

FISCAL NOTE
Requested by Legislative Council
02/05/2015

Amendment to: HB 1228

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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

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

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

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

Engrossed HB 1228 extends the carryforward period for certain unused tax credits.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, engrossed HB 1228 will extend the allowable years for which the unused portion of this tax credit can be carried forward from twenty to thirty years. This could potentially reduce revenues in future biennia, but the amount of tax credits that will eventually be utilized in the future, associated with this change, is not known.

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

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/08/2015

FISCAL NOTE
Requested by Legislative Council
01/13/2015

Bill/Resolution No.: HB 1228

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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

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

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

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

HB 1228 extends the carryforward period for certain unused tax credits.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, HB 1228 will extend the allowable years for which the unused portion of this tax credit can be carried forward from twenty to forty years. This could potentially reduce revenues in future biennia, but the amount of tax credits that will eventually be utilized in the future, associated with this change, is not known.

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

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/30/2015

2015 HOUSE FINANCE AND TAXATION

HB 1228

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1228
2/2/2015
22975

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill relating to an extension of the carryforward period for excess geothermal, solar, wind, or biomass energy device income tax credits.

Minutes:

Attachment #1, 2, 3

Chairman Headland: Opened hearing on HB 1228.

Vice Chairman Owens: Introduced bill. Back in the 2005 session we still looking to diversify the economy and to become an even greater exporter of energy. We started investing, inviting and creating incentives for wind energy companies to come and participate to expand our energy production. We created it and they came but then we discovered oil in North Dakota. Ever since then we've been reducing our income tax. As part of the decision to create these wind farms across the state the calculation to determine the return on investment to properly do this and make it worthwhile our tax incentives/credits were included in the discussion. We've been blessed over the years and because we've greatly reduced income we've greatly reduced the effect of the tax credit. This bill seeks at no current cost to anyone, to extend the carryover period.

Representative Klein: When do we stop subsidizing and let the market decide which system pays off?

Vice Chairman Owens: I agree with you. In this case the decision was made on the value of those credits over a period of time. I'm not looking at extending or enhancing the credit; merely allowing it to play out to its maximum value that it was originally offered.

Representative Klein: Basically what you're doing is moving what was 20 years to 40 years?

Vice Chairman Owens: Yes, only because we have reduced income by 49% to over 50% income tax. Based on that in order to equalize the value of the credit we have to extend it out an additional 20 years to realize the value of that credit as it was presented to these groups initially.

Representative Froseth: Under section 1 subsection 6 item b, that would be for any wind energy installed before January 2012 which would extend it to 2052. On item c that would extend it to any new one installed after 2011 for 40 years so that could go on forever.

Vice Chairman Owens: Yes and it was changed later. We have another bill that addresses that section of law already. I will leave c up to you.

Representative Froseth: Refresh our memories on what the tax credit is.

Vice Chairman Owens: C is between eight and eleven; that was the carryforward. As far as the actual credit I forgot what it was. I'm sure somebody coming after me can tell you that.

Chairman Headland: Do you believe that extending a tax credit for 40 years is good tax policy in general?

Vice Chairman Owens: Forty years is very long time. For some reason it was 20 years before.

Chairman Headland: We didn't do it from 20 years we just changed it 20 last session. I think originally it was a five year tax credit. We will need to get clarification on that as well.

Representative Brandenburg: I remember a carryover in the beginning was 3% for five years then it was changed but I'm not sure when it went to 20 years. It gave time to fully utilize that tax credit. The reason we're requesting the tax credit is that these people went out and did a purchase power agreement so this law was on the books. I support coal, oil, and wind but the thing that is probably different about this bill is that these people went out and built their purchase power agreement with these companies with this tax credit involved.

Chairman Headland: If the income to the company that is asking for the tax credit has already been reduced by 50% because the rates have dropped, why do they need a further tax credit? Their tax liability has already been reduced so they have benefited in that area.

Representative Brandenburg: You're right but you still have to go back to that they built that purchase power agreement on that carryforward that was there and they thought they'd have.

Chairman Headland: We will take support for HB 1228.

Rebecca Kujawa, NextEra Energy Resources, LLC: Provided testimony in support. See attachment #1. (Ended testimony at 17:00)

Chairman Headland: Can you refresh our memory on the length of time of the initial credit?

Rebecca Kujawa: Back to the original statute the original credit was 5% per year for three years then it was amended to 3% per year for five years. It was amended in 2009 to be a 20 year carryover period.

Representative Froseth: What is the life expectancy on a wind farm? If passed, would this bill include any replacement parts to keep the wind farms operating? What about the decommissioning of the sites?

Rebecca Kujawa: We generally believe that 40 years is a conservative estimate for the life expectancy of a wind farm. The technology we've installed in North Dakota for all of our wind facilities is a newer more efficient technology so we're optimistic that in 40 years may ultimately be conservative. The project is absolutely responsible for the decommissioning the project and are subject to public service commission hearings over the summer to ensure that those costs are covered from the projects if not from the sponsor.

Chairman Headland: It's been indicated that it's the deduction in the corporate tax rate that we've chosen to do as a state have not allowed you to fully utilize the credits as they were originally written. Can you comment that if we had chosen to leave rates the same would have the wind projects generated enough income to fully utilize the credit?

Rebecca Kujawa: It's a difficult question to answer in isolation. It's clear from our analysis that the decrease in the tax rate absolutely has an impact but it's not the only thing that had an impact. We are a significant company that has billions of dollars to invest every year and we've done that for many years in the past and expect to do it many years in the future. We are a practical company with how we invest in projects. If it's a project that has the ability to utilize income tax credits versus a project somewhere else that doesn't have that opportunity then we are going to invest in North Dakota. The longer we have visibility to the availability of that income tax credit the longer we have the ability to incorporate them into our models and the higher the likelihood we make an investment today.

Chairman Headland: We've seen a lot of the energy projects, credits and development all go through the empower commission. Was this bill considered by the empower commission?

Rebecca Kujawa: I don't believe it was.

Chairman Headland: Further testimony in support of HB 1228?

Dana Bonn, Greater North Dakota Chamber: Provided written testimony from Jon Godfread in support. See attachment #2.

Chairman Headland: Further testimony in support of HB 1228?

John Olson, Next Era Energy and Ottertail Power Company: Before it went to 20 years the provisions in the income tax credit law also provided for the transferability of those credits. In 2009 when it went to the five years the transferability of those credits was removed from the code. Those transferability credits also had a stipulation that they had to be invested in transmission build out.

Representative Froseth: Invested in other utility improvements other than wind, solar and geothermal?

John Olson: As I remember in the language it was transmission. I don't remember it encompassed pipelines; I think it was electrical and transmission from that. We can find that out for you for sure.

Representative Froseth: Can't pipelines be categorized as transmission?

John Olson: Absolutely.

Chairman Headland: Further testimony in support?

Ryan Kelly, Allele: Introduced Jamie Jago from Allele.

Jamie Jago, Tax Manager of Allele: Provided testimony. See attachment #3.

Chairman Headland: You do business in Minnesota as well. What type of credit do they offer in the area of income for renewables?

Jamie Jago: Minnesota does not have any state tax credits that we are utilizing for renewable power.

Chairman Headland: Are you building in Minnesota right now?

Jamie Jago: We have several coal power plants with no plans to build additional coal as would be expected. We have several hydro power plants which have been around for hundred years with no plans to build additional hydro. We are looking at solar. We have been expanding in wind.

Representative Froseth: We send a lot of wind that way.

Jamie Jago: Our local commission recognizes that North Dakota has these credits and are anxious to see our customers benefiting from these. As to date we haven't been able to utilize any of the credits because of the generous federal tax benefits that have been flowing through returns. They realize North Dakota has state tax credits for renewables and Minnesota does not.

Chairman Headland: The federal credits have been so generous that they've reduced income to levels that the credit the state offers has not been utilized.

Jamie Jago: It's not the federal credit; it's the federal bonus depreciation. It's the tax policy in the bonus depreciation.

Chairman Headland: Further testimony in support of 1228? Is there any opposition?

David Streyle, North American Coal Corporation: We don't think it's a good policy to have tax credits running out to 2052. The certainty you provide gives a two year window so every two years you can come back. I can assure you that once you give these credits they won't be coming back off the books. Our company and the coal industry in general have been taking it in the shorts for the last years. I support the wind industry, I support development, and I support senate bill 2037 which was the deal that was cut. All of us in terms of companies have come forward and put the best policy on the table we can provide.

Chairman Headland: Any other opposition?

Pete Hanebutt, North Dakota Farm Bureau: The forty year thing makes me very nervous. I think its bad public policy to put anything in for 40 years. I don't think many of us will be around then and it seems it's the wrong way to go.

Chairman Headland: Further opposition? Can somebody from the tax department answer a few questions? Can you explain to the committee the initial credit that was authorized and what the current credit is?

Joe Becker, North Dakota Tax Department: Previous folks here have answered the question. The original credit started at five percent of the cost of the materials and installation. You could take that in three years so it was a total of 15% over that period. That was changed some years later to three percent spread out over five years so you still have the same 15% overall.

Chairman Headland: Now it's still the 15% spread over 20 years?

Joe Becker: It started at a five year carryover. In 2009 those carryover periods were changed to 20 years if wind devices were built within a certain period of time and 10 years for all the other devices; geothermal, solar, and biomass.

Representative Froseth: Still limited to the 15 percent?

Joe Becker: That's correct. There was a question about the bill I'd like to comment on. Representative Froseth was looking at the bill lines 14-17 and was concerned over the possibility that it was an unlimited credit for those devices. This is just one part of the entire statute. There is another section in the same statute that has a sunset date of January 1, 2015 which we have already reached so at this point the program is already done.

Chairman Headland: Any other questions for the tax department?

Dale Niezwaag, Basin Electric: Neutral testimony. There was a question early asking if this bill was considered by the empower commission. The empower commission is made up of energy representatives and if there isn't full consensus it doesn't come forward. This portion was discussed but in the final package which was senate bill 2037 it was not included in that. It was discussed with the empower commission.

House Finance and Taxation Committee

HB 1228

February 2, 2015

Page 6

Chairman Headland: It's clear it was discussed and it was not chosen as a priority of the empower commission. We will close the hearing on HB 1228.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1228
2/4/2015
23188

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Brueder

Explanation or reason for introduction of bill/resolution:

A Bill relating to an extension of the carryforward period for excess geothermal, solar, wind, or biomass energy device income tax credits.

Minutes:

Attachment #1

Chairman Headland: Does anyone have any amendments?

Representative Dockter: I have amendments but they aren't right. Distributed proposed amendments 15.0600.02001 and explained. See attachment #1.

Vice Chairman Owens: Basically all we're doing is changing the forty to thirty and returning paragraph c to the current language of 10 succeeding taxable years?

Representative Dockter: That's correct. The third and fourth amendment we are striking out we are not adding it. If we pass it those two won't be on it. I would have Mr. Walstad do that.

Chairman Headland: You're just removing the language that is referenced. It all stays.

Vice Chairman Owens: Made a MOTION TO ADOPT THE AMENDMENT 02001.

Representative Trottier: SECONDED.

VOICE VOTE: MOTION CARRIES TO ADOPT THE AMENDMENT.

Chairman Headland: We have amended bill 1228. What are your wishes?

Representative Hatlestad: I'm concerned with the length of time at 30 years.

Chairman Headland: We're only extending it another 10 years; they already have the 20 years.

Representative Dockter: If we do the 30 it would go out to 2042. We have to keep in mind that this is a carryforward. Hopefully we get some more income and corporate tax relief again this session. Every time we do that it carries it out farther and farther because they have less credit to give back because of our tax policy by reducing taxes. We've been cutting corporate and income taxes the last few sessions and that is just going to move it out farther. If we don't do anything with tax policy it will go to 2042.

Chairman Headland: We'd also be providing these investors of these projects to continue to invest. There is certainly a cost of extending the credit an additional ten years but not as great as if we would extend it out 20 years. I think it's a reasonable compromise.

Representative Dockter: MADE A MOTION FOR A DO PASS AS AMENDED.

Vice Chairman Owens: SECONDED.

Representative Steiner: During committee discussion it was said that if they are getting corporate tax breaks or some breaks along the way then they would have to extend these because they got some breaks, do they really need that?

Chairman Headland: The way the lobbyist explained it to me is for purposes of generating new investment they need a lot of capital and a lot of investors. By allowing this extension it props up their balance sheet to an extent where these credits are viewed as an asset and it helps them sell to investors. I think that in turn helps their ability to invest in North Dakota projects.

Representative Dockter: The other thing they mentioned was that they were also in natural gas, not just wind.

Chairman Headland: That's right, they also invest in pipelines. This credit on their balance sheet helps them sell their projects to investors. Is there any other discussion?

**ROLL CALL VOTE: 11 YES 2 NO 1 ABSENT
MOTION CARRIES FOR A DO PASS AS AMENDED.**

Representative Dockter will carry this bill.

JK
2-4-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1228

Page 1, line 2, remove "an extension of"

Page 1, line 13, replace "forty" with "thirty"

Page 1, line 16, remove the overstrike over "~~ten~~"

Page 1, line 16, remove "forty"

Renumber accordingly

Date: 2-4-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1228

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0600.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Owens Seconded By Rep. Trotter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote = Motion carries.

Date: 2-4-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1228**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0600.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Dockter Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN		✓	REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	AB				
REP KADING		✓			
REP TROTTIER	✓				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Rep. Dockter

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

REPORT OF STANDING COMMITTEE

HB 1228: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1228 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "an extension of"

Page 1, line 13, replace "forty" with "thirty"

Page 1, line 16, remove the overstrike over "~~ten~~"

Page 1, line 16, remove "forty"

Renumber accordingly

2015 SENATE FINANCE AND TAXATION

HB 1228

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1228
3/17/2015
Job #24937

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the carryforward period for excess geothermal, solar, wind, or biomass energy device income tax credits; and to provide an effective date.

Minutes:

Attachments #1, #2

Chairman Cook opened the hearing on HB1228. All committee members present except Sen. Unruh.

Rep. Mark Owens, Dist. 17 -- I bring to you today, HB1228. With our prosperity of the past we have been able to do some amazing things with tax relief. Ironically enough, while that does lower the tax liability for certain individuals and organizations, in this case, it creates a difference of book value associated with return on investment when it was first created because the tax credits associated with the wind energy was also part of the decision and the factors included, along with a number of other things, in the investment prospects of the project itself. While everything has been wonderful with the reduction in taxes and everything, it does alter the return on investment in book value. That's why we brought this bill, was to give the carryforward another 10 years to realize some additional value in that carryforward of the tax credits that were provided for these alternative energy sources.

Sen. Cook -- I'm just curious what you would be saying with a piece of legislation if we had eliminated income tax.

Rep. Owens -- I thought about that too. Does that mean you are still considering eliminating income tax?

Sen. Cook -- Why not?

Sen. Triplett -- If lowering income taxes across the board has harmed the book value of certain industries, why don't we instead just raise the income taxes back up then to where they were?

Rep. Owens -- Technically, that would work because we had the reverse effect but it doesn't appear that's going to happen right now. In lieu of that, in order to still maintain the return on investment in this particular investment, we brought this bill to ask you to extend the carryforward.

Rebecca J. Kujawa, Vice President, Business Management, NextEra Energy Resources, LLC -- (Attachment #1)

Sen. Dotzenrod -- You say in your testimony that, on the positive side, the extension of the carryforward period will incentivize NextEra to continue to invest and provide jobs and economic benefit. This bill only provides an extension of credits that were previously earned, as I understand it. It doesn't give you an extension for credits that you are going to earn in the future. The benefit will be earned and will fall to the company independent of what is done from this point forward.

Rebecca Kujawa -- If I understand your question, yes, we are not asking for an extension of any credits, no new projects to get new additional credits. Our request relates only to the tax credits that we've already earned for the projects that are already in operation and have been in operation for a number of years. The comment relates to the fact that we, as a company, and many companies here in North Dakota do this as well, file what is called a unitary tax return which is a consolidated return for all of our projects in North Dakota and also brings in other projects from outside of the state. We file one tax return. To the extent that we make a new investment in North Dakota that creates new, what otherwise would have been taxable income, these credits could be used to offset that taxable income. So, us, as a company is very motivated to create the opportunity to invest more in the state and create more taxable income to utilize more of these credits.

Sen. Unruh -- If we didn't allow the extension of these credits to be applied to future tax liabilities, how would that impact your investment here in North Dakota? Would that keep you from investing in any particular project or other projects?

Rebecca Kujawa -- I'd say there are 2 potential impacts: (1) which is the more direct one, is whether or not that affects our plans to invest in the state. We are a very deliberate company in our investments. When we look at a potential project, we look at all the potential revenue sources. We look at all the potential expenses and we assess what our net present value or internal rate of return is of that expected project. With the extension of the carryforward period of these tax credits, we would have a longer term visibility and basically include a more significant value in these new investment opportunities. And all else being equal, if something is very close to being an investment-worthy project, this could make the difference

Sen. Triplett -- In answer to Sen. Dotzenrod's question, I think I heard you say that you will be able to use this extension to benefit your overall company, assuming that you make new investments in North Dakota. But you also provided us with this chart and so you have a section in there, the grey section, suggesting that some tax credits are not expected to be used. That kind of implies that you've already made the decisions about your future investment. Can you respond to that line and what it really means?

Rebecca Kujawa -- Thank you, Sen. Triplett, for bringing this to my attention and I neglected to mention it in my remarks. This is a response to a couple of questions that we had of what's the negative impact to us, how are we harmed. On the left side, which is the large yellow pie, this is meant to indicate, based on our current assumptions for everything that goes into our taxable income and ultimately our credit utilization in North Dakota, at 6.5%, what is the impact when we change just the corporate income tax rate to the 4.53% that it currently is today? And you can see that nearly 50%, approximately 47% of the tax credits under the lower tax rate would be utilized; whereas 53% wouldn't otherwise be able to be utilized. The tax credit extension would gain that additional green section of 35% but we would still have 18% that we would expect to be unutilized, relative to all of our assumption that goes into utilization of the tax credit. It's that grey part that would continue to have his motivated, as well as other potential changes that could affect our taxable income going forward from today.

Sen. Triplett -- So the assumption in creating the second pie chart would be that we pass this bill but then you make no additional investments in North Dakota.

Rebecca Kujawa -- Correct.

John Olson, appearing on behalf of Ottertail Power Company. We are supporting this bill. Just to give you an idea about Ottertail's interest and when, in North Dakota, partnered with NextEra Eergy in the Langdon Ashtabula & Lavern wind projects where we owned those projects but NextEra operates them. There's about a total of 138 megawatts in those 3 wind farms. We also purchase wind energy from NextEra at Langdon and that portion that owns and operates by NextEra there and another sizeable amount of 62 megawatts at Ashtabula that owned and operated by NextEra so that is 138 megawatts that we own and that we purchase around 82 megawatts. We think that this bill will also benefit our customers by giving some value to these income tax credits with the extension of time.

Laney Herauf, Greater North Dakota Chamber -- (Attachment #2) In support of HB1228.

Sen. Triplett -- I note that there are people here from the Tax Dept., my question is if we pass this, who else out there is standing in line to say "me too"? What other time limited tax credits do we have out there that will be the dominos for the next session

Matt Peyerl -- The roster of tax credits, there's probably close to 20, they have a variety of different carryover provisions. Some have no carryover provisions. Some have carryback provisions and they have different carryforward provisions. The last time the wind one was addressed was in 2009 where it was extended from 5 years to 20 for that narrow window and then the geothermal was extended from 5 to 10. Since 2009, wind hasn't been tinkered with. This would add from 20 to 30 years. The other credits that have been added since then have all had their own carryover provision, typically 5 years for our investment tax credits, like the angel and endowment, etc. You can draw your own conclusion for what impact extending one credit carryover has on another.

Sen. Cook -- I would hope that as we start looking at all of our different incentives this interim tax credit is on the top of the list.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1228
3/24/2015
Job #25306

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1228

Sen. Laffen -- This was the wind and biomass. Some of the renewal energy tax extensions. It just extends the date. I visited with a bunch of these people and the way this works is that they book those tax credits and then they are on their books and as we reduce taxes it takes longer to get them back. What they are asking for is an extension of time to be able to capture most of the tax credits. They are already writing off some of them because they will never get all of them back now. I don't know that this hurts us too much in that we've already sort of agreed to that amount anyway.

I would move a do pass on engrossed HB1228.

Sen. Oehlke -- Seconded.

Sen. Triplett -- I'll vote for this on one condition, that the carrier of the bill report what these people really, in their hearts, want: for us to increase our income taxes back to where they were 2 or 4 years ago so that they could take full advantage of the tax credits in the time frame in which they had originally booked them. I think that is an important point to present on the floor, wouldn't you agree, Sen. Laffen?

Sen. Laffen -- I actually asked them what would happen if we had wiped out income tax and they said that would be the worst thing possible for them because they have already booked those tax credits and they have no way, then, of capturing that money. It seems odd but that is the way it works.

Sen. Dotzenrod -- I think there is another thing, too, that besides the fact that they can't use them. They are carrying these credits as an asset on their balance sheet. If we reduced the rate of tax to zero, that's an asset that is going to evaporate and go off the balance sheet. In some circumstances it's important for them to look good on paper.

Sen. Triplett -- I said that rather facetiously but I think their commentary to us, which did talk about that, as Sen. Dotzenrod has just said, makes the point that I think having a stable tax system may be, in the long run, more important than having absolute low rates on every kind of tax. People and corporations make long term decisions based on the taxes as they find them at the time and for us to be fiddling with our tax structure every single year does mess up something for somebody all the time. I just hope that we can get to a place where we say, this is who we are as a state, this is the balanced tax structure that we have and we intend to keep it. We all agreed, a long time ago, that our property taxes had gotten way out of hand because the state had not been managing its share of education costs and I think we really have about accomplished that correction. We've dropped income taxes repeatedly for the last 3 or 4 sessions and it seems like it is not going to happen again but probably only because oil prices are down. My position is maybe it ought not to happen simply because there needs to be some stability in the tax structure. While my request for your carry, Sen. Laffen, may have been facetious, I do think it is important that we realize that stability is important to a lot of people for a lot of different reason that we might be aware of entirely.

Sen. Unruh -- I have struggled with this for some of the same reasons that Sen. Triplett is struggling with the concept. I think the biggest rub for me, and I haven't decided if I'm supporting it or not, when they came into these tax credits they were guaranteed a 5 year window to be able to utilize them. They came back and they asked for 20 years. They came back this time and they asked, originally, for 40 years and the bill is down to 30 now. That certainly isn't stability in our tax structure, by any means. They had the 5 year window. We gave them 15 more and now they are back asking for more. I struggle with the policy side of that, of just continuing to ask for a little bit more every single time we come back here.

Sen. Cook -- They didn't ask for transferability or sale, though.

Sen. Unruh -- They didn't and I am thankful for that because that I certainly couldn't support but just because we didn't give them everything that they wanted doesn't mean that we should feel obligated to provide this option. That being said, I see the value in it and I do see how important it is and I get how it is an asset in their books and I want them to be able to utilize that, hence the internal struggle here.

Sen. Laffen -- I was going to respond to Sen. Triplett's comments about income tax that we have a 1059 that's on the board today, as well as that is another income tax reduction.

Sen. Cook -- 1223. 1059 is property.

Sen. Laffen -- I'm not sure that I had agreed to carry this yet.

Sen. Cook -- Other discussion?

Roll call vote on a do pass on HB1228. Carried 7-0-0.

Carrier: Sen. Triplett

Date: 3-24-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB1228

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Laffen Seconded By Sen. Oehlke

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Triplett

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

REPORT OF STANDING COMMITTEE

HB 1228, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1228 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1228

HB 1228
2-2-15
#1 p. 1

Testimony for Proposed Tax Legislation

NextEra Energy Resources Representatives:

Rebecca J. Kujawa Vice President, Business Management, NextEra Energy Resources, LLC

House Bill: 1228

Testimony:

Mr. Chair and members of the committee, my name is Rebecca Kujawa and I am the Vice President of Business Management for NextEra Energy Resources, formally known as FPL Energy. In this capacity, I have profit and loss responsibility for NextEra Energy Resources' projects in the Midwest United States, including North Dakota, as well as our projects in Canada and Spain. NextEra Energy Resources is one of the primary subsidiaries of NextEra Energy, Inc. a leading clean energy company with consolidated revenues of approximately \$17.0 billion and approximately 44,900 megawatts of generating capacity as of year-end 2014. In addition to NextEra Energy Resources, NextEra Energy's other principal subsidiary is Florida Power & Light Company, which is one of the largest rate-regulated electric utilities in the United States.

NextEra Energy Resources owns, develops, constructs, manages and operates electric generating facilities in wholesale energy markets primarily in the U.S., as well as in Canada and Spain. NextEra Energy Resources is one of the largest wholesale generators of electric power in the U.S., with approximately 19,777 megawatts of generating capacity across 25 states, 4 Canadian provinces and 1 Spanish province as of December 31, 2014.

NextEra Energy has often been recognized by third parties for its efforts in sustainability, corporate responsibility, ethics and compliance, and diversity, and has been named No. 1 overall among electric and gas utilities on Fortune's list of "World's Most Admired Companies" for eight consecutive years, which is an unprecedented achievement in its industry.

NextEra Energy Resources owns and operates 11 wind farms in North Dakota, totaling approximately 850 megawatts and representing a capital investment of approximately \$1.4 billion. Since 2012, we have expanded our portfolio in North Dakota, consisting of investments of approximately \$400 million in gas gathering and transportation pipelines. Our newest gas pipeline, the Flickertail pipeline in Divide and Williams Counties, aids in eliminating flaring from drilling projects in the area. Our Wheatland oil pipeline reduces trucking and road congestion in McKenzie County. Our investments in the state do not stop after we build an asset. With roughly 75 full-time employees in North Dakota, we spend approximately \$6 million annually in payroll, \$2.2 million annually in property taxes and \$5 million annually in lease payments to local landowners.

NextEra is a diversified energy company and we value our partnership with the State of North Dakota and hope to continue to invest in the state. We are currently targeting to invest an additional \$700 million in future projects in North Dakota, including a 150 megawatt wind project in Dickinson and additional oil and gas investment opportunities.

I am here today to provide our comments on House Bill 1228, which proposes to amend Subsection 6 of section 57-38-01.8 of the North Dakota Century Code.

As proposed, the amendment extends the carryforward period of the income tax credit earned for installation of geothermal, solar, wind or biomass energy devices by twenty years for all projects built after September 30, 2009 and before December 31, 2011 and by thirty years for the credits received for all projects built after January 1, 2012.

NextEra Energy Resources' initial decision to invest in renewable projects in the state was influenced by the state's business friendly policies for renewable energy including providing income tax credits for geothermal, solar, biomass, or wind energy devices. The statute provides for a carryforward for excess credits that cannot be used on the income tax return of any tax year. Income tax credits for projects that were installed prior to September 30, 2008 are not addressed in this bill. Under the current statute, excess income tax credits for wind energy devices installed after September 30, 2008 and before January 1, 2012 may be used as a credit carryover for twenty tax years. Excess credits for geothermal, solar or biomass energy devices installed after September 30, 2008 and wind energy devices installed after December 31, 2011 can be carried forward for ten tax years. House bill 1228 proposes to amend both the twenty and ten year carry forward periods to forty years.

Publicly traded companies, such as NextEra, are required to use generally accepted accounting principles, also known as GAAP for financial reporting. Under these principles, when an income tax credit is earned, NextEra is required to recognize the income tax credit in its financial statements. Income tax credits are treated as a reduction to income tax expenses on the income statement and as an asset on the balance sheet. As credits are used, the value of the income tax credits on the balance sheet is reduced. If the company forecasts it will have more tax credits than it can use against future tax liability, it must record a charge to earnings on the income statement and must reduce the value of the income tax credits on the balance sheet. Many variables can impact a company's forecast over the life of a project. One example of an event that could change the forecast is a reduction in the corporate income tax rate. Since 2003, North Dakota's corporate income tax rate has been reduced from 6.5% to 4.53% which has significantly reduced our projects' ability to realize value from these tax credits. We believe it is likely that many credits will expire before the carryforward period ends. This represents a risk to the company's book earnings and the loss of the opportunity to realize a cash benefit from the incentive the State of North Dakota offered to stimulate the type of investments NextEra has made and continues to make in the state.

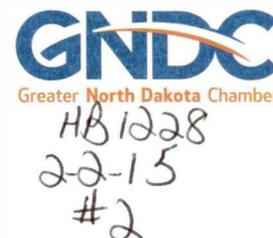
The proposed changes to the tax law will extend the credit carryforward period for projects built after September 30, 2008 to forty years, or a reasonable expectation of the operating life of the

#1
P.3

projects. We think it makes sense to align the carryforward period with the life of the project to allow investors the opportunity to earn the value from these credits that were originally earned. We believe these changes will help to ensure that investors are able to benefit from the tax credit and that the credits continue to incentivize development in North Dakota.

All of the states in the region are competing for additional investments in renewable energy projects and offer a variety of tax incentives to encourage such investments. The incentives include property tax reductions, sales tax exemptions and/or income tax credits. North Dakota continues to be competitive for additional energy and infrastructure investments and NextEra continues to explore opportunities for additional investments in the state. Continued investment in a diversified energy portfolio balances the economic environment in the state for all the citizens and businesses in the state.

NextEra is one of the largest investors in North Dakota, and the ability to utilize the tax credits we have earned is key to our continued future development in the state. NextEra believes that it is important that the state's tax policy continues to be business friendly and supports continued development. NextEra is asking North Dakota to extend the time period in which investors in wind, solar, biomass and geothermal projects, like NextEra, can utilize the previously granted income tax credits.



Testimony of Jon Godfread
Greater North Dakota Chamber of Commerce
HB 1228
February 2, 2015

Mr. Chairman and members of the committee, my name is Jon Godfread; I am the Vice President of Government Affairs for the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group, we stand in Support of HB 1228.

The Greater North Dakota Chamber has long been supportive of investments in economic development, encouraging development of businesses by emphasizing new wealth creation and expansive diversification in our state. GNDC also promotes policies and initiatives that promise an affordable, stable, and reliable supply of energy. Therefore, we support HB 1228, which will allow companies a longer time period to use the tax credits they earned. We recognize the strategic role wind will play in continuing to enhance North Dakota's diverse energy portfolio and believe this bill will help ensure tax certainty for wind and encourage future investment in renewable wind resources.

Thank you, and I would be happy to answer any questions.

Champions  Business

PO Box 2639 P: 701-222-0929
Bismarck, ND 58502 F: 701-222-1611

www.ndchamber.com

HB 1228
2-2-15
#3 p.1

DRAFT NORTH DAKOTA TESTIMONY

Good morning Mr. Chair and members of the Finance and Tax committee. My name is Jamie Jago, and I am the Tax Manager at ALLETE. Thank you for giving me an opportunity to speak with you this morning. I am here to speak in support of the extension of the carryforward period for the energy income tax credits contained in House Bill No 1228.

First I would like to share some brief information with you regarding ALLETE. ALLETE is a diversified energy company comprised in part of two electric utilities, Minnesota Power and Wisconsin-based Superior Water Light and Power. ALLETE also owns a non-regulated subsidiary called ALLETE Clean Energy or ACE, which develops and operates energy projects in multiple states including North Dakota. ACE recently purchased the rights to develop the 107 MW Thunder Spirit wind farm near Hettinger. ACE will construct the wind farm and then sell it to Montana-Dakota for their utility customers.

ACE is also pursuing a project that would use advanced technology for CO2 capture at an existing lignite fired power plant in North Dakota, utilizing the CO2 for enhanced oil recovery.

ALLETE also owns BNI Coal, headquartered in Bismarck. A native ND mining company, BNI Coal started mining in northwestern North Dakota in 1930 and has been mining coal for the Milton R Young Station since 1970 at its Center Mine location. BNI Coal supplies 4 million tons of lignite coal annually to the Young Station and employs 170 people with an annual local spend of \$60 million.

Minnesota Power utilizes a generation supply mix of coal and renewables. The majority of Minnesota Power's renewable energy comes from North Dakota in the form of wind resources transported on a DC Line we own that runs from Center, North Dakota, to Duluth, Minnesota. Our Bison wind project near New Salem consists of 165 turbines; an \$800 million investment in North Dakota, generating nearly 500 megawatts, making it the largest wind farm in the state in terms of electric generating capacity. We also purchase all of the output of a 98-megawatt wind farm Oliver County.

ALLETE subsidiaries, ACE, BNI Coal and Minnesota Power, collectively, own and operate over one billion in assets in North Dakota.

We support the extension of the carryforward period for these energy income tax credits as it would allow us to use more of these income tax credits to make our current North Dakota wind generation more competitive and to make potential

future additional wind investments in North Dakota more attractive as a generation source for our customers.

Our wind resources in North Dakota will be operating in the state for well over 20 years, the current maximum income tax credit carryforward period. Extending the credit carryforward period will allow the benefits to be used over the longer life of the wind farms, providing more of the cost benefit intended by the credits.

In summary, ALLETE has many energy interests in North Dakota; we have recently made substantial new energy investments in the state and plan further energy investments here in coming years. ALLETE was pleased to see this bill brought forward.... and we support extending the carry-over as it will benefit our projects too.

Mr. Chair and member of the committee, I thank you for your time. I would be happy to answer any questions.

HB 1228
2-4-15
#1

15.0600.02001
Title.

Prepared by the Legislative Council staff for
Representative Dockter
February 3, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1228

Page 1, line 2, remove "an extension of"

Page 1, line 13, replace "forty" with "thirty"

Page 1, line 15, overstrike "after September 30, 2008" and insert immediately thereafter "before
July 1, 2015"

Page 1, line 16, after "2011" insert ", and before July 1, 2015"

Page 1, line 16, remove the overstrike over "~~ten~~"

Page 1, line 16, remove "forty"

Renumber accordingly

Testimony for Proposed Tax Legislation

NextEra Energy Resources Representatives:

Rebecca J. Kujawa Vice President, Business Management, NextEra Energy Resources, LLC

House Bill: 1228

Testimony:

Mr. Chair and members of the committee, my name is Rebecca Kujawa and I am the Vice President of Business Management for NextEra Energy Resources, formally known as FPL Energy. In this capacity, I have profit and loss responsibility for NextEra Energy Resources' projects in the United States, including North Dakota, as well as our projects in Canada and Spain. NextEra Energy Resources is one of the primary subsidiaries of NextEra Energy, Inc., a publicly traded diversified energy company with a market capitalization of approximately \$45 billion dollars, making NextEra Energy one of the top 5 largest power companies in the United States. Last week we communicated to investors our plans to invest more than \$30 billion dollars in energy-related projects in North America between now and 2018. In addition to NextEra Energy Resources, NextEra Energy's other principal subsidiary is Florida Power & Light Company, which is one of the largest rate-regulated electric utilities in the United States.

NextEra Energy Resources owns, develops, constructs, manages and operates electric generating facilities in wholesale energy markets primarily in the U.S., as well as in Canada and Spain. Alone, NextEra Energy Resources is one of the largest wholesale generators of electric power in the U.S., with approximately 19,777 megawatts of generating capacity across 25 states, 4 Canadian provinces and 1 Spanish province as of December 31, 2014.

NextEra Energy has often been recognized by third parties for its efforts in sustainability, corporate responsibility, ethics and compliance, and diversity, and has been named No. 1 overall among electric and gas utilities on Fortune's list of "World's Most Admired Companies" for eight consecutive years, which is an unprecedented achievement in its industry.

The partnership between North Dakota and NextEra has been an important one for our company. Since 2003, NextEra Energy Resources has invested approximately \$1.8 billion dollars in North Dakota in various energy projects, including investments of approximately \$400 million dollars in oil and gas gathering, oil and gas producing and transportation pipeline investments. Our newest gas pipeline, the Flickertail pipeline in Divide and Williams counties, will help to eliminate flaring from our drilling investments in the area. We also have an oil pipeline, called Wheatland, which helps to eliminate trucking and road congestion in McKenzie County.

And we would like to continue to make additional investments in North Dakota. We have identified opportunities to invest an additional \$700 million dollars here in the state, the majority of which are potential oil and gas investment opportunities.

I am here today to provide support for House Bill 1228. This bill would extend the credit carry-forward period of certain previously earned income tax credits to thirty years, an increase of 10 years from the current 20-year carry-forward period. To be clear, this proposal does not involve any new income tax credits. As you may know, we consulted with many stakeholders in the state, including many of your colleagues in the House and Senate, about different proposals that might meet both the needs of companies like ours as well as the objectives of the state. We discussed ideas such as transferability and salability. Ultimately, we listened to the different perspectives and we believe this bill represents a reasonable compromise. In our opinion, this extension is a modest and fair request, which allows project owners the opportunity to realize additional value from the credits the State offered investors to build certain power generation projects in the State. Additionally, extending the carry-forward period of the credits will continue to incentivize development and investment in North Dakota as these credits provide economic value for a company to offset North Dakota taxable income.

Let me take a minute to explain how the tax credits are valued by the companies that earn them, how that value can change over time, and why it is important to NextEra. Our North Dakota income tax liability is based on many factors, one of which has been the reduction in the corporate income tax rate in North Dakota over time from 6.5% -- which was the rate when we made our initial investments -- to 4.53%, the current rate. Unfortunately, in this case there are some real negative impacts from the reduction in the tax rate. I know it sounds counterintuitive -- a lower tax rate is supposed to be a good thing. However, the tax rate reduction has unfavorably impacted our ability to utilize previously earned income tax credits which results in what are effectively impairments, or write-downs, to assets related to these projects.

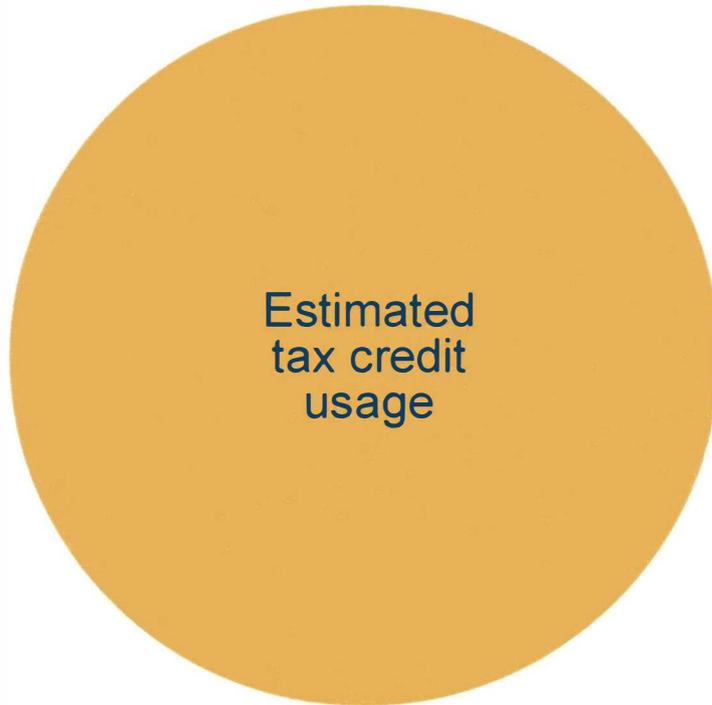
As we built certain projects in North Dakota, we earned the tax credits and were required to include the expected value of these credits upfront in our financial statements even though the credits were expected to offset taxable income over a longer period of time. When the State reduces the corporate income tax rate, a portion of the cash value of the credits is lost and that loss is required to be reflected in our financial statements as what is effectively an impairment of assets related to the projects. The extension of the carry-forward period enables us to recover a portion of the value that was lost through the reduction in the tax rate. It may be worth noting that even with this proposed extension, there is some value that is still not expected to be recovered from the existing investments in North Dakota.

On the positive side, the extension of the carry-forward period will incentivize NextEra to continue to invest in North Dakota, which will provide both jobs and economic benefit to the state while enabling us to utilize more of these existing and previously earned tax credits. NextEra believes that it is important that the State's tax policy continues to be fair, supports business investments and fosters new development. NextEra is one of the largest investors in North Dakota, and the ability to recover the value of the tax credits we have previously earned is key to our continued future development and investment in the State.

Thank you for taking the time today to listen to our thoughts on House Bill 1228. At this time, I would be happy to answer any questions you may have.

The lower corporate tax rate impacts the value of previously-earned tax credits

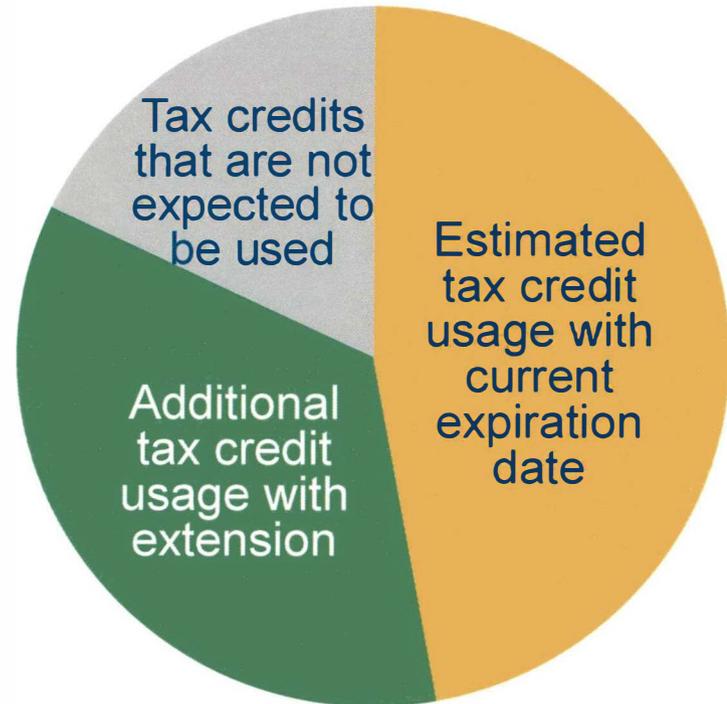
With Previous Corporate Tax Rate



20-Year Carry-Forward

Current tax credits expiration

With Current Corporate Tax Rate



30-Year Carry-Forward

Proposed extension

Percentages are for illustrative purposes and actual utilization is affected by a number of factors including the time period allowed for income tax credit carry-forward, North Dakota corporate income tax rates over time, overall taxable income in North Dakota, among other factors

1.3
A91228
3.1.145

Testimony of Laney Herauf
Greater North Dakota Chamber of Commerce
HB 1228
March 17, 2015

Mr. Chairman and members of the committee, my name is Laney Herauf; I am the Government and Regulatory Affairs Specialist with the Greater North Dakota Chamber. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in Support of HB 1228.

The Greater North Dakota Chamber has long been supportive of investments in economic development, encouraging development of businesses by emphasizing new wealth creation and expansive diversification in our state. GNDC also promotes policies and initiatives that promise an affordable, stable, and reliable supply of energy. Therefore we support HB 1228, which will allow companies a longer time period to use the tax credits they earned. We recognize the strategic role wind will play in continuing to enhance North Dakota's diverse energy portfolio and believe this bill will help ensure tax certainty for wind and encourage future investment in renewable wind resources.

Thank you and I would be happy to answer any questions.