MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1233

2007 HOUSE FINANCE AND TAXATION

HB 1233

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233 A

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: 1192

Committee Clerk Signature Mickei Schmidt

Minutes:

Chairman Belter opened the hearing on HB 1233.

Representative Brandenburg: This Bill deals with a tax credit for wind energy. In 2001 there was a Bill passed for tax credits for investing, you could get a tax credit for 3% up to 5 years or 50% of the cogence. In dealing with this tax credit, due to the construction, the way that the towers are put up they don't pay taxes in ND. Now this is one of those Bills that deal with the consumer being the winner out of this and this would allow a pass through and the investment tax credit would pass on through the purchase power agreement. In other words the people are buying the power to use that tax credit, the IOU's and the co-ops, and there's a number of different as you look at this legislation it talks about gross receipts tax and statute. We've got amendments coming and I'm going to let those people explain because there are parties here from both sides to explain how this could work out.

Chairman Belter: Did you say there are amendments coming?

Representative Brandenburg: Yes.

Chairman Belter: Is there further testimony in support?

Rep. Dawn Charging: In my district this came of special interest to me when I was looking at this year's rural opportunities and things that are happening in my district and wind energy was one. I am here in support of wind energy and this Bill.

Rep. Dave Monson: I too have an abundance of wind in my district. Hopefully it's something that we can start harnessing soon. There are a lot of people interested in this in my corner and a lot of interest by power and light for one to try to start an industry up there. I think I should be supporting this Bill.

Representative Kelsh: We have a great deal of wind in my district also. It needs to be harnessed and anything I can do to further that cause, I would support it.

Dale Niezwaag, representing Basin and Power Cooperative; At this time we are working with the Tax Department to develop amendments to the Bill that will make it a little bit more based and workable.

Chairman Belter: Any further support? Is there any testimony in opposition? Neutral testimony? If not, we'll close the hearing on HB1233.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233 B

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: 1228 02min 30sec

Committee Clerk Signature Mickie Schmidt

Minutes:

Committee Work:

Chairman Belter: Let's look at HB 1233.

Representative Brandenburg: This is a good Bill and it's going to work, we just have to get the amendments put in there. The Tax Department's working on the amendments.

Representative Froseth: Rep. Brandenburg, on line 16, it says "A cooperative is entitled to a credit". It doesn't state how much credit. Is that what's going to be worked into the amendments?

Representative Brandenburg: No, what it does is increase it. In 2001, we passed an investment tax credit, which is 3% in five years. This allows the tax credit to be used as a credit to the person buying the power. It lowers the purchase power on the power costs back to the consumers. The Tax Department is working on this right now.

Chairman Belter: Ok, we'll hold this for the amendments. Close the meeting on HB 1233.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233 C

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2378

Committee Clerk Signature Mickie Schmidt

Minutes:

Chairman Belter opened the hearing on 1233 and asked Rep. Brandenburg if he was ready with his amendments. Let's move on and come back to this.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1233

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 1-31-07

Recorder Job Number: 2380

Committee Clerk Signature

Minutes:

Chairman Belter: Rep Brandenburg, how many bills to you have here?

Rep Brandenburg: HB 1233. Mr. Chairman we have some amendments to present. (amendments attached) There is someone here from the Tax Dept to explain them.

Donnita Wald, ND State Tax Dept: HB as introduced does two things. It creates the option for the tax preparer to build a geothermal, solar or wind energy device transferring credit that was earned from the building that device. The second thing that it does is allow that credit to be taken from the gross receipt tax which is an in lieu of tax which is administered by the property tax division. After chairing the meeting with some of the people involved there were some areas of concern. We drafted some amendments that we think will deliver better control and authority to audit and administer how the transferable credit program is going to work. We also removed the gross receipts tax portion of it from the bill. (Donnita then walked through the bill and amendments as attached.)

<u>Page 3, after line 17</u> - this <u>Section 8</u> allows the tax credit generator to assign power transfer to tax credit that they generate to the individual under a power purchase agreement. What that does is limit the sale to just one particular entity so we aren't tracking the credit all over the place. What you have here today is that the credit can be transferred to the people who

purchase the electricity or to another US utility who sells electricity at retail. These are the two instances under these amendments where the credits can be transferred.

New Subsection A clarifies when the credit can be used. Subsection B clarifies that there can be only one sale or transfer. Subsection C requires the tax credit seller and the tax credit purchaser to file documents with the department with the information that the tax dept needs to administer the program. They must also file a confidentiality agreement in case of an audit. Subsection D requires the tax credit seller to report to the purchaser any changes in the amount of tax credit within 30 days. Subsection E provides that the gross proceeds receipts from the sale of the credit must be allocated to ND and tax paid on that amount and it cannot be used to offset your other ND income. If it is sold at $1M, it will be taxed at $1M. The reason we put this in is because typically income received from the sale of an intangible or contract income is assigned to the status of a commercial domicile which many times is not in ND. Our thought was that if we allow you to sell the credit then we should have the right to tax it. Subsection F gives us four years after the date of credit assignment to audit the credit. Subsection G just gives us the ability to adopt other rules that we deem necessary to administer a tax credit selling program. We don't have it currently.

Rep Weiler: With these amendments, is this something that the tax dept can support?

Wald: We don't typically support bills.

Rep Pinkerton: Asked Ms. Wald to walk through it again using a scenario.

Wald: Someone (Florida Power and Light) comes and they build wind farms. As soon as that wind farm is built, the sell the electricity generated from that farm under a power purchase agreement to someone like Basin Electric or they can sell it off MISO. Under this situation as the bill is written, the tax credit that they will earn from building that wind generator, which is

3% of their cost for 5 years can be transferred under the power purchase agreement so that Basin Electric can use the tax credit or they can sell it to another utility whether it is an investor owned utility or another cooperative who may be able to use that tax credit. Right now Florida Power and Light cannot use that tax credit that they've earned.

Rep Pinkerton: Is there a fiscal note on this bill?

Wald: There is no fiscal note.

Rep Brandenburg: If I could go back, there is a tax credit here right now for 3% for 5 years for investment tax credit. Trouble is that Florida Power and Light is not able to use their investment tax credit because they don't pay taxes in ND. So we need a pass through credit company (ex. Basin Electric). If we allow the tax credit to be transferred it means lower cost of energy. This will allow project that are looking at other states to be able to reduce the cost of the project and be competitive in the market and bring them to ND.

Rep Pinkerton: Essentially 15% of the project would be received back as tax credit corporate income. So the cost of the project would be dependant upon the number of units that are built.

Rep Brandenburg: This addresses the fiscal note question. Zero time zero is zero. But if you have this investment tax credit and you have a building of $1M. You will have $150,000 that is taken off that investment by 3% over 5 years. This will reflect on the lower price of power.

Rep Pinkerton: Are you saying that each tower is worth $1M?

Rep Brandenburg: No, depending on the size of the tower, the megawatts. Each tower to install costs approximately $2.6M.

Rep Pinkerton: So $2.6M times 15% is $320,000 or something? 100 towers would he $30M. So the fiscal note would be about $30M?

Rep Brandenburg: Using the calculations, that's right. But what we're forgetting about is that the $300M project that you are putting up, you've also payment on towers that's going to more than offset the tax credit. The towers that are put up are going to create construction, payments to the land owners that pay income tax, property tax to the county, so the !5% that we're giving up to transfer the credits will be more than offset by the development of the energy. This is a very competitive market. This bill is a deal buster to allow construction.

Rep Headland: On Subsection E of the amendment - let's just say that Florida Power and Light has to use the proceeds against the cost of building or what does it say in it?

Wald: What it says is if Florida Power earns a tax credit of $30M and they sell that tax credit for $26M, that they will be taxed on $26M. There is no offset. They cannot offset their net operating losses. They can't offset any other income they may have.

Rep Froseth: There isn't anything here that requires the tax credit to be applied to loaned equipment and supplies that are manufactured in ND.

Wald: There is a sales tax reduction for those parts purchased or used in ND. I think this is something that we can work with.

Rep Brandenburg moved the amendments prepared by the Tax Dept

Rep Froelich seconded the motion

Voice Vote - passed

Rep Brandenburg moved a Do Pass as Amended

Rep Owens seconded the motion

(yes) 9 (no) 2 (absent) 2

Carrier: Rep Brandenburg

(Discussion as to whether to send it to Appropriations - Chairman ruled no)

Chairman Belter: I think the project would have to be finished. I think legislation such as this helps to put the state of ND in an equal or competitive advantage in attracting wind farms and so if you look at it from the standpoint as a potential of not collecting revenues, but on the other hand, if the site is built in another state, you get nothing out of it. At least if it's built in ND you have the industry here which in the long run should be positive revenue wise.

FISCAL NOTE

Requested by Legislative Council
04/24/2007

Amendment to: Engrossed HB 1233

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			($3,000,000)			
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engr. HB 1233 with Conference Committee Amendments authorizes the assigning or sale of all or part of the income tax credit for installation of wind energy devices.

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.*

The provisions of Engr. HB 1233 with Conference Committee Amendments is expected to reduce corporation and individual income tax revenues by $3 million during the 2007-09 biennium, which is the limit set forth in the bill on the amount of the qualifying tax credits that can be sold.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	04/24/2007

FISCAL NOTE

Requested by Legislative Council
03/27/2007

Amendment to: Engrossed HB 1233

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engr. HB 1233 with Senate Amendments authorizes the assigning or sale of all or part of the income tax credit for installation of wind energy devices.

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.*

The provisions of Engr. HB 1233 with Senate Amendments will reduce corporation and individual income tax revenues by an amount that cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	03/28/2007

FISCAL NOTE

Requested by Legislative Council
03/15/2007

Amendment to: Engrossed HB 1233

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Engr. HB 1233 with Senate Amendments authorizes the assigning of all or part of the income tax credit for installation of wind energy devices as part of a qualifying power purchase agreement, or to any taxpayer engaged in the sale of electricity.

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.*

The provisions of Engr. HB 1233 with Senate Amendments will reduce corporation and individual income tax revenues by an amount that cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	03/15/2007

FISCAL NOTE

Requested by Legislative Council
02/06/2007

Amendment to: HB 1233

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

Eng. HB 1233 authorizes the assigning of the income tax credit for installation of wind energy devices as a credit against the rural electric cooperative gross receipts tax as part of a qualifying power purchase agreement.

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.*

The provisions of Eng. HB 1233 will reduce rural electric cooperative gross receipts tax distributions to all political subdivisions in which power lines of an REC are located that takes advantage of the assignment of the tax credits. It is not known the total amount of REC gross reciepts tax that may be offset, or the possible reduction of revenues to any affected political subdivisions.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	02/07/2009

FISCAL NOTE

Requested by Legislative Council
01/10/2007

Bill/Resolution No.: HB 1233

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

HB 1233 authorizes the assigning of the income tax credit for installation of wind energy devices as a credit against the rural electric cooperative gross receipts tax as part of a qualifying power purchase agreement.

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.*

The provisions of HB 1233 will reduce rural electric cooperative gross receipts tax distributions to all political subdivisions in which power lines of an REC are located that takes advantage of the assignment of the tax credits. It is not known the total amount of REC gross reciepts tax that may be offset, or the possible reduction of revenues to any affected political subdivisions.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	01/15/2007

HB 1233

#1 1-31-07 Am

Prepared by North Dakota Office of State Tax Commissioner
January 31, 2007 v 2

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PROPOSED AMENDMENTS TO HOUSE BILL 1233

Page 1, line 1, remove "subsection 1 of section 57-33-04 and"

Page 1, remove lines 5 through 19

Page 3, line 14, after the first "the" insert "unused", after "be" insert "sold,", after "assigned" insert "or otherwise transferred by the taxpayer, the "tax credit transferor","

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Page 3, line 15, after "purchaser" insert "of the power generated by the device", after "agreement" insert ", or to any North Dakota taxpayer engaged in the sale of electricity at retail to customers or members,"

Page 3, line 17, replace "or subsection 1 of section 57-33-04" with "beginning with the tax year in which (a) the purchase agreement is fully executed by the parties and (b) the geothermal, solar or wind energy device is installed"

Deleted: power

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Page 3, after line 17, insert:

"a. A purchaser of the tax credit must claim the credit beginning with the tax year in which (a) the purchase agreement is fully executed by the parties and (b) the geothermal, solar or wind energy device is installed. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

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b. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.

Deleted: power

c. If the taxpayer elects to sell, assign or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall jointly file with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the total installed cost of the qualifying geothermal, solar, or wind energy device, the amount of the credit being transferred, the gross proceeds received by the transferor, and the tax year or years for which the credit may be claimed. If the tax credit is sold, assigned or transferred via a power purchase agreement, the power purchase agreement must clearly state the purchase price associated with the tax credit sold. The taxpayer and the purchaser must also file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed, and the tax commissioner may audit these returns and

Deleted: power purchase

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HB 1233
1-31-07 AM
#1

assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.

d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser must file amended returns reporting the additional tax due or claiming a refund as provided in sections 57-38-38 or 57-38-40.

e. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

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f. The tax commissioner has four years after the the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. The provisions of this subdivision do not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

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g. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit."

Deleted: g. An individual, estate or trust that purchases a credit under this section is entitled to claim the credit against state income tax liability under sections 57-38-29 or 57-38-30.3¶

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Renumber accordingly

70504.0101
Title.0200

Adopted by the Finance and Taxation Committee
January 31, 2007

House Amendments to HB 1233 (70504.0101) - Finance and Taxation Committee 02/01/2007

Page 1, line 1, remove "subsection 1 of section 57-33-04 and"

Page 1, remove lines 5 through 19

Page 3, line 14, after the first "the" insert "unused", after "be" insert "sold,", and after "assigned" insert ", or otherwise transferred by the taxpayer to the tax credit transferor"

Page 3, line 15, after "purchaser" insert "of the power generated by the device" and after "agreement" insert ", or to any North Dakota taxpayer engaged in the sale of electricity at retail to customers or members,"

Page 3, line 17, replace "or subsection 1 of section 57-33-04" with "beginning with the tax year in which the power purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed"

Page 3, after line 17, insert:

"a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

b. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.

c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. If the tax credit is sold, assigned, or transferred via a power purchase agreement, the power purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law may have expired for the purchaser.

d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.

e. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

f. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

g. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit."

Renumber accordingly

Date: 1/31/07
Roll Call Vote #: 1233 #1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Finance & Tax Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number HB1233

Action Taken Do Pass on Amendments

Motion Made By Brandenburg Seconded By Froelich

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter			Rep. Froelich		
Vice Chairman Drovdal			Rep. Kelsh		
Rep. Brandenburg			Rep. Pinkerton		
Rep. Froseth			Rep. Schmidt		
Rep. Grande			Rep. Vig		
Rep. Headland					
Rep. Owens					
Rep. Weiler					
Rep. Wrangham					

Total (Yes) ____ No ____

Absent ____

Floor Assignment ____

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

Voice Vote
Passed

Date: 1-31-07
Roll Call Vote #: 1233 #2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Finance & Tax Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: Do Pass As Amended

Motion Made By: Rep. Brandenburg

Seconded By: Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich	✓	
Vice Chairman Drovdal		✓	Rep. Kelsh		
Rep. Brandenburg	✓		Rep. Pinkerton		✓
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande			Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler	✓				
Rep. Wrangham					

Total (Yes) 9 No 2

Absent 3

Floor Assignment: Rep. Brandenburg

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

REPORT OF STANDING COMMITTEE

HB 1233: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). HB 1233 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 1 of section 57-33-04 and"

Page 1, remove lines 5 through 19

Page 3, line 14, after the first "the" insert "unused", after "be" insert "sold,", and after "assigned" insert ", or otherwise transferred by the taxpayer to the tax credit transferor"

Page 3, line 15, after "purchaser" insert "of the power generated by the device" and after "agreement" insert ", or to any North Dakota taxpayer engaged in the sale of electricity at retail to customers or members,"

Page 3, line 17, replace "or subsection 1 of section 57-33-04" with "beginning with the tax year in which the power purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed"

Page 3, after line 17, insert:

"a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

b. The original purchaser of the tax credit may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.

c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. If the tax credit is sold, assigned, or transferred via a power purchase agreement, the power purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law may have expired for the purchaser.

d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.

e. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

f. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

g. The tax commissioner may adopt rules to permit verification of the validity and timeliness of the transferred tax credit."

Renumber accordingly

2007 SENATE FINANCE AND TAXATION

HB 1233

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1233

Senate Finance & Tax Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4842

Committee Clerk Signature	Sharon Renfrow

Minutes:

Senator Urlacher opened the hearing on HB 1233 relating to assignment of a wind energy device installation tax credit as part of a power purchase agreement; and to provide an effective date.

Senator Monson introduced HB 1233 and urged a do pass.

Representative Brandenburg said HB 1233 deals with an Income Tax Credit for wind farms. What HB 1233 does is allow the transfer of the Income Tax credit to people within the energy sector. He also introduced proposed amendments' to Engrossed HB 1233.

Senator Cook asked if the existing credits aren't working and why.

Rep. Brandenburg said it isn't working because the company is not able to use the income tax credit because they don't usually need it the first years. This bill will make ND more attractive for incoming power business.

Donnita Wald attorney for the Tax Dept. walked the committee members through the bill and the amendment.

John Di Donato, FPL Energy testified in support of HB 1233. He stated that if ND wants to seriously get into wind development they need to provide incentives to companies.

John Olson representing Ottertail Power Co. testified in support of HB 1233 and the amendment.

Bob Graveline, U.S. N. D. spoke in support of HB 1233 and the proposed amendment.

Dale Niezwaag, Basin Elec. spoke in support of the bill with the following amendment offered. On page 3, line 2 remove the words "at retail".

Donnita Wald, ND Tax Dept. said the tax dept. is neutral on the bill but wanted to share some comments. She said this bill will be a first in ND and they do have some concerns about transferring tax credits. We think there are other possibilities: .... and refunds. Other states have refundable tax credits.

Senator Horne asked if when these companies sell their tax credits to companies are they wind utilities or any utility.

Donnita said they can be any utility.

Senator Triplett asked if amended will we need a new fiscal note.

Donnita said that she thought so.

Rep. Brandenberg said he supported the amendment that Basin Elec. proposed removing the word retail. He also discussed possible costs (FN) and emphasized the potential economics of what wind energy development could bring to ND.

Senator Tollefson asked about the average life of a tower.

Mr. Di Donato said that the engineers say about 25 years. He said that they maintain and sign leases for longer period of time.

Senator Horne asked what is in their leases with landowners on decommissioning.

Mr. Di Donato said the obligation that our company has is if that machine does not produce electricity for a period of 12 months we must remove the machine from their property. We are a tenant on this property by lease or easements. The landowner owns the property and the landowner can take that abandoned unit and sell it for scrap iron. We believe at worst that removing the machine for us is a break even proposition for us. We don't plan on removing machines but our contract requires us to do that.

Senator Horne asked what his company thought about the bond.

Mr. Di Donato said that they did not support the bond but some other states do require some security on behalf of the wind farm operator or constructor.

Senator Urlacher closed the hearing on HB 1233.

Senator Cook moved a do pass on amendment 02TX plus that we remove the word "at retail" on line 2, page 3.

Senator Horne seconded the motion.

The clerk called the roll 7-0-0

Discussion followed and it was decided to wait for the fiscal note before acting on this.

Senator Urlacher closed the discussion on HB 1233.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1233**

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 13, 2007

Recorder Job Number: # 4993

Committee Clerk Signature	Sharon Renfrow

Minutes:

Sen. Urlacher called the committee to order for discussion and action on HB 1233.

Sen. Urlacher: this doesn't show a fiscal note

Sen. Horne: handed out a sheet entitled "Questions for HB 1233". (See attached) before we go into the fiscal side and consider the bill I did raise a question and I will send around for part of the consideration. A few numbers about how it might affect us in the state and then bring that up for discussion. If an average tower is let's say 2 million dollars to make the math easy and the credit is 3% and Florida Power and Light can't use those and they sell them, purchased by other utilities in the State which then would reduce their taxable liability and my question was to someone would that mean or could that mean that some of these utilities wouldn't be paying income tax in ND for any particular or over a number of years and the answer was yes. Just raising the question whether we want to take that into consideration when we vote on this. I'm not against wind energy obviously but the question is what is the impact and this is what it could be. I thought we should think about that before we go too far so we understand what could happen. Make that part of discussion.

Sen. Tollefson: the fiscal note has a paragraph which I think probably describes it quite well the provisions is this bill will reduce rural electric cooperative gross receipts tax distributions to all political subdivisions in which power lines of an REC located in this report but it doesn't what to what extent it would reduce it.

Sen. Triplett: I think that's in error I think Ms. Wald told us yesterday that the information on the REC was amended out in the House and so that paragraph actually does not have any affect.

Donita Wald: Tax Dept., Sen. Triplett is correct the House amended those gross receipts tax out of the bill, the fiscal note is incorrect to that.

Sen. Triplett: the only part that would be relevant right now would be Qa, is that correct or that is out too, so there is nothing in the fiscal impact saying that there's anything, is that right?

Donita: that's correct, but it still does allow the offset for the corporate income taxes and individual income tax.

Sen. Triplett: but nobody has made any estimate of what that impact is?

Donita: no, I believe its because of the credit is already there and maybe the assumption is that its being used, as the testimony indicated yesterday its not being used at least by Florida Power and Light, so this would allow them to use

Sen. Horne: if it was being used we probably wouldn't be talking about this, obviously it isn't being used or they wouldn't be a proposal to amend the bill.

Sen. Anderson: I guess I've always had a little problem with selling these credits it seems to me like its more specific project. It doesn't seem to me like they should be able to sell those credits to somebody else, somebody convince me I'm wrong.

Sen. Triplett: I think the idea is that some of the utility companies want to get into wind energy but they don't necessarily want to develop the expertise to go out and deal with the siding and construction and that sort of thing so they like Otter Tail Power would like to buy wind energy up and running from Florida Power and Light and am I right about that is that what is going on?

Donita: to the extent that those the purchase of that green energy result in some green tags for Otter Tail, those are something totally different than what this is. In this particular bill they can sell the credits but not necessarily the green tags, it's a different market.

Sen. Cook: this bill was introduced by Florida Power and Light, that's who's benefiting from this bill.

Sen. Horne: that's my opinion.

Sen. Anderson: would the consumer gain or would the company profits gain only? I have a concern about that.

Sen. Oehlke: Florida Power and Light would gain because they'd be getting dollars but they'd be selling a dollar of tax credit for 50 cents, so the buyer would get a dollar tax credit with 50 cents, Florida Power and Light would get 50 cents for something they weren't going to be able to use because they couldn't use it up in the number of years allowed for it. They both would gain but we would use, the State would be the loser.

Sen. Anderson: I understand what you're saying the other person who got the credits would gain but my question is when you get right down to the end, would the consumer get it a reduction?

Sen. Cook: if your going to be totally concerned with what the consumer pays for electricity you wouldn't have one of these in the State. I **Move DO NOT PASS**, seconded by Sen. Oehlke.

Roll call vote: 7-0-0 Sen. Horne will carry the bill.

this one

70504.03TX
Title.

Prepared by the Office of State Tax Commissioner
March 21, 2007

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1233

Page 1, line 2, remove "as part of a power"

Page 1, line 3, remove "purchase agreement"

Page 3, line 1, remove "<u>sale of electricity to customers or</u>"

Page 3, line 2, replace "<u>members</u>" with "<u>construction or expansion of electricity transmission lines and associated transmission substations placed in service on or after December 31, 2006</u>"

Page 4, line 24, replace "taxable years beginning" with "geothermal, solar, or wind energy devices installed"

Renumber accordingly

-NO-

70504.04TX
Title.

Prepared by the Office of State Tax Commissioner
March 21, 2007

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1233

Page 1, line 2, remove "as part of a power"

Page 1, line 3, remove "purchase agreement"

Page 3, line 1, remove "<u>sale of electricity to customers or</u>"

Page 3, line 2, replace "<u>members</u>" with "<u>construction or expansion of electricity transmission lines and associated transmission substations from a wind energy device project with a capacity of 100 megawatts or larger, and which are placed in service on or after December 31, 2006</u>"

Page 4, line 24, replace "taxable years beginning" with "geothermal, solar, or wind energy devices installed"

Renumber accordingly

Amendment Passed

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1233

Page 2, line 30, remove "the tax credit transferor to"

Page 3, line 2, remove "at retail"

Page 3, line 5, after "agreement" insert "or tax credit purchase agreement"

Page 3, line 23, remove "If the tax"

Page 3, remove line 24

Page 3, line 25, replace "power" with "The"

Renumber Accordingly

Date: 3.13.07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1233

Senate Finance & Tax Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ____________

Action Taken DNP as amended

Motion Made By Cook Seconded By ____________

Senators	Yes	No	Senators	Yes	No
Sen. Urlacher	✓		Sen. Anderson	✓	
Sen. Tollefson	✓		Sen. Horne	✓	
Sen. Cook	✓		Sen. Triplett	✓	
Sen. Oehlke	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Horne

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

REPORT OF STANDING COMMITTEE

HB 1233, as engrossed: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1233 was placed on the Sixth order on the calendar.

Page 2, line 30, remove "the tax credit transferor to"

Page 3, line 2, remove "at retail"

Page 3, line 5, after "agreement" insert "or tax credit purchase agreement"

Page 3, line 23, remove "If the tax"

Page 3, remove line 24

Page 3, line 25, replace "power" with "The"

Renumber accordingly

2007 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1233

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233 CC

House Finance and Taxation Committee

☒ Check here for Conference Committee

Hearing Date: April 20, 2007

Recorder Job Number: 6217

Committee Clerk Signature Mickie Schmidt

Minutes:

Committee Conference:

Chairman Brandenburg opened the hearing on HB 1049 and asked the clerk to take the roll; everyone was present.

Chairman Brandenburg: Mary, will you continue, you were explaining the Bill.

Mary Loftsgard, Supervisor of Corporate Income Tax, Tax Dept.: The question that is still out there is do we have limit credit limitation now and how much tax credit can be sold? If you look on page 3, sec. D; it should be E. The way that the amendment is proposed is the total amount of credits used by all taxpayers between July 1, 07' and to limit it to 5 million dollars. We had some discussion with other people and what we suggest is that it needs to say is the total amount of purchase credits sold by all taxpayers, not used.

Rep. Kelsh: So does this have a sunset?

Cory Fong, State Tax Commissioner: On section D, this is the section that we see that there needs to be some changes. We're not sure that that July 1 through December 31st date needs to be amended but the implication and the goal here is to provide a Statewide cap of how much can be sold an the other substance in the amendment would be on line 2, which would change that from 5 million to 3 million, so this would be a section that we need to do some additional work on. But that's the section that we would have to do a little bit more work on and we certainly will do that for the conference committee.

Chairman Brandenburg: 3 million is the cap and we've agreed to that and we're just trying to clean up the language that's needed for the Tax Dept. to make sure that we can implement this program and be reasonable so it's handled well. Any other questions?

Cory Fong: There's also another substance in the amendment being proposed on page 2, sub. sec. 6; which will only allow the purchaser to offset 60% of their liability so again, another cap that is intended to limit the usage of the credit being sold. So not only do you have the statewide cap of 3 million provide in this, you also have the cap in sub. sec. 6.

Sen. Tollefson: About these tax credits can be used for because my understanding is when you're talking strictly about transmissions that would be for substations and generation.

Chairman Brandenburg: That discussion was held. Is that your concern?

Cory Fong: As Mary eluded, the whole reference to effecting the transmission has been removed from this Bill. Your concern about what was going to qualify for credit in terms on the build on transmission has been removed and now we're back to the original contract which would allow the credits that sold to a Purchase Power Agreement (PPA) or to a company that is power generating electricity. There's no reference now to the transmission build out.

Sen. Anderson: The floor amendment got there by the Senate originally defeated this, because I think the statement was that it was felt that these commodities shouldn't be bought and sold as a commodity. But then it was brought back because of the transmission lines. We need transmission lines and that's why it was limited only to expenses for transmission lines during a given year. The credits couldn't be carried over and above what was actually spent for those constructions during that year. This is really a big change.

Chairman Brandenburg: I just haven't got to that point yet where the transmission was discussed and that this applies to transmission and 3 million dollar cap for the biennium. That's where we're at so we have to do some more work with these amendments. I wanted to have the discussion with the Tax Dept. to explain everything, what has happened and we're getting the history now.

Cory Fong: I'd like to answer Sen. Anderson's question. Companies that will be able to purchase the credit are still in some cases in a business of building out transmission. Utility companies for example, that generate electricity obviously have the new potential to also build out transmission so, I don't know that it's precluded in transmission build out. It's just not directly tied to say we're only going to allow credits to be sold specifically for transmission build out but certainly some of the companies that we do title to purchase given that if they have an income offset would be in the business of building out transmission potentially.

Sen. Tollefson: That's really broad. Personally I think it should be more specific. When you get into transmission lines you have to consider all factors including phones, wire, sub stations; they enter into a power pool and it gets into big dollars in some situations. In selling those to an organization that maybe basically their business is selling or generating or providing electric energy, but yet they have satellites that could benefit from the use of those tax credits. I think this is something we should take a real close look at.

Rep. Headland: Does a transmission upgrade, does that constitute transmission, if you upgrade a current fund?

Cory Fong: I am not in a position to respond to your question. However it was one of the concerns that we had in the version that came off of the Senate floor, which we truly didn't define what exactly transmission was.

Sen. Tollefson: Transmission itself means you're moving power from A to B. In my estimation to your question I would say, yes, it would be part of that transmission. But that substation at the end, you're moving that power from the wind energy to the grid that substation would not be part, you couldn't use these credits on building that substation.

Chairman Brandenburg: What we're working towards is to define these credits towards transmission. What we want to do is be able to encourage transmission to get out of here and get to the Cities. That's the bottom line. What it costs to get that line from here to Minneapolis is going to be more than offset all our other transmissions.

Sen. Tollefson: I agree with what you're saying. The terms used can be another medium of exchange if it's used improperly. The proper use of those tax credits is what we're after.

Chairman Brandenburg: I agree.

Sen. Anderson: It wasn't that easy to get this brought back up again and I don't know what the Senate will stand for you understand, but it actually had to be transmission lines etc… built in ND. I know it was stated getting them power to Minneapolis. Well that was thrown you know nothing outside of the State. This is just background. I'm not going one way or the other.

Chairman Brandenburg: Right.

Sen. Oehlke: I do have that highlighted in red there. That's the wording that was added and we crossed out.

Chairman Brandenburg: Committee, I'll read what Sen. Oehlke has given me; (he read from the amendment 70504.0202). I think we need to expand it also to out of State because this lines going to go to Minneapolis and I wonder if we can do that. And it can be use in ND and also outside of ND. If, it's starting in ND.

Sen. Tollefson: Under normal circumstances energy that is generated in the State of ND, it was the grid somewhere and that grid has about a seven state distribution including part of

Canada and so it might be kind of a lead point but your transmission line and you have it soldiered it could be important or not.

Chairman Brandenburg: Yes, and I think in the whole steam of things this could be a part.

Rep. Headland: I think you could accomplish what we're both talking about by just saying the power and it has to start in ND. It doesn't really make any difference where it ends up.

Sen. Tollefson: The idea is to sell the power.

Sen. Oehlke: I do remember testimony given by one of the Rep. of the Wind folks and SD gives zero for anything because they're closer to Minneapolis. I'm not so sure we need to spend money on line going through SD, maybe they can pony up too.

Chairman Brandenburg: I don't disagree with you but I will tell you that we still have to get to SD or Minnesota to get there and they're just closer to Minneapolis and that's part of the problem. We're 150 miles out there.

Rep. Kelsh: SD doesn't have an income tax.

Chairman Brandenburg: They also have what's called a contractors tax.

Sen. Oehlke: They do have a sales tax.

Cory Fong: Wasn't that what Sen. Oehlke was proposing tying it back to the whole concept of transmission build out. The one thing that we still need as part of an amendment to be crafted if that's the direction committee wanted to head. We need a definition of what transmission build out is. We certainly would have an amendment to achieve that.

Chairman Brandenburg: I agree with you. I do think though we need to have it opened up so it's not just in ND because we need to get the power from ND to the Minneapolis market. Are you Ok with that type of language? Are we going to have a problem with that?

Sen. Anderson: I do, that's what convinced me was that it had to be ND.

Chairman Brandenburg: What if they start on the SD border. They only come 20 miles into ND to tie into the grid. If you've been part of the electric utilities competition committee and Sen. Tollefson you have, you've seen cap x 2020 and you can see where that line would come in and tie up to that line right there in the Ellendale area and hook up and go to Grand Fall and go to Minneapolis market so theoretically this new transmission line was to get to Minneapolis. It could start there and not be able to get any of this credit.

Sen. Oehlke: I don't have any problem in doing what's best and right for ND and the people that live here. We have to be a little bit careful with this. We're doing something that's different.

Sen. Tollefson: The sale of tax credits is really the issue. There are a lot of tax credits out there that might someday somehow be available. There are brokers in tax credits that would be anxious to buy them up and resell them. I know they couldn't under this provision.

Rep. Headland: If we're going to allow from wind generation that is built in ND, I'm having a hard time figuring out how they can utilize the transmission line that wasn't in ND at some point. If the line somehow, I can understand that we're trying to get to Minneapolis. The complete line maybe can't only be located in ND, but a portion of the line will have to be and I think that ought enough to qualify us.

Sen. Tollefson: There are several changes you're going to have to come up in these amendments before we dare meet anyway.

Chairman Brandenburg: We're going to have to see a final version. I think we're on the same lines; we just got to get this fixed. Mary, can we get something together by four?

Mary Loftsgard: Are you talking about adding transmission components? Do you want it to be under a Purchase Power Agreement?

Chairman Brandenburg: What was agreed upon was that this would deal with transmission and cap it at 3 million. No PPA. Is that a problem? And ask the Tax Dept. can that work?

Mary Loftsgard: We can write it to say that.

Cory Fong: I too would like some more direction because you have been working on this Bill from the get go and you have always tied it to PPA, so are you willing to take that out, take out the record?

Rep. Headland: I think we have to leave the PPA in there.

Chairman Brandenburg: Senator's, are you going to Ok with that? Transmission is the key.

Cory Fong: Tying it back to the Senate version where it was based on PPA.

Chairman Brandenburg: I think we need some other amendments here and bring them back again and talk.

Sen. Anderson: Commissioner Fong, here's where you need more definition, it's "that constructs or expands electricity transmission lines and associated transmission substations in ND".

Sen. Tollefson: The substations are out of there.

Donnita Wald, Legal Counsel: We need to define investments.

Cory Fong: I would like Legal Counsel who really crafted the Bill and its many versions to do this.

Donnita Wald: I just want to make sure that when I'm putting these together that we're getting it right the first time. Transmission from a project or any transmission build out?

Sen. Tollefson: It could be from any transmission build out, that's my opinion of it. Transmission is transmission.

Chairman Brandenburg: Ok. Shall we wait until Monday? Let's check with leadership before we make that call. We know what we want to do and I think we have agreed as a committee on a cap, transmission and we just need to make sure that we can implement the program to the Tax Dept. Ok, we will adjourn the conference.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233

House Finance and Taxation Committee

☒ Check here for Conference Committee

Hearing Date: April 21, 2007

Recorder Job Number: 6239

Committee Clerk Signature Mickie Schmidt

Minutes:

Conference Committee:

Chairman Brandenburg called the conference to order and asked the clerk to take the roll: all were present.

Chairman Brandenburg: I have some amendments to pass out, **(See attachment #1)**. We have people in the room to go through these with us, Commissioner Fong and Mary Loftsgard, Supervisor for Corporate Income Tax from the Tax Dept.

Cory Fong: Let's walk through the changes. There is probably various sections that need to be fixed but I think we can fix that relatively easily. On page 2 of the amendments, the substitute change on this page is in sub section 7 which allows the credit to be sold as the part of the Purchase Power Agreement or to any ND tax payer that constructs or expands in electricity transmission line in ND after December 31, 2006. I believe that that was changed as a result of the discussion yesterday among the Senate that they would like to somehow tie this to transmission build out, so that is the change there in subsection 7.

At the bottom of that same section we tightened up the language to what constitutes qualified transmission build out. It's no longer the investment that the actual cost of acquisition and installation, so again our question yesterday was what is investment, now we have a more defined or greater definition of what that actually entails and it would be the actual cost of acquisition and installation of the transmission lines constructed in ND for that taxable year following down to sub A.

Sen. Oehlke: Back up in section 6, I notice that the wording relative to 60% of the tax liability for tax is not in that section anymore, is that on purpose? I didn't see it anywhere else either.

Cory Fong: It is found in sub A and I wanted to point out in the middle of that section that you will see that again the purchaser of the tax credit under the section has only the right to claim and use the credit in it's terms that would have applied to the tax credit transfer. Then also it's followed by the fact that they can only offset 60% of their liability. So again that is another cap of sorts. I am going to ask Mary to explain what that particular section means for the taxpayer who's going to buy a credit and how they're going to be able to use it.

Mary Loftsgard: She explains the amendment. (Can't hear).The taxpayer buys the credit has the same rights as the original in terms of the carry forward used. If in that first year of installation (can't hear). The purchaser can only offset liability up to 60% of their liability but they would be allowed then to carry forward whatever was left of the amount that they purchased into another year, but again in that second year, it could only move their purchase credit out, (Can't hear).

Rep. Headland: So throughout the use of this credit, they can only get up to a maximum of 60% of their liability, is that during the biennium or is that forever? You said they can carry on over into the next year, correct?

Mary Loftsgard: They can only use the purchased credit in a taxable year up to 60% of the liability, but whatever purchase credit, it still unused can be carried forward.

Rep. Headland: So if they can use up to 60% the first year and they can use the remaining into the next year up to 3 million?

Mary Loftsgard: It's not that they can use only 60% of a credit they purchased, they can use amount of credit that they purchased up to 60% of their liability. So potentially they may be able to use all of the credit that was purchased from the installer in that first year depending on what their liability is. For example; let's assume that one installer sells all 3 million dollars of credits in the biennium to one other tax payer. And that taxpayer actually has 5 million dollars of liability here. They would be able to use that entire 60%. They would eat that up in the first year.

Rep. Headland: Got it

Cory Fong: Mary, one more clarification; the carry forward, how long would the purchaser of the credit be able to carry credits forward?

Mary Loftsgard: 5 years is the credit. That is consistent with the statute as it already is, you can find that up on page 2, section 6.

Cory Fong: So if the generator of the credit has 5 years then the purchaser has the same 5 years?

Mary Loftsgard: That's correct.

Cory Fong: So that is the substantive of changes in section A, Sub B. the substantive change there is that they can only sell a credit to one purchaser, and that purchaser cannot continue to sell the credit so again, very limited. The generator of the credit or the owner of the credit can only sell it to one purchaser and the purchaser is prohibited from selling to other taxpayers other than again they can use it to offset other entities within their combined group.

Going on to page 3, the substantive change that we talked about yesterday which is in Sub E, which we believe needs to be corrected. It says right here the amount of total credits that can be sold by a taxpayer is limited to 3 million dollars each biennium. Now it implies per taxpayer cap and the intent here is to provide a pro-biennium a statewide cap. So we will need to look at a language change and we would suggest an amendment that would say the total amount of credits that can be sold by all taxpayers is limited to 3 million dollars each biennium and then go on with sentence, this limit applies on the basis of the date of installation geothermal solar wind energy device. That would be a substantive and necessary change in order to create the biennium statewide cap that I think is driving a concept behind this.

Chairman Brandenburg: If I could just ask to add the word "all" in there between a and taxpayer, would it take care of that?

Cory Fong: You'll need to delete "a" and replace that with "all" and change taxpayer to taxpayers. The other comment that I want to make on page 3, is again sub H; which is the ability for the Tax Commissioner to adopt rules for this process and we believe it will be imperative to adopt rules for the administration of this credit. So we are again asking for support of sub H so that we have the ability to do that.

Rep. Kelsh: On page 2, subsection B; the first sentence there says the tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. Can you tell me what that means and why we have to have that language in there? There's only one credit to sell, why do we have to say they can only sell one credit a year? And then does it also mean that when you're only at 5 for one year and after that year the purchaser can otherwise resell that credit?

Cory Fong: I'll let Mary take a crack at this but it's our understanding, no, it would not allow the purchaser to sell the credit.

Mary Loftsgard: We have in the Tax Dept. concerns about transferability and managing and tracking and making sure that what's being done is in accordance with the statute. This is new ground. We're trying to start out in small steps to make sure that we do this correctly. The concern about limiting the sale to one taxpayer to try as we go forward initially to limit the administrative burden and to allow us to be able to track how this works and that we have everything in the statute that needs to be in there. I believe that in yesterdays amendment we didn't have each taxable year and we have adjusted that. For example; 3 million dollars have been sold in the first year of the biennium (can't hear), under a PPA to one company. This would then allow them the second year if that company didn't (can't hear) PPA from them, it would allow them in the second year of the biennium to have a shot. But at no time can a tax credit purchaser resell those credits.

Cory Fong: I might add, with the fixes that we're proposing in sub E on page 3, the cap per biennium statewide for credit that can be sold is going to be 3 million and all generators of credits will compete under that same cap of 3 million so if one company sells off 1.5 million in credits, another company will only have another 1.5 million. Once that cap is reached, no more credits can be sold for that biennium. Once that biennium concludes that 3 million dollar cap will then be a blank and companies can again attempt to achieve that cap. I think that's pretty clear.

Chairman Brandenburg: In your example in this Bill it only refers to transmission because we're not dealing with the construction of the whole project.

Sen. Tollefson: Transmission only is included.

Cory Fong: And through the PPA, which is what the group yesterday gave, that was the direction you were going.

Sen. Tollefson: In the broad sense, how do you define PPA?

Cory Fong: I'm not sure that I'm the right person to ask that question, but it's an agreement between two parties.

Sen. Tollefson: One is the generator and the other to purchase, I understand that. That's why I asked for the broad sense; could the PPA in a broad definition affect this amendment in any way? Are we on the same page on the definition of PPA?

Chairman Brandenburg: I think that the Tax Commissioner needs to have the PPA in here to deal with tax credits.

The Chairman opened the conference up to everyone. There was general discussion about the transmission, Seed Capitol Credits, and PPA.

Sen. Tollefson: That's my point. PPA can be defined in many different ways. Who should make that determination, is that the Tax Dept. or who?

Cory Fong: I don't think it's our place to be defining what constitutes the PPA. My understanding of these agreements comes from last session when I was at the Commerce Dept. when we got the law passed to reduce the taxable value from 3% down to 1-1/2% for those that had a PPA in place and were building a wind farm. As I recall that PPA, typically they are about 20 to 25 years. This has always been my understanding that these are significant agreements and if that's changed based on the new environment out there that they're shorter length of time, I don't know that and that's why I don't think we're in the place to decide what constitutes a more than casual PPA.

Sen. Oehlke: In section E; between yesterday and today, we've taken out the sunset clause. Is that on purpose or was that an accident? It looks like now the 3 million is going to be there for each biennium and unless we went back in on purpose and changed something but that same section stated between July 07 and Dec. 08. Is that what we intend to do or do we want a sunset on this so that we don't end up with a problem?

Chairman Brandenburg: I don't think that from my understanding that we were going to put a sunset on it. We can come back next session to deal with that.

Sen. Oehlke: It might get taken out next session but we'll have spent 6 million by the time we take it out.

Sen. Tollefson: I'm getting back to PPA. A consumer of electricity from a company, MDU for example, you have an agreement to buy power from them, you have a PPA. Should you have the ability to buy against those tax credits?

Cory Fong: Sen., I think Mary can help clarify this for us in subsection 7, page 2;

Mary Loftsgard: The PPA has to be for purchase of electricity generated from a wind device. There is one restrainer in there; it has to be from a wind energy device.

Sen. Tollefson: That is such a broad term. In the eyes of the law it could be defined as almost any buyer. When you dump wind energy on a grid, the purchaser in Minneapolis could really buying wind energy power generated by wind energy. Now that's a real high remote situation perhaps, but I do think that it's something that should be clarified. I think it's important because that one with a PPA is eligible.

Rep. Kelsh: Does the 5 year carry forward have any affect on the 3 million dollar cap? Does the 3 million dollar cap only apply to the first time anyone applies for the credit and then it's carried forward for 5 years? Does that carry forward come out of the subsequent 3 million dollar cap?

Mary Loftsgard: It depends. The language that you looked at yesterday was really language that was proposed by some of the parties that have been discussed in this room. The understanding was that it was to be a cap per biennium and the feeling was that that was unclear that it was not statewide 3 million dollar cap so that was why the change was made here. The intent was not to sunset that. As far as the carry forward, let's assume that we have to meet the 3 million dollar cap. There may not be a carry forward depending on who buys that tax credit. If they have liability in excess of 3 million dollars and that 3 million dollars is equal to or less than 60% of the liability, they can use them all, (can't hear). It's going to depend on how the credits are sold and to whom.

Rep. Kelsh: You're at 3 when the cap is renewed. They're using a carry forward; does that draw off of that cap? (Can't hear)

Mary Loftsgard: No, the carry forward doesn't reduce the cap. That carry forward really is an issue for the taxpayer whom is using it.

Cory Fong: The cap is only on credits sold. It doesn't define how the taxpayer purchaser uses the credit. But they're limited to only offset 60% of their liability.

Rep. Headland: In subsection 2, we defined geothermal and solar; couldn't we define for the purposes of this section the PPA?

Cory Fong: We could. I get the impression from Sen. Tollefson that he's concerned about it being a casual kind of PPA. Perhaps you could put a life span on PPA of at least 15 or 20 years.

Chairman Brandenburg: Rep. Headland and Sen. Tollefson, how do you feel about that?

Rep. Kelsh: I don't have a problem with that. My question is when the retail customer buys electricity, on their monthly bill, would that constitute a PPA?

Sen. Oehlke: On a PPA, we're talking about 3 million dollars of money here and if someone's got a tax liability and they're using it and they're buying credits to pay for part of it, what difference does it really make to us whether it's me and an individual that happens to have a wind tower on my farm or I'm a big company that's buying these credits?

Sen. Tollefson: It's a one time sale anyway.

Sen. Oehlke: Now we're trying to micro manage this and I don't know if we really want to do that. And that brings up my question yesterday, when I asked about that 60% before, you pointed out that it's down here and it was yesterday too but it was also up here, was that just redundant?

Mary Loftsgard: Yes.

The Chairman opened up the discussion between the committee and others in the room. (They did not state their names.)

Rep. Headland: My only point for bringing it up is that I understood that Sen. Tollefson was having a little trouble with the way it was written and I just thought it might be a way to come to an agreement.

Chairman Brandenburg: Any other questions?

Sen. Tollefson: On page 2, section 5; the consolidated tax return of any combination of corporations, that could be just about anyone couldn't it, if you had a PPA? Am I correct?

Mary Loftsgard: There are criteria that have to be met to be in a combined report and a consolidated return. (Can't hear) You can't have a totally unrelated companies come together and file a combined return. The purchaser of the tax credit on that combined return doesn't have its own tax liability; it may not have a tax liability because it has carry forward. But it has an affiliate who's in an unrelated line of business at the manufacturers wishes. This basically says that the company that purchases, if they can't use that, they can use it against their affiliate.

Sen. Tollefson: And that would be defined actually by the reporting method on the consolidated return, right?

Mary Loftsgard: This section is not new; this was changed in the last session.

Chairman Brandenburg: We've got to make a couple of changes here.

Sen. Oehlke: Yes, that section E on the 3rd page; all taxpayers, instead of a taxpayer. **I would make a motion to move amendment 0204.**

Chairman Brandenburg: So your motion Sen. Oehlke would be that the Senate would recede from the Senate amendments with a Do Pass as Amended and adopt amendment 0204 with the change?

Sen. Oehlke: That's correct and the added amendment would be on page 3, item E, where it says "a taxpayer" would be changed to "all taxpayers".

Sen. Tollefson: I'll second that.

Chairman Brandenburg: Is there any questions? Will the clerk read the roll; 6-y; 0-n; 0-absent; Rep. Brandenburg will carry the Bill.

Rep. Kelsh: We've already voted but the effective date, December 31, 2006 which means we're giving incentive to build transmission that may have already been built.

Chairman Brandenburg: That applies to… Is that date going to be a problem, the date that's there?

Mary Loftsgard: The concern was about the construction. The effective date is for wind devices installed after December 31, 2006 and in section 7, it's also any ND taxpayer can't hear).

Chairman Brandenburg: That could be a problem couldn't it? Do we need to change this date?

Mary Loftsgard: We could administer any date you want.

Rep. Kelsh: The way I see it, we can leave the effective as it is, after December 31 and then change the date up in sub section 7.

Chairman Brandenburg: So what date would you suggest?

Rep. Kelsh: July 1st?

Cory Fong: Appropriation Bills go into affect July 1st. But the rest go August 1st. So this would not be an appropriation Bill so I would think that it's probably going to have an August 1st effective date.

Chairman Brandenburg: Do we want to change that date, we'll have to bring the motion back and revote again or just add it?

Rep. Kelsh: I move that we reconsider our action that we passed amendment 0204 and it was on the prevailing side.

Sen. Oehlke: Second it.

Chairman Brandenburg: The motion is to reconsider our action; all in favor signify by saying aye. The motion carries.

Rep. Kelsh: I would move to change that date from December 31, 2006 to August 1, 2007 under sub section 7, page 2.

Chairman Brandenburg: And you want to make the motion for the whole Bill?

Rep. Kelsh: And then adopt the amendments 0204 and have the Senate recede from their amendments.

Chairman Brandenburg: We have a motion before us to deal with the two changes of the date of August 1, 2007 in section 7 and also with "all taxpayers" in section E.

Sen. Oehlke: Second it.

Chairman Brandenburg: Will the clerk please read the roll: **6-y; 0-n; 0-absent; Rep. Brandenburg will carry the Bill.** We will adjourn this conference.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1233 CC

House Finance and Taxation Committee

☒ **Check here for Conference Committee**

Hearing Date: April 23, 2007

Recorder Job Number: 6296

Committee Clerk Signature Vickie Schmidt

Minutes:

Committee Conference:

Chairman Brandenburg called the conference to order and asked the clerk to take the roll; everyone was present.

Chairman Brandenburg: Members of the committee, I'm glad that you guys caught this because I did not see it, I apologize. Mary, would you come up to the table? We went over these changes before you got down here. The issue in section E, "all taxpayers" was not corrected. It was also brought up about the effective date of December 31, 2006. In visiting with Commissioner Fong, that needs to stay at December 31, 2006, not August 1, 2007. So the only things we need to make are in 7E to all taxpayers. Is that correct?

Mary Loftsgard: Yes that's correct.

Rep. Headland: I would move the 0206 amendment.

Sen. Tollefson: Second it.

Chairman Brandenburg: All in favor signify by saying aye, the motion carries. 6-y; 0-n; 0-absent; Rep. Brandenburg will carry the Bill. Ok, we will adjourn the conference.

Prepared by the Legislative Council staff for
Representative Brandenburg
April 21, 2007

Conference Committee Amendments to Engrossed HB 1233 (70504.0205) - 04/21/2007

That the Senate recede from its amendments as printed on pages 1154 and 1155 of the House Journal and page 1023 of the Senate Journal and that Engrossed House Bill No. 1233 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to assignment of a wind energy device installation tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy devices.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

2. For the purposes of this section:

   a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

   b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

3. If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, or wind energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of

this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

7. All or part of the unused credit allowed under this section may be sold, assigned, or otherwise transferred by the taxpayer to the purchaser of the power generated by the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.

   a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

   b. The tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.

   c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. The purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law which may have expired for the purchaser.

d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.

e. The total amount of credits that can be sold by a taxpayer is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.

f. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for geothermal, solar, or wind energy devices installed after December 31, 2006."

Renumber accordingly

1st

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1233 (, as (re)engrossed): Date: April 21, 2007

Your Conference Committee House Finance & Tax

For the Senate: **For the House:**

Roll:		YES	NO		YES	NO	Roll:
✓	Sen. Tollefson	✓		Chairman Brandenburg	✓		✓
✓	Sen. Oehlke	✓		Rep. Headland	✓		✓
✓	Sen. Anderson	✓		Rep. Kelsh	✓		✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1154 -- 1155

____, and place ________ on the Seventh order.

✓, adopt (further) amendments as follows, and place 1233 on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) ________ was placed on the Seventh order of business on the calendar.

DATE: April 21, 2007
CARRIER: ________

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: ________

SECONDED BY: ________

VOTE COUNT ___ **YES** ___ **NO** ___ **ABSENT**

reconsidered

Revised 4/1/05

1233 CC 8Am
#1 4-21-07
70504.0204
Title.

Prepared by the Legislative Council staff for
Representative Brandenburg
April 21, 2007

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1233

That the Senate recede from its amendments as printed on pages 1154 and 1155 of the House Journal and page 1023 of the Senate Journal and that Engrossed House Bill No. 1233 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to assignment of a wind energy device installation tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy devices.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

2. For the purposes of this section:

   a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

   b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

3. If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar,

or wind energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

7. All or part of the unused credit allowed under this section may be sold, assigned, or otherwise transferred by the taxpayer to the purchaser of the power generated by the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after December 31, 2006. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.

   a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

   b. The tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.

   c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. The purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law which may have expired for the purchaser.

d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.

e. The total amount of credits that can be sold by a taxpayer is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.

f. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for geothermal, solar, or wind energy devices installed after December 31, 2006."

Renumber accordingly

2nd

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1233 CC (, as (re)engrossed): Date: April 21, 2007

Your Conference Committee House Finance & Tax

For the Senate:	YES	NO	For the House:	YES	NO
Sen. Tollefson	✓		Chairman Brandenburg	✓	
Sen. Oehlke	✓		Rep. Headland	✓	
Sen. Anderson	✓		Rep. Kelsh	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1154 -- 1155

____, and place ________ on the Seventh order.

✓ , adopt (further) amendments as follows, and place 1233 on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) ________ was placed on the Seventh order of business on the calendar.

DATE: April 21, 2007
CARRIER: Rep. Brandenburg

LC NO. 70504.0204 of amendment	
LC NO. of engrossment	
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Kelsh

SECONDED BY: Sen. Oehlke

VOTE COUNT 6 **YES** 0 **NO** 0 **ABSENT**

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1233, as engrossed: Your conference committee (Sens. Tollefson, Oehlke, Anderson and Reps. Brandenburg, Headland, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1154-1155, adopt amendments as follows, and place HB 1233 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1154 and 1155 of the House Journal and page 1023 of the Senate Journal and that Engrossed House Bill No. 1233 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to assignment of a wind energy device installation tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy devices.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

2. For the purposes of this section:

   a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

   b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

3. If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, or wind energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

7. All or part of the unused credit allowed under this section may be sold, assigned, or otherwise transferred by the taxpayer to the purchaser of the power generated by the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.

   a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

   b. The tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.

   c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. The purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law which may have expired for the purchaser.

d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.

e. The total amount of credits that can be sold by a taxpayer is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.

f. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for geothermal, solar, or wind energy devices installed after December 31, 2006."

Renumber accordingly

Engrossed HB 1233 was placed on the Seventh order of business on the calendar.

Prepared by the Legislative Council staff for
Representative Brandenburg
April 21, 2007

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1233

That the Senate recede from its amendments as printed on pages 1154 and 1155 of the House Journal and page 1023 of the Senate Journal and that Engrossed House Bill No. 1233 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to assignment of a wind energy device installation tax credit; and to provide an effective date.

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1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.

2. For the purposes of this section:

   a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.

   b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

3. If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar,

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5. If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

6. The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

7. All or part of the unused credit allowed under this section may be sold, assigned, or otherwise transferred by the taxpayer to the purchaser of the power generated by the device as part of the consideration in a power purchase agreement, or to any North Dakota taxpayer that constructs or expands an electricity transmission line in North Dakota after August 1, 2007. The taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter beginning with the tax year in which the power purchase agreement or the tax credit purchase agreement was fully executed by the parties and the geothermal, solar, or wind energy device is installed. If the credit is transferred to an entity that constructs or expands transmission lines, the amount of credit claimed by that entity in any taxable year may not exceed the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that taxable year.

   a. A purchaser of the tax credit must claim the credit beginning with the tax year in which the purchase agreement is fully executed by the parties and the geothermal, solar, or wind energy device is installed. A purchaser of a tax credit under this section has only the right to claim and use the credit under the terms that would have applied to the tax credit transferor, except that in the case of a credit that is sold, assigned, or otherwise transferred by the taxpayer to the tax credit transferor, the credit allowed under this section may not exceed sixty percent of the liability for tax of the tax credit purchaser under this chapter. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.

   b. The tax credit transferor may sell the credit to only one tax credit purchaser each taxable year. The tax credit purchaser may not sell, assign, or otherwise transfer the credit purchased under the purchase agreement.

   c. If the taxpayer elects to sell, assign, or otherwise transfer an excess credit under this subsection, the tax credit transferor and the tax credit purchaser shall file jointly with the tax commissioner a copy of the purchase agreement affecting the tax credit transfer and a statement containing the name, address, and taxpayer identification number of any party to the transfer; the total installed cost of the qualifying geothermal, solar, or wind energy device; the amount of the credit being transferred; the gross proceeds received by the transferor; and the tax year for which the credit may be claimed. The purchase agreement must state clearly the purchase price associated with the tax credit sold. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and confidentiality waiver must be filed within thirty days after the date the purchase agreement is fully executed. The tax commissioner may audit the returns and assess or issue refunds, notwithstanding any other time limitation prescribed under law which may have expired for the purchaser.

d. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40.

e. The total amount of credits that can be sold by all taxpayers is limited to three million dollars each biennium. This limit applies on the basis of the date of installation of the geothermal, solar, or wind energy device.

f. Gross proceeds received under the purchase agreement by the tax credit transferor for the sale, assignment, or transfer of the tax credit must be allocated to North Dakota. The amount assigned under this subsection may not be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.

g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for geothermal, solar, or wind energy devices installed after December 31, 2006."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1233 (, as (re)engrossed): Date: April 23, 2007

Your Conference Committee House Finance & Tax

Roll:	For the Senate:	YES	NO	For the House:	YES	NO	Roll:
✓	Sen. Tollefson			Chairman Brandenburg			✓
✓	Sen. Oehlke			Rep. Headland			✓
✓	Sen. Anderson			Rep. Kelsh			✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1154 -- 1155

____, and place ________ on the Seventh order.

✓, adopt (further) amendments as follows, and place 1233 on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1233 was placed on the Seventh order of business on the calendar.

DATE: April 23, 2007
CARRIER: Rep. Brandenburg

LC NO. 70504.0206 of amendment	
LC NO. of engrossment	
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Headland

SECONDED BY: Sen. Tollefson

VOTE COUNT 6 YES 0 NO 0 ABSENT

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

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g. Within four years after the date of the credit assignment, the tax commissioner may audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and, if necessary, assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.

h. The tax commissioner may adopt rules to permit verification of the validity, timeliness, and limitations on the sale of the tax credit transferred under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for geothermal, solar, or wind energy devices installed after December 31, 2006."

Renumber accordingly

Reengrossed HB 1233 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1233

Questions for HB 1233

Why can't FPL Energy use all of the income tax credits that are available to them at this time?

If FPL Energy is able to take individual portions of their unused tax credit from one wind farm and sell or transfer them to several different utilities, will there be any income taxes paid by North Dakota utilities for the next 10 years?

General Information

The income tax credit provided by HB 1233 is 3% per year for 5 years

Income Tax Credits can be carried forward 5 years.

Installed cost of a 1.5 megawatt wind tower is approximately $2 million

Impact of bill

$2 million x 3% = $60,000 x 5 years = $300,000 per wind tower.

$300,000 x 100 towers = $30 million over a 10 year period

Sen Horne 3-13-07