

2013 HOUSE FINANCE AND TAXATION

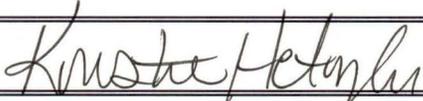
HB 1413

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1413
February 5, 2013
Job 18296

Conference Committee



Explanation or reason for introduction of bill/resolution:

A Bill relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts; relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts.

Minutes:

Attached testimony #1

Chairman Belter: Opened hearing on HB 1413.

Vice Chairman Headland: Introduced bill.

Dale Niezwaag, Basin Electric Power Cooperative and the Dakota Gasification Company:
See attached testimony #1. Supports HB 1413

Representative Froseth: Dakota Gas produces all these byproducts now, don't they? What is the reason for the exemption?

Dale Niezwaag: You're exactly right with the price of natural gas coming down the revenue for that stops what we have got to do is increase the byproduct production to replace the revenue that we are losing from natural gas.

Representative Froseth: Do you have any estimate on what the costs would be to increase the facilities to handle more byproducts?

Dale Niezwaag: We don't have a specific project in mind yet; we know that we need to make some additional changes to keep it violable, so we can't determine that right now.

Representative Klein: Is 100% of what you produce in CO2 going to Canada?

Dale Niezwaag: We capture about 50% of CO2, what we send to Canada is what we can reliable send. If there is extra we cannot contract out as a guarantee.

Representative Trottier: Where is the point where you will start making money is gas price is low?

Dale Niezwaag: The program we have at Dakota Gas is to try and force our production costs down to \$5 per dekatherm.

Representative Owens: Could you describe to us coal gasification for future customers, for instance, the Air Force?

Dale Niezwaag: We produce a synthetic natural gas, pipe it, and sell it on the market. We do that with the natural gas part. As far as making jet fuel, Dakota Gas does not have the capabilities to do that at this point. They have been working to get diesel fuel, but not jet fuel.

Representative Froseth: Diesel fuel uses only about 40% of the barrel of oil, 60% left that is a byproduct, is there anyway your plant can take that byproduct from oil refinery and process it into produces that you're processing right now from coal.

Dale Niezwaag: I don't believe so. We are mostly handling the solid as far as coal. The ability to use more liquid, I do not believe so but not totally sure on that.

Chairman Belter: Further testimony in support

Sandy Tabor, Lignite Counsel: Supports HB 1413. It is important opportunity for DGC to expand and look to the future.

David Streyle, North American Coal: Supports HB 1413. An expansion means more coal, more coal mine, more severance taxes, and more high paying jobs. To answer an earlier question - JPA jet fuel, our company is also involved in a project for CTL, going from coal right into liquids.

Chairman Belter: Further testimony in support of 1413? Closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1413
February 11, 2013
Job #18697

Conference Committee

Committee Clerk Signature

May Bruckler

Explanation or reason for introduction of bill/resolution:

A Bill relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts; relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts.

Minutes:

Chairman Belter: This is a sales tax exemption for the expansion of coal gasification for byproducts. What are the committee's wishes?

Representative Klein: Made a motion for a Do Pass.

Representative Drovdal: Seconded.

Representative Kelsh: I will support this motion however I would like to see a permanent sales tax exemption for a sale of components for wind development as well.

Chairman Belter: The chairman will take that thought under advisement.

ROLL CALL VOTE: 13 YES 0 NO 1 ABSENT

Representative Drovdal will carry this bill.

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1413

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1413 creates a sales and use tax exemption for the construction or expansion of a facility for use with goal gasification byproducts.

- 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.*

We are not aware of a project that would immediately utilize this exemption. Any large-scale qualifying projects may be constructed beyond the 2013-15 biennium.

- 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

Telephone: 328-3402

Date Prepared: 02/04/2013

Date: 2-11-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. ~~1410~~ 1413

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. Klein Seconded By Rep. Drovdal

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser	✓	
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovdal	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Drovdal

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

REPORT OF STANDING COMMITTEE

HB 1413: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1413 was placed on the Eleventh order on the calendar.

2013 SENATE FINANCE AND TAXATION

HB 1413

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1413
3/18/2013
Job Number 20033

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts; to amend and reenact section 57-40.2-03.3 of the North Dakota Century Code, relating to a sales tax exemption for tangible personal property used to construct or expand a facility for use of coal gasification byproducts; and to provide an effective date.

Minutes:

Testimony Attached

Chairman Cook opened the hearing on HB 1413.

Dale Niezwaag introduced HB 1413, see attached testimony 1.

Senator Miller - How can the state taxpayers be assured that when you talk about refiguring the value of the byproducts back into the tax collection, how does that work?

Dale Niezwaag - How it works to increase a sale, anytime any revenue comes out of that plant there's no sub companies of the plant. The Dakota Gasification plant is its own entity and provides the sales of all the byproducts. Any increase in sales gets added on to what they call the average price of gas. At this point there is no diversification other than having that plant as a subsidiary of Basin Electric. (5:21)

Sandy Tabor, Lignite Energy Council - We just wanted you to know we support this bill.

David Straley, North American Coal - We too stand in support of the bill. Dale raised a point regarding the coal conversion tax. Any increase in more severance of tons and using of tons increases the conversion tax. When we increase our ton severance 37.5 cents per ton is also a tax increase to the state as well.

Dennis Hill, ND Association of Rural Electrics - We stand in support of the bill for the reasons you have heard from the other testifiers.

Chairman Cook - I keep going back to this no residual economic value. So now we have it in the Ag products right?

Myles Vosberg, Tax Department - Correct

Chairman Cook - Can you speak at all toward the administration of that to make sure it's not being abused? Obviously you do some audits?

Myles Vosberg - We do audits, we also review the refunds when they come in. The power plant, the Ag commodity facility, this exemption for the coal gasification byproducts all provide the exemption where it can pass through to the contractor so that we don't have to go through as much refunds as we use to. But, we do review this; I don't know that we've had a big problem with that or any problem with it.

Chairman Cook - So all the industrial sales companies that call on these plants are selling tools, selling drill bits, they are selling filters, selling consumables, they just don't charge sales tax. I'm looking at it from the vendor side.

Myles Vosberg - This would be during the construction phase only. So it's going to be more sales to the contractors than to the plants. Like the filters for example in the plants probably wouldn't, the original ones when they build the plant would qualify and they aren't going to qualify after that so I think the consumables is going to apply almost exclusively to the contractors that are building the facilities.

Chairman Cook - The vendor knows, does he get some certificate from the contractor that the product that they are purchasing is exempt?

Myles Vosberg - For these particular plant exemptions we send a letter out to the plant owner qualifying the plant for the exemption. They can pass that letter on to the contractor to use for the exemption when they purchase but because those are items that are normally taxable for contractor and all their other jobs, contractors can use an exemption certificate to buy things without paying tax and so a contractor could for example buy those types of supplies without paying tax and if they used them on a job where they need to pay tax they would accrue and pay it on their return. A lot of contractors do that. (10:45)

Chairman Cook - The contractor has got his home office somewhere and that is where a lot of sales are taken there. Some of these sales go to this job site some to that job site, but when you audit contractors your comfortable that they are actually paying the tax on the products that are subject to tax?

Myles Vosberg - When we are auditing those contractors we are reviewing for the local tax as well as the state tax and we are reviewing things like their job cost records and so on to trace all the costs that go to a particular job and then their purchase invoices to see if they paid tax on it when they purchased it or accrued it when they used it. That would be the basic method we would use to audit contractors.

Chairman Cook - And you're comfortable?

Myles Vosberg - We are.

Senator Dotzenrod - Some of the product they talk about are about in the middle of that second to last paragraph. Anhydrous ammonia fertilizer, I think that product is being produced at this plant. I think there is a process there where they are producing it and it goes into the commercial market and gets used. There is another project coming up in the Spirit Wood site that there's several, I think more than one, a lot of it is through Cenex they are going to build a huge plant there to manufacture anhydrous ammonia, I think the cost of that plant is estimated around \$1.3 billion. The current exemptions that we provide for the construction, sales tax exemptions, would that facility be qualifying for existing or part of what is in this bill or is that something that is not...

Myles Vosberg - This bill would not apply to that because this is for byproducts at a coal gasification plant. I don't know the specifics on that particular plant but I'm guessing it would probably qualify for the manufacturing exemption. (13:48)

Chairman Cook closed the hearing on HB 1413.

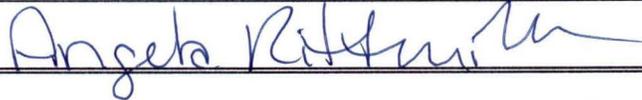
2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1413
4/8/2013
Job Number 20955

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

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Minutes:

Chairman Cook opened discussion on HB 1413.

Senator Miller moved a **Do Pass**.

Seconded by **Vice Chairman Campbell**.

Senator Dotzenrod - Does this have something to do with the, this doesn't apply to that plant that is going to be built in Spirit Wood. We only have one coal gasification plant in the state. The benefits are at that facility.

Senator Miller - Not only in itself does it generate jobs and enhances our economy but by having the products available in the state enhances so many other industries, particularly agriculture. I think this is one of those things that helps reduce costs and increases its economic efficiency.

Senator Triplett - To Senator Dotzenrod suggestion that this is only about the Dakota Gasification Plant and I think in terms of what is out there currently it is because it's the only one we have but the language, the bill actually says gross receipts from sales or personal property used to construct or expand. So it theoretically could be used by some new organization. I'm personally not aware of any out there.

Roll Call Vote 7-0-0

Carried by **Senator Miller**.

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1413

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/04/2013

Date: 4-8-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1413**

Senate Finance & Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Senator Miller Seconded By Senator Campbell

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett	X	
Senator Joe Miller	X				
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

HB 1413: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1413 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1413

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**Dale Niezwaag - Basin Electric Power Cooperative
North Dakota House Bill 1413
House Finance and Taxation Committee
February 5, 2013**

Mr. Chairman and members of the committee, my name is Dale Niezwaag, representing Basin Electric Power Cooperative and its subsidiary, the Dakota Gasification Company (Dakota Gas). I am here today in support of House Bill 1413 which provides a sales tax exemption for tangible personal property that is used to construct or expand a facility for coal gasification byproducts.

The legislation will allow coal gasification facilities in the State of North Dakota to qualify for the same sales tax incentives for expansion of their byproducts that gas processing facilities and refineries already have in North Dakota.

The Great Plains Synfuels Plant, owned and operated by the Dakota Gas, is the only commercial-scale coal gasification plant in the United States that manufactures natural gas. For many years, Dakota Gas has been working to diversify the products produced by the plant. In addition to synthetic natural gas, the Great Plains Synfuels Plant also produces and markets ammonium sulfate and anhydrous ammonia fertilizers for agricultural crops. Other products include phenol for the production of resins in the plywood industry, cresylic acid for the chemical industry, liquid nitrogen for refrigeration and oil field services, methanol for solvents, naphtha for gasoline blend stocks, krypton and xenon gases for the nation's lighting industry; and carbon dioxide for enhanced oil recovery.

As stated earlier North Dakota tax code currently provides for a sales and use tax exemption for all materials used for the processing and refining of gas at gas processing facilities and refineries. Since the Plant is classified and taxed as a coal-conversion facility under the North Dakota Century Code, it does qualify for the manufacturers' sales tax exemption for expansion, but that exemption is only for machinery or equipment used directly in a new or expanded part of the plant. This proposed legislation would allow the Plant to also qualify for the sales tax exemption on all equipment and materials related to the expansion of byproducts from the facility, not just the equipment directly related to the manufacturing of the byproducts.

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It is no secret that the current and long-term projected price of natural gas is very low. While Dakota Gas' primary source of revenue has always been natural gas sales, dropping gas prices have shifted its primary revenue source to byproducts. Today, byproduct revenue has grown from 38 percent of the total revenue in 2009 to a projected 63 percent in 2013. DGC has been diligently working to become more efficient by driving down its production costs, continuing to provide more than 700 valuable jobs and contributing more \$12 million in taxes per year to the state.

While expanded byproduct development has provided additional revenue to Dakota Gas, it also provides a valuable benefit to Rural America, especially with the increased fertilizer demand and growing needs by new industrial/manufacturing facilities.

Lastly, increasing the byproducts produced at the plant will provide the State with an increased amount of coal conversion taxes. This is because the coal conversion taxes paid by Dakota Gas are calculated on the average price of synthetic natural gas the plant receives and the revenue from byproduct sales is added to the revenue provided by the taxable synthetic natural gas available for sale.

Mr. Chairman and members of the committee, we believe that approving this change to the state's tax code will provide Dakota Gas' Great Plains Synfuels Plant with the same incentives available to other gas processing plants and refineries in the state and keep the plant moving forward in its diversification activities to preserve its long-term viability. I urge a "do pass" on HB 1413 and will be happy to answer any questions.

**Dale Niezwaag - Basin Electric Power Cooperative
North Dakota House Bill 1413
Senate Finance and Taxation Committee
March 18, 2013**

Mr. Chairman and members of the committee, my name is Dale Niezwaag, representing Basin Electric Power Cooperative and its subsidiary, the Dakota Gasification Company (Dakota Gas). I am here today in support of House Bill 1413 which provides a sales tax exemption for tangible personal property that is used to construct or expand a facility for coal gasification byproducts.

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