

2021 SENATE FINANCE AND TAXATION

SB 2206

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2206
2/16/2021

A BILL for an Act to amend and reenact section 49-06-02 of the North Dakota Century Code, relating to value of property for ratemaking purposes.

Chair Bell calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [9:02]

Discussion Topics:

- Utility regulatory structure
- Emergency services, outages, grid reliability
- Financial Incentive
- MISO
- Rate setting

Senator Bell [9:02] introduces the Bill and provides an Amendment [21.0486.03001] in favor #6649 & 6650.

Brian Kroshus, [9:07] Commissioner, PSC, in favor #6672 and #6739

Jason Bohrer [9:20] President Lignite Energy Council orally in favor

Senator Patten [9:27] Moved DO PASS on Amendment [21.0486.03001]

Senator Meyer second

Motion Passed by voice vote

Senator Kannianen [9:27] Motion DO PASS as Amended

Senator Meyer [9:28] second

Senators	Vote
Senator Jessica Bell	Y
Senator Jordan Kannianen	Y
Senator Scott Meyer	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	N
Senator Jim Roers	Y
Senator Mark Weber	Y

Motion Passed 6-1-0

Senator Bell Carries

Additional written testimony:

Carlee McLeod, USND, In Favor #6702

Scott Skokos, Executive Director, Dakota Resource Council, In Opposition, #6712

Chair Bell adjourns the meeting. [09:28]

Joel Crane, Committee Clerk

February 12, 2021

CS
2/16
1061

PROPOSED AMENDMENTS TO SENATE BILL NO. 2206

Page 2, line 1, remove "rate of return and the rate base, for power"

Page 2, line 2, replace "purchase agreements of a coal-fired electric generating unit, plant, or facility" with "a financial incentive set at a reasonable rate for power purchase agreements of a dispatchable on-demand generating unit, plant, or facility deemed to protect grid reliability"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2206: Finance and Taxation Committee (Sen. Bell, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2206 was placed on the Sixth order on the calendar.

Page 2, line 1, remove "rate of return and the rate base, for power"

Page 2, line 2, replace "purchase agreements of a coal-fired electric generating unit, plant, or facility" with "a financial incentive set at a reasonable rate for power purchase agreements of a dispatchable on-demand generating unit, plant, or facility deemed to protect grid reliability"

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

SENATE BILL NO. 2206

Introduced by

Senator Bell

1 A BILL for an Act to amend and reenact section 49-06-02 of the North Dakota Century Code,
2 relating to value of property for ratemaking purposes.

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

4 **SECTION 1. AMENDMENT.** Section 49-06-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **49-06-02. Value of property for ratemaking purposes - Determination.**

7 The value of the property of a public utility, as determined by the commission for ratemaking
8 purposes, is the money honestly and prudently invested therein by the utility including
9 construction work in progress for new facilities that use lignite mined in this state to generate
10 electricity, as well as additions or modifications to existing lignite facilities, less accrued
11 depreciation. The commission shall allow a public utility for those new or existing facilities
12 utilizing lignite mined in this state as its primary fuel:

- 13 1. To recover its research and development costs incurred to develop lignite more
14 cleanly, efficiently, or economically, including carbon dioxide capture and sequestration
15 utilization and a reasonable rate of return on capital expenditures;
- 16 2. To recover its incremental costs of complying with federal environmental laws,
17 including a reasonable rate of return on capital expenditures. The commission may
18 allow these costs to be recovered by an environmental surcharge that may be added
19 to existing rates; and
- 20 3. To recover all costs resulting from a coal severance tax pursuant to chapter 57-61 and
21 all costs resulting from a coal conversion tax pursuant to chapter 57-60. The
22 commission shall allow the inclusion of these costs in the base rates and the inclusion
23 in the automatic adjustment clause of any of these costs not in base rates; and

- 1 4. To recover costs in rates, including ~~rate of return and the rate base, for power~~
- 2 ~~purchase agreements of a coal-fired electric generating unit, plant, or facility~~ a financial
- 3 incentive set at a reasonable rate for power purchase agreements of a dispatchable
- 4 on-demand generating unit, plant, or facility deemed to protect grid reliability.

Senator Jessica Bell
District 33
SB 2206

This bill relates to rate recovery for investor owned utilities (IOU) regulated by the Public Service Commission. The language expands the opportunity for dispatchable on-demand generating units and their ability to recover reasonable costs in rates for power purchase agreements to help protect grid reliability, as well as for investments made in carbon dioxide capture and sequestration investments.

IOUs are for profit entities that generate and distribute electricity and are bound by regulations at the state and federal level in those activities. Our current regulatory structure is set up in a way that incentivizes new investments in brick and mortar generation. So in order for IOUs to continue to profit, an obvious goal of a company, they need to tear down old and build new. There is nothing to incentivize IOUs to continue operating equipment not generating a new rate of return, already paid for, and, not to mention, struggling to bid profitably into a very distorted electricity market.

The current regulatory structure is built around incentivizing new projects, something that has worked for the electric generation business community for years. As electric generation has changed and reliability has become a focus, so must our regulations change with it. For example, just this week alone, both Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) have issued emergency alerts instructing their end users to conserve energy because supply was approaching the point it couldn't meet demand. SPP also subsequently issued an emergency alert taking that one step further, announcing controlled interruptions of service as decided by utilities. The next step is controlled power interruptions by SPP itself. The system in Texas, ERCOT, experienced more demand than it did load by a large margin this past week, something that's been anticipated in a scenario like this for the past two years, resulting in rolling blackouts anticipated to last for a mere 45 minutes, some of which have stretched past 6 hours.

You may hear concerns that we are not in charge of reliability on the system. We are not. Ultimately, the regional transmission operators and individual utilities currently are. We've been told to trust they will do their job to ensure in situations like we've experienced this past week, the power will be on. Given the events of this past week, it's incumbent upon us to ask the hard questions. It's time for us to evaluate our regulatory structure. It's time for us to put our own priority on reliability. It's time for us to take steps to alter the regulatory structure to help utilities keep assets in place that have proven to work, and this legislation is a small step in that direction.

SB Bill 2206

Presented by: **Brian Kroshus, Public Service Commissioner**
 Public Service Commission

Before: **Senate Finance and Taxation Committee**
 The Honorable Jessica Bell, Chair

Date: **February 16, 2021**

TESTIMONY

Madame Chair and committee members, I am Commissioner Brian Kroshus of the Public Service Commission. I am here to testify in support of SB 2206.

As you well know, the energy industry, and specifically the utility industry, continues to undergo rapid transformation due to technological changes, market forces, federal policies, and policies set forth by individual states. This has led many, including the Commission, to have concerns related to the impacts this may have on the grid.

To illustrate that particular point, one would only need to look at pricing maps for the past several days from the Midwest Independent System Operator (MISO) and Southwest Power Pool (SPP), the two regional transmission organizations that our cooperatives and investor-owned utilities (IOUs) are members of.

The locational marginal pricing in both MISO and SPP have skyrocketed due to adequacy concerns and as of yesterday, SPP went into Energy Emergency Alert Level 3 which is the highest level of emergency, requiring operation reserves below the required minimum or asking members to implement controlled service

interruptions to “safeguard continued reliability of the regional grid.” Portions of the MISO grid in Southeast Texas also went into forced curtailments.

This bill is both timely and essential. In addition to encouraging IOUs to research and develop carbon capture and sequestration technologies utilizing North Dakota lignite, it provides an opportunity for IOUs entering into a purchase power agreement with a facility utilizing North Dakota lignite, to receive a reasonable financial incentive if the facility is deemed necessary to protect grid reliability.

With that in mind, the Commission believes this bill is an appropriate step to incentivize IOUs to again, evaluate the implementation of carbon capture technology and purchase power agreements with owners of in-state baseload generation for the purpose of maintaining system reliability.

Thank you for this opportunity to speak with you and I stand available for any questions.

FOR IMMEDIATE RELEASE – Feb. 15, 2021**Media Contacts:**Derek Wingfield (dwingfield@spp.org; 501-614-3394)Meghan Sever (msever@spp.org; 501-482-2393)**Southwest Power Pool initiates controlled outages to maintain system reliability**

Little Rock, Ark. — As extreme cold weather persists across the 14-state Southwest Power Pool (SPP) balancing authority area, electricity use has exceeded available generation. The grid operator declared an Energy Emergency Alert (EEA) Level 3 at 10:08 a.m. Central time on Feb. 15, when it was forced to begin relying on required reserve energy. After exhausting usage of available reserve energy, SPP has now subsequently directed its member utilities to implement controlled interruptions of service effective immediately to prevent further, more widespread and uncontrolled outages.

"In our history as a grid operator, this is an unprecedented event and marks the first time SPP has ever had to call for controlled interruptions of service," said SPP's executive vice president and chief operating officer Lanny Nickell. "It's a last resort that we understand puts a burden on our member utilities and the customers they serve, but it's a step we're consciously taking to prevent circumstances from getting worse, which could result in uncontrolled outages of even greater magnitude."

SPP has instructed our members' transmission system operators to reduce electricity demand by an amount needed to prevent further uncontrolled outages. Individual utilities will determine how best to curtail their use by the required amount based on their own emergency operating plans.

While SPP and our member companies work to restore the regional power grid to full capacity, consumers are urged to reduce electricity use, both at home and work.

"Our grid operators and member utilities are highly trained and prepared to respond to situations like this, and we're working closely together to ensure the grid returns to a stable and safe operating condition," said Nickell.

SPP declared a period of conservative operations for our entire balancing authority area at midnight central time on Feb. 9. The declaration of conservative operations signaled to SPP's member company utility operators that they should operate conservatively to mitigate the risk of worsening conditions. On Feb. 14, we declared an EEA Level 1 effective at 5:00 am central time on Monday, Feb. 15. An EEA1 signals that SPP foresees or is experiencing conditions where all available resources are scheduled to meet firm load obligations and that we may be unable to sustain its required contingency reserves. Subsequently on Feb. 15 at 7:22 a.m. SPP declared an EEA Level 2, which required SPP to direct its member companies to issue public conservation appeals.

We thank the public for their cooperation and understanding during this power grid emergency. [Follow us on Twitter](#) or visit [SPP.org](https://www.spp.org) for updates.

About SPP: Southwest Power Pool, Inc. is a regional transmission organization: a not-for-profit corporation mandated by the Federal Energy Regulatory Commission to ensure reliable supplies of power, adequate transmission infrastructure and competitive wholesale electricity prices on behalf of its members. SPP manages the electric grid across 17 central and western U.S. states and provides energy services on a contract basis to customers in both the Eastern and Western Interconnections. The company's headquarters are in Little Rock, Arkansas. Learn more at [SPP.org](https://www.spp.org).

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Senate Bill 2206—Testimony in Support

Senate Finance and Tax, Chairwoman Bell

February 16, 2021

Chairwoman Bell, members of the committee, my name is Carlee McLeod, and I am president of the Utility Shareholders of North Dakota (USND). On behalf of my member companies, we support SB 2206.

Dispatchable generation has been an important part of our utilities' operations to serve customers, and we have been working to ensure a future for those resources. As the industry looks toward emerging carbon dioxide capture and sequestration utilization technologies, we support tools to allow the Public Service Commission to consider investments in those technologies in rate calculations. We support providing the commission with tools to incentivize integration of these technologies rather than any mandate to purchase a particular source of power.

Thank you.



1 Chairman Jessica Bell & members of the committee, my name is Scott Skokos and I am
2 testifying on behalf of Dakota Resource Council and our members. Thank you for allowing me
3 to submit written testimony in opposition to SB 2206.

4 Dakota Resource Council (DRC) is a non-partisan grassroots group of landowners, ranchers,
5 farmers, and other citizens. We oppose SB 2206 simply because it is not fair to charge ratepayers
6 for high-risk projects that have been proven around the world to not be economically viable.¹ If
7 other investors or the state decide to take that risk, while we highly recommend otherwise, that is
8 their choice. However, charging ratepayers for those high-risk projects that are not in alignment
9 with the direction our entire nation is going surrounding energy is wrong. Our energy economy is
10 rapidly changing and ratepayers trust that they aren't funding high-risk investments.

11 Take, for example, the Petra Nova carbon sequestration project in Texas, which is likely to not
12 be coming back online after having been mothballed. Petra Nova never captured the anticipated
13 amounts of carbon and was not economically viable.² This is the example that supporters of
14 carbon sequestration in ND like to point to. A failed project is not good evidence to support this
15 bill. Again, if the state and private investors choose to invest in high-risk carbon capture, fine.
16 Ratepayers shouldn't foot the investment.

17 Project Tundra is throwing money at a problem that is a bad long-term investment and that
18 money could instead be used to fund actual retraining and transition funds for coal communities,
19 as is already being done in other states. For more information about why Project Tundra is high-
20 risk and not economically feasible see the recent report titled "Project Tundra: A Step in the
21 Wrong Direction".³

22 I urge the committee to oppose SB 2206 and recommend a **DO NOT PASS** on SB 2206.

¹ http://www.worc.org/media/Too_Good_to_Be_True_Report.pdf

² https://ieefa.org/wp-content/uploads/2020/08/Petra-Nova-Mothballing-Post-Mortem_August-2020.pdf

³ https://ieefa.org/wp-content/uploads/2020/09/Project-Tundra_A-Step-in-the-Wrong-Direction_September-2020.pdf

2021 HOUSE FINANCE AND TAXATION

SB 2206

2021 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

SB 2206
3/16/2021
AM

A bill relating to value of property for ratemaking purposes.

Chairman Headland opened the hearing at 9:01am.

Representatives	Present
Representative Craig Headland	Y
Representative Vicky Steiner	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Sebastian Ertelt	AB
Representative Jay Fisher	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Tom Kading	Y
Representative Ben Koppelman	Y
Representative Marvin E. Nelson	Y
Representative Nathan Toman	Y
Representative Wayne A. Trottier	Y

Discussion Topics:

- Investor-owned utilities power agreements
- Financial incentives for investor-owned utilities
- Rate recovery for investor-owned utilities

Senator Bell introduced bill (#9479).

Julie Fedorchak, Chairman for North Dakota Public Service Commission, support (#9337).

Jason Bohrer, President and CEO of the Lignite Energy Council, support (#9425-Jonathon Fortner's testimony).

Additional written testimony:

Carlee McLeod, Utility Shareholders of North Dakota, support #9330.

Scott Skokos, Executive Director with Dakota Resource Council, opposition #9302.

House Finance and Taxation Committee
SB 2206
March 16, 2021
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Vice Chairman Steiner closed the hearing at 9:30am.

Mary Brucker, Committee Clerk

Senator Jessica Bell
District 33
SB 2206

This bill relates to rate recovery for investor owned utilities (IOU) regulated by the Public Service Commission. The language expands the opportunity for dispatchable on-demand generating units and their ability to recover reasonable costs in rates for power purchase agreements to help protect grid reliability, as well as for investments made in carbon dioxide capture and sequestration investments.

IOUs are for profit entities that generate and distribute electricity and are bound by regulations at the state and federal level in those activities. Our current regulatory structure is set up in a way that incentivizes new investments in brick and mortar generation. So in order for IOUs to continue to profit, an obvious goal of a company, they need to tear down old and build new. There is nothing to incentivize IOUs to continue operating equipment not generating a new rate of return, already paid for, and, not to mention, struggling to bid profitably into a very distorted electricity market.

The current regulatory structure is built around incentivizing new projects, something that has worked for the electric generation business community for years. As electric generation has changed and reliability has become a focus, so must our regulations change with it. For example, just this week alone, both Midcontinent Independent System Operator (MISO) and Southwest Power Pool (SPP) have issued emergency alerts instructing their end users to conserve energy because supply was approaching the point it couldn't meet demand. SPP also subsequently issued an emergency alert taking that one step further, announcing controlled interruptions of service as decided by utilities. The next step is controlled power interruptions by SPP itself. The system in Texas, ERCOT, experienced more demand than it did load by a large margin this past week, something that's been anticipated in a scenario like this for the past two years, resulting in rolling blackouts anticipated to last for a mere 45 minutes, some of which have stretched past 6 hours.

You may hear concerns that we are not in charge of reliability on the system. We are not. Ultimately, the regional transmission operators and individual utilities currently are. We've been told to trust they will do their job to ensure in situations like we've experienced this past week, the power will be on. Given the events of this past week, it's incumbent upon us to ask the hard questions. It's time for us to evaluate our regulatory structure. It's time for us to put our own priority on reliability. It's time for us to take steps to alter the regulatory structure to help utilities keep assets in place that have proven to work, and this legislation is a small step in that direction.

Senate Bill 2206

Presented by: Julie Fedorchak, Chair
Public Service Commission

Before: House Finance and Taxation Committee
The Honorable Craig Headland, Chair

Date: March 16, 2021

TESTIMONY

Mr. Chairman and committee members, I am Julie Fedorchak, Chair of the Public Service Commission. I am here to testify in support of SB 2206.

As you well know, the energy industry, and specifically the utility industry, continues to undergo rapid transformation due to technological changes, market forces, federal policies, and policies set forth by individual states. This has led many, including the commission, to have concerns related to the impacts this may have on the grid.

To illustrate that particular point, one would only need to look at pricing maps last month from the Midwest Independent System Operator (MISO) and Southwest Power Pool (SPP), the two regional transmission organizations that our cooperatives and investor-owned utilities (IOUs) are members of.

The locational marginal pricing in both MISO and SPP skyrocketed due to adequacy concerns. SPP went into Energy Emergency Alert Level 3 which is the highest level of emergency, requiring operation reserves below the required minimum or asking members to implement controlled service interruptions to

“safeguard continued reliability of the regional grid.” Portions of the MISO grid in Southeast Texas also went into forced curtailments.

This bill accomplishes two goals. In addition to encouraging IOUs to research and develop carbon capture and sequestration technologies utilizing North Dakota lignite, it provides an opportunity for IOUs entering into a purchase power agreement with a facility utilizing North Dakota lignite, to receive a reasonable financial incentive if the facility is deemed necessary to protect grid reliability.

With that in mind, the Commission believes this bill is an appropriate step to incentivize IOUs to again, evaluate the implementation of carbon capture technology and purchase power agreements with owners of in-state baseload generation for the purpose of maintaining system reliability.

Thank you for this opportunity to speak with you and I stand available for any questions.



March 16, 2021

Chairman Headland and House Finance and Taxation Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in support of Senate Bill 2206.

This legislation would allow a public utility with a new or existing facility, that utilize lignite mined in North Dakota, to recover research and development costs to develop carbon dioxide capture and sequestration and provide a financial incentive set at a reasonable rate for power purchase agreements of a dispatchable on-demand generating unit, plant, or facility deemed to protect grid reliability.

The Lignite Energy Council appreciates Senator Bell and the North Dakota legislature for their continued support and recognition of the lignite industry's strong track record of success in providing affordable and reliable electricity, 13,000 jobs, and billions in economic activity to the State of North Dakota and the region.

For these reasons, the Lignite Energy Council supports SB2206 and we respectfully ask that the committee provide this legislation with a favorable "Do-Pass" recommendation.

Thank you for your consideration,

Jonathan Fortner

VP of Government Relations & External Affairs



1016 E. Owens Ave. | PO Box 2277 | Bismarck, ND 58502

701.258.7117

www.lignite.com

LEC@lignite.com



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

Senate Bill 2206—Testimony in Support

#9330

House Finance and Tax, Chairman Headland

March 16, 2021

Chairman Headland, members of the committee, my name is Carlee McLeod, and I am president of the Utility Shareholders of North Dakota (USND). On behalf of my member companies, we support SB 2206.

Dispatchable generation has been an important part of our utilities' operations to serve customers, and we have been working to ensure a future for those resources. As the industry looks toward emerging carbon dioxide capture and sequestration utilization technologies, we support tools to allow the Public Service Commission to consider investments in those technologies in rate calculations. We support providing the commission with tools to incentivize integration of these technologies rather than any mandate to purchase a particular source of power.

Thank you.



March 16, 2021
Testimony of Dakota Resource Council
SB 2206
Scott Skokos Lobbyist # 256

Chairman Headland & members of the committee, my name is Scott Skokos and I am testifying on behalf of Dakota Resource Council and our members. Thank you for allowing me to submit written testimony in opposition to SB 2206.

Dakota Resource Council (DRC) is a non-partisan grassroots group of landowners, ranchers, farmers, and other citizens. We oppose SB 2206 simply because it is not right to charge ratepayers for high-risk projects that have been proven around the world to not be economically viable.¹ If other investors or the state decide to take that risk, while we highly recommend otherwise, that is their choice. However, charging ratepayers for those high-risk projects that are not in alignment with the direction our entire nation is going surrounding energy is wrong. Our energy economy is rapidly changing and ratepayers trust that they aren't funding high-risk investments.

Take for example the Petra Nova carbon sequestration project in Texas, which is likely to not be coming back online after having been mothballed. Petra Nova never captured the anticipated amounts of carbon and was not economically viable.² Proponents often point to Petra Nova often cited as the example of a project best carbon sequestration project, despite the fact that it failed on all accounts. A failed project is not good evidence to support this bill. Again, if the state and private investors choose to invest in high-risk carbon capture, fine. Ratepayers shouldn't foot the investment.

I urge the committee to oppose SB 2206 and recommend a DO NOT PASS on SB 2206.

1 - http://www.worc.org/media/Too_Good_to_Be_True_Report.pdf

2-
https://ieefa.org/wp-content/uploads/2020/08/Petra-Nova-Mothballing-Post-Mortem_August-2020.pdf

3 -
https://ieefa.org/wp-content/uploads/2020/09/Project-Tundra_A-Step-in-the-Wrong-Direction_September-2020.pdf

2021 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Room JW327E, State Capitol

SB 2206
3/23/2021

A bill relating to value of property for ratemaking purposes.

Chairman Headland opened up for discussion at 11:28am.

Representatives	Present
Representative Craig Headland	Y
Representative Vicky Steiner	AB
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Sebastian Ertelt	Y
Representative Jay Fisher	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Tom Kading	Y
Representative Ben Koppelman	Y
Representative Marvin E. Nelson	Y
Representative Nathan Toman	Y
Representative Wayne A. Trottier	Y

Discussion Topics:

- Committee decision

Representative Bosch made a motion for a DO PASS.

Representative Dockter seconded the motion.

Roll call vote:

Representatives	Vote
Representative Craig Headland	Y
Representative Vicky Steiner	AB
Representative Dick Anderson	Y
Representative Glenn Bosch	Y
Representative Jason Dockter	Y
Representative Sebastian Ertelt	Y
Representative Jay Fisher	Y
Representative Patrick Hatlestad	Y
Representative Zachary Ista	Y
Representative Tom Kading	Y
Representative Ben Koppelman	Y

Representative Marvin E. Nelson	Y
Representative Nathan Toman	Y
Representative Wayne A. Trottier	Y

Motion carried 13-0-1

Representative Bosch is the bill carrier.

Chairman Headland closed the discussion at 11:30am.

Mary Brucker, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2206, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2206 was placed on the Fourteenth order on the calendar.