

HOUSE BILL NO. 1031

Introduced by

Legislative Council

(Economic Development Committee)

1 A BILL for an Act to amend and reenact sections 40-57.1-03, 40-57.1-04, and 40-57.1-04.1 and
2 subsection 11 of section 40-58-20 of the North Dakota Century Code, relating to the duration of
3 property and income tax exemptions for new and expanding businesses; and to provide an
4 effective date.

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

6 **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of**
9 **taxes - Notice to competitors - Limitations.** After negotiation with a potential project
10 operator, a municipality may grant a partial or complete exemption from ad valorem taxation on
11 all buildings, structures, fixtures, and improvements used in or necessary to the operation of a
12 project for a period not exceeding ~~five~~ ten years from the date of commencement of project
13 operations. ~~A municipality may also grant a partial or complete exemption from ad valorem~~
14 ~~taxation on buildings, structures, fixtures, and improvements used in or necessary to the~~
15 ~~operation of a project that produces or manufactures a product from agricultural commodities~~
16 ~~for all or part of the sixth year through the tenth year from the date of commencement of project~~
17 ~~operations.~~

18 In addition to, or in lieu of, a property tax exemption granted under this section, a
19 municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings,
20 structures, fixtures, and improvements used in the operation of a project. The governing body
21 of the municipality shall designate the amount of the payments for each year and the beginning
22 year and the concluding year for payments in lieu of taxes, but the option to make payments in
23 lieu of taxes under this section may not extend beyond the twentieth year from the date of
24 commencement of project operations. To establish the amount of payments in lieu of taxes, the

1 governing body of the municipality may use actual or estimated levels of assessment and
2 taxation or may establish payment amounts based on other factors. The governing body of the
3 municipality may designate different amounts of payments in lieu of taxes in different years to
4 recognize future project expansion plans or other considerations.

5 By November first of each year, the municipality that granted the option to make
6 payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of
7 taxes due under this section in the following year. After receiving the statement from the
8 municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer
9 for collection at the time when, and in the manner in which, ad valorem taxes must be certified.
10 Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this
11 section, the county treasurer shall apportion and distribute that amount to taxing districts on the
12 basis on which the general real estate tax levy is apportioned and distributed. The municipality
13 may enter ~~into~~ a written agreement with the local school district and any other local taxing
14 districts that wish to enter the agreement for an alternate method of apportionment and
15 distribution. If such an agreement is entered ~~into~~, the county treasurer shall apportion and
16 distribute the money according to the written agreement. All provisions of law relating to
17 enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem
18 taxes apply to payments in lieu of taxes under this section. However, the discount for early
19 payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this
20 section. The buildings, structures, fixtures, and improvements comprising a project for which
21 payments in lieu of taxes are allowed under this section must be excluded from the valuation of
22 property in the taxing district for purposes of determining the mill rate for the taxing district.

23 Negotiations with potential project operators for tax exemption or payments in lieu of
24 taxes must be carried on by the city council or commission if the project is proposed to be
25 located within the boundaries of a city, and by the board of county commissioners if the project
26 is proposed to be located outside the corporate limits of any city. A partial exemption must be
27 stated as a percentage of the total ad valorem taxes assessed against the property. Unless the
28 governing body of the municipality determines that there is no existing business within the
29 municipality for which the potential project would be a competitor, the potential project operator
30 shall publish two notices to competitors, the form of which must be prescribed by the tax
31 commissioner, of the application for tax exemption or payments in lieu of taxes in the official

1 newspaper of the municipality at least one week apart. The publications must be completed not
2 less than fifteen nor more than thirty days before the governing body of the municipality is to
3 consider the application. The municipality shall determine whether the granting of the
4 exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if
5 it so determines, shall give its approval.

6 During the negotiation and deliberation of a property tax exemption or the option to
7 make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting
8 ex officio members of its governing body, a representative appointed by the school board of
9 each school district affected by the proposed action and a representative appointed by the
10 board of township supervisors of each township affected by the proposed action.

11 **SECTION 2. AMENDMENT.** Section 40-57.1-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **40-57.1-04. Exemption from income tax - Notice to competitors - Limitations.**

14 Upon application by a project operator to the state board of equalization, the net income of a
15 project may be exempt from state income tax for a period not exceeding ~~five~~ ten years from
16 commencement of project operations. The application for the exemption must be reviewed as
17 to the eligibility of the project by the department of commerce division of economic development
18 and finance and its recommendations forwarded to the state board of equalization. The project
19 operator shall provide notice to competitors in the manner prescribed by the state board of
20 equalization. The board shall determine whether the granting of the exemption is in the best
21 interest of the people of North Dakota and, if it so determines, approve the exemption. The
22 board shall, after making its determination, certify the findings back to the applicant and to the
23 tax commissioner. Nothing contained herein shall have the effect of exempting the project from
24 filing an annual income tax return.

25 **SECTION 3. AMENDMENT.** Section 40-57.1-04.1 of the North Dakota Century Code
26 is amended and reenacted as follows:

27 **40-57.1-04.1. Ad valorem tax exemption for existing structures - Requirements.**

28 Notwithstanding any other provision of this chapter, a project operator who otherwise qualifies
29 under this chapter may receive, upon application consistent with ~~the provisions of~~ this chapter,
30 ~~receive~~ a partial or complete exemption from ad valorem taxation on any existing structure used
31 in or necessary to the operation of the project for a period not exceeding ~~five~~ ten years from the

1 date of commencement of project operations in the structure. ~~For taxable years beginning after~~
2 ~~December 31, 1988, the governing body of a municipality may grant additional exemptions of~~
3 ~~property under this section during a period not exceeding ten years from the date of~~
4 ~~commencement of project operations in the structure if the structure is owned by the United~~
5 ~~States, the state, or a political subdivision of the state and leased to the project operator.~~ The
6 project operator shall apply to the governing body of the municipality annually for the exemption
7 and the governing body of the municipality may grant the exemption for only one year at a time.

8 **SECTION 4. AMENDMENT.** Subsection 11 of section 40-58-20 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 11. As an alternative to the sale of bonds to be amortized with tax increments as
11 provided in this section, the governing body of a municipality may grant, in its
12 discretion, ~~grant~~ a total or partial tax exemption for the project in order to provide
13 assistance to a project developer in a development or renewal area, pursuant to
14 agreement with the municipality. ~~However, if a developer of a development or~~
15 ~~renewal project receives a tax exemption for that project pursuant to this~~
16 ~~subsection, that project developer may not receive a tax exemption for that project~~
17 ~~under section 40-57.1-03, 40-57.1-04, 40-57.1-04.1, or 40-57.1-04.3.~~ The amount
18 of annual tax exemption under this subsection is limited to the tax increment as
19 defined in this section as it applies to the development or renewal project and may
20 extend for a period not to exceed fifteen years. In determining the total amount of
21 the tax exemption to be authorized, the municipality shall give due consideration to
22 the same elements as are involved in the sale of bonds to be amortized by tax
23 increments. The amount to be reimbursed, by tax exemption, to the project
24 developer must be all or a portion of eligible public costs which have been paid by
25 the project developer, plus interest on those costs at a rate not to exceed ten
26 percent per annum. The amount of tax exemption must be an amount sufficient to
27 reimburse the project operator for those eligible costs, amortized pursuant to the
28 agreement between the project developer and the municipality.

29 **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
30 December 31, 2004. The extended period of an exemption under this Act is available to a
31 project that has received an exemption under chapter 40-57.1 before January 1, 2005, but the

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1 project operator must apply for the extended exemption to the governing body of the city or
2 county for exemption under section 40-57.1-03 or to the state board of equalization for an
3 exemption under section 40-57.1-04. Section 40-57.1-07 does not apply to applications for
4 extended exemptions as permitted by this section.