

Introduced by

1 A BILL for an Act to create and enact chapters 57-33.2 and 57-60.1 of the North Dakota
2 Century Code, relating to taxation of generation, distribution, and transmission of electric power;
3 to amend and reenact sections 57-02-27.3, 57-06-02, 57-06-03, and 57-06-05, subsections 13
4 and 14 of section 57-06-06, and sections 57-06-18, 57-06-19, 57-06-20, and 57-06-21 of the
5 North Dakota Century Code, relating to assessment and imposition of taxes against electric
6 power companies; to repeal sections 57-06-07 and 57-06-17 and chapters 57-33 and 57-33.1 of
7 the North Dakota Century Code, relating to taxation of electric power companies, rural electric
8 cooperatives, and cooperative electrical generating plants; to provide a penalty; to provide a
9 continuing appropriation; and to provide an effective date.

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

11 **SECTION 1. AMENDMENT.** Section 57-02-27.3 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-02-27.3. Taxable valuation of ~~centrally-assessed~~ wind turbine electric**
14 **generators.** A ~~centrally-assessed~~ wind turbine electric generation unit with a nameplate
15 generation capacity of one hundred kilowatts or more, on which construction is completed
16 before January 1, 2011, must be valued at three percent of assessed value to determine
17 taxable valuation of the property.

18 **SECTION 2. AMENDMENT.** Section 57-06-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **57-06-02. Definitions.** As used in this chapter, unless the context ~~and~~ or subject
21 matter otherwise clearly ~~require~~ requires:

22 1. "Company" includes any individual, copartnership, business trust, corporation,
23 limited liability company, joint-stock company, or association.

2. "Gas company" means a company owning, holding, or operating under lease or otherwise any property in this state for the purpose of furnishing gas, or distributing the same, for public use, by means of pipelines.

3. "Pipeline company" means a company owning, holding, or operating under a lease or otherwise any property in this state for the purpose of transporting crude oil, natural gas, processed gas, manufactured gas, refined petroleum products, or coal and related products for public use.

~~4. "Power company" means a company owning or holding, under lease or otherwise, any property in this state and operating it for the purpose of furnishing or distributing electric light, electric power, or steam heat for public use.~~

SECTION 3. AMENDMENT. Section 57-06-03 of the North Dakota Century Code is amended and reenacted as follows:

57-06-03. Operative property defined. The term "operative property" means any and all property reasonably necessary for use by any company mentioned in section 57-06-02 exclusively in the operation and conduct of the particular kind of business engaged in by it. Any such property held under a contract for the purchase thereof must be considered for all purposes of taxation as the property of the company holding the same. Any such property, real or personal, held by any company under a rental lease must be assessed by the state board of equalization in the name of such company, if an agreement in writing between the owner thereof and such company is filed with the tax commissioner requesting that such leased property be so assessed. Whenever any property of a public utility company required to be assessed by the state board of equalization under the provisions of this chapter is used partly for operative purposes and partly for other purposes, either by the company or by others, all such property that is not exempt under chapter 57-33.2 must be assessed by the state board of equalization as operative property of the company.

SECTION 4. AMENDMENT. Section 57-06-05 of the North Dakota Century Code is amended and reenacted as follows:

57-06-05. Annual assessment. The state board of equalization, at its annual meeting in August, shall assess the franchises and all operative property of ~~power~~, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

1 **SECTION 5. AMENDMENT.** Subsections 13 and 14 of section 57-06-06 of the North
2 Dakota Century Code are amended and reenacted as follows:

3 13. A description of the personal property, including moneys and credits, held by the
4 company as a whole system, and the part thereof apportioned to the ~~line~~
5 company's property in North Dakota.

6 14. The whole length of the ~~lines~~ pipelines of the system operated by the company and
7 the length of the ~~lines~~ pipelines in North Dakota, whether operated as owner,
8 lessee, or otherwise. The length of the ~~line~~ pipeline operated for the whole system
9 and in North Dakota shall be separately reported.

10 **SECTION 6. AMENDMENT.** Section 57-06-18 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-06-18. Allocation of assessment of ~~other~~ operative property.** All lots and
13 parcels of real estate, not including rights of way, with the buildings, structures, and
14 improvements thereon, ~~dams and powerhouses, substations, shops, and other buildings,~~
15 ~~electric power, electric light, gas, or steam~~ distribution systems, and other personal property ~~not~~
16 ~~a part of any single and continuous property,~~ must be separately assessed and the assessment
17 must be allocated to the taxing district in which the property is located. The assessment by the
18 state board of equalization covering the property must give a legal description of the real estate
19 and a general description of other property sufficient for identification. The assessment by the
20 board of the operative property must cover the aggregate valuation of the property of any
21 company in any municipality or taxing district of the state as a unit and need not be made in
22 detail.

23 **SECTION 7. AMENDMENT.** Section 57-06-19 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **57-06-19. Certification of assessment.** The state tax commissioner shall certify to the
26 county auditor of each county in which the company assessed owns property:

27 1. ~~The~~ the total assessed valuation of the company's property ~~not constituting a~~
28 ~~single and continuous line,~~ with information as to the amount in each assessment
29 district within such county.

2. ~~The number of miles [kilometers] of line, valuation per mile [1.61 kilometers], and total valuation of any property constituting a single and continuous line within each taxing district in each county.~~

SECTION 8. AMENDMENT. Section 57-06-20 of the North Dakota Century Code is amended and reenacted as follows:

57-06-20. Duties of county auditor. The county auditor, after receiving the statement from the tax commissioner, shall enter the valuations mentioned in section 57-06-19 in the assessment record of the several taxing districts of the county ~~into or through which the lines extend, or~~ in which the property is located. Taxes must be extended upon such percentage of full values as is required by law and at the same rate and in the same manner as taxes upon tangible personal property in such taxing districts.

SECTION 9. AMENDMENT. Section 57-06-21 of the North Dakota Century Code is amended and reenacted as follows:

57-06-21. Reports to county auditors. On or before the first day of May of each year, each company required to be assessed under this chapter shall file with the county auditor of each county within which any part of its operative property is located a report giving a general description of all its property located within the county, with operative and nonoperative property listed separately. Such report must give the length of the ~~line or lines~~ pipelines within the county and the length in each taxing district of each ~~line~~ pipeline constituting part of a single and continuous ~~line~~ pipeline or property. The company also shall file with the county auditor a map of all of its ~~lines~~ pipelines within the county showing clearly the length of its ~~lines~~ pipelines within each taxing district as of January first of that year and shall file revised maps in subsequent years if changes have been made in its operative property. To facilitate the making of such maps, the county auditor annually, on or before the first day of April, shall mail to the company an accurate map of the county showing the boundaries of each assessment district and school district.

SECTION 10. Chapter 57-33.2 of the North Dakota Century Code is created and enacted as follows:

57-33.2-01. Definitions. As used in this chapter:

1. "Commissioner" means the state tax commissioner.

2. "Company" means an individual, partnership, corporation, limited liability company, limited liability partnership, cooperative, or any other organization or association engaged in generation, distribution, or transmission of electricity.
3. "Distribution company" means a company engaged in distribution of electricity for retail sale to consumers in this state through distribution lines. However, a municipal electric utility operated under chapter 40-33 is not a distribution company for purposes of this chapter and is not subject to taxes under section 57-33.2-03.
4. "Distribution line" means a line to transmit electricity, which operates at a voltage of less than forty-one and six-tenths kilovolts.
5. "Retail sale" means transfer of electricity to the end-use consumer for consideration.
6. "Transmission company" means a company engaged in transmission of electricity through transmission lines.
7. "Transmission line" means a line to transmit electrical energy which operates at a voltage of forty-one and six-tenths kilovolts or more but does not include a line owned or operated by an agency or instrumentality of the United States government.

57-33.2-02. Transmission line mile tax. Transmission lines are subject to annual taxes per mile [1.61 kilometers] or fraction of a mile based on their nominal operating voltages on January first of each year, as follows:

1. For transmission lines that operate at a nominal operating voltage of less than fifty kilovolts, a tax of seventy-five dollars.
2. For transmission lines that operate at a nominal operating voltage of fifty kilovolts or more, but less than one hundred kilovolts, a tax of one hundred fifty dollars.
3. For transmission lines that operate at a nominal operating voltage of one hundred kilovolts or more, but less than two hundred kilovolts, a tax of three hundred dollars.
4. For transmission lines that operate at a nominal operating voltage of two hundred kilovolts or more, but less than three hundred kilovolts, a tax of four hundred fifty dollars.

5. For transmission lines that operate at a nominal operating voltage of three hundred kilovolts or more, but less than four hundred kilovolts, a tax of six hundred dollars.

6. For transmission lines that operate at a nominal operating voltage of four hundred kilovolts or more, a tax of nine hundred dollars.

57-33.2-03. Distribution taxes. A distribution company is subject to taxes consisting of the following two components:

1. A tax at the rate of fifty-four cents per megawatt-hour for retail sale of electricity delivered through a distribution line to a consumer in this state during the calendar year.

2. A tax at the rate of ninety-two hundredths of one percent of the company's gross revenue from retail sales of electricity delivered through a distribution line to a consumer in this state during the calendar year.

Distribution taxes do not apply to the sale of electricity to any coal conversion facility subject to taxation under chapter 57-60.

57-33.2-04. Delinquent taxes. Taxes under this chapter are due January first for the preceding calendar year and are delinquent if not received by the commissioner by March first following the due date.

57-33.2-05. Taxes in lieu of property taxes. Taxes imposed by this chapter are taxes upon the privilege of doing business in this state and are in lieu of all real or personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is owned and used directly by a company in the operation and conduct of the business of generation or delivery of electricity through distribution or transmission lines.

Taxes under this chapter are not in lieu of property taxes on the following:

1. Taxes on a wind turbine electric generation unit subject to valuation under section 57-02-27.3.

2. Taxes on a coal-powered electrical generating plant that is not subject to coal conversion facility privilege taxes under chapter 57-60.

3. Property taxes on land on which generation, transmission, or distribution buildings, structures, or improvements are located, including buildings, structures, or improvements used for administrative purposes relating to generation, transmission, or distribution of electricity.

4. City franchise fees on public utilities.

This chapter may not be construed to abridge the power of a governing board of a city to franchise the construction and operation of a public utility.

57-33.2-06. Taxes paid on worthless accounts. Distribution taxes paid from retail sales to accounts found to be worthless and charged off in accordance with generally accepted accounting principles may be credited against subsequent payment of taxes under section 57-33.2-03. If accounts that have been claimed as a credit under this section are later collected, tax under section 57-33.2-03 must be paid on the amount collected.

57-33.2-07. Powers of commissioner. The commissioner may require any company subject to taxes imposed by this chapter to furnish any information the commissioner deems necessary to correctly compute the amount of the tax under this chapter. The commissioner may examine the books, records, and files of a company. The commissioner may conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any company or person and may make any investigation deemed necessary to full and complete disclosure of facts necessary to administer the tax under this chapter. The commissioner may make rules in compliance with chapter 28-32 as necessary for administration of this chapter.

57-33.2-08. Commissioner to audit reports and state board of equalization to assess tax. The tax commissioner may audit reports of distribution companies and transmission companies not later than three years after the due date of the report, or three years after the report was filed, whichever period expires later. The state board of equalization shall assess the tax and, if any additional tax is found due, the tax commissioner shall notify the taxpayer in detail as to the reason for the increase.

57-33.2-09. Transmission line location reports and maps to county auditors. By May first of each year, each transmission company shall file with the county auditor of each county in which any of its transmission line is located a report showing the length and nominal operating voltage of its transmission line within the county and within each taxing district within the county. A transmission company shall file with the report a map showing all of its transmission line within the county and showing the length and nominal operating voltage of its transmission line within each taxing district in the county. Reports and maps under this section must be based upon nominal operating voltage, ownership, and location of transmission lines

as of January first of each year. By April first of each year, the county auditor shall provide each transmission company having transmission line in the county with an accurate map of the county showing the boundaries of each taxing district in the county.

57-33.2-10. Filing of reports and maps with commissioner. By May first of each year, each transmission company, distribution company, and each company that is both a transmission company and a distribution company shall file with the commissioner:

1. Information about the company, including:

a. The company name.

b. Whether the company is an individual, partnership, association, cooperative, corporation, limited liability company, or other legal entity and the state or country and date of original organization and any reorganization, consolidation, or merger with references to specific laws authorizing such actions.

c. The location of its principal office.

d. The place where the company's books, papers, and accounts are kept.

e. The name and mailing address of the president, secretary, treasurer, auditor, superintendent, general manager, and all other general officers.

f. The name and mailing address of the chief officer or managing agent and any general officers of the company who reside in this state.

2. A copy of each report and map filed with any county auditor under section 57-33.2-09.

3. A report on the megawatt-hours of electricity delivered for retail sale to consumers in each county during the most recently completed calendar year.

4. A report on the company's gross revenue from retail sale of electricity delivered through a distribution line to consumers in each county in this state during the most recently completed calendar year.

5. Any other information the commissioner requires.

57-33.2-11. Deficiency, protest, and appeal.

1. When the amount of taxes due is understated on a return because of a mathematical or clerical error, the tax commissioner shall notify the company of the

error and the amount of additional taxes due. This notice is not a notice of deficiency and the company has no right to protest.

2. If upon an audit the tax commissioner finds additional taxes due, the tax commissioner shall notify the company and the state board of equalization of the deficiency in the tax amount. A notice of deficiency must be sent to the company by first-class mail and must state the amount of additional taxes due and set forth the reasons for the increase.
3. A company has thirty days from the date of mailing of the notice of deficiency to file a written protest with the state board of equalization objecting to the assessment of additional taxes due. The protest must set forth the basis for the protest and any other information that may be required by the state board of equalization. If a company fails to file a written protest within the time provided, the amount of additional taxes stated in the notice of deficiency becomes finally and irrevocably fixed. If a company protests only a portion of the tax commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
4. If a protest is filed, the state board of equalization shall reconsider the assessment of additional taxes due.
5. Within six months after the protest is filed, the state board of equalization shall mail to the company a notice of reconsideration and assessment which must respond to the company's protest and assess the amount of any additional taxes due. The amount set forth in that notice becomes finally and irrevocably fixed unless the company brings an action against the state in district court within six months of the mailing of the notice of reconsideration and assessment.

57-33.2-12. Claims for credit or refund.

1. A company may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within six years after the due date of the return or within six years after the return was filed, whichever period expires later.
2. A claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.

3. The tax commissioner shall notify the company if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the company brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

57-33.2-13. Preservation of records. Every company required to make a return and pay any taxes under this chapter shall preserve records of retail sales as the commissioner may require. Every company shall preserve for a period of six years and three months all invoices and other records of electricity delivered to a consumer in this state. All of these books, invoices, and other records must be open to examination at any time by the commissioner or any duly authorized agent of the commissioner.

57-33.2-14. Lien for tax. The tax under this chapter constitutes a first and paramount lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien is subject to collection, indexing, and other action in the manner provided in section 57-39.2-13 for sales tax liens.

57-33.2-15. Corporate officer and limited liability company governor or manager liability. If a corporation or limited liability company taxable under this chapter fails for any reason to file the required returns or pay the tax due, any of its officers, governors, or managers having control or supervision of, or charged with the responsibility for making, the returns and payments, are personally liable for the failure. The dissolution of a corporation or limited liability company does not discharge an officer's, a governor's, or a manager's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.

57-33.2-16. Bond. The commissioner may require a sufficient bond from any company charged with making and filing reports and payment of taxes under this chapter. Any required bond must run to the state of North Dakota and be conditioned upon making and filing of reports as required by law or rule and for prompt payment of all taxes justly due to the state under this chapter.

57-33.2-17. Deposit of revenue - Report to treasurer. The commissioner shall transfer revenue collected under this chapter to the state treasurer for deposit in the electric

transmission and distribution tax fund. With each transfer under this section, the commissioner shall provide a report showing the information necessary for the state treasurer to allocate the revenue under section 57-33.2-18.

57-33.2-18. Allocation - Continuing appropriation. The electric transmission and distribution tax fund is appropriated as a standing and continuing appropriation to the state treasurer for allocation and distribution to counties by April first of each year as provided in this section.

1. Revenue from the tax on transmission lines under section 57-33.2-02 must be allocated among counties based on the mileage of transmission lines and the rates of tax on those lines within each county. Revenue received by a county under this subsection must be allocated among taxing districts in the county based on the mileage of transmission lines and the rates of tax that apply to the land on which those lines are located within each taxing district. Revenue from that portion of a transmission line located in more than one taxing district must be allocated among those taxing districts in proportion to their respective current property tax mill rates that apply to the land on which the transmission line is located.

ALTERNATIVE A

2. Revenue from the distribution company tax under section 57-33.2-03 must be allocated to the county in which the retail sale to which the tax applied was made. Revenue received by the county under this subsection must be allocated among taxing districts in the county in proportion to their most recent respective property tax levies in dollars on property within the county. A city that operates a municipal electric utility under chapter 40-33 must be excluded from allocations and computations under this subsection.

ALTERNATIVE B

2. Revenue from the taxes paid by a distribution company under section 57-33.2-03 must be allocated to each county in which that distribution company's distribution lines are located in the ratio in which the number of miles of its lines in each county bears to the total number of miles of lines of the distribution company in this state. Revenue received by the county under this subsection must be allocated among taxing districts in the county in proportion to their most recent respective property

tax levies in dollars on property within the county. A city that operates a municipal electric utility under chapter 40-33 must be excluded from allocations and computations under this subsection.

3. For purposes of this section, "taxing district" means the state, county, and that portion of any political subdivision with authority to levy property taxes which is located within the county.

57-33.2-19. Penalty. A person who willfully violates any provision of this chapter is guilty of a class A misdemeanor.

SECTION 11. Chapter 57-60.1 of the North Dakota Century Code is created and enacted as follows:

57-60.1-01. Definitions. As used in this chapter:

1. "Commissioner" means the state tax commissioner.
2. "Electrical generating plant" means a facility that produces electrical power from a source other than coal or wind energy and which has at least one single electrical energy generation unit with a capacity of five thousand kilowatts or more.
3. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, derived by an electrical generating plant subject to this chapter from the production of electricity, but not including any revenue derived from transportation, transmission, distribution, or other events that occur after completion of the process of production of electricity by the facility.
4. "Operator" means any person owning, holding, or leasing an electrical generating plant and conducting the generation of electricity by the plant.

57-60.1-02. Imposition of taxes - In lieu of ad valorem taxes. There is imposed upon the operator of each electrical generating plant a tax paid monthly for the privilege of producing electricity at such electrical generating plant. The rate of the tax is ninety one-hundredths of one mill on each kilowatt-hour of electricity produced for the purpose of sale. The board of county commissioners, by resolution, may grant to the operator of an electrical generating plant located within the county which begins construction after June 30, 2003, partial or complete exemption from the tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the plant. An electrical generating plant

is classified as personal property and taxes imposed by this chapter are in lieu of ad valorem taxes except taxes on the land on which the electrical generating plant is located.

57-60.1-03. Adoption by reference of provisions governing the privilege tax on coal conversion facilities. The provisions of chapter 57-60 which are not in conflict with the provisions of this chapter govern the administration of the tax imposed in this chapter.

57-60.1-04. Allocation of revenue - Continuing appropriation.

1. The state treasurer shall no less than quarterly allocate all moneys received from each electrical generating plant to the county in which the electrical generating plant is located.

2. Amounts allocated to a county under this section must be allocated within the county in the same manner property taxes are allocated on the land on which the electrical generating plant is located.

SECTION 12. REPEAL. Sections 57-06-07 and 57-06-17 and chapters 57-33 and 57-33.1 of the North Dakota Century Code are repealed.

SECTION 13. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2003.

NOTE: This bill draft contains alternatives in Section 10, one of which must be deleted prior to introduction.