by the companies before the companies file their final reports to the Tax Department.

The current law requires the county auditors to provide accurate maps to transmission and distribution companies operating in their county showing the boundaries of each taxing district in the county. SB 2263 changes the date for providing these maps from April 1 to February 1 to allow more time for the companies to make sure they have the updated taxing district boundary information to prepare their reports to meet the April 15 deadline to report line location information to the county auditors.

Section 3 of the bill clarifies the method that should be used in allocating wind energy taxes among taxing districts when there are turbines in more than one county or other taxing districts. The new wind tax includes both a capacity tax and a production tax. Capacity is a measure of output and is commonly stated in megawatts. So, for example, a wind farm with 100 turbines of 1.5 megawatts each will have a total capacity of 150 megawatts. The capacity tax is allocated among taxing districts by determining how many turbines are in each county, for example, and then allocating the tax accordingly. With respect to the production tax, however, the method of allocating production taxes among taxing districts was not defined. One method would be to meter each turbine's individual production in making allocations among taxing districts. Another method would be to determine the overall wind farm production and then allocate that production based on the capacity of each wind turbine. For simplicity and overall fairness, we believe the latter approach works best and that is the method described in Section 3 of the bill.

That concludes my testimony. I would be happy to try to answer any questions you may have.

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE POLITICAL SUBDIVISION COMMITTEE**

SENATE BILL 2263

JANUARY 26, 2011

Chairman Andrist, members of the Senate Political Subdivision Committee, my name is Sara Meier, and I am a Property Tax Specialist for the Office of State Tax Commissioner. My testimony on Senate Bill 2263 is to provide insight on the necessity of the change proposed.

SECTIONS 1 AND 2

In 2009, the Legislature created N.D.C.C. chapter 57-33.2 to address the taxation and allocation of tax of electric generation, distribution and transmission companies.

Under current language, by April first of each year, each county auditor is required to provide accurate maps of the taxing districts to each distribution and transmission line company, which has property located within their county. By May first of each year, each transmission and distribution company is required to file a report listing the location of its lines with the county auditor of each county in which the lines are located. County auditors are to contact each company with any corrections to taxing district information that is listed on this report.

Each company also files the same report with the Office of State Tax Commissioner by May first of each year. If any corrections are requested by a county auditor, it is too late for a company to make the corrections to the report sent to the Office of State Tax Commissioner.

As a courtesy to counties, a report is generated by the Office of State Tax Commissioner, which shows the location of the lines and the allocation of the tax. After this report is received by the county auditor, the apportionment of tax is determined.

Changing the dates would allow a window of opportunity for companies to make the changes requested by the counties, before the final report is sent to the Office of State Tax Commissioner, and will promote more accurate apportionment of the tax to the appropriate districts.

SECTION 3

Under current language, part of the distribution of the generation tax is to be based on the location of the associated collector system of a wind farm. There is no reporting requirement by which to base the distribution of tax for the collector system.

With wind farms that are subject to the ad valorem assessment and tax under N.D.C.C. chapter 57-06, the distribution of the value is based on the original cost information provided by the company. The proposed amendment would distribute the tax among the wind generators of the wind farm evenly based on the rated capacity.

Section 4

I request that the effective date of this bill be removed. By removing the effective date, the default date would be July 1, 2011.

Section 3 must be in place for the 2011 tax year because there exists one wind farm that would be subject to this taxation.

Sections 1 and 2, do not need to be in effect for 2011.

Please feel free to contact with any questions. Thank you for your consideration.

Testimony #1
p. 1

SB 2263

Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
House Finance and Tax Committee
March 8, 2011

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This bill makes two minor technical changes to a major property tax reform law passed by the legislature in 2009. Among other things, that legislation changed the in lieu property taxes electric co-ops pay to counties, cities and other taxing districts. Under the old tax system, co-ops primarily paid a 2% gross receipts tax as an in lieu property tax. The new law replaced the gross receipts taxes with a tax of \$1 per megawatt hour of retail electric sales, established a progressive transmission line mile tax schedule that increases with voltage levels, and created new in lieu generation taxes for co-ops on wind and other forms of non-coal generation. Tax revenue raised under the new law is distributed to taxing districts based on the location of distribution and transmission power lines, retail sales, and where wind or other non-coal generators are located.

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That concludes my testimony. I would be happy to try to answer any questions you may have.

Testimony #2

p. 1

TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
HOUSE FINANCE AND TAXATION COMMITTEE

SENATE BILL 2263

MARCH 8, 2011

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With wind farms that are subject to the ad valorem assessment and tax under N.D.C.C. chapter 57-06, the distribution of the value is based on the original cost information provided by the company. The proposed amendment would distribute the tax among the wind generators of the wind farm, evenly, based upon the rated capacity.

Section 4

I request that the effective date of this bill be removed. By removing the effective date, the default date would be July 1, 2011.

All sections would be administrable by removing the effective date.

This ends my prepared testimony. I would welcome questions.