

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Pinkerton

1 A BILL for an Act to create and enact a new section to chapter 57-06 of the North Dakota
2 Century Code, relating to a surtax on certain electricity transmission; to amend and reenact
3 section 57-33.1-02 of the North Dakota Century Code, relating to a surtax on certain electricity
4 transmission to provide a continuing appropriation; and to provide an effective date.

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

6 **SECTION 1.** A new section to chapter 57-06 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Electricity transmission surtax.** In addition to all other taxes provided by law, a surtax
9 of ten percent of the retail price of electricity generated in this state and carried through
10 transmission lines in this state into a state that imposes by law, rule, regulation, or order any
11 conditions affecting coal-fired electrical generation which exceed standards contained in federal
12 law. The tax commissioner shall collect the surtax imposed by this section from every entity
13 selling electrical power that is consumed by retail customers in a state described in this section.

14 **SECTION 2. AMENDMENT.** Section 57-33.1-02 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-33.1-02. Imposition of taxes - In lieu of ad valorem taxes.** Each cooperative
17 operating an electrical energy generating plant shall pay an annual franchise tax for the
18 privilege of operating such plant, which must be computed and determined according to the
19 following procedures:

20 1. Each year for the first two years during which a cooperative operates an electrical
21 energy generating plant the commissioner, on or before April fifteenth, shall levy a
22 tax of one percent upon the gross receipts derived from the operation of such
23 electrical energy generating plant or plants for the preceding calendar year and
24 thereafter the tax imposed must be levied upon the gross receipts derived from the

operation of such plant or plants at the rate of two percent of the gross receipts.

The taxes levied by this subsection are in lieu of any ad valorem taxes upon personal property, except transmission lines, of an electrical energy generating plant the gross receipts of which have been subjected to such tax, and the procedures relating to the ad valorem method of levying property taxes are not applicable to the taxation of such electrical energy generating plants. For the purpose of determining when the two percent rate shall be applied, the first calendar year in which a cooperative is operating an electrical energy generating plant shall be the first year in which such plant earns gross receipts.

2. In addition to the tax imposed under subsection 1, the commissioner shall levy a tax upon transmission lines of two hundred thirty kilovolts or larger, owned by cooperatives subject to the provisions of this chapter and chapter 57-60 and carrying electrical energy the gross receipts or production of which have been subjected to the tax imposed by subsection 1 of this section or subsections 2 and 3 of section 57-60-02, at the rate of two hundred twenty-five dollars per mile [1.61 kilometers] or fraction thereof of such lines located in this state, except that the rate of tax under this subsection for a transmission line of two hundred thirty kilovolts or larger which is initially placed in service on or after October 1, 2002, is three hundred dollars per mile [1.61 kilometers] or fraction thereof of such lines located in this state. The tax imposed under this subsection does not apply to a transmission line initially placed in service on or after October 1, 2002, for the first taxable year after the line is initially placed in service, and the tax imposed under this subsection on a transmission line initially placed in service on or after October 1, 2002, 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.

The tax imposed by this subsection is in lieu of any property tax on such lines and any substation used in delivering electrical energy, the gross receipts or

1 production of which have been subjected to the tax imposed by subsection 1 of this
2 section or subsections 2 and 3 of section 57-60-02. The proceeds derived from the
3 taxing of transmission lines must be allocated to each county in which such
4 transmission lines are located in the proportion that the miles [kilometers] of such
5 lines in a county bear to the total miles [kilometers] of such transmission lines
6 located within this state. Revenues received by each county must be deposited in
7 the county general fund.

8 For purposes of this subsection, "initially placed in service" includes both new
9 construction and substantial expansion of the carrying capacity of a preexisting
10 line, and "substantial expansion" means an increase in carrying capacity of fifty
11 percent or more.

12 3. In addition to all other taxes provided by law, a surtax of ten percent of the retail
13 price of electricity generated in this state and carried through transmission lines in
14 this state into a state that imposes by law, rule, regulation, or order any conditions
15 affecting coal-fired electrical generation which exceed standards contained in
16 federal law. The tax commissioner shall collect the surtax imposed by this section
17 from every entity selling electrical power that is consumed by retail customers in a
18 state described in this section.

19 **SECTION 3. ALLOCATION - CONTINUING APPROPRIATION.** All revenues
20 collected by the tax commissioner from the surtax imposed by section 1 of this Act and
21 subsection 3 of section 57-33.1-02 shall be deposited by the tax commissioner in a special fund
22 in the state treasury to be known as the remediation of environmental costs fund. The tax
23 commissioner shall allocate the moneys in the fund among retail consumers of electricity in this
24 state by allocation to power companies providing those electric services in an amount
25 necessary to provide a uniform reduction in electric rates to consumers not to exceed ten
26 percent. Any funds remaining in the fund shall be allocated by the commissioner to operators
27 of coal-fired electrical generation facilities in this state to offset costs of remediation of
28 environmental impact and improved emissions technology. A continuing appropriation of the
29 moneys available in the fund is provided to the tax commissioner for purposes of this section.

30 **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
31 June 30, 2009.