

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

1 determined at the passthrough entity level. The amount of the total credit
2 determined at the entity level must be passed through to the partners,
3 shareholders, or members in proportion to their respective interests in the
4 passthrough entity.

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

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

14 7. All or part of the credit allowed under this section may be assigned to the
15 purchaser as part of the consideration in a power purchase agreement and the
16 taxpayer receiving the assignment of the credit is entitled to claim the credit against
17 that taxpayer's tax liability under this chapter or subsection 1 of section 57-33-04.

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