

Sixtieth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1233

Introduced by

Representatives Brandenburg, Charging, S. Kelsh, Monson

Senators Erbele, Wanzek

1 A BILL for an Act to amend and reenact subsection 1 of section 57-33-04 and section  
2 57-38-01.8 of the North Dakota Century Code, relating to assignment of a wind energy device  
3 installation tax credit as part of a power purchase agreement; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 57-33-04 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 1. The tax commissioner shall levy on each cooperative a tax upon its gross receipts  
8 for the preceding calendar year. Gross receipts derived from the sale of a capital  
9 asset are not subject to the tax imposed by this section. Each year for the first five  
10 years during which such cooperative is engaged in business the tax must be one  
11 percent and thereafter the tax must be two percent of its gross receipts. For the  
12 purpose of determining when the two percent rate must be applied, the first year  
13 the cooperative is engaged in business must be the first year in which the  
14 cooperative was engaged in business prior to April first of that year. The tax  
15 hereby imposed is in lieu of any other taxes levied on the personal property of such  
16 cooperatives. A cooperative is entitled to a credit against the tax imposed under  
17 this section in the amount of a wind energy device tax credit assigned to the  
18 cooperative under the terms of a power purchase agreement as provided in section  
19 57-38-01.8.

20 **SECTION 2. AMENDMENT.** Section 57-38-01.8 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy**  
23 **devices.**

- 1           1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of  
2           this chapter may claim a credit for the cost of a geothermal, solar, or wind energy  
3           device installed before January 1, 2011, in a building or on property owned or  
4           leased by the taxpayer in North Dakota. The credit provided in this section for a  
5           device installed before January 1, 2001, must be in an amount equal to five  
6           percent per year for three years, and for a device installed after December 31,  
7           2000, must be in an amount equal to three percent per year for five years of the  
8           actual cost of acquisition and installation of the geothermal, solar, or wind energy  
9           device and must be subtracted from any income tax liability of the taxpayer as  
10          determined pursuant to the provisions of this chapter.
- 11          2. For the purposes of this section:
  - 12           a. "Geothermal energy device" means a system or mechanism or series of  
13           mechanisms designed to provide heating or cooling or to produce electrical or  
14           mechanical power, or any combination of these, by a method which extracts  
15           or converts the energy naturally occurring beneath the earth's surface in rock  
16           structures, water, or steam.
  - 17           b. "Solar or wind energy device" means a system or mechanism or series of  
18           mechanisms designed to provide heating or cooling or to produce electrical or  
19           mechanical power, or any combination of these, or to store any of these, by a  
20           method which converts the natural energy of the sun or wind.
- 21          3. If a geothermal, solar, or wind energy device is a part of a system which uses other  
22          means of energy, only that portion of the total system directly attributable to the  
23          cost of the geothermal, solar, or wind energy device may be included in  
24          determining the amount of the credit. The costs of installation may not include  
25          costs of redesigning, remodeling, or otherwise altering the structure of a building in  
26          which a geothermal, solar, or wind energy device is installed.
- 27          4. A partnership, subchapter S corporation, limited partnership, limited liability  
28          company, or any other passthrough entity that installs a geothermal, solar, or wind  
29          energy device in a building or on property owned or leased by the passthrough  
30          entity must be considered to be the taxpayer for purposes of this section, and the  
31          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 credit allowed under this section may be assigned to the purchaser as part of the consideration in a power purchase agreement and the taxpayer receiving the assignment of the credit is entitled to claim the credit against that taxpayer's tax liability under this chapter or subsection 1 of section 57-33-04.

**SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2006.