15.0865.01000

FISCAL NOTE
Requested by Legislative Council
01/20/2015

Bill/Resolution No.: SB 2310

1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

SB 2310 expands the law governing the income tax credit for installing a biomass, geothermal, solar, or wind energy device in North Dakota.

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.*

Current law contains a sunset date of January 1, 2015. Therefore, the tax credit is not available for devices installed on or after that date. For wind devices only, generally consisting of wind turbines, this bill extends the sunset date to January 1, 2017, if construction of the wind turbine began before January 1, 2015, and its installation is completed before January 1, 2017.

Current law provides that if an energy device tax credit is earned by a passthrough entity, such as a partnership or S corporation, the allowable credit must be passed through to its owners, limited to regular corporations, based on their respective interests in the passthrough entity. This bill expands the law in two ways: First, it will allow a passthrough entity to pass the credit to any type of owner, including another passthrough entity. Second, it will allow the credit to be allocated to the owners in whatever proportion they agree to in writing, regardless of whether the credit allocation arrangement has any substantial economic effect or substance.

(Note: Unless changes are made to the law governing the allowance of an energy device credit for individual income tax purposes, the change that would allow a passthrough entity to pass the credit through to any type of owner is not sufficient to allow an owner who is an individual to claim the credit.)

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.*

If enacted, SB 2310 may result in a reduction in state general fund revenues for the 2015-17 biennium. The amount of the reduction, if any, cannot be determined because the number and size of any wind turbines meeting the conditions of the extended sunset date are unknown. Assuming one or more 100 megawatt wind projects were to

meet the conditions in the bill, each could potentially generate up to $3 million of income tax credits per year for 5 years, of which the amount claimed for income tax purposes will depend on the tax liability of the taxpayer (or taxpayers) receiving the credit.

In the case of a passthrough entity that earns or receives the credit, the change that would allow the credit to be allocated to the owners in any manner they agree to will make it easier to allocate the credit to an owner best able to use the credit, increasing the potential fiscal impact.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/31/2015

2015 SENATE FINANCE AND TAXATION

SB 2310

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2310
2/2/2015
Job #22970

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Alice Grove

Explanation or reason for introduction of bill/resolution:

Relating to treatment of passthrough entity income tax credits for geothermal, solar, wind, or biomass energy devices; and to provide an effective date.

Minutes: Attachments #1,2,3,4

Chairman Cook opened the hearing on SB2310.

Senator Terry Wanzek, Dist. #29
SB2310 comes to you and it does 2 things: the first thing is to extend the North Dakota wind income tax credit for projects that have planned to complete construction in 2014 but were delayed due reasons out of their control. In other words, it is not targeting any new projects. This is targeting projects that are already in the process of development. The second thing it does, it clarifies how the North Dakota investment tax credit can be used within the partnership structure. It's not asking for the credit to be transferred or sold off to anybody outside the structure and, in my opinion, that means it's mostly the folks within the partnership, the people that have made the investment into the project that are wanting to be able to allocate the tax credit as they see fit within their partnership structure. It comes to us as a result of one project within Stutsman County and it's Geronimo Wind that has been involved with this project with some local investors and they've been working to construct this large-scale wind farm in the Courtney area since 2008. Over this time Geronimo has been working with the North Dakota Tax Commissioner's office since 2008 to clarify how North Dakota's income tax credit could be used. It is my understanding that part of the problem is that this project goes back and has been delayed but the actual bid that was made took into account the income tax credit as part of the bid. They built that into their bid. Their bid has been accepted. They are trying to get on to the transmission system and have been delayed in that effort. There are 23 local investors that are also part of this project. Current investment in this project development is approximately $13 million that has already been spent. This project will have economic impact to our community, $270 to $300 million of capital investment in this wind farm, $1.3 million per year in land owner payments will be made, $800,000.00 per year of local tax impact to county, school districts, townships and fire districts. It is expected that there will be 15 full-time jobs once it's developed and 200 temporary construction jobs.

Senator Bekkedahl -- On page 2, lines 5 through 7, please walk us through the rational for that statement that says: there is no requirement to demonstrate that the arrangements involving the credit have substantial economic effect or economic substance.

Senator Wanzek -- I knew that I was going to get that one and I didn't prepare for it.

Senator Triplett -- You have been straight forward indicating that this bill is intended for the use of one particular company, but as with all good tax policy, it is stated generically. Turning your attention to a new sentence on page 1: a wind energy device on which construction was commenced before January 1, 2015, and which is installed before January 1, 2017, is eligible for the credit. What happens if, on either end, we find out that there is someone else who has gone out and scratched the dirt but hasn't put $13 million into so they could claim they have commenced it before January 1, 2015, or, on the other hand, what happens if your folks continue to run into problems and can't get it done before 2017?

Senator Wanzek -- Through this whole process things like that will be flushed out. I understand it's somewhat in line with the empowerment bill as well, and if you feel that it needs to be narrowed down a little more to define what kind of investment, how much of an investment, I might consider that.

Betsy Engelking, Geronimo Energy (Attachment #1) (Attachment #2)
Before I begin my testimony, I'm passing out these numbers that I promised in the earlier session. Requests a do pass recommendation.

Senator Bekkedahl -- Going back to the language on page 2, does that offer the opportunity, because there is value to the tax credits, for some entities to seek involvement solely for the purpose of an investment that can then be flipped into the next part of the project and they reap a benefit?

Betsy Engelking -- Our director of finance is here who can probably get more to the specifics of your question. The intention here is to create an investment partnership that comes together and invests in projects and in exchange receives the benefits from the project. One of those benefits is the tax credit. Each investor also maintains a stake in the project and also shares in the other cash benefits, or other benefits the investor has to offer.

Senator Bekkedahl -- I realize now why it is happening with your explanation. It's the last words that say: or economic substance, that give me some unpleasant thoughts here about how people could be involved.

Betsy Engelking -- We had this discussion with the tax commission when we sat down and went through this bill. One of the things that we actually considered was that by simply saying that the partnership can decide how the benefits of the project are allocated we wouldn't need that sentence. We have agreed that it's possible to remove that sentence.

Jeff Mitchell -- I'm one of 23 investors in this wind farm. I represent the city of Courtney, city of Wimbledon, Durham, Courtney, Ashton and Grey Townships that's who is involved in the footprint. I am looking at this as another source of income to diversify my portfolio for the farm. We are grain and livestock right now. This could be the thing that holds my farm together. I have my own land in this, our own cash in this. I'm committed here. This thing was held up by the MSL interconnection agreement. Also it was held up by Fish and Wildlife. We spent another year satisfying them because I want to be a good neighbor. The other part is the 20 year power purchase agreement. That price is locked for 20 years. I don't know anyone else locking the price of power for 20 years. That's a fair enough deal there.

Casey Bradley, Stutsman County Auditor and Chief Operating Officer (Attachment #3) Asks for a do pass on SB2310.

Warren Enyart, M-Power LLC
I am one of the founders and an investor, and manager of M-Power, and I'm here to support SB2310 on the premise that our company is very much like Geronimo. We treat our landowners the same. We are a landowner-driven community based renewal energy development company. We have 2 more wind farms in the making. Currently we have 129 landowners who are investors in our company, as well as participants in those projects. We have 8 community development organizations in 3 counties and, in addition, we have 140 private investors all of whom are local investors. They may or may not be landowners but they have local ties. On the basis of our constituency we know that, even though we've spent a good number of dollars in getting our projects to the point where they are, we do not qualify for this project. We're in support of it, simply because we know that in order to build a project and to keep it close to home, we need significant financial partners and those financial partners are more likely to benefit from this particular amendment.

Senator Triplett -- You indicated that you have 2 more wind farms in the making but you know that you don't qualify for the amendments. Am I correct that you are speaking in terms of the second part of the bill -- the passthrough piece that you are in favor of?

Warren Enyart -- No. I'm speaking to the qualifications under lines 10,11 & 12. We have not begun construction on either of these two later projects and the earlier one is a done deal.

Senator Triplett -- So you are not asking that we change something here to include you?

Warren Enyart -- No, we are just appearing in support of this business model.

Senator Triplett -- So your business model works without the tax incentive?

Warren Enyart -- We used the federal tax incentive the last time. But that, as you well know, the uncertainty of that leads us to lend ourselves to other incentives. The way this is written, we're not eligible.

Senator Cook -- Not even the last part of the bill?

Warren Enyart -- Maybe in the future.

No further testimony on SB2310.

Chairman Cook -- Dee, I would like an explanation of the fiscal note, or Matt.

Matt Peyerl, Office of Tax Commissioner

Chairman Cook -- Most importantly, speak to that last statement. The question that Senator Bekkedahl asked.

Matt Peyerl -- The last change in the bill, lines 5 through 7, it starts with what's on line 4, in how the current law allows for the credit to be passed through and it's based on your respective interests in a passthrough entity, and to this point the tax department's position on that is that it's based on your ownership interest. If you are a 50% owner in a passthrough entity, you'll have 50% of the credit flow through to you. The change on lines 5 through 7 would allow for a 1% owner to be allocated a credit of any number.

Chairman Cook -- Why?

Matt Peyerl -- I think the intent of the bill is that there isn't enough tax liability by the actual owners to utilize the credit, which I think has probably been one of the ceilings on the utilization of the credit in prior years. It's to try to allow more utilization of that credit.

One other item, I think most of the committees is aware of the striking of the word corporate in line 2, and to get the credit to be allowed on an individual income tax return you'd need 2 changes and one is the striking of that corporate word and the other is another change to allow it on an individual income tax return. It's kind of like enabling piece of language. And that is on some other bills in some other chambers. If that were the intent of the sponsors, it would need to be in this bill.

Chairman Cook closed the hearing on SB2310.

(Attachment #4 was submitted after the hearing.)

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2310
2/4/2015
Job #23223

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work.

Minutes:

Chairman Cook opened the committee work on SB2310.
Little bill dealing with wind companies and what they want to do is something that we don't do with tax credits. They would like to assign the tax credit to any owner of the company regardless of interest in the company.

Senator Triplett -- Are you ready to move on this one? I would move a do not pass.

Seconded by Senator Oehlke.

Senator Dotzenrod -- I'm trying to make sure that I understand what is the purpose of the bill here because as I understood it and when I talked to Senator Wanzek and agreed that this was something that I would be willing to help him sponsor is that there were people in his area that had started a project but they weren't going to be able to make the deadlines that we had in the law. They had anticipated that they would and they didn't so this 2 year extension gave them some time to get their work done.

Chairman Cook -- And, Senator Dotzenrod, that extension is identical to what's in 2037.

Senator Dotzenrod -- Ok, so then they could assume the title or the name of the project, is that what's on page 2?

Chairman Cook -- What's on page 2 is if you are an investor in the company and you have a 1% investment that they could assign up to 100% of the tax credit to that person with 1%. Credits become a commodity.

Senator Laffen -- The national historic tax credits do work that way. Federal ones.

Senator Dotzenrod -- Essentially, the thought of allowing those who've been committed and got some money and some time invested in this, the provisions that I thought made

sense on page 1, those are going to show up in 2037. And by a do not pass we are getting rid of this idea that was introduced on page 2.

Chairman Cook -- That's true.

We have a motion for do not pass. Any discussion?

Roll call vote: 5-2-0.

Carrier: Senator Cook.

Date: 2-4-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2310

Senate Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☑ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Triplett Seconded By Sen. Oehlke

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod		✓
Vice Chairman Lonnie Laffen		✓	Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Sen. Cook

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

REPORT OF STANDING COMMITTEE

SB 2310: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2310 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2310

Current Cap and Gen Tax - Opt In Available through Oct. 2016 (Estimated)

Project Specifics	Data Entry
Total MW	200
Net Capacity Factor	42%
Efficiency	1.0

Total Annual Tax
$ 867,920

Tax Category	Per MW	Total Annual Tax		Calculation
Capacity Tax	$ 2,500.00	Capacity Tax	$ 500,000	Total NW * $2,500
Production Tax	$ 0.50	Generation Tax	$ 367,920	MW-h Generated Per Year * $0.50
MW-h Generated Per Year	735,840			

ND Cent Code: 57-33.2
Expires Oct. 2016

Stutsman County Tax Split		Annual	20 Years
School District	52%	$ 451,318	$ 9,026,368
County	37%	$ 321,130	$ 6,422,608
Townships	9%	$ 78,113	$ 1,562,256
Fire District	2%	$ 17,358	$ 347,168

Year	Annual
1	$ 867,920
2	$ 867,920
3	$ 867,920
4	$ 867,920
5	$ 867,920
6	$ 867,920
7	$ 867,920
8	$ 867,920
9	$ 867,920
10	$ 867,920
11	$ 867,920
12	$ 867,920
13	$ 867,920
14	$ 867,920
15	$ 867,920
16	$ 867,920
17	$ 867,920
18	$ 867,920
19	$ 867,920
20	$ 867,920
20 year total	$ 17,358,400

#1
SB 2310
2-2-15

Current Value Tax Approach - Enter Values and Percentage (Estimated)

	Market Value	ND Adjuster	State Value	Tax Rate	Taxable Value	County Mill Rate	Total Tax
Total Project Construction Cost	$ 300,000,000						**$ 1,199,581**
90% Turbine Construction Cost	$ 270,000,000	50%	$ 135,000,000	3.00%	$ 4,050,000	0.216	$ 875,370
10% Other Construction Cost	$ 30,000,000	50%	$ 15,000,000	10%	$ 1,500,000	0.216	$ 324,211

	Mills	Percent
County Mill Rate - Courtenay	216.141	21.61%
*ND Average Mill Rate		
Before 12% State Credit	195	
After 12% State Credit	171.6	
*Wind Farm County Mills	Range	Average
Before 12% State Credit	199 to 216	216.14
After 12% State Credit	176 to 198	190.20

Local Area Tax Split		Total 1 Year Tax	20 Year Est.
Schools	52%	$ 623,782	$ 7,111,116
County	37%	$ 443,845	$ 5,059,833
Townships	9%	$ 107,962	$ 1,230,770
Fire District	2%	$ 23,992	$ 273,504

* First Year Tax will not be the full year (<100%)

Guarteed to Counties (Not Production based) 100%
ND Century Code (Utility Value Based): 57-06
ND Centurty Code (Wind Specific Rates): 57-06-14.1
1.5% Expires at the end of 2014 and goes to 10%
3.0% Proposed by EmPower and Subcommittee
*Turbine Construction Cost Turbines, Turbine Labor, Transmission
*Other Construction Cost Collector System, Other Facilities, Roa

12% Legislative Buy Down (2013 & 2014)
- After taxes are calcuated - 12% paid by state - Reduced Bill

School Mill Levi Buy Down (2013 & 2014) - Up to 125 Mills
- Built into the Current local Mill Numbers

Wind Farm Mills Rates	Full Mill	Less 12%
Courtenay Township 1	215.6	189.7
Courtenay Township 2	215.6	189.7
Durham Township 1	224.6	197.6
Durham Township 2	208.5	183.5
Gray Township	233.6	205.6
Nogosek Township 1	215.6	189.7
Nogosek Township 2	199.5	175.6
Average	216.1	
State Property Tax Relief (12%)	25.9	12%
Net	190.2	

*Most turbines are in Courtenay and Durham with higher Mills

Depreciation Schedule (Estimated)

Year	Value %	Total Paid	by Wind Farm	by State
1	85	$ 1,019,644	$ 897,287	$ 122,357
2	95	$ 1,139,602	$ 1,002,850	$ 136,752
3	90	$ 1,079,623	$ 950,068	$ 129,555
4	85	$ 1,019,644	$ 897,287	$ 122,357
5	80	$ 959,665	$ 844,505	$ 115,160
6	75	$ 899,686	$ 791,723	$ 107,962
7	70	$ 839,707	$ 738,942	$ 100,765
8	65	$ 779,728	$ 686,160	$ 93,567
9	60	$ 719,749	$ 633,379	$ 86,370
10	55	$ 659,770	$ 580,597	$ 79,172
11	50	$ 599,790	$ 527,816	$ 71,975
12	45	$ 539,811	$ 475,034	$ 64,777
13	40	$ 479,832	$ 422,252	$ 57,580
14	35	$ 419,853	$ 369,471	$ 50,382
15	35	$ 419,853	$ 369,471	$ 50,382
16	35	$ 419,853	$ 369,471	$ 50,382
17	35	$ 419,853	$ 369,471	$ 50,382
18	35	$ 419,853	$ 369,471	$ 50,382
19	35	$ 419,853	$ 369,471	$ 50,382
20	35	$ 419,853	$ 369,471	$ 50,382
20 year total		$ 13,675,223	$ 12,034,196	$ 1,641,027

1.2

GERONIMO ENERGY

#2

Geronimo Energy
Testimony on SB 2310
February 2, 2015

Good Morning Mr. Chair and members of the Committee. Again, my name is Betsy Engelking and I am a Vice President with Geronimo Energy. Earlier this morning, I spoke with you about our Courtenay Wind Farm, which is being constructed near Jamestown, North Dakota. I am here to urge you to support SB 2310.

SB 2310 provides clarity on how wind developers can utilize the ND Wind Income Tax Credit. Over the past few years, Geronimo has received conflicting opinions on how financing structures can be organized to use the tax credit, and this lack of certainty has led to some difficulty attracting suitable financial partners for the Courtenay Wind Farm. The clarifications provided in SB 2310 will help secure North Dakota investors to provide capital that will ensure the construction of the Courtenay Wind Farm.

Specifically, the bill will allow the tax credit to pass through more than one entity to its eventual user. The clarification is necessary based on today's business structures, which frequently result in the creation of holding companies and Limited Liability Companies for specific assets. For permitting, regulatory, and commercial reasons, infrastructure projects often use multiple holding companies for a project. For example, the Courtenay project is owned by Courtenay Wind Farm, LLC. Upon construction, it will likely have 2 or more investors, each of which will set up a special purpose LLC for their investment. Without clear legislation that grants corporations the ability to move the tax credit through multiple entities, those investors would not be comfortable that they have the ability to utilize the ND Tax Credit. The remainder of the amendment, page 2, lines 4 through 7 is intended to clarify that if the partners in the project agree in writing, the credit can be shared in proportions determined by the partners.

Tax credits are excellent tools to attract investment in a state, and it played a role in our decision to develop a wind project in North Dakota. The ability to use the ND Income tax credit played a critical part in setting the price of electricity in the Purchased Power Agreement we entered into with Xcel energy in 2013. We have to date invested $13 million in the project, and the economic impacts of the project to North Dakota and the local community are significant – 200 construction jobs, 15 well-paying permanent jobs, $26.5 million in landowner payments and over $17 million in county, township and school district payments over the next 20 years. Without the clarification provided in SB 2310, it will be very difficult to complete this project and bring these benefits to the community. I request that the committee give this bill a "do pass" recommendation.

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www.geronimoenergy.com

#3
SB2310
2.2.15

TESTIMONY TO THE SENATE FINANCE AND TAX COMMITTEE REGARDING SENEATE BILL 2310

Casey Bradley, Stutsman County Auditor/COO

Mr. Chairman and members of the Senate Finance and Tax Committee, I am Casey Bradley, Stutsman County Auditor and Chief Operating Officer. I am here to testify in support of this legislation as it is vital to the fiscal viability of the Geronimo Energy project in Stutsman County.

Geronimo Energy has worked diligently with local residents as well as local governments for the past five years to make this project a reality. The methods Geronimo has used to engage the public has not only helped garner public support but also helped them to secure the necessary agreements with private landowners to make this project feasible. Geronimo has actively participated and even assisted in the amendments to our zoning ordinances to ensure that there were adequate safeguards in place to protect our road system.

As a company, Geronimo Energy has gone to great lengths to show their commitment to the community and to this project. They have structured their project so locals are able to not only benefit from the project lease payments but also serve as partial investors in the project development through the formation of a local LLC, many members of the Courtenay community have taken advantage of this opportunity. Likewise, when Geronimo Energy discovered that it had inadvertently publicly disseminated tax revenue projections based on wind generation tax rather than the deeply discounted property tax option available in the State of North Dakota, their founder and CEO personally traveled to a Stutsman County Commission meeting and informed the commission that if the income tax credit is extended and usable, the project would pay the difference to keep the taxing jurisdictions whole rather than retract the information that they had disseminated in the public.

Geronimo Energy has continuously shown a deep commitment to Stutsman County and the rural areas in which its project will be located. They have indicated to us that this bill is a vital element of their projects fiscal viability. As such, we respectfully request a do pass on SB 2310 as it will have an immediate impact on the viability of this project and the rural areas of Stutsman County where it will be located.

#4
SB 2310

15.0865.01000

Prepared for the
Senate Finance and
Taxation Committee
February 2, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2310

Page 1, line 1, after "to" insert "create and enact a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to treatment of passthrough entity income tax credits for geothermal, solar, wind, or biomass energy devices; to"

Page 1, line 8, after "57-38-30" insert "and 57-38-30.3"

Page 2, after line 7, insert:

"**SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Wind energy tax credit under section 1 of this Act, but only for wind energy devices on which construction was commenced before January 1, 2015, and which is installed before January 1, 2017."

Renumber accordingly