2009 HOUSE FINANCE AND TAXATION

HB 1456

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1456**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: **February 3, 2009**

Recorder Job Number: 8437

Committee Clerk Signature	Jan Prindle

Minutes:

Chairman Belter opened the hearing of HB 1456.

Representative Ben Vig, District 23, introduced the bill. This bill provides an increase for the income tax credit for wind energy device installation in HB 1233 passed last session. We did not include a provision for limited liability companies which we see we now have several projects across the state that are set up as LLCs. This bill will level the playing field for those who are developing wind energy projects across the state. We are seeing several major players as well as community projects. This will open it up for LLCs and community projects. We should have any citizen be able to claim income tax credit. Right now we have only utility companies able to claim an income tax credit.

Warren Pnyart, founder, Empower LLC, spoke in favor of the bill. We have 83 owners. Seventy-seven of those owners are the landowners in the foot print of the wind farm and along the 13 miles of transmission lines corridor. It does not go far enough for a community based company like ours. We do not have enough equity capital among the owners. Typically one-half is borrowed dollars. We are looking for an investor who has enough capital to finance $150,000. A number of those prospective institutional investors are looking at what North Dakota offered as part of their expected return. In addition they were looking at the federal production tax credits and leverage. Revenue resources for them for their internal rate of return are the motive for them to come to the table with their equity. Utilities were the only ones eligible for this particular incentive. Our market was limited for institutional investors to those who did have a substantial tax liability in the State of North Dakota. We were limited to only two utilities in the State of ND who could benefit. As a result, the project cost somewhat more and there is far less benefit to the community owners. That is the net effect of the old law. This new law does not go quite far enough. We suggest that we delete Section b and allow the sale of tax credits to anyone who has a tax liability to the State.

Representative Brandenburg: Did you figure out how to get a federal income tax credit for your project?

Pnyart: Had we been able to sell it to a utility, they would have had that benefit. Those utilities we are considering selling our project to will benefit from that tax credit.

Representative Pinkerton: How many dollars of tax credit would you have had for sale?

Pnyart: In the neighborhood of $20 million. Its 158 megawatts and uses 103 turbines.

Representative Headland: If we were to change this to being able to sell to any person that has tax liability and would be willing to purchase, you mentioned your project had about $20 million in credits. If we took all the wind farms and made it available to them, would we have any tax revenue coming in to this state? You are probably talking about millions of dollars of credit.

Pnyart: I don't want to ask for all of the tax credits. Just allow us to sell the tax credits that you feel is fiscally responsible to provide an incentive to locally owned community wind projects. In order to have that effective you need to allow anyone who has a tax liability in ND to buy that.

Representative Headland: I'm assuming yours is the only development in the state owned that way?

Pnyart: I believe there are others already developed or in developmental stages. It is my opinion that there would be more had there been a more favorable tax climate in ND for that kind of organizational structure.

There being no further testimony, Chairman Belter closed the hearing of HB 1456.

Not appearing, but providing written testimony to the Committee: **Matthew Bertolatus, director of finance, Geronimo Wind Energy, LLC. (Attachment 1)**

Dee Wald, general counsel, ND Tax Department, at a later time provided information on credits or incentives other states in the region were providing. That information is included with these minutes as **Attachment 2.**

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1456

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/04/09

Recorder Job Number: 8633

Committee Clerk Signature Lori Engleson

Minutes:

Chairman Belter opened the hearing on HB 1456.

Rep. Headland: Chairman, I'll move a do not pass.

Rep. Brandenburg: Second.

Chairman Belter: We have a motion by Rep. Headland on 1456 **do not pass**. Second by Rep. Brandenburg. Committee discussion on 1456. Seeing no discussion I'll ask the clerk to take the roll on a do not pass motion on HB 1456.

A roll call was taken by the clerk.

8 yes, 5 no, 0 absent. Rep. Brandenburg was assigned to carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: HB 1456

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 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 1456 deals with the transfer of wind energy device installation income tax credits.

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.*

HB 1456 removes any restriction as to who can purchase the unused tax credit. Under this bill any taxpayer can purchase the credit, not just one who purchases power or builds transmission.

The bill also changes the time period when a purchased credit can be claimed. Currently, it can be claimed in the tax year the purchase is made. The bill changes it to the period when the tax credit was earned.

The fiscal impact of this bill 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:**	02/02/2009

Date: 2/4/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1456

House **FINANCE AND TAXATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ Amended

Motion Made By Headland Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Representative Froelich		✓
Vice Chairman David Drovdal	✓		Representative Kelsh		✓
Representative Brandenburg	✓		Representative Pinkerton		✓
Representative Froseth	✓		Representative Schmidt		✓
Representative Grande	✓		Representative Winrich		✓
Representative Headland	✓				
Representative Weiler	✓				
Representative Wrangham	✓				

Total (Yes) 8 No 5

Absent 0

Floor Assignment Rep Brandenburg

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

REPORT OF STANDING COMMITTEE

HB 1456: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1456 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1456

Testimony 1

GERONIMO
WIND ENERGY

February 2, 2009

To: Wesley R. Belter, Chairman
David Drovdal, Vice Chairman

CC: Mike Brandenburg
Rod Froelich
Glen Froseth
Bette B. Grande
Craig Headland
Scot Kelsh
Louis Pinkerton
Arlo Schmidt
Dave Weiler
Lonny Winrich
Dwight Wrangham

Committee Members,

As many other states have done, North Dakota has rightly chosen to promote wind energy. The State's abundant wind resource makes it an ideal location for wind energy development. The aggressive growth of wind energy in the last few years has fueled job growth not only in the development companies, but in a variety of manufacturing and support industries which have ramped up to support this development.

The North Dakota tax credit for renewable energy provides a significant incentive for renewable energy development in the state. Under reasonable rates of return, the 15% credit over 5 years provides a 12% reduction in the cost of the renewable energy project. However, as currently written, it also creates a distorted market. Most renewable energy developers have little to no North Dakota taxable income. Therefore, a tax credit has little to no value to them. For example, a 100MW project in today's market will cost about $225 million. That project will generate an annual credit of $6.7 million. In order to fully absorb the benefit, the owners of the project will need North Dakota state taxable income in excess of $100 million. The same situation exists with regards to federal tax benefits for renewable energy, and in that situation methods have been developed to allow for the efficient monetization of the federal tax benefits.

As written, the tax credit may only be sold to certain entities. As defined, these entities are essentially only utilities: power purchasers and electric transmission line owners. There is a very limited set of North Dakota entities which meet the statute's definition and have the taxable income required to purchase the credit. Furthermore, many of these entities are in the wind energy development business themselves, and either have little desire to assist competing companies by buying their credits, or have tax credits from their own projects.

The net effect has put all non-utility based developers at a significant disadvantage when trying to compete in North Dakota. Non-utility based developers are often community based developers, and allowing these groups to access the tax credit in an efficient manner (as they lack the taxable income themselves) will allow them to compete on a level playing field with larger entities and should allow a larger share of benefits of these projects to remain in the rural communities where they are located. The first step is to eliminate the restriction on selling the credit, and allow developers to sell the credit to any corporation or individual. This will allow an efficient method for community and other small developers to compete on a level playing field, and allow projects to be built on their own merit, and not on the basis of a market distorted by an inefficient tax code. Thank you for your time.

Sincerely,

Matthew Bertolatus
Director of Finance
Geronimo Wind Energy, LLC

STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

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Memorandum

To: Chairman Belter, Members of the House Finance & Taxation Committee

From: Dee Wald, General Counsel

Date: February 4, 2009

Subject: HB 1456 - Regional Commercial Wind Tax Incentives

The Committee requested information on the wind energy tax incentives that were available in North Dakota's neighboring states. The following information, compiled by the Department of Commerce, contains the requested information for Minnesota, South Dakota, and Montana. I am also providing you chart that provides a quick comparison of North Dakota's incentives to those of Minnesota and South Dakota. If further information is needed, please do not hesitate to contact me at 8-2777 or dwald@nd.gov

I. MINNESOTA:

Renewable Energy Production Incentive

Supported by the state's Renewable Development Fund, Minnesota offers a payment of 1.0¢ to 1.5¢ per kilowatt-hour (kWh) for electricity generated by hydro facilities and on-farm anaerobic manure methane digesters. This incentive is available to hydro facilities located at the site of a dam, if the dam was in existence as of March 31, 1994, and begins generating electricity after July 1, 1994 or generates electricity after substantial refurbishing of a facility that begins after July 1, 2001. In order to receive payments, qualifying hydro facilities must begin operation by December 31, 2011. This is an extension of the previous deadline (2009) as a result of H.F. 1812 of 2008.

In May 2007, the REPI was amended to make the actual gas produced by on farm anaerobic digesters eligible to receive the incentive beginning July 1, 2007. In other words, it is no longer required that the gas be used to produce electricity. It has not yet been determined how the incentive will be calculated for this option.

Minnesota also issues a payment of 1.0¢ to 1.5¢/kWh for electricity generated by new wind-energy projects less than two megawatts (MW) in capacity. As of May 2006, 211 MW were operating and receiving incentive payments. An additional 13 MW are eligible to receive payments when operational. The program was closed to new applicants on January 1, 2005.

Wind and Solar-Electric (PV) Systems Exemption

Minnesota excludes the value added by solar-electric (PV) systems from real property taxation, and all real and personal property of wind-energy systems is exempt from the state's property tax. However, the land on which a PV or wind system is located remains taxable.

In lieu of a property tax on large wind-energy systems, a production tax was implemented in 2002. Wind systems greater than 12 MW are taxed at a rate of 0.12 cents/kWh; systems between 2 MW and 12 MW are taxed at a rate of 0.036 cents/kWh; and systems between 250 kW and 2 MW are taxed at a rate of 0.012 cents/kWh. Wind systems under 250 kW are exempt from the production tax, as are systems with a capacity of 2 MW or less that are owned by political subdivisions. However, a provision in a separate statute (Minn. Stat. § 272.028) allows a mutually agreeable alternative to be negotiated between the local government authority and the wind facility owner for the purpose of maintaining "public infrastructure and services." For example, a lower tax might be negotiated by a local government in order to attract wind development.

Wind Sales Tax Exemption

Wind-energy conversion systems used as electric-power sources are exempt from Minnesota's sales tax. Materials used to manufacture, install, construct, repair or replace wind-energy systems also are exempt from the state sales tax. A "wind energy conversion system" (WECS) is defined as any device, such as a wind charger, wind mill or wind turbine, that converts wind energy to a form of usable energy.

II. SOUTH DAKOTA

Large Commercial Wind Exemption and Alternative Taxes

In South Dakota, wind farms constructed after July 1, 2007 are eligible for an alternative taxation calculation in lieu of all taxes on real and personal property levied by the state, counties, municipalities, schools, and other political subdivisions. The definition of "wind farm" includes only facilities producing electricity for commercial sale and having a minimum nameplate capacity of 5 MW. All property used or constructed to interconnect individual wind turbines within a wind farm into a common project, termed the "collector system", is eligible for the exemption and alternative taxation.

The alternative taxation method has two components. The first component is an annual tax equal to $3/kilowatt (kW) of the nameplate capacity of the wind farm, prorated according to when the wind farm begins operation during the first calender year. The second component is a 2% annual tax on the gross receipts of the wind farm. The gross receipts are calculated as the number of kilowatt-hours (kWh) produced multiplied by a base electricity rate of $0.0475/kWh in 2008, with the base rate increasing by 2.5% annually thereafter.

A partial rebate of the taxes paid under this formula is available for the construction of transmission lines in South Dakota that serve an eligible facility. The total maximum rebate is 50% of the combined cost of the transmission lines and wind farm collector system. The maximum rebate in one year is 90% of the gross receipts tax for the first 5 years and 50% of the gross receipts tax for the next 5 years. No rebates will be issued after this 10-year period. Up to 80% of the rebate may be issued in the form of a tax credit in lieu of full payment of the gross receipts tax.

The money generated by the alternative taxation method described above will be deposited to into the newly created wind energy tax fund. All of the receipts from the capacity tax and 20% of the gross receipts tax will be redistributed back to the county treasurer of the county(ies) where the wind farm is located before May of each year.

Commercial wind facilities smaller than 5 MW remain eligible for a separate wind energy property tax assessment method under South Dakota law.

III. MONTANA

Alternative Energy Investment Tax Credit (Corporate)

Commercial and net metering alternative energy investments of $5,000 or more are eligible for a tax credit of up to 35% against individual or corporate tax on income generated by the investment. The credit is applied only against taxes due as a consequence of taxable or net income produced by one of the following:

- A manufacturing plant that is located in Montana and that produces alternative energy generating equipment.
- A new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or
- The alternative energy generating equipment in which the investment was made, for the credit being claimed.

This credit is available to taxpayers purchasing an existing facility as well as to those building a new facility.

A "net metering system" means a facility for the production of electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;
(b) has a generating capacity of not more than 50 kilowatts;
(c) is located on the customer-generator's premises;
(d) operates in parallel with the utility's distribution facilities; and
(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

The tax credit must be taken the year the equipment is placed in service; however, any portion of the tax credit that exceeds the amount of tax to be paid may be carried over and applied against state tax liability for the following 7 years. A credit may be extended through the 15th tax year succeeding the tax year of installation for projects on a Montana Indian reservation that meet other specified criteria.

Taxpayers may not take this credit in conjunction with any other state energy or state investment tax benefits, or with the property tax exemption for nonfossil energy property 15-6-201(4).

Corporate Property Tax Reduction for New/Expanded Generating Facilities
Summary:

Montana generating plants producing 1 megawatt or more by means of an alternative renewable energy source are eligible for the new or expanded industry property tax reduction on the local mill levy during the first nine years of operation, subject to approval by the local government. If so approved, the facility is taxed at 50% of its taxable value in the first five years after the construction permit is issued. Each year thereafter, the percentage is increased by equal percentages until the full taxable value is attained in the tenth year.

The tax reduction applies only to taxes levied for the local high schools and elementary schools and for the local government offering the reduction. If owned by a utility, an exempt wholesale generator or certain other electrical energy producers, this property is class 13 property and otherwise would be taxed on 6 percent of assessed value. If owned by an electric cooperative, this property is class 5 and otherwise would be taxed at 3 percent of assessed value. If owned by any other business, the real property is class 4 and otherwise would be taxed at 3.01 percent of assessed value and the personal property would be class 8 with a tax rate of 3 percent of assessed value. The assessed value of real property is adjusted every five years to reflect market trends. The assessed value of personal property is adjusted yearly based on a trend factor that reflects the relevant rate of inflation and on the Department of Revenue's depreciation schedule.

COMPARISON OF STATE WIND ENERGY TAX INCENTIVES

State	Income Tax Incentives	Property Tax Incentives	Sales, Use and Contractor's Excise tax Incentives
North Dakota	15% tax credit *(3% for first five years, five year carryforward, expires in 2011, transferable)*	85% reduction in tax *(expires in 2011)*	Exempt from taxation *(expires in 2011)*
South Dakota	No state tax	Partial exemption *(tax only on base, foundation, tower, and substations)*	Lower rates and/or refunds depending upon size and cost
Minnesota	None	Only land is taxable *(a production tax is paid in lieu of property taxes)*	Exempt from taxation