

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2299

2001 SENATE FINANCE AND TAXATION

SB 2299

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2299

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 1/29/01

Tape Number	Side A	Side B	Meter #
1		x	36.1-49.4
2	x		0-35.8
1/30/01 - 1	x		0-11.9
2		x	36.5-49
2/12/01 - 1	x		25.4-32.6
Committee Clerk Signature <i>Rynelle K. Kraft</i>			

Minutes:

Senator Urlacher: Opened the hearing on SB 2299, relating to sales and use taxes on coal.

Senator Gary Nelson: Co-sponsored the bill, testified in support. The legislature has been very sensitive to the fact that we must keep lignite competitive if we are to keep the jobs, the economic activity, and the tax revenue in our state. We have passed previous legislation dealing with the competitive position of lignite and our ability to tax out of state coal. That legislation was found to be unconstitutional. This bill was developed with the cooperation with the industry, the tax dept., and the attorney general. This bill deserves favorable consideration for 3 reasons: Makes our low BTU lignite more competitive with out of state coal, shifts the severance tax to a more reliable tax, the conversion tax, and this is a win-win situation for the state as it guarantees more revenues. I would urge the committee to vote favorably on 2299.

Senator Aaron Krauter: Co-sponsored the bill, testified in support. Written testimony attached.

Rick Clayburgh: ND Tax Commissioner, neutral. Refers to *Kennecot vs. North Dakota*. Talks about out-of state companies and offers amendment. Meter number 43.4-49.4.

Carmen Miller: Attorney General's Office, state support of the Office.

John Dwyer: President, Lignite Energy Council, testified in support. Written testimony attached. Explains testimony and answers questions from Senator Wardner and Senator Nichols. Through meter number 17.5.

Representative John Mahoney: Thank you for your indulgence, Mr. Chairman. I'm here to testify, I would say, I guess neutral to extremely cautious at this point on this bill. Frankly, this bill in its current form, I have to say it scares me. When this concept was first brought up in November and December, I liked the idea, ah, it seemed to be something that was going to perhaps address what we've been trying to do for two sessions. John talked about the bill, the bills of the last two sessions, I did, I was a sponsor of the bill two sessions ago that kind of got the ball rolling on trying to do something to equalize the taxes on out of state coal and in state coal but we know what's happened with that. It, it, had constitutional problems. And now with that, this thing has rolled along and here we are with this, which is an absolutely incredible change in the structure of taxing an industry that pays something like \$75 million in taxes a year. And not to mention the uncounted dollars, millions of dollars, in taxes for all the employees and the economic benefits and everything else that the coal industry provides. I suppose I should be able to say that, yeah, I'll jump on the bandwagon, I'm wholeheartedly in favor of this because it's going to lead to political subdivisions revenue neutral or even give us an extra \$7,000, but I feel my obligation down here at the legislature is not simply to my political subdivision, ah, political subdivisions up in my district, but I owe, I owe the state, I have the obligation to the state to try to look out for them as well. Um, by the way I don't even know if I mentioned my

name. I'm Representative John Mahoney from District 33, which is in the heart of the coal and energy industry. Ah, anyway, I think it's worth while to, to back up and take a look at the taxing structure as its gone over the years. Ah, some of you may remember back in 1975 out of a study during the interim between 73 and 75 the initial tax structure came about and it was set at \$.50 a ton the severance tax was with an escalated clause of \$.3, excuse me, \$.1 for every 3 point increase in the whole bill, prices for all commodities. That was changed in 77 to \$.65 a ton, with a 1 to 1 escalator. In 79, that was changed to \$.85 a ton and those of you who were around, remember, there was some very, very heated battles over the tax structure for the industry. Ah, in fact, ah, Byron Dorgan has achieved a lot of success in politics and I think that was one of the first good battles that he had here in the, this capitol, was over this coal tax structure. Um, what the escalator, the tax reached a high of \$1.04 a ton which was the way it was until 1987. In 1987, we set the tax at \$.75 a ton, plus we set up a \$.02 a ton for lignite research. Um, the privilege tax, the conversion tax, that is as John said \$.25, a half a mill actually works out to be \$.25 that is assessed amount in a quarter has that %60 tax. Ah, now a couple things concern me and I hope this committee will take a real hard look at this bill. First of all, we had battles about changing the tax 10 cents here, 5 cents here, 2 cents here, we battled for the 2 cents in the research fund, which I think is tremendous. Um, I think this body has been good to the industry, the industry has been good to us, it's been beneficial, it's been a win-win situation. I'd like to see it continue that way. Ah, we're taking, cutting the \$.07 in half, I mean, that's incredible. I mean that's an incredible shift. And by doing that, uh, we're kind of putting all our eggs in one basket. Everybody, with all the investments going on, everybody talks about diversified portfolios, I hate that word, I don't think I have a portfolio even though I have investments. Um, to do that, we're depending on a lot of variables. Um, and this supposedly is geared toward equalizing the tax for

out of state coal and in state coal. But there's a lot of things to consider. For example, there's a %60 tax on the conversion tax on the one quarter mill. Uh, and that supposedly is going to be an incentive for the plants to operate entire capacity. Now, when I look at that and consider a half a billion dollar power plant and the tremendous demand for energy, am I going to make my decision on whether to run that plant %50, %70, %90, or %100 on what the tax structure is if we're able to have a profit on that? Maybe so, maybe not. We can hear from industry experts on that. Um, for that additional capacity, is that going to be all in state coal? There's nothing saying it has to be. From 60-100 percent, maybe it's all out of state, tax-free coal for all we know. Just some things to think about. Uh, there was a mention of the study that was done a couple years ago by Mr. Ramseth. In that study, which is in our, came into, came in our uh, legislative report from the legislative council, there's also a statement that Mr. Ramseth made and I'll quote it. Dr. Ramseth said, and I'll quote the legislative council report, "It is important to remember that ND tax and regulatory policies for the coal industry is not what has created the current economic problems faced by the lignite industry. Price reductions in sub bituminous coal address transportation costs have been so significant that they are responsible for the competitive prices faced by the industry. With that in mind, I just want to say that I think this is perhaps going in the right direction but it is a huge step. And whether or not it's revenue neutral to our political subdivisions, this body does have a responsibility to the state. I think that the state, legislators from all over the state, have been very considerate and compassionate to the things that we've gone through in our areas. Um, we have a tremendous amount of impact, and we share a tremendous amount of tax dollars with the other districts. The conversion tax for example, the 1 quarter mill goes entirely to the state, the other quarter mill goes %65 to the state, and %35 to the political subdivisions. The 7%, we take %35, 15% goes to the trust fund, %50 to

the state. We share with the state, the state shares with us, the industry is very good, we are facing real competition, I'm denying that from the sub bituminous coal. And it's something that's certainly worth looking at. If we can work a bill that's going to protect the state, um, be good for the industry, be good for the political subdivisions, great. If we can't come up with something, and if we're jumping in with both feet, or if we're diving off a cliff, we better see how deep the water is and I hope this committee will take a real hard look at the numbers I presented to you, like I say, they're based on speculation. We don't know what's going to happen in the future. I would ask you to look a hard look at the numbers and proceed with caution. With that, I'd be open to answer any questions.

Senator Wardner: What is your feelings on the future use of Powder River Coal?

Representative John Mahoney: Well, Mr. Chairman, Sen. Wardner, it is a threat. I think that now we're at the point where it's my understanding that coal actually is, for BTU, somewhat cheaper than our lignite coal. And whether the tax difference is going to make or break the competitiveness of it, I don't know, but I think that the plants here, I would hope, want to use the closer coal and the plants that are here are designed for lignite. I'm sure the boilers could probably be refitted but as I understand it, sub bituminous coal is a lot hotter and these plants can only burn a certain mix of that coal, is my understanding, but I'd like to think that they're going to support our industry with the great volume of lignite coal that we have. And if we don't use it all up in the 1,000 years that we have it, then maybe there could be some, but it took millions and millions of years to make that stuff and I think we want to be careful once we disperse it or let it go. Thank you.

René Pfeunig: ND Building & Construction Trade Council & ND Electrical Workers Council, testified in support.

Harlan Fuglesten: ND Assoc. Of REC's, testified in support.

Dale Anderson: Greater ND Assoc., testified in support.

Illana Jeffcoat-Sacco: Public Service Commission, neutrally testified. Written testimony attached.

Senator Urlacher: Closed the hearing. Action delayed.

Subcommittee met 1/30/01. Meter number 0-11.9. Senators Wardner, Christmann, and Nichols present.

John Dwyer: Reappeared to explain amendment.

Dennis Boyd: MDU Resources, appeared to explain another amendment.

Motions made to accept amendments and to combine them into one.

Dale Niezwaag: Basin Electric, explains that they're still working on an amendment but will introduce it when this bill goes to appropriations.

AMENDMENT ACTION:

Motion made by Senator Christmann, Seconded by Senator Nichols, to move amendment from PSC to combine with amendment from the Tax Commissioner. Voice Vote taken. All in favor.

Discussion held later in full committee. Meter number 36.5-49.

AMENDMENT ACTION:

Motion made by Senator Wardner, Seconded by Senator Christmann, to move amendment numbered 10666.0301. Voice Vote taken. All in favor, amendment adopted.

Page 7
Senate Finance and Taxation Committee
Bill/Resolution Number 2299
Hearing Date 1/29/01

COMMITTEE ACTION: 1/30/01

Motion made by Senator Christmann for a DO PASS AS AMENDED & REREFFERED TO APPROPRIATIONS, Seconded by Senator Wardner. Vote was 6 yeas, 0 nays, 0 absent and not voting. Bill carrier was Senator Christmann.

Discussion held 2/12/01. Meter number 25.4-32.6.

John Dwyer: Appeared to explain the amendment he will be proposing in Appropriations.

