

2009 SENATE FINANCE AND TAXATION

SB 2033

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2033

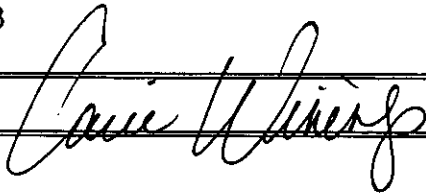
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/27/2009

Recorder Job Number: 7823

Committee Clerk Signature



Minutes:

Chairman Cook: Opened hearing on SB 2033.

Tim Dawson, Legislative Council: explained the bill.

Shane Goettle, Commissioner of North Dakota Department of Commerce and chairman of the EmPower North Dakota Commission: See attachment #1 for testimony in support of bill. They want the 10 year window to stay intact. They are alright with the coming proposed amendment. He said investments coming into wind projects are slowing down as the national economy has slowed down. For that reason they believe that an additional incentive on the Income Tax credit allowing it to be carried forward for twenty years would be particularly useful for wind projects. They believe that the additional incentive will help spur wind projects even in a downward trend in the national economy.

John Ketchum, Vice President, Nextera Energy Resources: See Attachment #2 for testimony in support of the bill and rational for improving SB 2033. He proposed an amendment to the bill #3.

10.00 **Senator Hogue:** asked if he could walk them through their internal process when they are making decisions to site a particular area in a particular state.

John Ketchum: said when a project comes in front of their investment committee and eventually in front of the BOD they are looking primarily at the economic return on the investment. The thing that the tax credit would allow them to do is to get some meaningful benefit on the back end, so they are actually modeling these projects when combined with North Dakota's property tax and sales tax provisions which other states have as well. The investment tax credit is something that would move the needle, so to speak, when comparing ND with other states.

Senator Hogue: asked if it was correct to assume that as investors sit around the table do they discussed the relative tax incentives of that state.

John Ketchum: Absolutely, he said those incentives are line items that show up on their model.

12.19 **Chairman Cook:** What controls the price that you sell your product for?

John Ketchum: said typical economic factors, supply and demand. Also transmission, transmission is a driver and that impacts supply and demand.

Chairman Cook: You must be looking at the ability of moving the electricity out of state?

John Ketchum: Long term, yes.

13.37 **Chairman Cook:** Is there a great variance in the price that you get for your electricity?

John Ketchum: replied yes. Right now they are seeing pricing in ND from their customers on our power purchase agreements as lower.

Chairman Cook: Can you give me an example?

John Ketchum: You are probably looking at 5-7 dollars.

Senator Oehlke: said he had mentioned the average life of a wind project as twenty five years, is that the project or the investment return.

John Ketchum: he said it was the project. From an accounting stand point they allow them to depreciate the useful economic life of a wind farm over a twenty five year period. So they expect that the equipment will last for about that long.

14.59 **Senator Triplett:** asked that in the model that they used to analyze these projects did they take into account the overall regulatory climate in the State and how do they do it.

John Ketchum: developers will look at this and ND has always had friendly regulatory environment. But the number one driver is going to be what the economical return on the investment in ND versus somewhere else.

Senator Triplett: There are costs associated in working in a state with poor regulatory environment.

John Ketchum: he said many of the states they work with are similar to ND's regulatory environment.

16.49 **Chairman Cook:** Further testimony.

No opposing testimony.

Questions for the Tax Commissioners Office.

17.08 Donnita Wald, General Counsel for the Tax Commissioners Office.

Senator Dotzenrod: asked about the tax credit on lines 13-14. The 15% total credit that ND offers is not changed by this bill it is the carry over period of time when that can be carried over that we are extending.

Donnita Wald: said yes.

Senator Dotzenrod: asked if it was the entire structure and if that was based on what it cost to build it. Or is it just the cost of material.

Donnita Wald: It is all of the material from the ground up, that is the cost they use.

Senator Hogue: asked if that included the concrete.

DW: Yes

19.45 **Senator Oehlke:** wanted clarification on ten and twenty years. On the first ten years they aren't paying any taxes because they have all the other expenses and the following ten years they would be using all the tax credits they built up over the first ten years.

DW: Assuming that they are not making any income in the state. The assumption is after the ten years they have used up their operating loss and they will be having some income.

Senator Oehlke: asked that if we put on the twenty year amendment the tax credits would be utilized at that time.

DW: yes.

Chairman Cook: When is it considered installed?

DW: That it is when it is completed, it is finished.

Senator Hogue: asked if the tax department could give the committee an idea what kind of a federal tax credit the operators receive.

DW: We will find out.

Closed hearing in SB 2033.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2033

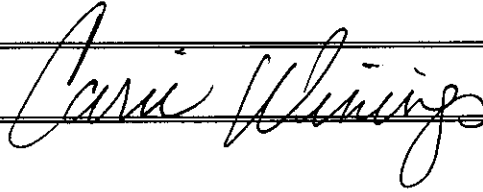
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/27/2009

Recorder Job Number: 7903

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on SB 2033. Introduced amendments on bill – See Attachment #1. If we pass the bill, we have a request from 10 to 20, and would that be only for wind generation.

Senator Triplett: My thoughts on the amendment, where it would allow them to get their tax credit and shut the door to everyone else. That is how I read it. It is sort of an in/out thing and then it closes it up again, and the only people that will be able to take advantage of it are people that have stuff on the drawing board right now.

Senator Hogue: Asks for a copy of the amendment.

Chairman Cook: What his argument is is the tax credit is supposed to be the carrot that makes them part with money and make an investment, and he is arguing from the point that the carrot has no potential to affect their income.

Senator Triplett: There are two thoughts there, and one is extending the tax credit from 10 years to 20 years, and I understand that point. But it is also making it available only in a very brief time period.

Chairman Cook: I believe I asked the Tax Department was going to give us some idea of what the history is on this as far as credits that have been obtained and especially the property tax part.

Senator Oehlke: Page 3, line 28, g., don't they assign credits every year? Did that need to be adjusted?

Chairman Cook: Clarified what was being asked.

Senator Oehlke: Wouldn't the credit be assigned to Northern Power and Lights every year?

Senator Triplett: I think you might be confusing the transfer of credit with the ability to use a credit oneself.

Chairman Cook: They are auditing both the tax forms of the person who was originally given the credit and the person he transferred to.

Senator Oehlke: I got it.

Senator Triplett: They don't anticipate having any income within North Dakota for a good long time, so these credits against income are of no use to them until more time passes and then the second piece of it is that this bill originally gave them the right to transfer the credits to someone else who did have North Dakota income, and they are saying because of the limitations on the transfer they haven't been able to find any takers.

Senator Hogue: Why don't they have any income?

Chairman Cook: They have income as a company, but not North Dakota income.

Senator Hogue: Why don't they have North Dakota income? They are here and they are operating and generating electricity, and I suppose all of their property is exempt.

Chairman Cook: The income that they have that is taxable is zero because of the federal depreciation laws that are out there. Then when they run out of the depreciation deduction they start using the credits and that gets them into year 10.

Chairman Cook: I thought I understood that this option to be able to sell those credits terminated at a date, am I wrong there?

Senator Oehlke: On page 1, last line before number 7, it says tax credits.....

Chairman Cook: That is carrying them over, but Subsection 7 goes into selling the credits, I thought that was sunsetted and was to be amended, but I don't see it in here.

Senator Oehlke: Page 1, Line 20 talks about that maybe the excess may be used as a credit carryover each of the five succeeding taxable years and that is what they want to increase to 20.

Senator Triplett: In the fiscal notes of this bill, under Subsection 2 b., the fiscal impact section, it says SB 2033 delays the sunset of the income tax credit from 2011 to 2015 except for the transferability of the credit which is allowed to sunset in this bill as it does in current law. But I am not seeing where it actually says that either.

Senator Anderson: Maybe on page 1, line 7, it says January 21st of 2015 – it might refer back.

Senator Triplett: That responds to the first comment in the section.

Chairman Cook: I will call the person that did this fiscal note and ask that question.

Closed discussion on SB 2033.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2033

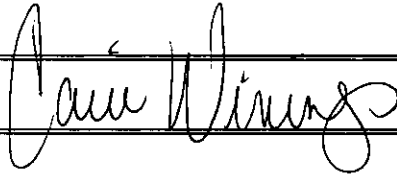
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/03/2009

Recorder Job Number: 8512

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on SB 2033. See Attachment # 1 for amendments prepared by Donnita Wald at my request. Explained the amendments and asked if that was the direction the committee wanted to go in.

Senator Dotzenrod: This is only on books for 2 years since the last biennium.

Chairman Cook: They haven't been able to really use them.

Senator Dotzenrod: I don't believe any credits have been sold.

Chairman Cook: There were strict restrictions on who they could sell them to. I would give them 20 years and get rid of the ability to sell them.

Vice Chairman Miller: Motioned to approve amendments and overstrike 10 and add 20 on line 22.

Discussion: A little discussion occurred between committee members on changing 10 to 20.

Senator Dotzenrod: Seconded.

A voice vote was taken: 7 yeas, 0 Nays.

Senator Oehlke: Moved a Do Pass As Amended.

Senator Hogue: Seconded.

A Roll Call vote was taken: Yeas 7, Nays 0, Absent 0.

Vice Chairman Miller will carry the bill.

FISCAL NOTE
Requested by Legislative Council
03/06/2009

Amendment to: Engrossed
SB 2033

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).*

Engrossed SB 2033 with House Amendments extends the date of availability of the income tax credit for installation of geothermal, solar, wind, or biomass energy devices, removes the credit transfer provisions, and expands the credit carryforward provisions.

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.*

Engrossed SB 2033 with House Amendments delays the sunset of the income tax credit for installation of geothermal, solar, wind, or biomass energy devices from 2011 to 2015. The bill also expands the carryforward provisions from five to ten or twenty years, depending on the project installation date. Most of the fiscal impact of the bill will occur beyond the 2009-2011 biennium. The only impact that would occur within this biennium would be for those systems - if any - that would have been installed from January 1, 2011 to June 30, 2011. It is not known if any systems would have been installed during that period had the tax credit been allowed to sunset. The fiscal impact 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:	03/06/2009

FISCAL NOTE
Requested by Legislative Council
02/06/2009

Amendment to: SB 2033

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).*

Engrossed SB 2033 extends the date of availability of the income tax credit for installation of geothermal, solar, wind, or biomass energy devices, removes the credit transfer provisions, and expands the credit carryforward provisions.

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.*

Engrossed SB 2033 delays the sunset of the income tax credit for installation of geothermal, solar, wind, or biomass energy devices from 2011 to 2015. The bill also expands the carryforward provisions from five to ten or twenty years, depending on the project installation date. Most of the fiscal impact of SB 2033 will occur beyond the 2009-2011 biennium. The only impact that would occur within this biennium would be for those systems - if any - that would have been installed from January 1, 2011 to June 30, 2011. It is not known if any systems would have been installed during that period had the tax credit been allowed to sunset. The fiscal impact 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:	02/07/2009

FISCAL NOTE
Requested by Legislative Council
12/08/2008

Bill/Resolution No.: SB 2033

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).*

SB 2033 extends the date of availability of the income tax credits for installation of geothermal, solar, wind, or biomass 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.*

SB 2033 delays the sunset of this income tax credit from 2011 to 2015 (except for the transferability of the credit, which is allowed to sunset in this bill as it does in current law). The bill also extends the carryforward provisions from five to ten years. Most of the fiscal impact of SB 2033 will occur beyond the 2009-2011 biennium. The only impact that would occur within this biennium would be for those systems - if any - that would have been installed from January 1, 2011 to June 30, 2011. It is not known if any systems would have been installed during that period had the tax credit been allowed to sunset. The fiscal impact 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:	12/31/2008

#1

Prepared for the
Senate Finance & Taxation Committee
February 2, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2033

Page 1, overstrike lines 23 through 24

Page 2, overstrike lines 1 through 31

Page 3, overstrike lines 1 through 31

Page 4, overstrike lines 1 through 5

Page 4, remove line 6

Renumber accordingly

Date: 02/03/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2033

Senate Finance and Taxation Committee

Check here for Conference Committee

Amendments

Legislative Council Amendment Number + overstrike 10, add 20

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller - Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

all in favor

Total: Yes 7 No 0

Absent _____

Floor Assignment _____

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

Date: 02/03/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 2033

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended ^{AS}

Motion Made By Senator Oehlke Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

SB 2033: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2033 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsections 1, 6, and 7 of"

Page 1, line 5, replace "Subsections 1, 6, and 7 of section" with "Section"

Page 1, line 6, replace "are" with "is"

Page 1, after line 6, insert:

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

Page 1, after line 16, insert:

"2. For the purposes of this section:

- a. "Biomass energy device" means a system using agricultural crops, wastes, or residues; wood or wood wastes or residues; animal wastes; landfill gas; or other biological sources to produce fuel or electricity.
 - b. "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.
 - c. "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, wind, or biomass 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, wind, or biomass 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, wind, or biomass 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, wind, or biomass 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."

Page 1, line 17, after "6." insert "a."

Page 1, line 20, replace "For tax credits for energy devices installed after" with:

- "b. Any excess tax credits earned for wind energy devices installed after September 30, 2008, and before August 1, 2011, may be used as a credit carryover to each of the twenty succeeding taxable years.
- c. For any tax credits for geothermal, solar, or biomass energy devices installed after"

Page 1, line 21, after the second underscored comma insert "and wind energy devices installed after July 31, 2011,"

Page 1, line 23, overstrike "All or part of the unused credit allowed under this section may be sold, assigned, or"

Page 1, overstrike line 24

Page 2, overstrike lines 1 through 31

Page 3, overstrike lines 1 through 31

Page 4, overstrike lines 1 through 5

Page 4, replace line 6 with:

- ~~"8.~~ For geothermal, solar, wind, or biomass energy devices installed after December 31, 2006, if ownership of a device is transferred at the time installation is complete and the device is fully operational, the purchaser of the device is eligible for the tax credit under this section. Subsequent purchasers of the device are not eligible for the tax credit."

Renumber accordingly

2009 HOUSE FINANCE AND TAXATION

SB 2033

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2033

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9710

Committee Clerk Signature

Minutes:

Chairman Belter: We will open the hearing on SB 2033.

Tim Dawson, Legislative Council: Committee members, we have before us engrossed SB 2033. The bill extends by four years the income tax credit for a renewable energy device and the bill allows a carry forward of the credit. You can look on page 3 with the new language at the top, which are the carry forward provisions of 20 years for a wind energy device installed from September 30, 2008 to August 1, 2011 and 10 years for other renewable energy devices. The carry forward is five years under present law. The bill removes the transferability of the credit on pages 3, 4 and 5. At one time that tax credit that was earned was transferable. That concludes the bill.

Chairman Belter: Did the Senate make some changes?

Tim Dawson: Yes, they did. I am going from memory here, but I think the carry forward that came out of the committee was a ten-year carry forward and then they added the 20-year carry forward and the deal with transferability was dealt with a little bit differently. It is the same in effect. The main thing is adding that 20-year carry forward.

Representative Headland: How many tax credits does a company like Florida Power and Light have? If we extend it for 20 years, that will have huge impact on our state coffers, will it not?

Tim Dawson: That would be a question for the Tax Department. I don't know the fiscal impact of this and I think that the fiscal note is far into the future.

Shane Goettle, ND Department of Commerce: (Testimony 1) It is correct that the carry forward was proposed as 10 years and we had proposed sunsetting the transferability of credits in 2011. The Senate made the changes to create this window for a 20-year carry forward. Part of the rationale, as I understand it, is that with the dry up of international credits coming into some of these projects, this little extra added incentive might be what we need to bridge the recession and continue to develop wind. I think North Dakota is one of the more attractive places to develop wind in a climate in which attracting investments to these projects is a little more difficult. That carve out for wind, the 20 year carry forward is just for wind. The 10-year carry forward is for all the others, the geo thermal, solar and biomass and wind after 2011. The Senate also then chose not to allow the sunset of the transferability up to 2011 but to do away with it immediately. That is some of the background behind the changes as I understand them and my participation in the other chamber. I would be happy to entertain any questions.

Representative Froseth: Do you know what the length of term for recapturing loss of a wind generating facility is projected to be?

Shane Goettle: It is a long-term recapture. I have been told by the major developer here, Florida Power and Light (which is now going under the name of Nextera Energy) that 10 years wasn't something that worked for them. They had had some difficulty using the transferability of credits and that the 20 years was something they could take back to the company and use

as justification for calculating the return on a project. They had told us that that timeframe is one that is necessary because in order for them to begin using the credits, they have the federal production tax credit that comes into play and the depreciation of equipment that comes into play before they can make use of the credit. So they have a long-term approach under this model to make this work. They are really one of the strongest advocates for the 20-year carry forward and the result is in front of you.

Representative Headland: I understand why Florida Power might want to spread it over 20 years because it will take them that long to recoup all the tax credit they have coming. My question is how many other states are spreading out their tax credits in the same fashion?

Shane Goettle: I don't have it with me, but we actually have some analysis of what other states have done and we can provide that. I couldn't answer that off the top of my head. I am not sure how far we have extended that. I should mention with respect to the question of how much it would cost, when you look at the date, this doesn't impact any existing projects. It is for projects that occurred under both formulations here after September 30, 2008 so it is for the projects that are under consideration right now and future projects as to respect of the costs.

Chairman Belter: What is the current depreciation rate for wind projects?

Shane Goettle: I believe it is 14 years, but I would have to look at the wind energy people in the room here.

Representative Winrich: If I understand this correctly, the 10-year carry over is permanent.

Shane Goettle: No, it is not permanent. The 10 year, I think there is a 2015 dateyou will see in provision 1, any taxpayer filing a ND income tax return pursuant to the provisions of this chapter may claim a credit for the cost of geothermal, solar,.....before January 1, 2015. As I read it, I think the whole provision runs out in 2015.

Representative Winrich: Okay, I was reading line 6-9 on page 3 and it says for any tax credits, etc. until after September 30 or wind devices after 2011, the excess may be used as a credit carry over to each of 10 succeeding tax years.

Shane Goettle: But the 2015 date in section 1 is the limiting date on the other.

Representative Winrich: I was interested in the same sort of things Representative Headland was asking about. I would like to see the same sort of analysis for other states too.

Shane Goettle: Mr. Chairman, I will have one of my staff provide that analysis we have conducted to the committee. If you need anything more out of that analysis, we can probably do that.

Representative Froseth: All the language that is taken out on pages 3, 4, and 5 deals with transferring that credit so the new language doesn't allow the company to transfer any credits to somebody who wants to buy something?

Shane Goettle: As soon as this law would take effect, there would be no opportunity to transfer the credits anymore. The credits that anybody has on their books would be useless.

Representative Headland: This is a lot better deal. When we allowed them to transfer that credit, there were some costs associated with transferring them and now that's gone.

Shane Goettle: That is correct.

Representative Pinkerton: I thought that we allowed that transfer of credits two years ago because Florida Power and Light didn't think that they had any tax liability in ND. Was I mistaken on that?

Shane Goettle: At that time, my understanding is that they felt that for this to work for them, based upon the way the law was drafted; they needed transferability so they could turn them into cash for their projects in relation to development of transmission lines. I think over time there has been a lot of discomfort about the idea of transferability of tax credit period, not just

for wind but for a variety of things. Knowing that and knowing the difficulties they have had transferring the credits under the model as struck by the previous legislature, they were not able to find a buyer under the stricture of the statute so the 20-year carry forward was, we were told, an acceptable compromise for them since transferability was problematic for them.

Representative Pinkerton: Do we have a number of how many dollars were transferred so we know how many tax credits that were used?

Shane Goettle: I don't know that for sure and I am not sure if the Tax Department would be able to tell you. In fact, if anybody purchased them, it doesn't necessarily mean that they used them.

John Olson, Florida Power and Light/Nextera Energy/Ottertail Power Company: I would like to say that I did not get up on the first two bills, 2031 and 2032, but we certainly favor those bills as incentives for wind development in ND. SB 2033 is a very important bill. I remember last session that we had a lot of debate, amending, confusion and reluctance to do a bill or a law providing for the salability of those income tax credits. What happened was that the bill was finally capped (I think it was capped at \$3 million or something like that). but the conditions that were associated with that really produced no benefit to FPL and Nextera Energy. As a result of an \$800 million investment in ND and \$113 million of income tax credits available, they were able to transfer \$185,000 so that bill does not work. We need to change to something that is more realistic and workable. SB 2033 is. Robert Garvin, the Vice President of Regulatory Affairs, Florida Power and Light and Nextera Energy, is here to handle some detailed questions that I am sure I won't be able to answer. Let me just point out that the extension to 20 years is very important because they cannot really use the 10-year cap in the bill right now that was in the Senate. The 20 year does enable them to utilize that carry over and utilize those credits. We had presented to the Senate information concerning why this

was necessary now--because we are in a recession or on the border of one that is pretty serious in this country, North Dakota continues, I think, to maintain a leadership role in the wind energy development in this state. I think we can thank the legislature for that, the leadership that we have seen in the executive branch, and especially in the legislature in creating these tax incentives. We are really doing well and we want to continue doing well. Representative Headland asked what kind of other tax credits are available in other states. I forget how many states Nextera operates in, but several of those states have unlimited salability of tax credits. That is important because a company like Nextera looks at the competitive environment among states and decides where they can go and make the capital investments required that has incentives available for them to develop these wind farms. They compete in their own company. There are people who want to go to California, Oklahoma, Texas, or Iowa. North Dakota has been able to generate a lot of interest with a company like Nextera Energy. We are here; we intend to stay here and to do business here. I have been told by Nextera and they have done this analysis that nationally new wind investment in 2009 is anticipated to be down by some percent (inaudible) after a record year in 2008. In 2008 there was over \$37 billion in new wind investment, totaling over 7500 megawatts and creating over 200,000 jobs nationwide. In 2009, as few as 4000 megawatts of new wind capacity is anticipated, along with \$16 billion worth of investment and 89,000 fewer jobs. Now we have seen some effects of that with DMI with the reduction of force in Fargo for the manufacturer of towers. We have seen it with the blade manufacturer, LM Glass Fibers, in reductions just recently in January. Flipper Wind, which is a wind turbine manufacturer in Iowa, is reducing its workforce by 25%. It is really important to have these kinds of incentives to keep investment going especially in these harsh economic times. I just want to refer to a study that was commissioned by Nextera Energy on the Langdon wind farm. You are all familiar with that; it

was a 150 megawatt project involving Nextera, Ottertail Power, and Minnkota Power. They commissioned North Dakota State University Agro Business and Applied Economics Department to do a study on the impact of Cavalier County and the area. Let me tell you some of the things that happened as a result of that. Cavalier County would receive \$191,000 in direct property taxes during the operational phase; the Langdon area schools would receive \$271,000 in property tax revenues; \$9.3 million went to entities in the Langdon area during construction phase; \$47 million in additional expenditures went to entities elsewhere in ND. We had a ND contractor as the lead contractor on that project. \$1.4 million annually went to the ND entities, including payroll and employee benefits, and landowner payments; \$10 million Ottertail investment went to upgrade 35 miles of its transmission line, which went to a substation in my hometown of Kensal, ND. We had 269 employees at peak construction in addition to 1656 secondary jobs statewide. All available housing, including RV courts was occupied; quarterly sales tax revenues consistently exceeded previous year's totals by 20-41%. I am quoting Carol Goodman, Executive Director of the Cavalier County Job Development Authority on these facts and figures. There are 10 to 15 permanent jobs created as a result of that wind developer and the project in Devils Lake at the junior college. Their wind technology program is continuing to offer young people training in that area. As a result of that one project, where we did the study, we can see the economic impact of how important wind development is in the state. For that reason, I hope you will react favorably to these three bills, and particularly this bill, because it is designed to make something workable that was not workable before.

Representative Headland: You mentioned 4000 megawatts and \$16 billion in investments.

How much of that is coming here?

John Olson: Not all 4000, I am sure, but we are hoping to have new projects in the state.

The man is here; he is a Wisconsin native; he has served on the Public Service Commission in Wisconsin before he went to work for Nextera Energy. Put him on the spot. Ask him how much we are going to do here and see if he will tell you.

Robert Garvin, Nextera Energy Resources: In terms of our 2009 build plan, we are aggressively working on a number of projects in this state and hope to announce very soon that we are going to go over a billion dollars in ND with a couple of projects. That is why bills like this are very important to our company given the current economic conditions we are in. It does move the needle. As John pointed out, the previous income tax credit based on our current \$800 million of investment can't be used. We worked very hard with a number of legislators to try to come up with a long-term credit that attracts wind investment to ND and provides an immediate economic benefit in ND and a long-term incentive to get us to come here.

Representative Headland: You mentioned a billion dollars. How much have you previously invested or is that all new investment?

Robert Garvin: No, to date our current investment in ND is about \$811 million and we hope to go over \$1 billion this year. When we put in a wind farm, the smallest wind farm we will do in ND will be about a \$100 million plus investment. We just did a project last year in Iowa that was \$400 million; it was larger—200 megawatts. That's the scope and scale of projects we do all over the country, but Iowa, ND and Texas are our key states in terms of investment.

Representative Headland: Part of that new investment will be located in Stutsman County?

Robert Garvin: We are participating in that. We have a very active interest.

Chairman Belter: Any other relevant questions?

Representative Pinkerton: Of the \$800 million of investment you have made in the last two years, you were unable to use any of the tax credit. How much tax credit did you have?

Robert Garvin: What we earned was about \$114 million. What we were able to sell, and believe me we tried selling them but there were no takers so we were only able to realize \$185,000 in terms of the ability to transfer to any other. Because of our low amount of income tax liability, which is where our real option is to get any benefit right now, these are long-term investments. That is why the way we depreciate this facility, the real income comes after the first ten years of operation. That is why this 20 year is important because down the road, years 13 and 14, is where we can start getting an actual benefit.

Representative Pinkerton: By real income, you mean taxable income because there are so many federal tax credits that...

Robert Garvin: The way we depreciate, we don't realize a lot of income until the out years so this would be an incentive for us in the years 13, 14 and beyond. We will have a lot higher income subject to taxation in those out years. That is why the 5 and 10 years don't do much for us as a developer. The way we organize our facilities, we have seven of them, we don't realize tax liability to the ND taxpayers til those out years so it is just another incentive. As we look at all the states we are invested in, the states you are competing with, if we put a \$300 million investment in Oklahoma, and we are going to do that, we can sell those tax credits to any taxpayer if we can't realize them. That is just an example of another state that gone a different way in the incentives but we understand the appetite here in providing development in terms of salability. That is why bills like 2033 are important as another incentive.

Representative Pinkerton: Just so I catch the numbers correctly, the \$800 million investment you made in the last two years, you could have had \$114 million in tax credits?

Robert Garvin: The way the formula works, and it is actually a little over two years, that is what we have on our books as income tax credits that we have earned.

Representative Pinkerton: That is not deduction; that is actual.

Robert Garvin: That is a credit that we have earned that we cannot use.

Representative Pinkerton: So \$114 million.

Robert Garvin: Well there is a potential purchaser but there is no appetite. We have tried selling them and we can't sell them so.

Representative Pinkerton: There was a \$3 million cap though so you would have only been able to use \$3 million of that \$114 million. Is there a cap on this bill?

Robert Garvin: But the way it rolls over. I am just doing the numbers on our books as earned; how they are sold and when is a different spreadsheet we have to go through.

It is the same cap. It is the same mechanism. Overall \$15 million is for caps; it is equal to 3% of the total cost of acquisition and installation of the first five tax years for a total of 15%. That is how it works. The sales of the credits are capped at \$3 million. (28:04) for all ND taxpayers. The cap is not being changed as I understand it. The transferability ends so there is no cap.

Representative Pinkerton: If you go \$800 million, you get an \$115 million credit and if some other firm goes \$800 million, they get a credit; so we could end up with \$300-400 million tax credits out there.

Robert Garvin: If you attract that type of investment, I guess theoretically you could have significant money. I am not speaking for any other company; I am just talking about us.

Chairman Belter: Any other questions? Further testimony in support of 2033?

Kathy Aas, Xcel Energy: (Attachment 2) We too are in support of Bill 2033 and the

previous bills you heard. We want to thank the Empower Commission for the work they have done on this. Last summer Xcel Energy announced a 150 megawatt project in Representative

Brandenburg's area. It is a \$400 million project. Our planners were looking at it and we would like to offer an amendment on page 3, articles b and c, to extend those dates out five months. They feel it would be difficult to complete the project by August 1, 2011. Normally the tax credits end at the end of the year so we would ask that August 1, 2011 be extended to January 1, 2012. On page 3, line 7, that the date instead of July 31 be moved to December 31, 2011.

Chairman Belter: Any other questions?

Representative Pinkerton: Kathy, on your \$400 million projects, you will get about \$50 million in tax credits?

Kathy Aas: That would be correct.

Representative Pinkerton: You would have 20 years to use those up? That would apply to corporate tax that Xcel pays? Would that just about take away all corporate tax Xcel pays in ND?

Kathy Aas: I am not sure. I could not answer that without checking with the tax people.

Bruce Eckre, Wahpeton, Representing Hartland Wind Farm: Hartland Wind Farm is looking at putting up a massive wind project in Burke and Mountrail Counties in Representative Froseth's area. All three bills, 2031, 2032, and especially 2033 are very important for long-term goals and long-term investments. Our investors are mostly out of Texas, New York and Minnesota and to hold together all of this money is not easy to do in these times. As Mr. Goettle stated, the Senate added this to 2033 because of the tight recession, and I am hoping we can all get together.

Representative Headland: What company do you represent? How much investment?

Bruce Eckre: Hartland Wind Farm. Governor Hoeven in his state-of-the-state address mentioned Hartland Wind Farm putting up a massive one and there are still hoping to do that and hold their investment together. It was a \$4 billion investment initially. It is 1300 wind

towers. This is a huge investment; it would be bigger than Pickens. In fact, a lot of the investors are from Texas. Montgomery Energy and Denali Energy, we have a lot of consortiums put together and we are looking at ND. John talked about money spent at the local level and school districts, counties, townships will really benefit from this; there is no doubt. A lot of permanent jobs will be added in the small towns up there because you are going to need mechanics coming out of Devils Lake probably to maintain these towers once they are up.

Chairman Belter: Any questions? Further testimony in support of SB 2033? Any opposition to 2033? Any neutral testimony on SB 2033?

Representative Pinkerton: This is so far out there in 20 years. What if one of these companies merges with another company? Would that tax credit carry over in the merger?

Mary Loftsgaard, Associate Director of Tax Administration, Office of the State Tax

Commissioner: In answer to your question, if the entities actually merge and the entity that owned the credit is merged out of existence, no, the credit would not transfer. It would depend upon how that merger was facilitated; if the entity that earned the credit here was the surviving corporation in the merger, yes, they would continue.

Chairman Belter: Any other questions of the Tax Department? If not, we will close the hearing on SB 2033.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2033**

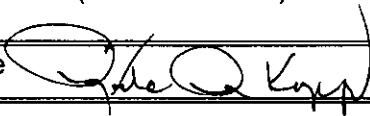
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9954 (Also SB 2031)

Committee Clerk Signature



Minutes:

(Everything on Recording 9954 from 1:38 to 4:12 was on SB 2033.)

Representative Pinkerton: They did send me information out from the Tax Department comparing other states to what North Dakota charges for tax incentives. Ours is very liberal.

Most of the other states would only pick one of those tax breaks, whether it be property, sales or income tax credit. Oklahoma, which the gentleman from Nextera specifically mentioned, has a much lower tax and if they take that tax, my understanding is, from what was sent out, they do not have any kind of property tax exemptions. I don't know if you have had a chance to read that information, but the tax in Oklahoma is based on kilowatt hours and it is limited to ten years. It was fully tradable, but I think that the amount on that was maybe around \$50,000 a year over that ten years. I am sorry; I don't remember; I wasn't aware we were going to discuss this bill today. The other thing that I would be particularly leery about would be that what Nextera talked about, they had \$114 million in tax credits. That is a lot of change. I am fully aware that they might not be able to take it, but if cap in trade comes in, (I am neither supporting or opposed to cap in trade right now); but if cap in trade does come in and they are able to get all of these carbon credits, they can easily have \$114 million in tax credits income. We don't have any idea what cap in trade is going to come in at. I just don't know if that....

Representative Winrich: You are talking about 2033?

Chairman Belter: 2031.

Representative Winrich: 2031 is just about extending central assessment of wind generators.

Representative Pinkerton: It was still in my head so I apologize.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2033**

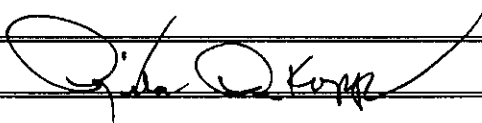
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9956

Committee Clerk Signature



Minutes:

Chairman Belter: Let's look at SB 2033.

Representative Grande: I have the amendments that were submitted by Kathy Strombeck 901.90.0300. That is not the amendment number, but does everyone have those amendments. I would like to move those amendments.

Chairman Belter: We have a motion from Representative Grande and a second from Representative Brandenburg to move the .0300 amendments to 2033. Is there any discussion? I guess the purpose of the amendment was to make sure they get within the construction deadline, is that correct? Any discussion on the amendment? **(The motion to approve the .0300 amendment carried by a voice vote.)** What are your wishes on 2033?

Representative Pinkerton: You already heard that long speech there and I won't do it twice, but this is a lot of money to put out there. You heard Florida Power and Light talk about that they have \$114 million of unused credit. I did do a little quick research. I went to Florida Power and Light's corporate site and it looked like wind energy was one of their most profitable divisions. I think I would be sort of leery about putting that much money out there, particularly not knowing what the cap in trade is going to do to their profits. (02:48)

Representative Brandenburg: The \$114 million worth of credits that they have already earned at this point; they are gone. They're giving them up. What this bill does because those dates are changing and those credits, they're not there anymore. What this bill with the tax credits in the future (inaudible) and the next 20 years, but these wind turbines are not profitable until about the 8th year so until you get to the 8th or possibly the 10th year, depending on your business structure, you are not going to be able to use these credits. As they build these up, we would come back here next session and the session after that and the session after that so it is really a moot point. You are not going to have the tax credits that are going to be usable until you turn the wind tower into profit and have taxable income that you can offset it with. That is why there is not a fiscal note as I explained before; there won't be a fiscal note until the wind turbines are profitable and you start having an income to offset it, so when you look at \$114 million, and you start having an income to offset it. When you look at \$114 million, they have earned that already but that is gone. This will be carried forward on future projects, not existing projects. (04:12)

Representative Pinkerton: My understanding is that there is a federal tax credit of 30%. I wonder if they are truly not profitable or if they are just not producing any kind of taxable income. They could be two different things because they have a 30% federal tax credit and then they have an accelerated depreciation. I think their accelerated depreciation (I am sorry I can't quote the exact numbers) is for 12-15 years, 10 years. The first ten years or so you are operational, between your federal credit and their accelerated depreciation, even if they are producing net income, it is not taxable income because their credits are destroying the taxable portion of it. Then certainly I agree with you that the \$114 million is tax credits that they had before and they could have traded those or sold them to another corporation but it was limited only to other, essentially XCEL or MDU or Ottertail. I think that those companies probably

didn't need any tax credit because they already have them and they reduce their taxable income down to zero. They have no need for...except for maybe the \$100 and some odd thousand. I think this is a heavily subsidized industry. I think they have a chance of getting a tremendous amount of money coming from cap in trade and that is just more government money coming in. If they build a billion dollars worth of towers (that is two wind farms); they will still have that \$120 million of tax credits. We just don't know what the future is going to hold ten years or fifteen years out there. That cap in trade could make them enormously profitable.

Representative Brandenburg: Just so you separate them. You have the federal energy tax credit which deals on the federal side when you pay federal taxes. It is also part of it, but rarely is it....you have to have a tax credit to use the federal energy tax credit which is a separate issue and not anything to do with this bill. But what I am trying to say is that the federal tax credit that we are dealing with here and the state tax credit, they have to pay state taxes before they are able to use this. The transferable credit within the energy family; you're right; nobody could use those credits. It was designed that way so it was used in the energy sector so it wasn't sold off to somebody else. The purchase power agreement gives a transferable credit to them (inaudible) ; it wasn't just so you could sell it without it being tied to the purchase power agreements. This bill really has no fiscal note on it until you hit year 10 and turn profitable. We are going to come back here three times before that.

Representative Pinkerton: It just seems a bit unfair to tell them they can build their towers and in ten years we discover they are very profitable and take that credit away. I mean is that something we would want to do? I don't know if that is done frequently or that we should. We would have to change the law. The Oklahoma one that he talked about was limited to ten

years and the one in Iowa takes any of the other kinds of credit. I think they are getting a very good deal from us.

Representative Brandenburg: This is a bill done in many other industries that incentivizes construction and jobs and is something in ND that brings new industry up to par that pays property tax that makes payments to the land owners, that creates jobs. You have DMI that builds the towers, you have got L&M Glass Fibers that sell the blades, you have got culverts, you have got roads, you have got quasi construction and they are looking at different areas to come to so this is important to their toolbox as they are looking at trying to put wind towers up. Is there a cost? If they come here and put a billion dollars in the state in the next five years; they have put in probably close to \$800 million already in the state so if they put in a billion dollars, that is going to be \$150 million on that billion dollar investment, but is that such a bad thing to give when you get a billion dollars investment?

Representative Pinkerton: If this was in the oil business and they were hiring lots and lots of workers, but once these towers are built and the construction phase is fairly short (within a year), then they run with 10 or 12 workers (that's apparently what we are told can run a fairly big wind farm). It is not creating jobs like Bobcat or creating jobs like Freightliner.

Representative Weiler: Well I won't interrupt the conversation, but I just had a question for Representative Brandenburg. What do you mean when you say the \$114 or \$115 million of tax credits are gone?

Representative Brandenburg: FPL with \$800 million that they have put into the state already, they have earned \$114 million in tax credit. Coming in to the session with a deadline to use this credits, which were expiring this session, they are asking to extend those existing construction into the 20 years for the new construction and it was denied. It's not out there.

Those tax credits are gone. Now they are looking at new construction, they are asking that those tax credits be kept in place.

Representative Weiler: I would like to challenge Representative Brandenburg. He certainly knows more about this industry and all the details of it, but it says it delays the sunset of the income tax credit for installation of geo-thermal, solar, wind and bio mass from 2011 to 2015.

Representative Brandenburg: You have to look at the transferrable credits when you read it, to sell the transferrable credits because this is on new construction. I think if it pertains to old construction it doesn't apply to carry forward; it's the new construction. It has to be new facilities constructed other than the one XCEL is asking for. I apologize; I wasn't here. Here it is on page 3, any tax credits earned for wind energy devices installed after September 30, 2008 and before August 1, 2011 can be used as a credit carryover into the next 20 taxable years so it is not talking about anything that was constructed before September 30, 2008.

That is why they are asking for this amendment before August 1, 2011 to January 1, 2012 so they are asking to extend that. What I am saying is that the projects that were constructed before that date don't qualify for those tax credits. Those are the projects that are already built that had the \$114 million built up, but they are gone.

Representative Wrangham: I think I know what removing subsection 7 beginning on page 3 going onto page 4 and page 5 does, but I am asking if I am right. I think removing this language makes these credits totally transferrable in which case they will be used in the future right away because they will be able to sell them to somebody else plus it allows them to carry them over. Is that your interpretation of what removing number 7 does?

Representative Headland: I would like to delay any action on this bill until we get some more information because I was told too that the \$114 million was gone, but just in looking at the language of the bill, I am not sure.

Representative Brandenburg: Mr. Chairman, maybe we do need to get Walstad down here from legislative council and just make sure what we are saying and what we are talking about are the same thing. It does get confusing.

Representative Froseth: Just a comment in response to Representative Pinkerton's concern about the value after they are up and running. The one that is being contemplated up in northwest ND, all the information they have given us is they need one technician for every 10 towers. That is a 1300 tower project; that would be 130 technicians in that area to service that wind farm. I think we have a bigger picture to consider here too with the coming of all this new development, there is going to have to be transmission. Included in the project there is a partnership with A&E, American Electric, and they are one of the largest transmission companies in the world. They are contemplating building a huge electrical transmission system across ND. I think that would probably be the largest benefit of all these smaller projects around the state to get....we need transmission, not only for the new wind generating farms that are coming but just the coal generation we have now. We don't have enough transmission to move the product to other states where the market is so I think there is a long-range plan here that we should probably keep in the back of our minds when we are discussing these bills.

Representative Brandenburg: If I can continue, Nextera, Florida Power and Light, when they came to town and started building, they have done everything they said. When they said they were going to build a wind farm, they were going to take care of the roads, they were going to do this and they did it. I have seen them draw up what those guys are talking about, big transmission lines to Minneapolis. They are having a hard time going through Minnesota; they are now looking at going through South Dakota and Iowa and into Illinois and come in that way. They have got the money to do it. Working with all of the companies in the state, I do

think that it would be good for ND to incentivize. That is why these incentives are here because when you think about it, it was in 2001 we started on this stuff and here we are with \$800 million. It is not just the jobs that they are leaving behind; it is also the jobs at DMI; look at DMI, they're laying off people. That's because they aren't building as many wind towers. Really the only people who can come up are four to five companies because these investors come out here and try to make it work and can't make it work right now because the money is tight. (17:23) Florida Power and Light is still in it with a tax appetite to make the federal tax energy credits as well as also the money to capitalize plant and work with other developers.

Representative Pinkerton: I am not arguing the merits of the wind towers. I guess I just wonder if we really need to give those kinds of incentives. They are getting a lot of incentive with the tax credit with no sales tax on it, property tax exemptions which are fairly significant to the local areas. When you look at the information sent out by the Commerce Department, it just doesn't look like the other states are giving those kinds of incentives that we are talking about with 2033. It comes back to what do you have to pay to get them to come? Do we have to pay this much?

Representative Brandenburg: You might be right looking at property taxes in one state versus another state, but really in this area South Dakota, North Dakota, Minnesota, Wyoming, Montana, all of them are trying to be on an equal playing field to be competitive to put the towers here. I know right now they are looking and ND and they are looking at Texas. That is what Nextera is looking at. They are making a choice where they can make it work the best. They could be playing me; but you know, it could be a deal buster too. When we are making this choice right here and we are talking a billion dollars, and that is what they tell me, a billion dollars, and they put \$800 million in here the last four years, it might be the deal buster; it might not. We have got to make that choice.

Chairman Belter: Any comments? Okay, we will hold this bill.

2009 HOUSE STANDING COMMITTEE MINUTES

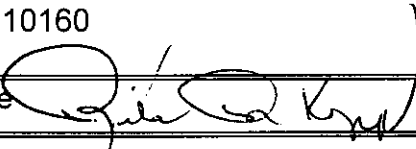
Bill/Resolution No. SB 2033

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10160

Committee Clerk Signature 

Minutes:

Representative Brandenburg: Are we ready to do 2033, the one with the tax credit?

Chairman Belter: Are we ready to act on it? With the .0300 amendments? What are your wishes on this bill?

Representative Grande: "Do pass as amended".

Representative Brandenburg: Second.

Chairman Belter: Any discussion?

Representative Pinkerton: I guess discussion on this bill would be that if in the future, economic conditions change and these towers become... My research shows that at the start, we will make about \$220,000 a year and by the time that 20 years is up, they will be up to about \$44 hundred thousand a year. If there are changes in our economic system or green credits become a big deal and these towers are making a million dollars a year, I think the intention of this committee would clearly be that we would change how future committees would change how they are taxed. I would like that part of the discussion today that the intention would be that if economic changes occur, it could be either way. Economic changes could occur so they are much less profitable and maybe they would have to have more tax breaks. I do think that is an important part as historically, as this is going to be a long time in

the future that this is going to happen, so when someone looks back to when this bill was passed and what was the intention of the committee, I would like it to go on record that the intention of the committee is that this could be adjusted in changing economic conditions.

Chairman Belter: I agree with you. Every session we have that opportunity to look at these issues, but I do share your concerns on it. Any other comments?

Representative Pinkerton: Representative Brandenburg did a good job of convincing me of that.

Chairman Belter: Any other discussion? If not, will the clerk read the roll for a “do pass as amended” on SB 2033. (A roll call vote resulted in 11 ayes, 0 nays, 2 absent/not voting-Headland and Froelich.) **Representative Brandenburg will carry the bill.**

90190.0301
Title.0400

Adopted by the Finance and Taxation
Committee

March 4, 2009

VR
3/4/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2033

Page 3, line 4, replace "August 1, 2011" with "January 1, 2012"

Page 3, line 7, replace "July" with "December"

Renumber accordingly

Date: 3/2/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2033

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 300

Action Taken Do Pass Do Not Pass Amended

Motion Made By Grande Seconded By Branden

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) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3/4/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2033

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 Grande 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) 11 No 0

Absent 2

Floor Assignment Rep Brandenburg

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

REPORT OF STANDING COMMITTEE

SB 2033, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2033 was placed on the Sixth order on the calendar.

Page 3, line 4, replace "August 1, 2011" with "January 1, 2012"

Page 3, line 7, replace "July" with "December"

Renumber accordingly

2009 TESTIMONY

SB 2033

DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILLS 2032, 2031, & 2033
JANUARY 27, 2009, 9:00 A.M.
SENATE FINANCE AND TAXATION COMMITTEE
LEWIS AND CLARK ROOM
SENATOR DWIGHT COOK, CHAIRMAN

SHANE GOETTLE – COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Shane Goettle, Commissioner of the North Dakota Department of Commerce. I also serve as chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bills 2032, 2031, and 2033. All three of these bills have been recommended by the Commission and were approved by the interim Energy Development and Transmission committee. A complete list of bills recommended and supported by the Commission is below:

- House Bill No. 1032 - Siting Jurisdiction for Certain Gas Pipelines.
- House Bill No. 1352 – State Energy Policy.
- Senate Bill No. 2031 - Property Tax Reduction for Wind Towers.
- Senate Bill No. 2032 - Sales and Use Tax Exemption for Wind Towers.
- Senate Bill No. 2033 - Income Tax Credit for Renewable Energy Devices.
- Senate Bill No. 2034 - Oil Extraction Tax Exemption for Tertiary Recovery Using Carbon Dioxide.
- Senate Bill No. 2035 - Sales and Use Tax Exemption for Beneficiated Coal Plant and Severance Tax Exemption for Beneficiated Coal in Agricultural Commodity Processing.
- Senate Bill No. 2036 - Coal Conversion Tax Exemption for Repowering Beneficiated Coal Plant.
- Senate Bill No. 2037 - Sales and Use Tax Exemption for Gas From Oil Wells.

You have three of these bills before you today that extend or make permanent tax incentives for wind energy. The EmPower ND Commission felt it was important to extend these key incentives that have allowed North Dakota to be competitive with neighboring states.

SB 2032 makes permanent the sales and use tax exemption for wind towers. This mirrors other industries that also have permanent sales and use tax exemptions. SB 2031 and SB 2033 extend the sunset dates to 2015 for the reduced property tax valuation and the income tax credit. Periodic reviews are in order and the sunset of 2015 will allow a future consideration of whether these incentives are still appropriate.

Mr. Chairman and members of the Finance and Taxation Committee, I respectfully request your favorable consideration of Senate Bills 2032, 2031, and 2033. That concludes my testimony and I am happy to entertain any questions.



Senate Bill 2033

Renewable Investment Tax Credit

Current Law

- Provides an income tax credit for installing a biomass, geothermal, solar or wind device in a building or on property owned or leased in North Dakota
- The credit is equal to 3% to the cost of acquisition and installation and is allowed in each of the first 5 tax years (for a total of 15%).
- For taxable years beginning after December 31, 2004, any credit in excess of the year's tax liability may be carried forward to the five succeeding tax years.
- Sales of the credit are capped at \$3 million for ALL North Dakota taxpayers over the biennium and are limited to (i) those who have purchased energy from the device as part of a purchase power agreement or (ii) to construct or expand electrical transmission lines in North Dakota after August 1, 2007.
- The credit expires on January 1, 2011.

Senate Bill 2033

- Extends the renewable investment tax credit until 2015
- Allows any credit in excess of the year's tax liability to be carried forward to the ten succeeding tax years
- Prohibits the sale of credits earned after 2010
- Applies to projects installed after September 30, 2008

Proposed Amendment to Senate Bill 2033

- Amend Page 1, line 20, after "years", add "For tax credits for energy devices installed after September 20, 2008 and prior to July 31, 2011, the excess may be used as a credit carryover to each of the succeeding twenty years".
- Amend page 1, line 21, delete "September 30, 2008", and add "August 1, 2011"

Rationale for Improving SB 2033

- The carryover provisions in the current investment tax credit (5 years) and the changes proposed in SB 2033 (10 years) provide limited benefit for viable, proven wind companies that desire to construct more wind farms in North Dakota since wind farms do not generate sufficient taxable income during the initial decade of its operations to provide a credit that can be used in any meaningful fashion.
- Any limited benefit from the credit during the first 10 years would arise only to the extent a wind developer has non-wind sources of income that are subject to North Dakota taxation. In NextEra's case, it has been able to utilize only \$185,000 (or less than 1%) of its investment tax credits over the last five years from its approximate \$800 MM investment in North Dakota.
- Amending the bill to extend the carryover provision from the proposed 10 years to 20 years would better enable wind developers to utilize the credits and would provide a reasonable long term incentive to attract wind investment.
- This modest change is needed at a time when North Dakota's leadership role in attracting new wind investment amidst a global financial crisis; tight capital markets and transmission constraints will be severely tested over the next few years.

Nationally, new wind investment in 2009 is anticipated to be down by roughly 60% from its record year in 2008. In 2008, there was over \$37 billion in new wind investment totaling over 7500 megawatts (MW) and creating over 200,000 jobs. In 2009, as few as 4,000MW of new wind capacity may be constructed; along with \$16 billion reduced investment and 89,000 fewer jobs.

The Midwest region has already seen considerable reductions in renewable investment and reduced employment in wind related industries, with work force reductions at local tower manufacturer, DMI and a North Dakota blade manufacturer, LM Glassfiber. Just last week, Clipper Wind (a wind turbine manufacturer) in neighboring Iowa announced it was reducing its workforce by 25%.

Nextera Energy

- The largest wind developer in North Dakota with over 500 megawatts of emission free energy at 7 farms across the state and approximately \$800 million invested.
- A recent North Dakota State University Study examined the positive economic impact resulting from construction of Nextera's Langdon Wind Energy Center in 2007. The study concluded that this project alone produced \$56 million in statewide direct impacts during the construction period; \$169 million in secondary impacts for a total one time construction impact of \$225.7 million. Peak construction work force was 269 workers.

#3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2033

1. Page 1, line 20, after "years.", add "For tax credits for energy devices installed after September 30, 2008 and prior to July 31, 2011, the excess may be used as a credit carryover to each of the succeeding twenty years."
2. Page 1, line 21, delete "September 30, 2008", and add " August 1, 2011".

PROPOSED AMENDMENTS TO SENATE BILL NO. 2033

Page 1, line 22, after the period insert "Any excess tax credits earned for wind energy devices installed after September 30, 2008 and before August 1, 2011 may be used as a credit carryover to each of the twenty succeeding taxable years. Any excess tax credits earned after July 31, 2011 for installing a wind energy device may be carried over for the same time period that is available under this subsection for credits earned for the installation of other energy devices."

Renumber accordingly

Testimony

**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILLS 2031, 2032, 2033, 2035, & 2037
FEBRUARY 25, 2009, 9:00 A.M.
HOUSE FINANCE AND TAXATION COMMITTEE
FORT TOTTEN ROOM
REPRESENTATIVE WES BELTER, CHAIRMAN**

SHANE GOETTLE – COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Shane Goettle, Commissioner of the North Dakota Department of Commerce. I also serve as chairman of the EmPower North Dakota Commission.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and its members were appointed by the Governor. It is an industry lead effort that allows all of our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bills 2031, 2032, 2033, 2035, and 2037. All five of these bills have been recommended by the Commission and were approved by the interim Energy Development and Transmission committee. A complete list of bills recommended and supported by the Commission is below:

- House Bill No. 1032 - Siting Jurisdiction for Certain Gas Pipelines.
- House Bill No. 1352 – State Energy Policy.
- Senate Bill No. 2031 - Property Tax Reduction for Wind Towers.
- Senate Bill No. 2032 - Sales and Use Tax Exemption for Wind Towers.
- Senate Bill No. 2033 - Income Tax Credit for Renewable Energy Devices.
- Senate Bill No. 2034 - Oil Extraction Tax Exemption for Tertiary Recovery Using Carbon Dioxide.
- Senate Bill No. 2035 - Sales and Use Tax Exemption for Beneficiated Coal Plant and Severance Tax Exemption for Beneficiated Coal in Agricultural Commodity Processing.
- Senate Bill No. 2036 - Coal Conversion Tax Exemption for Repowering Beneficiated Coal Plant.
- Senate Bill No. 2037 - Sales and Use Tax Exemption for Gas From Oil Wells.

Senate Bills 2031, 2032, and 2033 extend our state's tax incentives for wind energy development to 2015. The combination of favorable property tax treatment, sales and use tax exemptions, and income tax credits has allowed North Dakota to be competitive with neighboring states as companies decide where to locate new wind farms. Periodic reviews are in order and the sunset of 2015 will allow a future consideration of whether these incentives are still appropriate.

SB 2035 gives equal tax treatment to beneficiated coal as coal in its natural form.

SB 2037 clarifies that the sales and use tax exemption for gas gathering equipment applies to oil wells.

Mr. Chairman and members of the Finance and Taxation Committee, I respectfully request your favorable consideration of Senate Bills 2031, 2032, 2033, 2035 and 2037. That concludes my testimony and I am happy to entertain any questions.

AMENDMENTS FOR SB-2033

THE FOLLOWING AMENDMENTS ARE OFFERED FOR SB-2033, FIRST
ENGROSSMENT,

90190.0300

On page 3, line 4, delete the date "August 1, 2011" and insert the date "January 1, 2012"

On page 3, line 7, delete the word "July" and insert the word "December"

And renumber accordingly.

MEMO TO: Senator Curtis Olafson
 FROM: Carol Goodman, Executive Director,
 Cavalier County Job Development Authority
 SUBJECT: Community Impact and Potential of Wind Farms
 DATE: January 21, 2009

Good afternoon! Thank you for our discussion earlier today regarding the tremendous current and potential future impact on North Dakota as a result of wind energy development.

Cavalier County is fortunate to be the location of Langdon Wind, LLC, a 133 turbine wind farm developed and constructed in 2007 and 2008. The \$250,000,000 project has brought us an economic impact that rivals the days of the Anti-ballistic Missile Defense project of the early 1970's

Dr. Larry Leistritz, professor of Agribusiness and Applied Economics at North Dakota State University, was commissioned by FPL Energy (now NextEra Energy Resources) for a socioeconomic impact study of Cavalier County and the area. The study was released in May, 2008, and contains these pertinent points:

- Cavalier County will receive \$191,000 in direct property taxes during the operational phase.
- The Langdon Area School District will receive \$271,000 in property tax revenues.
- \$9.3M to entities in the Langdon area during construction phase.
- \$47M additional expenditures to entities elsewhere in ND.
- \$42M purchase of wind towers & blades, DMI and LM Glasfiber.
- \$1.4M annually to North Dakota entities, including payroll and employee benefits and landowner payments.
- \$10M Otter Tail investment to upgrade OT transmission line (35 miles), plus
- 269 employees at peak construction, in addition to 1,656 secondary jobs statewide.
- All available housing full during construction, including RV's in trailer parks and City Park. Quarterly sales tax revenues consistently exceed previous year's totals by 28-41%.
- 10-15 permanent jobs created, bringing new opportunities for existing population and younger workers who have moved back to the community.
- Housing, retail, service, construction sectors consistently strong.
- 5-year options have been signed for next phase, possibly in 2010.
- Provided opportunity for community to partner with Lake Region State College to develop a wind technician training program that will serve North Dakota and national wind development.



Senate Bill 2033

Keeping North Dakota as the Leader in Wind Development

About NextEra Energy Resources

- **A subsidiary of FPL Group, NextEra is the largest wind developer in North Dakota with over 500 megawatts of emission free energy at 8 wind farms across the state and approximately \$800 million invested.**
- **A recent North Dakota State University study examined the positive economic impact resulting from construction of NextEra's Langdon Wind Energy Center in 2007 and concluded that this single project alone produced \$56 million in statewide direct impacts during the construction period and \$169 million in secondary impacts, for a total one time construction impact of \$225.7 million. Peak construction work force was 269 workers.**

Effect of Current Recession on Wind Growth in North Dakota

- **Nationally, new wind investment in 2009 is anticipated to be down by roughly 60% from its record year in 2008. In 2008, there was over \$37 billion in new wind investment totaling over 7500 megawatts (MW) and creating over 200,000 jobs. In 2009, as few as 4,000MW of new wind capacity may be constructed, resulting in a \$21 billion drop in new investment and 89,000 fewer jobs from the prior year.**
- **Reductions in renewable investment and reduced employment in wind related industries, with work force reductions at local tower manufacturer, DMI and a North Dakota blade manufacturer, LM Glassfiber. Clipper Wind (a wind turbine manufacturer) in neighboring Iowa announced it was reducing its workforce by 25%.**

Current Law

- **Provides an income tax credit for installing a biomass, geothermal, solar or wind device in a building or on property owned or leased in North Dakota.**
- **Any credit in excess of the year's tax liability may be carried forward to the 5 succeeding tax years. Sales of credits are severely limited by restrictions (no credits have been sold to any North Dakota taxpayer).**

Senate Bill 2033

- **Extends the renewable investment tax credit until 2015**

- **Narrow 2-Year Stimulus Window:** 20 carry-forward would apply **ONLY** to tax credits earned from wind projects put in service after September 30, 2008 and prior to August 1, 2011. Wind projects constructed after August 1, 2011 would **ONLY** be eligible to carry forward earned credits for 10 years.
- **Eliminates the sale of ALL credits after August 1, 2009.**

Why SB 2033 is Needed

- **Due to accelerated tax depreciation and loss carryovers akin to wind developers, the current 5 year carryover in the current investment tax credit provides limited benefit for viable, proven wind companies like NextEra that desire to construct more wind farms in North Dakota.**
- **North Dakota has lower purchased power prices than other states in the region. Green credits generated by wind generating facilities are bundled with energy and transferred to the purchaser of the energy. This results in no additional economic upside to generators such as NextEra from the sale of the green credits. Green credits are an incentive for purchasers to purchase renewable energy, not for generators to make new investment.**

Fiscal Impact of SB2033 is Modest

- **The bill provides improved credit utilization only for NEW investments in North Dakota. None of the credits NextEra earned from wind projects placed in service prior to September 30, 2008 will ever benefit from the 20-year carry-forward and will, for the most part, expire unused.**
- **NextEra's current benefit is severely limited, as it has only been able to utilize \$185,000 of credits over the past five years against \$800 MM of investment in the state. As a unitary filer, this is true because our core business is the development of wind and other renewable generating resources throughout the country. Despite any new investment in North Dakota, our investment outside the state will also continue to limit the amount of actual taxable income apportioned each year to North Dakota, and in turn limit the annual North Dakota tax liability and credit offset.**
- **Although any future year-on-year benefit from the credits is expected to be modest for NextEra, the additional 15-years in carry-forward would at least provide wind developers such as NextEra with an opportunity to generate a limited economic benefit in the out years from NEW wind investment in North Dakota.**
- **The net result to North Dakota is dramatic upside from continued, new wind investment over the next two years during a period of unparalleled economic turmoil and competition amongst states for scarce capital investment. Without this economic incentive, there is a risk of loss of new wind development in North Dakota, while passage of this bill may yield substantial gain.**



Bruce Eckre <bruce.eckre@gmail.com>

Hartland Wind Farm story in the Kenmare News Newspaper

Bruce Eckre <bruce.eckre@gmail.com>
To: bruce.eckre@gmail.com

Sun, Mar 1, 2009 at 6:31 PM



THE KENAMRE NEWS

If you would like to learn more about the region and read *The Kenmare News* every week, consider a subscription to *The Kenmare News*.

Conditions improving for wind farm development

Posted 2/11/09 (Wed)

By Caroline Downs

With the help of landowners in Burke, Mountrail and northern Ward counties, the Hartland Wind Farm project continues to develop, with conditions becoming even more favorable given current attitudes at the state and national levels.

Curt Johnson, a principal with Denali Energy which has partnered with Montgomery Energy to develop the 2,000 megawatt wind project, delivered that message during meetings held the last week of January in Kenmare and Bowbells.

The sessions were intended to inform landowners and area residents new to the project, as well as those who had already signed on, about the progress of Hartland Wind Farm. Johnson started at the top, citing an emphasis by President Obama's new administration to support renewable energy projects and plans to upgrade the national transmission grid.

He continued by describing the proposal announced in December by American Electric Powers (AEP) to construct an extra high voltage transmission line from a point south of Kenmare near the townsite of Hartland to an eastern terminus near Chicago. "That's a major development," Johnson said. "We can't speak enough about the importance of this."

Using the familiar North Dakota wind resource map, Johnson pointed out how AEP's transmission proposal would benefit other wind projects in North Dakota and South Dakota. He also described how Hartland Wind Farm expected its turbines to operate at 43 to 45 percent capacity, based on the wind characteristics in this area, compared to successful wind farms in South Dakota, California and Texas that operated in upper 30 percent range on a good day.

AEP will have constant access to power generated in this area even when the wind doesn't blow, because Hartland Wind Farm intends to utilize natural gas, currently flared off by oilfield activity, in a firming facility to supply electricity at times when the wind peaks down. "We're going to have a very consistent, desirable form of energy that they're going to be needing and wanting in Illinois," Johnson said.

Enter the landowner. Johnson explained how Hartland Wind Farm wanted the opportunity to develop a focus area of about 360 square miles, or 800,000 acres, concentrated around the Missouri Coteau in northwestern North Dakota. The project is planned for four phases of 500 MW each, using 1.5 to 2.0 MW wind turbine generators, or an estimated 333 wind turbines per phase.

Hartland Wind Farm is projected to do more than make money for its principals, however. Johnson predicts a stimulated economy for the region, with skilled technicians entering the work force and requiring housing, education, goods and services from communities in the area. Hartland Wind Farm is also working with state tax officials to study ways the increased tax revenues, about \$20,000 per turbine paid by Hartland Wind Farm, could be returned to the school districts, counties and townships impacted by the wind project.

Of course, the landowners will benefit, too, in a manner that Johnson hopes will not adversely affect current agricultural practices. "There's a resource there that is pretty easily harvested and developed," he said. "We're not replacing farming, but supplementing it."

To that end, Hartland Wind Farm invited landowners to review the project's option and easement agreements. Jon Dostal, one of the project

managers, explained the documents and their differences.

According to Dostal, the five-year option agreement, with payment of \$1 per acre per year, would allow Hartland Wind Farm representatives and engineers to conduct the research necessary on that parcel of land for determining the best placement of wind turbines, underground cable and any other facilities or infrastructure associated with the project.

"Without the cooperation of the landowners, we wouldn't be here," Dostal said. "This says you're interested and allows us to do our investigation."

Hartland Wind Farm has achieved one milestone, with more than 45,000 acres under option in southern Ward County around Berthold, Donnybrook and Carpio. "That was enough land to move forward with the planning and engineering of that first phase," said Dostal.

Two more milestone regions have been identified, including portions of Burke County and the townships around Kenmare, as well as portions of Mountrail County. To date, about 77,000 acres total have been optioned for the project, but Hartland Wind Farm has not yet reached its threshold for the second or third milestone regions. Payment to landowners within a specified milestone region begins once the threshold acreage has been optioned.

Dostal explained the option agreement does not guarantee siting of a wind turbine on a particular landowner's property. On the other hand, acres held by landowners who refrain from signing an option agreement will not be considered for wind turbines.

He emphasized the importance of communication between the landowner and Hartland Wind Farm during the option period. "We need notification of existing encumbrances on your property," he said, listing commitments like grassland easements, mineral rights, drilling plans, CRP acres, etc. "We don't want to interfere with any current uses going on with your property or any planned uses."

Easement agreements will be offered for sites chosen for wind turbines, underground cabling, and other infrastructure related to the project. Dostal said those agreements are written for 40 years, and easements will only be recorded on the specific acres needed for the project purposes. Landowners will meet with the engineers to discuss those sites, and no work will take place until the landowners understand and agree to the project's plans.

Payment on the easement agreements depends on the use of the acres in question. If a turbine is placed on the site, the landowner receives \$2,000 per year until the equipment is operational. Then the landowner is paid two percent of the gross operating proceeds.

Dostal offered an example of the annual revenue projected from a single turbine, with the current local price of 4 cents per kilowatt hour generating \$414,000 in annual revenue, with the landowner receiving \$8,280 for the year.

However, Hartland Wind Farm intends to negotiate its price, given the market for electricity in Chicago is typically higher than North Dakota and power currently sells for about 8 cents per kilowatt hour or more. In that case, any landowners with turbines on their property would share in those higher revenues.

The easement agreement contains additional information about Hartland Wind Farm's responsibility for crop damages incurred, restoring property after a wind turbine is removed, minimizing liability for landowners and the company's payment of increased property taxes related to the improvements made by the wind project.

Members of the audience voiced several questions, including an interest in the number of turbines allowed per quarter. Johnson said the location of

turbines would be a matter of practicality, given the topography and presence of roads in the area. He said that generally, the types of turbines planned for use by Hartland Wind Farm were positioned about a quarter mile from each latitudinally and a half mile apart longitudinally. The turbines themselves stand 230 feet high, with 130-foot blades.

In regard to the future of the wind project, once the turbines are operational, Johnson said the easement agreements are severable from the property in cases where the landowners sold their land. Also, Hartland Wind Farm has no intention of selling their developments, even though some entities have already indicated their interest. Johnson noted the security of the project's financial resources, despite economic troubles throughout the nation. "We will not release control of this project," he said.

One landowner asked about road maintenance, which Johnson said would be the subject of discussions with the counties involved. "We'll be maintaining our roads as best as we can, and we'll work with the counties to keep the roads in condition," he said. "We have to have 24/7 access to these towers to guaranty power, so we may need to develop a comprehensive maintenance plan."

Johnson described the underground cabling planned to connect the towers and transport power to the transmission line, with the intention of burying the cables deep enough to avoid problems with farm equipment. He also mentioned concerns with migrating birds, especially endangered whooping cranes, and said he was already cooperating with officials from the U.S. Fish and Wildlife Service Mountain-Prairie Region office in Denver, CO, to develop ways to minimize any threats to the cranes.

"There's not one example of a [whooping crane] kill by a turbine," he said. "The risk is from the transmission lines, which is another reason to go underground with those as much as we can."

Both Dostal and Johnson encouraged landowners in the crowd to study the paperwork offered by Hartland Wind Farm and consult with attorneys before signing the agreements. "We will stop at nothing to answer questions you have about the documents," Johnson said.

Anyone with further questions about Hartland Wind Farm or Denali Energy's interest in working with landowners in the area should contact Craig Swenson toll-free at 1-877-557-1031 or by calling 218-824-5000. Information can also be found at project's website www.denalicompanies.com.

Source: S.L. 2005, ch. 393, § 1.

beginning after December 31, 2004, pursuant to section 5 of chapter 393, S.L. 2005.

Effective Date.

This section is effective for taxable years

49-02-25. Renewable electricity and recycled energy defined. As used in section 49-02-24, renewable electricity and recycled energy include electricity generated from facilities using the following sources:

1. Solar, using the sun as the source of energy for producing electricity.
2. Wind, using the wind as the source of energy for producing electricity.
3. Hydroelectric, using water as the source of energy for producing electricity.
4. Biomass, using agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, and landfill gas as the fuel to produce electricity.
5. Geothermal, using energy contained in heat that continuously flows outward from the earth as the source of energy to produce electricity.
6. Hydrogen, provided that the hydrogen is generated from a source listed in this section.
7. Recycled energy systems producing electricity from currently unused waste heat resulting from combustion or other processes into electricity and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity.

Source: S.L. 2005, ch. 393, § 2; 2007, ch. 405, § 1; 2007, ch. 406, § 2.

Effective Date.

The 2007 amendment of this section by section 1 of chapter 405, S.L. 2007 became effective August 1, 2007.

The 2007 amendment of this section by section 2 of chapter 406, S.L. 2007 became effective August 1, 2007.

This section is effective for taxable years beginning after December 31, 2004, pursuant to section 5 of chapter 393, S.L. 2005.

Note.

Section 49-02-25 was amended 2 times by the 2007 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 1 of chapter 405, Session Laws 2007, House Bill 1193; and section 2 of chapter 406, Session Laws 2007, House Bill 1506.

49-02-26. Qualifying for renewable electricity and recycled energy credits — Exception for certain hydroelectric facilities. Except as otherwise provided in this section, for purposes of qualifying for renewable electricity and recycled energy credits, electricity must be generated from a source identified in section 49-02-25. For electricity generated from hydroelectric facilities, the hydroelectric facility must have an inservice date of January 1, 2007, or later, or be new hydroelectric generation obtained from repowering or efficiency improvements to hydroelectric facilities existing on August 1, 2007.

Source: S.L. 2005, ch. 393, § 3; 2007, ch. 406, § 3.

effective August 1, 2007.

Effective Date.

The 2007 amendment of this section by section 3 of chapter 406, S.L. 2007 became

This section is effective for taxable years beginning after December 31, 2004, pursuant to section 5 of chapter 393, S.L. 2005.