17.0273.01000

FISCAL NOTE
Requested by Legislative Council
12/20/2016

Bill/Resolution No.: HB 1028

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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 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.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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 1028 makes permanent the sales and use tax exemption for materials used in the construction of a wind-powered electrical generation facility.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of HB 1028 makes permanent the sales tax exemption, and Section 2 makes permanent the use tax exemption for wind-powered electrical generating facilities. The fiscal impact of this exemption cannot be determined; it is dependent upon the amount of wind-powered electrical generation that will come on line during the 2017-2019 biennium. For every 500 megawatts of wind energy coming online for which construction would have been completed after January 1, 2017, the estimated fiscal impact of the sunset removal is a reduction in total state sales tax revenues of $20 to $30 million. This assumes an average total cost per megawatt of $1.5 to $1.8 million, with material costs equaling about 70% of the total cost. Any sales tax reductions impact the state general fund and the state aid distribution fund.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 01/23/2017

2017 HOUSE FINANCE AND TAXATION

HB 1028

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1028
1/24/2017
27298

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for materials used in the construction or expansion of a wind-powered electrical generation facility.

Minutes: Attachments 1-13

Chairman Headland: Opened hearing on HB 1028.

Senator Rich Wardner: Introduced bill. This bill makes a very small change; it was to sunset on January 1, 2015 and this extends it permanently. It is a sales tax exemption on equipment and materials in building wind farms. It was brought forward by Empowerment. Empowerment is the industry leaders in energy in the state of North Dakota. It is represented by people in coal, retail, wind, ethanol, gas, oil, etc. They brought this bill forward because they wanted everybody to be on the same playing field. There were a few members on our interim committee who were dead set against this but they changed their vote. Everybody has heartburn about the production credit that comes from the federal government but that is being phased out in the next two years. People are very concerned about wind farms and when they're done then it can no longer be used and it will just sit there causing clean up but that is not true. They have to go through bonding just like everybody else and there has to be a cleanup which is regulated by the PSC. Not everybody loves wind farms; they don't want them. They don't want the wind turbines in their area. We went through this in Dickinson. It came down to a local issue. If you site a wind turbine on your land you get paid a lot better than you used to; you get paid very well. These were some of the issues that were taken up in our committee before it was brought forward. We had the blessing from the coal people. I believe that coal has been good to this state. Coal has provided low cost energy and we need to keep it in the mix. Through technology wind is also bringing the costs down. Back when Governor Hoven was here we were going to develop all forms of energy in the state of North Dakota. If you want a good comparison on the tax issues and how they balance out between the different energies Commissioner Rauschenberger can explain that to your committee.

Chairman Headland: Are there any questions for Senator Wardner?

Representative Brandenburg: I am here in support of HB 1028. Distributed written testimony. See attachment #1. Ended testimony at 10:29.

Chairman Headland: Are there any questions for Representative Brandenburg? Is there further support for HB 1028?

Justin Dever, Co-Deputy Commissioner for the Department of Commerce: Distributed testimony. See attachment #2. Ended testimony at 12:57.

Chairman Headland: Are there any questions?

Representative B. Koppelman: When Empower is endorsing this bill does that require all the members of Empower to be in favor of the bill or is it a majority vote?

Justin Dever: In this case, this recommendation was put forth to the Energy Development and Transmission Committee. Empower operates on a consensus basis so it required unanimous support at that time.

Representative B. Koppelman: It's the current point of view that all the members of Empower support this?

Justin Dever: I'll let the members speak for themselves.

Chairman Headland: This particular incentive was also an incentive looked at during the interim. Can you recall what the outcome of those discussions were within that committee?

Justin Dever: The discussions were to allow the recommendation of the Energy Development and Transmission Committee to carry. The interim Political Subdivision Taxation Committee did not take a position on this bill.

Chairman Headland: Is there further testimony in support?

Jeremy Rham, Otter Tail Power Company: I'd like to introduce our company's Vice President of Planning and Strategy, Brad Tollerson. He will be presenting Otter Tail's position on HB 1028.

Brad Tollerson, Vice President of Planning and Strategy for Otter Tail Power Company: Distributed testimony. See attachment #3. Ended testimony at 22:45.

Chairman Headland: How many megawatts of wind power do you generate in states adjacent to us?

Brad Tollerson: At present all of our wind generation is in North Dakota.

Chairman Headland: What has been the deciding factor for Otter Tail to build the wind generation in North Dakota? Is it strictly policy or does it have anything to do with the wind itself?

Brad Tollerson: Wind resource plays an important part in where we go. Ultimately, it is the cost per leveled megawatt hour of production that we get from any new wind resource that drives our decision. In our most recent wind decisions the Clean Power Plan also played a role. The election now has changed the direction on that. Going forward with the Clean Power Plan not being a factor we will look for the resource with the lowest cost, taking in all economic factors, whether it be wind resource, interconnection cost, tax policy, etc.

Chairman Headland: Do you currently have any other types of power generation on the drawing board?

Brad Tollerson: Our resource plan calls for additional natural gas; simply cycle natural gas. It also calls for additional wind and some solar.

Representative Olson: You say that you don't have any wind generation in Minnesota, why is that?

Brad Tollerson: When all of the decisions were made the resources in North Dakota were our best low cost option at the time.

Representative Olson: What made it better in North Dakota and lower cost than Minnesota?

Brad Tollerson: When we look at renewable resources we work with a variety of developers that have looked at wind resource, interconnection costs, tax policy, and operating costs going forward. They bring proposals to us as a utility and we evaluate those in aggregate based on the proposals.

Representative Olson: No clear answer; it's a huge aggregate of factors. Without this sales tax exemption or if it were modified, that would factor into the decision of where to develop but would it certainly result in not producing more wind generation in North Dakota? How essential is this component to our tax policy to your decision with all of those aggregate factors?

Brad Tollerson: The sales tax impact on a wind farm in North Dakota right now is shy of 5% of project cost. When you stack up all those factors not knowing how the other factors might be moving at any given time the 5% change in costs could have a material impact that would sway a project to another location.

Representative Steiner: Are you saying yes or no that you will not build wind if you don't get this incentive?

Brad Tollerson: We are not saying no but this incentive is a key economic driver in any decision as to which wind project is selected next. There are a lot of projects out there in a variety of states for utilities to choose amongst and we're going to choose the lowest cost alternative. This is one factor. I can't definitively say this tax issue would rule out a North Dakota project.

Representative Olson: In your testimony you state there are social and political pressures. Can you describe any political pressures that may be coming to Otter Tail at a state level which drives this?

Brad Tollerson: Otter Tail serves half of its load in Minnesota and half in the Dakotas. Minnesota has a different political climate as it relates to renewable energy. All of Otter Tail's wind resources that we've added historically have been economical for our customers across the three state area. We are well out in front of our renewable energy standards per the state of Minnesota so those are not driving our decisions now to add additional wind. Our wind is being driven by economics; it is the low cost resource for our customers.

Representative B. Koppelman: What is the cost per kilowatt on your wind power and how is that going to change once you cease to receive incentives from the federal government?

Brad Tollerson: The current market for new wind is in the neighborhood of $20 per megawatt hour after the production tax credit. Production tax credit is roughly a $24 per megawatt hour credit that will be phased out over a number of years. As that is phased out technology gains will be offsetting the production tax credit. In general, you'd expect wind to go from about $20 resource to over a $40 resource if you're just looking at the production tax credit impacts.

Representative B. Koppelman: This is a little concerning to me that if the true cost right now is $40 a megawatt hour then subsidized down to $20, at which time it becomes competitive. We heard those tax credits are going to be phasing out relatively soon and you seem pretty confident that you'll offset all that with increases in technology. My fear is that you won't offset that all with increase in technology and costs will continue to rise because we have more wind power versus coal.

Brad Tollerson: There needs to be some clarification. When we say the production tax credit is going to phase out, over the course of the next several years if you enter a project or get a project online after 2020 the 10-year production tax credit will be stepped down in increments of 20 percent. As long as you have the project online by that time you will receive the production tax credit for the 10-year window of time. The projects we're talking about in our planning horizon now we'll get the entire production tax credit for a 10-year window; it's just that 10-year window in subsequent years will start to phase down by 20% each year. We're not entering it not knowing whether or not the tax credit will continue for our projects; we'll know it's for our projects, it's just subsequent projects in later years where it will be phased out.

Chairman Headland: A pretty large incentive to get those wind projects done in the next couple years.

Brad Tollerson: It is.

Mark Nisbet, North Dakota Principal Manager for Xcel Energy: Distributed testimony. See attachment #4. Ended testimony at 39:15.

Chairman Headland: Are there any questions?

Representative Grueneich: Out of the 14 full time jobs that were created what is the lifespan of those jobs?

Mark Nisbet: The 14 jobs should be over the life of the project over the next 20 years. These people are educated to run those jobs and maintain those wind turbines on site in the Courtenay area.

Representative Grueneich: What do those in Courtenay jobs pay? How many of the jobs were brought from out of the area?

Jamie Orakie (not sure of correct spelling as he did not sign the registration form)**, Manager of the two wind farms in the state:** The average wage for the jobs are between $18-22 per hour with plenty of overtime for the first five years and with a full benefit package. At Courtenay we have three technicians and a manager that came from the area and the others are transfers from all over the country.

Representative Grueneich: Out of those 14 positions, are they required to be onsite 365 or are they a temporary position where they transfer in and out?

Jamie Orakie: Yes that is permanent, 365. They work business hours, Monday through Friday, and an on call schedule for Saturday and Sunday until 9:00 or 10:00pm usually.

Representative Grueneich: Are they required to live within the area?

Jamie Orakie: Within 45 minutes of the wind farm.

Chairman Headland: How much wind power do you produce in our neighboring states?

Mark Nisbet: We have about 2,200 megawatts of wind on our system. I feel very proud to have brought these last two projects to North Dakota. We had some concern that we weren't generating in North Dakota so North Dakota has worked hard and we've helped that process along with a cap at 20-20 line which was a multimillion-dollar project, $100,000,000 invested in North Dakota in transmission plus the $600,000,000 in these two projects. If we reach our projected goals wind might be 25% of our overall generating mix. We feel we do very well by having a diverse mix. We have nuclear energy, wind, hydro, and small amounts of solar in our portfolio. Over the last 25 years our average rate increases have stayed below the rate of inflation even in this period where we are incorporating wind. This is a good time to invest in wind. While other costs are rising this low cost of generation can help us hold down overall rate increases.

Representative Olson: What is your federal requirement for renewables?

Mark Nisbet: There is no federal requirement for renewables. There isn't a Minnesota requirement but we're well ahead of that and we're making these decisions based on the economics of the project in that the fuel and natural gases were very low.

Representative B. Koppelman: What is your state requirement for renewables in Minnesota?

Mark Nisbet: It is 30% for Xcel Energy. Our requirement is higher for Xcel Energy than some of the other utilities in the state of Minnesota.

Representative B. Koppelman: Don't you have equal protection in Minnesota?

Mark Nisbet: We are one of the largest utilities in the state of Minnesota and it was an agreement reached when we were looking for ways to extend the license of our nuclear facilities in the state. Based on the storage issue that is one of the things that we agreed to in order to allow those nuclear plants to keep operating. Nuclear plants have been a great part of that mix and have overall been a spectacular part of holding costs down.

Chairman Headland: Is there further testimony in support?

Cory Fong, Director of Communications and Public Affairs for MDU Resources Group: Distributed testimony. See attachment #5. Ended testimony at 54:47. Also introduced Darcy Neigum who is the director of our Electrical Systems Operations and Planning.

Chairman Headland: Are you considering any other energy generation source aside from wind as we speak that you would like to talk about?

Cory Fong: We have a resource planning process. The lowest cost is always our first consideration. Wind and natural gas are a part of that going forward. We will be looking at those sources primarily. We see coal as a key part of our generation mix and that's why we have supported those kinds of incentives in the past. We are also very supportive of Clean Coal Energy.

Chairman Headland: I don't hear anyone talking about coal.

Cory Fong: We have supported incentives in the past for coal and coal technology and we will continue to support coal this session.

Representative Grueneich: You said you have a project that is estimated to be $85 million in the planning stages. You've contracted with Ace Construction. It would be safe to assume that you knew this tax incentive may or may not be there.

Cory Fong: Correct. This particular incentive we're talking about required construction before year end to be completed the end of 2016. They're developing the farm, building their economics and passing some savings onto us. I don't believe they would take advantage of that incentive because the construction won't be completed until the of 2016, it may be more likely to be completed the end of 2018.

Representative Grueneich: Could you put that $85 million in dollars and cents?

Cory Fong: It could be as much as five percent of the cost. We will take that all into consideration in deciding where our next development is. The sales and use tax becomes important as an economic benefit for us to consider additional projects in our state.

Representative Grueneich: Out of an $85 million project there are other costs associated so what portion is the sales and use tax exemption portion?

Cory Fong: It is just shy of five percent.

Representative B. Koppelman: I think the parity needs to extend to all levels of taxation and costs when it comes to the state so we're not picking winners and losers based on how we form our tax policy. I'm aware coal and oil have some sort of extraction and production type taxes that go along with them so as they create energy the state brings in revenue. You referred to the customers having a benefit from wind and other things, how does the state benefit? Do you have a similar tax to the extraction and production tax that are paid to the state?

Cory Fong: Senator Wardner had referred to a piece Ryan Rauschenberger distributed during the interim that could be very helpful for the committee to see. Wind does not have that same kind of tax. We feel it is still very important that in this particular case where you have all other forms of generation that enjoy the sales and use tax exemption, wind should also have that same kind of fair playing field in the sales tax.

Representative B. Koppelman: How does the state continue to fund its priorities with the loss of those taxes if wind is going market share over time?

Cory Fong: Part of it is encouraging investment which creates other kinds of revenue for the state in the form of additional income taxes associated with jobs, additional taxes associated with property taxes, sales taxes that are generated from those people who are part of those projects, is another part to consider. Prior to the last legislative session there was a reduction in property tax which we now phased out and have gone to a generation capacity tax. The income tax credit that was once in place to spur development is gone. Those incentives have been phased out and we're left with one of the only incentives left on the books which is a sales and use tax exemption. We believe this keeps North Dakota competitive for that development so additional funds can be developed here. There are jobs and development associated with that and the economic lift associated with those projects.

Representative Olson: You state in your testimony that Montana doesn't have a sales tax and South Dakota companies don't pay income taxes. Do any of those states or Minnesota have anything comparable to the extraction or production tax for wind particularly?

Cory Fong: No, I don't believe so. I don't believe South Dakota, Minnesota, or Montana has a tax on the resource.

Representative Trottier: Will this stop any projects that you know of with the fiscal note that is shown?

Cory Fong: It is certainly a factor. We are going to be looking at low cost, energy source, access to wind, and access to the grid. All of these become factors in making our decisions going forward. I can't say it would absolutely stop projects going forward but we are going to be factoring in all of the other considerations including the economics, tax policy, and business climate of the state when we decide where we are going to locate the next investments.

Representative Ertelt: Is the federal credit you receive passed on in the form of taxation to the customers?

Cory Fong: Absolutely and that's a good thing. That is recognized by our consumers and customers as a lower rate to them so they benefit from that.

Chairman Headland: Is there further testimony in support?

Carlee McLeod, president of the Utility Shareholders of North Dakota: Distributed testimony. See attachment #6. Ended testimony at 1:09:11.

Chairman Headland: Is there anything in the study that tells us how much wind energy can the state of North Dakota support? I'm talking physically across the landscape.

Carlee McLeod: The energy potential has been rated for 770,000 megawatts if we built wind all over the state, which would fill the state so clearly that's not going to happen. I don't know if the study will get into what is likely to be added but I'm guessing it will be closer to 5,000 total.

Chairman Headland: We have potential for 770,000 megawatts but yet the public is pushing back at 2,800. That's a dilemma.

Carlee McLeod: I understand that.

Chairman Headland: Is there further testimony in support?

Randy Johnson, Vice President of Corporate Services at Wanzek Construction, Inc.: Distributed testimony. See attachment #7. Ended testimony at 1:15:47.

Chairman Headland: Are there any questions?

Representative Trottier: Where do you buy your blades or who decides who buys the equipment?

Randy Johnson: The procurement usually happens by the owner but it depends on the project.

Representative Trottier: How many blade plants are there in North Dakota? Do most of them come from North Dakota plants?

Randy Johnson: I don't know.

Chairman Headland: Is there further testimony in support?

Brent Bogar, Greater North Dakota Chamber: Distributed testimony. See attachment #8. Ended testimony at 1:19:25.

Vice Chairman Dockter: We've had several bills in committee for exemptions and we've passed out a lot of do not passes. I don't recall your organization asking for those exemptions. Why is this different from the others?

Brent Bogar: The Chamber looks at various bills and goes to the members to determine. A lot of times we will go with the direction from our members and our board as to which ones we will stand as an organization to support. The Chamber is supportive of the other tax credits and programs but the organizations and its members spoke on behalf of that.

Chairman Headland: Is there further testimony in support?

Elsie Blair Magnus, County Commissioner in Cavalier County: Distributed testimony. See attachment #9. Ended testimony at 1:24:36.

Representative Trottier: It sounds like this has really helped your county.

Elsie Blair Magnus: It has. Nothing is ever 100% perfect so we have had to deal with some issues.

Representative Trottier: Has that helped you with your property tax situation? Has it helped your budget with the County Commission?

Elsie Blair Magnus: Absolutely. $214,192 is significant to a county our size.

Chairman Headland: What type of process did you go through within your county when your wind farm was sited and approved?

Elsie Blair Magnus: I attended meetings as I could so I didn't really have access to everything. Our director worked with the company and the land owners. There was some consideration made on assessing so there were some incentives offered but I can't be specific on that because it was before my time.

Chairman Headland: Is there further testimony in support?

Casey Bradley, Auditor and Chief Operating Officer for Stutsman County: Distributed testimony. See attachment #10. Ended testimony at 1:28:32.

Chairman Headland: Is there further testimony in support?

Robert Harms, Tradewind Energy: I would like to introduce Frank Costanza who is the Executive Vice President of Tradewind. In earlier testimony you've been referred to the Empower Commission. About ten years ago we ended up having energy sectors coming

into North Dakota Legislature fighting about different issues. The Empower Commission was designed to take the entire energy sector and bring it together for them to have meetings throughout the interim and debate set policy so they could formulate policies they could bring forward to the legislature to implement on all energy sector policy long term. Your challenge now is how to set a long term policy that makes sense for North Dakota that includes an industry that has invested over $4 billion in our state since it was incentivized in 2001.

Frank Costanza, Executive Vice President for Tradewind Energy: Distributed testimony. See attachment #11. Ended testimony at 1:39:11.

Chairman Headland: Is there further testimony in support? (Break in committee)

Testimony submitted in support from Jennifer Greuel, Executive Director of Economic Development Association of North Dakota. See attachment #12.

Chairman Headland: We'll take opposition to HB 1028.

David Straley, North American Coal Corporation and its subsidiaries within North Dakota: Distributed testimony in opposition. See attachment #13. Ended testimony at 1:45:45.

Representative B. Koppelman: Do you have any data on the total number of megawatts that are produced by coal in North Dakota divided out by jobs? You could email that to us if you don't have that now. Most of the grid probably predates wind in North Dakota. Nationwide I've heard the grid is in rough shape and there isn't enough expansion of the grid happening. Do we have enough grid capacity in North Dakota to bring all the new megawatts and wind on line while still selling the coal power we produce at least at the current levels?

David Straley: Currently in North Dakota coal provides roughly 4,000 megawatts of electrical generation directly coming from coal and we employ about 4,000 people. There is a definite need to upgrade the grid. The grid needs to be stable and functioning so we can put our electrons on there as well. We absolutely want to compete. The PSC in the past has raised issues of the stability of the grid and the amount of wind.

Representative B. Koppelman: If you're producing 4,000 megawatts of power from wind, are we able to bring on the ambitious amount of wind without producing less power from coal?

David Straley: I would refer you to some of the announcements made from our customers. They are looking to cycle coal back down which means bring coal down, off line. The power plants that are fired by coal cycle them down and use less coal when the wind is blowing so cycling wind in the line. We are going to have that in North Dakota.

Representative B. Koppelman: Is it safe to say that wind and coal are somewhat hitched together?

David Straley: I'm pretty sure coal can survive without wind. We've been here since the 70s. The statement should be reversed around in terms of wind cannot survive without coal.

Why can't you build natural gas and nuclear facilities to back up base load? I don't think the issue is necessarily with coal; it's about base load. Wind may not be a base load. If you have an electron with a machine that has generated 40% of the time I would maybe consider that wasteful. I don't think that's efficient at all. Some think that is more than efficient. If you're not getting anything out of it from a state's standpoint, then why do that? There are some benefits coming from that but at the cost of what? The ramifications of taking coal off line is what it means to us.

Vice Chairman Dockter: What would be the revenue reduction of tax we get in coal if we increased the wind megawatt and you cycle down?

David Straley: It's really hard in a grid situation; it has many factors. From 2014-2015 in North Dakota we are down one million tons; 2014 there were 29 million tons produced now there is 27.7 million produced. Production totals were affected by outages of a couple power plants in addition electricity produced from wind generation in our region continues to put pressure on the seven lignite based power plants in the state. In the envelope if you take 10% off you may want to go back in the envelope and take 10% off again as well.

Chairman Headland: I think we all understand the incentive that is on the table that is at risk if these wind projects can't come on line within the next two years. Do you have any information available that would give us the decision making probability we could understand that coal generated power will not be displaced on the grid? Are there distribution projects on line or in the mix anywhere that you're aware of?

David Straley: I have information that is counter to that. There is a December 26 article in the Bismarck Tribune stating there is a power plant shutting down and is expected to see a lot more cycling of power plants as the output of renewable resources swings up and down. The change in operations at Coal Creek could result in lessening for coal from the nearby Falkirk Mine. Another article was read dated January 10 regarding a signed power purchase agreement. It's hard for me to stand here and not have utilities and us be on the same side. I'm telling you from a policy perspective what you're doing in terms of incentivizing one versus the other is not a parity argument. Parity in the law would be equivalency in the law but when the ramifications put us out of business and promote another, that is not parity.

Chairman Headland: You are part of the Empower process?

David Straley: I am a member of the Empower Commission and have been since 2007 when it was formed. I feel like we've done a lot of great work. I have supported these types of incentives in the past. However, one of our tenants of the Empower Commission has always been that we don't support mandates and agreed not to take one piece of the pie and give it to the other. That is why we were fighting back in 2005 and why all the industries were fighting in 2003 and 2005. That was the genius to create Empower and push it off to the side. I've informed our Empower Commission know that I was opposing this bill. We have a change of heart when you take away our piece of the pie and give it to someone else.

Representative Hogan: You talked about the reduction in coal in the last year. Can you tell us about the five-year trend and has that gone up and down?

David Straley: I'll get you those numbers. Maybe five or six years ago we were around the $29 or $30 million and we've slowly gone down. I can get you those exact numbers.

Representative Ertelt: The $5 million per line cap, is that for the life of that line?

David Straley: No that is the initial startup. The intent of that language was that there was a potential to increase jobs or at least maintain the jobs we had in North Dakota if you incentivize this coal mine. Legislature said they were not going to give us an unlimited exemption; they were going to give us a $5 million cap for one-time expenditures. Replacement costs of equipment is not included.

Representative Howe: We heard earlier that a sales and use tax can make up 5-7% of a wind project. What percentage of the $5 million cap is for a new mine?

David Straley: It would depend on how much you would spend on a new mine. If you spend $100 million with 5% that is $5 million so you're going to hit your cap. If you spend $500 million opening a new mine, you're going to spend $5 million at the state level or forgo $5 million because we're going to be over that cap and we're going to spend the additional dollars to the state of North Dakota to the general fund.

Chairman Headland: Is there further opposition?

Dwight Grotberg, farmer in Barnes County: I find it interesting that there is no extraction tax on wind. I want to talk about the even playing field. I was approached by a wind company to lease my land for a wind farm. My neighbors and I didn't want the wind farm for various reasons. There are millions of dollars that go to landowners for wind turbines but they are not an even playing field. Some landowners have 13 wind turbines on their land. Showed a map of the proposed wind project to the committee. The impact of this wind farm on our community was pretty significant. I started a wind petition and the people who signed are landowners, nonresident landowners, and farmers. I took this petition to the Barnes County commission. There's not a lot of people that live in this area but I got 77 signatures on this petition where they oppose or reject the proposed wind farm north, northwest, and east of Spiritwood, North Dakota and opposing or rejecting the expansion of the current wind farm located near Courtenay, North Dakota. I'm appreciate there was a sunset on this exemption. It was for good reason and that was to examine the impact of the effect of something that was done a long time ago. With all the wind farms that are around us and another coming is that this market for wind farms is hot. They are coming in fast and hard. I don't think they need the states incentivizing anymore, I think that's what it was there for. We have townships scrambling to place zoning ordinances. I think that until the state adds an extraction tax I don't think they need these exemptions anymore. I would urge all of you to strongly consider opposing this exemption.

Chairman Headland: Are there any questions?

Representative Olson: Are there any reasons why you don't want the wind farms?

Dwight Grotberg: I didn't want anything else to farm around, I don't like the looks of them, I don't like the imposition, I don't like the skyline disruption, and I don't like the lights. I can

see the potential in these wind farms in revenue from these towers. In the Courtenay wind farm area there is one farmer who receives money but doesn't have any wind towers on their land and the person next to them has six to eight of them so there's not a level playing field there.

Chairman Headland: Are you suggesting that the citizen subjected to the wind farm has come to believe the quality of life issues outweigh the economic benefit of those farms located there.

Dwight Grotberg: That's our opinion. There are farmers that have signed up and have even asked the wind companies to come on their land. People who live near the Courtenay wind farm didn't even know what was going on but has 40 wind towers in view of her bedroom window. Don't incentivize these guys anymore; they have enough. The fair thing to do is oppose this bill and let them get on the paying side of things.

Representative Steiner: How much were you offered?

Dwight Grotberg: In the contract it says you can't discuss the terms of the contract once you've signed the contract but I haven't signed the contract so I can discuss. There's a per megawatt compensation, about $7,000 per tower. This particular one being put forward by a company has said it has a $20 per acre compensation just for signing up. They are trying to establish a control area so then they can put the wind turbines where they want. I encourage you to look at the fact that this market is so hot is it really a fair playing field; I don't think so.

Chairman Headland: Is there further opposition?

James Schroeder, farmer in Barnes County: I would like to see the incentives for these wind projects cease. It's kind of creating a frenzy in our community. It's all about the number of towers they can fit between spaces. We have people living in the middle of a big power plant now. There are negative effects from safety issues to way of life issues. We are gaining revenue from taxes from the wind farms, however, we are starting to lose out on people building new homes in these areas. These large corporations are coming in and affecting the way of life many rural North Dakotans have right now. I think the tax incentives should instead go to the small track landowners who are dealing with this on a daily basis.

Chairman Headland: Is there further testimony?

Pete Hanebutt, North Dakota Farm Bureau: We are pro-energy but there are landowner concerns. We feel that the state should not be in a business of picking winners or losers. We love all the things that development has done for the tax base in rural communities but there is a tradeoff. We don't need to be in the business of giving permanent exemptions. There was a reason there was a sunset originally and I hope you can go back to that sunset because the wisdom of that is okay. We are a pro-free market organization and we think folks should stand on their own.

Chairman Headland: Is there further opposition? I know we have questions for the tax commissioner and more technical questions so I would like to recess this hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1028
1/24/2017
27313

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for materials used in the construction or expansion of a wind-powered electrical generation facility.

Minutes: Attachment 1

Chairman Headland: Continued with hearing in the afternoon. Is there anyone out there who could answer some of our questions regarding the grid and how electrons move around and such?

Lacy Anderson, Montana Dakota Utilities Resources: Introduced Darcy Neigum who will try and answer some of your questions.

Chairman Headland: It was indicated by Mr. Straley that lignite production is down for a few reasons, one of them being displacement of energy by wind. Could you address the committee as to the validity of that statement, if it's happening, and why it happens? We will also have questions from the committee.

Darcy Neigum, Montana Dakota Utilities: I'm responsible for our system operations and planning. We constantly have to come up with our current plans and long range plans in how we meet our customers' needs. That includes the energy that comes out of the walls and how we meet peak demand to have the generation available at any time to meet those requirements. We did those on a least cost planning basis. When doing those we look at our existing resources and our new resources like coal, gas, and wind. When we look at meeting those requirements and taking a look at the wind that's been added to the record and transmission system in North Dakota over the years, one thing to take into account is the requirements the load has for electric serving side has increased as well. We haven't seen the advent of any new coal plants except for the Spiritwood plant since the 1990s. A lot of that additional growth is either being met with wind, market purchases, or gas resources. As it pertains to the grid itself, we look at the grid and continues to be very robust and very resilient in its operations. We take a look at wind as it wants to interconnect on to our transmission system and it has to go through a study process. Part of that process looks at what's its impact is if it's on a lightly load or heavy load cases to make sure its providing the necessary upgrades so it isn't displacing someone else. It has to make the necessary

system improvements in order to ensure it is minimizing any impacts that would be out there under various cases. We look at the actual dispatch of all resources and it all happens under a real time basis. If a resource wasn't available or we were looking to run one of our higher cost resources, we would call our neighbors and try to buy and sell our cells to someone else. The grid has evolved today that our load and our generation is offered into a common market and that market has clearing mechanisms to come up with what ways are the most economical to do that. Those resources are dispatched and we're meeting the needs of customers for electricity and that's happening continuously. The coal, wind, and gas resources are all competing in the real time to supply those needs. We do see periods of time as a supply where our coal resources are back down. There have been times when the prices have fallen below in our offer prices which is a good thing for our customers because we end up saving money during those periods of time. We could continue to elect to run our coal resources regardless of the market but our customers would incur a cost that they otherwise wouldn't have to bear. As coal is being dispatched down or as it cycles through the day, this is a function of the market dynamics as how coal ends up being competitive with other resources. One of the benefits of North Dakota, in particular lignite, is considered one of the lowest coal generating plants that we always have in the neighboring states so they become very economic when it comes to competition. There are periods of time when prices are low and there are demands for resources to get to market. The consumers are paying for the least cost resource to end up meeting their requirements to serving what our customers have for needs for electricity. We see periods of time when wind generation is high and if loads are light there may be periods of time when the market prices are such that coal resources are being dispatched down at times. Loads have been growing in the state. In the Bakken region where we serve loads we saw that 400 megawatts of load and today that load tends to peak at over 1,000 megawatts. The energy has to be coming from somewhere whether it's the gas turbines or the wind resources that are being used to supply that new load as well.

Chairman Headland: It's more economically beneficial to the customer that you would cycle down a coal generation plant rather than shutting down a wind tower when the economics that paid for the price of energy are not on the more profitable side?

Darcy Neigum: The coal plants are able to dispatch so they can run between some minimum load and some maximum load. They have prices they offer to the market and they will operate in between those. We could continue to generate our own energy from our own plants but we don't take advantage of what the market has in serving the customers on a most economic basis. There are some situations where it's cheaper for us to end up buying energy from the market than it is to generate ourselves. In other times we have the ability to ramp our plants up to full load and even bring on our gas turbine resources to meet the needs of our customers and the neighbors.

Chairman Headland: Are there mandates in other states associated with the percent of power that has to be available for their customers that impact the decisions on what power goes on to the grid in North Dakota?

Darcy Neigum: It's on a reliability basis. If we had the largest resource that was out there everyone else would have enough room that they could pick up and be able to cover that

loss of the single largest loss of the generator. There are balances built in but not necessarily mandates that say a certain amount of energy has to come from their resources.

Representative Steiner: MDU is going through a rate request right now. If you're asking for a rate increase does that mean power costs more and you have more wind on the line?

Darcy Neigum: The cost that we charge our customer electric services are made up of various components. One of those is the production facilities, which would be generation, transmission distribution facilities, fuel, and purchase power makes up another part of that. With the low market prices and introduction of renewables into our system we've seen our fuel and purchase power prices going down as to the percentage of the bills that our customers pay. The weight increase that we predominantly have in our current case deals with new equipment we're having to add, whether it's on the transmission side or the distribution side they continue to serve load, it's the cost of that in new facilities plus environmental regulations and upgrades that we have to do at our existing plants.

Representative Olson: With regards to wind and coal or lignite, could you compare the efficiency of the two methods of energy generation to one another?

Darcy Neigum: All those resources work together in meeting the needs of the customers. We have a portfolio of resources and we are making sure that those resources are serving a part to meet the needs of our customers. Coal is important, as are our renewables and gas turbine resources that we have. When planning we make sure that we can continue to meet the needs of our customers on the most peak of days whether the wind is blowing or not. There is a lot of planning and requirements that we have to go through to make sure the system is reliable and continues to be.

Representative Olson: Is there a magic number where you don't want to go above the amount of energy that you're relying on wind to serve? The wind is not always blowing so there are times when it's producing more energy and other times producing very little.

Darcy Neigum: We don't have our coal turn itself on or off. If one of those pieces remain on at whatever economic level it is to supply the needs of our customers. Even if it only provides 40-50% of its capability the wind generation typically blows or has some sort of output level 80-90% of the time. There isn't a magic number. A lot of it deals with the resiliency of the grid overall and how it assesses the risks then decides if there should be some limitation how to impose it or come up with some sort of counterbalancing mechanism at that point.

Chairman Headland: Who builds the transmission for the additional power?

Darcy Neigum: When the generator makes the request and if there are network upgrades that are decided upon, in North Dakota that goes back to whether that incumbent transmission order is to construct those facilities for them. Usually the incumbent utilities like MDU, Xcel, and Otter Tail have those opportunities to construct, own, and operate those facilities.

Chairman Headland: When they require easements do they have any trouble acquiring those easements and are they having to compensate property owners similarly to locating a wind tower or something in that area?

Darcy Neigum: It depends on the area and if there are issues with landowners and such. That allows us enough time to get out in front of them and work through those issues; find the alternate routes and find routes that have the less impacts. In some cases, we use the same route right away and overbuild one of our distribution facilities if we can, or add a separate line onto existing structures to minimize impacts.

Representative Hogan: How do the MISOs compare to other distributions around the country in terms of its distribution of wind, coal, and gas? Are there national standards or national trends? How do we compare to those national trends?

Darcy Neigum: It varies on the part of the country you're in and the availability of those resources as far as what you see for those mixes and those renewables. North Dakota has a large resource potential. It has a sparse population so that leaves better access to the transmission.

Chairman Headland: Could you explain section three of the bill?

Ryan Rauschenberger, Tax Commissioner: Section three is specific to the effective dates and the retroactivity of the effective dates. The extension of the sunset was considered in the 2015 session and was extended to the dates you see on page two line six. The date in code was anything constructed before January 1, 2017. On page four lines three and four is the use tax section so sales and use tax mirror each other and that was not updated so this would be considered to be a technical correction. We've been administering it as far as the entire incentive as with all the incentives on the book are passed with both the sales and use tax exemption being eligible for the wind farm or the contractor, depending on who applies for the exemption. It was an oversight in the drafting of the bill. This would keep it in par. During the interim committee it was asked how that should be worded and the effective date and we said to make sure that if this passes there isn't any gap in time because as of 2015-16 we keep the sales and use tax on par.

Chairman Headland: On page four the overstruck language on the sales and use tax wasn't there but was inserted to make it look like it was there?

Ryan Rauschenberger: When the bill passed in 2015 the use tax language wasn't updated so this language probably wouldn't be necessary in the effective dates of the bill. This recognizes how we're applying what passed in 2015. If the bill were to fail it wouldn't change anything we're doing. If it passes it recognizes that we had applied the use tax law the same as the sales tax.

Chairman Headland: I'm still not clear.

Representative Howe: Senator Wardner said you had addressed the interim committee and provided a graph regarding all the tax information. Would you be able to provide that to us?

Ryan Rauschenberger: I have copies of that chart if you would like. Going back to your question, Mr. Chairman, if it wasn't for an oversight in the drafting in 2015 that is all the retroactivity language was needed for was to cover to make sure that if this passes it's applied back to 2015 which is what we've been doing, and that there isn't any discrepancy between sales and use tax going forward.

Chairman Headland: I understand the logic behind it. Has this been a practice of the tax department in the past when we've had unintended consequences because of the way the bill was drafted?

Ryan Rauschenberger: We have in the past. The similarity between the sales and use tax law has always been the same. Based on the discussion last session in 2015 we felt comfortable doing that because all the incentives have always been tied together on sales and use tax. The only difference is that this has a sunset on it. Normally this would take place in our housekeeping bill which will be here after crossover.

Chairman Headland: I wish legislative intent was always carried out by every area of code when something gets missed.

Representative B. Koppelman: Do you know how much use tax was exempted in this period of time?

Ryan Rauschenberger: I'd be happy to provide that to the committee.

Representative Hatlestad: Does this mean there is a refund involved? If you had paid the tax in 2014 when this change went through you could now get a refund?

Ryan Rauschenberger: Regardless of the language in this bill, yes, there are refunds that may not have been claimed.

Representative B. Koppelman: What is the parity of all taxes paid by our various energy industries?

Ryan Rauschenberger: That is a difficult question to answer. Distributed a handout titled Electricity Taxation in North Dakota and Federal Taxation. See attachment #1. Ended testimony on the handout at 36:55.

Chairman Headland: On the production tax credit for wind, that was reauthorized a couple years back but was set to end 2014 or 2015 so it's set to end again. We don't know what Congress will decide to do with the credit at that time, is there?

Ryan Rauschenberger: It might be better for the companies themselves to answer that question. My understanding is that is phases out over time and eventually goes away. I don't know with Congress how that will work out.

Representative B. Koppelman: If I wanted to figure out how much property gas natural gas was paying would I add $1.15 plus $.60 to get a total of $1.75 per megawatt hour?

Ryan Rauschenberger: That is correct in the sense that you have taken the fuel, the property tax that's embedded in the fuel, and the cost of fuel into the plant itself.

Representative B. Koppelman: In that same example the calculation for extraction tax is $282,373, is that separate from the property tax?

Ryan Rauschenberger: That's part of the $.60 and that is a product of the number of MCFs times .06 per MCF then breaking down per kilowatt hour.

Representative Olson: Are there any revenues that come directly to your department from wind?

Ryan Rauschenberger: The wind is subject to market value or the production and capacity factor then that all goes out to the counties in lieu of property tax. Under law those are all county taxes.

Representative B. Koppelman: There isn't state revenue that comes in from wind that would go in our general fund?

Ryan Rauschenberger: Other than the multiplier factors that have been talked about earlier today and the sales and income tax that comes from other sources. Nothing directly from wind but from the economic impact.

Chairman Headland: Does anyone have any questions? Seeing none we will close the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1028
1/31/2017
27680

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to a sales and use tax exemption for materials used in the construction or expansion of a wind-powered electrical generation facility.

Minutes:

No attachments

Chairman Headland: We'll open up the discussion.

Vice Chairman Dockter: MADE A MOTION FOR A DO NOT PASS

Representative Olson: SECONDED

Chairman Headland: Let's have some discussion.

Vice Chairman Dockter: Every incentive we've had this session we've had a do not pass because of budget constraints. We've given a lot and have helped out the wind energy since 2001. I feel that with our budget I can't support anything that has a fiscal note. The intention of this exemption is to get the wind companies up and running with wind farms. We are a business friendly state and I think they will continue to invest in our state.

Representative Olson: I supported this bill in the last session when we extended the sunset. I was surprised that we now want to make it permanent. I have conflicts when it comes to the continued subsidy at a state level for these types of projects in energy. It is an inherently expensive form of energy and without the federal subsidy it's not worth it. I think it's political and I'm opposed to politics with renewable energies which have been a farce. Do we want to get in on the revenues at the state level by incentivizing it? It's going to be built somewhere. We don't have the type of modeling that would be required of us to put in all the different variables. How competitive are we anyway when they decide where they want to build? In order for us to make a decision we have to be able to start getting the data on these incentives. I'm voting no.

Representative Howe: A couple farmers testified and they made it clear they didn't like wind energy at all. Our intent is not to kill the wind energy industry or prevent further

development of the wind industry. I will be supporting a do not pass. We welcome all forms of energy and we are by no means trying to kill the wind energy industry.

Representative Mitskog: I really support wind. We have an abundance of natural resources in the energy sector in North Dakota and I like this as part of the mix. With our budget situation we need to make deep cuts that are affecting individuals' lives. We already set precedent in this committee by not continuing incentives. I'll be concurring with a do not pass.

Representative Hatlestad: In the fiscal note section 2b, is the potential cost per biennium $20-30 million in lost revenue?

Chairman Headland: The impact of continuing removing the sunset would be $20-30 million based on 500 megawatts of wind they are projecting to be built.

Representative B. Koppelman: If the sunset was made permanent there is zero tax dollars generated directly from wind in our state. All other sources of energy have forms of revenue to the state. I did a comparison with the numbers we were given and in the wind energy we were told the jobs paid $20-22/hour by a manager in the industry. That produces approximately one job paying roughly $45,000 a year for every 20 megawatts of power. In coal we have one job for every one megawatt of power and it's with an annual salary of $87,000. Our actions were to promote a ton more wind in our industry, we could be directly responsible for replacing a portion of our coal industry with wind. Unless we had a way to make tax parity across the board to a level playing field I don't know if that combined with a potential loss in jobs is something I don't want to support. I'm going to support the do not pass.

Representative Ertelt: There were multiple arguments made for this bill and one of those was parity. I agree with Representative B. Koppelman that argument falls short because you have to look at the whole tax incentive that the energy industries are receiving including federal dollars. I also agree on the job front as well. The jobs seem to be higher paying in coal and there are more of them per kilowatt. We didn't hear a decisive stance whether or not that wind would be built out of state. I'm willing to bet they will still be building here. I'm supporting the do not pass.

Representative Hogan: This has been a hard decision for me because I support renewables. The Empower group has tried to bring all energy groups together. This is the first time in a couple sessions when I haven't felt like the energy group is unified on their approach to an issue. They recommended we pass this and that had a lot of influence on me. I am passionate about services. This is $20-30 million and that is a lot of money. It has a significant impact on our overall state budget. I will support the do not pass.

Chairman Headland: Is there anything else? We have all struggled with this decision. This is an industry that has invested billions of dollars in our state. I would hope this vote doesn't signal to the industry that we are done with wind. We are trying to find some balance amongst the players and this particular sales tax exemption has been on the books for some time. It's been sunset and extended several times. We could do it again and pass this eventual decision down the road. I think I'm going to go along with the do not pass. I want industry

to understand the session is still in its early stages and a new forecast is coming. We are certainly not slamming the door completely on incentivizing more production and construction.

ROLL CALL VOTE: 13 YES 1 NO 0 ABSENT

MOTION CARRIED FOR A DO NOT PASS

Vice Chairman Dockter will carry this bill.

Date: 1-31-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1028

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description:

Recommendation:
☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Dockter Seconded By Rep. Olson

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓		Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger		✓			
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Dockter

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

REPORT OF STANDING COMMITTEE

HB 1028: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO NOT PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1028 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1028

#1 p. 1
1-24-17
HB 1028

STATE AND FEDERAL TAX INCENTIVES FOR COAL AND OIL

This memorandum provides information on the availability of state and federal tax incentives relating to coal and oil.

COAL SEVERANCE TAX

The coal severance tax is imposed on the act of removing coal from the earth pursuant to North Dakota Century Code (NDCC) Chapter 57-61. The tax is in lieu of both the sales and use taxes on coal and the property tax on minerals in the earth. The coal severance tax applies to all coal severed for sale or industrial purposes, except coal used for heating buildings in the state, coal used by the state or any political subdivision of the state, and coal used in agricultural processing facilities in the state or adjacent states. The tax is applied at a rate of 37.5 cents per ton. An additional 2 cents per ton tax is levied for the lignite research fund. A 50 percent reduction of the 37.5 cent tax is allowed for coal burned in a cogeneration facility designed to use renewable resources to generate 10 percent or more of its energy output. A county may grant a partial or complete exemption from the county's 70 percent portion of the 37.5 cent tax for coal that is shipped out of state.

COAL CONVERSION PRIVILEGE TAX

The coal conversion tax is imposed in lieu of property taxes on the operator of each coal conversion facility pursuant to NDCC Chapter 57-60. The land on which the facility is located remains subject to property taxes. The privilege tax on coal conversion facilities is applied based on the type of coal conversion facility as follows:

- **Electrical generating plants** - Electrical generating plants are subject to two separate levies. One levy is a .65 mill times 60 percent of installed capacity times the number of hours in the taxable period, and the other levy is .25 mill per kilowatt-hour of electricity produced for sale. Installed capacity means the number of kilowatts a power unit can produce as displayed on the nameplate assigned to the turbine of the power unit.
- **Other coal conversion plants:**

  Coal gasification plants - A coal gasification plant is subject to a monthly tax in the amount of 13.5 cents per thousand cubic feet of synthetic natural gas produced for sale or 4.1 percent of gross receipts, whichever is greater.

  Plants converting coal to products other than gas - These plants are taxed at a rate of 4.1 percent of gross receipts.

  Coal beneficiation plants - The tax rate for a coal beneficiation plant is 20 cents per ton of beneficiated coal produced for sale or 1.25 percent of gross receipts, whichever is greater.

Exemptions to the coal conversion tax are:

- Synthetic natural gas produced in excess of 110 million cubic feet per day.
- Income from byproducts of a coal gasification plant to a maximum of 20 percent of gross receipts.
- Revenue derived from the sale and transportation of carbon dioxide for use in the enhanced recovery of oil or natural gas.
- Beneficiated coal produced in excess of 80 percent of a plant's design capacity or produced for use within a coal conversion facility.
- A new or repowered coal-burning electrical generation plant is exempt from the general fund portion of both levies for 5 years. The county may grant an exemption for up to 5 years from the county's 15 percent share of the levy on installed capacity.
- All new coal conversion plants other than electrical generating plants are exempt from the general fund's 85 percent share of the tax for 5 years. The county may grant a partial or complete exemption from the county's 15 percent share for up to 5 years.
- A coal conversion facility that achieves a 20 percent capture of carbon dioxide emissions during a taxable period receives a 20 percent reduction in the general fund share of the tax, and an additional reduction of 1 percent for every additional 2 percentage points of carbon dioxide emissions captured, up to a 50 percent reduction for 80 percent or more capture. The reduction is available for 10 years from the date of the first capture or from the date the facility is eligible to receive the credit.

#1 p.2
1-24-17
HB 1028

Additional state tax incentives pertaining to coal include:

- A sales and use tax exemption for machinery or equipment used to produce coal from a new mine. The exemption for each mine is limited to the first $5 million of sales and use tax paid pursuant to NDCC Section 57-39.2-04.8.
- A sales tax exemption for materials used to construct or expand a facility used to extract or process byproducts associated with coal gasification pursuant to NDCC Section 57-39.2-04.11.
- A sales and use tax exemption for materials used to construct, expand, repower, or add environmental upgrades to an electrical generation plant, and all additions thereto, which processes or converts coal into electrical power pursuant to NDCC Sections 57-39.2-04.2 and 57-40.2-04.2.
- A sales and use tax exemption on gross receipts from the initial sale of beneficiated coal and the sale of coal that is exempt from the coal severance tax pursuant to NDCC Sections 57-39.2-04 and 57-40.2-04.
- A property tax exemption for each coal conversion facility and any carbon dioxide capture system located at a coal conversion facility pursuant to NDCC Section 57-60-06. The property tax exemption does not apply to the land on which the facility or capture system is located.

FEDERAL TAX INCENTIVES - COAL

Federal tax incentives pertaining to coal include:

- **Percentage depletion for hard mineral fossil fuels** - Pursuant to Sections 611 through 613A and 291 of the Internal Revenue Code, percentage depletion is available for coal and lignite at a rate of 10 percent of gross income from the property. The deduction is limited to 50 percent of taxable income from the property. For corporations, the percentage depletion for coal and lignite is reduced by an amount equal to 20 percent of the percentage depletion that exceeds the adjusted basis of the property.
- **Expensing of exploration and development costs for hard mineral fuels** - Pursuant to Sections 617(a) and 291 of the Internal Revenue Code, a mining company may elect to deduct 70 percent of the cost of domestic exploration and development. The remaining 30 percent of expenses must be capitalized and amortized over a 60-month period. Pursuant to Section 59(e) of the Internal Revenue Code, a taxpayer may elect to capitalize mine exploration and development expenses and amortize those expenses over a 10-year period.
- **Capital gains treatment of coal royalties** - Pursuant to Section 631(c) of the Internal Revenue Code, a taxpayer that owned minerals in place for at least 1 year before the minerals were mined may treat the royalties from the mined coal as long-term capital gains rather than ordinary income.
- **Advanced coal project credits** - Pursuant to Section 48A of the Internal Revenue Code, tax credits equal to 30 percent of qualified investments are allocated to projects that use integrated gasification combined cycle or other advanced coal-based electricity generation technologies to capture and sequester 65 percent of carbon dioxide emissions.
- **Gasification credit** - Pursuant to Section 48B of the Internal Revenue Code, tax credits equal to 30 percent of qualified investments are allocated to gasification projects that capture and sequester at least 74 percent of carbon dioxide emissions.
- **Carbon dioxide sequestration credit** - Pursuant to Section 45Q of the Internal Revenue Code, a credit is available for the sequestration of carbon dioxide captured from industrial sources. The credit is equal to $10 per metric ton, adjusted for inflation, for carbon dioxide used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project. The credit is equal to $20 per metric ton, adjusted for inflation, for carbon dioxide permanently sequestered without first being used as a tertiary injectant.

OIL AND GAS GROSS PRODUCTION TAX

Pursuant to NDCC Chapter 57-51, a gross production tax of 5 percent of the gross value at the well is levied upon all oil produced in the state except a royalty interest in oil produced from an interest held by an organized Indian tribe or produced from a state, federal, or municipal holding. A gross production tax is levied upon all gas produced in the state and is calculated by taking taxable production times an annually adjusted flat rate per thousand cubic feet.

#1 p.3
1-24-17
HB 1028

Exemptions from the gross production tax include:

- Gas used on the lease for production purposes and any royalty interest from gas produced from a state, federal, or municipal holding or from an interest held by an organized Indian tribe.
- Shallow gas produced during the first 24 months of production following the date gas was first sold from a shallow gas well and gas produced from a shallow gas well during testing, but prior to well completion, or during connection to a pipeline pursuant to NDCC Section 57-51-02.4.
- Gas burned at the well site to power an electrical generator that consumes at least 75 percent of the gas from the well pursuant to NDCC Section 57-51-02.5.
- Gas collected at the well site by a system that intakes at least 75 percent of the gas and natural gas liquids volume from the well for beneficial consumption pursuant to NDCC Section 57-51-02.6.

OIL EXTRACTION TAX

The oil extraction tax is levied on the extraction of oil from the earth pursuant to NDCC Chapter 57-51.1. As originally enacted, the tax rate was established at 6.5 percent of the gross value of oil at the well, subject to full or partial exemptions.

Legislation passed during the 2015 legislative session resulted in a significant restructuring of oil extraction tax rates and exemptions. The oil extraction tax rate was reduced from 6.5 to 5 percent, beginning January 1, 2016, and is subject to change depending on the average price of a barrel of crude oil. If the average price of a barrel of crude oil exceeds the trigger price of $90 for 3 consecutive months, the rate increases to 6 percent on all oil extracted. The rate remains at 6 percent until the average price of a barrel of crude oil falls below the trigger price of $90 for 3 consecutive months, at which time the rate reverts to 5 percent on all oil extracted.

The 2015 bill eliminated various exemptions that were dependent on the average monthly comparison price of a barrel of oil dropping below the trigger price in existence before 2016 for 5 consecutive months including:

- A 15-month exemption on the initial production from a vertical well;
- A 24-month exemption on the initial production from a horizontal well;
- An exemption on all oil recovered during the testing period before well completion;
- A 12-month exemption on production from a qualifying well that was worked over;
- A 10-year exemption on production from a certified 2-year inactive well; and
- A 9-month exemption on production from a certified horizontal re-entry well.

A 60-month exemption on the initial production from wells drilled and completed before July 1, 2013, on nontrust lands within the boundaries of an Indian reservation or on lands held in trust by the United States for an individual Indian or tribe, and wells drilled and completed before July 1, 2013, on lands held by an Indian tribe if the interest was in existence on August 1, 1997, was also eliminated after December 31, 2015. A 24-month exemption from oil extraction tax for wells drilled and completed as a horizontal well when the prior triggered rate exemptions were in effect was eliminated on December 1, 2015, as was a reduced tax rate of 4 percent on oil produced from new wells, drilled and completed after April 21, 1987.

Rate reductions eliminated after December 31, 2015, included rate reductions dependent on the average monthly comparison price of a barrel of oil dropping below the trigger price in existence before 2016 for 5 consecutive months. The eliminated reductions previously lowered the 6.5 percent tax rate to 4 percent on:

- Oil produced from a vertical well completed after April 27, 1987, following the first 15 months of exempt production;
- Oil produced from a horizontal well completed after April 27, 1987, following the first 24 months of exempt production;
- Oil produced from a qualifying secondary or tertiary recovery project certified by the Industrial Commission after June 30, 1991; and
- Incremental oil produced from a qualifying secondary or tertiary recovery project, following the initial 5-year or 10-year exemption period.

#1 p. 4
1-24-17
HB 1028

In addition, production on which a rate reduction was dependent on the average price of a barrel of oil falling below $55 for 1 month was eliminated after December 31, 2015. The reduction previously lowered the 6.5 percent tax rate to 2 percent on the first 75,000 barrels, or the first $4.5 million of gross value at the well, whichever was less, of oil produced during the first 18 months after completion. The rate reduction applied only to horizontal wells drilled and completed after April 30, 2009, and before July 1, 2015.

Production that remains exempt from the oil extraction tax after December 31, 2015, includes:

- Liquids produced from a collection system employed to avoid flaring, which are exempt for a period of 2 years and 30 days from the time of first production;
- Production that is exempt from the gross production tax imposed by NDCC Chapter 57-51;
- Production from stripper well property or an individual stripper well;
- Incremental production from a secondary recovery project for 5 years from the date incremental production begins;
- Incremental production from a tertiary recovery project for 10 years from the date incremental production begins; and
- Incremental production from a tertiary recovery project for 5 years from the date incremental production begins if the project is located outside the Bakken and Three Forks Formations.

Incremental production from a tertiary recovery project from a horizontal well drilled and completed within the Bakken and Three Forks Formations is not exempt from oil extraction tax from July 1, 2015, through June 30, 2017, but is thereafter exempt for a period of 5 years from July 1, 2017, or the date incremental production begins, whichever is later.

Production that continues to be subject to a reduced oil extraction tax rate after December 31, 2015, includes production from wells drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation. The first 75,000 barrels of oil produced during the first 18 months after completion are subject to a reduced tax rate of 2 percent on the gross value at the well of oil extracted.

Additional tax incentives pertaining to oil and gas include:

- A sales and use tax exemption for materials used to reduce emissions, increase efficiency, or enhance the reliability of equipment at a new or existing oil refinery or gas processing plant pursuant to NDCC Sections 57-39.2-04.2 and 57-40.2-04.2.
- A sales and use tax exemption for gross receipts from sales of carbon dioxide used for enhanced recovery of oil or natural gas pursuant to NDCC Sections 57-39.2-04 and 57-40.2-04.
- A sales tax exemption for gross receipts from sales of natural gas or sales of fuels used for heating purposes pursuant to NDCC Section 57-39.2-04.
- A sales and use tax exemption for materials used to construct or expand a system used to compress, process, gather, collect, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas processing facility in this state pursuant to NDCC Sections 57-39.2-04.5 and 57-40.2-03.3.
- A sales and use tax exemption for materials used to expand or construct an oil refinery that has a nameplate capacity of processing at least 5,000 barrels of oil per day pursuant to NDCC Sections 57-39.2-04.6 and 57-40.2-03.3.
- A sales and use tax exemption for materials used to construct or expand a processing facility to produce liquefied natural gas pursuant to NDCC Sections 57-39.2-04.10 and 57-40.2-03.3.
- A sales tax exemption for materials used to construct or expand a system used to compress, gather, collect, store, transport, or inject carbon dioxide for use in enhanced recovery of oil or natural gas pursuant to NDCC Sections 57-39.2-04.14 and 57-40.2-03.3.
- A property tax exemption for equipment, machinery, tools, materials, and property necessary, and actually being used at the site of a producing well, for the production of oil and gas pursuant to NDCC Section 57-51-04. The property tax exemption expressly does not apply to drilling rigs, gasoline extraction or absorption plants, water systems, fuel systems, hospitals, residences, and various other buildings.

#1 p 5
1-24-17
HB 1028

- A property tax exemption for any equipment directly used for enhanced recovery of oil or natural gas pursuant to NDCC Section 57-60-06. The property tax exemption does not apply to the land on which the equipment is located.

- A property tax exemption for property, exclusive of land, and necessary associated equipment for the transportation or storage of carbon dioxide for use in enhanced recovery of oil or natural gas pursuant to NDCC Section 57-06-17.1. The property tax exemption applies for the first 10 full taxable years following the initial operation of the pipeline, but does not apply to the land on which the property and associated equipment is located.

FEDERAL TAX INCENTIVES - OIL AND GAS

Federal tax incentives pertaining to oil and gas include:

- **Expensing of intangible drilling costs** - Pursuant to Sections 263(c) and 291 of the Internal Revenue Code, taxpayers may elect to expense, rather than capitalize, intangible drilling costs paid or incurred in the development of oil or natural gas property.
- **Cost and percentage depletion for oil and natural gas wells** - Pursuant to Sections 611 through 613A and 291 of the Internal Revenue Code, taxpayers with an economic interest in a producing mine or oil and gas property may elect to use cost depletion or percentage depletion. Cost depletion is limited to the taxpayer's basis in the property. Percentage depletion is subject to limitations based on the net income derived from the property and taxable income. Percentage depletion is available only to independent producers and royalty owners. Integrated oil and gas companies must use cost depletion.
- **2-year amortization period for geological and geophysical expenditures** - Pursuant to Section 167(h) of the Internal Revenue Code, independent producers of oil and natural gas may amortize geological and geophysical expenditures over a 2-year period.
- **Deduction for tertiary injectants** - Pursuant to Section 193 of the Internal Revenue Code, a taxpayer engaged in petroleum extraction activities may deduct, rather than capitalize, qualified tertiary injectant expenses incurred in the recovery of crude oil.
- **Exception to passive loss limitation for working interests in oil and natural gas properties** - Pursuant to Section 469 of the Internal Revenue Code, a taxpayer that owns a working interest in a manner that does not limit the taxpayer's liability may offset active income with losses from the working interest in the oil and gas property.
- **Enhanced oil recovery credit** - Pursuant to Section 43 of the Internal Revenue Code, a taxpayer is allowed a 15 percent credit for expenses associated with an enhanced oil recovery project using one or more tertiary recovery methods. The credit phases out if the crude oil reference price in the prior taxable year exceeds $28 per barrel, indexed for inflation, by at least $6.
- **Marginal well credit** - Pursuant to Section 45I of the Internal Revenue Code, a $3 credit per barrel, adjusted for inflation, applies to production of crude oil from a marginal well. A 50 cent credit per thousand cubic feet, adjusted for inflation, applies to production of natural gas from a marginal well. Marginal wells are defined as wells with an average daily production of no more than 25 barrels per day.
- **Carbon dioxide sequestration credit** - Pursuant to Section 45Q of the Internal Revenue Code, a credit is available for the sequestration of carbon dioxide captured from an industrial source. The credit is equal to $10 per metric ton, adjusted for inflation, for carbon dioxide used as a tertiary injectant in a qualified enhanced oil or natural gas recovery project. The credit is equal to $20 per metric ton, adjusted for inflation, for carbon dioxide permanently sequestered without first being used as a tertiary injectant.

#2
1-24-17
HB 1028

EMPOWER

North Dakota
LEGENDARY

DEPARTMENT OF COMMERCE TESTIMONY ON HOUSE BILL 1028
JANUARY 24, 2017, 9:00 A.M.
HOUSE FINANCE AND TAXATION COMMITTEE
REPRESENTATIVE CRAIG HEADLAND, CHAIRMAN

JUSTIN DEVER – CO-DEPUTY COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Justin Dever and I serve as a Co-Deputy Commissioner for the North Dakota Department of Commerce. The Commissioner of Commerce serves as chairman of the EmPower North Dakota Commission.

On behalf of the EmPower ND Commission, I am here today to speak in favor of House Bill 1028. This is a bill that was drafted and approved by the interim Energy Development and Transmission committee based upon a recommendation of the EmPower ND Commission. A full list of the Commission's recommendations can be found in the report, which is available on the EmPower ND website at www.EmPowerND.com. The EmPower ND Commission operates on a consensus basis and all recommendations were approved unanimously.

The EmPower ND Commission recommends that the legislature "remove the sunset provision on the sales tax exemption provided for the construction of wind powered electrical generating facilities." This recommendation is part of an ongoing effort by the EmPower ND Commission to achieve parity in the way state tax policy treats the various energy sectors. Last session, the legislature made progress in this regard by approving SB 2037 (2015) which removed income tax and property tax incentives for new wind projects.

The state currently provides a sales tax exemption for equipment related to electrical generation facilities, whether it uses wind, natural gas or coal to generate the power. On December 31, 2016, the sales tax exemption for wind expired, while the exemption related to other fuel sources will continue indefinitely. The EmPower ND Commission is asking that this sunset be removed and that all fuel sources be treated equally.

Mr. Chairman and members of the Finance and Taxation Committee, the EmPower ND Commission respectfully request your favorable consideration of House Bill 1028. That concludes my testimony and I am happy to entertain any questions.

#3 p. 1
1-24-17
HB 1028

Testimony of Brad Tollerson
Otter Tail Power Company
Before the House Finance & Taxation Committee
January 24, 2017

Mr. Chairman and members of the Committee, for the record my name is Brad Tollerson. I serve as Vice President of Planning and Strategy for Otter Tail Power Company. I submit the following comments regarding my company's support for the sales and use tax exemption for wind generation equipment.

Otter Tail Power is a public utility operating in Minnesota, North Dakota, and South Dakota. Our company is the largest subsidiary of Otter Tail Corporation, whose corporate offices are in Fargo and Fergus Falls. Otter Tail Corporation is a diversified public utility holding company with electric and manufacturing segments. The manufacturing segment includes Fargo-based Northern Pipe Products, a PVC pipe manufacturer, and Detroit Lakes-based BTD Manufacturing, a metal fabricator.

Otter Tail Power Company currently operates three coal-fired plants—including Coyote Station near Beulah. We and our Coyote Station co-owners, Montana-Dakota Utilities, NorthWestern Energy, and Northern Municipal Power Agency (which provides power to Grafton and Park River) recently entered a 25-year lignite supply agreement with a subsidiary of the North American Coal Corporation—making a long-term commitment to the North Dakota lignite industry. In addition, we own or purchase the energy output of 248MW of wind generation in North Dakota. This wind generation is near Edgeley, Langdon, Ashtabula, and Luverne. Our resource plan calls for an additional 200-300MW of wind—and simple-cycle natural gas generation to meet our customers' upcoming needs. We hope to add 150MW of wind generation in McIntosh and Dickey Counties. We support legislation to eliminate the sunset on the sales and use tax exemption for wind generation equipment. We believe the exemption should be made permanent, just as it is for generation equipment from other fuel sources. The exemptions yield investment in the state - - growing the energy industry, along with the component manufacturing and service industries that support it.

#3 p. 2
1-24-17
HB 1028

We have heard some legislators express concern that zero marginal cost wind generation is displacing generation from lignite units. While we acknowledge that wind and low natural gas prices have contributed to reduced coal generation, eliminating the sales and use tax exemption is not in North Dakota's best interests. I will step through a few factors that show why.

First, all of the utilities and electric generators operating in North Dakota participate in one of two Regional Transmission Organizations (RTOs) as shown in Figure 1. Great River Energy, Minnkota Power Cooperative, ALLETE/Minnesota Power, Montana-Dakota Utilities, Otter Tail Power, and Xcel Energy all participate in the centralized energy markets of the Midcontinent Independent Transmission System Operator also known as MISO. Basin Electric and the Western Area Power Administration, or WAPA, participate in similar markets in the Southwest Power Pool (SPP). Within each of these RTOs, all of the generation is centrally dispatched to meet electricity demand while minimizing cost. Therefore, lignite generation competes with all other generation across a large geographic footprint—whether from wind, solar, nuclear, hydro, natural gas, or Powder River Basin coal. For MISO, that region reaches from North Dakota east to Michigan and south to Louisiana. For SPP, that region extends south to Oklahoma and Texas. Therefore, wind generation in any other state can displace generation from lignite—just as wind generation in North Dakota can displace generation from Powder River Basin coal in other states. It's important to note that units utilizing North Dakota lignite are among the lowest cost coal assets in the MISO footprint due to mine-mouth operations—avoiding the extra rail cost incurred for transportation to most plants. For Otter Tail, that means that Coyote Station is our lowest marginal cost unit since both Big Stone and Hoot Lake rely on rail to transport Powder River Basin fuel.

#3 p.3
1-24-17
HB 1028

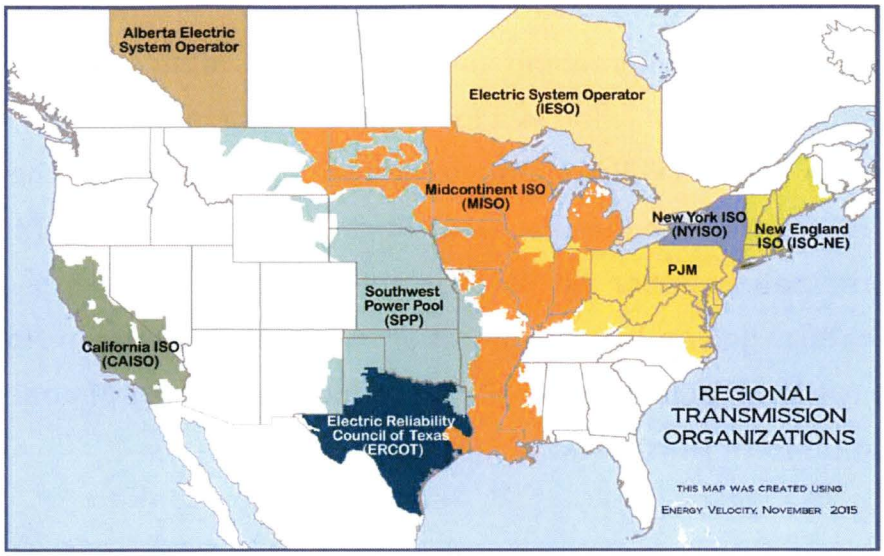


Figure 1

Secondly, North Dakota has great wind resources as shown in Figure 2, but so do many other states across the two RTOs—namely South Dakota, southwest Minnesota, Iowa, Nebraska, Kansas, and Oklahoma. Like other rate regulated utilities, Otter Tail seeks out projects with the lowest cost to serve our retail customers—over 40% of which are located in North Dakota. Therefore, unless other factors constrain our decision making—we will look for the lowest-cost energy resources. State tax policies play a role in cost.

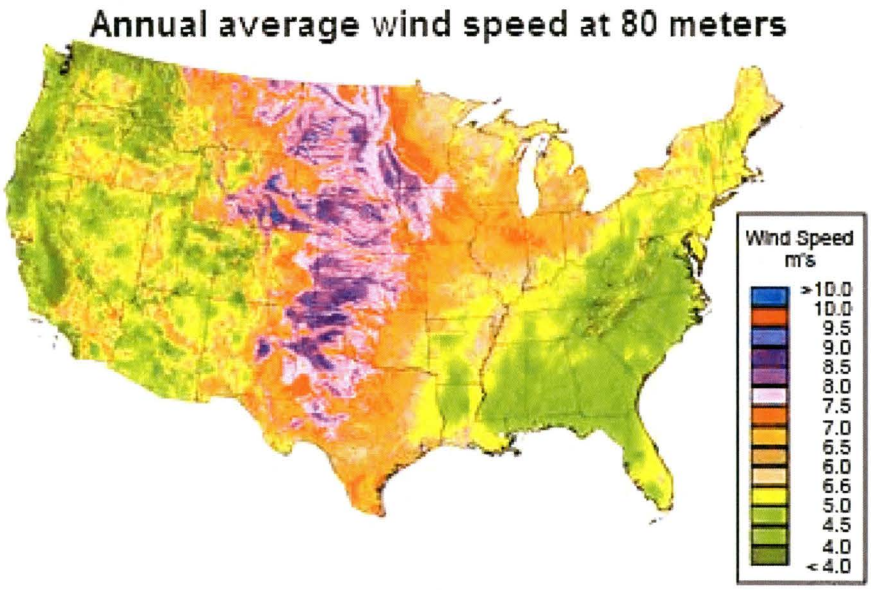


Figure 2

#3 p.4
1-24-17
HB 1028

As we're all aware, continuing social and political pressures—whether we agree with them or not—will continue to drive increasing amounts of renewable energy. In addition, for many companies like Otter Tail, wind is a least-cost resource that helps keep consumer rates low. Therefore, utilities will continue to add wind generation to the grid—and seek to add this wind in states with the lowest costs. Furthermore, since all of the utilities in North Dakota participate in either the MISO or SPP centralized markets—power plants built to use low-cost natural gas and wind generation, whether it is built in North Dakota or elsewhere in the footprint of MISO or SPP, will reduce the output of coal generation—including generation from North Dakota lignite.

However, if North Dakota tax policy is less hospitable, wind may instead be constructed in nearby states—resulting in the same negative consequences for the lignite industry. We need all kinds of energy to grow North Dakota's economy. We encourage North Dakota to make itself as attractive as possible for all forms of energy. Preserving the sales and use tax exemption for wind generation equipment will help North Dakota continue to capture the economic benefits of landowner easement payments, increased property tax revenues, construction and permanent job growth, and component manufacturing and service industry growth. In addition, it will pave the way for new transmission assets that will further enhance North Dakota's well-deserved reputation as a center of energy growth.

In conclusion, Mr. Chair and members of the committee, Otter Tail Power Company strongly supports the sales and use tax exemption for wind generation and urges your support for the legislation. Thank you and I am happy to take any questions you may have.

#4 p.1
1-24-17
HB 1028

Xcel Energy Testimony
House Finance & Taxation Committee
January 24, 2017

Mr. Chairman and members of the Committee, my name is Mark Nisbet, ND Principal Manager for Xcel Energy. On behalf of Xcel Energy we urge a yes vote on HB 1028 to extend the sales and use tax exemption for wind generated electric producing facilities.

Xcel Energy is a major U.S. electricity and natural gas company with regulated operations in eight Midwestern states. Xcel Energy provides a comprehensive portfolio of energy-related products and services to 3.5 million electricity customers and 2 million natural gas customers through its regulated operating companies. In North Dakota, Xcel Energy serves approximately 95,000 electric customers and 55,000 natural gas customers. Xcel Energy has been providing service to customers in North Dakota for over 100 years. In 2015, Xcel Energy paid $3.2 million in property tax in North Dakota. In 2016, we expect to pay a total of $4,650,000 in property tax in North Dakota.

We do not believe this is the end of Xcel Energy's investment interest in North Dakota. As we continue to expand our generation, wind will be part of our mix. We also hope to develop natural gas generation in North Dakota, which is a strong partner to wind generation. Wind is an important part of our energy mix and is helping reduce costs compared to other sources of generation. As technology improves, wind generation has become more efficient while coal transportation costs have escalated.

Most of our generation projects go through a competitive process. These projects can be sited in any of the states in our regional footprint. Currently, South Dakota, Minnesota and Wisconsin all have a full or partial sales tax exemption. This legislation is one of the tools that makes North Dakota a viable option for future investments.

Unless the 2017 legislature acts to provide parity in generation sales and use tax exemptions, wind will be the only generation source paying sales and use tax. That will mean wind generation is taxed more heavily in ND than all other sources of generation. Sales and use tax exemptions exist permanently for all other electric power production sources in North Dakota, including coal plants. The state provides a sales and use tax exemption for other sectors of the economy, including: construction materials used in building an agricultural processing facility; machinery/equipment used for manufacturing, ag commodity processing or

#4 p.2
1-24-17
HB 1028

recycling; tangible personal property used to construct or expand a system to compress, gather, collect, store, transport, or inject C02; tangible personal property used to construct or expand a coal gasification facility; building materials, equipment, tangible personal property used to construct or expand a gas processing facility; and tangible personal property used to construct or expand a liquefied natural gas facility.

During the past decade, as the wind industry has matured in North Dakota the state has phased out both the income tax credit for installing wind devices and the reduced property (ad valorem) tax rates in exchange for a production-based tax, which is based on capacity and energy that is comparable to the tax on other generation sources, including coal and natural gas.

Opponents of this exemption often note that no matter how equitable North Dakota's tax framework is, wind is subsidized by the federal production tax credit (PTC). While it is true the PTC has supported wind development, 2016 was the last year to qualify for the full PTC. Wind projects that started construction in 2016 receive a full value PTC. For projects that begin construction in 2017, the credit is at 80 percent of full value; in 2018, 60 percent PTC; and in 2019, 40 percent PTC.

This is not is not a good time for the State of North Dakota to step back from being aggressive in pursuit of projects that are competitive in nature and are not constrained by state boundaries. With a measureable impact from the state sales tax exemption Xcel Energy chose two North Dakota wind projects from our last round of requests for proposals.

- In Rolette County, ND, construction was completed on the $260 million dollar 150-MW Border Winds Farm, creating 10 full-time jobs. The project employed 150 people during peak construction. It will generate $605,000 annually in local tax revenue and is projected to provide landowners with $13.3 million in payments over 20 years. In 2015, we paid $391,000 in property tax on this project.
- Xcel Energy broke ground on a 200-MW wind farm project in Courtenay, ND in September 2015. The more than $300 million dollar investment will create about 200 construction jobs and 14 full-time jobs, while providing an estimated $900,000 annually in local tax revenue and pay landowners approximately $20 million in payments over 20 years. In 2016, we anticipate paying about $450,000 in property tax on this project.

#4 p.3
L2417
HB 1028

In addition, our ratepayers benefited from the lower overall cost of the project. The state has benefited from the jobs and long term property taxes that these projects create. The landowners benefit by having a steady source of income during times of uncertain commodity prices. Xcel Energy has appreciated North Dakota's focus on providing a great business climate, and we urge you to continue to support a pro-business climate that will allow North Dakota's economy to grow through energy production.

Mr. Chairman and members of the Committee, on behalf of Xcel Energy, I ask you for your support of HB 1028 retaining the wind electrical generating facilities sales tax exemption. This concludes my testimony and I am happy to answer questions.

#5 p.1
1-24-17
HB 1028

MDU RESOURCES
GROUP, INC.

1200 W. Century Ave.
Bismarck, ND 58503
Mailing address:
P.O. Box 5650
Bismarck, ND 58506-5650
(701) 530-1000
www.MDU.com

House Finance & Tax Committee
January 24, 2017
Chairman Craig Headland
In support of HB 1028
Cory Fong, MDU Resources, Group, Inc.

Hello Chairman Headland and members of the House Finance and Taxation Committee.

My name is Cory Fong. I am the Director of Communications and Public Affairs for MDU Resources Group, Inc., headquartered here in Bismarck. I appear before you today on behalf of one of our family of MDU Resources Group companies, Montana-Dakota Utilities, also headquartered here in Bismarck.

Thank you for the opportunity to appear before you today in support of the sales and use tax exemption for wind devices, contained in section 57-39.2-04.2 of the North Dakota Century Code, which expired at the end of this year, and to encourage your favorable consideration of HB 1028 that would extend the tax exemption.

MDU serves 143,000 electric customers in North Dakota, South Dakota, Montana, and Wyoming, 92,000 of those customers are in 150 communities in North Dakota. MDU has roughly $1.4 billion in assets in North Dakota, 567 full and part-time employees representing an annual payroll of $49.7 million, and, for 2015, we paid $3.7 million in property taxes in the state.

Included in our $1.4 billion in assets in North Dakota are two of MDU's wind farms. Our Cedar Hills wind farm, near Rhame, has a capacity of 19.5 megawatts of electricity, and our newest wind farm, Thunder Spirit near Hettinger, has a capacity of 107.5 megawatts. These two wind farms represent approximately $256 million in capital investment.

Not only has the state of North Dakota and its communities benefited from the capital investment associated with these two projects (and many others developed by other power companies), wind generation projects provide important local economic benefits, such as property taxes and lease payments to landowners. Including our estimate for 2016, MDU has paid nearly $360,000 in property taxes to Bowman County for our Cedar Hills wind farm during the past six years. Our Thunder Spirit Wind farm is subject to the in-lieu-of tax based on capacity and actual production and will pay Adams County approximately $275,000 for 2016 and approximately $500,000 annually beginning in 2017. And, during this same period, MDU has paid landowners in these counties nearly $775,000 in lease payments for the use of their land. Beginning in 2017, MDU's lease payments to landowners for both wind farms will amount to approximately $493,000 annually.

MDU also recently announced Thunder Spirit Wind II, signing a 25-year agreement with a subsidiary of ALLETE Clean Energy (ACE) to purchase the power from the new wind farm they will design and build. The agreement includes an option for Montana-Dakota to buy the project at the close of construction. The expansion will boost the combined production at the wind farm to approximately 150 megawatts of renewable energy and will increase Montana-Dakota's generation portfolio from approximately 20 percent renewables to 25 percent. The expansion includes 13 to 16 turbines, depending on the turbine size selected, and will be constructed by ACE. Construction costs for the project are estimated to be $85 million. It is expected to be online in December 2018.

#5 p.2
1-24-17
HB 1028

So, why am I here today on behalf of MDU advocating for the sales and use tax exemption for wind devices and encouraging your favorable consideration of the bill before you?

Customer Savings

First, it's about our customers. This incentive actually does little to nothing to directly benefit an Investor Owned Utility company, like MDU, or its shareholders.

Rather, the benefit of the incentive is passed on to customers in the form of reduced rates. So, we are here asking to keep in place the sales and use tax exemption for wind generation on behalf of our customers. The benefit occurs through reducing our capital investment, which is part of what the Public Service Commission uses to set rates and determine the amount of revenue that our company is authorized to collect. Taxes are included in the total cost of a project, and thus are also included in the rate base. With the sales and use tax exemption, the total project costs are lower, which allows the PSC to approve lower revenue for our company, in turn resulting in lower retail electric rates for our customers.

Since our customers include manufacturing and retail operations, lower electric rates for those customers translate into reduced costs that are passed on to the consumers of the goods and services they provide. Lower electric rates also help the manufacturing sector be more competitive, which can lead to growth and employment opportunities.

The state and local governments are also among MDU customers, which means lower electric rates for those customers translates into important cost savings to them as well.

MDU used the sales and use tax exemption for wind devices on our Cedar Hills wind farm in 2010, resulting in savings of $1.8 million that was passed on to our customers. ALLETE Clean Energy also used the sales and use tax exemption for wind devices in the construction of the Thunder Spirit wind farm, which MDU purchased at the end of 2015. Had ALLETE not had the tax exemption, our purchase cost would have been $6-$7 million higher, which our customers would have had to pay through rates.

Collectively, our two existing North Dakota wind projects, Cedar Hills and Thunder Spirit, resulted in a dozen permanent, full-time jobs, not to mention the hundreds of jobs created during construction and the dollars they spent in local communities during construction and continued operations. And our recently announced Thunder Spirit II will result in even more permanent and construction-related jobs and investment in local communities.

Keeping North Dakota Competitive for Wind

The second reason I am here today advocating for the sales and use tax exemption is to keep North Dakota competitive for wind development. We are sometimes asked, do these incentives make a difference in whether a project happens? They do. The cost of the project, including taxes, is considered along with other key factors, such as proximity to electric transmission, proximity to customer load, and the wind capacity production factor. Reducing the sales and use tax on a project creates significant upfront savings, which can be the deciding factor in the financial viability of a project.

And, the availability of incentives, like the sales and use tax exemption, can have a significant influence on where a project occurs. MDU, like other utilities in the region, operates in multiple states. These states have varied tax policies, which are part of the consideration as potential locations are reviewed for factors that impact the total cost of a project. So the tax environment and incentives are important and can be a deciding factor as states compete against each other for these investments.

Recognizing that the wind industry has matured in North Dakota during the past decade, the state has phased out both the income tax credit for installing wind devices and the reduced property (ad valorem) tax rates in exchange for a production-based tax, which is based on capacity and energy that is comparable to the tax on other generation sources, including coal and natural gas. MDU was supportive of these tax changes, but North Dakota risks becoming less competitive and less attractive for wind development without the sales and use tax exemption as compared to other neighboring states. That's why extending the sales and use tax exemption is so important to us and other companies that are looking

#5 p.3
1-24-17
HB 1028

to develop wind projects in North Dakota in the future. The sales and use tax exemption is the one remaining incentive for wind that keeps North Dakota in the running for future development.

Of the states where MDU operates, Montana does not have a sales tax. And, in South Dakota, companies don't pay income taxes; plus, during the past few years, South Dakota has changed its property tax structure, making it more attractive for wind development.

In addition to the economic reasons to encourage wind development in North Dakota, if carbon emission regulations are implemented today or in the future, North Dakota wind generation might be used to offset carbon emissions from others sources of generation in the state. If these wind generation resources are built elsewhere then limitations may exist whereby carbon emission offsets produced in another state may not be eligible to be used in North Dakota.

Tax Fairness

Finally, I ask you to support the sales and use tax exemption for wind projects because it creates fairness and parity in our tax system. Sales and use tax exemptions exist permanently for all other electric power production sources in North Dakota that generate 100 kilowatts or more, including coal plants. Likewise, the state provides a sales and use tax exemption for other sectors of the economy, such as:

- construction materials used in building an agricultural processing facility;
- machinery/equipment used for manufacturing, ag commodity processing or recycling;
- tangible personal property used to construct or expand a system to compress, gather, collect, store, transport, or inject CO_2;
- tangible personal property used to construct or expand a coal gasification facility;
- computer and telecommunications equipment;
- building materials, equipment, and other tangible personal property used to construct or expand a gas processing facility; and
- tangible personal property used to construct or expand a liquefied natural gas facility.

Presumably, these exemptions were intended to incentivize the development of these industries in North Dakota, and we feel the state should also want that for wind energy.

Even the Empower North Dakota Commission, which consists of representatives from all significant energy sectors, recognized the need for parity and has recommended that the sales and use tax exemption be made permanent for all forms of energy generation. It puts generation sources on a level playing field with respect to state policy, allowing our utilities to plan for the type of generation that is best for their customers and the market in which they operate.

The bottom line is that extending the sales and use tax exemption for wind devices is good for North Dakota consumers, including MDU's 92,000 electric customers. It keeps electric bills lower for residential and business customers, keeps North Dakota competitive as a location for wind projects, and it promotes fairness and certainty in our state tax system, which is inherent to a good business climate.

Thank you again for allowing me to appear before you, Chairman Headland and members of the Committee, and I respectfully encourage your favorable consideration of HB 1028 before you today that would extend the sales and use tax exemption for wind devices.

USND
Utility Shareholders
of North Dakota

#6
1-24-17
HB 1028

PO Box 1856
Bismarck, ND 58502
701-258-8864
1-800-981-5132
www.usnd.org

House Bill 1028—Testimony in Support

House Finance and Tax Committee, Chairman Headland

January 24, 2017

Chairman Headland, members of the committee, I am Carlee McLeod, president of the Utility Shareholders of North Dakota. I appear before you to support HB 1028 and to provide information from an ongoing study of the economic impact of the wind industry in North Dakota being performed by the Department of Agribusiness and Applied Economics at NDSU.

As of 2016, North Dakota had a total wind generating capacity of 2,488 MW, with another 504 MW under construction for a total of 2992 MW. Often, the focus of industry testimony has been on the upfront investments of construction. While construction and manufacturing data is still being studied, this study has focused on ongoing operations.

The ongoing economic impact of wind generation in North Dakota was estimated to be $169.3M in 2016, with $61.7M in direct impacts (in-state retail expenditures, wages, salaries, lease payments) and $107.6M in secondary impacts. While the majority of FTEs occur during construction or in the manufacture sectors not yet represented in study results, ongoing operations account for approximately 500 FTEs in the state, including 136 direct FTEs and 364 secondary impact FTEs. As a result of those ongoing operations, tax revenues to the state and local political subdivisions were approximately $9,375,575 in 2016, comprised of $2,556,000 in sales and use tax, $857,000 in personal income tax, $315,000 in corporate income tax, and $5,647,575 in property tax.

Construction and manufacturing data will continue to be analyzed for inclusion in this study. Today, you will hear from a construction company about its involvement in the industry. From the manufacturing side, I can only share employment numbers at this time. There are over 850 jobs in ND directly involved in the manufacturing of wind tower components.

#7 p. 1
1-24-17
HB 1028

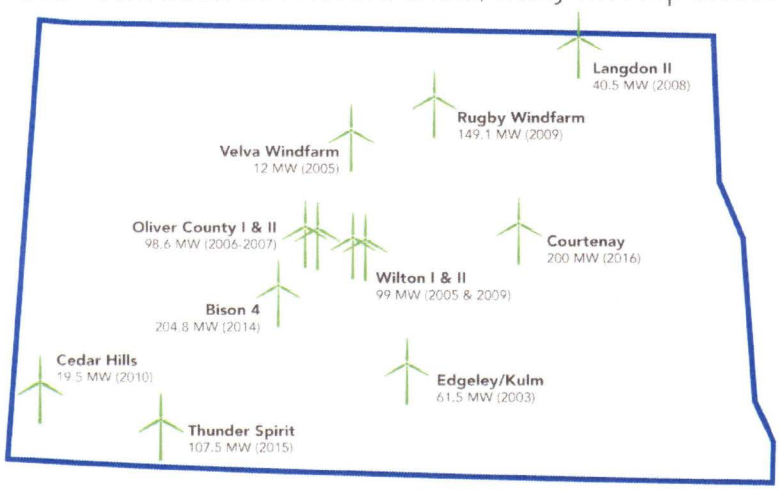
WANZEK
a MasTec company

Testimony of Randy Johnson
Wanzek Construction, Inc.
ND House Finance and Taxation Committee
January 24, 2017

Good morning, Mr. Chairman and members of the committee. My name is Randy Johnson and I am the Vice President of Corporate Services at Wanzek Construction, Inc., headquartered in West Fargo. Thank you for the opportunity to speak in support of House Bill 1028. We strongly believe that a sales and use tax exemption for the construction or expansion of a wind-powered generation facility would encourage the continued development of renewable energy in North Dakota and would generate revenue that would otherwise not be realized in our state.

As I mentioned, I represent Wanzek Construction, Inc., who has a history rich in some of North Dakota's very first renewable energy projects. Founded in 1971 on a family farm, Wanzek has evolved with the needs of a changing market and forward-thinking clients. Wanzek installed its first turbine in 2001, and now 16 years and nearly 7,500 installed megawatts later, Wanzek continues to pride itself on building renewable energy solutions for clients with big ideas to power our towns, cities, states and nation with renewable energy.

Wanzek has served clients over 75 renewable projects for owners and off-takers that include NextEra Energy Resources, Basin Electric, Minnesota Power, Allete Clean Energy, Montana-Dakota Utilities Co., Xcel Energy and Otter Tail Power among others. Twelve of these projects, noted in this handout, have been constructed in North Dakota, many with repeat clients. Renewable projects such as these do so much more than just generate power. They provide jobs, tax revenue, opportunities for subcontractors and material suppliers. They provide opportunities for the hospitality industries to provide Wanzek employees with housing, meals and entertainment. Small and diverse local businesses see opportunities to promote job creation and growth through revenue realized from renewable energy projects.



While Wanzek is also active in the Industrial Agriculture, Oil & Gas, Power and Heavy-Civil industries, 85% of our revenue is a direct result of renewable projects. Last year, 615 Wanzek employees contributed to construction projects in North Dakota, including the installation and maintenance of renewable energy projects. Incentives and bills such as HB 1028 ease the financial burden of the up-front costs associated with wind energy, giving contractors such as Wanzek, the ability to hire, train

#7 p. 2
1-24-17
HB 1028

and promote ND residents and tax payers in addition to attracting exceptional talent to projects in our state.

Beyond renewable energy construction, we have also realized that once a turbine is fully operational and effectively generating electricity, we want to keep it that way. Our renewable energy services team ensures generators, gearboxes and blades are replaced safely, gear and hydraulic oil changes happen efficiently and skilled technicians minimize turbine downtime. This emerging market of maintaining wind energy generates additional revenue, jobs and growth for Wanzek. You'll notice included in this handout is a photo of a turbine maintenance project completed right here in North Dakota.

Wanzek Renewable Services performs maintenance work for Otter Tail Power Company at Ashtabula Windfarm near Luverne, North Dakota.

Our teams are also dedicated to the communities in which they work. For those working on-site, these rural North Dakota communities become a home away from home. Wanzek acknowledges this and budgets for community involvement at each of our sites. Our most recent North Dakota projects received over $15,000 in Wanzek support for community improvement efforts.

In conclusion, I respectfully encourage you to enact legislation that would incentivize the continuation of renewable energy construction, the creation of jobs and the promise of renewable power for our future generations.

Thank you for your consideration, time and attention on this matter.

Randy Johnson, VP Corporate Services
701-893-3640 | rjohnson@wanzek.com

#8
1-24-17
HB 1028

GNDC
Greater North Dakota Chamber

January 24, 2017
The Honorable Representative Craig Headland
Finance and Taxation Committee
Re: Support for House Bill 1028

Chairman Headland and members of the committee:

My name is Brent Bogar and I am representing the Greater North Dakota Chamber. The GNDC works on behalf of all our members to support building a strong, vibrant business climate in North Dakota. Knowing that it is important that we have a business climate that creates parity and encourages competition and investment GNDC stands today in support of HB 1028.

GNDC has and does support the Empower Commission and appreciates the efforts the commission has made in its mission to developing a comprehensive energy policy for the state. This policy supports the advancement of all sectors of the energy industry, an "all of the above" approach to energy development. GNDC believes that the representative mix of the Empower Commission has helped the state develop legislation, incentives and polices that make its energy policy a model for others to follow by recognizing all sectors and their importance to energy development.

The energy industry is vital to North Dakota's economy by creating jobs, generating local and state tax revenue, and assisting with maintaining lower energy costs to businesses and consumers. Job creation, appropriate tax policy that encourages investment and development, and lower costs of doing business are all primary tenants of GNDC's policy to make North Dakota the most business-friendly state in the country.

GNDC believes that by supporting and encouraging investment in the energy sector the Legislature will help North Dakota maintain its role as major producer of all energy sources, a leader in responsible energy development, and continued economic diversification and growth.

HB 1028 encourages the continuation of a policy that has led to the development of an energy sector that not only diversifies the energy mix of North Dakota, but also provides diversification of economic activity and supports a healthy business environment.

Chairman, members of the committee GNDC urges a Do Pass on HB 1028 and I would stand for any questions you may have.

Champions for Business
PO Box 2639 P: 701-222-0929
Bismarck, ND 58502 F: 701-222-1611
www.ndchamber.com

#9 p.1
1-24-17
HB 1028

Chairman Headland and members of the House Finance and Taxation Committee, my name is Elsie Blair Magnus. I am a county commissioner in Cavalier County, where one of the North Dakota wind farms has benefitted Cavalier County and portions of Ramsey and Walsh Counties for several years. The additional revenue has helped provide top notch services to our constituents. This chart lists the 2015 property tax receipts as allocated to Cavalier County and the portion of Ramsey and Walsh County where the wind farm is located.

County receipts		
		$214,192.00
School receipts		
	Langdon	$86,089.00
	Edmore (Ramsey)	$49,747.00
	SUB TOTAL	**$135,836.00**
Fire		
	Fairdale (Walsh)	$805.00
	Langdon	$1,586.00
	Nekoma	$3,136.00
	Osnabrock	$296.00
	SUB TOTAL	**$5,823.00**
Twp/City		
	Easby TWP	$5,500.00
	Nekoma TWP	$12,539.00
	Osnabrock TWP	$10,057.00
	Perry TWP	$5,593.00
	SUB TOTAL	**$33,689.00**
TOTAL	**School, Fire, Twp/City**	**$175,348.00**
TOTAL	**County, School, Fire, City, TWP**	**$389,540.00**

The additional $389, 540.00 has been significant as we work to balance our budget in a county with a population of 3896 as noted in the 2013 census. We strive to keep the many young families who have returned to the county recently and we are happy to have recorded a recent population increase. In the last year 60 babies were born in our county, perhaps not due to the wind towers.

In addition to property tax, the building of the wind farm in our area has been a significant economic boost through construction payments, the influx of 200+ construction workers, a permanent workforce of 10 employees, and ongoing land-owner lease payments.

In this time of economic downturn, the wind farm brings additional income not only to the entities that benefit from property tax, but also to the landowners who received lease payments. It has also spiked

interest in training for jobs related to the wind farm. Lake Region State College, in nearby Devils Lake in Ramsey County, developed the Wind Energy Technician course, the first of its kind in North Dakota. It is being taught by a Cavalier County resident.

Chairman Headland and members of the committee, I believe it is only fair for wind to receive the parity that other forms of electric generation and other entities within the state receive. What is sauce for the goose is sauce for the gander.

I ask for your support for HB 1028. Thank you.

#10
1-24-17
HB 1028

Testimony for
House Finance and Taxation Committee
January 24, 2017
Prepared by:
Casey Bradley, Stutsman County Auditor/COO

HB 1028: Continuation of Sales Tax Exemption for Windfarms

I would like to thank Chairman Headland and committee members for the opportunity to address HB 1028. My name is Casey Bradley; I currently serve as the Auditor and Chief Operating Officer for Stutsman County. Stutsman County just recently had the Courtenay Windfarm complete construction and has another development considering locating in Stutsman and Barnes Counties. There are a multitude of factors used to make the final determination of locating a project in a community. Sales tax is certainly one of those factors and is currently allowed for new construction of power plants in other industries as an exemption. Too keep North Dakota competitive and to continue to attract these types of developments while maintaining parity within the power generation industry the passage of this bill is key.

As we have seen in Stutsman County, the development of the Courtenay Wind Farm in rural areas that haven't seen a significant development in many years has been widely supported and welcomed by even those who are not benefiting directly from having a tower sited on their property. At our public hearings we had several people indicate to the Zoning Board that they were in support of the project even though they were not within the project footprint. Much of this support is geared around the amount of taxable value that is created by these projects. Likewise, with the inconsistency of the agricultural markets these projects provide a steady revenue stream to the landowners with minimal impact to their farming operations.

For the Courtenay Windfarm, it is estimated that the local units of government will take in about $850,400 per year which equates to $17,008,000 of new tax revenue over the course of the 20 year life expectancy of this project. This anticipated revenue is vital to not only the county but also to every local taxing jurisdiction that is benefiting from it. I know the rural fire district has looked at using these funds to build a new fire hall and several of the townships have discussed lowering their mill levies so everyone sees a benefit. At the county level the anticipated revenue has helped lessen the loss of other revenue sources such as State Aide which would likely have to have been substituted with property tax or with cuts to services.

Wind Farms have been a substantial boost to rural economies and provide some economic consistency across the state at a time when we are seeing many other industries experience downturns. We need to continue to be competitive with other states in the wind industry and provide incentives in areas that are viable and beneficial to all stakeholders. I believe HB 1028 is one of those areas that has minimal impact on all stakeholders and for that reason I request your do pass recommendation on HB 1028.

#11
1-24-17
HB 1028

THE HARMS GROUP

HB 1028

January 24, 2017

House Finance and Tax Committee

Mr. Chairman, Members of the Committee:

My name is Frank B. Costanza. I am executive vice-president of Tradewind Energy, Inc. We **SUPPORT** HB 1028 and urge a DO PASS recommendation to your colleagues in the House of Representatives.

Tradewind Energy, is an independent wind-developer that has been in business since 2003 and developed the Lindahl Wind Project north of Tioga. The Lindahl Project— was developed by local landowners themselves and featured:

- -150 MW of new power into the Bakken region
- -13,000 acre foot print; approximately 75 towers
- -28 landowners (who developed their own land lease)
- -$250 million investment
- -100 construction jobs
- -12 permanent jobs after construction
- -Low-cost power to local market in need of power, as per ND Transmission Authority (2012)
- -25 year power purchase agreement with Basin Electric-executed November, 2014
- -Constructed in 2016 and will be placed in service in March, 2017

We support HB 1028 for a host of reasons. I would like to address two key issues. I am happy to discuss them with you in detail.

First, your tax policy impacts a company like Tradewind and our investment strategy. Passing HB 1028, will provide a long term planning policy that will continue to attract new investment, further diversify your economy and provide a diverse energy mix. You've seen the value of favorable tax policy the past decade that has produced over $4 billion in new wind investment in North Dakota. That investment provides new economic vitality to parts of North Dakota that don't have energy development from coal, or oil and gas. It provides property tax payments to local government, jobs, and millions of dollars in annual payments to North Dakota landowners. Diversifying the North Dakota economy, and helping rural parts of North Dakota with more opportunities will be one of the benefits of passing HB 1028.

Second, North Dakota should promote an "all of the above" energy strategy, welcome all energy sources, and allow local decisions to develop the resources. Wind will be developed in ND or other states. Electricity is centrally dispatched by regional transmission organizations (MISO/SSP) across state-lines, covering large geographic areas with the cheapest being deployed first. Impeding ND wind will not protect ND coal. Rejecting HB 1028 will not protect coal. Passing HB 1028 will help all of North Dakota.

Frank Costanza
Tradewind Energy, Inc.

Frank B Costanza

#12
1-24-17
HB 1028

ECONOMIC DEVELOPMENT ASSOCIATION OF NORTH DAKOTA
ED ND
PO BOX 1091 • BISMARCK, NORTH DAKOTA 58502

January 24, 2017

Chairman Headland and Members of the House Finance and Taxation Committee:

The Economic Development Association of North Dakota represents more than 80 large and small and rural and urban economic development organizations on the front line of growing businesses and communities in North Dakota. The primary purpose of the organization is to support the creation of new wealth and the diversification of North Dakota's economy. It is for these reasons our organization and its members want to express support for HB 1028.

Our organization is supportive of efforts to demonstrate the value of the state's investment in business support programs to grow and diversify North Dakota's economy. We too want to assure North Dakota taxpayers these investments are a return on their investment.

Recent slowdown in oil and agriculture activity has highlighted North Dakota's need to invest in other industries. Wind-powered generation helps the economy of rural communities across the state with jobs and landowner payments. Workers are employed in construction, maintenance, manufacturing and indirect support services. North Dakota has an abundance of wind as a natural resource, but is in competition with other states which have their own incentives and exemptions.

Thank you for the opportunity to express our support for HB 1028 and for your continued commitment to diversifying North Dakota's economy.

Sincerely,

Connie Ova
President

#13 p.1
1-24-17
HB 1028

David Straley – The North American Coal Corporation
House Finance and Taxation Committee
Testimony on January 24, 2017

OPPOSE HB 1028

Chairman Headland and members of the House Finance and Taxation Committee, my name is David Straley and I represent The North American Coal Corporation and its subsidiaries within North Dakota. I am here today to ask for your consideration to oppose House Bill 1028 for three main policy reasons: 1. this bill is presented on the premise of parity; however, that premise is faulty and overlooks other important factors; 2. foregone tax payments to the state general fund will benefit out of state consumers; and 3. the erosion of the North Dakota coal tax base and employment base is a direct cost of this bill without any reciprocal benefit to the state. I will address these one at a time, but first a little about the company I represent.

The North American Coal Corporation has been operating in North Dakota for 60 years. Beginning with the Indianhead Mine in an open-market, retail sales of coal concept, we have since grown our operations to dedicated mine-mouth customers that benefit not only North Dakota consumers, but also customers throughout the entire Midwest. Through today's Coyote Creek, Falkirk and Freedom Mines, our company provides well over 20 million tons of coal annually in North Dakota, and it has done so consistently since the 1990s. We are currently developing other coal reserves in North Dakota for marketing purposes.

We are proud to do business here and look forward to continuing to do business in a state where coal is welcomed and appreciated, not only by the state, but for many of our customers who are in this room today, so I know you appreciate the difficulty in us opposing this bill.

Also, it is important to note that although the utilities and the coal producers may not be together with the same arguments of this bill, I think we all agree on one thing—access to affordable, reliable, clean, domestic, and efficient electricity is not only a luxury, it is the engine that powers our North Dakota economy. So, now for those three points:

We do not believe this bill is based on parity, nor fairness. I have attached a chart to this testimony that shows the major forms of energy produced in North Dakota and the associated benefits in the form of sales tax exemptions. I have not addressed any federal production tax credits in my testimony, but I believe they are another example how parity is lacking. Please note that for development of a new coal mine in North Dakota, there is a major hole that does not keep us in parity—a sales tax exemption is only received by some of the machinery and equipment that is used in a coal mine. Also, there is a cap of five million dollars of total sales tax exemption for a new coal

mine. As you can see from the chart provided, coal and wind are treated very differently when addressing sales tax exemptions. These two differences demonstrate a lack of parity.

The sales tax exemption is an economic tool to be used by the state to help a project that may or may not be built in the state. Thus, we promote these incentives to encourage a project to move forward in the state before the decision is made. We do not believe it is a tool that should be used after the fact or retroactive without mistake of fact or error. Whether you pass or defeat this bill, some of these wind farms will be built in North Dakota. Some have already been announced, and some others have given notice of intent to permit through the North Dakota Public Service Commission. An industry that needs a government subsidy to continue to operate is not an industry. The question you need to answer is "what is the benefit that the state receives in exchange if we allow this sales tax exemption?" And if you agree that the benefits are worth the investment, then I would suggest that you include all the other energy industries with a similar tax exempt status to really address the issue of parity, including the lifting of the coal mine limits in this bill as well, but you may also want to include natural gas transmission pipelines, oil transmission pipelines, oil and gas exploration equipment and materials, as well as electrical transmission lines—all five who receive limited or no benefit whatsoever in sales tax exemptions.

As for the issue of where do the benefits flow; some of the foregone tax payments to the state will benefit of out of state consumers, depending on the utility and their service territory. If a wind farm is built in North Dakota and the customers are within another state, how can this possibly benefit all citizens of North Dakota? I understand it will benefit the local economies in which wind farms are located, but not the overall state general fund. These concerns may need to be addressed in this bill as well, but I am not sure how you accomplish this as the flow of electricity crosses state lines, but tax policies do not.

Lastly, we believe this bill encourages the erosion of the North Dakota coal tax base and employment base. It will come at the expense of the coal taxes paid to the state, annually at approximately 100 million dollars in total. It will erode the solid employment figures within coal country. Currently there are 4,000 direct jobs and 11,500 indirect jobs that benefit the coal industry in North Dakota. Note: these direct coal jobs have an average annual salary of about $87,000. If in fact you intend to incentivize the wind industry to replace this tax base, then please consider the ramifications of the erosion of the tax base it may create. I believe the utilities want to have a reciprocal benefit to the state, as well as their consumers.

I do appreciate your hearing my concerns today, and again, I do not envy your position in deciding the fate of this bill. But given all the potential negative downfalls regarding the exemption, I would again ask for you to oppose HB 1028. Thank you for taking this testimony today and I'd be happy to answer any questions you may have.

Industry	Sales Tax Exemption Type	Type of materials exempt	$ Amount limit
Ethanol/Biodiesel	Ag Commodity Processing Plant Materials	All materials and equipment used to construct the facility	no
Coal to Natural Gas	Coal Gasification Byproducts	All materials and equipment used to construct the facility	no
Coal Mine	Coal Mine Machinery or Equipment	**Only Machinery and Equipment** that is used to produce coal in a new mine only -replacement equipment qualifies if new mine investment exceeds $20 million	**$5 million per mine**
Electrical Generation	Electrical Generating Facilities	All materials and equipment used to construct the facility	no
Wind	Electrical Generating Facilities	All materials and equipment used to construct the facility up to Substation	no
Other	Electrical Generating Facilities	All materials and equipment used to construct the facility	no
Natural Gas	Natural Gas Gathering Lines and Processing Facility	All materials and equipment used to construct the facility	no
Liquified Gas Processing	LNG Production Facility	All materials and equipment used to construct the facility	no
Oil	Refinery	All materials and equipment used to construct the facility	no
Natural Gas Transmission Pipeline	**NO EXEMPTION**		
Oil Transmission Pipeline	**NO EXEMPTION**		
Oil and Gas Exploration Equipment/Materials	**NO EXEMPTION**		
Electrical Transmission Lines	**NO EXEMPTION**		

#13 p.3
1-24-17
HB 1028

ELECTRICITY TAXATION IN NORTH DAKOTA + FEDERAL TAXATION

State Taxation	Natural Gas	Wind	Coal
Property Tax	Electricity generated from sources other than wind or coal is subject to an in lieu of property tax of - $0.50 per kW (X) rated capacity of generator, and; -One mill per kWh of electricity generated: **Example**: A 135 MW natural gas peaker plant would pay $67,500 per year (135,000 KW x $0.50) and also $464,727 if it operated at 39% of rated capacity. Property tax per-kWh basis is $0.001145 ($1.15 per MWh)	A wind farm which has completed construction **after Dec 31, 2014** is subject to a tax of - $2.50 per kW (X) the rated capacity -1/2 of one mill per kWh of electricity generated -Wind farms completed **before Jan 1, 2015** are subject to a tax rate of 1.5% of taxable value **Example (1)**: A 209 MW wind farm constructed after Dec 31, 2015 would pay $521,250 (208500 kW x $2.50) and also $294,122 at roughly a 32% of rated capacity. Property tax per-kWh is $0.00138 ($1.37 per MWh) **Example (2):** A 150 MW wind farm build in 2009 is paying $355,000 under the market value system. Property tax per-kWh is $0.000844 ($0.844 per MWh)	.65 mills (X) 60% of Installed Capacity (X) hours .25 mills per kWh of electricity produced for sale -NOTE: A **new** coal-burning electrical generating unit is exempt from the state portion of the conversion tax for 5-years -A carbon capture credit of up to 50% of the state portion of tax is available **Example:** An existing 256 MW coal-burning electrical generation unit would pay $875,282 per year on capacity (256,200 x 60% x .00065 x hours in a year) and roughly $392,116 on production operating at 63% of capacity Property tax per-kWh is $0.000895 ($0.895 per MWh)
Severance/Extraction Tax on Fuel	$0.0601 per MCF **Example:** Gross Production Tax embedded in the price of natural gas for the year is 4,698,389 MCF x $0.0601 = $282,373 Property tax per-kWh is $0.0006 ($0.60 per MWh)	None	$0.395 per ton ($0.02 goes to Lignite Research Fund) **Example:** Coal Severance Tax embedded in the price of coal for the plant is 1,500,000 tons x $0.395 = $585,000 Property tax per-kWh is $0.000413 ($0.40 per MWh)
Sales Tax	Equpment Exempt from Sales Tax Sale of Electricity Exempt from Sales Tax	Equpment Exempt from Sales Tax if constructed by Dec. 31 2016 Sale of Electricity Exempt from Sales Tax	Equpment Exempt from Sales Tax Sale of Electricity Exempt from Sales Tax
State Income Tax	Cooperative vs. IOU vs. Independent Power Producer	Cooperative vs. IOU vs. Independent Power Producer -Wind farms commenced before Jan 1, 2015 and installed before Jan 1, 2017 received an income tax credit equal to 15% percent of the project cost. Much of the credits earned have not been able to be utilized.	Cooperative vs. IOU vs. Independent Power Producer

Federal Taxation			
Depreciation	15-year Depreciation	5-year Depreciation	20-year depreciation
Income Tax Credit	N/A	For the first ten years of opeation a $0.023/kWh ($23.00 per MWh) credit is offered for wind facilities commencing construction before Jan 1, 2017 -For wind facilities commencing construction in 2017, the PTC amount is reduced by 20% -For wind facilities commencing construction in 2018, the PTC amount is reduced by 40% -For wind facilities commencing construction in 2019, the PTC amount is reduced by 60%	N/A

#1
1-24-17
HB 1028

ND Tax
NORTH DAKOTA

HB 1028

BNI energy

AN ALLETE COMPANY

WADE BOESHANS
President and General Manager

January 30, 2017

To: ND House Finance and Taxation Committee

From: Wade Boeshans – President & General Manager – BNI Energy

RE: Support for All of the Above Energy Policy

Dear Chairman Headland and members of the committee,
I am writing you today to request your support for energy tax policy parity as you contemplate HB 1028. I understand there has been much debate in your committee about energy taxes and policy parity. I want to share my views about these issues as a native North Dakotan and Coal Industry Executive. I grew up on a dairy farm on the farm that my grandfather homesteaded in Mercer County near Beulah. I experienced firsthand both the challenges and benefits that energy development affords North Dakotans. I have come to appreciate and fully subscribe to the all of the above energy policy that North Dakota adopted several decades ago.

I am the President and General Manager of BNI Energy. BNI Energy is a subsidiary of ALLETE, a diversified Energy Company Headquartered in Duluth MN. ALLETE subsidiaries, BNI Energy, Minnesota Power, ALLETE Clean Energy, and ALLETE Renewable Resources collectively own and operate over one billion dollars of assets in North Dakota and have invested over a billion dollars in North Dakota over the last five years. BNI Energy subsidiary, BNI Coal, was founded in Northwest North Dakota in 1929 near Noonan and is the only native North Dakota mining company operating today. BNI Coal opened the Center mine near Center in 1969 and has been mining coal for the Milton R Young Station since 1970 at its Center Mine location. Today, BNI Coal supplies 4 to 4.5 million tons of lignite coal annually to the Young Station and employs 170 people with an annual local spend of $60 million.

ALLETE companies fully subscribe to all of the above business-friendly energy policies that North Dakota has implemented. We believe fuel diversity is a critical national security issue. It is essential that we utilize all our energy resources to preserve affordable and reliable energy for our region. Our commitment to North Dakota and it's all of the above approach are reflected by our long history of investing in the North Dakota. Minnesota Power Partnered with Minnkota Power to build lignite fueled Milton R. Young Unit II Generating Station and the D.C. transmission line from Center to Duluth in the 1970's. Minnesota Power and Minnkota Power invested over $400 million to extend the life of the Young Station in the 2000's. Minnesota Power invested $800 million to construct the Bison Wind Facility near New Salem in the 2010's. BNI has invested over $120 million in the last five years to recapitalize and expand our lignite mining operations. ALLETE Clean Energy Developed the Thunder Spirit Wind Facility for MDU in 2015 and recently announced the development of Thunder Spirit II in 2017. ALLETE Companies, BNI Energy and ALLETE Clean Energy, along with our Lignite Industry Partners are leading clean coal solutions including Project Tundra and the Allam Cycle. I personally co-chaired the EmPower R&D subcommittee that authored the EmPower R&D funding recommendations

1637 Burnt Boat Drive | PO Box 897 | Bismarck, ND 58502 | 701.355.5500

advocating state funding support for critical research, development and demonstration of CO2 solutions for the Lignite Industry.

The Lignite Industry has faced significant market and regulatory challenges that have stymied growth over the last several years. Utilities are not building new coal power plants today because they are difficult to permit, not economically competitive at this time and uncertainties around CO2 liabilities discourage new construction. Thus companies such as ALLETE have had to diversify their energy portfolio to ensure customers and consumers get the reliable energy they need. In addition, the EPA's rules to regulate carbon dioxide, also known as the EPA's Clean Power Plan (CPP) under the Obama Administration, required North Dakota to reduce CO2 emissions from its power plants by forty-five percent by 2030. Complying with the EPA's new rules may have resulted in significant impacts to North Dakota's $3.4 billion Lignite Industry and $100 million annual tax revenue associated with the industry. While CPP is being litigated in federal court and the incoming Trump administration will likely delay implementation or strike the rule all together, the Supreme Court has ruled that CO2 is a pollutant. This Supreme Court ruling requires the EPA to regulate CO2. Consequently, we believe that the ongoing litigation and new president will provide valuable time to develop the necessary technology solutions to secure a future for the Lignite Industry. To survive in this carbon-constrained future and secure the future of the lignite industry long-term, the lignite industry will need new technology solutions in three areas:

1) **Advanced generation** – new transformational technologies that include carbon dioxide capture that can be used to build new lignite power plants
2) **Carbon dioxide scrubbing and capture** – technologies that can be retrofitted to existing lignite power plants
3) **Carbon dioxide utilization and sequestration** – technologies that utilize and permanently store the CO2 eliminating atmospheric emission such as geologic storage or enhanced oil recovery

To this end, research, development, and demonstration of technologies that include the capture of carbon dioxide emissions from lignite based facilities as well as research, development, and demonstration of carbon dioxide sequestration and enhanced oil recovery are essential and ALLETE companies are working on all three:

1) **Allam Cycle Development** – ALLETE Companies, BNI Energy and ALLETE Clean Energy, are partnering with Basin Electric and the EERC to develop a next generation coal technology that could be used to build new power plants in ND called the Allam Cycle. Essentially this next generation technology could enable near-zero emission coal utilization including carbon dioxide emissions while providing lower electric costs than all other commercially available technologies.

2) **Project Tundra** – ALLETE Companies, BNI Energy and ALLETE Clean Energy are partnering with Minnkota Power Cooperative and the EERC to assess the viability of retrofitting a CO2 scrubbing technology on Minnkota Powers Milton R. Young Generating Station near Center North Dakota and transporting the captured CO2 to North Dakota oil fields for enhanced oil recovery and sequestration. The project builds on project that was recently completed in Texas that installed the CO2 scrubbing technology on a coal plant and is transporting the captured CO2 to an oil field.

3) **Carbon Safe** – ALLETE Companies, BNI Energy and ALLETE Clean Energy, are currently partnering with Basin Electric, Minnkota Power and the EERC to assess the geologic storage potential near the Minnkota's Milton R. Young generating station and Basin Electrics Antelope Valley Station. The EERC received an $8.0 million US DOE grant as well as financial support for the industrial partners to complete

the research. If successful the project will validate and quantify the geologic CO2 storage potential of the sites.

While these technologies and investments are being made to lignite plants to meet new EPA standards, companies need to continue to invest in and develop other resources that exist. Therefore wind and natural gas development will continue to play an important part in the "all of the above" energy strategy. Significant investments in environmental control equipment at lignite plants to meet new EPA standards, the glut of low priced natural gas, and federal renewable energy subsidies have all reduced the competitiveness of lignite facilities relative to other energy sources. Meanwhile, low electrical load growth in combination with state renewable energy mandates requiring renewable energy build outs have created excess electric power supply and historically low power market prices. Unbalanced policies that pick winners and losers like state mandates, renewable subsidies, and targeted regulation have resulted in an oversupplied market, stranded assets and higher rates for consumers. That being said, I strongly encourage North Dakota to stay the all of the above energy policy course and continue with tax policy parity. While I would like to see policy parity at the federal level and in other states that have implemented mandates, discouraging the wind investments in North Dakota thru imbalanced tax policy will not help the Lignite Industry and will hurt North Dakotans in the long-run.

It is strategic to North Dakota to position itself as the preferred supplier of energy to regional and national markets. North Dakota is an energy exporting state. Most of the energy produced in the state is exported to other states. Power produced in North Dakota is sold into regional markets; either the MISO market or SPP market. Each generating resource, regardless of fuel type (coal, gas, wind, nuclear, biomass, hydro, or solar) is interconnected to the electric grid only after the utility and regional transmission operator studies demonstrate it can be done without compromising reliability. The transmission system is planned, built and operated with the largest loss of electric load (customers) or loss of supply (generators) contingency in mind, and many, many engineering designs and reliability standards, regulated by the National Electric Reliability Corporation, are implemented to assure a robust grid is available at all times to serve customers. Therefore, no resource, of any fuel type, can "stress" the electric grid.

It is not a zero sum game where if North Dakota discourages wind generation then coal will benefit. The development of wind generation will simply be relocated to other states in the region and sell the power into the same market. The fate of the Lignite Industry will be the same either way and North Dakota will lose the opportunity to supply wind energy and the economic benefits associated with it. A better approach to saving the Lignite Industry would be to support research, development, and demonstration of new high potential technologies that reduce emissions and improve competitiveness of Lignite.

Throughout our long history ALLETE companies have implemented an all of the above energy strategy. Chairman Headland and members of the committee, I respectfully ask for your support of an all of the above energy policy for North Dakota and avoid implementing policies which pit one energy resource against another. ALLETE, like many utility companies in North Dakota and throughout the Midwest, have a diverse energy portfolio including both wind and coal assets. As such, we urge you to prioritize tax policy parity as you contemplate HB 1028.

Sincerely,

Wade Boeshans