

Sixty-first  
Legislative Assembly  
of North Dakota

Introduced by

1 A BILL for an Act to create and enact a chapter of the North Dakota Century Code, relating to  
2 taxation of generation, distribution, and transmission of electric power; to amend and reenact  
3 sections 57-06-03 of the North Dakota Century Code, relating to assessment and imposition of  
4 taxes against centrally assessed electric power companies; to repeal chapters 57-33 and  
5 57-33.1 of the North Dakota Century Code, relating to taxation of rural electric cooperatives and  
6 cooperative electrical generating plants; to provide a penalty; to provide a continuing  
7 appropriation; and to provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Section 57-06-03 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **57-06-03. Operative property defined.** The term "operative property" means any and  
12 all property reasonably necessary for use by any company mentioned in section 57-06-02  
13 exclusively in the operation and conduct of the particular kind of business engaged in by it. Any  
14 such property held under a contract for the purchase thereof must be considered for all  
15 purposes of taxation as the property of the company holding the same. Any such property, real  
16 or personal, held by any company under a rental lease must be assessed by the state board of  
17 equalization in the name of such company, if an agreement in writing between the owner  
18 thereof and such company is filed with the tax commissioner requesting that such leased  
19 property be so assessed. Whenever any property of a public utility company required to be  
20 assessed by the state board of equalization under the provisions of this chapter is used partly  
21 for operative purposes and partly for other purposes, either by the company or by others, all  
22 such property that is not exempt under chapter 57-33.2 must be assessed by the state board of  
23 equalization as operative property of the company.

1           **SECTION 2.** Chapter 57-33.2 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **57-33.2-01. Definitions.** As used in this chapter:

- 4           1. "Commissioner" means the state tax commissioner.
- 5           2. "Company" means an individual, partnership, corporation, limited liability company,  
6 limited liability partnership, cooperative, or any other organization or association  
7 engaged in generation, distribution, or transmission of electricity. An  
8 investor-owned utility is not a "company" for purposes of this chapter unless it files  
9 an irrevocable election to be treated as a company under this chapter by  
10 October 1, 2010, for taxable periods after December 31, 2010, or by October 1,  
11 2011, for taxable periods after December 31, 2011. An investor-owned utility that  
12 files an election under this chapter is exempt from taxation under chapter 57-06.
- 13          3. "Distribution company" means a company engaged in distribution of electricity for  
14 retail sale to consumers in this state through distribution lines. However, a  
15 municipal electric utility operated under chapter 40-33 is not a distribution company  
16 for purposes of this chapter and is not subject to taxes under section 57-33.2-03.
- 17          4. "Distribution line" means a line to transmit electricity, which operates at a voltage of  
18 less than forty-one and six-tenths kilovolts.
- 19          5. "Retail sale" means transfer of electricity to the end-use consumer for  
20 consideration.
- 21          6. "Transmission company" means a company engaged in transmission of electricity  
22 through transmission lines.
- 23          7. "Transmission line" means a line to transmit electrical energy which operates at a  
24 voltage of forty-one and six-tenths kilovolts or more but does not include a line  
25 owned or operated by an agency or instrumentality of the United States  
26 government.

27           **57-33.2-02. Transmission line mile tax - Exemption.** Transmission lines are subject  
28 to annual taxes per mile [1.61 kilometers] or fraction of a mile based on their nominal operating  
29 voltages on January first of each year, as follows:

- 30          1. For transmission lines that operate at a nominal operating voltage of less than fifty  
31 kilovolts, a tax of fifty 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 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 two 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 dollars.
5. For transmission lines that operate at a nominal operating voltage of three hundred kilovolts or more a tax of six hundred dollars.
6. A transmission line of two hundred thirty kilovolts or larger which is initially placed in service on or after October 1, 2009, is exempt from transmission line taxes under this section for the first taxable year after the line is initially placed in service, and transmission line taxes under this section must be reduced by:
  - a. Seventy-five percent for the second taxable year of operation of the transmission line.
  - b. Fifty percent for the third taxable year of operation of the transmission line.
  - c. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth year, such transmission lines are subject to the standard transmission line taxes under this section.

**57-33.2-03. Distribution taxes.** A distribution company is subject to a tax at the rate of one dollar per megawatt-hour for retail sale of electricity delivered to a consumer in this state during the calendar year. Distribution taxes under this section do not apply to the sale of electricity to any coal conversion facility subject to taxation under chapter 57-60.

**57-33.2-04. Wind generation taxation and taxation of generation from sources other than coal.** Wind generators and generators of electricity from sources other than coal are subject to taxes under this section.

1. Grid-connected wind generators that are part of a project with generation capacity of 100 kilowatts or more are subject to taxes consisting of the following two components:

a. A tax of two dollars per kilowatt hour times the rated capacity of the wind generator.

b. A tax of \$.0005 per kilowatt hour times the production of the wind generator during the taxable period.

2. Grid-connected generation of 100 kilowatts or more not produced from coal or wind is subject to taxes consisting of the following two components.

a. Fifty cents per kilowatt hour times the rated capacity of the generation unit.

b. One mill per kilowatt hour of electricity generated by the production unit within the taxable period.

**57-33.2-05. 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.

**57-33.2-06. 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 coal-powered electrical generating plant that is not subject to coal conversion facility privilege taxes under chapter 57-60.

2. 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.

3. 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.

**57-33.2-07. 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

1 57-33.2-03. If accounts that have been claimed as a credit under this section are later  
2 collected, tax under section 57-33.2-03 must be paid on the amount collected.

3 **57-33.2-08. Powers of commissioner.** The commissioner may require any company  
4 subject to taxes imposed by this chapter to furnish any information the commissioner deems  
5 necessary to correctly compute the amount of the tax under this chapter. The commissioner  
6 may examine the books, records, and files of a company. The commissioner may conduct  
7 hearings and compel the attendance of witnesses and the production of books, records, and  
8 papers of any company or person and may make any investigation deemed necessary to full  
9 and complete disclosure of facts necessary to administer the tax under this chapter. The  
10 commissioner may make rules in compliance with chapter 28-32 as necessary for  
11 administration of this chapter.

12 **57-33.2-08. Commissioner to audit reports and state board of equalization to**  
13 **assess tax.** The tax commissioner may audit reports of distribution companies and  
14 transmission companies not later than three years after the due date of the report, or three  
15 years after the report was filed, whichever period expires later. The state board of equalization  
16 shall assess the tax and, if any additional tax is found due, the tax commissioner shall notify the  
17 taxpayer in detail as to the reason for the increase.

18 **57-33.2-09. Transmission line location reports and maps to county auditors.** By  
19 May first of each year, each transmission company shall file with the county auditor of each  
20 county in which any of its transmission line is located a report showing the length and nominal  
21 operating voltage of its transmission line within the county and within each taxing district within  
22 the county. A transmission company shall file with the report a map showing all of its  
23 transmission line within the county and showing the length and nominal operating voltage of its  
24 transmission line within each taxing district in the county. Reports and maps under this section  
25 must be based upon nominal operating voltage, ownership, and location of transmission lines  
26 as of January first of each year. By April first of each year, the county auditor shall provide  
27 each transmission company having transmission line in the county with an accurate map of the  
28 county showing the boundaries of each taxing district in the county.

29 **57-33.2-10. Filing of reports and maps with commissioner.** By May first of each  
30 year, each transmission company, distribution company, and each company that is both a  
31 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.

1       3. A company has thirty days from the date of mailing of the notice of deficiency to file  
2       a written protest with the state board of equalization objecting to the assessment of  
3       additional taxes due. The protest must set forth the basis for the protest and any  
4       other information that may be required by the state board of equalization. If a  
5       company fails to file a written protest within the time provided, the amount of  
6       additional taxes stated in the notice of deficiency becomes finally and irrevocably  
7       fixed. If a company protests only a portion of the tax commissioner's finding, the  
8       portion that is not protested becomes finally and irrevocably fixed.

9       4. If a protest is filed, the state board of equalization shall reconsider the assessment  
10      of additional taxes due.

11      5. Within six months after the protest is filed, the state board of equalization shall mail  
12      to the company a notice of reconsideration and assessment which must respond to  
13      the company's protest and assess the amount of any additional taxes due. The  
14      amount set forth in that notice becomes finally and irrevocably fixed unless the  
15      company brings an action against the state in district court within six months of the  
16      mailing of the notice of reconsideration and assessment.

17      **57-33.2-12. Claims for credit or refund.**

18      1. A company may file a claim for credit or refund of an overpayment of any tax  
19      imposed by this chapter within six years after the due date of the return or within  
20      six years after the return was filed, whichever period expires later.

21      2. A claim for credit or refund must be made by filing with the tax commissioner an  
22      amended return, or other report as prescribed by the tax commissioner,  
23      accompanied by a statement outlining the specific grounds upon which the claim  
24      for credit or refund is based.

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

30      **57-33.2-13. Preservation of records.** Every company required to make a return and  
31      pay any taxes under this chapter shall preserve records of retail sales as the commissioner may

1 require. Every company shall preserve for a period of six years and three months all invoices  
2 and other records of electricity delivered to a consumer in this state. All of these books,  
3 invoices, and other records must be open to examination at any time by the commissioner or  
4 any duly authorized agent of the commissioner.

5 **57-33.2-14. Lien for tax.** The tax under this chapter constitutes a first and paramount  
6 lien in favor of the state of North Dakota upon all property and rights to property, whether real or  
7 personal, belonging to the taxpayer. The lien is subject to collection, indexing, and other action  
8 in the manner provided in section 57-39.2-13 for sales tax liens.

9 **57-33.2-15. Corporate officer and limited liability company governor or manager**  
10 **liability.** If a corporation or limited liability company taxable under this chapter fails for any  
11 reason to file the required returns or pay the tax due, any of its officers, governors, or managers  
12 having control or supervision of, or charged with the responsibility for making, the returns and  
13 payments, are personally liable for the failure. The dissolution of a corporation or limited liability  
14 company does not discharge an officer's, a governor's, or a manager's liability for a prior failure  
15 of the corporation or limited liability company to make a return or remit the tax due. The sum  
16 due for such a liability may be assessed and collected under the provisions of this chapter for  
17 the assessment and collection of other liabilities.

18 **57-33.2-16. Bond.** The commissioner may require a sufficient bond from any company  
19 charged with making and filing reports and payment of taxes under this chapter. Any required  
20 bond must run to the state of North Dakota and be conditioned upon making and filing of  
21 reports as required by law or rule and for prompt payment of all taxes justly due to the state  
22 under this chapter.

23 **57-33.2-17. Deposit of revenue - Report to treasurer.** The commissioner shall  
24 transfer revenue collected under this chapter to the state treasurer for deposit in the electric  
25 transmission and distribution tax fund. With each transfer under this section, the commissioner  
26 shall provide a report showing the information necessary for the state treasurer to allocate the  
27 revenue under section 57-33.2-18.

28 **57-33.2-18. Allocation - Continuing appropriation.** The electric transmission and  
29 distribution tax fund is appropriated as a standing and continuing appropriation to the state  
30 treasurer for allocation and distribution to counties by April first of each year as provided in this  
31 section.

- 1        1. Revenue from the tax on transmission lines under section 57-33.2-02 must be  
2        allocated among counties based on the mileage of transmission lines and the rates  
3        of tax on those lines within each county. Revenue received by a county for each  
4        size transmission line under this subsection must be allocated among taxing  
5        districts in the county based on the mileage of that transmission line and the rates  
6        of tax that apply to the land on which that line is located within each taxing district.  
7        Revenue from that portion of a transmission line located in more than one taxing  
8        district must be allocated among those taxing districts in proportion to their  
9        respective most recent property tax mill rates that apply to the land on which the  
10       transmission line is located.
- 11       2. Revenue from the distribution company megawatt-hour tax under section  
12       57-33.2-03 must be allocated to the county in which the retail sale to which the tax  
13       applied was made. Revenue received by the county under this subsection must be  
14       allocated among taxing districts in the county in proportion to their most recent  
15       respective property tax levies in dollars on property within the county. A city that  
16       operates a municipal electric utility under chapter 40-33 must be excluded from  
17       allocations and computations under this subsection.
- 18       3. For purposes of this section, "taxing district" means the state, county, and that  
19       portion of any political subdivision with authority to levy property taxes which is  
20       located within the county.

21       **57-33.2-19. Penalty.** A person who willfully violates any provision of this chapter is  
22       guilty of a class A misdemeanor.

23       **SECTION 11. REPEAL.** Chapters 57-33 and 57-33.1 of the North Dakota Century  
24       Code are repealed.

25       **SECTION 12. EFFECTIVE DATE.** This Act is effective for taxable years beginning  
26       after December 31, 2009.