

Introduced by

Representatives Vigesaa, Devlin, D. Johnson, Kiefert, Monson

Senators Wanzek, Schneider

1 A BILL for an Act to amend and reenact section 57-38-01.8, subdivision o of subsection 7 of  
2 section 57-38-30.3, and subsection 1 of section 57-39.2-04.2 of the North Dakota Century  
3 Code, relating to income and sales tax incentives for smaller wind energy generation units; and  
4 to provide an effective date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 57-38-01.8 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **57-38-01.8. Income tax credit for installation of geothermal, solar, wind, or biomass**  
9 **energy devices.**

- 10 1. A taxpayer filing a North Dakota income tax return pursuant to the provisions of this  
11 chapter may claim a credit against the tax liability under section 57-38-30 for the cost  
12 of a geothermal, solar, wind, or biomass energy device installed before January 1,  
13 2015, in a building or on property owned or leased by the taxpayer in North Dakota.  
14 The credit provided in this section for a device installed before January 1, 2001, must  
15 be in an amount equal to five percent per year for three years, and for a device  
16 installed after December 31, 2000, must be in an amount equal to three percent per  
17 year for five years of the actual cost of acquisition and installation of the geothermal,  
18 solar, wind, or biomass energy device and must be subtracted from any income tax  
19 liability of the taxpayer as determined pursuant to the provisions of this chapter.
- 20 2. For the purposes of this section:
- 21 a. "Biomass energy device" means a system using agricultural crops, wastes, or  
22 residues; wood or wood wastes or residues; animal wastes; landfill gas; or other  
23 biological sources to produce fuel or electricity.

- 1           b. "Geothermal energy device" means a system or mechanism or series of  
2           mechanisms designed to provide heating or cooling or to produce electrical or  
3           mechanical power, or any combination of these, by a method which extracts or  
4           converts the energy naturally occurring beneath the earth's surface in rock  
5           structures, water, or steam.
- 6           c. "Solar or wind energy device" means a system or mechanism or series of  
7           mechanisms designed to provide heating or cooling or to produce electrical or  
8           mechanical power, or any combination of these, or to store any of these, by a  
9           method which converts the natural energy of the sun or wind.
- 10          3. If a geothermal, solar, wind, or biomass energy device is a part of a system which  
11          uses other means of energy, only that portion of the total system directly attributable to  
12          the cost of the geothermal, solar, wind, or biomass energy device may be included in  
13          determining the amount of the credit. The costs of installation may not include costs of  
14          redesigning, remodeling, or otherwise altering the structure of a building in which a  
15          geothermal, solar, wind, or biomass energy device is installed.
- 16          4. A partnership, subchapter S corporation, limited partnership, limited liability company,  
17          or any other passthrough entity that installs a geothermal, solar, wind, or biomass  
18          energy device in a building or on property owned or leased by the passthrough entity  
19          must be considered to be the taxpayer for purposes of this section, and the amount of  
20          the credit allowed with respect to the entity's investments must be determined at the  
21          passthrough entity level. The amount of the total credit determined at the entity level  
22          must be passed through to the corporate partners, shareholders, or members in  
23          proportion to their respective interests in the passthrough entity.
- 24          5. If a taxpayer entitled to the credit provided by this section is a member of a group of  
25          corporations filing a North Dakota consolidated tax return using the combined  
26          reporting method, the credit may be claimed against the aggregate North Dakota tax  
27          liability of all of the corporations included in the North Dakota consolidated return.
- 28          6. a. The credit allowed under this section may not exceed the liability for tax under  
29          this chapter. If the amount of credit determined under this section exceeds the  
30          liability for tax under this chapter, the excess may be used as a credit carryover  
31          to each of the five succeeding taxable years.

- 1           b. Any excess tax credits earned for wind energy devices installed after  
2           September 30, 2008, and before January 1, 2012, may be used as a credit  
3           carryover to each of the twenty succeeding taxable years.
- 4           c. For any tax credits for geothermal, solar, or biomass energy devices installed  
5           after September 30, 2008, and wind energy devices installed after December 31,  
6           2011, the excess may be used as a credit carryover to each of the ten  
7           succeeding taxable years.
- 8        7. For geothermal, solar, wind, or biomass energy devices installed after December 31,  
9        2006, if ownership of a device is transferred at the time installation is complete and the  
10       device is fully operational, the purchaser of the device is eligible for the tax credit  
11       under this section. Subsequent purchasers of the device are not eligible for the tax  
12       credit.
- 13       8. An individual taxpayer filing a North Dakota return pursuant to the provisions of this  
14       chapter may claim a credit against the tax liability under section 57-38-30.3 for the  
15       cost of a geothermal energy device installed after December 31, 2008, and before  
16       January 1, 2015, and for the cost of a wind energy device installed after December 31,  
17       2012, and before January 1, 2015, in a building or on property owned or leased by the  
18       taxpayer in North Dakota. The credit must be in an amount equal to three percent per  
19       year for five years of the actual cost of acquisition and installation of the geothermal or  
20       wind energy device.

21       **SECTION 2. AMENDMENT.** Subdivision o of subsection 7 of section 57-38-30.3 of the  
22       North Dakota Century Code is amended and reenacted as follows:

- 23           o. Geothermal or wind energy device installation credit under section 57-38-01.8.

24       **SECTION 3. AMENDMENT.** Subsection 1 of section 57-39.2-04.2 of the North Dakota  
25       Century Code is amended and reenacted as follows:

- 26       1. As used in this section, unless the context otherwise requires:
- 27           a. (1) "Environmental upgrade" means an investment greater than twenty-five  
28           million dollars or one hundred thousand dollars per megawatt of installed  
29           nameplate capacity, whichever is less, in machinery, equipment, and related  
30           facilities for reducing emissions or increasing efficiency at an existing power  
31           plant.

- 1                   (2) "Environmental upgrade" for purposes of a process unit means an  
2                   investment greater than one hundred thousand dollars in machinery,  
3                   equipment, and related facilities for reducing emissions, increasing  
4                   efficiency, or enhancing reliability of the equipment at a new or existing  
5                   process unit.
- 6                   b. "Operator" means any person owning, holding, or leasing a power plant or  
7                   process unit.
- 8                   c. "Power plant" means:
- 9                   (1) An electrical generating plant, and all additions to the plant, which  
10                  processes or converts coal in its natural form or beneficiated coal into  
11                  electrical power and which has at least one single electrical energy  
12                  generation unit with a capacity of fifty thousand kilowatts or more.
- 13                  (2) A wind-powered electrical generating facility, on which construction is  
14                  completed before January 1, 2015, and all additions to the facility, which  
15                  provides electrical power through wind generation and which has at least  
16                  one single electrical energy generation unit with a nameplate capacity of  
17                  ~~one hundred~~twenty kilowatts or more.
- 18                  (3) Any other type of electrical power generating facility excluding the types of  
19                  power plants identified in paragraphs 1 and 2 which has a capacity of one  
20                  hundred kilowatts or more and produces electricity for resale or for  
21                  consumption in a business activity.
- 22                  d. "Process unit" means an oil refinery or gas processing plant and all adjacent  
23                  units that are utilized in the processing of crude oil or natural gas.
- 24                  e. "Production equipment" means machinery and attachment units, other than  
25                  replacement parts, directly and exclusively used in the generation, transmission,  
26                  or distribution of electrical energy for sale by a power plant.
- 27                  f. "Repowering" means an investment of more than two hundred million dollars or  
28                  one million dollars per megawatt of installed nameplate capacity, whichever is  
29                  less, in an existing power plant that modifies or replaces the process used for  
30                  converting coal in its natural form or beneficiated coal into electrical power.

- 1       **SECTION 4. EFFECTIVE DATE.** Sections 1 and 2 of this Act are effective for taxable years
- 2 beginning after December 31, 2012. Section 3 of this Act is effective for taxable events
- 3 occurring after June 30, 2013.