

2011 SENATE FINANCE AND TAXATION

SB 2336

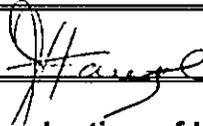
2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2336
January 31, 2011
13664

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To encourage the coal industry to develop coal resources in North Dakota.

Minutes:

One attached testimony

Chairman Senator Cook opened the hearing on SB 2336 relating to a sales tax exemption for machinery or equipment used to produce coal from a new mine located in this state.

Senator Wardner, District #37 introduced SB 2336. The idea is to encourage the coal industry to develop coal resources in North Dakota. He stated that ND has a lot of lignite coal. It will allow the coal industry a state incentive to fairly compete with other industries.

David Straley representing North American Coal testified in support of SB 2336. He said that they have approximately 700 fulltime employees in North Dakota. They also employ about 200 seasonal employees. They are currently permitting a new mine in North Dakota, to date the permit has not been granted but they are estimating sometime in 2011 this process will be done and North American Coal will be granted a permit to mine that coal. This bill is to help them get the right business environment and the right incentives in place to help sell the coal reserve. The first part of SB 2336 is for a sales tax exemption for machinery and equipment used to produce coal from a new mine. This applies only to the first purchase. It does not apply to replacement parts or machinery.

Senator Hogue asked if he thought the Fiscal Note was a reasonable estimate of the sales tax revenue that the state will be forgoing if this bill passes.

Mr. Straley said depending on investments. They would plan to keep their investments minimal but they couldn't speak for what a big mine would do if they came in. He thinks it is not probable to see a big mine like the size of Falkirk coming in. He explained other revenues that would be going to the state per ton mined.

Sandi Tabor with the Lignite Energy Council testified in support of SB 2336.

Senator Cook asked for opposing testimony.

Ashley Lauth, Dakota Resource Council testified in opposition to SB 2336. Written testimony A.

Senator Cook asked if there was a bill before this body dealing with reclamation.

Ms. Lauth replied not that she was aware of.

Senator Cook asked if she had any supportive documents for the numbers used in her testimony.

Ms. Lauth deferred the question to her colleague, Scott Skokos.

Senator Miller asked if she was figuring cropland and pastureland separately. Was there a distinction.

Ms. Lauth deferred question to Scott Skokos.

James Kambeitz, citizen of North Dakota stands firmly against this bill because it is UN North Dakotan, economically, ethically, in our vision, stewardship wise.

Wade Schafer, Dakota Resource Council testified in opposition to SB 2336 and urged a Do Not Pass.

Scott Skokos, citizen from ND, testified in opposition. He testified against the coal mine at South Heart.

Senator Cook asked about the numbers presented in Ms. Lauth testimony about reclaimed acres. He asked if he had documents supporting this.

Mr. Skokos said the numbers were from the Public Service Commission. He said he would get that documentation.

Senator Cook closed the hearing on SB 2336.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2336
2/2/2011
Job Number 13880

Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

To encourage the coal industry to develop coal resources in North Dakota.

Minutes:

Committee Work

Senator Hogue handed out an amendment providing a sales tax exemption for the new lignite coal mines.

Senator Hogue – Industry has asked for an exemption. My proposal is to cap it at \$2 million per mine. I think the testimony was there are 2 applications pending before the North Dakota Public Service Commission for a new mine permit. I understand the disadvantages that the industry has from the standpoint that lignite is an inferior coal in terms of its energy content and that they do create a lot of good paying jobs. But, I go back to my argument about these industries make decisions to open new mines based on the economies of mining coal and generating electricity and not what we do in this room. As important as we think it is, it's not that important to them. For them, this is, in my view, an afterthought. Let's get a lobbyist to the North Dakota Legislature so we can get some free money, and, I'm not 100% opposed to that, but I think we need to understand we are not a significant factor in their decision making process. Since we are not, we ought not to be giving all this money away that could be spent on other, better things. So, my proposal is to cap their exemption at \$2 million per mine.

Senator Triplett – Can you explain to us where you got the number, what that represents in terms of what you think they should be entitled to?

Senator Hogue – I'd like to say it wasn't pulled out of thin air, but I listened to the representative from North American talk about we could spend \$100 million on a drag line, and that wouldn't include our rolling stock, and then I look at the fiscal note which was a little over \$9 million I think. So I just looked for some reasonable compromise in between the two. If they were to open and go all out on a new mine, I think the representative from North American said no, unlikely that we'd spend \$200 million. I thought of \$2.5 million because that would be \$50 million, but in the end I opted for \$2 million.

Senator Hogue – I will move the amendment.

Seconded by **Vice Chairman Miller**.

Vice Chairman Miller – I appreciate Senator Hogue's amendment, I think it's reasonable. I do think that when you are in the coal industry, that business, you're battling a cesspool of regulations and hostile groups that attempt to take you down and every dollar that you can put together, that is good to have that war chest there so you can keep doing business. I think the coal industry has also demonstrated very well that they are good for our state as far as passing their savings and good business practices on to their consumers. That is why I signed on to the bill, because I think this bill demonstrates something that can expand our economy and benefit everyone.

Senator Hogue – The other thing that concerns me is that we are giving them an exemption for personal property. For example, their conveyers and the rolling stock, that equipment is freely transferable to some other mine, some other location, some other mine operator and I would hate for them to be able to take advantage of this and then turn around and sell this equipment to someone else. It goes back to my fundamental belief that what their decision process does not have, as a material component, whether we give them a sales tax exemption or not.

Chairman Cook – They are in a competitive world. Lignite is competing against Wyoming lignite coal. It is a very valuable industry to the state of North Dakota. I would hate to see our economy if that industry was gone. I'd certainly like to see that industry expand. They did ask me to sponsor the bill and you don't see my name on it but I think they made an argument to me, that they have an opportunity, it's going to be very competitive and that this will help, so I certainly think we should pass the bill.

Senator Triplett stated that this tax exemption, based on testimony, is not slowing anyone down. They will move forward at the same pace with or without this exemption and agrees with Senator Hogue that they are just looking for free money.

Chairman Cook – We have before us an amendment to cap the sales tax exemption to \$2 million. Any other discussion? All in favor say yea. Opposed? (7-0-0)

Senator Burckhard moved a Do Pass as Amended.

Seconded by **Vice Chairman Miller**.

Senator Dotzenrod – This is a struggle I think on these exemptions because I think that just about every industry that we have out there, that are in the producer end of it, can come in and make a pretty good argument that they shouldn't be paying sales tax; that it's a cost for them, it will make them more competitive. I believe in the coal industry there is a marketplace out there for energy, they are going to look at what the market is, and I think they are seeing some trends that look, probably pretty good right now. We do have some of the lowest priced energy in the nation. It's probably not going to stay that way. It's a business decision and I can understand the argument for the tax exemption and in some ways I can sympathize with it. I really think when it gets down to it, what we do here in this committee I don't believe will influence a decision. I think they are going to look at the market, see what kind of returns they can get, see what they believe they are going to be

able to do with energy and energy marketing, and they will make a decision to go ahead or not based on that.

Senator Triplett – One other distinction that I see is between the two types of mines that we might be looking at and supporting. North American Coal Corporation has a history of mine mouth operations where they supply coal to a power plant right at the mine thereby producing a considerable amount of more good jobs in addition to the mining jobs. The South Heart Mine, which is the other one being proposed to my knowledge is not going to be doing that, and we did have some testimony that it would be more of a merchant mine, where the coal would simply be shipped out of state for use elsewhere in terms of the conversion, so the value added piece of it would be elsewhere. I've struggled trying to figure out some way we could give an exemption to the companies that do the mine mouth operations because of the additional economic development piece and not give it to the ones who are just planning to ship the coal out. I think there is a clear distinction but I'm not sure how to do it so I don't have any amendments drafted for it. I just wanted to explain that is part of my no vote here.

Chairman Cook – Can you give me one example of lignite coal being shipped out of the state?

Senator Triplett – Probably not but I don't know that for a fact.

Chairman Cook – We have before us SB 2336 as amended. Ask the clerk to take the roll. (5-2-0)

Carried by **Vice Chairman Miller**.

FISCAL NOTE
 Requested by Legislative Council
 03/25/2011

Amendment to: Engrossed
 SB 2336

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).*

Engrossed SB 2336 with House Amendments creates a limited sales and use tax exemption for machinery and equipment used to produce coal from a new coal mine.

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 not known if a new coal mine will be established in the 2011-13 biennium, so a fiscal impact cannot be determined. However, Engrossed SB 2336 with House Amendments limits the fiscal impact to -\$5 million for each new coal mine that is established after enactment of the bill.

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:	03/25/2011

FISCAL NOTE
 Requested by Legislative Council
 02/04/2011

Amendment to: SB 2336

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).*

Engrossed SB 2336 creates a limited sales and use tax exemption for machinery and equipment used to produce coal from a new coal mine.

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 not known if a new coal mine will be established in the 2011-13 biennium, so a fiscal impact cannot be determined. However, Engrossed SB 2336 limits the fiscal impact to -\$2 million for each new coal mine that is established after enactment of the bill.

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:	02/07/2011

FISCAL NOTE

Requested by Legislative Council
01/26/2011

Bill/Resolution No.: SB 2336

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 2336 creates a sales and use tax exemption for machinery and equipment used to produce coal from a new coal mine.

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 not known if a new coal mine will be established in the 2011-13 biennium, so a fiscal impact cannot be determined. However, typical expenditures involved in a new coal mine startup would suggest SB 2336, if enacted, could reduce state general fund and state aid distribution fund revenues by approximately \$9.3 million per new coal mine.

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
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Phone Number: 328-3402

Date Prepared: 01/28/2011

February 1, 2011

JCB
2-3-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2336

Page 1, line 10, after the underscored period insert "The exemption for each new mine under this section is limited to the first two million dollars of sales and use tax liability exempted."

Renumber accordingly

Date: 2-2-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2336

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 Hogue Seconded By Senator Miller

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Verbal vote

Date: 2-2-11
 Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2336

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 Burckhard Seconded By Senator Miller

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) 5 No 2

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

SB 2336: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2336 was placed on the Sixth order on the calendar.

Page 1, line 10, after the underscored period insert "The exemption for each new mine under this section is limited to the first two million dollars of sales and use tax liability exempted."

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2336

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2336
March 9, 2011
#15167

Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a sales tax exemption for machinery or equipment used to produce coal from a new mine located in this state; and provide an effective date.

Minutes:

See attached testimony #1.

Senator Wardner: Introduced bill. Support. This is a sale tax exemption for machinery or equipment use to produce coal from a new mine located in the state. We haven't had a new mine in the state for a long time. Why would we want to encourage that? First of all, we have the resource in the state. There is a demand for energy in this country and we could supply more of that energy. It encourages the coal industry to develop the coal resources we have. It's a small piece by all means. It allows the coal industry to state incentive this case of sales tax exemption to the equipment and machinery. To fairly compete with other industries that receives similar incentives. I would like to point out that any new coal mine or if there is a generation plant that is attached to it then it will be the latest in technology. I know that there are people who laugh when you say its clean coal but it will be a lot cleaner than the plants that we have and it will be very close to being zero. The only thing we debate about is the CO2 and after the last three winters I am not buying that the CO2 is causing global warming. It is going to help grow the state and provide good jobs. Why shouldn't we have the good jobs here when we are providing the energy for around the country as well as them being placed in some other part of the country or someplace else in the world as the way things are going?

David Streyle, North American Coal Corporation: Support. We've got two large mines in the state of North Dakota; the Freedom Mine up near Beulah and has approximately 15 million tons of coal that we produce each year from that mine dedicated to the customer of Basin Electric. We also have the Falkirk Mining Company which runs the Falkirk Mine just north of Underwood, North Dakota, and there we produce about 7 ½ to 8 million tons a year with 100% of that coal going to GREs Coal Creek Station to generate electricity. As an industry we produce approximately 30 million tons in the state and North American Coal produces approximately 22 million of those 30 million tons. We haven't opened a new coal mine in the state for approximately 30 years and with the country's appetite for energy and increased energy we would like to make sure our resources are available. We'd like to make sure that we lay down the best climate in North Dakota to develop those coal resources. North American has been in business and operating in the state of North

Dakota since 1957 where we have developed and produced coal. We are hoping we can produce and market more coal in the future. We are currently permitting a mine in North Dakota; it is north and west of Center, North Dakota, approximately two miles away from the town. We have several millions of tons that are recoverable in that region. We plan to work with the Public Service Commission to make sure we receive that permit later this year. We anticipate somewhere in the year 2011 we will receive that permit. Once we receive the permit that does not mean we are going to be actively mining coal in that region, it means we have the permit for the right to produce coal in that region. We have at this point not a dedicated customer for those reserves but we are working with both in state and out of state customers to produce that coal from that mine. As some of you may have seen in the paper or been actively engaged in the PR game, North American has no date in the South Heart project and what Great Northern Properties is doing there. To date we have not received any negotiations or any type of contact to go forward and move into that region. If it would move forward and this bill passed into law would qualify. I would now like to walk you through the bill to make it as clear as possible. In section 1 the sales tax exemption is for 5% on machinery mining equipment that are used to uncover the coal and in the general process of mining. It is on the first purchase of equipment and not on the replacement parts or the replacement machinery thereafter. It is a one-time up front sales tax exemption. It defines what that machinery and what that equipment is in the bill. It also defines what a new mine is in the bill. It is a mine that receives a permit after December 31, 2010, so clearly our project would qualify. It also defines what producing coal means so that we have as much clarity as we can with producing coal. It also has an effective date for taxable events occurring after June 30, 2011. There is not a fiscal note but there are notes in the fiscal note relating to a \$2 million cap on the bill. At this point we would offer and ask for an amendment should the committee see fit to take the bill back to its original form; on page 1, lines 11 and 12 and with a hanging "the" on line 10 to remove that. I've talked to the Tax Department in relationship with an administrative issue that they think they may have with the filings and how they would accurately work with that provision so I think they have a couple concerns on this. We as a coal company, depending on the size and the scope of the operation, this \$2 million cap could be a small cap or it could be a large cap. When we open up a facility such as the size of a Falkirk producing 7-8 million tons a year, we could easily hit \$200-350 million in new equipment to open up a mine that size. With that being said I don't see that in the near future. I see more of the small numbered and smaller mine operations where you are producing anywhere to 150-200, maybe even 250 tons and maybe some small coal customers but the potential is there to open up new facilities should the United States gets its hands around a comprehensive energy policy that entitles coals to its fair share.

Representative Shirley Meyer: Would you run through your amendment again?

David Streyle: Yes. On page 1, lines 10, I would remove the last "the" and then I would delete lines 11 and 12 in subsection 1.

Representative Lonny B. Winrich: It is my understanding that the coal we mine in North Dakota has a high moisture content that it can't be shipped anywhere profitably so it has to be used right at the site. If you open up a new mine near Center are you going to build a generating plant and convert it into hydrogen or what is going to be done with the coal?

David Streyle: Our plan at this point is to continually market this coal. You're correct that lignite is a relatively high moisture coal which on a competitive market does not allow us to ship to far because you are shipping a lot of water. Our plans at this point are to market it to everyone whether it is a coal to hydrogen plant or coal to liquids facility or activating carbon facility, or whatever the intent is it is our intent to work with those customers that would use coal. At this point there is no dedicated customer for that coal field.

Representative Glen Froseth: Last session we passed a bill that gave an exemption for beneficiated coal. Is that exemption still in place and has it been used?

David Streyle: Yes, you passed that bill last session and signed into law. That was a beneficiated coal project that would go to an agriculture processing facility in particular. The exemption that we had last session was in relationship to because of the tax code you allowed unprocessed coal to be allowed for that exemption. Then from the process and technology we have developed a beneficiated coal which inadvertently 4-6 years ago put into through tax definition what the term of beneficiated coal was so there was a natural conflict that if you beneficiated the coal and sent it to an agriculture processing facility you couldn't get the credit.

Representative Glen Froseth: This proposed amendment would put an open end to the tax exemption on any equipment you buy in the future. It is specific to opening a new mine. Wouldn't it be better to know exactly some sort of a limit on how much the tax exemption would be? I don't mind offering a tax exemption for equipment to open a new mine but to keep it open ended is probably not what you're looking for.

David Streyle: It is our position and our hope that as we compete with out of state coals that we compete within the region and we can offer the best policy and business incentive to get the business here. I can tell you and assure that when we bid coal contracts we are bidding on pennies per million BTU. We are down to the pennies and when we can offer incentives like this it is our full intent when we build these kinds of contracts that 100% of this savings will go into the cost of coal and we will be reducing 100% dollar for dollar, penny for penny, the cost of coal for our customers thus getting them in the state. I asked our two companies to date what they paid in sales tax exemptions on the existing operations over the last few years and a rough estimate is in the order of \$15-16 million that we've paid in incremental sales taxes over the last five years at the two existing mines. That does not include the fuel taxes or some of the other major components that we are working on at our existing mines. We feel that with a onetime exemption up front that this would apply to only a new mine and only to facilities operating and opening up a new mine and only on that initial purchase. That is the state's nice way to help buy into the project with thus allowing us to compete more fairly to get the business here. It's always also been our motto that power plants are forever and coal mines come and go. There is no reason existing facilities cannot up and ship in out of state coal where the state of North Dakota gets no benefits and where we receive none of the good paying jobs or none of the severance tax and you're shipping out of state coal and getting the coal brought in from out of state.

Representative Steven L. Zaiser: If you put a sunset on the time frame for that exemption, for instance, a new mine may be a new mine 30 years from now, its that same

mine so you make changes to that additional equipment. Would they be eligible for that exemption?

David Streyle: To qualify for this exemption we need a certificate from the tax commissioner. We asked for a set time frame to get a new mine up and developed. It would be my hope and my thoughts that the mine would not be a new mine anymore and other new proposed mines to develop coal resources would qualify.

Representative Steven L. Zaiser: So there would be a sunset on the equipment and the exemption?

David Streyle: Yes, I believe so through similar certificates.

Representative Patrick Hatlestad: You talked about a first time purchase to open up a mine. You talked about the mine in the Center area and that you would open it up on a smaller basis. Let's say you spend \$10 million to open it up and then five years from now you spend \$100 million with new equipment. Would that second purchase of \$100 million qualify?

David Streyle: No, I don't believe it would. I think that would be part of the tax commissioner's discretion as well. A coal mine isn't like opening up a new business where you put bricks and mortar in and you've got your door open and you turn the key and you're ready to go; coal mining is over a much longer process. You could see a 6-8 year development window before we put a shop complex in for dragline equipment and so forth. Some of that equipment we don't buy until it's absolutely necessary and needed through the coal mine.

Representative Patrick Hatlestad: What you're saying is that the new mine definition could be six years long?

David Streyle: Yes I am.

Representative Glen Froseth: What defines the parameters of a mine is that defined in your permitting to include the number of acres and the actual parameters?

David Streyle: Yes, it is public record with firm boundary line where we can have disturbances and where we cannot.

Scott Skokos, Dakota Resource Council: Opposition. Please refer to attached testimony #1.

Chairman Wesley R. Belter: It just sounds like you're against coal mining.

Scott Skokos, Dakota Resource Council: That's our organizational stance right now especially with the farmers and ranchers out in South Heart specifically. And in certain areas around Falkirk Mine there is a lot of land that has not been released out of bond after 35 years of mining.

Chairman Wesley R. Belter: I would suggest you take a tour of the coal areas and see the reclamation that is going on there.

Brent Winkelman, Controller of Dakota West Mine, Beulah: Opposition. I find myself in an unusual position being on the same side of this bill as Dakota Resource Council. All of the mines in this state are very mature mines. They have their equipment and permits. If they have to expand their area or move from their current area of mining it is just a matter of going north, south, east, or west from where they are and filing an amended permit and moving on. They are not buying brand new equipment. They may be replacing equipment, maybe an excavator wears out or the rolling stock wears out. None of that is covered in this bill because it's not a new permit or a new mine, it is replacement equipment not brand new equipment. It maybe that there would be some sort of qualification if they were to expand their fleet but if their volumes and permit areas are the same this bill wouldn't apply to the mature, existing mines in the state. It was mentioned that this would spur development in North Dakota and it would somehow miraculously encourage people to go out and start a permitting area and creating new coal mines. The coal mines are here for a specific reason which is to be a fuel supply for electrical generation. So unless we have a radical change within the federal mindset that allows the building of more fossil fuel electrical generation plants we aren't going to see a wide open surge of people deciding they want to go into the coal mine business. As far as bringing jobs into the state, I know that North American Coal is looking to open the Auto Creek Mine, and if anything this would displace jobs by taking business away from existing mines. I don't see it creating new jobs other than the danger of displacing. One of the things you're not going to see here today is a representative from the Lignite Energy Council standing up here saying that their fully behind this bill and they want you to pass it because it is widely accepted among the entire coal industry that this is a good thing. It isn't, it's a very narrow application. Rather than look at this as an incentive to generate more mining activity or create new mines I would rather the bill say to write out a \$10 million check to North American Coal and hand it to them, that's all it does. BNI might be adding a much larger excavator because the distance between the current mining and the planned mine they might add some new equipment but even if it's a \$3 million excavator that is just going to benefit them for about \$150,000. The wide open application that the original bill had is going to benefit just one company in the state and that's all. We went for a new permit several years back because the mining area that we wanted to abandon due to the economics; the dirt was too deep, the ground conditions were too wet, and the high wall was unstable. On the other end of the mining area was very good coal with very good ground conditions and it was very shallow. That was a business decision and we didn't care if there was an exemption on brand new equipment or not as we knew we were leaving an area where mining was expensive to go to a new area where mining was inexpensive and it didn't require new equipment it just required walking the dragline across highway 49 over to the new area and we just continued mining. The legislature, the state of North Dakota and the taxpayers are being asked to underwrite a business decision that has already been made. North American Coal has already determined in their business model that they are running into the same conditions that all the mature mines in the state are. We've already cherry picked the shallow good coal and now we have to go into the deeper coal which is becoming more expensive. It could be that Auto Creek provides them with an opportunity to reduce their mining costs because it's shallower coal or maybe the quality of the coal is better but that is a business decision that they've already made to do. Now they are coming to you and

asking you to underwrite them for maybe \$9 or \$10 million to do this. If you turn this bill down, like it should have been defeated in the Senate in my opinion, they are not going to decide not to go with Auto Creek; they are still going to go there. The mining in this state is still going to continue. This bill is not going to all of a sudden cause people to go wild and start mining coal because they have to have a market for it. Lignite coal is not a high enough quality coal to where it just applies to out of state transportation. The company I work for owns mines in Montana and those mines sell coal to UND and NDSU. We don't do it, North American Coal doesn't do it, and BNI doesn't do it because the quality doesn't justify shipping it from the center of the state to the eastern part of the state to be used for heating. Unless the federal mindset changes and all of a sudden we do away with the mandates for green energy and say we are only going to worry about the cheapest electrical generating costs only and then somebody decides to build a new power plant in North Dakota then this bill might have some affect but until then this bill is just a one time opportunity for one company to benefit and it is nothing more than that. I don't think the state of North Dakota should be underwriting one particular company among several competitors in the same industry in the same state.

Representative Shirley Meyer: The bill does not state that you need to purchase new equipment.

Brent Winkelman: No, but you can't just replace equipment. I don't mean brand new versus used. The bill states that if you have to buy additional equipment for that mine. We are currently buying new equipment all the time, every year we are buying new equipment. When I say new I mean different, I don't mean brand new. That would not be covered under this bill because we are in our existing permit in our existing mine. This bill would not provide any benefit to the mature mines.

Representative Dave Weiler: We didn't get the name of the individual from Dakota Resource Council for the record. Scott Skokos.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2336.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2336
March 23, 2011
#15876

Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a sales tax exemption for machinery or equipment used to produce coal from a new mine located in this state; and provide an effective date.

Minutes:

See attached amendments.

Vice Chairman Craig Headland: I'm assuming you have all received the emails from the Westmoreland Mine stating opposition to this bill. What we're passing out now is an amendment that has been agreed to upon all parties and drafted by the tax department.

Donnita Wald, General Counsel for Office of State Tax Commissioner: Distributed and reviewed amendments. Please refer to attached amendments. At the chairman's request we took the three amendments that had been proposed to the committee, one by Representative Streyle, one that was worked on between North American Coal and Westmoreland and others to redefine what a new mine meant, and the third amendment is what the tax department has to administer the cap that is being put on. Reviewed the Christmas tree version of the bill first with green being the new language and red is what is being taken out of the bill as it came over from the senate.

Representative Glen Froseth: Will you state that again?

Donnita Wald, General Counsel for Office of State Tax Commissioner: We are saying that after the sales tax has been paid the mine operator must get the refund of the taxes paid from us so they must apply for the refund. The contractor pays his taxes and the mine operator gets the refund. The reason I'm sure they do that is because that's built into their contracts.

Representative Glen Froseth: Wouldn't it be easier if they had to apply for the tax exemption first?

Donnita Wald, General Counsel for Office of State Tax Commissioner: We would not know what they are purchasing and the cost of the materials that they are buying. The contractor doesn't come into us and tell us what they are buying, how much they are buying, or if they will be using it all.

Representative Bette Grande: I thought we had a bill where the tax commissioner came in and asked that they do it the opposite way so why the difference between the two?

Donnita Wald, General Counsel for Office of State Tax Commissioner: It's the cap. Those other sales exemptions didn't have a cap on them.

Donnita Wald, General Counsel for Office of State Tax Commissioner: On page 2 lines 14-19 there were some issues with respect to the definition of a new mine. The parties got together and agreed to change the definition of a new mine to a mine that was not producing coal as of the end of 2010 and a mine that submitted an application to the public service commission before July 1, 2011, and a new mine does not include an expansion of an existing mine that requires a separate permit from the PSC. It truly has to be a new mine.

Vice Chairman Craig Headland: That portion has been agreed on with North American Coal and Westmoreland. The other part of the amendment was a cleanup for the tax department so they could understand the amount of the credit.

Representative Shirley Meyer: I make a motion to pass the amendment.

Representative Mark S. Owens: Seconded.

Representative Lonny B. Winrich: The window of opportunity here seems to be very narrow. It must be new ground after December 31, 2010 and they have to submit the application before July 1, 2011. Some of the original objection to this bill was that it only pertained to one mine. It looks like that is still the case.

Vice Chairman Craig Headland: Dee, could you clarify that? The way I understand it is this amendment would not allow for a sales tax exemption on a rebid of the contract to the coal plant that Westmoreland is supplying coal for.

Donnita Wald, General Counsel for Office of State Tax Commissioner: I think that was expanded to include Westmoreland.

Vice Chairman Craig Headland: That's correct.

Donnita Wald, General Counsel for Office of State Tax Commissioner: Just because they have the permit doesn't mean that they are going to start digging as that could take years. When the bill came over it was just a mine that was permitted after 12-31-10 and what that June 30 date has to do with Westmoreland I was not involved in those discussions at all. We were just given amendments to draft.

Representative Lonny B. Winrich: At any rate the time period here is short enough so we must know exactly which mines are going to qualify already. Do you not?

Vice Chairman Craig Headland: I would assume so.

Representative Dwight Wrangham: Why did we raise it from \$2 million to \$5 million?

House Finance and Taxation Committee:

SB 2336

March 23, 2011

Page 3

Vice Chairman Craig Headland: That was an agreement with North American and the chairman of this committee.

A voice vote was taken to adopt the amendment: MOTION CARRIED.

Vice Chairman Craig Headland: We have amended 2336 before you. What are your wishes?

Representative Shirley Meyer: I MOVE A DO PASS AS AMENDED.

Representative Mark S. Owens: Seconded.

**A roll call vote was taken: YES 10 NO 3 ABSENT 1
MOTION CARRIED FOR DO PASS AS AMENDED.**

Representative Bette Grande will carry SB 2336.

March 23, 2011

VR
3/23/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2336

Page 1, line 11, replace "two" with "five"

Page 1, line 12, replace "liability exempted" with "paid"

Page 1, line 16, remove "To qualify for the exemption at the time of purchase, the mine operator must receive"

Page 1, remove lines 17 through 20

Page 1, line 21, replace "tax under this chapter, the" with "The"

Page 1, line 21, replace "must" with "shall"

Page 1, line 21, remove the second "tax"

Page 1, line 23, after the underscored period insert "A refund claim may not exceed the limitation in subsection 1. Application for the refund must be made at the time and in the manner directed by the commissioner and must include sufficient information to verify the correctness of the refund claim."

Page 1, line 24, replace "5." with "4."

Page 2, line 8, remove "permitted under chapter 38-14.1 by the public service"

Page 2, line 9, replace "commission after December 31, 2010" with "that was not producing coal as of December 31, 2010, and for which an application for a mine permit under chapter 38-14.1 was submitted to the public service commission before July 1, 2011. New mine does not include an expansion of an existing mine that requires a separate permit from the public service commission under chapter 38-14.1"

Renumber accordingly

Date: 3-23-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2336

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. Meyer 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 Trotter					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE

MOTION CARRIED

Date: 3-23-11
 Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2336

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. Meyer Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	AB		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) 10 No 3

Absent 1

Floor Assignment Rep. Grande

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

REPORT OF STANDING COMMITTEE

SB 2336, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2336 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "two" with "five"

Page 1, line 12, replace "liability exempted" with "paid"

Page 1, line 16, remove "To qualify for the exemption at the time of purchase, the mine operator must receive"

Page 1, remove lines 17 through 20

Page 1, line 21, replace "tax under this chapter, the" with "The"

Page 1, line 21, replace "must" with "shall"

Page 1, line 21, remove the second "tax"

Page 1, line 23, after the underscored period insert "A refund claim may not exceed the limitation in subsection 1. Application for the refund must be made at the time and in the manner directed by the commissioner and must include sufficient information to verify the correctness of the refund claim."

Page 1, line 24, replace "5." with "4."

Page 2, line 8, remove "permitted under chapter 38-14.1 by the public service"

Page 2, line 9, replace "commission after December 31, 2010" with "that was not producing coal as of December 31, 2010, and for which an application for a mine permit under chapter 38-14.1 was submitted to the public service commission before July 1, 2011. New mine does not include an expansion of an existing mine that requires a separate permit from the public service commission under chapter 38-14.1"

Renumber accordingly

2011 SENATE FINANCE AND TAXATION

CONFERENCE COMMITTEE

SB 2336

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2336
4/13/2011
Job Number 16562

Conference Committee

A. Bittmiller

Explanation or reason for introduction of bill/resolution:

To encourage the coal industry to develop coal resources in North Dakota

Minutes:

Conference Committee

Senator Miller opened discussion on SB 2336.

Representative Grande – Through the process in the House side we have dealt with what would best serve all involved in the coal industry for this and as we worked through that process we had what we thought was a group of amendments that we passed that was suitable to all involved but afterwards there were just a couple other changes that industry as a whole had agreed to that they wanted to bring to a conference committee to add in so that all aspects would be brought together and I think industry its self is best to explain how it all fits together.

David Straley, North American Coal went through some amendments asked for by the coal industry.

Senator Miller – The means of how you worked out this deal with your industry partners, can you tell us a little bit about why this is better for them than before?

Sandi Tabor, Lignite Energy Council explained that some felt the way it was before would give an unfair advantage to one or two entities so they worked with the House to see if they could rectify it to make it fair for everyone.

Senator Miller – In the House version the language that became contentious was this page 2 section b the defining of a new mine.

Sandi Tabor, Lignite Energy Council – And in the House version they had tried to limit it and that's what created the "work for one but not the other". What this now does is actually pull the bill back fairly close to what it looked like when it was in the Senate. There are obviously some changes, but it's closer now in its applicability to the companies.

Senator Triplett – One of the differences is the difference between \$2 million and \$5 million. I appreciate when an industry can come together and all members of the industry

are in the room but I think we need to remember who is not in the room when we have meetings like this and in this case it's the citizens of the state of North Dakota and apparently the legislators who are suppose to look out for the citizens. In terms of the size of the sales tax exemption, can you discuss who made the decision to go from \$2 million to \$5 million and how that was made?

David Straley, North American Coal – If I understand the question right our company actually asked for the exemption to be removed and go back to the original version of the bill and I think I'd have to turn the question back over to the House committee members on where they felt comfortable with where that number was.

Representative Headland – The \$5 million was a negotiation amongst the Tax Committee in the House and the coal industry and that is what we came up with.

Senator Triplett – I guess I'm looking for a little more detail than that. The conversation in the Senate was the \$2 million and so we thought that was a reasonable limitation and to the extent that at the time that we understood what the overall implications of everything else we are doing in terms of reducing taxes on the one hand and increasing spending on the other hand and increasing savings and just the whole mix of budgeting things we were more comfortable with the \$2 million exemption than a \$5 million.

Senator Miller - \$5 million if that number got changed for some reason, does that confuse the bill? Does it create some sort of problem with other players in the industry?

David Straley, North American Coal – If the \$5 million were to change is that going to create another hardship within the industry? I don't think so. I know it's a number we have always talked about and like I said our company is on record testifying in front of the House as saying to go to the unlimited cap. Our position on that has always been at \$5 million that is \$100 million of investment.

Representative Headland – The industry came to the House and asked us for \$10 million and just as you appropriately thought \$2 million was a correct figure with what you felt tax relief should be, we had a different opinion and we set it at \$5 million.

Representative Grande – As I looked at this and the numbers come out, opening a new mine is going to cost anywhere from \$300 - \$500 million. That's just the equipment, that's not talking building cost, facility cost, infrastructure or within that you are going to have those kind of numbers and so you're looking at a very small piece of the cost even going to \$5 million so I think it's very justified to go \$5 million in the fact that this is an industry we really want to be able to promote and move forward in the way that this industry in its self is moving forward with a lot of their advancements of clean coal, coal gasification, all the direction that is going we would like to help them out in that aspect. That is why we chose that dollar amount.

Representative Grande – The House would make a motion to recede from our amendments and further amend with the engrossed amendment .02003 including the written amendment at the bottom.

Seconded by **Representative Headland**.

Senator Miller – Any discussion on the amendments?

Senator Triplett – I was more comfortable with \$2 million. I heard Senator Holmberg on the floor of the Senate a couple of days ago saying the fact that we have been giving away too much and spending too much and we are out of money and that we need to start being a little more careful with what we are doing here. Not being on the Appropriations Committee I don't have a good a handle on it as he does but that was his assessment so I guess I don't have a particular problem with any of the rest of the amendments, I appreciate the effort that's been put in and I appreciate the notion of limiting this to a single large effort, that seems very reasonable and I'm fine with all the rest of the amendments but I think \$5 million is a healthy chunk of money in North Dakota and we need to think carefully about where these numbers come from. Before we vote on it I'd ask if there is any willingness on the part of the House to compromise on a number somewhere between \$2 million and \$5 million.

Representative Grande – No

Senator Miller – The fiscal impact of the bill will not be seen for some time. We are not going to probably see this in the next year or 2 maybe. I'm comfortable with this, I signed on to the bill with a total exemption but I like this better. So without any further discussion I will ask the clerk to take the roll. (5-1-0)

Senator Miller closed discussion on SB 2336.

April 13, 2011

[Handwritten signature]
4-13-11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2336

That the House recede from its amendments as printed on page 1055 of the Senate Journal and pages 1116 and 1117 of the House Journal and that Engrossed Senate Bill No. 2336 be amended as follows:

Page 1, line 11, replace "two" with "five"

Page 1, line 12, replace "liability exempted" with "paid"

Page 1, line 13, replace "and purchase" with "is exempt if the capitalized investment in the new mine exceeds twenty million dollars. Purchases"

Page 1, line 16, remove "To qualify for the exemption at the time of purchase, the mine operator must receive"

Page 1, remove lines 17 through 20

Page 1, line 21, replace "tax under this chapter, the" with "The"

Page 1, line 21, replace "must" with "shall".

Page 1, line 21, remove the second "tax"

Page 1, line 23, after the underscored period insert "A refund claim may not exceed the limitation in subsection 1. Application for the refund must be made at the time and in the manner directed by the commissioner and must include sufficient information to verify the correctness of the refund claim."

Page 1, line 24, replace "5." with "4."

Page 2, line 8, replace "a mine" with "an area"

Renumber accordingly

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Finance and Taxation

Bill/Resolution No. SB 2336 as (re) engrossed

Date: 4/13/2011

Roll Call Vote #: 1

- Action Taken**
- SENATE accede to House amendments
 - SENATE accede to House amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 1055 --

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) SB 2336 was placed on the Seventh order of business on the calendar

Motion Made by: Representative Grande Seconded by: Representative Headland

Senators			Yes	No		Representatives			Yes	No
Senator Miller	X		X			Representative Grande	X		X	
Senator Burckhard	X		X			Representative Headland	X		X	
Senator Triplett	X			X		Representative Meyer	X		X	

Vote Count: Yes 5 No 1 Absent 0

Senate Carrier Senator Miller House Carrier Representative Grande

LC Number 11.8253 . 02004 of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2336, as engrossed: Your conference committee (Sens. Miller, Burckhard, Triplett and Reps. Grande, Headland, S. Meyer) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1055, adopt amendments as follows, and place SB 2336 on the Seventh order:

That the House recede from its amendments as printed on page 1055 of the Senate Journal and pages 1116 and 1117 of the House Journal and that Engrossed Senate Bill No. 2336 be amended as follows:

Page 1, line 11, replace "two" with "five"

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Page 1, line 24, replace "5." with "4."

Page 2, line 8, replace "a mine" with "an area"

Re-number accordingly

Engrossed SB 2336 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2336

Testimony of Dakota Resource Council
SB 2336
January 31, 2011

Dakota Resource Council urges a "do not pass" recommendation on Senate Bill 2336.

According to the fiscal note, passage of this bill could result in a subsidy of nearly \$10 million for each mine eligible for the tax exemption for machinery and equipment.

One likely recipient of this subsidy would be the proposed coal mine near South Heart. The possible coal conversion facility connected with this mine has already received \$10 million in state development funds. According to its proponents, the coal conversion facility could only be completed if it receives additional federal subsidies. Should these funds not be forthcoming—and so far they have not been—any mine that begins operation would be a merchant mine, with coal conversion likely occurring out of state. The result would be loss of any coal conversion revenues to the state.

In addition, the coal mine itself faces strong opposition from area farmers and ranchers who would be directly affected by mine operations. In many cases, these farmers and ranchers would experience significant ongoing losses of income due to reduced ability to conduct farming and ranching operations. Some are likely to be driven out of business and forced to leave their community and relocate operations in order to stay in business.

The reason for this is the extremely low rate of full reclamation in North Dakota. The totality of final bond release acres in North Dakota at the beginning of 2010 was about 14,700 acres according to the state Public Service Commission. Of these acres, only about 10,700 acres were actually disturbed by mining operations. Of these only about 7,000 acres have remained in agricultural operations after bond release, with the remaining acres going into non-agricultural use. Discounting lands released from bond for ponds and woodlands, roughly 3,400 acres of land previously used for agriculture have gone into non-agricultural use following bond release, mostly industrial and recreational uses. Extrapolating that on the basis of the some 105,000 acres remaining under bond, almost all of which had a pre-mining agricultural land use, we can reasonably expect the loss of some 35,000 additional acres of farmland due to alternative post-mining land use designations, or nearly 40,000 acres altogether. That amounts to roughly 20 family farms of 2,000 acres each, a typical size farm in North Dakota coal country.

It should be noted that mining companies benefit from non-agricultural post-mining land use designation because it relieves them of the burden of proving post-mining productivity, which North Dakota law sets at 100% of pre-mining productivity on all mined lands.

Given the practice in our state of assigning bond on the basis of a rolling estimate of the costs of reclamation activities that would fall to the state under a "worst case scenario," we believe the bonds that remain available after revegetation has commenced are likely

far short of the funds available to correct a violation of productivity standards at the Phase III bond release level. This shortfall would severely limit the ability of the state to compensate communities for the loss of agricultural land due to failure of reclamation.

These losses would be significant. For example, if we estimate (in 2010 dollars) the price of wheat at \$3.00 per bushel (much lower than the current price over 40,000 acres (a not unrealistic figure) of disturbed land designated for post-mining agricultural land use and suitable for wheat production at 30 bushels per acre (again, on the low side) a 10% loss of productivity, the loss to area farmers would be approximately \$360,000 per year. Of course, if the land has lost 10% of its productivity, this loss will repeat on an annual basis. Over a 100-year period these losses would amount, in 2011 dollars, to a staggering \$36 million. This calculation, of course, does not take into account losses in farm income due to acres diverted to non-agricultural post-mining land uses. Obviously, this is not the result the framers of our reclamation laws hoped for, but it is not an unreasonable concern. Continued bond release delays, coupled with a large percentage of bond releases going into non-agricultural post-mining land uses on land previously used for agriculture, are not encouraging.

We would note in addition that initial county zoning changes adopted to accommodate the proposed South Heart mine were thrown out by a district court because the county did not provide a coherent rationale for the changes. The county's second set of zoning changes for the same purpose are being challenged for the same reason.

We do not agree that coal mining which disrupts our state's most important industry warrants tax relief. This is especially true at the proposed South Heart mine, which lies less than 20 miles from the boundary of Theodore Roosevelt National Park, our state's leading tourist destination, and could cause lost income not only to area farmers and ranchers but also to our state's tourism industry.

We urge the committee to stop the mindless trend to subsidize an industry which should stand on its own feet, and give Senate Bill 2336 a do not pass recommendation.

Testimony #1
p.1

Testimony of Dakota Resource Council
SB 2336
March 9, 2011

Dakota Resource Council urges a "do not pass" recommendation on Senate Bill 2336.

According to the fiscal note, passage of this bill could result in a subsidy of nearly \$10 million for each mine eligible for the tax exemption for machinery and equipment.

One likely recipient of this subsidy would be the proposed coal mine near South Heart. The possible coal conversion facility connected with this mine has already received \$10 million in state development funds. According to its proponents, the coal conversion facility could only be completed if it receives additional federal subsidies. Should these funds not be forthcoming—and so far they have not been—any mine that begins operation would be a merchant mine, with coal conversion likely occurring out of state. The result would be loss of any coal conversion revenues to the state.

In addition, the coal mine itself faces strong opposition from area farmers and ranchers who would be directly affected by mine operations. In many cases, these farmers and ranchers would experience significant ongoing losses of income due to reduced ability to conduct farming and ranching operations. Some are likely to be driven out of business and forced to leave their community and relocate operations in order to stay in business.

The reason for this is the extremely low rate of full reclamation in North Dakota. According to the Public Service Commission Reclamation Division, the totality of final bond release acres in North Dakota at the beginning of 2010 was about 14,700 acres. Of these acres, only about 10,700 acres were actually disturbed by mining operations. Of these only about 7,000 acres have remained in agricultural operations after bond release, with the remaining acres going into non-agricultural use. Discounting lands released from bond for ponds and woodlands, roughly 3,400 acres of land previously used for agriculture have gone into non-agricultural use following bond release, mostly industrial and recreational uses. Extrapolating that on the basis of the some 105,000 acres remaining under bond, almost all of which had a pre-mining agricultural land use, we can reasonably expect the loss of some 35,000 additional acres of farmland due to alternative post-mining land use designations, or nearly 40,000 acres altogether. That amounts to roughly 20 family farms of 2,000 acres each, a typical size farm in North Dakota coal country.

It should be noted that mining companies benefit from non-agricultural post-mining land use designation because it relieves them of the burden of proving post-mining productivity, which North Dakota law sets at 100% of pre-mining productivity on all mined lands.

Given the practice in our state of assigning bond on the basis of a rolling estimate of the costs of reclamation activities that would fall to the state under a "worst case scenario," we believe the bonds that remain available after revegetation has commenced are likely

#1 p. 2

far short of the funds available to correct a violation of productivity standards at the Phase III bond release level. This shortfall would severely limit the ability of the state to compensate communities for the loss of agricultural land due to failure of reclamation.

These losses would be significant. For example, if we estimate (in 2010 dollars) the price of wheat at \$3.00 per bushel (much lower than the current price over 40,000 acres (a not unrealistic figure) of disturbed land designated for post-mining agricultural land use and suitable for wheat production at 30 bushels per acre (again, on the low side) a 10% loss of productivity, the loss to area farmers would be approximately \$360,000 per year. Of course, if the land has lost 10% of its productivity, this loss will repeat on an annual basis. Over a 100-year period these losses would amount, in 2011 dollars, to a staggering \$36 million. This calculation, of course, does not take into account losses in farm income due to acres diverted to non-agricultural post-mining land uses. Obviously, this is not the result the framers of our reclamation laws hoped for, but it is not an unreasonable concern. Continued bond release delays, coupled with a large percentage of bond releases going into non-agricultural post-mining land uses on land previously used for agriculture, are not encouraging.

We do not agree that coal mining which disrupts our state's most important industry warrants tax relief. This is especially true at the proposed South Heart mine, which lies less than 20 miles from the boundary of Theodore Roosevelt National Park, our state's leading tourist destination, and could cause lost income not only to area farmers and ranchers but also to our state's tourism industry.

We urge the committee to stop the ~~misguided~~ trend to subsidize an industry which should stand on its own feet, and give Senate Bill 2336 a do not pass recommendation.

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2336

Introduced by

Senators Wardner, Miller, O'Connell

Representatives Belter, Headland, S. Meyer

1 A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota
2 Century Code, relating to a sales tax exemption for machinery or equipment used to produce
3 coal from a new mine located in this state; and to provide an effective date.

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

5 **SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Sales tax exemption for machinery or equipment used to produce coal from a new**
8 **mine.**

- 9 1. Gross receipts from sales of machinery or equipment used to produce coal from a new
10 mine located in this state are exempt from the tax imposed by this chapter. The
11 exemption for each new mine under this section is limited to the first two five million
12 dollars of sales and use tax liability-exempted-paid.
- 13 2. Purchase of replacement machinery or equipment and purchase of repair or
14 replacement parts for existing machinery or equipment are not exempt under this
15 section.
- 16 3. To qualify for the exemption at the time of purchase, the mine operator must receive
17 from the tax commissioner a certificate stating that the machinery or equipment
18 qualifies for the exemption. If a certificate is not received before the purchase, the
19 mine operator must pay the tax and apply to the tax commissioner for a refund.
- 20 4. If the machinery or equipment is purchased or installed by a contractor subject to the
21 tax under this chapter, the The mine operator must apply to the tax commissioner for a

1 refund of sales and use taxes paid for which the exemption is claimed under this
2 section. A refund claim may not exceed the limitation in subsection 1. Application for
3 the refund must be made at the time and in the manner directed by the tax
4 commissioner and must include sufficient information to verify the correctness of the
5 refund claim.

6 5. 4. For purposes of this section:

- 7 a. "Machinery or equipment" means machinery or equipment used directly to
8 uncover, sever, crush, handle, or transport coal removed from the earth.
9 "Machinery or equipment" includes draglines, excavators, rolling stock, conveyor
10 equipment, reclamation equipment, and equipment to pulverize coal but does not
11 include rail spurs, office buildings, workshops, or any component not used
12 directly to uncover, sever, crush, handle, or transport coal removed from the
13 earth.
- 14 b. "New mine" means a mine permitted under chapter 38-14.1 by the public service
15 commission after December 31, 2010 that was not producing coal as of
16 December 31, 2010, and that submitted an application to the public service
17 commission for a mine permit, under chapter 38-14.1, before July 1, 2011. New
18 mine does not include an expansion of an existing mine that requires a separate
19 permit from the public service commission under chapter 38-14.1.
- 20 c. "Produce coal" means mining operations to uncover, sever, crush, handle, or
21 transport coal from its natural location under the earth's surface to the mouth of
22 the mine and all activities necessary and incidental to the reclamation of that
23 location.

24 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after June
25 30, 2011.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2336

Page 1, line 11, replace "two" with "five"

Page 1, line 12, replace "liability exempted" with "paid"

Page 1, line 16, remove "To qualify for the exemption at the time of purchase, the mine operator must receive"

Page 1, remove lines 17 through 19

Page 1, remove line 20

Page 1, line 21, replace "tax under this chapter, the" with "The"

Page 1, line 23, after the period insert "A refund claim may not exceed the limitation in subsection 1. Application for the refund must be made at the time and in the manner directed by the tax commissioner and must include sufficient information to verify the correctness of the refund claim."

Page 1, line 24, replace "5." with "4."

Page 2, line 8, remove "permitted under chapter 38-14.1 by the public service"

Page 2 line 9, replace "commission after December 31, 2010" with "that was not producing coal as of December 31, 2010, and that submitted an application to the public service commission for a mine permit, under chapter 38-14.1, before July 1, 2011. New mine does not include an expansion of an existing mine that requires a separate permit from the public service commission under chapter 38-14.1"

Renumber accordingly

March 23, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2336

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Page 1, line 21, replace "must" with "shall"

Page 1, line 21, remove the second "tax"

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Renumber accordingly

7.1 line 21
remove the
second
"tax"

already defined in chapter

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2336

That the House recede from its amendments as printed on page(s) _____ of the Senate Journal and page(s) _____ of the House Journal and that Senate Bill No. 2336 be amended as follows:

- ✓ Page 1, line 11, replace "two" with "five"
- ✓ Page 1, line 12, replace "liability exempted" with "paid"
- ✓ Page 1, line 13, replace "and purchase" with "is exempt if the capitalized investment in the new mine exceeds twenty million dollars. Purchases"

Page 1, line 16, remove "To qualify for the exemption at the time of purchase, the mine operator must receive"

Page 1, remove lines 17 through 20

Page 1, line 21, replace "tax under this chapter, the" with "The"

Page 1, line 21, replace "must" with "shall"

Page 1, line 21, remove the second "tax"

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Page 1, line 24, replace "5." with "4."

Renumber accordingly

page 2, line 8 replace "a mine" with "an area"