

TAXATION

CHAPTER 441

SENATE BILL NO. 2294

(Senators Cook, Stenehjem, Wardner)
(Representatives Carlson, Belter, Froseth)

AN ACT to amend and reenact subsection 7 of section 57-01-02, sections 57-01-05 and 57-02-11, subsection 3 of section 57-12-06, and sections 57-13-04, 57-13-05, 57-13-07, 57-13-08, and 57-14-08 of the North Dakota Century Code, relating to assessments of property, powers and duties of the state supervisor of assessments, listing of individual property records, the duties of the state board of equalization, and the duties of county assessors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 57-01-02 of the North Dakota Century Code is amended and reenacted as follows:

7. May require a ~~reassessment~~new assessment of property in any county to be made in accordance with chapter 57-14, whenever that is deemed necessary, or may require county auditors to place on the assessment rolls property which may be discovered and which has not been taxed according to law. For purposes of this subsection, "new assessment" means a new assessment as defined in section 57-14-08.

SECTION 2. AMENDMENT. Section 57-01-05 of the North Dakota Century Code is amended and reenacted as follows:

57-01-05. State supervisor of assessments.

The state tax commissioner shall appoint a supervisor of assessments who must be a person trained and experienced in property appraisals and familiar with assessment and equalization procedures and techniques. The supervisor of assessments serves at the pleasure of the state tax commissioner and office space must be furnished to the supervisor of assessments by the commissioner.

The supervisor of assessments shall perform the following duties under the direction of the tax commissioner:

1. The supervisor of assessments shall advise and give the various assessors in the state the necessary instructions and directions as to their duties under the laws of this state, to the end that a uniform assessment of all real and personal property in this state will be attained.
2. The supervisor of assessments shall assist and instruct the various assessors in this state in the use of soil reconnaissance surveys, land classification methods, in the preparation and proper use of land maps and record cards, in

the proper classification of real and personal property, and in the determination of proper standards of value.

3. The supervisor of assessments may require the attendance of groups of assessors at meetings called by the supervisor of assessments for the purpose of giving them further assistance and instruction as to their duties.
4. The supervisor of assessments may make sales, market, and productivity studies and other studies of property assessments in the various counties and cities of this state for the purpose of properly advising the various assessors and directors of tax equalization in the state and for the purpose of recommending to the tax commissioner changes to be made by the state board of equalization in the performance of the equalization powers and duties prescribed for it by section 57-13-04. In any sales, market, and productivity study made according to section 57-01-06, the county directors of tax equalization or city assessors, as the case may be, are responsible for compiling a record of sales of property made in the county or city, and in conjunction with the county commissioners shall analyze the sales for the purpose of advising the state supervisor of assessments as to the value of using the sales in any such study. The compilations must be forwarded to the state supervisor of assessments with the findings of the county director of tax equalization, city assessors, and the board of county commissioners. In any county or city or any part thereof where the number of sales of properties is insufficient for making a sales, market, and productivity study, the county director of tax equalization or city assessor, as the case may be, in cooperation with the state supervisor of assessments or that person's assistants shall make appraisals of properties in order to determine the market value.
5. The supervisor of assessments shall cooperate with North Dakota state university in the development of a soil mapping program, a land classification system, valuation studies, and other matters relating to the assessment of property and shall provide for the use of such information and procedure at the earliest possible date by the assessors of this state.
6. The supervisor of assessments has general supervision of assessors and county directors of tax equalization pertaining to methods and procedures of assessment of all property and has authority to require all county directors of tax equalization to do any act necessary to obtain uniform methods and procedures of assessment.
7. Whenever an investigation by the state supervisor of assessments shows there is probable cause to believe the holder of a certificate issued by the state supervisor of assessments under chapter 11-10.1 has failed to comply with any of the provisions of this title pertaining to assessments, or any rules prescribed by the tax commissioner, the state supervisor of assessments may petition the tax commissioner for a hearing to show cause why the certificate should be suspended or revoked.
 - a. The state supervisor of assessments must provide the certificate holder at least ten days' notice of the time and place of the hearing.
 - b. If cause to suspend or revoke the certificate is shown, the tax commissioner may suspend or revoke the certificate.

- c. The tax commissioner may restore a certificate after suspension or revocation.
 - d. An individual whose certificate has been suspended or revoked in the manner provided in this section may appeal that determination to the district court.
8. If a certificate holder's certificate is suspended or revoked under this section, the governing body of the county in which the certificate holder performs duties shall ensure the continued administration of assessments within that county by a person authorized under section 11-10.1-05 and be responsible for any expenses associated with the fulfillment of this responsibility. Expenses incurred by a county to fulfill the duties of a township or city assessment official whose certificate has been suspended or revoked must be charged to the political subdivision in which the certificate holder is employed and must either be paid directly to the county by the political subdivision or deducted by the county treasurer from funds coming into the treasurer's control which are apportionable to the subdivision.
9. The supervisor of assessments shall perform such other duties relating to assessment and taxation of property as the tax commissioner directs.
10. The tax commissioner may prescribe rules necessary for the detailed and efficient administration of this section.

¹³⁷ **SECTION 3. AMENDMENT.** Section 57-02-11 of the North Dakota Century Code is amended and reenacted as follows:

57-02-11. Listing of property - Assessment thereof.

~~Property must be listed and assessed~~Certified assessment officials must list and assess property as follows:

1. All real property subject to taxation must be listed and assessed every year with reference to its value, on February first of that year.
2. An individual property record must be kept by the appropriate assessment official for each parcel of taxable property. The record may be in electronic or paper form and must include identifying information as prescribed by the state supervisor of assessments. Assessors shall prepare the records and provide copies of all property records prepared by the assessor to the county director of tax equalization. The county director of tax equalization shall maintain those records for ten years from the date the records were received from the assessors. A city with a population of five thousand or more may elect to maintain the records required under this subsection on behalf of the county. A city that makes this election must include these records in a city database of taxable property to be maintained in the office of city assessor for ten years from the assessment date.
3. Whenever after the first day of February and before the first day of April in any year, it is made to appear to the assessor by the oath of the owner that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or

¹³⁷ Section 57-02-11 was also amended by section 3 of House Bill No. 1116, chapter 446.

~~injured~~damaged by fire, flood, or tornado, or other natural disaster, the assessor shall investigate the matter and deduct from the valuation of the property of the owner of such destroyed property an amount which in the assessor's judgment fairly represents such deduction as should be made.

SECTION 4. AMENDMENT. Subsection 3 of section 57-12-06 of the North Dakota Century Code is amended and reenacted as follows:

3. The owner of any separate piece or parcel of real estate that has been assessed may appeal the assessment thereon to the state board of equalization as provided in ~~subdivision a of subsection 3 of section 57-13-04;~~ provided, however, that such owner has first appealed the assessment to the local equalization board of the taxing district in which the property was assessed and to the county board of equalization of the county in which the property was assessed. Notwithstanding this requirement, an owner of property which has been subjected to a new assessment authorized under section 57-14-08 may appeal the new assessment to the state board of equalization in the manner provided for in section 57-14-08.

SECTION 5. AMENDMENT. Section 57-13-04 of the North Dakota Century Code is amended and reenacted as follows:

57-13-04. General duties and powers of board.

The state board of equalization shall equalize the valuation and assessment of property throughout the state, and has power to equalize the assessment, classification, and exemption status of property in this state between assessment districts of the same county, and between the different counties of the state. It shall:

1. Equalize the assessment of real property by adding to the aggregate value thereof in any assessment district in a county and in every county in the state in which the board may believe the valuation too low, such percentage rate as will raise the same to its proper value as provided by law, and by deducting from the aggregate assessed value thereof, in any assessment district in a county and every county in the state in which the board may believe the value too high, such percentage as will reduce the same to its proper value as provided by law. City lots must be equalized in the manner provided for equalizing other real property.
2. In making such equalization, add to or deduct from the aggregate assessed valuation of lands and city lots such percentage as may be deemed by the board to be equitable and just, but in all cases of addition to or deduction from the assessed valuation of any class of property in the several assessment districts in each county and in the several counties of the state, or throughout the state, the percentage rate of addition or deduction must be even and not fractional.
3. In equalizing individual assessments:
 - a. If it believes an assessment to be too high, the board may reduce the assessment on any separate piece or parcel of real estate if the ~~taxpayer~~owner of the property has appealed such assessment to the board either by appearing personally or by a representative before the board or by mail or other communication to the board in which the ~~taxpayer's~~property owner's reasons for asking for the reduction are made known to the board.

- (1) The board does not have authority to reduce an assessment until the taxpayer-owner of the property has established to the satisfaction of the board that the taxpayer-owner of the property had first appealed the assessment to the local equalization board of the taxing district in which the property was assessed and to the county board of equalization of the county in which the property was assessed.
- (2) The board does not have authority to reduce a new assessment provided for under section 57-14-08 until the owner of the property has established to the satisfaction of the board that the owner of the property had first appealed the assessment to the county board of equalization of the county in which the property was assessed.
- b. If it believes an assessment to be too low, the board may increase the assessment on any separate piece or parcel of real estate. The secretary of the board, by mail sent to the last-known address of the owner to whom the property was assessed, shall notify such person of the amount of increase made by the board in such assessment.
- c. The percentage of reduction or increase made by the board under this subsection in any assessment must be a whole-numbered amount and not a fractional amount.
4. Equalize the classification and taxable status of real property in any assessment district in a county and in every county in the state in which the board determines the classification or taxable status is incorrect or inequitable. The board may equalize property under this subsection if information is received indicating that property within the assessment district or county may be erroneously classified or the property's taxable status is incorrect. The board may also equalize property under this subsection if a property owner has properly appealed the property's classification or taxable status. In the case of an appeal, the owner of the property must establish to the satisfaction of the board that the owner of the property had first appealed the classification or taxable status determination to the local equalization board of the taxing district in which the property is situated and to the county board of equalization of the county in which the property is situated.
5. Provide for reviews of selected properties, parcels, or lots within each county by the tax commissioner, state supervisor of assessments, or their designee, to verify the accuracy of real property assessment listings, valuations, classifications, and eligibility for exemptions. The reviews must be examined by the state board of equalization at its annual meeting in August. The board may make necessary corrections in the property assessment listings, valuations, classifications, and eligibility for exemptions or direct the affected township, city, or county governing body to make the corrections ordered by the state board of equalization resulting from its examination of the reviews provided for in this section.
6. The board may prescribe rules and regulations necessary and advisable for the detailed administration of and compliance with this section.
7. If any county or county official fails to take action ordered by the state board of equalization under the authority granted to it in this chapter or chapter 57-02, the board may petition any judge of the district court to issue a restraining order, writ of mandamus, or other form of declaratory or injunctive relief

requiring the county or county official to comply with the order of the board. The order or notice upon the petition shall be returnable not more than ten days after the filing of the petition. The petition must be heard and determined on the return day, or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case consistent with the rights of the parties. The county or county official must show cause why the county or county official should not comply with any directive or order of the board. The judgment must include costs in favor of the prevailing party.

8. The board may order a new assessment of any class of property, or of all the property, located within any political subdivision if, in its opinion, taxable property located within that subdivision has escaped assessment in whole or in part, has been assessed unfairly, or has not been assessed according to law. A new assessment ordered by the board must be made as provided in section 57-14-08.

SECTION 6. AMENDMENT. Section 57-13-05 of the North Dakota Century Code is amended and reenacted as follows:

57-13-05. Hearing before state board of equalization.

The board of county commissioners of any of the several counties, or any representative thereof in its place or stead, or any city council or board of city commissioners or any representative thereof, any township supervisors, or representative groups of taxpayers or taxpayers' associations, or any individual representing the same, may appear before the state board of equalization to be heard for the purpose of opposing any unreasonable or unjust increase or decrease in the valuation or determination of classification of the taxable property of the county, city, or township represented as equalized by the county board of equalization, ~~or of~~ opposing any increase or decrease in ~~such~~the valuation or determination of classification as proposed by the state board of equalization, or opposing a determination of taxable status made by a county board of equalization. to the end that all valuations or classifications of like taxable property may be uniform and equal throughout the state and exemption determinations made by a county board of equalization are found reasonable by the state board of equalization.

SECTION 7. AMENDMENT. Section 57-13-07 of the North Dakota Century Code is amended and reenacted as follows:

57-13-07. Proceedings to be published - Abstract sent to county auditors.

The secretary shall keep a record of the proceedings of the board, which must be published by the secretary in an annual report. Upon final adjournment, the secretary shall transmit to each county auditor an abstract of such proceedings specifying the percentage added to or deducted from the valuation of the real property of each of the counties, in case an equal percentage has not been added to or deducted from each, and specifying also the percentage added to or deducted from the several classes of personal property in each of the counties in the state, and such other information as will enable each auditor properly to equalize or make corrections to the valuation or classification of taxable property or status with regard to exemption of property in the auditor's county, and to determine the taxable rates thereof.

SECTION 8. AMENDMENT. Section 57-13-08 of the North Dakota Century Code is amended and reenacted as follows:

57-13-08. Duty of county auditor after equalization by state board.

Upon receipt of the report of the proceedings of the state board of equalization, the county auditor shall add to or deduct from each tract or lot of real property in the auditor's county the required percentage of the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding in each case any fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that the value of any separate tract or lot contains no fraction of a dollar. The county auditor shall revalue each tract or lot of real property that is reclassified by the state board of equalization using the proper valuation method for the class of taxable property as specified by the state board of equalization. The county auditor shall adjust the status of a tract or lot to comply with any determinations made by the state board of equalization in which the tract or lot is found by the state board of equalization to be taxable or exempt.

SECTION 9. AMENDMENT. Section 57-14-08 of the North Dakota Century Code is amended and reenacted as follows:

57-14-08. ~~General reassessment~~New assessment of property - Allowance.

For purposes of this section, a "new assessment" means an assessment ordered by a board of county commissioners, or as authorized under section 57-01-02 or 57-13-04, of any class of property, or of all property, located within any political subdivision of the county if taxable property located within a subdivision has escaped assessment in whole or in part, has been assessed unfairly, or has not been assessed according to law. A ~~reassessment~~new assessment may be made as follows:

1. Upon the filing of a petition signed by not less than ten freeholders in a political subdivision, or by the governing body of that subdivision, requesting a ~~reassessment~~new assessment of property in the subdivision or upon investigation by the board of county commissioners, the board of county commissioners, before October first, may order a ~~reassessment~~new assessment of any class of property, or of all property, located within the subdivision or within any subdivision if, ~~in its opinion, taxable property located within the subdivision has escaped assessment in whole or in part, or has been assessed unfairly, or has not been assessed according to law. The state board of equalization or the tax commissioner may order a new assessment of~~ any class of property or all property located in any political subdivision. The new assessment and equalization must be conducted under the terms and conditions as set forth in the state board of equalization or tax commissioner's order. The local governing body responsible for performing the new assessment may petition the state board of equalization or tax commissioner for a modification of any or all of the order's terms and conditions. The state board of equalization or tax commissioner may for good cause shown grant all or part of the modification request.
2. The board of county commissioners then may appoint a competent citizen of this state as a special assessor who shall make a ~~reassessment~~new assessment of the property specified by the board and who shall proceed in accordance with the provisions of law governing assessors. The special assessor may be selected by competitive bidding or a process determined by the board of county commissioners. The special assessor is entitled to reasonable compensation by the board of county commissioners for the special assessor's services, together with meals and lodging as allowed by law, and mileage expense at the rate allowed by law for each mile

[1.61 kilometers] actually and necessarily traveled in the performance of that person's duties, which must be audited and allowed by the board of county commissioners and paid out of the county treasury upon warrant of the county auditor. If the ~~reassessment~~new assessment was ordered by the state board of equalization or tax commissioner, the state board of equalization or tax commissioner shall appoint a competent citizen of this state as a special assessor who shall make a ~~reassessment~~new assessment of the property specified by the state board of equalization or tax commissioner and ~~who to be completed under the terms and conditions set forth in the order; the special assessor~~ shall proceed in accordance with the provisions of the law governing assessors; the special assessor is entitled to reasonable compensation by the state board of equalization or tax commissioner for that person's services plus meals, lodging, and mileage expense at the rates provided by law, and the state board of equalization or tax commissioner shall audit and allow the bill, and the same must be paid out of the county treasury. In either case, the compensation must be charged to the political subdivision in which the ~~reassessment~~new assessment was made and must be deducted by the county treasurer from funds coming into the treasurer's hands apportionable to the subdivision. The board of county commissioners, state board of equalization, or tax commissioner who appoints a special assessor may authorize such assistants as may be necessary to aid the special assessor and shall allow reasonable compensation for each of the assistants plus meals, lodging, and mileage expense at the rates provided by law, which amounts must be audited, allowed, and paid and must be charged to the political subdivision reassessed in which the new assessment occurred in the manner provided for the special assessor.

3. Upon completion of the ~~reassessment~~terms and conditions of the new assessment order, the assessor shall certify the result to the county auditor, who forthwith shall give notice by mail to the state tax commissioner and the board of county commissioners and the governing boards of each township, city, and school district which is wholly or partially within the ~~reassessment~~newly assessed district, that a ~~reassessment~~new assessment has been completed in the named assessment district as provided under this section and that a meeting for the purpose of equalizing the assessment will be held in the county courthouse on the day and at the time specified ~~in the notice for the meeting of the county board of equalization~~. Each board shall appoint one of its members to attend the equalization meeting and the tax commissioner shall attend or appoint a representative from the commissioner's office to attend the meeting. ~~The group of persons comprise the special board of equalization for the reassessment. The member representing the board of county commissioners serves as chairman and the county auditor serves as secretary for the special board of equalization. The meeting must be held not later than thirty days from the date of the written notice of the meeting mailed by the county auditor. A notice of the special meeting and its purpose that the new assessment provided for under this section will be considered during the meeting of the county board of equalization must be published at least once in the official newspaper of the county in which the reassessment new assessment was made not less than one week prior to the meeting. Each person, except the tax commissioner or the commissioner's appointee, serving on this special board of equalization is entitled to compensation at the rate of up to forty five dollars per day plus mileage expense and necessary expenses for meals and lodging at the rate allowed by law for attendance at the meeting. Claims therefor must be audited and allowed by the board of county commissioners and must be paid,~~

~~charged, and deducted in the same manner as the claim of the special assessor.~~ The claims for mileage expense and necessary expenses for meals and lodging of the tax commissioner or the commissioner's appointee in attending the special equalization meeting must be audited, allowed, and paid as are other similar claims made by them.

4. When any special assessor has increased the true and full valuation of any lot or tract of land including any improvements to that lot or tract of land by three thousand dollars or more and ~~to~~ by ten percent or more of the last assessment as a result of the new assessment provided for under this section, written notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered in writing by the special assessor to the property owner, mailed in writing to the property owner at the property owner's last-known address, or provided to the property owner by electronic mail directed with verification of receipt to an electronic mail address at which the property owner has consented to receive notice. The tax commissioner shall prescribe suitable forms for this notice and the notice must also show the true and full value as defined by law of the property, including improvements, that the special assessor used in making the ~~reassessment~~ new assessment and must also show the date prescribed by law for the meeting of the ~~special county~~ board of equalization of the ~~assessment district~~ county in which the property is located. Delivery of notice to the property owner under this section must be completed at least fifteen days in advance of the meeting date of the ~~special county~~ board of equalization and at the expense of the assessment district for which the special assessor is employed.
5. At the meeting, the ~~special county~~ board of equalization shall hear all grievances and complaints in regard to the ~~reassessment~~ new assessment provided for under this section and shall proceed to equalize the same. All tax lists must be corrected to comply with the action.
6. Any property owner aggrieved by a decision of the county board of equalization with regard to the new assessment provided for under this section may appeal that decision to the state board of equalization at its August meeting. The board does not have authority to reduce a new assessment until the owner of property has established to the satisfaction of the board that the owner of the property had first appealed the new assessment to the county board of equalization of the county in which the property was assessed.

Approved April 20, 2011
Filed April 20, 2011

CHAPTER 442

HOUSE BILL NO. 1071

(Representatives Drovdal, Kempenich, Hatlestad, Rust)
(Senator Lyson)

AN ACT to amend and reenact subsection 1 of section 57-02-01 of the North Dakota Century Code, relating to retention of property tax status as agricultural property for property previously devoted to agricultural uses which is being used for mineral extraction and for which the surface owner owns none of the subsurface mineral rights; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection.
 - a. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:
 - ~~a.~~(1) The land is platted by the owner.
 - ~~b.~~(2) Public improvements, including sewer, water, or streets, are in place.
 - ~~c.~~(3) Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
 - ~~d.~~(4) Property is zoned other than agricultural.
 - ~~e.~~(5) Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
 - ~~f.~~(6) The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
 - ~~g.~~(7) The property sells for more than four times the county average true and full agricultural value.
 - b. Land that was assessed as agricultural property at the time the land was put to use for extraction of oil, natural gas, or subsurface minerals as defined in section 38-12-01 must continue to be assessed as agricultural

property if the remainder of the surface owner's parcel of property on which the subsurface mineral activity is occurring continues to qualify for assessment as agricultural property under this subsection.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 443

HOUSE BILL NO. 1223

(Representative Belter)
(Senator G. Lee)

AN ACT to amend and reenact subsection 3 of section 57-02-08 of the North Dakota Century Code, relating to property tax exemption of the leasehold interest when a political subdivision leases property from another political subdivision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁸ **SECTION 1. AMENDMENT.** Subsection 3 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

3. All property belonging to any political subdivision and the leasehold interest in property leased by a political subdivision from another political subdivision.

Approved March 29, 2011
Filed March 29, 2011

¹³⁸ Section 57-02-08 was also amended by section 1 of House Bill No. 1046, chapter 486, and section 1 of Senate Bill No. 2049, chapter 444, and subsection 7 was repealed by section 2 of House Bill No. 1246, chapter 445.

CHAPTER 444

SENATE BILL NO. 2049

(Legislative Management)
(Taxation Committee)

AN ACT to amend and reenact subsection 8 of section 57-02-08 of the North Dakota Century Code, relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁹ **SECTION 1. AMENDMENT.** Subsection 8 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

8. All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, ~~and this,~~
 - a. The exemption provided by this subsection includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner.
 - b. For purposes of this subsection and section 5 of article X of the Constitution of North Dakota, property is not used wholly or in part for public charity or charitable or other public purposes if that property is residential rental units leased to tenants based on income levels that enable the owner to receive a federal low-income housing income tax credit.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2011.

Approved April 27, 2011
Filed April 27, 2011

¹³⁹ Section 57-02-08 was also amended by section 1 of House Bill No. 1046, chapter 486, and section 1 of House Bill No. 1223, chapter 443, and subsection 7 was repealed by section 2 of House Bill No. 1246, chapter 445.

CHAPTER 445

HOUSE BILL NO. 1246

(Representatives Weisz, Belter)
(Senator Hogue)

AN ACT to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for church property; to repeal subsection 7 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for certain church property; to provide for a legislative management study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~All real property, not exceeding two acres [.81 hectare] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, buildings owned by any religious corporation or organization and used for the religious services of the organization, and if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, improved off-street parking or reasonable landscaping or sidewalk area adjoining the main church building, and up to a maximum of two additional acres [.81 hectare] must be deemed to be property used exclusively for religious services, and exempt from taxation, whether the real property consists of one tract or more. If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [.81 hectare], is exempt from taxation.~~ The exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent. ~~All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.~~

¹⁴⁰ **SECTION 2. REPEAL.** Subsection 7 of section 57-02-08 of the North Dakota Century Code is repealed.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - SALES TAX EXEMPTION FOR CHARITABLE NONPROFITS. During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of extending the

¹⁴⁰ Section 57-02-08 was amended by section 1 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1223, chapter 443, and section 1 of Senate Bill No. 2049, chapter 444.

sales tax exemption on purchases of tangible property to all charitable nonprofit organizations so that all such organizations are treated equally and fairly under state law. The legislative management also may undertake a comparative analysis of the efficacy of sales tax exemptions and rate reductions, including, for each exemption or reduction, a detailed analysis of the fiscal impact to the state; benefits to the state economy from eliminating or retaining the exemption or rate reduction; the relationship of the exemption or rate reduction to tax policies of other states and to federal or state laws or regulations; and who are the beneficiaries of each exemption or rate reduction, specifically including the extent to which the benefits flow to out-of-state concerns. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 446

HOUSE BILL NO. 1116

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact subsection 2 of section 57-02-08.2, subsections 1, 2, and 8 of section 57-02-08.8, subsection 2 of section 57-02-11, and section 57-06-17.3 of the North Dakota Century Code, relating to homestead credit and disabled veterans certifications, the basis for calculation of the disabled veterans credit, assessment of destroyed or damaged property, and the basis for calculation of the new transmission line property tax exemption; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-02-08.2 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The On or before the first of June of each year, the tax commissioner shall audit such the certifications, make such the required corrections as may be required, and certify to the state treasurer for payment to each county on or before the first of June of each year, the sum of the amounts computed by multiplying the exemption allowed for each such homestead in the county for the preceding year by the total of the tax mill rates, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for that year.~~

¹⁴¹ **SECTION 2. AMENDMENT.** Subsections 1, 2, and 8 of section 57-02-08.8 of the North Dakota Century Code are amended and reenacted as follows:

1. A disabled veteran of the United States armed forces with an armed forces service-connected disability of fifty percent or greater, who was discharged under honorable conditions or who has been retired from the armed forces of the United States, or the unremarried surviving spouse if the disabled veteran is deceased, is eligible for a credit applied against the first ~~one hundred twenty thousand dollars of true and full~~ five thousand four hundred dollars of taxable valuation of the fixtures, buildings, and improvements of the person's homestead owned and occupied by the disabled veteran or unremarried surviving spouse equal to the percentage of the disabled veteran's disability compensation rating for service-connected disabilities as certified by the department of veterans affairs for the purpose of applying for a property tax exemption.
2. If two disabled veterans are married to each other and living together, their combined credits may not exceed one hundred percent of ~~one hundred twenty thousand dollars of true and full value~~ five thousand four hundred dollars of taxable valuation of the fixtures, buildings, and improvements of the homestead. If a disabled veteran co-owns the homestead property with someone other than the disabled veteran's spouse, the credit is limited to that

¹⁴¹ Section 57-02-08.8 was also amended by section 3 of House Bill No. 1217, chapter 447.

disabled veteran's interest in the fixtures, buildings, and improvements of the homestead, to a maximum amount calculated by multiplying ~~one hundred twenty thousand dollars of true and full~~ five thousand four hundred dollars of taxable valuation by the disabled veteran's percentage of interest in the homestead property and multiplying the result by the applicant's certified disability percentage.

8. ~~The On or before the first of June of each year, the tax commissioner shall audit the certifications, make any the required corrections that may be required, and certify to the state treasurer for payment to each county on or before the first of June of each year, the sum of the amounts computed by multiplying the credit allowed for each homestead of a disabled veteran in the county by the total of the tax mill rates, exclusive of any state mill rates that were applied to other real estate in the taxing districts for the preceding year.~~

¹⁴² **SECTION 3. AMENDMENT.** Subsection 2 of section 57-02-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Whenever after the first day of February and before the first day of April in any year, it is made to appear to the assessor by the oath of the owner that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or ~~injured~~ damaged by fire, flood, ~~or~~ or tornado, or other natural disaster, the assessor shall investigate the matter and deduct from the valuation of the property of the owner of such destroyed property an amount which in the assessor's judgment fairly represents such deduction as should be made.

SECTION 4. AMENDMENT. Section 57-06-17.3 of the North Dakota Century Code is amended and reenacted as follows:

57-06-17.3. New transmission line property tax exemption.

A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is not taxable under chapter 57-33.2 and is initially placed in service on or after October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and ~~property taxes~~ the taxable valuation as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

1. Seventy-five percent for the second taxable year of operation of the transmission line.
2. Fifty percent for the third taxable year of operation of the transmission line.
3. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to allocation among counties in the proportion that the miles of that

¹⁴² Section 57-02-11 was also amended by section 3 of Senate Bill No. 2294, chapter 441.

transmission line in the county bears to the miles of that transmission line in the state. Revenues received by each county must be deposited in the county general fund.

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

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 447

HOUSE BILL NO. 1217

(Representatives Owens, Dahl, Sanford)
(Senators Cook, Sorvaag)

AN ACT to amend and reenact subsection 1 of section 15-10-18.2, subdivision j of subsection 2 of section 39-04-18, subsection 1 of section 57-02-08.8, and subsection 1 of section 57-40.3-04 of the North Dakota Century Code, relating to benefits for disabled veterans; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-10-18.2 of the North Dakota Century Code is amended and reenacted as follows:

1. "Dependent" for purposes of section 15-10-18.3 means:
 - a. A child, stepchild, spouse, widow, or widower of a resident veteran, as "veteran" is defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, ~~was totally disabled as a result of service-connected causes~~, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action;
 - b. A child or a stepchild of a veteran, as defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, ~~was totally disabled as a result of service-connected causes~~, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the child's other parent has been a resident of this state and was a resident of this state at the time of death or determination of total disability of the veteran; or
 - c. A child or a stepchild of a veteran, as defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, ~~was totally disabled as a result of service-connected causes~~, has a one hundred percent service-connected disability as determined by the department of veterans' affairs, has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, died from service-connected disabilities, was a prisoner of war, or was declared missing in action, provided the child's other parent establishes residency in this state and maintains that residency for a period of five

years immediately preceding the child's or stepchild's enrollment at an institution under the control of the state board of higher education.

¹⁴³ **SECTION 2. AMENDMENT.** Subdivision j of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- j. Motor vehicles not exceeding twenty-six thousand pounds [11793.40 kilograms] registered gross weight owned and operated by a disabled veteran under the provisions of Public Law 79-663 [38 U.S.C. 3901] ~~or a disabled veteran~~ who has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or a disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs is entitled to display a distinctive license plate issued by the department upon the payment of a fee of five dollars. This exemption applies to no more than two such motor vehicles owned by a disabled veteran at any one time.

¹⁴⁴ **SECTION 3. AMENDMENT.** Subsection 1 of section 57-02-08.8 of the North Dakota Century Code is amended and reenacted as follows:

1. A disabled veteran of the United States armed forces with an armed forces service-connected disability of fifty percent or greater or a disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, who was discharged under honorable conditions or who has been retired from the armed forces of the United States, or the unremarried surviving spouse if the disabled veteran is deceased, is eligible for a credit applied against the first ~~one hundred twenty thousand dollars of true and full~~ five thousand four hundred dollars of taxable valuation of the fixtures, buildings, and improvements of the person's homestead equal to the percentage of the disabled veteran's disability compensation rating for service-connected disabilities as certified by the department of ~~veterans~~ veterans' affairs for the purpose of applying for a property tax exemption. An unremarried surviving spouse who is receiving department of veterans' affairs dependency and indemnity compensation receives a one hundred percent exemption as described in this subsection.

¹⁴⁵ **SECTION 4. AMENDMENT.** Subsection 1 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Any motor vehicle acquired by, or leased and in the possession of, a resident disabled veteran under the provisions of Pub. L. 79-663 [38 U.S.C. 3901] ~~or a resident disabled veteran~~ who has a one hundred percent service-connected disability as determined by the department of ~~veterans~~ veterans' affairs, or a resident disabled veteran who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one

¹⁴³ Section 39-04-18 was also amended by section 4 of House Bill No. 1113, chapter 267, and section 1 of Senate Bill No. 2207, chapter 268.

¹⁴⁴ Section 57-02-08.8 was also amended by section 2 of House Bill No. 1116, chapter 446.

¹⁴⁵ Section 57-40.3-04 was also amended by section 5 of Senate Bill No. 2207, chapter 268, and section 1 of House Bill No. 1153, chapter 474.

hundred percent as determined by the department of veterans' affairs who registers, or is eligible to register, the vehicle with a distinctive license plate issued by the department of transportation under subdivision j of subsection 2 of section 39-04-18. An unremarried surviving spouse who is receiving department of veterans' affairs dependency and indemnity compensation retains the exemption of the deceased, qualifying veteran in this subsection.

SECTION 5. EFFECTIVE DATE. Section 3 of this Act is effective for taxable years beginning after December 31, 2010.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 448

HOUSE BILL NO. 1101

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to amend and reenact section 57-02-27.1 of the North Dakota Century Code, relating to the valuation of properties in townships; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-27.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27.1. Property to be valued at true and full value.

All assessors and boards of equalization shall place the values of all items of taxable property at the true and full value of the property except as otherwise specifically provided by law, and the amount of taxes that may be levied on such property must be limited as provided in this chapter. For the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04, the term "true and full value" has the same meaning as provided in subsection 15 of section 57-02-01, except that "true and full value" of agricultural lands must be as determined pursuant to section 57-02-27.2.

The governing body of the city or township may establish valuations that recognize the supply of vacant lots available for sale.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 449

HOUSE BILL NO. 1048

(Legislative Management)
(Taxation Committee)

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to creation of the agricultural land valuation fund; to amend and reenact subsection 10 of section 57-02-27.2 of the North Dakota Century Code, relating to extension of the deadline for counties to implement use of soil survey data in agricultural property tax assessments; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

10. For any county that has not fully implemented use of soil type and soil classification data from detailed or general soil surveys ~~for by February first of~~ any taxable year after 2011, the tax commissioner shall direct the state treasurer to withhold five percent of that county's allocation each ~~month~~ quarter from the state aid distribution fund under section 57-39.2-26.1 ~~until that county has fully implemented use of soil type or soil classification data from detailed and general soil surveys~~ beginning with the first quarter of 2013. The amount withheld from the allocation must be deposited into the agricultural land valuation fund. The amount withheld from the allocation must be withheld entirely from the portion of the allocation which may be retained by the county and may not reduce allocations to any political subdivisions within the county.

SECTION 2. A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

Agricultural land valuation fund - Deposits - Continuing appropriation.

There is established a special fund in the state treasury to be known as the agricultural land valuation fund. The moneys withheld under subsection 10 of section 57-02-27.2 must be deposited into the agricultural land valuation fund. All moneys deposited in the agricultural land valuation fund are appropriated as a continuing appropriation and must be allocated to the county from which the withholding was made upon certification from the tax commissioner of the implementation of subsection 7 of section 57-02-27.2 by that county.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 450

HOUSE BILL NO. 1144

(Representatives Drovdal, Hatlestad)
(Senators Andrist, Lyson)

AN ACT to create and enact chapter 57-02.4 of the North Dakota Century Code, relating to crew housing permit fees for crew housing facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-02.4 of the North Dakota Century Code is created and enacted as follows:

57-02.4-01. Definitions.

As used in this chapter:

1. "Crew housing facilities" means one or more lodging units or skid units, ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis, which are not real property, as defined in section 57-02-04, and are not mobile homes, as defined in section 57-55-01. A group of crew housing facilities that are connected physically or by common ownership may be treated as a single crew housing facility for purposes of imposition of crew housing permit fees imposed under this chapter.
2. "Crew housing permit" means a right granted by a city or county to locate crew housing facilities on property within the jurisdiction of the city or county under this chapter and to enjoy attendant services and facilities provided by the city or county.
3. "Skid unit" means a structure or group of structures, either single or multisectional, which is not built on a permanent chassis and is ordinarily designed for human living quarters or a place of business, on a temporary or permanent basis.

57-02.4-02. Crew housing permit fees - Fee revenue sharing with other taxing districts.

A city, for property within city limits, or a county, for property outside city limits, may impose crew housing permit fees that apply to crew housing facilities. Crew housing permit fees imposed by a city or county must be determined on the basis of the value of services and facilities provided to the crew housing facility by the city or county or both. A city or county imposing fees under this section may share revenues from the fees with other taxing districts in which the property is located.

57-02.4-03. Exemptions.

This chapter does not apply to:

1. Real property that is exempt from property taxation or subject to payments in lieu of taxes.
2. Mobile or manufactured homes as defined under chapter 57-55.
3. A recreational vehicle, camper, or camper trailer required to be licensed by the motor vehicle division of the department of transportation.
4. Park model trailers for which the owner has paid a park model trailer fee under section 39-18-03.2.

57-02.4-04. Reporting requirement.

A county or city may establish reporting requirements for crew housing facilities subject to permit fees within the jurisdiction of the county or city.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 451

HOUSE BILL NO. 1194

(Representatives Porter, Belter, R. Kelsch)
(Senators Cook, Fischer, Hogue)

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to public hearings relating to property tax increases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Property tax levy increase notice and public hearing.

Notwithstanding any other provision of law, a taxing district may not impose a property tax levy in a greater number of mills than the zero increase number of mills, unless the taxing district is in substantial compliance with this section.

1. The governing body shall cause publication of notice in its official newspaper at least seven days before a public hearing on its property tax levy. A public hearing under this section may not be scheduled to begin earlier than six p.m. The notice must have at least one-half inch white space margin on all four sides and must be at least two columns wide by five inches high. The heading must be capitalized in boldface type of at least eighteen point stating "IMPORTANT NOTICE TO (name of taxing district) TAXPAYERS". The proposed percentage increase must be printed in a boldface type size no less than two points less than the heading, while the remaining portion of the advertisement must be printed in a type face size no less than four points less than the heading. The text of the notice must contain:
 - a. The date, time, and place of the public hearing.
 - b. A statement that the public hearing will be held to consider increasing the property tax levy by a stated percentage, expressed as a percentage increase exceeding the zero increase number of mills.
 - c. A statement that there will be an opportunity for citizens to present oral or written comments regarding the property tax levy.
 - d. Any other information the taxing district wishes to provide to inform taxpayers.
2. If the governing body of the taxing district does not make a final decision on imposing a property tax levy exceeding the zero increase number of mills at the public hearing required by this section, the governing body shall announce at that public hearing the scheduled time and place of the next public meeting at which the governing body will consider final adoption of a property tax levy exceeding the tax district's zero increase number of mills.
3. For purposes of this section:

- a. "New growth" means the taxable valuation of any property that was not taxable in the prior year.
- b. "Property tax levy" means the tax rate, expressed in mills, for all property taxes levied by the taxing district.
- c. "Taxing district" means a city, county, school district, or city park district but does not include any such taxing district that levied a property tax levy of less than one hundred thousand dollars for the prior year and sets a budget for the current year calling for a property tax levy of less than one hundred thousand dollars.
- d. "Zero increase number of mills" means the number of mills against the taxing district's current year taxable valuation, excluding consideration of new growth, which will provide the same amount of property tax revenue as the property tax levy in the prior year.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 452

HOUSE BILL NO. 1225

(Representatives J. Nelson, Kretschmar, S. Meyer)
(Senators Wanzek, Heckaman)

AN ACT to amend and reenact subsection 22 of section 57-15-06.7 and section 57-15-28 of the North Dakota Century Code, relating to the county emergency fund and levy limitation; to provide for a legislative management study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 22 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

22. A county levying a tax for emergency purposes as provided in section 57-15-28 may levy a tax not exceeding two mills in a county with a population of thirty thousand or more, four mills in a county with a population under thirty thousand but more than five thousand, or six mills in a county with a population of five thousand or fewer.

SECTION 2. AMENDMENT. Section 57-15-28 of the North Dakota Century Code is amended and reenacted as follows:

57-15-28. Emergency fund - County.

The governing body of any county may levy a tax for emergency purposes not exceeding the limitation in subsection 22 of section 57-15-06.7. The emergency fund may not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes but must be shown in the budget as an "emergency fund" and may not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, must be deposited in the emergency fund, and must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund may not be used for the purchase of road equipment. The emergency fund may not be used for any road construction or maintenance, except for repair of roads damaged by nature within sixty days preceding the determination to expend emergency funds ~~or for the purchase of road equipment~~; however, the emergency fund may be used to match federal funds appropriated to mitigate damage to roads related to a federally declared disaster that occurred more than sixty days preceding the determination. Any unexpended balance remaining in the emergency fund at the end of any fiscal year must be kept in the fund. When the amount of money in the emergency fund, plus the amount of money due the fund from outstanding taxes, equals the amount produced by a levy of five mills on the taxable valuation of property in a county with a population of thirty thousand or more, ten mills on the taxable valuation of property in a county with a population of less than thirty thousand but more than five thousand, or fifteen mills on the taxable valuation of property in a county with a population of five thousand or fewer, the levy authorized by this section

must be discontinued, and no further levy may be made until required to replenish the emergency fund.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - COUNTY AND CITY EMERGENCY FUND LEVIES. During the 2011-12 interim, the legislative management shall consider studying county and city emergency fund levies and expenditures and jurisdictional responsibilities and issues relating to emergency fund levies and expenditures. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 4. EFFECTIVE DATE. Section 1 of this Act is effective for taxable years beginning after December 31, 2010. Section 2 of this Act is effective for emergency fund expenditures after July 31, 2011.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 453

SENATE BILL NO. 2242

(Senators Grindberg, Krebsbach, Robinson)
(Representatives Devlin, Kreidt, J. Nelson)

AN ACT to amend and reenact subsection 5 of section 57-15-56 and section 57-39.2-26.2 of the North Dakota Century Code, relating to a matching grant from the senior citizen services and programs fund to counties and the mill levy for senior citizen services and programs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-15-56 of the North Dakota Century Code is amended and reenacted as follows:

5. The state treasurer shall provide matching funds as provided in this subsection for counties for senior citizen services and programs funded as required by this section. The grants must be made on or before March first of each year to each eligible county. A county receiving a grant under this section which has not levied a tax under this section shall transfer the amount received to a city within the county which has levied a tax under this section. A grant may not be made to any county that has not filed with the state treasurer a written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the state treasurer on or before February first of each year following a year in which the reporting county received grant funds under this subsection. A matching fund grant must be provided from the senior citizen services and programs fund to each eligible county equal to ~~two-thirds~~three-fourths of the amount levied in dollars in the county under this section for the taxable year, but the matching fund grant applies only to a levy of up to one mill under this section.

~~It is the intent of the legislative assembly that counties or cities allocate an amount equal to one third of one mill of property tax revenue from their funds raised or received under section 57-15-06, 57-15-08, or 57-39.2-26.1, or any combination of those fund sources, for senior citizen services and programs for each taxable year. A continuing appropriation of state matching funds and expectation of a local matching fund effort is initiated because of the anticipated increase in state aid distribution fund allocations, with the intent of stabilizing matching funds for senior citizen services and programs at a funding level of one mill for all participating counties. A county is not required to provide the one third of one mill matching funds if the county program can be covered with the funding from the state and the levy under this section in the county. It is also anticipated that this change in funding will allow reduction of mill levies under this section in some counties, which will allow allocation of unused amounts under section 57-39.2-26.2 among counties levying the statutory maximum amount for taxable year 2004.~~

SECTION 2. AMENDMENT. Section 57-39.2-26.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.2. Allocation of revenues to senior citizen services and programs matching fund - Continuing appropriation.

Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections equal to the amount of revenue that would have been generated by a levy of ~~two-thirds~~three-fourths of one mill on the taxable valuation of all property in the state subject to a levy under section 57-15-56 in the previous taxable year must be deposited by the state treasurer in the senior citizen services and programs fund during the period from July first through December thirty-first of each year. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax revenues which must be deposited in the fund as determined under this section. Revenues deposited in the senior citizen services and programs fund are provided as a standing and continuing appropriation for allocation as provided in subsection 5 of section 57-15-56. Any unexpended and unobligated amount in the senior citizen services and programs fund at the end of ~~the 2005-07 biennium~~ must be allocated among counties that levied the statutory maximum mill levy for taxable year 2004 in proportion to the dollars generated by those levies in those counties for that year but the allocation to any county may not exceed the difference between combined funding for the county's senior citizen services and programs for taxable year 2004 and the combined funding for those services and programs for taxable year 2006 and any remaining unexpended and unobligated amount at the end of any biennium must be transferred by the state treasurer to the state general fund.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 20, 2011
Filed April 20, 2011

CHAPTER 454

HOUSE BILL NO. 1100

(Political Subdivisions Committee)
(At the request of the Office of Management and Budget)

AN ACT to amend and reenact section 57-22-11 of the North Dakota Century Code, relating to certification of uncollectible taxes to the director of the office of management and budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-22-11 of the North Dakota Century Code is amended and reenacted as follows:

57-22-11. Cancellation of uncollectible taxes.

At its regular meeting in January of each year, the board of county commissioners shall examine the sheriff's report on personal property taxes and compare the same with the tax lists of the auditor and treasurer, and, upon such report, may cancel such taxes as the board is satisfied cannot be collected. The items of tax so canceled must be noted on the tax lists of the treasurer and auditor, ~~and the~~ The auditor forthwith shall make a report to the sheriff of the tax items canceled ~~and also shall certify to the director of the state office of management and budget the amount of state taxes canceled,~~ and the same must be credited to the county.

Approved April 11, 2011
Filed April 11, 2011

CHAPTER 455

SENATE BILL NO. 2263

(Senator Cook)

AN ACT to amend and reenact sections 57-33.2-06 and 57-33.2-07 and subsection 3 of section 57-33.2-19 of the North Dakota Century Code, relating to reporting dates and allocation for electric generation, distribution, and transmission taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-33.2-06 of the North Dakota Century Code is amended and reenacted as follows:

57-33.2-06. Transmission and distribution line location reports to county auditors.

By ~~May first~~April fifteenth of each year, each transmission or distribution company shall file, with the county auditor of each county in which any of its transmission or distribution line is located, a report showing the length and nominal operating voltage of its transmission and distribution line within the county and within each taxing district within the county. Reports under this section must be based upon nominal operating voltage, ownership, and location of transmission and distribution lines as of January first of each year. Reports under this section must be prepared to distinguish transmission lines from distribution lines. By ~~April~~February first of each year, the county auditor shall provide each transmission or distribution company having a transmission or distribution line in the county with an accurate map of the county showing the boundaries of each taxing district in the county.

SECTION 2. AMENDMENT. Section 57-33.2-07 of the North Dakota Century Code is amended and reenacted as follows:

57-33.2-07. Filing of reports with commissioner.

By ~~May~~June first of each year, each wind farm, wind generator, and generator of electricity from sources other than coal subject to the coal conversion tax and each transmission company, distribution company, and each company that is both a transmission company and a distribution company shall file with the commissioner on a form prescribed by the commissioner any and all information required by the commissioner. The form must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the August meeting of the state board of equalization. Required information includes:

1. 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, 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 filed with any county auditor under section 57-33.2-06.
 3. A report on the megawatt-hours of electricity produced by wind generators and generators of electricity from sources other than coal in each county in the state and a map showing the location of each generator and its rated capacity, and all components of the collector system, if any.
 4. A report on the megawatt-hours of electricity delivered for retail sale to consumers in each taxing district in each county during the most recently completed calendar year.

SECTION 3. AMENDMENT. Subsection 3 of section 57-33.2-19 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Revenue from the generation taxes under section 57-33.2-04 must be allocated to the county in which the generator is located. Revenue received by the county under this subsection must be allocated among taxing districts in which the generator is located in proportion to their respective most recent property tax mill rates that apply to the land on which the generator is located.
- b. Revenue from the generation taxes under section 57-33.2-04 from wind farms must be allocated to the county and among taxing districts in which the wind farm and associated collector system, wind generator, or other generation unit is located in proportion to their respective most recent property tax mill rates that apply to the land on which the wind farm is located. For purposes of revenue allocation when generation turbines are located in more than one county or other taxing district, the capacity tax in subdivision a of subsection 1 of section 57-33.2-04 must be based on the capacity of the turbines within each county or taxing district. The electricity output for the kilowatt-hour tax in subdivision b of subsection 1 of section 57-33.2-04 must be allocated according to the proportionate share of wind generation capacity within each county or other taxing district in relation to the total capacity of the wind farm.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 456

SENATE BILL NO. 2249

(Senator Olafson)
(Representative Klemm)

AN ACT to amend and reenact sections 35-20-16, 35-34-04, and 41-09-73, subsection 2 of section 41-09-87, subsection 5 of section 57-34-10, subsection 4 of section 57-36-09.5, section 57-38-49, subsection 4 of section 57-39.2-13, subsection 4 of section 57-40.2-16, subsection 3 of section 57-40.3-07.1, subsection 4 of section 57-43.1-17.4, subsection 4 of section 57-43.2-16.3, subsection 4 of section 57-43.3-22, subsection 2 of section 57-51-11, and subsection 4 of section 57-63-10 of the North Dakota Century Code, relating to the contents of a child support lien filed with the secretary of state, the contents of a vessel lien for the collection of child support, the contents of a financing statement, the filing of a financing statement, a tax lien on a telecommunications carrier, a tax lien for the collection of taxes on tobacco products, a tax lien for the collection of income taxes, a tax lien for the collection of sales tax, a tax lien for the collection of use tax, a tax lien for the collection of motor vehicle excise tax, a tax lien for the collection of motor vehicle fuel tax, a tax lien for the collection of special fuels and importer for use tax; and to declare an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-20-16 of the North Dakota Century Code is amended and reenacted as follows:

35-20-16. Procedure to obtain unpaid earned property or casualty insurance premium lien - Filing.

The secretary of state shall prescribe a form that can be used to obtain a lien under this section and also be entered in the central indexing system. Any person entitled to an unpaid earned property or casualty insurance premium lien, within ninety days after termination of coverage, shall file in the office of the recorder of the county or counties in which the property covered by the policy is located and with any loss payee named in the policy, a verified statement in writing stating all of the following:

1. The name and address of the policyholder.
2. The name and address of the lienholder.
3. ~~The social security number of the debtor, or in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of that person.~~
4. The nature and quantity of insurance coverage provided.
- ~~5.~~ 4. The amount of unpaid earned premium.
- ~~6.~~ 5. A description of the property covered by the insurance and subject to the lien.

~~7-6.~~ That a lien is claimed upon the property described.

¹⁴⁶ **SECTION 2. AMENDMENT.** Section 35-34-04 of the North Dakota Century Code is amended and reenacted as follows:

35-34-04. Vessel lien.

1. In the case of a vessel, the child support agency may establish a lien by filing a notice of lien with the secretary of state if the value of the vessel is estimated to be at least twice the cost of establishing the lien. The notice must contain a description of the make, model designation, and serial number of the vessel, including its identification or registration number, if any, and the name, ~~social security number,~~ and last-known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's last-known address.
2. Upon filing of the notice of lien in accordance with this section, the notice of lien must be indexed by the secretary of state in the central indexing system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.
3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the recorder.
4. A lien under this section is perfected when notice of the lien is filed with the secretary of state.
5. The child support agency may file an amendment to correct the ~~social security number of the obligor,~~ to correct the spelling of the obligor's name, or to correct or change the address of the obligor.

¹⁴⁷ **SECTION 3. AMENDMENT.** Section 41-09-73 of the North Dakota Century Code is amended and reenacted as follows:

41-09-73. (9-502) Contents of financing statement - Record of mortgage as financing statement - Time of filing financing statement - Amending financing statement.

1. Subject to subsection 2, a financing statement is sufficient only if the statement:
 - a. Provides the name of the debtor;
 - b. Provides the name of the secured party or a representative of the secured party;
 - c. Indicates the collateral covered by the financing statement;

¹⁴⁶ Section 35-34-04 was also amended by section 10 of Senate Bill No. 2258, chapter 251.

¹⁴⁷ Section 41-09-73 was also amended by section 10 of House Bill No. 1137, chapter 304.

- d. If it is a financing statement that is to be filed to gain protection under the central notice system, includes a reasonable description of the property, including the county in which the property is located, and any other additional information required by the Food Security Act of 1985 [Pub. L. 99-198; Stat. 1535; 7 U.S.C. 1631], as prescribed by the secretary of state, and, to be sufficient a financing statement must include ~~the social security number or federal tax identification number of the debtor;~~ the name and address of the secured party; and unless electronically filed, the signatures of the debtor and secured parties;
 - e. ~~Provides the social security number or federal tax identification number of the debtor;~~
 - f. Provides a mailing address for the secured party; and
 - ~~g-f.~~ Provides a mailing address for the debtor.
2. Except as otherwise provided in subsection 2 of section 41-09-72, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection 1 and also:
 - a. Indicate that it covers this type of collateral;
 - b. Indicate that it is to be filed for record in the real property records;
 - c. Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
 - d. If the debtor does not have an interest of record in the real property, provide the name of a record owner.
 3. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
 - a. The record indicates the goods or accounts that it covers;
 - b. The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
 - c. The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
 - d. The record is duly recorded.
 4. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.
 5. A financing statement filed to gain protection under the central notice system must be amended within three months of a material change to reflect that

change. The amended financing statement must be signed by both the debtor and secured party and filed in the same manner as the original financing statement. An electronically filed amendment does not need to be signed.

6. Any social security number or federal tax identification number submitted ~~under subdivision e of subsection 1 on a financing statement filed pursuant to this chapter~~ as a central indexing filing prior to January 1, 2012, is an exempt record as defined by subsection 5 of section 44-04-17.1 and, ~~for documents submitted after January 1, 2002~~, may not be disclosed as part of any search under section 41-09-94 or 41-09-96 or as part of a copy of the record. ~~After December 31, 2011, a debtor's social security number or federal tax identification number may not be filed only pursuant to this chapter~~ in the filing office with the central indexing system and may not be recorded in the real property records.

¹⁴⁸ **SECTION 4. AMENDMENT.** Subsection 2 of section 41-09-87 of the North Dakota Century Code is amended and reenacted as follows:

2. Filing does not occur with respect to a record that a filing office refuses to accept because:
 - a. The record is not communicated by a method or medium of communication authorized by the filing office;
 - b. An amount equal to or greater than the applicable filing fee is not tendered;
 - c. The filing office is unable to index the record because:
 - (1) In the case of an initial financing statement, the record does not provide a name for the debtor;
 - (2) In the case of an amendment or correction statement, the record:
 - (a) Does not identify the initial financing statement as required by section 41-09-83 or 41-09-89, as applicable; or
 - (b) Identifies an initial financing statement whose effectiveness has lapsed under section 41-09-86;
 - (3) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
 - (4) In the case of a record filed or recorded in the filing office described in subdivision a of subsection 1 of section 41-09-72, the record does not provide a sufficient description of the real property to which it relates;
 - d. In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

¹⁴⁸ Section 41-09-87 was also amended by section 14 of House Bill No. 1137, chapter 304.

- e. In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
 - (1) Provide a mailing address for the debtor;
 - (2) Indicate whether the debtor is an individual or an organization; or
 - (3) If the financing statement indicates that the debtor is an organization, provide:
 - (a) A type of organization for the debtor;
 - (b) A jurisdiction of organization for the debtor; or
 - (c) An organizational identification number for the debtor or indicate that the debtor has none;
- f. In the case of an assignment reflected in an initial financing statement under subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of section 41-09-85, the record does not provide a name and mailing address for the assignee;
- g. In the case of a continuation statement, the record is not filed within the six-month period prescribed by subsection 4 of section 41-09-86; ~~or~~
- ~~h. The record does not contain the social security number or the federal tax identification number of the debtor.~~

SECTION 5. AMENDMENT. Subsection 5 of section 57-34-10 of the North Dakota Century Code is amended and reenacted as follows:

- 5. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the tax commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in subsection 4, takes free of, or has priority over, the lien. The tax commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d-c.~~ The date and time the notice of lien was indexed.
 - ~~e-d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. The tax commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

SECTION 6. AMENDMENT. Subsection 4 of section 57-36-09.5 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d.c.~~ The date and time the notice of lien was indexed.
 - e.d. The amount of the lien.

The notice of lien is effective as of eight a.m. next day following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

SECTION 7. AMENDMENT. Section 57-38-49 of the North Dakota Century Code is amended and reenacted as follows:

57-38-49. Preservation of lien.

Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in section 57-38-48, takes free of, or has priority over, the lien. The commissioner shall index in the central indexing system the following data:

1. The name of the taxpayer.
2. ~~The tax identification number or social security number of the taxpayer.~~
3. The name "State of North Dakota" as claimant.
- 4.3. The date and time the notice of lien was indexed.
- 5.4. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

SECTION 8. AMENDMENT. Subsection 4 of section 57-39.2-13 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.

- ~~d-c.~~ The date and time the notice of lien was indexed.
- ~~e-d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

SECTION 9. AMENDMENT. Subsection 4 of section 57-40.2-16 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d-c.~~ The date and time the notice of lien was indexed.
 - ~~e-d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

SECTION 10. AMENDMENT. Subsection 3 of section 57-40.3-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d-c.~~ The date and time the notice of lien was indexed.
 - ~~e-d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner is exempt from the payment of fees otherwise provided by law for the indexing or the satisfaction of the lien.

SECTION 11. AMENDMENT. Subsection 4 of section 57-43.1-17.4 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d.c.~~ The date and time the notice of lien was indexed.
 - e.d. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

SECTION 12. AMENDMENT. Subsection 4 of section 57-43.2-16.3 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d.c.~~ The date and time the notice of lien was indexed.
 - e.d. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

SECTION 13. AMENDMENT. Subsection 4 of section 57-43.3-22 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d.c.~~ The date and time the notice of lien was indexed.
 - e.d. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

SECTION 14. AMENDMENT. Subsection 2 of section 57-51-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in this state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien. The commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. ~~The tax identification number or social security number of the taxpayer.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d.c.~~ The date and time the notice of lien was indexed.
 - ~~e.d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. of the first day following the indexing of the notice. A notice of lien filed by the commissioner with a recorder before August 1, 1997, may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

SECTION 15. AMENDMENT. Subsection 4 of section 57-63-10 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the facility.
 - b. ~~The tax identification number of the facility or social security number of the owner, officer, or manager of the facility.~~
 - e. The name "State of North Dakota" as claimant.
 - ~~d.c.~~ The date and time the notice of lien was indexed.
 - ~~e.d.~~ The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. A notice of lien filed by the commissioner with the recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

SECTION 16. EFFECTIVE DATE. This Act becomes effective January 1, 2012.

CHAPTER 457

HOUSE BILL NO. 1047

(Legislative Management)
(Taxation Committee)

AN ACT to amend and reenact sections 57-15-01.1, 57-35.3-03, 57-35.3-05, 57-35.3-07, 57-35.3-08, and 57-38-30, subsection 1 of section 57-38-30.3, and sections 57-64-01, 57-64-02, 57-64-03, and 57-64-04 of the North Dakota Century Code and section 13 of chapter 520 of the 2007 Session Laws, relating to reduction of the rate of the financial institutions tax and adjustment of the allocation of the tax, a reduction in income tax rates for corporations, individuals, estates, and trusts, and allocation of state funding to school districts for mill levy reduction grants and property tax levies of school districts; to repeal chapter 57-16 of the North Dakota Century Code, relating to certain excess levies of school districts; to provide an appropriation; to provide for a transfer; to provide for legislative management studies; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-01.1. Protection of taxpayers and taxing districts.

Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section:
 - a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year. For a park district general fund, the "amount levied in dollars in property taxes" is the sum of amounts levied in dollars in property taxes for the general fund under section 57-15-12 including any additional levy approved by the electors, the insurance reserve fund under section 32-12.1-08, the employee health care program under section 40-49-12, the public recreation system under section 40-55-09 including any additional levy approved by the electors, forestry purposes under section 57-15-12.1 except any additional levy approved by the electors, pest control under section 4-33-11, and handicapped person programs and activities under section 57-15-60;
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section;
 - c. "Calculated mill rate" means the mill rate that results from dividing the base year taxes levied by the sum of the taxable value of the taxable

- property in the base year plus the taxable value of the property exempt by local discretion or charitable status, calculated in the same manner as the taxable property; and
- d. "Property exempt by local discretion or charitable status" means property exempted from taxation as new or expanding businesses under chapter 40-57.1; improvements to property under chapter 57-02.2; or buildings belonging to institutions of public charity, new single-family residential or townhouse or condominium property, property used for early childhood services, or pollution abatement improvements under section 57-02-08.
3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable property and property exempt by local discretion or charitable status which is not included in the taxing district for the budget year but was included in the taxing district for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable property or property exempt by local discretion or charitable status which was not included in the taxing district for the base year but which is included in the taxing district for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district. For purposes of this subdivision, an expired temporary mill levy increase does not include a school district general fund mill rate exceeding one hundred ten mills which has expired or has not received approval of electors for an extension under subsection 2 of section 57-64-03.
 - d. Increased, for a school district determining its levy limitation under this section, by the amount the school district's mill levy reduction grant under section 57-64-02 for the base year exceeds the amount of the school district's mill levy reduction grant under section 57-64-02 for the budget year.
 - e. Reduced for a school district determining its levy limitation under this section, by the amount the school district's mill levy reduction grant under section 57-64-02 for the budget year exceeds the amount of the school district's mill levy reduction grant under section 57-64-02 for the base year.
 4. In addition to any other levy limitation factor under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.

5. Under this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
6. A school district choosing to determine its levy authority under this section may apply subsection 3 only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply subsection 3 to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to subsection 3.
7. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 2. AMENDMENT. Section 57-35.3-03 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-03. Imposition and basis of tax.

An annual tax is imposed upon each financial institution for the grant to it of the privilege of transacting, or for the actual transacting by it, of business within this state during any part of each tax year. The tax is based upon and measured by the taxable income of the financial institution for the calendar year. The rate of tax is ~~seven~~ six and one-half percent of taxable income, but the amount of tax may not be less than fifty dollars.

¹⁴⁹ **SECTION 3. AMENDMENT.** Section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-05. Credits.

1. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of higher education located within the state or to the North Dakota independent college fund. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven tenths~~ four and six tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

¹⁴⁹ Section 57-35.3-05 was amended by section 1 of Senate Bill No. 2160, chapter 458, section 4 of Senate Bill No. 2210, chapter 398, and section 1 of House Bill No. 1124, chapter 459.

- b. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of charitable contributions made by the taxpayer during the taxable year to nonprofit private institutions of secondary education located within the state. The amount allowable as a credit under this subdivision for any taxable year may not exceed ~~five and seven tenths~~four and six tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.
 - c. For the purposes of this subsection, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the department of public instruction and which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through twelfth grades.
 - d. For the purposes of this subsection, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed for filing the return for the taxable year.
2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to the extent that the overpayment would have been an allowable deduction from tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the current taxable year. The amount allowable as a credit under this subsection for any taxable year may not exceed five-sevenths of the tax before credits allowed under this section.
- b. For purposes of determining distributions to and from the counties under section 57-35.3-09:
 - (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
 - (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
 - (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.

3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. The amount allowable as a credit under this subsection for any taxable year may not exceed ~~five and seven tenths~~ four and six tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.

¹⁵⁰ **SECTION 4. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-07. Payment of tax.

~~Two sevenths~~ Three thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 1 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. ~~Five sevenths~~ Ten thirteenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

SECTION 5. AMENDMENT. Section 57-35.3-08 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-08. Disposition of tax.

The commissioner shall deposit the portion of the tax payable in the year the return is due in the general fund of the state treasury and shall deposit the portion of the tax payable in the year after the return is due in the financial institution tax distribution fund of the state treasury, ~~which is hereby created~~. Interest, penalty, and late tax payments attributable to each portion of the tax must be deposited in the appropriate fund.

¹⁵¹ **SECTION 6. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations.

A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. a. For the first twenty-five thousand dollars of taxable income, at the rate of ~~two one and one tenth~~ sixty-eight hundredths percent.

¹⁵⁰ Section 57-35.3-07 was also amended by section 2 of House Bill No. 1124, chapter 459, section 2 of Senate Bill No. 2160, chapter 458, and section 5 of Senate Bill No. 2210, chapter 398.

¹⁵¹ Section 57-38-30 was also amended by section 9 of House Bill No. 1039, chapter 54.

- b. On all taxable income exceeding twenty-five thousand dollars and not exceeding fifty thousand dollars, at the rate of ~~five~~four and ~~twenty-five~~twenty-three hundredths percent.
- c. On all taxable income exceeding fifty thousand dollars, at the rate of ~~six~~five and ~~four~~ten~~ths~~ths ~~fifteen~~hundredths percent.
2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

¹⁵² **SECTION 7. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

- a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$33,950 <u>\$34,500</u>	1.84% <u>1.51%</u>
Over \$33,950 <u>\$34,500</u>	\$624.68 <u>\$520.95</u> plus 3.44% <u>2.82%</u>
but not over \$82,250 <u>\$83,600</u>	of amount over \$33,950 <u>\$34,500</u>
Over \$82,250 <u>\$83,600</u>	\$2,286.20 <u>\$1,905.57</u> plus 3.84% <u>3.13%</u>
but not over \$174,550 <u>\$174,400</u>	of amount over \$82,250 <u>\$83,600</u>
Over \$174,550 <u>\$174,400</u>	\$5,688.53 <u>\$4,747.61</u> plus 4.42% <u>3.63%</u>
but not over \$372,950 <u>\$379,150</u>	of amount over \$174,550 <u>\$174,400</u>
Over \$372,950 <u>\$379,150</u>	\$14,590.44 <u>\$12,180.04</u> plus 4.86% <u>3.99%</u>
	of amount over \$372,950 <u>\$379,150</u>

- b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:	The tax is equal to:
Not over \$56,750 <u>\$57,700</u>	1.84% <u>1.51%</u>
Over \$56,750 <u>\$57,700</u>	\$1,044.20 <u>\$871.27</u> plus 3.44% <u>2.82%</u>
but not over \$137,050 <u>\$139,350</u>	of amount over \$56,750 <u>\$57,700</u>

¹⁵² Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 8 of House Bill No. 1124, chapter 459, section 10 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2208, chapter 463.

Over <u>\$137,050</u> <u>\$139,350</u>	<u>\$3,806.52</u> <u>\$3,173.80</u> plus 3.81% <u>3.13%</u>
but not over <u>\$208,850</u> <u>\$212,300</u>	of amount over <u>\$137,050</u> <u>\$139,350</u>
Over <u>\$208,850</u> <u>\$212,300</u>	<u>\$6,542.10</u> <u>\$5,457.14</u> plus 4.42% <u>3.63%</u>
but not over <u>\$372,950</u> <u>\$379,150</u>	of amount over <u>\$208,850</u> <u>\$212,300</u>
Over <u>\$372,950</u> <u>\$379,150</u>	<u>\$13,795.32</u> <u>\$11,513.79</u> plus 4.86% <u>3.99%</u>
	of amount over <u>\$372,950</u> <u>\$379,150</u>

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to: Not over
<u>\$28,375</u> <u>\$28,850</u>	<u>1.84%</u> <u>1.51%</u>
Over <u>\$28,375</u> <u>\$28,850</u>	<u>\$522.10</u> <u>\$435.64</u> plus 3.44% <u>2.82%</u>
but not over <u>\$68,525</u> <u>\$69,675</u>	of amount over <u>\$28,375</u> <u>\$28,850</u>
Over <u>\$68,525</u> <u>\$69,675</u>	<u>\$1,903.26</u> <u>\$1,586.90</u> plus 3.81% <u>3.13%</u>
but not over <u>\$104,425</u> <u>\$106,150</u>	of amount over <u>\$68,525</u> <u>\$69,675</u>
Over <u>\$104,425</u> <u>\$106,150</u>	<u>\$3,271.05</u> <u>\$2,728.57</u> plus 4.42% <u>3.63%</u>
but not over <u>\$186,475</u> <u>\$189,575</u>	of amount over <u>\$104,425</u> <u>\$106,150</u>
Over <u>\$186,475</u> <u>\$189,575</u>	<u>\$6,897.66</u> <u>\$5,756.90</u> plus 4.86% <u>3.99%</u>
	of amount over <u>\$186,475</u> <u>\$189,575</u>

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over <u>\$45,500</u> <u>\$46,250</u>	<u>1.84%</u> <u>1.51%</u>
Over <u>\$45,500</u> <u>\$46,250</u>	<u>\$837.20</u> <u>\$698.38</u> plus 3.44% <u>2.82%</u>
but not over <u>\$117,450</u> <u>\$119,400</u>	of amount over <u>\$45,500</u> <u>\$46,250</u>
Over <u>\$117,450</u> <u>\$119,400</u>	<u>\$3,312.28</u> <u>\$2,761.21</u> plus 3.81% <u>3.13%</u>
but not over <u>\$190,200</u> <u>\$193,350</u>	of amount over <u>\$117,450</u> <u>\$119,400</u>
Over <u>\$190,200</u> <u>\$193,350</u>	<u>\$6,084.06</u> <u>\$5,075.84</u> plus 4.42% <u>3.63%</u>
but not over <u>\$372,950</u> <u>\$379,150</u>	of amount over <u>\$190,200</u> <u>\$193,350</u>
Over <u>\$372,950</u> <u>\$379,150</u>	<u>\$14,161.64</u> <u>\$11,820.38</u> plus 4.86% <u>3.99%</u>
	of amount over <u>\$372,950</u> <u>\$379,150</u>

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over \$2,300	<u>1.84%</u> <u>1.51%</u>
Over \$2,300	<u>\$42.32</u> <u>\$34.73</u> plus 3.44% <u>2.82%</u>
but not over <u>\$5,350</u> <u>\$5,450</u>	of amount over \$2,300
Over <u>\$5,350</u> <u>\$5,450</u>	<u>\$147.24</u> <u>\$123.56</u> plus 3.81% <u>3.13%</u>
but not over <u>\$8,200</u> <u>\$8,300</u>	of amount over <u>\$5,350</u> <u>\$5,450</u>
Over <u>\$8,200</u> <u>\$8,300</u>	<u>\$255.83</u> <u>\$212.77</u> plus 4.42% <u>3.63%</u>
but not over <u>\$11,450</u> <u>\$11,350</u>	of amount over <u>\$8,200</u> <u>\$8,300</u>
Over <u>\$11,450</u> <u>\$11,350</u>	<u>\$386.22</u> <u>\$323.48</u> plus 4.86% <u>3.99%</u>
	of amount over <u>\$11,450</u> <u>\$11,350</u>

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

- (1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and

- (2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

- g. ~~For taxable years beginning after December 31, 2009, the~~The tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.
- h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

SECTION 8. AMENDMENT. Section 57-64-01 of the North Dakota Century Code is amended and reenacted as follows:

57-64-01. Definitions.

For purposes of this chapter:

1. "Combined education mill rate" means the combined number of mills levied by a school district for the general fund, high school tuition, and high school transportation.
2. "Qualifying school district" means a school district that meets the conditions and requirements of this chapter to receive a mill levy reduction grant.
3. ~~"Weighted student unit" means weighted student unit as determined for the school district under chapter 15.1-27.~~

SECTION 9. AMENDMENT. Section 57-64-02 of the North Dakota Century Code is amended and reenacted as follows:

57-64-02. Mill levy reduction allocation and grant.

Each qualifying school district in the state is entitled to a mill levy reduction allocation and grant as provided in this chapter, subject to legislative appropriation to the superintendent of public instruction.

1. The mill levy reduction allocation rate for each qualifying school district is equal to the payments to the school district based on the per student payment rate as determined for the school year under chapter 15.1-27.

2. The grant to a qualifying school district may not exceed the smallest of:
 - a. The allocation determined under subsection 1;
 - b. The taxable valuation of property in the school district in the previous taxable year times the number of mills determined by subtracting one hundred mills from the combined education mill rate of the school district for taxable year 2008; or
 - c. The taxable valuation of property in the school district in the previous taxable year times seventy-five mills.
3. The grant to a qualifying school district may not be less than the grant to that school district in the preceding school year.
4. The grant to a qualifying school district may not exceed the grant to that school district in the preceding school year by a percentage that is more than the percentage increase in statewide taxable valuation which was determined for the previous taxable year.
5. For purposes of this section, "taxable valuation" means the valuation to which the mill rate is applied to determine the amount of ad valorem taxes or payments in lieu of taxes, and includes taxable valuation determined for agricultural, residential, and commercial property; gas company property, pipeline property, power company property, and railroad property assessed by the state board of equalization under chapter 57-06; mobile homes under chapter 57-55; land controlled by the game and fish department subject to valuation under chapter 57-02.1; land owned by the board of university and school lands or the state treasurer subject to valuation under chapter 57-02.3; national guard land subject to valuation under chapter 37-07.3; farmland or ranchland owned by nonprofit organizations for conservation purposes subject to valuation under section 10-06.1-10; land acquired by the state water commission for the Devils Lake project subject to valuation under chapter 61-02; a workforce safety and insurance building and associated real property subject to valuation under section 65-02-32; and carbon dioxide pipeline property subject to valuation under section 57-06-17.2. For purposes of this section, "taxable valuation" includes the taxable valuation of the homestead credit reimbursed by the state under section 57-02-08.2 and the disabled veterans' credit reimbursed by the state under section 57-02-08.8.
- 4-6. The superintendent of public instruction shall report to each qualifying school district by July fifteenth of each year the mill levy reduction grant in dollars available to that school district during the upcoming school year.
- 5-7. By December first, January first, February first, and March first of each school year, the superintendent of public instruction shall forward to each qualifying school district installments equal to twenty-five percent of the total mill levy reduction grant the district is eligible to receive during that school year.
- 6-8. Allocations to a school district under this chapter are not considered per student payments or state aid for purposes of chapter 15.1-27.
- 7-9. For all purposes under law relating to allocation of funds among political subdivisions based on property tax levies, property taxes levied by a school

district are the amount that would have been levied without the mill reduction grant provided to the school district under this chapter.

SECTION 10. AMENDMENT. Section 57-64-03 of the North Dakota Century Code is amended and reenacted as follows:

57-64-03. School district levy compliance.

1. To be eligible to receive a grant under this chapter, a qualifying school district must establish a spending level that does not result in a general fund mill rate exceeding one hundred ten mills. The certificate of levy form filed with the county auditor by a qualifying school district must reflect the revenue to be received by the school district under this chapter and that the general fund mill rate for the school district will not exceed one hundred ten mills unless:
 - a. The district has approval of a majority of the electors of the school district for a higher levy;
 - b. The higher levy is the result of a school district reorganization in compliance with chapter 15.1-12; ~~or~~
 - c. The higher levy does not produce an amount in dollars exceeding the amount allowed under section 57-15-01.1 ~~for taxable year 2008~~ reduced by the amount of the school district's mill levy reduction grant under section 57-64-02 for the budget year; or
 - d. The district has authority for a higher levy under subdivision b of subsection 2.
2. The authority under subdivision a or b of subsection 1 for a school district to levy a general fund mill rate exceeding one hundred ten mills applies for not more than ten taxable years at a time after taxable year 2008 unless a majority of the electors of the school district approve an extension of that authority. Approval by electors of extension of levy authority under subdivision a or b of subsection 1 is effective for not more than ten taxable years at a time. A ballot measure for approval by electors of extension of levy authority under subdivision a or b of subsection 1 is subject to the following:
 - a. The ballot measure must specify the number of mills for the general fund mill rate for which approval is sought.
 - b. If a ballot measure for approval of extension of levy authority ~~to levy a specific number of mills under this subsection~~ is not approved by a majority of the electors of the school district voting on the question, the school district general fund levy limitation for subsequent years is subject to the limitations as determined for the school district's budget year under section 57-15-01.1 or 57-15-14, whichever produces the higher levy limitation.

SECTION 11. AMENDMENT. Section 57-64-04 of the North Dakota Century Code is amended and reenacted as follows:

57-64-04. Levy reduction priority.

In setting mill rates for qualified school districts, the county auditor shall apply funds allocated to a school district under this chapter for mill levy reduction first to reduce the number of mills levied for general fund purposes and, if allocation funds

remain after the general fund mill rate is reduced to zero, the balance must be applied to reduce the high school tuition levy and, if allocation funds remain after the high school tuition levy mill rate is reduced to zero, then to reduce the high school transportation levy of the qualified school district.

SECTION 12. REPEAL. Chapter 57-16 of the North Dakota Century Code is repealed.

SECTION 13. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$341,790,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of allocation of mill levy reduction grants to school districts under chapter 57-64, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 14. TRANSFER - PROPERTY TAX RELIEF SUSTAINABILITY FUND - GENERAL FUND. The office of management and budget shall transfer the sum of \$295,000,000 from the property tax relief sustainability fund to the general fund on July 1, 2011.

SECTION 15. AMENDMENT. Section 13 of chapter 520 of the 2007 Session Laws is amended and reenacted as follows:

SECTION 13. LEGISLATIVE COUNCIL MANAGEMENT STUDY. The legislative ~~council~~management shall study in each interim through 2012 the feasibility and desirability of property tax reform and providing property tax relief to taxpayers of the state, with the goal of reduction of each taxpayer's annual property tax bill to an amount that is not more than one and one-half percent of the true and full value of property, and including examination of the proper measure of education funding from local taxation and state resources and the variability of funding resources among taxing districts and examination of improved collection and reporting of property tax information to identify residency of property owners with minimized administrative difficulty. The legislative management shall consider the sustainability of state-funded property tax relief in view of the compounding effect of ongoing property taxable valuation increases. The legislative ~~council~~management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the legislative assembly subsequent to each interim.

SECTION 16. LEGISLATIVE MANAGEMENT STUDY - FINANCIAL INSTITUTIONS AND CORPORATE INCOME TAXATION. During the 2011-12 interim, the legislative management shall consider studying the feasibility and desirability of revision of the financial institutions taxes, including the feasibility of taxing financial institutions under the state corporate income tax laws. The study under this section must include consideration of corporate income taxes, including corporate income apportionment factors and potential impact of federal legislation on state corporate income taxes. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 17. EFFECTIVE DATE. Sections 1 through 7 of this Act are effective for taxable years beginning after December 31, 2010. The remainder of this Act is effective July 1, 2011.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 458

SENATE BILL NO. 2160

(Senators Krebsbach, Flakoll, Mathern)
(Representatives Sanford, N. Johnson, Streylo)

AN ACT to create and enact subsection 4 to section 57-35.3-05 of the North Dakota Century Code, relating to a financial institutions tax credit for charitable gifts to qualified endowments by financial institutions; to amend and reenact sections 57-35.3-07 and 57-38-01.21 of the North Dakota Century Code, relating to the tax credit for charitable gifts, planned gifts, or endowments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵³ **SECTION 1.** Subsection 4 to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

4. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a financial institution under this subsection for charitable gifts made in a taxable year may not exceed ten thousand dollars. For the purposes of the credit allowed in this subsection, subsections 1, 6, and 8 of section 57-38-01.21 apply. A charitable gift used as the basis for a credit claimed under this subsection may not be used as the basis for the claim of a credit under any other provision of this chapter.

¹⁵⁴ **SECTION 2. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-07. Payment of tax.

Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the ~~credit~~ credits allowed under ~~subsections~~ subsections 1 and 4 of section 57-35.3-05, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

¹⁵³ Section 57-35.3-05 was also amended by section 4 of Senate Bill No. 2210, chapter 398, section 3 of House Bill No. 1047, chapter 457, and section 1 of House Bill No. 1124, chapter 459.

¹⁵⁴ Section 57-35.3-07 was also amended by section 4 of House Bill No. 1047, chapter 457, section 2 of House Bill No. 1124, chapter 459, and section 5 of Senate Bill No. 2210, chapter 398.

¹⁵⁵ **SECTION 3. AMENDMENT.** Section 57-38-01.21 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.21. ~~Planned~~Charitable gifts, ~~planned~~ gifts, and qualified endowments credit - Definitions.

1. For purposes of this section:

- a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.
- b. "Planned gift" means an irrevocable ~~contribution~~charitable gift to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the ~~contribution~~charitable gift uses any of the following techniques that are authorized under the Internal Revenue Code:

- (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
- (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
- (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
- (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
- (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
- (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
- (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a ~~contribution~~charitable gift using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the ~~contribution~~planned gift.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the ~~contribution~~planned gift.

¹⁵⁵ Section 57-38-01.21 was also amended by section 4 of House Bill No. 1124, chapter 459.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the ~~contribution~~planned gift.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

- c. "Qualified endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:
 - (1) A qualified nonprofit organization; or
 - (2) A bank or trust company holding the fund on behalf of a qualified nonprofit organization.
 - d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.
2.
 - a. An individual is allowed a tax credit against the tax imposed by section 57-38-30.3 in an amount equal to forty percent of the present value of the aggregate amount of the charitable gift portion of planned gifts made by the taxpayer during the taxable year to a qualified nonprofit organization or qualified endowment. The maximum credit that may be claimed under this subsection for ~~contributions~~planned gifts made in a taxable year is ten thousand dollars for an individual, or twenty thousand dollars for married individuals filing a joint return. The credit allowed under this section may not exceed the taxpayer's income tax liability.
 - b. An individual is allowed a tax credit against the tax imposed by section 57-38-30.3 for making a charitable gift to a qualified endowment. The credit is equal to forty percent of the charitable gift. If an individual makes a single charitable gift to a qualified endowment, the charitable gift must be five thousand dollars or more to qualify for the credit. If an individual makes more than one charitable gift to the same qualified endowment, the aggregate amount of the charitable gifts made to that qualified endowment must be five thousand dollars or more to qualify for the credit. The maximum credit that may be claimed under this subsection for charitable gifts made in a taxable year is ten thousand dollars for an individual or twenty thousand dollars for married individuals filing a joint return. The tax credit allowed under this section may not exceed the taxpayer's income tax liability.
 3. A corporation is allowed a tax credit against the tax imposed by section 57-38-30 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a corporation under this subsection for ~~contributions~~charitable gifts made in a taxable year is ten thousand dollars. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability.

4. An estate or trust is allowed a tax credit in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit ~~allowed that may be claimed~~ under this subsection for ~~contributions~~ charitable gifts made in a taxable year is ten thousand dollars. The allowable credit must be apportioned to the estate or trust and to its beneficiaries on the basis of the income of the estate or trust allocable to each, and the beneficiaries may claim their share of the credit against the tax imposed by section 57-38-30 or 57-38-30.3. A beneficiary may claim the credit only in the beneficiary's taxable year in which the taxable year of the estate or trust ends. Subsections 6 and 7 apply to the estate or trust and its beneficiaries with respect to their respective shares of the apportioned credit.
5. A partnership, subchapter S corporation, or limited liability company treated like a partnership is entitled to a credit in an amount equal to forty percent of a charitable gift to a qualified endowment by the entity during the taxable year. The maximum credit ~~allowed to that may be claimed by~~ the entity under this subsection for ~~charitable gifts and planned gifts~~ made in a taxable year is ten thousand dollars. The credit determined at the entity level must be passed through to the partners, shareholders, or members in the same proportion that the charitable contributions attributable to the ~~charitable gifts and planned gifts~~ under this section are distributed to the partners, shareholders, or members. The partner, shareholder, or member may claim the credit only in the partner's, shareholder's, or member's taxable year in which the taxable year of the partnership, subchapter S corporation, or limited liability company ends. Subsections 6 and 7 apply to the partner, shareholder, or member.
6. The amount of the ~~contribution~~ charitable gift upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in the taxable year in which the credit is first claimed, but only to the extent that the ~~contribution~~ charitable gift reduced federal taxable income.
7. ~~An~~ The unused portion of a credit under this section may be carried forward for up to three taxable years.
8. If a ~~contribution~~ charitable gift for which a credit was claimed is recovered by the taxpayer, an amount equal to the credit claimed in all taxable years must be added to the tax due on the income tax return filed for the taxable year in which the recovery occurs. For purposes of subsection 4, this subsection applies if the estate or trust recovers the ~~contribution~~ charitable gift and the estate or trust and its beneficiaries are liable for the additional tax due with respect to their respective shares of the apportioned credit. For purposes of subsection 5, this subsection applies if the partnership, subchapter S corporation, or limited liability company recovers the ~~contribution~~ charitable gift, and the partner, shareholder, or member is liable for the additional tax due.
9. A charitable gift used as the basis for a credit claimed under this section may not be used as the basis for the claim of a credit under any other provision of this chapter.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 459

HOUSE BILL NO. 1124

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subsection to section 57-38-01.8 of the North Dakota Century Code, relating to the individual income tax credit for installation of geothermal energy devices; to amend and reenact subsection 3 of section 57-35.3-05, section 57-35.3-07, subsections 1 and 6 of section 57-38-01.21, section 57-38-01.28, subsection 1 of section 57-38-01.31, section 57-38-29.3, subsections 2 and 3 of section 57-38-30.3, sections 57-38-59.2 and 57-38.4-01, and subsection 1 of section 57-38.4-02 of the North Dakota Century Code, relating to the tuition scholarship tax credit for financial institution tax purposes, the tax credit for planned gifts and qualified endowments, the marriage penalty tax credit, the employer tax credit for mobilized employees, the long-term care partnership plan insurance coverage tax credit, the qualified dividend and long-term capital gain income tax exclusion, return filing requirements for individuals, withholding on lottery winnings, and the use of the domestic disclosure spreadsheet for the water's edge method election for reporting income; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁶ **SECTION 1. AMENDMENT.** Subsection 3 of section 57-35.3-05 of the North Dakota Century Code is amended and reenacted as follows:

3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient. ~~The amount allowable as a credit under this subsection for any taxable year may not exceed five and seven tenths percent of the tax before credits allowed under this section, or two thousand five hundred dollars, whichever is less.~~

¹⁵⁷ **SECTION 2. AMENDMENT.** Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

¹⁵⁶ Section 57-35.3-05 was also amended by section 1 of Senate Bill No. 2160, chapter 458, section 4 of Senate Bill No. 2210, chapter 398, and section 3 of House Bill No. 1047, chapter 457.

¹⁵⁷ Section 57-35.3-07 was also amended by section 4 of House Bill No. 1047, chapter 457, section 2 of Senate Bill No. 2160, chapter 458, and section 5 of Senate Bill No. 2210, chapter 398.

57-35.3-07. Payment of tax.

Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the ~~credit~~ credits allowed under ~~subsections~~ subsections 1 and 3 of section 57-35.3-05, must be paid to the tax commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be paid to the tax commissioner on or before January fifteenth of the year after the return is due. Payment must be made ~~by check, draft, or money order, payable to in the manner prescribed by the tax commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.~~

SECTION 3. A new subsection to section 57-38-01.8 of the North Dakota Century Code is created and enacted as follows:

An individual taxpayer filing a North Dakota return pursuant to the provisions of this chapter may claim a credit against the tax liability under section 57-38-30.3 for the cost of a geothermal energy device installed after December 31, 2008, and before January 1, 2015, in a building or on property owned or leased by the taxpayer in North Dakota. The credit must be in an amount equal to three percent per year for five years of the actual cost of acquisition and installation of the geothermal energy device.

¹⁵⁸ **SECTION 4. AMENDMENT.** Subsections 1 and 6 of section 57-38-01.21 of the North Dakota Century Code are amended and reenacted as follows:

1. For purposes of this section:
 - a. "Permanent, irrevocable fund" means a fund comprising cash, securities, mutual funds, or other investment assets established for a specific charitable, religious, educational, or eleemosynary purpose and invested for the production or growth of income, or both, which may either be added to principal or expended.
 - b. "Planned gift" means an irrevocable contribution to a North Dakota qualified nonprofit organization or qualified endowment held by or for a North Dakota qualified nonprofit organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:
 - (1) Charitable remainder unitrusts, as defined by 26 U.S.C. 664;
 - (2) Charitable remainder annuity trusts, as defined by 26 U.S.C. 664;
 - (3) Pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);
 - (4) Charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);
 - (5) Charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);
 - (6) Charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

¹⁵⁸ Section 57-38-01.21 was also amended by section 3 of Senate Bill No. 2160, chapter 458.

- (7) Deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);
- (8) Charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B); or
- (9) Paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

"Planned gift" does not include a contribution using a charitable remainder unitrust or charitable remainder annuity trust unless the agreement provides that the trust may not terminate and beneficiaries' interest in the trust may not be assigned or contributed to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the beneficiaries or five years from the date of the contribution.

"Planned gift" does not include a deferred charitable gift annuity unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables used by the internal revenue service in determining federal charitable income tax deductions on the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified nonprofit organization or qualified endowment sooner than the earlier of the date of death of the annuitant or annuitants or five years after the date of the contribution.

"Planned gift" does not include a charitable gift annuity or deferred charitable gift annuity unless the annuity is a qualified charitable gift annuity for federal income tax purposes.

- c. "Qualified endowment" means a permanent, irrevocable fund held by a North Dakota incorporated or established organization that is:
 - (1) A qualified nonprofit organization; or
 - (2) A bank or trust company holding the fund on behalf of a qualified nonprofit organization.
 - d. "Qualified nonprofit organization" means a North Dakota incorporated or established tax-exempt organization under 26 U.S.C. 501(c) to which contributions qualify for federal charitable income tax deductions with an established business presence or situs in North Dakota.
6. The amount of the contribution upon which an allowable credit is computed must be added to federal taxable income in computing North Dakota taxable income in ~~the any~~ taxable year in which the ~~credit is first claimed~~ charitable gift reduces federal taxable income, but only to the extent that the contribution reduced federal taxable income.

SECTION 5. AMENDMENT. Section 57-38-01.28 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.28. Marriage penalty credit.

1. A married couple filing a joint return under section 57-38-30.3 is allowed a credit of not to exceed three hundred dollars per couple as determined under this section. The tax commissioner shall adjust the maximum amount of the credit under this subsection each taxable year at the time and rate adjustments are made to rate schedules under subdivision g of subsection 1 of section 57-38-30.3.
 2. The credit under this section is the difference between the tax on the couple's joint North Dakota taxable income under the rates and income levels in subdivision b of subsection 1 of section 57-38-30.3 and the sum of the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the earned qualified income of the lesser-earning spouse, and the tax under the rates and income levels of subdivision a of subsection 1 of section 57-38-30.3 on the couple's joint North Dakota taxable income, minus the earned qualified income of the lesser-earning spouse.
 3. ~~The tax commissioner shall prepare and make available to taxpayers a comprehensive table showing the credit under this section at brackets of earnings of the lesser-earning spouse and joint taxable income. The brackets of earnings may not be more than two thousand dollars.~~
 4. For a nonresident or part-year resident, the credit under this section must be adjusted based on the percentage calculated under subdivision f of subsection 1 of section 57-38-30.3.
- ~~5.4.~~ For purposes of this section:
- a. "Earned Qualifying income" means the sum of the following, to the extent included in North Dakota taxable income:
 - (1) Earned income as defined in section 32(c)(2) of the Internal Revenue Code;
 - (2) Income received from a retirement pension, profit-sharing, stock bonus, or annuity plan; and
 - (3) Social security benefits as defined in section 86(d)(1) of the Internal Revenue Code.
 - b. "Earned Qualifying income of the lesser-earning spouse" means the earned qualifying income of the spouse with the lesser amount of earned qualifying income for the taxable year minus the sum of:
 - (1) The amount for one exemption under section 151(d) of the Internal Revenue Code; and
 - (2) One-half of the amount of the standard deduction under section 63(c)(2)(A)(4) of the Internal Revenue Code.

SECTION 6. AMENDMENT. Subsection 1 of section 57-38-01.31 of the North Dakota Century Code is amended and reenacted as follows:

1. A taxpayer who is an employer in this state is entitled to a credit against tax liability as determined under ~~section 57-38-29, sections~~ 57-38-30, ~~and 57-38-30.3~~ equal to twenty-five percent of the reduction in compensation that the taxpayer continues to pay during the taxable year to, or on behalf of, each employee of the taxpayer during the period that the employee is mobilized under title 10 of the United States Code as a member of a reserve or national guard component of the armed forces of the United States. The maximum credit allowed for each eligible employee is one thousand dollars. The amount of the tax credit may not exceed the amount of the taxpayer's state tax liability for the tax year and an excess credit may be carried forward for up to five taxable years. For the purposes of this subsection:
 - a. "Reduction in compensation" means the amount by which the pay received during the taxable year by the employee for service under title 10 of the United States Code is less than the total amount of salary and related retirement plan contributions that would have been paid by the taxpayer to the employee for the same time period had the employee not been mobilized.
 - b. "Related retirement plan contributions" means the portion of voluntary or matching contributions paid by the taxpayer into a defined contribution plan maintained by the taxpayer for the employee.

SECTION 7. AMENDMENT. Section 57-38-29.3 of the North Dakota Century Code is amended and reenacted as follows:

57-38-29.3. Credit for premiums for long-term care partnership plan insurance coverage.

A credit against an individual's tax liability under this chapter is provided to each taxpayer in the amount of the premiums paid during the taxable year by the taxpayer for qualified long-term care partnership plan insurance coverage for the taxpayer or the taxpayer's spouse, or both. The credit under this section for each insured individual may not exceed two hundred fifty dollars in any taxable year. ~~An individual who claims the credit under this section may not also claim the credit under section 57-38-29.2 for the same policy.~~ For purposes of this section, "qualified long-term care partnership plan" is one that:

1. Is a qualified long-term care insurance policy, as defined in section 7702B(b) of the Internal Revenue Code of 1986, with an issue date on or after the date specified in an approved medicaid state plan amendment that provides for the disregard of assets;
2. Meets the requirements of the long-term care insurance model regulations and the long-term care insurance model act promulgated by the national association of insurance commissioners as adopted as of October 2000, or the insurance commissioner certifies that the policy meets those requirements; and
3. Is purchased by an individual who:
 - a. Has not attained age sixty-one as of the date of purchase, if the policy provides compound annual inflation protection;
 - b. Has attained age sixty-one but has not attained age seventy-six as of the date of purchase, if the policy provides some level of inflation protection; or

- c. Has attained age seventy-six as of the date of purchase.

¹⁵⁹ **SECTION 8. AMENDMENT.** Subsections 2 and 3 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

2. For purposes of this section, "North Dakota taxable income" means the federal taxable income of an individual, estate, or trust as computed under the Internal Revenue Code of 1986, as amended, adjusted as follows:
 - a. Reduced by interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - b. Reduced by the portion of a distribution from a qualified investment fund described in section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.
 - c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
 - d. Reduced by thirty percent of ~~the~~:
 - (1) ~~The excess of the taxpayer's net long-term capital gain and qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008, for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.~~
 - (2) The qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.
 - e. Increased by the amount of a lump sum distribution for which income averaging was elected under section 402 of the Internal Revenue Code of 1986 [26 U.S.C. 402], as amended. This adjustment does not apply if the taxpayer received the lump sum distribution while a nonresident of this state and the distribution is exempt from taxation by this state under federal law.

¹⁵⁹ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 10 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2208, chapter 463.

- f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under chapter 57-35.3.
- g. Reduced by the amount received by the taxpayer as payment for services performed when mobilized under title 10 United States Code federal service as a member of the national guard or reserve member of the armed forces of the United States. This subdivision does not apply to federal service while attending annual training, basic military training, or professional military education.
- h. Reduced by income from a new and expanding business exempt from state income tax under section 40-57.1-04.
- i. Reduced by interest and income from bonds issued under chapter 11-37.
- j. Reduced by up to ten thousand dollars of qualified expenses that are related to a donation by a taxpayer or a taxpayer's dependent, while living, of one or more human organs to another human being for human organ transplantation. A taxpayer may claim the reduction in this subdivision only once for each instance of organ donation during the taxable year in which the human organ donation and the human organ transplantation occurs but if qualified expenses are incurred in more than one taxable year, the reduction for those expenses must be claimed in the year in which the expenses are incurred. For purposes of this subdivision:
 - (1) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of one person to the body of another person.
 - (2) "Organ" means all or part of an individual's liver, pancreas, kidney, intestine, lung, or bone marrow.
 - (3) "Qualified expenses" means lost wages not compensated by sick pay and unreimbursed medical expenses as defined for federal income tax purposes, to the extent not deducted in computing federal taxable income, whether or not the taxpayer itemizes federal income tax deductions.
- k. Increased by the amount of the contribution upon which the credit under section 57-38-01.21 is computed, but only to the extent that the contribution reduced federal taxable income.
- l. Reduced by the amount of any payment received by a veteran or beneficiary of a veteran under section 37-28-03 or 37-28-04.
- m. Reduced by the amount received by a taxpayer that was paid by an employer under paragraph 4 of subdivision a of subsection 2 of section 57-38-01.25 to hire the taxpayer for a hard-to-fill position under section 57-38-01.25, but only to the extent the amount received by the taxpayer is included in federal taxable income. The reduction applies only if the employer is entitled to the credit under section 57-38-01.25. The taxpayer must attach a statement from the employer in which the employer certifies that the employer is entitled to the credit under section 57-38-01.25 and

which specifically identified the type of payment and the amount of the exemption under this section.

- n. Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.
 - o. Reduced by the amount of income of a taxpayer, who resides within the boundaries of any reservation in this state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources within the boundaries of any reservation in this state.
3. ~~Married individuals filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter. The same filing status used when filing federal income tax returns must be used when filing state income tax returns.~~

SECTION 9. AMENDMENT. Section 57-38-59.2 of the North Dakota Century Code is amended and reenacted as follows:

57-38-59.2. Withholding of lottery winnings.

The North Dakota lottery shall deduct and withhold ~~five and fifty four one hundredths percent~~ at the highest marginal rate provided in section 57-38-30.3 of the total proceeds of state lottery winnings as North Dakota withholding tax if the winnings are subject to withholding. For purposes of this section, "winnings subject to withholding" means the proceeds in excess of five thousand dollars won from a lottery game operated pursuant to chapter 53-12. Every person who receives a payment from the winnings that are subject to withholding shall furnish the lottery director with a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the recipient. The North Dakota lottery shall file returns as provided in section 57-38-60 and is liable for the payment of the tax required to be withheld but is not liable to any person for the amount of the payment.

SECTION 10. AMENDMENT. Section 57-38.4-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.4-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Affiliated corporation" means a parent corporation and any corporation of which more than fifty percent of the voting stock is owned directly or indirectly by the parent corporation or another member of the water's edge group.
2. "~~Domestic disclosure spreadsheet" means a spreadsheet that fully discloses the income reported to each state, the state tax liability, the method used for apportioning or allocating income to the various states, and other information provided for by rules as may be necessary to determine the proper amount of tax due to each state and to identify the water's edge group.~~

- ~~3-~~ "Existing corporation" means a corporation that filed a North Dakota income tax return for any year after taxable year 1979 or was a successor to or unitary with a corporation that filed a North Dakota income tax return for any year after taxable year 1979.
- ~~4-3.~~ "Foreign dividends" means any dividend received by a member of the water's edge group from any affiliated corporation incorporated outside the fifty states and District of Columbia, including amounts included in income computed under sections 951 through 954 of the Internal Revenue Code.
- ~~5-4.~~ "Income from 80/20 corporations" means net book income after taxes of a corporation which is incorporated in the United States and eligible to be included in the federal consolidated return and which has twenty percent or less of its property and payroll as determined by factoring under chapter 57-38.1 assigned to locations inside the fifty states and the District of Columbia. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
- ~~6-5.~~ "New corporation" means a corporation that has not filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a corporation which is a successor to or which is affiliated with a corporation that filed an income tax return in North Dakota for any year after the tax year 1979. A new corporation does not include a business reorganization or acquisition, except a corporation with no previous activity in North Dakota which acquires an existing corporation and increases and maintains the threshold activity of the existing corporation by twenty-five percent or more shall be treated as a new corporation.
- ~~7-6.~~ "Threshold activity" means the yearly average combined property and payroll in North Dakota of a corporation and its affiliates for the previous three years.
- ~~8-7.~~ "Water's edge group" includes the following entities:
- a. Any affiliated corporation incorporated in the United States or a possession of the United States, as described in sections 931 through 936 of the Internal Revenue Code. Corporations incorporated in the United States must be eligible to be included in a federal consolidated return and must have more than twenty percent of its property and payroll, as determined by factoring under chapter 57-38.1, assigned to locations inside the fifty states, the District of Columbia, and possessions of the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.
 - b. Domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code.
 - c. Export trade corporations, as described in sections 970 through 972 of the Internal Revenue Code.

- d. Foreign corporations deriving gain or loss from a disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code.
- e. Any corporation incorporated outside the United States if over fifty percent of its voting stock is owned directly or indirectly by an affiliated corporation and if more than twenty percent of the average of its payroll and property is assignable to a location within the United States.

9-8. "Worldwide combined report" means a combined report with respect to a unitary affiliated group irrespective of the country or countries in which any member of the affiliated group is incorporated or conducts business activity.

SECTION 11. AMENDMENT. Subsection 1 of section 57-38.4-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation electing to file using the water's edge method must comply with the following:
 - a. The election must be made on the return as originally and timely filed.
 - b. ~~The corporation may not reduce taxable income for federal taxes deducted under subdivision c of subsection 1 of section 57-38-01.3.~~
 - e. The water's edge election is binding for five consecutive taxable years after making the election.
 - d. ~~The corporation must file with the tax commissioner a domestic disclosure spreadsheet, after which the corporation must file a domestic disclosure spreadsheet only every third year while the election remains in effect.~~

SECTION 12. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 460

SENATE BILL NO. 2034

(Legislative Management)
(Energy Development and Transmission Committee)

AN ACT to create and enact a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definition of green diesel; to amend and reenact sections 17-03-01, 17-03-04, and 17-03-05, subsection 1 of section 17-07-01, sections 19-10-01, 54-17.7-02, 54-44.5-09, 57-38-01.22, and 57-38-01.23, subsection 7 of section 57-38-30.3, section 57-38-30.6, subsection 2 of section 57-38.6-01, and subsection 51 of section 57-39.2-04 of the North Dakota Century Code, relating to green diesel; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-03-01 of the North Dakota Century Code is amended and reenacted as follows:

17-03-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Biodiesel production facility" means a producer of a ~~biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines~~ fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oil or animal fats that meets American society for testing and materials specification D 6751. The facility must be located in this state ~~and:~~
 - a. ~~Agricultural producers must hold at least ten percent of the ownership interest in the facility; or~~
 - b. ~~Residents of this state must own at least fifty percent of the ownership interest of the facility.~~
2. "Biofuel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel ~~and ethanol, and green diesel~~ production facilities and to livestock operations as provided under this chapter.
3. "Ethanol production facility" means a producer of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product for use in internal combustion engines. The facility must be located in this state ~~and:~~
 - a. ~~Agricultural producers must hold at least ten percent of the ownership interest in the facility; or~~
 - b. ~~Residents of this state must own at least fifty percent of the ownership interest of the facility.~~

4. "Green diesel production facility" means a producer of a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications. The facility must be located in this state.
5. "Livestock operation" means a livestock feeding, handling, milking, or holding operation located in this state which uses as part of its operation a byproduct produced at a biodiesel or an ethanol production facility.

SECTION 2. AMENDMENT. Section 17-03-04 of the North Dakota Century Code is amended and reenacted as follows:

17-03-04. Fund moneys - Eligible uses.

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel ~~or an~~ ethanol, or green diesel production facility or to a livestock operation for the following eligible uses:
 - (1) Purchase or construction of real property.
 - (2) Expansion of facilities.
 - (3) Purchase or installation of equipment, including a biodigester system.
- b. The loan funds may not be used to refinance any existing debt or for the relocation within this state of the biodiesel ~~or~~ ethanol, or green diesel production facility or the livestock operation.
2. a. The maximum amount from the fund in the interest rate buydown for a biodiesel ~~or~~ ethanol, or green diesel production facility may not exceed five hundred thousand dollars to any single biodiesel ~~or~~ ethanol, or green diesel production facility under this chapter.
- b. Except as provided in subdivision c, the maximum amount from the fund in the interest rate buydown for a livestock operation may not exceed two hundred fifty thousand dollars to any single livestock operation under this chapter.
- c. If a livestock operation has reached the limit provided for in subdivision b as a result of any activity other than the purchase or installation of a biodigester, that operation is entitled to receive from the fund up to two hundred fifty thousand dollars as an additional interest rate buydown on the operation's purchase or installation of a biodigester system.
3. The fund participation is limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
4. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 3. AMENDMENT. Section 17-03-05 of the North Dakota Century Code is amended and reenacted as follows:

17-03-05. Partnership in assisting community expansion fund incentive limitation.

A biodiesel production facility ~~or ethanol~~ or green diesel production facility that receives interest buydown from the biofuel partnership in assisting community expansion fund is not eligible to receive interest buydown from the partnership in assisting community expansion fund for the same project during the same biennium.

¹⁶⁰ **SECTION 4. AMENDMENT.** Subsection 1 of section 17-07-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The energy policy commission is composed of:
 - a. The commissioner of commerce;
 - b. A representative of the agriculture community appointed by the governor;
 - c. A representative recommended by the lignite energy council appointed by the governor;
 - d. A representative recommended by the North Dakota petroleum council appointed by the governor;
 - e. A member from the biodiesel or green diesel industry appointed by the governor;
 - f. A member from the biomass industry appointed by the governor;
 - g. A member from the wind industry appointed by the governor;
 - h. A member from the ethanol industry appointed by the governor;
 - i. A representative recommended by the North Dakota petroleum marketers association appointed by the governor;
 - j. A member from the North Dakota investor-owned electric utility industry appointed by the governor;
 - k. A member from the generation and transmission electric cooperative industry appointed by the governor;
 - l. A member from the lignite coal-producing industry appointed by the governor;
 - m. A member from the refining or gas-processing industry appointed by the governor; and
 - n. Additional nonvoting members appointed by the governor.

SECTION 5. AMENDMENT. Section 19-10-01 of the North Dakota Century Code is amended and reenacted as follows:

¹⁶⁰ Section 17-07-01 was also amended by section 1 of House Bill No. 1218, chapter 158.

19-10-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Adulterated", when used to describe any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which fails to meet the specifications prescribed by this chapter.
2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other than a petroleum-based fuel. The term includes biodiesel and green diesel as defined in section 57-43.2-01.
3. ~~"Biodiesel" means any non-petroleum based diesel fuel made from renewable resources such as vegetable oils or animal fats.~~
4. "Department" means the state department of health.
- ~~5-4.~~ "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.
- ~~6-5.~~ "Gasoline" is a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.
- ~~7-6.~~ "Heating oil" is any product intended for use or offered for sale as a furnace oil, range oil, or fuel oil for heating and cooking purposes to be used in burners other than wick burners regardless of whether the product is designated as furnace oil, range oil, fuel oil, gas oil, or is given any other name or designation.
- ~~8-7.~~ "Kerosene" is a petroleum fraction which is free from water, additives, foreign or suspended matter, and is suitable for use as an illuminating oil.
- ~~9-8.~~ "Lubricating oil" is any petroleum, or other product, used for the purpose of reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel engines, and other machines.
- ~~10-9.~~ "Misbranded", when used in connection with any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which is not labeled as required under the provisions of this chapter.
- ~~14-10.~~ "Sell" and "sale" include the keeping, offering, or exposing for sale, transportation, or exchange of the restricted or prohibited article.
- ~~12-11.~~ "Tractor fuel" is any product, other than gasoline or kerosene, intended for use or offered for sale as a fuel for tractors, regardless of whether the product is designated as distillate, gas oil, fuel oil, or is given any other name or designation.

SECTION 6. AMENDMENT. Section 54-17.7-02 of the North Dakota Century Code is amended and reenacted as follows:

54-17.7-02. Definitions.

As used in this chapter:

1. "Authority" means the industrial commission acting as the North Dakota pipeline authority.
2. "Commission" means the North Dakota industrial commission.
3. "Energy-related commodities" means any substance, element, or compound, either gaseous, liquid, or solid, associated with the production, refining, or processing of renewable energy, crude oil, natural gas, coal, or coal byproducts, including oil, natural gas liquids, refined petroleum products, carbon dioxide, hydrogen, ethanol, propane, butane, ethane, methane, sulfur, helium, synthetic fuels, nitrogen, biodiesel, green diesel, and liquids made from coal.
4. "Natural gas" means hydrocarbons or nonhydrocarbons that at atmospheric conditions of temperature and pressure are in a gaseous phase.
5. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct pipeline facilities contemplated by the authority or to provide services fulfilling the need for such pipeline facilities.
6. "Pipeline facilities" means pipelines, pumps, compressors, storage, and all other facilities, structures, and properties incidental and necessary or useful in the interconnection of pipelines or the transportation, distribution, and delivery of energy-related commodities to points of sale or consumption or to the point or points of distribution for consumption located within and without this state.
7. "Project area" means the geographic area in which construction of a pipeline facility contemplated by the authority is likely to occur.

SECTION 7. AMENDMENT. Section 54-44.5-09 of the North Dakota Century Code is amended and reenacted as follows:

54-44.5-09. Office of renewable energy and energy efficiency.

The office of renewable energy and energy efficiency is established within the division of community services. The office shall assist in the development of renewable energy within this state to provide secure, diverse, sustainable, and competitive renewable energy supplies and promote the conservation of energy and the wise use of energy resources in both the public and private sectors. The office shall communicate and disseminate information concerning state and federal energy conservation and renewable energy incentives, including tax credits, financing and grants to business entities seeking to invest in wind-generated power and transmission, ethanol production and distribution, and the development of biodiesel, green diesel, biomass, solar, hydropower, geothermal, and other renewable energy sources. The office also shall ~~also~~ manage and distribute all production incentive payments as authorized by chapter 17-02.

SECTION 8. AMENDMENT. Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.22. Income tax credit for blending of biodiesel fuel or green diesel fuel.

A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel

fuel or green diesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "~~biodiesel~~" ~~means and~~ "green diesel" ~~mean~~ fuel ~~meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01~~. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 9. AMENDMENT. Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.23. Income tax credit for biodiesel or green diesel sales equipment costs.

A seller of biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel or green diesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume. For purposes of this section, "~~biodiesel fuel~~" ~~means and~~ "green diesel fuel" ~~mean~~ fuel ~~meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01~~. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel or green diesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel or green diesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel or green diesel fuel containing at least two percent biodiesel or green diesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel or green diesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

¹⁶¹ **SECTION 10. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

¹⁶¹ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 8 of House Bill No. 1124, chapter 459, and section 1 of Senate Bill No. 2208, chapter 463.

7. A taxpayer filing a return under this section is entitled to the following tax credits:
- a. Family care tax credit under section 57-38-01.20.
 - b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - c. Agricultural business investment tax credit under section 57-38.6-03.
 - d. Seed capital investment tax credit under section 57-38.5-03.
 - e. Planned gift tax credit under section 57-38-01.21.
 - f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
 - g. Internship employment tax credit under section 57-38-01.24.
 - h. Workforce recruitment credit under section 57-38-01.25.
 - i. Angel fund investment tax credit under section 57-38-01.26.
 - j. Microbusiness tax credit under section 57-38-01.27.
 - k. Marriage penalty credit under section 57-38-01.28.
 - l. Homestead income tax credit under section 57-38-01.29.
 - m. Commercial property income tax credit under section 57-38-01.30.
 - n. Research and experimental expenditures under section 57-38-30.5.
 - o. Geothermal energy device installation credit under section 57-38-01.8.
 - p. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
 - q. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.

SECTION 11. AMENDMENT. Section 57-38-30.6 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.6. Corporate income tax credit for biodiesel or green diesel production or soybean and canola crushing facility equipment costs.

A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume or of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing crushed soybeans or canola. For purposes of this section, "biodiesel" ~~means~~ and "green

~~diesel" mean fuel meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01.~~ The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production or blending of diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume or begins crushing soybeans or canola, but eligible costs incurred before the taxable year production, blending, or crushing begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year production, blending, or crushing begins.

SECTION 12. AMENDMENT. Subsection 2 of section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:
 - a. Involved in production of diesel fuel containing at least five percent biodiesel ~~meeting the specifications adopted by the American society for testing and materials~~ or green diesel as defined in section 57-43.2-01;
 - b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
 - c. Involved in a soybean or canola crushing facility.

¹⁶² **SECTION 13. AMENDMENT.** Subsection 51 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

51. Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel or green diesel fuel as defined under section 57-43.2-01 by volume. ~~For purposes of this subsection, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials.~~

SECTION 14. A new subsection to section 57-43.2-01 of the North Dakota Century Code is created and enacted as follows:

"Green diesel" means a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications.

SECTION 15. EFFECTIVE DATE. Section 13 of this Act is effective for taxable events after June 30, 2011.

Approved April 25, 2011
Filed April 25, 2011

¹⁶² Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1334, chapter 468, section 3 of Senate Bill No. 2172, chapter 465, section 1 of House Bill No. 1424, chapter 467, and section 1 of Senate Bill No. 2292, chapter 466.

CHAPTER 461

HOUSE BILL NO. 1057

(Legislative Management)
(Workforce Committee)

AN ACT to amend and reenact section 57-38-01.26 of the North Dakota Century Code, relating to the angel fund investment tax credit; to provide for a report to the legislative management; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.26 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.26. Angel fund investment tax credit.

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is ~~incorporated in a domestic organization created under the laws of this state.~~ The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount ~~invested~~ remitted by the taxpayer ~~into~~ an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is one hundred fifty thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.
2. To be eligible for the credit, the investment must be at risk in the angel fund for at least three years. Investments placed in escrow do not qualify for the credit. The credit must be claimed in the taxable year in which the investment in the angel fund was received by the angel fund. The credit allowed may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the ~~four~~ seven succeeding taxable years. A taxpayer claiming a credit under this section may not claim any credit available to the taxpayer as a result of an investment made by the angel fund in a qualified business under chapter 57-38.5 or 57-38.6.
3. An angel fund must:
 - a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.
 - b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with

- annual revenues over two million dollars not to exceed ten million dollars. Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.
- c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.
 - d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.
 - e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.
 - f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.
 - g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.
 - h. Be in compliance with the securities laws of this state.
 - i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:
 - (1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;
 - (2) The dollar amount remitted by the taxpayer or passthrough entity; and
 - (3) The date the payment was received by the angel fund for the investment.
 - j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.
4. The tax commissioner may disclose to the legislative management the reported information described under paragraphs 2 and 3 of subdivision i of subsection 3 and the reported information described under subdivision j of subsection 3.
 5. Angel fund investors may be actively involved in the enterprises in which the angel fund invests but the angel fund may not invest in any enterprise if any one angel fund investor owns directly or indirectly more than forty-nine percent of the ownership interests in the enterprise. The angel fund may not invest in an enterprise if any one partner, shareholder, or member of a passthrough

entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the enterprise.

- 5-6. Investors in one angel fund may not receive more than five million dollars in aggregate credits under this section during the life of the angel fund but this provision may not be interpreted to limit additional investments in that angel fund.
7. a. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level.
- b. For the first two taxable years beginning after December 31, 2010, if a passthrough entity does not elect to sell, transfer, or assign the credit as provided under this subsection and subsection 8, the amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.
- c. For the first two taxable years beginning after December 31, 2010, if a passthrough entity elects to sell, transfer, or assign a credit as provided under this subsection and subsection 8, the passthrough entity shall make an irrevocable election to sell, transfer, or assign the credit on the return filed by the entity for the taxable year in which the credit was earned. A passthrough entity that makes a valid election to sell, transfer, or assign a credit shall sell one hundred percent of the credit earned, may sell the credit to only one purchaser, and shall comply with the requirements of this subsection and subsection 8.
8. For the first two taxable years beginning after December 31, 2010, a taxpayer may elect to sell, transfer, or assign all of the earned or excess tax credit earned under this section for investment in an angel fund established after July 31, 2011, subject to the following:
- a. A taxpayer's total credit sale, transfer, or assignment under this section may not exceed one hundred thousand dollars over any combination of taxable years. The cumulative credits transferred by all investors in an angel fund may not exceed fifty percent of the aggregate credits under this section during the life of the angel fund under subsection 6.
- b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the tax credit transferor and the tax credit purchaser jointly shall file with the tax commissioner a copy of the purchase agreement and a statement containing the names, addresses, and taxpayer identification numbers of the parties to the transfer, the amount of the credit being transferred, the gross proceeds received by the transferor, and the taxable year or years for which the credit may be claimed. The taxpayer and the purchaser also shall file a document allowing the tax commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit. The purchase agreement, supporting statement, and waiver must be filed within thirty days after the date the purchase agreement is fully executed.

- c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.
- d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.
- e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.
- f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.
- g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.
- h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.

SECTION 2. REPORT TO THE LEGISLATIVE MANAGEMENT. During the 2011-12 and 2013-14 interims, the tax commissioner shall report to the legislative management on the number of in-state and out-of-state investors, amount of investment, and amount of tax credits accrued, claimed, and transferred by each individual angel fund.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved May 5, 2011
Filed May 5, 2011

CHAPTER 462

HOUSE BILL NO. 1072

(Representatives Nathe, Belter, L. Meier, Porter)
(Senators Cook, Hogue)
(At the request of the Tax Commissioner)

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction to remove the marriage penalty contained in the federal standard deduction for married persons filing jointly; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶³ **SECTION 1.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

For married individuals filing jointly, reduced by an amount equal to the excess of the recomputed itemized deductions or standard deduction over the amount of the itemized deductions or standard deduction deducted in computing federal taxable income. For purposes of this subdivision, "itemized deductions or standard deduction" means the amount under section 63 of the Internal Revenue Code that the married individuals deducted in computing their federal taxable income and "recomputed itemized deductions or standard deduction" means an amount determined by computing the itemized deductions or standard deduction in a manner that replaces the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for married individuals filing jointly with an amount equal to double the amount of the basic standard deduction under section 63(c)(2) of the Internal Revenue Code for a single individual other than a head of household and surviving spouse. If the married individuals elected under section 63(e) of the Internal Revenue Code to deduct itemized deductions in computing their federal taxable income even though the amount of the allowable standard deduction is greater, the reduction under this subdivision is not allowed. Married individuals filing jointly shall compute the available reduction under this subdivision in a manner prescribed by the tax commissioner.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 4, 2011
Filed April 4, 2011

¹⁶³ Section 57-38-30.3 was also amended by section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 8 of House Bill No. 1124, chapter 459, section 10 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2208, chapter 463.

CHAPTER 463

SENATE BILL NO. 2208

(Senators Schaible, Cook, Marcellais)
(Representatives Rohr, Schmidt)

AN ACT to amend and reenact subdivision o of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to the income tax exemption applying to qualifying reservation residents, activities, and sources; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁴ **SECTION 1. AMENDMENT.** Subdivision o of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

- o. Reduced by the amount of income of a taxpayer, who resides anywhere within the exterior boundaries of ~~anya~~ reservation situated in this state or situated both in this state and in an adjoining state and who is an enrolled member of a federally recognized Indian tribe, from activities or sources anywhere within the exterior boundaries of ~~anya~~ reservation situated in this state or both situated in this state and in an adjoining state.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2010.

Approved April 19, 2011
Filed April 20, 2011

¹⁶⁴ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1072, chapter 462, section 13 of Senate Bill No. 2057, chapter 50, section 7 of Senate Bill No. 2210, chapter 398, section 7 of House Bill No. 1047, chapter 457, section 8 of House Bill No. 1124, chapter 459, and section 10 of Senate Bill No. 2034, chapter 460.

CHAPTER 464

SENATE BILL NO. 2170

(Senator Cook)
(Representative Belter)

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to the imposition of individual income taxes and employer income tax withholding for mobile workforce employees; to amend and reenact subsection 1 of section 57-38-59 of the North Dakota Century Code, relating to the imposition of individual income taxes and employer income tax withholding for mobile workforce employees; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38-59 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Every~~Except as provided in section 2 of this Act, every employer making payment of wages to employees shall deduct and withhold from their wages such percentage or percentages, as determined by the tax commissioner, multiplied times the total amount required to be deducted by an employer from wages of an employee under the provisions of the Internal Revenue Code of 1986, ~~and as hereafter amended~~, as will approximate the income taxes due the state. The amount of tax withheld must be computed without regard to any other amount required to be withheld ~~thereunder~~, but the tax withheld must as closely as possible pay any tax liability imposed by this chapter.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Nonresident mobile workforce - Computation of taxable income - Exclusion - Exception for employer withholding - Returns required.

1. a. Compensation subject to withholding under section 57-38-59, without regard to subsection 3, that is received by a nonresident for employment duties performed in this state, shall be excluded from state source income if:
 - (1) The nonresident has no other income from sources in this state for the tax year in which the compensation was received;
 - (2) The nonresident is present in this state to perform employment duties for not more than twenty days during the tax year in which the compensation is received. Presence in this state by the nonresident for any part of a day constitutes presence for that day unless the presence is purely for purposes of transit through the state; and
 - (3) The nonresident's state of residence provides a substantially similar exclusion or does not impose an individual income tax or the nonresident's income is exempt from taxation by this state under the United States Constitution or federal statute.

- b. This subsection does not apply to compensation received in this state by:
- (1) A professional athlete or member of a professional athletic team;
 - (2) A professional entertainer performing services in the professional performing arts;
 - (3) A person of prominence performing services for compensation on a per event basis;
 - (4) A person performing construction services to improve real property;
 - (5) A key employee under section 416(i) of the Internal Revenue Code, as amended [26 U.S.C. 416(i)], for the year immediately preceding the current tax year. A determination under this paragraph must be made without regard to ownership or the existence of a benefit plan;
 - (6) An employee of a noncorporate employer, who would be a key employee without regard to ownership or the existence of a benefit plan, for the year immediately preceding the current tax year under section 416(i) of the Internal Revenue Code [26 U.S.C. 416(i)], if the term "employee" were substituted for the term "officer" in section 416(i) (1)(A)(i) of the Internal Revenue Code and if such person is one of the noncorporate employer's fifty highest paid employees without regard to whether such person is an officer.
- c. This subsection shall not prevent the operation, renewal, or initiation of any agreement with another state authorized under section 57-38-59.1.
- d. This subsection creates an exclusion from nonresident compensation under certain de minimus circumstances and has no application to this state's jurisdiction to impose this or any other tax on any taxpayer.
2. a. A nonresident whose only state source income is compensation excluded under subsection 1 does not have an income tax liability and is not required to file a return as prescribed in section 57-38-31, except nothing in this subsection prohibits the tax commissioner from exercising the commissioner's discretion to require the filing of an informational return by a nonresident employee described in subdivision a of subsection 1.
- b. This subsection is applicable to the determination of an individual income taxpayer's filing requirement and has no application to the imposition of, or this state's jurisdiction to impose, this or any other tax on any taxpayer.
3. a. No amount is required to be deducted or retained from compensation paid to a nonresident for employment duties performed in this state if the compensation is excluded from state source income under subsection 1, without regard to paragraph 1 of subdivision a of subsection 1. The number of days a nonresident employee is present in this state for purposes of paragraph 2 of subdivision a of subsection 1 must include all days the nonresident employee is present and performing employment duties on behalf of the employer and any other related person.

- (1) For purposes of this subsection, "related person" means a person that, with respect to the employer during all or any portion of the taxable year, is:
 - (a) A related entity;
 - (b) A component member as defined in section 1563(b) of the Internal Revenue Code [26 U.S.C. 1563(b)];
 - (c) A person to or from whom there is attribution to stock ownership as provided in section 1563(e) of the Internal Revenue Code; or
 - (d) A person that, notwithstanding its form of organization, bears the same relationship to the employer as a person described in subparagraphs a through c.
- (2) For purposes of this subsection, "related entity" means:
 - (a) A stockholder who is an individual, or a member of the stockholder's family as provided in section 318 of the Internal Revenue Code [26 U.S.C. 318] if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the employer's outstanding stock;
 - (b) A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty percent of the value of the employer's outstanding stock; or
 - (c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the federal Internal Revenue Code if the employer owns, directly, indirectly, beneficially, or constructively, at least fifty percent of the value of the corporation's outstanding stock. The attribution rules of the federal Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.
- b. An employer that erroneously applies the income tax withholding exception solely as a result of miscalculating the number of days a nonresident employee is present in this state to perform employment duties shall not be subject to the penalty imposed in section 57-38-45 if:
 - (1) The employer relied on the employer's regularly maintained time and attendance system that:
 - (a) Requires the employee to contemporaneously record the employee's daily work location each day the employee is present in a state other than the employee's state of residence; and

- (b) Is used by the employer to allocate the employee's wages between all taxing jurisdictions in which the employee performs duties;
- (2) The employer relied on the employee's travel records that the employer requires the employee to regularly maintain and contemporaneously record the employee's travel and daily work location; or
- (3) The employer does not require the records described in paragraph 1 or 2, and relied on travel expense reimbursement records that the employer requires the employee to submit on a regular and contemporaneous basis.
- c. This subsection establishes an exception to income tax withholding and deduction requirements and does not apply to the imposition of, or the state's jurisdiction to impose this, or any other tax on the employer.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2012.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 465

SENATE BILL NO. 2172

(Senators Oehlke, Hogue, Dotzenrod, Krebsbach)
(Representatives D. Johnson, Wingham)

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines; to amend and reenact subsections 21, 22, and 23 of section 57-39.2-01 and subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to a sales tax exemption for receipts from coin-operated amusement or entertainment machines; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 21, 22, and 23 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, ~~including the playing of any machine for amusement or entertainment in response to the use of a coin;~~ and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser

elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

22. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, ~~including the playing of any machine for amusement or entertainment in response to the use of a coin,~~ or magazines, or other periodicals; and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system.
23. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, ~~including the playing of any machine for amusement or entertainment in response to the use of a coin,~~ and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

¹⁶⁵ **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

¹⁶⁵ Section 57-39.2-02.1 was also amended by section 3 of House Bill No. 1391, chapter 473.

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
- b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity ~~and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.~~
- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
 - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
 - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.

If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

- h. A mandatory computer software maintenance contract for prewritten computer software.
- i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.

¹⁶⁶ **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from coin-operated amusement or entertainment machines.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2012.

Approved April 19, 2011
Filed April 20, 2011

¹⁶⁶ Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1334, chapter 468, section 1 of House Bill No. 1424, chapter 467, section 13 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2292, chapter 466.

CHAPTER 466

SENATE BILL NO. 2292

(Senators Hogue, Burckhard)
(Representatives Bellew, Dosch, Metcalf)

AN ACT to amend and reenact subsection 4 of section 57-39.2-04 of the North Dakota Century Code, relating to the sales tax exemption for nonprofit entities; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁷ **SECTION 1. AMENDMENT.** Subsection 4 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

4. a. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, ~~and the gross,~~
- b. ~~Gross~~ receipts from educational, religious, or charitable activities, ~~unless the gross receipts from the event exceed five thousand dollars and the activities are held in a publicly owned facility,~~ when the entire amount of net receipts is expended for educational, religious, or charitable purposes ~~and the gross.~~ The exemption specified in this subsection does not apply to:
 - (1) Gross receipts from taxable sales in excess of ten thousand dollars per event if the activities are held in a publicly owned facility; or
 - (2) Gross receipts from activities if the seller competes with retailers by maintaining inventory, conducting retail sales on a regular basis from a permanent or seasonal location, or soliciting sales from a website prepared for or maintained by the seller.
- c. ~~Gross~~ receipts derived by any public school district if such receipts are expended in accordance with section 15.1-07-10 or 15.1-07-11. ~~This exemption does not apply to regular retail sales that are in direct competition with retailers.~~
- d. ~~Gross receipts from educational, religious, or charitable activities held in a publicly owned facility are exempt if the sponsoring organization is of a nonprofit music or dramatic arts organization that is exempt from federal income taxation and is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis.~~

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

Approved April 19, 2011
Filed April 19, 2011

¹⁶⁷ Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1334, chapter 468, section 3 of Senate Bill No. 2172, chapter 465, section 1 of House Bill No. 1424, chapter 467, and section 13 of Senate Bill No. 2034, chapter 460.

CHAPTER 467

HOUSE BILL NO. 1424

(Representatives Pollert, Weisz, Mueller)
(Senators Klein, Miller, Wanzek)

AN ACT to amend and reenact subsection 8 of section 57-39.2-04, sections 57-39.2-12.1, 57-39.5-04, and 57-39.6-04, subsection 9 of section 57-40.2-04, and section 57-40.2-07.1 of the North Dakota Century Code, relating to compensation allowable to retailers for expenses associated with the collection, reporting, and remittance of state sales, use, and gross receipts taxes and the sales and use tax exemption for chemicals used for agricultural purposes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁸ **SECTION 1. AMENDMENT.** Subsection 8 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

8. Gross receipts from sales of ~~adjuvants required by the chemical label for application of a product warranty, agrichemical tank cleaners and foam markers,~~ commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides, and insecticides to agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being stored; and seeds, roots, bulbs, and small plants to commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

SECTION 2. AMENDMENT. Section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-12.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~ registered to report and ~~pay monthly~~ remit sales, use, or gross receipts tax imposed under section 57-39.2-12 ~~chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2~~ may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-40.2-07.1 may not exceed ~~eighty-five~~ ninety-three dollars ~~and seventy-five cents per month~~ return. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies

¹⁶⁸ Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 1 of House Bill No. 1334, chapter 468, section 3 of Senate Bill No. 2172, chapter 465, section 13 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2292, chapter 466.

only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.

3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 3. AMENDMENT. Section 57-39.5-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in ~~compliance~~conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 4. AMENDMENT. Section 57-39.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.6-04. Administration.

The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 5. AMENDMENT. Subsection 9 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

9. Adjuvants ~~required by the chemical label for application of a product warranty~~, agrichemical tank cleaners and foam markers, commercial fertilizers, fungicides, seed treatments, inoculants and fumigants, herbicides and insecticides used by agricultural or commercial vegetable producers and commercial applicators; chemicals used to preserve agricultural crops being

stored; and seeds, roots, bulbs, and small plants used by commercial users or consumers for planting or transplanting for commercial vegetable gardens or agricultural purposes.

SECTION 6. AMENDMENT. Section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-07.1. Deduction to reimburse retailer for administrative expenses.

1. A retailer ~~required~~ registered to report and ~~pay monthly~~ remit sales, use, or gross receipts tax imposed under section 57-40.2-07 chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due. The aggregate of deductions allowed by this section and section 57-39.2-12.1 may not exceed ~~eighty-five~~ ninety-three dollars and seventy-five cents per month ~~return~~. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 2 or 3 for the same period.
2. A certified service provider that contracts with retailers to calculate, collect, and remit tax due on behalf of retailers may deduct and retain from the tax remitted to the tax commissioner compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board effective June 1, 2006. The compensation provided in this subsection applies only to tax remitted by certified service providers on behalf of retailers that are remote sellers registered to collect sales and use tax in this state under chapter 57-39.4. Certified service providers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 3 for the same period.
3. A retailer that is a remote seller registered to collect sales and use tax under chapter 57-39.4 and that uses a certified automated system to calculate, report, and remit tax due under chapters 57-39.2, 57-39.4, and 57-40.2 may deduct and retain compensation or a monetary allowance up to the amount approved by the streamlined sales and use tax governing board during its December 2006 meeting. Retailers that receive compensation under this subsection may not receive additional compensation under subsection 1 or 2 for the same period.
4. For purposes of this section, "remote seller" means a retailer that does not have an adequate physical presence to establish nexus in this state for sales and use tax purposes.
5. Compensation may not be deducted and retained under this section unless the tax due is paid within the time limitations under section 57-39.2-12 or 57-40.2-07 or chapter 57-39.4.
6. The deduction allowed retailers or certified service providers by this section is to reimburse retailers directly or indirectly for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information to the tax commissioner upon request.

SECTION 7. EFFECTIVE DATE. Sections 2, 3, 4, and 6 of this Act are effective for taxable events occurring after December 31, 2011.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 468

HOUSE BILL NO. 1334

(Representative Belter)

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for memberships, admissions, and entrance fees of nonprofit 501(c)(7) social and recreation clubs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁹ **SECTION 1.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from memberships, admissions, and entrance fees to activities and events organized and operated by nonprofit social and recreation clubs organized under section 501(c)(7) of the Internal Revenue Code [26 U.S.C. 501(c)(7)] and operated solely by nonsalaried officers and staff.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

Approved April 19, 2011
Filed April 20, 2011

¹⁶⁹ Section 57-39.2-04 was also amended by section 2 of House Bill No. 1046, chapter 486, section 3 of Senate Bill No. 2172, chapter 465, section 1 of House Bill No. 1424, chapter 467, section 13 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2292, chapter 466.

CHAPTER 469

SENATE BILL NO. 2202

(Senators Klein, Hogue, Sorvaag)
(Representatives Hatlestad, Heller, Streyle)

AN ACT to amend and reenact sections 57-39.2-04.5, 57-39.2-04.6, and 57-40.2-03.3 of the North Dakota Century Code, relating to the sales and use tax exemption for materials used in compressing, processing, gathering, or refining gas, the sales and use tax exemption for materials used in construction or expansion of an oil refinery, and the use tax on contractors; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-04.5 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.5. Sales and use tax exemption for materials used in compressing, processing, gathering, or refining of gas.

1. Gross receipts from sales of tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into a system used to compress, process, gather, or refine gas. Tangible personal property used to replace an existing system to compress, process, gather, or refine gas does not qualify for exemption under this section unless the replacement creates an expansion of the system.
2. To receive the exemption under this section at the time of purchase, the owner of the gas compressing, processing, gathering, or refining system must receive from the tax commissioner a certificate that the tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state which the owner intends to purchase qualifies for exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. If the tangible personal property is purchased ~~and~~ installed by a contractor subject to the tax imposed by this chapter, the owner of the gas compressing, processing, gathering, or refining system ~~must~~ may apply to the tax commissioner for a refund of ~~sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is claimed as exempt under the difference between the amount remitted by the contractor and the exemption imposed or allowed by~~ this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

SECTION 2. AMENDMENT. Section 57-39.2-04.6 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.6. Sales and use tax exemption for materials used in construction or expansion of an oil refinery.

1. Gross receipts from sales of tangible personal property used in expanding or constructing an oil refinery that has a nameplate capacity of processing at least five thousand barrels of oil per day in this state are exempt from taxes under this chapter.
2. ~~The~~To receive the exemption at the time of purchase, the owner of the tangible personal property~~oil refinery must apply to receive from the tax commissioner for a refund of sales and use taxes paid by any contractor, subcontractor, or builder for which the sales or use is claimed as exempt under this section~~a certificate that the tangible personal property used to construct or expand an oil refinery qualifying under this section which the owner intends to purchase qualifies for the exemption. If a certificate is not received before the purchase, the owner shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
3. If the tangible personal property is purchased or installed by a contractor subject to the tax imposed by this chapter, the owner of the oil refinery may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed under this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
- ~~3-4.~~ This chapter and chapter 57-40.2 apply to the exemption under this section.

SECTION 3. AMENDMENT. Section 57-40.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-03.3. Use tax on contractors.

1. When a contractor or subcontractor uses tangible personal property in the performance of that person's contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a use tax at the rate prescribed by section 57-40.2-02.1 measured by the purchase price or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales tax or use tax by this state, and the tax due thereon has been paid.
2. The provisions of this chapter pertaining to the administration of the tax imposed by section 57-40.2-02.1, not in conflict with the provisions of this section, govern the administration of the tax levied by this section.
3. The tax imposed by this section does not apply to medical equipment purchased as tangible personal property by a hospital or by a long-term care facility as defined in section 50-10.1-01 and subsequently installed by a contractor into such hospital or facility.

4. The tax imposed by this section does not apply to:
- a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2; or
 - b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4; or
 - c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5; or
 - d. Tangible personal property used to construct to expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 470

SENATE BILL NO. 2171

(Senators Cook, Oehlke, O'Connell)
(Representatives Froseth, Kempenich, Thoreson)

AN ACT to amend and reenact section 57-39.2-04.7 of the North Dakota Century Code, relating to sales and use tax exemption for equipment used in telecommunications infrastructure development; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-04.7 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.7. (Effective through ~~June 30, 2011~~ December 31, 2012) Sales tax exemption for equipment used in telecommunications infrastructure development.

1. Gross receipts from sales of tangible personal property used to construct or expand telecommunications service infrastructure in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company.
2. To qualify for exemption at the time of purchase, a telecommunications company must receive a certificate from the commissioner stating that the property qualifies for the exemption. If a certificate is not received before the purchase or the purchase is made by a contractor, subcontractor, or builder, the telecommunications company must apply to the commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. Application for a refund must be made at the times and in the manner directed by the commissioner and must include sufficient information to permit the commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2011, and before January 1, 2013, and after that date is ineffective.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 471

SENATE BILL NO. 2336

(Senators Wardner, Miller, O'Connell)
(Representatives Belter, Headland, S. Meyer)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales tax exemption for machinery or equipment used to produce coal from a new mine located in this state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for machinery or equipment used to produce coal from a new mine.

1. Gross receipts from sales of machinery or equipment used to produce coal from a new mine located in this state are exempt from the tax imposed by this chapter. The exemption for each new mine under this section is limited to the first five million dollars of sales and use tax paid.
2. Purchase of replacement machinery or equipment is exempt if the capitalized investment in the new mine exceeds twenty million dollars. Purchases of repair or replacement parts for existing machinery or equipment are not exempt under this section.
3. The mine operator shall apply to the commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. A refund claim may not exceed the limitation in subsection 1. Application for the refund must be made at the time and in the manner directed by the commissioner and must include sufficient information to verify the correctness of the refund claim.
4. For purposes of this section:
 - a. "Machinery or equipment" means machinery or equipment used directly to uncover, sever, crush, handle, or transport coal removed from the earth. "Machinery or equipment" includes draglines, excavators, rolling stock, conveyor equipment, reclamation equipment, and equipment to pulverize coal but does not include rail spurs, office buildings, workshops, or any component not used directly to uncover, sever, crush, handle, or transport coal removed from the earth.
 - b. "New mine" means an area permitted under chapter 38-14.1 by the public service commission after December 31, 2010.
 - c. "Produce coal" means mining operations to uncover, sever, crush, handle, or transport coal from its natural location under the earth's surface to the

mouth of the mine and all activities necessary and incidental to the reclamation of that location.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 472

SENATE BILL NO. 2253

(Senators Olafson, Andrist, Dotzenrod)
(Representative Froseth)

AN ACT to amend and reenact section 57-39.2-26.1 of the North Dakota Century Code, relating to the allocation of funds in the state aid distribution fund; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions.

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
 - a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:
 - (1) Thirty-two percent of the amount must be allocated equally among the counties; and
 - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.
 - b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:
 - (1) Forty percent of the amount must be allocated equally among the counties; and

- (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period ~~as provided in this subsection based upon the proportion each city's population bears to the total population of all cities.~~
 - a. ~~Nineteen and four tenths percent of the amount must be allocated among cities with a population of eighty thousand or more, based upon the proportion each city's population bears to the total population of all such cities.~~
 - b. ~~Thirty four and five tenths percent of the amount must be allocated among cities with a population of twenty thousand or more but fewer than eighty thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
 - e. ~~Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
 - d. ~~Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
 - e. ~~Thirteen and one tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
 - f. ~~Six and one tenth percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.~~
 - g. ~~Three and four-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five~~

~~hundred, based upon the proportion each such city's population bears to the total population of all such cities.~~

- ~~h. Two and six tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.~~

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2011.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 473

HOUSE BILL NO. 1391

(Representatives Drovdal, Hatlestad, Kaldor)
(Senators Cook, Miller, Dotzenrod)

AN ACT to create and enact section 57-39.4-33.3 of the North Dakota Century Code, relating to prohibited replacement taxes; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of section 40-05.1-06, subsection 1 of section 57-39.2-02.1, sections 57-39.4-01, 57-39.4-02, 57-39.4-03, and 57-39.4-04, subsections 1 and 3 of section 57-39.4-09, and sections 57-39.4-10, 57-39.4-11.1, 57-39.4-14, 57-39.4-14.1, 57-39.4-18, 57-39.4-19, 57-39.4-20, and 57-39.4-24 of the North Dakota Century Code, relating to the administration of the streamlined sales and use tax agreement; to repeal chapter 57-39.3 of the North Dakota Century Code, relating to fees in lieu of sales taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt and mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use taxes, farm machinery gross receipts taxes, and alcoholic beverage gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other heating fuels delivered by the seller

- or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
- b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
 - c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005.

SECTION 2. AMENDMENT. Subsection 16 of section 40-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16. To impose registration fees on motor vehicles, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use taxes and gross receipts taxes levied under this chapter:
 - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other heating fuels delivered by the seller or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.
 - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.

- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax purposes, except for farm machinery gross receipts tax.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1 and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

¹⁷⁰ **SECTION 3. AMENDMENT.** Subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and including bundled transactions consisting entirely of tangible personal property.
 - b. The furnishing or service of communication services including one-way and two-way telecommunications services or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
 - d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
 - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
 - g. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
 - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

¹⁷⁰ Section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2172, chapter 465.

- (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".
- h. A mandatory computer software maintenance contract for prewritten computer software.
 - i. An optional computer software maintenance contract for prewritten computer software that provides only software upgrades or updates or an optional computer software maintenance contract for prewritten computer software that is a bundled transaction and provides software upgrades or updates and support services.

SECTION 4. AMENDMENT. Section 57-39.4-01 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-01. Adoption of streamlined sales and use tax agreement.

North Dakota adopts the streamlined sales and use tax agreement as adopted November 12, 2002, and as may be amended by the member states of the streamlined sales tax project. The entire agreement is adopted by reference with the exception of articles III and V, which are adopted as set out in this chapter.

SECTION 5. AMENDMENT. Section 57-39.4-02 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-02. (301) State level administration.

1. Each member state shall provide state level administration of sales and use taxes subject to the agreement. The state level administration may be performed by a member state's tax commission, department of revenue, or any other single entity designated by state law. Sellers and purchasers are only required to register with, file returns with, and remit funds to the state level authority. ~~Each~~The state level authority of a member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. ~~Each member~~The state level authority shall conduct, or ~~authorize~~ others may be authorized to conduct on its behalf, subject to the provisions of subsection 2, all audits of the sellers ~~registered under the agreement and purchasers~~ for that state's tax and the tax of its local jurisdictions, ~~and~~. Except as provided in this chapter local jurisdictions shall not conduct independent sales or use tax audits of sellers ~~registered under the agreement and purchasers~~.
2. If authorized by statute, nothing in this section prohibits the state level authority from authorizing audits of taxpayers to be conducted or performed by others on behalf of the state level authority provided:
 - a. The person is conducting the audit for all taxes due and not only for taxes due to a specific local taxing jurisdiction;
 - b. The person is subject to the same confidentiality provisions and other protections afforded to a taxpayer as a person working for the state level authority;
 - c. Absent fraud, a refund claim filed subsequent to the audit that covers part of the audit period or mutual consent, the audit does not cover an audit period already conducted by the state level authority or another person acting on its behalf; and
 - d. The audit is subject to the same administrative and appeal procedures granted to audits conducted by the state level authority.

SECTION 6. AMENDMENT. Section 57-39.4-03 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-03. (302) State and local tax bases.

~~Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the~~The tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas, or other fuels delivered by the seller and the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

SECTION 7. AMENDMENT. Section 57-39.4-04 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-04. (303) Seller registration.

Each member state shall participate in an on-line sales and use tax registration system in cooperation with the other member states. Under this system:

1. A seller registering under the agreement ~~is~~shall be registered in each of the member states.
2. A model 2, model 3, or model 4 seller may elect to be registered in one or more states as a seller which anticipates making no sales into the state or states if it has not had sales into the state or states for the preceding twelve months. This election does not relieve the seller of its agreement under section 401(B) to collect taxes on all sales into the states or its liability for remitting to the proper states any taxes collected.
3. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.
- ~~3-4.~~ A written signature from the seller is not required.
- ~~4-5.~~ An agent may register a seller under uniform procedures adopted by the member states.
- ~~5-6.~~ A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.
7. Nothing in this section shall be construed to relieve a seller of any legal obligation it may have under a state's laws to register in that state or its obligation to collect and remit taxes for at least thirty-six months in a state and meet all other requirements for amnesty set out in section 402 of the agreement in order to be eligible for amnesty in the state.
8. Whenever a state joins the agreement, sellers registered under the agreement shall be registered in the new state as follows:
 - a. Model 1 sellers will be automatically registered in such state.
 - b. Model 2, model 3, and model 4 sellers will be automatically registered in the new state but may elect to be registered as a seller which anticipates making no sales into the new state.
9. Upon registration, the governing board shall provide to the seller information regarding the requirements and options for filing a simplified electronic return and for filing remittances in any member state. Member states may provide information to sellers concerning other tax return filing options in that state.
10. The governing board shall cause the system for registering under the agreement to include a feature that allows sellers registered under the agreement to update relevant registration data in the system and have such updated data provided to all member states. The governing board shall establish conditions and procedures to allow states which are not members of the agreement to participate in the registration system.

SECTION 8. AMENDMENT. Subsections 1 and 3 of section 57-39.4-09 of the North Dakota Century Code are amended and reenacted as follows:

1. No member state shall have multiple state sales and use tax rates on items of personal property or services, except that a member state may impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law ~~pursuant to~~ under the agreement. In addition, if federal law prohibits the imposition of local tax on a product that is subject to state tax, the state may impose an additional rate on the product, provided the rate achieves tax parity for similar products.
3. The provisions of this section do not apply to sales or use taxes levied on fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or to electricity, piped natural or artificial gas or other heating fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

SECTION 9. AMENDMENT. Section 57-39.4-10 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-10. (309) Application of general sourcing rules and exclusions from the rules.

1. Each member state shall agree to require sellers to source the retail sale of a product in accordance with section 57-39.4-11 ~~or 57-39.4-11.1. The~~ Except as provided in section 57-39.4-11.1, the provisions of section 57-39.4-11 apply to all sales regardless of the characterization of a product as tangible personal property, a digital good, or a service. ~~The~~ Except as otherwise provided in the agreement, the provisions of section ~~sections~~ 57-39.4-11 and 57-39.4-11.1 only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.
2. ~~Section~~ Sections 57-39.4-11 ~~does~~ and 57-39.4-11.1 do not apply to sales or use taxes levied on the following:
 - a. The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of each member state.
 - b. The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4 of section 57-39.4-11. The retail sale of these items shall be sourced according to the requirements of each member state, and the lease or rental of these items must be sourced according to subsection 3 of section 57-39.4-11.
 - c. Telecommunications services and ancillary services, as set out in section 57-39.4-16, and internet access service shall be sourced in accordance with section 57-39.4-15.
 - d. Florist sales as defined by each member state. These sales must be sourced according to the requirements of each member state.

- e. The retail sale of products and services qualifying as direct mail must be sourced in accordance with section 57-39.4-14.

SECTION 10. AMENDMENT. Section 57-39.4-11.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-11.1. (310.1) Election for origin-based sourcing.

1. A member state that has local jurisdictions that levy or receive sales or use taxes may elect to source the retail sale of tangible personal property and digital goods under the provisions of this section in lieu of the provisions of subdivisions b, c, and d of subsection 1 of section 57-39.4-11 if the state complies with subsection 3 of this section and the only exception to section 57-39.4-11 is in subsection 2 of this section.
2. A member state may source retail sales, excluding lease or rental, of tangible personal property or digital goods to the location where the order is received by the seller if:
 - a. The order is received in the same state by the seller where receipt of the product by the purchaser or the purchaser's designated donee occurs;
 - b. The location where receipt of the product by the purchaser occurs is determined under subdivisions b, c, and d of subsection 1 of section 57-39.4-11; and
 - c. At the time the order is received, the recordkeeping system of the seller used to calculate the proper amount of sales or use tax to be imposed captures the location where the order is received.
3. A member state electing to source sales under this section shall comply with all of the following:
 - a. When the location where the order is received by the seller and the location where the receipt of the product by the purchaser or the purchaser's designated donee occurs as determined under subdivisions b, c, and d of subsection 1 of section 57-39.4-11 are in different states, the sale must be sourced under the provisions of section 57-39.4-11.
 - b. When the productsale is sourced under this section to the location where the order is received by the seller, only the sales tax for the location where the order is received by the seller may be levied. No additional sales or use tax based on the location where the product is delivered to the purchaser may be levied on that sale. The purchaser shall not be entitled to any refund if the combined state and local rate at the location where the product is received by the purchaser is lower than the rate where the order is received by the seller.
 - c. A member state may not require a seller to use a recordkeeping system that captures the location where the order is received to calculate the proper amount of sales or use tax to be imposed.
 - d. A purchaser shall not have an additional liability to the state for tax, penalty, or interest on a sale for which the purchaser remits tax to the seller in the amount invoiced by the seller if the invoice amount is calculated at either the rate applicable to the location where receipt by the

- purchaser occurs or at the rate applicable to the location where the order is received by the seller. A purchaser may rely on a written representation by the seller as to the location where the order for the sale was received by the seller. When the purchaser does not have a written representation by the seller as to the location where the order for the sale was received by the seller, the purchaser may use the seller's business address that is available from the purchaser's business records maintained in the ordinary course of the purchaser's business to determine the rate applicable to the location where the order was received.
- e. The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller, where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed, or fulfilled. An order is received when all of the information from the purchaser necessary to determine whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped must not be used in determining the location where the order is received by the seller.
- f. A member state must provide for direct pay permits under section 57-39.4-27 and the requirements of this subsection. Purchasers that remit sales and use tax under a direct pay permit shall remit tax at the rate in effect for the location where receipt of the product by the purchaser occurs or the product is first used as determined by state law. A member state may establish reasonable thresholds at which the member state will consider direct pay applications, provided the threshold must be based upon purchases with no distinction between taxable and nontaxable purchases. The member state shall establish a process for application for a direct pay permit as provided in this chapter. The member state may require the direct pay permit applicant to demonstrate:
- (1) An ability to comply with the sales and use tax laws of the state;
 - (2) A business purpose for seeking a direct pay permit and how the permit will benefit tax compliance; and
 - (3) Proof of good standing under the tax laws of the state. The member state shall review all permit applications in a timely manner. Notification of authorization or denial must be received by applicants within one hundred twenty days of application. The member state may not limit direct pay permit applicants to businesses engaged in manufacturing or businesses that do not know the ultimate use of the product at the time of the purchase.
- g. When taxable services are sold with tangible personal property or digital products under a single contract or in the same transaction, are billed on the same billing statement, and because of the application of this section, would be sourced to different jurisdictions, a member state shall elect either origin sourcing or destination sourcing to determine a single situs for that transaction. The member state election is required until the governing board adopts a uniform methodology to address these sales.

- h. A member state that elects to source the sale of tangible personal property and digital goods under the provisions of this section shall inform the governing board of the election.
4. Compliance with the provisions of this section satisfies a state's eligibility for membership in this agreement as follows:
 - a. If a state is in substantial compliance with the provisions of this agreement other than sourcing of sales of tangible personal property and digital goods as provided in section 57-39.4-11, and elects to source sales of tangible personal property and digital goods under this section, the state may become an associate member state in the same manner as provided for states to become full member states under article VIII of the agreement.
 - b. ~~On or after January 1, 2010, a~~ state that becomes an associate member state under this subsection shall automatically become a full member state, provided that at least five states which are not full member states on December 31, 2007, are determined to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11, and the state has notified the governing board of an election under subdivision h of subsection 3 ~~of this section~~ to source sales under this section and has been found to be in substantial compliance with the provisions of this section.
 - c. ~~This section shall be fully effective for all purposes on or after January 1, 2010, provided at least five states which are not full member states on December 31, 2007, have been found to be in substantial compliance with the provisions of the agreement other than sourcing sales of tangible personal property and digital goods under section 57-39.4-11 and have notified the governing board of an election under subdivision h of subsection 3 of this section to source sales under this section and have been found to be in substantial compliance with the provisions of this section. States electing to source sales under this section after that time may become full member states if all other requirements for membership are satisfied.~~

SECTION 11. AMENDMENT. Section 57-39.4-14 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-14. (313) Direct mail sourcing.

1. ~~Notwithstanding section 57-39.4-11, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.~~
 - a. ~~Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.~~
 - b. ~~Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the~~

- ~~tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction in which the seller has collected tax pursuant to the delivery information provided by the purchaser.~~
- ~~2. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection 1, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.~~
 3. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller. For purposes of this section:
 - a. "Advertising and promotional direct mail" means:
 - (1) Printed material that meets the definition of direct mail, in appendix C, part I of the agreement; and
 - (2) The primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this subsection, the word "product" means tangible personal property, a product transferred electronically, or a service.
 - b. "Other direct mail" means any direct mail that is not advertising and promotional direct mail regardless of whether advertising and promotional direct mail is included in the same mailing. The term includes:
 - (1) Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, statements of account, and payroll advices;
 - (2) Any legally required mailings, including privacy notices, tax reports, and stockholder reports; and
 - (3) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.
2. Notwithstanding sections 57-39.4-11 and 57-39.4-11.1, the following provisions apply to sales of advertising and promotional direct mail:
 - a. A purchaser of advertising and promotional direct mail may provide the seller with either:
 - (1) A direct pay permit;

- (2) A streamlined sales and use tax agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state; or
- (3) Information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients.
- b. If the purchaser provides the permit, certificate, or statement referred to in this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the permit, certificate, or statement applies. The purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall report and pay any applicable tax due.
- c. If the purchaser provides the seller information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the delivery information provided by the purchaser.
- d. If the purchaser does not provide the seller with any of the items listed in this subsection, the sale shall be sourced according to subdivision e of subsection 1 of section 57-39.4-11. The state to which the advertising and promotional direct mail is delivered may disallow credit for tax paid on sales sourced under this paragraph.
- 3. Notwithstanding sections 57-39.4-11 and 57-39.4-11.1, the following provisions apply to sales of other direct mail:

 - a. Except as otherwise provided in this paragraph, sales of other direct mail are sourced in accordance with subdivision c of subsection 1 of section 57-39.4-11.
 - b. A purchaser of other direct mail may provide the seller with either:

 - (1) A direct pay permit; or
 - (2) A streamlined sales and use tax agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state.
 - c. If the purchaser provides the permit, certificate, or statement referred to in this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the permit, certificate, or statement applies. Notwithstanding subdivision a, the sale shall be sourced to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.

4. a. This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of direct mail.
- b. This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether advertising and promotional direct mail is included in the same mailing.
- c. If a transaction is a "bundled transaction" that includes advertising and promotional direct mail, this section shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of advertising and promotional direct mail.
- d. Nothing in this section shall limit any purchaser's:
- (1) Obligation for sales or use tax to any state to which the direct mail is delivered;
 - (2) Right under local, state, federal, or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions; or
 - (3) Right to a refund of sales or use taxes overpaid to any jurisdiction.
- e. This section applies for purposes of uniformly sourcing direct mail transactions and does not impose requirements on states regarding the taxation of products that meet the definition of direct mail or to the application of sales for resale or other exemptions.

SECTION 12. AMENDMENT. Section 57-39.4-14.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-14.1. (313.1) Election for origin-based direct mail sourcing.

1. Notwithstanding sections 57-39.4-11, 57-39.4-11.1, and 57-39.4-14, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state under this section.
2. If the purchaser provides the seller with a direct pay permit or ~~an exemption certificate claiming direct mail~~ a streamlined sales and use tax agreement certificate of exemption claiming direct mail or other written statement approved, authorized, or accepted by the state, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax and then on any transaction involving direct mail. The purchaser is obligated to pay or remit the ~~must report and pay any applicable tax on a direct pay basis. An exemption certificate claiming direct mail~~ due. A streamlined sales and use tax agreement certificate of exemption claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
3. Except as provided in ~~subsections~~ subsections 2 and this subsection, 3, and 4, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to section 57-39.4-14.

4. Notwithstanding subsection 3, a seller may elect to use the provisions of section 57-39.4-14 to source all sales of advertising and promotional direct mail.
5. Nothing in this section limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced under subsection 3 shall owe no additional sales or use tax to that state based on where the purchaser uses or delivers the direct mail in the state.
- ~~5-6.~~ A member state that elects to source the sale of direct mail under the provisions of this section shall inform the governing board in writing at least sixty days prior to the beginning of the calendar quarter ~~such~~this election begins.

SECTION 13. AMENDMENT. Section 57-39.4-18 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-18. (317) Administration of exemptions.

1. Each member state shall observe the following provisions when a purchaser claims an exemption:
 - a. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the governing board.
 - b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
 - c. The seller shall use the standard form for claiming an exemption electronically as adopted by the governing board.
 - d. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
 - e. A member state may utilize a system in which the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale.
 - f. The seller shall maintain proper records of exempt transactions and provide them to a member state when requested.
 - g. A member state shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate, or another means that does not burden sellers.
 - h. In the case of drop shipment sales, member states must allow a third-party vendor, drop shipper, to claim a resale exemption based on an exemption certificate by its customer or reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer or reseller is registered to collect and remit sales and use tax in the state where the sale is sourced.
2. Each member state shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser

improperly claimed an exemption and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates ~~graying out exemption reason types on the uniform form and posting it on a state's web site is an indicator~~ that the claimed exemption is not available in that state. Graying out exemption reason types on the uniform form and posting it on a state's website is an indicator.

3. Each state shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the agreement within ninety days subsequent to the date of sale. A member state may provide for a period longer than ninety days for the seller to obtain the necessary information.
- ~~a-4.~~ If the seller has not obtained an exemption certificate or all relevant data elements as provided by this section, a member state shall provide the seller ~~may, within~~with one hundred twenty days subsequent to a request for substantiation by a member state, ~~to either prove that the transaction was not subject to tax by other means or obtain a:~~
 - a. A fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, member states may continue to apply their own standards of good faith until such time as a uniform standard for good faith is defined in the agreement which means that the seller obtain a certificate that claims an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, could be applicable to the item being purchased, and is reasonable for the purchaser's type of business; or
 - b. Other information establishing that the transaction was not subject to the tax. A member state may provide for a period longer than one hundred twenty days for sellers to obtain the necessary information.
 - c. If the seller obtains the information described in this subsection, the member state shall relieve the seller of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The state must establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.
- ~~b-5.~~ Nothing in this section shall affect the ability of member states to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

- ~~e.6. Notwithstanding the aforementioned, each~~ Each member state shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate ~~for~~ from a purchaser with which the seller has a recurring business relationship. ~~States~~ Notwithstanding the provisions of subsection 5, a member state may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.
7. Each state shall post on its website the uniform paper exemption certificate, streamlined sales and use tax exemption certificate, as revised and adopted by the governing board, with any applicable graying out of nonapplicable exemption types under subsection 2.

SECTION 14. AMENDMENT. Section 57-39.4-19 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-19. (318) Uniform tax returns.

Each member state shall:

1. Require that only ~~one~~ a single tax return for each taxing period for each seller be filed for the member state ~~and to include~~ all the taxing jurisdictions within the member state.
2. a. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
 - b. When the due date for a return falls on a Saturday or Sunday or legal holiday in the subject member state, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made under subdivision b of subsection 5 of section 57-39.4-20, the return shall be accepted as timely filed on the same day as the remittance under that subsection.
3. ~~Allow any model 1, model 2, or model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board. Make available to all sellers, whether or not registered under the agreement, except sellers of products qualifying for exclusion from the provisions of section 57-39.4-09 of this agreement, a simplified return that is filed electronically as follows:~~
 - a. The simplified electronic return hereinafter SER shall be in a form approved by the governing board and shall contain only those fields approved by the governing board. The SER shall contain two parts. Part 1 shall contain information relating to remittances and allocations and part 2 shall contain information relating to exempt sales.
 - b. Each member state must notify the governing board if it requires the submission of the part 2 information provided no state may require the submission of part 2 information from a model 4 seller which has no legal requirement to register in the state.

c. Returns shall be required as follows:

- (1) Certified service providers must file a SER in all member states on behalf of model 1 sellers. Certified service providers, on behalf of these sellers, shall file the audit reports provided for in article V of the rules and procedures of the agreement for the states, and in addition, shall be required to file part 1 of the SER each month for each member state. A state shall allow a model 1 seller to file both part 1 and part 2 of the SER. A model 1 seller which chooses to file both part 1 and the part 2 of SER shall still be required to file the audit reports provided for in article V of the rules and procedures of the agreement.
- (2) Model 2 and model 3 sellers must file a SER in all member states other than states for which they have indicated that they anticipate making no sales. These sellers shall file part 1 of the SER every month for all states in which they anticipate making sales. These sellers need not file part 2 information until January 1, 2012. After this date, they shall have the following options for meeting their obligation to furnish part 2 information:
 - (a) File part 2 of the SER together with part 1 of the SER every month; or
 - (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals. The sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.
- (3) Every member state shall allow model 4 sellers to file a SER. The sellers shall file part 1 of the SER every month unless a state allows less frequent filing. Model 4 sellers which have a legal requirement to register in the state shall have the following options for meeting their obligation to furnish part 2 information:
 - (a) File part 2 of the SER together with part 1 of the SER; or
 - (b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

Model 4 sellers which elect not to file a SER shall file returns in the form under schedules afforded to sellers not registered under the agreement according to the requirements of each member state.

- (4) No later than January 1, 2013, every member state shall allow sellers not registered under the agreement that are registered in the state to file a SER. These sellers shall file part 1 of the SER every month unless a state allows less frequent filing and shall have the following options for meeting their obligation to furnish part 2 information:

(a) File part 2 of the SER together with part 1 of the SER; or

(b) File part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed under this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals.

These sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information under subdivision b.

- d. A state which requires the submission of part 2 information under paragraph 2 may provide an exemption from this requirement to a seller under terms and conditions set out by the state.
- e. A state may require a seller which elects to file a SER to give at least three months' notice of the seller's intent to discontinue filing a SER.
- ~~4. Allow any seller that is registered under the agreement, which does not have a legal requirement to register in the member state, and is not a model 1, model 2, or model 3 seller, to submit its sales and use tax returns as follows:~~
- ~~a. Upon registration, a member state shall provide to the seller the returns required by that state.~~
- ~~b. A member state may require a seller to file a return any time within one year of the month of initial registration and future returns may be required on an annual basis in succeeding years.~~
- ~~c. In addition to the returns required in subdivision b, a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.~~
- ~~d. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.~~
- ~~e. Require, at each member state's discretion, all model 1, model 2, and model 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004. Not require the filing of a return from a seller registered under the agreement which has indicated at the time of registration that it anticipates making no sales which would be sourced to the state under the agreement. A seller shall lose this exemption upon~~

- making any taxable sales into the state and shall file a return in the month following the sale. A state may, but is not required to, allow a seller to regain such filing exemption upon such terms and conditions as the state may impose.
5. Adopt a standardized transmission process to allow for receipt of uniform tax returns and other formatted information as approved by the governing board. The process must provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, tax preparer, or any other authorized person to file returns for more than one seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.
 6. Give notice to a seller registered under this agreement which has no legal requirement to register in the state, of a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return provided a member state may establish a liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of nonfiling or late filing.
 7. Nothing in this section shall prohibit a state from allowing additional return options or the filing of returns less frequently.

SECTION 15. AMENDMENT. Section 57-39.4-20 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-20. (319) Uniform rules for remittance of funds.

Each member state shall:

1. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided ~~herein in the agreement~~. The state shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.
2. Require, at each member state's discretion, all remittances ~~from sellers under model 1, model 2, and model 3~~ in payment of taxes reported on the approved simplified return format to be remitted electronically.
3. Allow for electronic payments by all remitters by both automated clearinghouse credit and automated clearinghouse debit.
4. Provide an alternative method for making same day payments if an electronic funds transfer fails.
5. a. Provide that if a due date for a payment falls on a Saturday, Sunday, or legal banking holiday in a member state, the taxes are payment, including any related payment voucher information, is due to that state on the next succeeding business day.

- b. Additionally, if the federal reserve bank is closed on a due date that prohibits a person from being able to make a payment by automated clearinghouse debit or credit, that payment shall be accepted as timely if made on the next day the federal reserve bank is open.
6. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.
7. Adopt a standardized transmission process approved by the governing board that allows for the remittance in a SER of a single bulk payment for taxes reported on multiple SERs by affiliated entities, certified service providers, or preparers. Each state shall comply with this provision no later than two years after the governing board approves such a standardized transmission process.

SECTION 16. AMENDMENT. Section 57-39.4-24 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-24. (323) Caps and thresholds.

1. ~~Each~~No member state shall~~;~~may
- a. ~~Not~~ have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. ~~A member state may continue to have caps and thresholds until that date.~~
- b. ~~Not~~or have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.
2. ~~Each~~No member state that has local jurisdictions that levy a sales or use tax shall ~~not~~may place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. ~~A member state may continue to have caps and thresholds until that date.~~
3. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances when the burden of administration has been shifted from the retailer.
4. For states that have a cap or threshold on clothing before January 1, 2006, the provisions of this section do not apply to sales or use tax thresholds for exemptions that are based on the value of "essential clothing" except as provided in the library of definitions.

SECTION 17. Section 57-39.4-33.3 of the North Dakota Century Code is created and enacted as follows:

57-39.4-33.3. (334) Replacement tax prohibited.

No state may have a prohibited replacement tax on any product defined in part II or part III(B) of the library of definitions which has the effect of avoiding the intent of this agreement.

SECTION 18. REPEAL. Chapter 57-39.3 of the North Dakota Century Code is repealed.

SECTION 19. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

Approved April 11, 2011
Filed April 11, 2011

CHAPTER 474

HOUSE BILL NO. 1153

(Representatives Ruby, Maragos, Delmore)
(Senators Hogue, Larsen, G. Lee)

AN ACT to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to exemptions from motor vehicle excise tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷¹ **SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

5. a. A motor vehicle acquired by inheritance from, by bequest of, or operation of a trust created by a decedent who owned it;
- b. The transfer of a motor vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee;
- c. The transfer of a motor vehicle by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships;
- d. The transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed;
- e. The transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization in which the ownership of the reorganized business remains in the same person or persons as ~~prior to~~before the reorganization, ~~but only~~ if the title transfer is completed within one hundred eighty days from the effective date of the reorganization; ~~and~~
- f. The transfer of a motor vehicle previously transferred under subdivision e which returns ownership to the previous owner: and
- g. The transfer of a motor vehicle without monetary consideration from a revocable living trust to the trustor or to the spouse, child, or sibling of the trustor.

Approved March 14, 2011
Filed March 14, 2011

¹⁷¹ Section 57-40.3-04 was also amended by section 5 of Senate Bill No. 2207, chapter 268, and section 4 of House Bill No. 1217, chapter 447.

CHAPTER 475

HOUSE BILL NO. 1157

(Representatives Maragos, Heilman, Klein)
(Senators Krebsbach, Sorvaag)

AN ACT to create and enact a new subsection to section 57-40.5-03 of the North Dakota Century Code, relating to an exemption from aircraft excise tax for aircraft acquired by an aviation museum; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-40.5-03 of the North Dakota Century Code is created and enacted as follows:

Aircraft acquired by an aviation museum located in this state that is exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)]. For purposes of this subsection, the term "acquired" has the meaning as provided in section 57-40.5-01. Any aviation museum acquiring an aircraft under this subsection shall comply with sections 57-40.5-04 and 57-40.5-05. The aircraft may not be used for commercial activities. For purposes of this subsection, commercial activities do not include activities for which a fee is charged when the proceeds are used for the benefit of the aviation museum.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 476

HOUSE BILL NO. 1045

(Legislative Management)
(Public Safety and Transportation Committee)

AN ACT to amend and reenact sections 57-40.6-01 and 57-40.6-10 of the North Dakota Century Code, relating to definitions and standards and guidelines for emergency services communication systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions.

In this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Active prepaid wireless service" means a prepaid wireless service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.
2. "Assessed communications service" means a software service, communication connection, cable or broadband transport facilities, or a combination of these facilities, between a billed retail end user and a service provider's network that provides the end user, upon dialing 911, access to a public safety answering point through a permissible interconnection to the dedicated 911 network. The term includes telephone exchange access service, wireless service, active prepaid wireless service, and voice over internet protocol service.
3. "Automated notification system" means that portion of a telecommunications system that provides rapid notice of emergency situations to the public.
4. "Communication connection" means a telephone access line, wireless access line, unique voice over internet protocol service connection, or functional equivalent uniquely identifiable by a number, internet address, or other designation.
5. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
6. "FCC order" means federal communications commission order 94-102 [961 Federal Register 40348] and any other FCC order that affects the provision of wireless enhanced 911 service.
7. "Prepaid wireless service" means wireless service that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes

that terminates either upon use by a customer and delivery by the wireless provider of an agreed-upon amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless the customer makes additional payments.

8. "Public safety answering point" or "PSAP" means a communications facility or combination of facilities operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
9. "Public safety answering point service area" means the geographic area for which a public safety answering point has dispatch and emergency communications responsibility.
10. "Public safety telecommunicator" means an individual whose primary full-time or part-time duties are receiving, processing, and transmitting public safety information received through an emergency services communication system.
11. "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in section 57-34.1-02.
- ~~40-12.~~ "Telephone access line" means the principal access to the telephone company's switched network, including an outward dialed trunk or access register.
- ~~44-13.~~ "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
- ~~42-14.~~ "Unpublished" means information that is not published or available from directory assistance.
- ~~43-15.~~ "Voice over internet protocol service" means a service that enables real-time two-way voice communications; requires a broadband connection from the user's location; requires internet protocol-compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.
- ~~44-16.~~ "Wireless access line" means each active wireless and prepaid wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
- ~~45-17.~~ "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.
- ~~46-18.~~ "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:

- a. Services commonly referred to as wireless; and
- b. Services provided by any wireless real-time two-way voice communication device, including radio-telephone communications used in:
 - (1) Cellular telephone service;
 - (2) Personal communications service; or
 - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.

~~47-19.~~ "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within ~~the~~this state of ~~North Dakota.~~

¹⁷² **SECTION 2. AMENDMENT.** Section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-10. Standards and guidelines.

1. The governing body of the local governmental unit with jurisdiction over an emergency ~~911 telephone services communication~~ system ~~shall be~~ or shall designate a governing committee ~~of the emergency 911 telephone system which~~that shall:
 - a. Designate ~~a 911~~an emergency services communication system coordinator.
 - b. Enter written agreements with participating organizations and agencies.
 - c. Designate lines of authority.
 - d. Provide for a written plan for rural addressing, if applicable, which has been coordinated with the local postal authorities. After January 1, 1993, a rural plan must conform to the modified burkle addressing plan. A plan in use before this date does not have to conform with the modified burkle addressing plan. If implemented, all rural addressing signs must comply with the manual on uniform traffic control devices standards.
 - e. ~~Provide for an update of the emergency 911 telephone system's data base annually by obtaining current records from the appropriate telecommunications company.~~
 - f. Define a records retention plan for all printed, electronic, and recorded records in accordance with state law and jurisdictional requirements.
 - ~~g-f.~~ Encourage that ~~coin-free dialing~~cost-free connection is available for ~~911 emergency~~ calls.
 - ~~h.~~ ~~Define a mechanism to differentiate between emergency 911 telephone calls from other calls.~~

¹⁷² Section 57-40.6-10 was also amended by section 1 of House Bill No. 1139, chapter 479, and section 3 of House Bill No. 1156, chapter 478.

- ~~i. Provide for written operating procedures.~~
 - ~~j. Require the public safety answering point that initially receives an emergency call to be responsible for handling that call. If a transfer of an emergency call is made to a secondary public safety answering point, the initial public safety answering point may not disconnect from the three way call unless mutually agreed upon by the two public safety answering point dispatchers. Upon this agreement, the secondary public safety answering point becomes responsible for the call.~~
 - ~~k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision.~~
 - ~~i.g. Operate or contract for the operation of at least one public safety answering point to manage emergency services communications.~~
 - ~~h. Ensure that fee proceeds collected under this chapter are expended in accordance with guidelines developed pursuant to section 57-40.6-12 and implement an accounting system sufficient to meet the requirements of section 57-40.6-05.~~
2. The governing committee may:
 - a. Require appropriate liability protection.
 - b. Create a user advisory board.
 - c. Conduct an annual statistical evaluation of services.
 - d. Publish an annual financial report in the official county newspaper.
3. An emergency 911 telephone system must access and dispatch the following services communication system coordinator shall:
 - ~~a. Law enforcement.~~
 - ~~b. Fire service.~~
 - ~~c. Emergency medical service.~~
4. An emergency 911 telephone system may access and dispatch the following services:
 - ~~a. Poison control.~~
 - ~~b. Suicide prevention.~~
 - ~~c. Emergency management.~~
 - ~~d. Any other related service in subsection 3 or this subsection.~~

- ~~5. The governing committee of an emergency 911 telephone system shall provide that that system:~~
 - ~~a. Provides twenty four hour, seven day a week coverage.~~
 - ~~b. Dispatches and communicates with service identified in subsection 3.~~
 - ~~c. Records all incoming 911 calls and related radio and telephone communications.~~
 - ~~d. Provides alternate measures in the event of an emergency 911 telephone system failure, including an alternate public safety answering point seven-digit number.~~
 - ~~e. Ensures an adequate grade of service that is statistically based by population to assure access to an emergency 911 telephone system.~~
 - ~~f. Does not accept one way call in alarms or devices.~~
 - ~~g. Provides access to an emergency 911 telephone system through specialized telecommunications equipment as defined under section 54-44.8-01.~~
6. An emergency 911 telephone system may:
 - a. Locate the emergency caller utilizing electronic equipment.
 - b. Provide a mechanism for investigating false or prank calls.
7. An emergency 911 telephone system must include at least one public safety answering point.
8. A cellular 911 call must be routed to the appropriate 911 public safety answering point.
9. An emergency 911 telephone call must be answered by a dispatcher who has completed training through an association of public safety communications officials course or equivalent course. An emergency 911 dispatch center is required to offer emergency medical dispatch instructions on all emergency medical calls. Prerival instructions must be offered by a dispatcher who has completed an emergency medical dispatch course approved by the division of emergency health services. Prerival medical instructions may be given through a mutual aid agreement.
 - a. Ensure that address and mapping data is updated in the emergency services communication system database and mapping system within thirty days of receipt of notice or request for change;
 - b. Provide for a complete annual review of the emergency services communication system land line database by obtaining current records from the appropriate telecommunications companies;
 - c. Maintain the law enforcement, fire, and emergency medical service response boundaries for the public safety answering point service area; and

- d. Ensure that the dispatch protocols for emergency service notifications are documented and communicated with all law enforcement, fire, and emergency medical services.
4. A public safety answering point must:
 - a. Be operational twenty-four hours a day seven days a week or be capable of transferring emergency calls to another public safety answering point meeting the requirements of this section during times of nonoperation.
 - b. No later than July 1, 2013, be staffed continuously with at least one public safety telecommunicator who is on duty at all times of operation and who has primary responsibility for handling the communications of the public safety answering point.
 - c. Have the capability to dispatch law enforcement, fire, and medical responders to calls for service in the public safety answering point's service area.
 - d. Have two-way communication with all law enforcement, fire, and medical responder units and operational incident or unified commands in the public safety answering point's service area.
 - e. As authorized by the governing committee, access and dispatch poison control, suicide prevention, emergency management, and other public or private services but may not accept one-way private call-in alarms or devices as 911 calls.
 - f. Dispatch the emergency medical service that has been determined to be the quickest to arrive to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide public safety answering points with the physical locations of the emergency medical services necessary for the implementation of this subdivision.
 - g. Be capable of providing emergency medical dispatch prearrival instructions on all emergency medical calls. Prearrival instructions must be offered by a public safety telecommunicator who has completed an emergency medical dispatch course approved by the division of emergency health services. Prearrival medical instructions may be given through a mutual aid agreement.
 - h. Have security measures in place to prevent direct physical public access to on-duty public safety telecommunicators and to prevent direct physical public access to any room or location where public safety answering point equipment and systems are located.
 - i. Have an alternative source of electrical power that is sufficient to ensure at least six hours of continued operation of emergency communication equipment in the event of a commercial power failure. A public safety answering point also must have equipment to protect critical equipment and systems from irregular power conditions, such as power spikes, lightning, and brownouts. Documented testing of backup equipment must be performed each quarter under load.

- j. Maintain a written policy for computer system security and preservation of data.
- k. Have the capability of recording and immediate playback of recorded emergency calls and radio traffic.
- l. Employ a mechanism to differentiate emergency calls from other calls.
- m. Provide assistance for investigating false or prank calls.
- n. Have an alternative method of answering inbound emergency calls at the public safety answering point when its primary emergency services communication system equipment is inoperable.
- o. No later than July 1, 2013, have a written policy, appropriate agreements, and the capability to directly answer emergency calls and dispatch responders from a separate, independent location other than the main public safety answering point or another public safety answering point meeting the requirements of this section, within sixty minutes of an event that renders the main public safety answering point inoperative. This alternative location must have independent access to the public safety answering point's land line database. The capability of transferring emergency calls to this alternative location must be tested and documented annually.
- p. Remain responsible for all emergency calls received, even if a transfer of the call is made to a second public safety answering point. The initial public safety answering point may not disconnect from the three-way call unless mutually agreed by the two public safety telecommunicators. Upon this agreement, the secondary public safety answering point becomes responsible for the call.
- q. Employ the necessary telecommunications network and electronic equipment consistent with the minimum technical standards recommended by the national emergency number association to securely receive and respond to emergency communications.
- r. After July 1, 2013, maintain current, up-to-date mapping of its service area and have the ability to use longitude and latitude to direct responders.
- s. Secure two sets of fingerprints from a law enforcement agency or any other agency authorized to take fingerprints and all other information necessary to obtain state criminal history record information and a nationwide background check under federal law for all public safety telecommunicators.
- t. Have policies to ensure that all public safety telecommunicators:
 - (1) Do not have felony convictions;
 - (2) Complete preemployment screening for illegal substance use and hearing;
 - (3) Complete training through an association of public safety communications officials course or equivalent course;

- (4) Can prioritize appropriately all calls for service; and
- (5) Can determine the appropriate resources to be used in response to all calls for public safety services.
- u. Have written policies establishing procedures for recording and documenting relevant information of every request for service, including:
 - (1) Date and time of request for service;
 - (2) Name and address of requester, if available;
 - (3) Type of incident reported;
 - (4) Location of incident reported;
 - (5) Description of resources assigned, if any;
 - (6) Time of dispatch;
 - (7) Time of resource arrival; and
 - (8) Time of incident conclusion.
- v. Have written policies establishing dispatch procedures and provide periodic training of public safety telecommunicators on those procedures, including procedures for:
 - (1) Standardized call taking and dispatch procedures;
 - (2) The prompt handling and appropriate routing of misdirected emergency calls;
 - (3) The handling of hang-up emergency calls;
 - (4) The handling of calls from non-English speaking callers; and
 - (5) The handling of calls from callers with hearing or speech impairments.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 477

SENATE BILL NO. 2246

(Senators Olafson, Lyson)
(Representatives Frantsvog, Kreun)

AN ACT to amend and reenact section 57-40.6-02 of the North Dakota Century Code, relating to fees imposed for emergency services communications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-02. (Effective through June 30, 2012) Authority of counties or cities to impose fee on assessed communications service - Procedure.

The governing body of a county or city may impose a fee on all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar per month per communication connection and must be applied equally upon all assessed communications services.
2. The question of the adoption of the fee must be submitted on a petition on which the petition title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the fee for an initial six-year period.
3. If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation, the fee may be imposed for a six-year period and is subject to reimposition under subsection 4.
4. Any political subdivision that desires to increase the fee, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the fee. The new ballot question may apply to only the proposed increase and not to the original

amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors.

5. In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
6. In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
7. A fee imposed under this section before August 1, 2007, on telephone exchange access service is extended to all assessed communications services and remains in effect until changed under this section.
8. Political subdivisions within an intrastate multicounty public safety answering point may exceed the maximum fee of one dollar to an amount not to exceed one dollar and fifty cents. The governing body of the political subdivision may increase the fee by resolution subject to a vote in that political subdivision at the next general election.

(Effective after June 30, 2012) Authority of counties or cities to impose fee on assessed communications service - Procedure. The governing body of a county or city may impose a fee on all assessed communications services in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the fee permitted under this section. The resolution must specify an effective date for the fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the fee. The resolution must include a provision for submitting the proposed fee to the electors of the county or city before the imposition of the fee is effective. The resolution must specify a fee that does not exceed one dollar and fifty cents per month per communication connection and must be applied equally upon all assessed communications services.
2. The question of the adoption of the fee must be submitted on a petition on which the petition title of the proposition includes the maximum monthly rate of the proposed fee authorized under subsection 1. The question of the adoption of the fee may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the fee. The fee is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot

must be worded so that a "yes" vote authorizes imposition of the fee for an initial six year period.

- ~~3.~~ If the electors have approved imposition of a fee under this section before July 1, 2005, and the governing body of the city or county has not implemented that fee by June 30, 2005, the approval by the electors remains valid until the fee is implemented and, upon implementation, the fee may be imposed for a six year period and is subject to reimposition under subsection 4.
- ~~4.~~ Any political subdivision that desires to increase the fee, subject to the limitations in subsection 1, before the end of the six year term, must use the same ballot procedure originally used to authorize the fee. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six year term. If the fee authorized by this section is approved by the electors, the fee may be reimposed for six additional years without resubmitting the question to the electors. Once established by this section, the maximum fee may be increased, decreased, or eliminated by a majority vote of the electors. The question may be placed on the ballot of any general, primary, or special election by a resolution of the governing body, or by a petition signed by ten percent or more of the total number of qualified electors of the political subdivision voting for governor at the most recent gubernatorial election and submitted to the governing body. By action of the governing body, the fee amount collected may be adjusted, subject to the maximum approved by the voters, to meet the costs allowed by this chapter.
- ~~5.4.~~ In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.
- ~~6.5.~~ In the interest of public safety, where the subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the fee do not coincide, and where all of the political subdivisions within the subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the subscriber's telephone exchange access service boundary have voted for the fee, a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency services communication system. The telephone exchange access service provider may collect an additional fee, equal in amount to the basic fee on those subscribers within the exchange boundary. The additional fee amounts collected must be remitted as provided in this chapter.
- ~~7.6.~~ A fee imposed under this section before August 1, 2007, on telephone exchange access service is extended to all assessed communications services and will remain in effect until changed pursuant to subsection 3.

CHAPTER 478

HOUSE BILL NO. 1156

(Representatives Klemin, Porter)
(Senators Lyson, Olafson)

AN ACT to amend and reenact sections 57-40.6-06 and 57-40.6-07 and subdivision a of subsection 1 of section 57-40.6-10 of the North Dakota Century Code, relating to the confidentiality of emergency services communication systems and to emergency services communication system coordinators; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base.

Any telephone exchange access service provider providing emergency 911 service shall provide current customer names, addresses, and telephone numbers to each ~~944~~emergency services communication system coordinator, the coordinator's designee, or public safety answering point within each 911 system. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703(c)(1)(B)(iii), and in a manner that identifies the names and telephone numbers that are unpublished. The provider shall report data base information regarding new service or a change of service within two business days of the actual service change unless a longer period is permitted by the jurisdiction. The provider shall report data base information regarding dropped service at least monthly.

SECTION 2. AMENDMENT. Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-07. Use of the furnished information.

1. Unpublished names and telephone numbers generated by a ~~944~~an emergency services communication system coordinator or ~~944~~a public safety answering point or provided to a 944an emergency services communication system coordinator or public safety answering point under section 57-40.6-06 are confidential and may be used only for verifying the location or identity, or both, for response purposes, of a person calling a ~~944~~public safety answering point for emergency help or by the ~~944~~emergency services communication system coordinator or public safety answering point for the purpose of a public safety agency notifying a person of an emergency.
2. Published names and telephone numbers maintained by a ~~944~~an emergency services communication system coordinator or public safety answering point are exempt records as defined in section 44-04-17.1 but must be provided upon request to the treasurer and auditor of the county served by the ~~944~~

~~coordinator~~ public safety answering point for the purpose of verifying and correcting names and addresses used for official purposes.

3. A record obtained by a public safety answering point for the purpose of providing services in an emergency and which reveals personal information or the identity, address, or telephone number of a person requesting emergency service or reporting an emergency ~~by accessing an emergency telephone number 911 system~~ is exempt from section 44-04-18 and may be redacted from the record before it is released.
4. An audio recording of a request for emergency services or of a report of an emergency is an exempt record as defined in section 44-04-17.1. However, upon request, a person may listen to the audio recording, but may not copy or record the audio. A person also may request a written transcript of the audio recording, which must be provided to the person within a reasonable time.

¹⁷³ **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

- a. Designate ~~a 911~~ an emergency services communication system coordinator.

Approved April 4, 2011
Filed April 4, 2011

¹⁷³ Section 57-40.6-10 was also amended by section 2 of House Bill No. 1045, chapter 476, and section 1 of House Bill No. 1139, chapter 479.

CHAPTER 479

HOUSE BILL NO. 1139

(Representative Porter)

AN ACT to amend and reenact subdivision k of subsection 1 of section 57-40.6-10 of the North Dakota Century Code, relating to dispatch of emergency medical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁴ **SECTION 1. AMENDMENT.** Subdivision k of subsection 1 of section 57-40.6-10 of the North Dakota Century Code is amended and reenacted as follows:

- k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision. An entity that is a quick response unit whose primary function is not emergency medical services may elect not to be dispatched to medical emergencies outside the entity's primary response area if the area outside the entity's primary response area is served by an advanced life support ambulance service. An entity that makes this election not to be dispatched is not eligible for an emergency medical services allocation under chapter 23-40.

Approved April 8, 2011
Filed April 11, 2011

¹⁷⁴ Section 57-40.6-10 was also amended by section 2 of House Bill No. 1045, chapter 476, and section 3 of House Bill No. 1156, chapter 478.

CHAPTER 480

HOUSE BILL NO. 1205

(Representatives Delmore, R. Kelsch, S. Meyer)
(Senators Krebsbach, Lyson, Nelson)

AN ACT to create and enact a new section to chapter 57-40.6 of the North Dakota Century Code, relating to call location information by a wireless service provider to law enforcement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

Provision of call location information by wireless service provider to law enforcement.

1. Upon request of a law enforcement agency or a public safety answering point on behalf of a law enforcement agency, a wireless service provider shall provide call location information concerning the telecommunications device of a user to the requesting law enforcement agency or public safety answering point. A law enforcement agency or public safety answering point may not request information under this section unless for the purposes of responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.
2. A wireless service provider may establish protocols by which the carrier voluntarily discloses call location information.
3. A claim for relief may not be brought in any court against any wireless service provider or any other person for providing call location information if acting in good faith and under this section.
4. The bureau of criminal investigation shall obtain contact information from all wireless service providers authorized to do business in this state to facilitate a request from a law enforcement agency or a public safety answering point on behalf of a law enforcement agency for call location information under this section. The bureau shall disseminate the contact information to each public safety answering point in this state.

Approved April 8, 2011
Filed April 11, 2011

CHAPTER 481

SENATE BILL NO. 2197

(Senators Wardner, Robinson, Krebsbach)
(Representatives Kempenich, Monson, Williams)

AN ACT to create and enact a new subsection to section 57-43.2-05 of the North Dakota Century Code, relating to licensing requirements for the special fuels tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-43.2-05 of the North Dakota Century Code is created and enacted as follows:

Based on the information provided in a special fuels retailer's license application and on the special fuels tax laws in effect at the time the application is filed, the tax commissioner may determine, on those conditions and terms as the commissioner deems reasonable and necessary, that a special fuels retailer license is not required.

- a. If there is a subsequent change in the special fuels tax laws that would require the person to obtain a license, the tax commissioner shall notify the person of the change and that a license application must be submitted. The person shall submit an application within thirty days of the notice provided in this subdivision. If the application is not filed, the tax commissioner may take the action necessary to enforce the license requirements of this section.
- b. If there is a subsequent change in the applicant's business practices that may require the person to obtain a retail license, the person must submit a revised license application. The tax commissioner shall review the revised application and make a redetermination as to whether a special fuels license is required.
- c. If the tax commissioner determines there was an omission or erroneous information provided in a license application and that a license would have been required under this section if correct and complete information had been provided, the tax commissioner shall assess tax, penalty, and interest from the date the license application was received. The tax must be assessed as provided in section 57-43.2-15 and must be based on the best information available. Subsection 4 of section 57-43.2-14 applies to the time period in which an assessment may be made under this subsection.

SECTION 2. EFFECTIVE DATE. This Act is effective for special fuels retailer's license applications filed after June 30, 2011.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 482

HOUSE BILL NO. 1467

(Representatives Kempenich, Thoreson, S. Meyer, Onstad)
(Senators Schaible, Wardner)

AN ACT to amend and reenact section 57-51.1-03 of the North Dakota Century Code, relating to a triggered oil extraction tax rate reduction; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03. (Effective through June 30, ~~2012~~2013) Exemptions from oil extraction tax.

The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is

reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

5. a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
- b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.
- c. For purposes of this subsection, incremental production is defined in the following manner:
 - (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
 - (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
 - (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial

commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both

primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.

- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:
 - a. The well is located within the boundaries of an Indian reservation;
 - b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
 - c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.
9. The first seventy-five thousand barrels or the first four million five hundred thousand dollars of gross value at the well, whichever is less, of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed after April 30, 2009, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion. The rate reduction under this subsection becomes effective on the first day of the month following a month for which the average price of a barrel of crude oil is less than fifty-five dollars. The rate reduction under this subsection becomes ineffective on the first day of the month following a month in which the average price of a barrel of crude oil exceeds seventy dollars. If the rate reduction under this subsection is effective on the date of completion of a well, the rate reduction applies to production from that well for up to

eighteen months after completion, subject to the other limitations of this subsection. If the rate reduction under this subsection is ineffective on the date of completion of a well, the rate reduction under this subsection does not apply to production from that well at any time.

(Effective after June 30, 2012) Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
5.
 - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
 - b. The incremental production from a tertiary recovery project that does not use carbon dioxide and which has been certified as a qualified project by the industrial commission is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins. Incremental production from a tertiary recovery project that uses carbon dioxide and which has been certified as a qualified project by the

industrial commission is exempt from any taxes imposed under this chapter from the date the incremental production begins.

- c. For purposes of this subsection, incremental production is defined in the following manner:
- (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
 - (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
 - (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.

- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
 - (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
 - (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a period of ten years after the date of receipt of the certification. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period.

However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.
8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:
 - a. The well is located within the boundaries of an Indian reservation;
 - b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
 - c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.
9. The first seventy-five thousand barrels of oil produced during the first eighteen months after completion, from a horizontal well drilled and completed in the Bakken formation after June 30, 2007, and before July 1, 2008, is subject to a reduced tax rate of two percent of the gross value at the well of the oil extracted under this chapter. A well eligible for a reduced tax rate under this subsection is eligible for the exemption for horizontal wells under subsection 3, if the exemption under subsection 3 is effective during all or part of the first twenty-four months after completion.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2011, and is effective through June 30, 2013, and is thereafter ineffective.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 483

HOUSE BILL NO. 1451

(Representatives Monson, Carlson, Delzer, Skarphol)
(Senators Oehlke, Sitte)

AN ACT to create and enact a new section to chapter 57-51.1 of the North Dakota Century Code, relating to deposit of oil and gas tax revenue; to amend and reenact sections 6-09.6-01.1, 6-09.6-01.2, 6-09.6-03, 6-09.7-05, 15-08.1-08, 15-08.1-09, 54-27.2-01, 57-51.1-07.3, and 61-33-07 of the North Dakota Century Code, relating to the lands and minerals trust fund, the budget stabilization fund, and the oil and gas research fund; to repeal sections 57-51.1-07.2 and 57-51.1-07.4 of the North Dakota Century Code, relating to elimination of the permanent oil tax trust fund; to provide for transfers; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.6-01.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.6-01.1. Developmentally disabled facility loan fund program no. 2.

There is hereby created a developmentally disabled facility loan fund program no. 2 for the purpose of making loans to nonprofit corporations, organized in the localities in which facilities are proposed to be located, for project costs, including the cost of real estate, construction, reconstruction, acquisition, furnishings and equipment, and administrative costs related to the establishment thereof, of facilities for developmentally disabled, chronically mentally ill, and physically disabled persons. The loan fund may borrow an amount not to exceed five million dollars from the common schools trust fund to finance the program. The loan must be repaid from any moneys in the ~~lands and minerals trust~~ strategic investment and improvements fund not otherwise appropriated. Any interest earned by the loan fund before loans are made must be credited by the Bank to the ~~lands and minerals trust~~ strategic investment and improvements fund. The loan fund program must be administered by the Bank of North Dakota in the same manner the Bank administers the program established by sections 6-09.6-01 and 6-09.6-02 through 6-09.6-05, except that all payments of principal and interest must be credited by the Bank to the ~~lands and minerals trust~~ strategic investment and improvements fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

SECTION 2. AMENDMENT. Section 6-09.6-01.2 of the North Dakota Century Code is amended and reenacted as follows:

6-09.6-01.2. Developmentally disabled facility loan fund program no. 3.

There is hereby created a developmentally disabled facility loan fund program no. 3 for the purpose of making loans to nonprofit corporations, organized in the localities in which facilities are proposed to be located, for project costs, including the cost of real estate, construction, reconstruction, acquisition, furnishings and equipment, and administrative costs related to the establishment thereof, of facilities

for developmentally disabled, chronically mentally ill, and physically disabled persons. The loan fund may borrow an amount not to exceed four million nine hundred fifty-one thousand one hundred forty-five dollars from the common schools trust fund to finance the program. The loan fund program shall be administered by the Bank of North Dakota in the same manner the Bank administers the program established by sections 6-09.6-01 and 6-09.6-02 through 6-09.6-05, except that all payments of principal and interest must be credited by the Bank to the ~~lands and minerals trust~~strategic investment and improvements fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

SECTION 3. AMENDMENT. Section 6-09.6-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.6-03. Amount of loan - Terms and conditions.

Loans in an amount not exceeding three-fourths of project costs, including the cost of construction, reconstruction, acquisition, furnishings, equipment, and administrative costs related to the establishment of the project, and the cost or value of real estate upon which the facility is located, must be made by the Bank of North Dakota from the fund maintained pursuant to sections 6-09.6-01, 6-09.6-01.1, and 6-09.6-01.2. Such loans must bear interest at a rate of ten and one-half percent for loans relating to facilities for developmentally disabled persons and five percent for loans relating to facilities for physically disabled persons and chronically mentally ill persons and are repayable in the manner prescribed by the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of a loan under this chapter, each nonprofit corporation shall execute a contract with the state to operate the facility in accordance with the standards prescribed for the licensing of the facility by the department of human services. The contract shall also provide that if the use of the facility is discontinued or diverted to purposes other than those proposed in the loan application without the express consent of the department of human services, the full amount of the loan provided under this chapter immediately becomes due and payable. The Bank of North Dakota may annually deduct, as a service fee for administering the revolving fund maintained under section 6-09.6-01, one-half of one percent of the principal balance of the outstanding loans from the revolving fund. Payments of interest and principal on loans made under section 6-09.6-01 must be made to the Bank of North Dakota and credited to the revolving fund. Payments of principal and interest on loans made under sections 6-09.6-01.1 and 6-09.6-01.2 must be credited by the Bank to the ~~lands and minerals trust~~strategic investment and improvements fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

¹⁷⁵ **SECTION 4. AMENDMENT.** Section 6-09.7-05 of the North Dakota Century Code is amended and reenacted as follows:

6-09.7-05. Establishment and maintenance of adequate guarantee funds - Use of ~~lands and minerals trust~~strategic investment and improvements fund.

The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. The guarantee reserve fund must be maintained from the ~~lands and minerals trust~~strategic investment and improvements fund created by section 15-08.1-08 and any moneys transferred from

¹⁷⁵ Section 6-09.7-05 was also amended by section 3 of Senate Bill No. 2306, chapter 82.

the ~~lands and minerals trust~~ strategic investment and improvements fund to maintain the guarantee reserve fund are available to reimburse lenders for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the state guarantee loan program and income in excess of that required to pay the cost of administering the program shall be deposited in the reserve fund. The amount of reserves for all guaranteed loans must be determined by a formula which will assure, as determined by the Bank, an adequate amount of reserve.

SECTION 5. AMENDMENT. Section 15-08.1-08 of the North Dakota Century Code is amended and reenacted as follows:

15-08.1-08. Income - Expenses - Reimbursement - Creation of ~~lands and minerals trust~~strategic investment and improvements fund - Legislative intent - Contingent transfer to legacy fund.

The income derived from the sale, lease, and management of the mineral interests acquired by the board of university and school lands pursuant to this chapter ~~and other funds as provided by law must, after deducting the expenses of sale, lease, and management of the property, be deposited in a fund to be known as the ~~lands and minerals trust~~strategic investment and improvements fund.~~ The corpus and interest of such trust may be expended as the legislative assembly may provide for one-time expenditures relating to improving state infrastructure or for initiatives to improve the efficiency and effectiveness of state government. It is the intent of the legislative assembly that moneys in the fund may be included in draft appropriation acts under section 54-44.1-06 and may be appropriated by the legislative assembly, but only to the extent that the moneys are estimated to be available at the beginning of the biennium in which the appropriations are authorized. If the unobligated balance in the fund at the end of any month exceeds three hundred million dollars, twenty-five percent of any revenues received for deposit in the fund in the subsequent month must be deposited instead into the legacy fund. For purposes of this section, "unobligated balance in the fund" means the balance in the fund reduced by appropriations or transfers from the fund authorized by the legislative assembly, guarantee reserve fund requirements under section 6-09.7-05, and any fund balance designated by the board of university and school lands relating to potential title disputes related to certain riverbed leases.

SECTION 6. AMENDMENT. Section 15-08.1-09 of the North Dakota Century Code is amended and reenacted as follows:

15-08.1-09. ~~Lands and minerals trust~~Strategic investment and improvements fund - Continuing appropriation.

There is appropriated annually the amount necessary to pay from the ~~lands and minerals trust~~ strategic investment and improvements fund all principal and interest to the common schools trust fund on any loans made from the fund to the developmentally disabled loan fund program nos. 2 and 3. This authority is ineffective after all loans are repaid.

SECTION 7. AMENDMENT. Section 54-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-27.2-01. (Effective through June 30, 2009) Budget stabilization fund.

The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund to an amount greater than five percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.

(Effective after June 30, 2009) Budget stabilization fund. The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund to an amount greater than ~~ten~~ nine and one-half percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.

SECTION 8. AMENDMENT. Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.3. Oil and gas research fund - Deposits - Continuing appropriation.

There is established a special fund in the state treasury to be known as the oil and gas research fund. Before depositing oil and gas gross production tax and oil extraction tax revenues in the general fund, property tax relief sustainability, strategic investment and improvements fund, or the ~~permanent oil tax trust~~ state disaster relief fund, two percent of the revenues must be deposited monthly into the oil and gas research fund, up to four million dollars per biennium. All moneys deposited in the oil and gas research fund and interest on all such moneys are appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.

SECTION 9. A new section to chapter 57-51.1 of the North Dakota Century Code is created and enacted as follows:

State share of oil and gas taxes - Deposits.

From the revenues designated for deposit in the state general fund under chapters 57-51 and 57-51.1, the state treasurer shall deposit the revenues received each biennium as follows:

1. The first two hundred million dollars into the state general fund;
2. The next three hundred forty-one million seven hundred ninety thousand dollars into the property tax relief sustainability fund;
3. The next one hundred million dollars into the state general fund;

4. The next one hundred million dollars into the strategic investment and improvements fund;
5. The next twenty-two million dollars into the state disaster relief fund; and
6. Any additional revenues into the strategic investment and improvements fund.

SECTION 10. AMENDMENT. Section 61-33-07 of the North Dakota Century Code is amended and reenacted as follows:

61-33-07. Deposit of income.

All income derived from the lease and management of the lands acquired by the state engineer and board of university and school lands pursuant to this chapter and not belonging to other trust funds must be deposited in the ~~lands and minerals trust~~ strategic investment and improvements fund.

SECTION 11. REPEAL. Sections 57-51.1-07.2 and 57-51.1-07.4 of the North Dakota Century Code are repealed at the end of the biennium beginning July 1, 2009, and ending June 30, 2011. For purposes of this section, at the end of the biennium means after cancellation of unexpended appropriations under section 54-44.1-11 but before any transfers to the budget stabilization fund under section 54-27.2-02.

SECTION 12. TRANSFER. At the end of the biennium beginning July 1, 2009, and ending June 30, 2011, the state treasurer shall transfer any remaining balance in the permanent oil tax trust fund to the state general fund. For purposes of this section, at the end of the biennium means after cancellation of unexpended appropriations under section 54-44.1-11 but before any transfers to the budget stabilization fund under section 54-27.2-02.

SECTION 13. TRANSFER. As soon as feasible after June 30, 2011, the state treasurer shall close out the lands and minerals trust fund and transfer any remaining unobligated balance to the strategic investment and improvements fund.

SECTION 14. EFFECTIVE DATE. This Act becomes effective July 1, 2011.

SECTION 15. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 9, 2011
Filed May 10, 2011

CHAPTER 484

SENATE BILL NO. 2129

(Senators Bowman, Lyson, Wardner, Warner)
(Representatives S. Meyer, Sukut)

AN ACT to amend and reenact sections 57-51-15 and 57-51.1-07 of the North Dakota Century Code, relating to legacy fund deposits of oil and gas tax collections and holding political subdivisions harmless against related allocation reductions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁶ **SECTION 1. AMENDMENT.** Section 57-51-15 of the North Dakota Century Code is amended and reenacted as follows:

57-51-15. Apportionment and use of proceeds of Gross production tax allocation.

The gross production tax ~~provided for in this chapter~~ must be ~~apportioned~~allocated monthly as follows:

1. First the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and one-fifth of the tax on gas must be deposited with the state treasurer who shall:
 - a. ~~Credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding eight million dollars per biennium;~~
 - b. Allocate five hundred thousand dollars per fiscal year to each city in an oil-producing county which has a population of seven thousand five hundred or more and more than two percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota. The allocation under this subdivision must be doubled if the city has more than seven and one-half percent of its private covered employment engaged in the mining industry, according to data compiled by job service North Dakota; ~~and~~
 - b. Allocate thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding eight million dollars per biennium; and
 - c. ~~Credit~~Allocate the remaining revenues ~~to the state general fund under subsection 3.~~
2. After deduction of the amount provided in subsection 1, annual revenue collected under this chapter from oil and gas produced in each county must be allocated as follows:

¹⁷⁶ Section 57-51-15 was also amended by section 6 of House Bill No. 1013, chapter 13, and section 1 of House Bill No. 1077, chapter 485.

- a. The first two million dollars ~~must be~~is allocated to the county.
 - b. ~~The~~Of the next one million dollars ~~must be allocated,~~ seventy-five percent is allocated to the county and ~~twenty five percent to the state general fund.~~
 - c. ~~The~~Of the next one million dollars ~~must be allocated,~~ fifty percent is allocated to the county and ~~fifty percent to the state general fund.~~
 - d. ~~The~~Of the next fourteen million dollars ~~must be allocated,~~ twenty-five percent is allocated to the county and ~~seventy five percent to the state general fund.~~
 - e. ~~All~~Of all annual revenue ~~remaining after the allocation in subdivision d~~ must be allocated~~exceeding eighteen million dollars,~~ ten percent is allocated to the county and ~~ninety percent to the state general fund.~~
3. After the allocations under subsections 1 and 2, the amount remaining is allocated first to provide for deposit of thirty percent of all revenue collected under this chapter in the legacy fund as provided in section 26 of article X of the Constitution of North Dakota and the remainder must be allocated to the state general fund. If the amount available for a monthly allocation under this subsection is insufficient to deposit thirty percent of all revenue collected under this chapter in the legacy fund, the state treasurer shall transfer the amount of the shortfall from the state general fund share of oil extraction tax collections and deposit that amount in the legacy fund.
- ~~3.4.~~ The amount to which each county is entitled under subsection 2 must be allocated within the county so the first five million three hundred fifty thousand dollars is allocated under subsection ~~45~~ for each fiscal year and any amount received by a county exceeding five million three hundred fifty thousand dollars is credited by the county treasurer to the county infrastructure fund and allocated under subsection ~~56~~.
- ~~4.5.~~ a. Forty-five percent of all revenues allocated to any county for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes.
- b. Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school

age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.

The countywide allocation to school districts under this subdivision is subject to the following:

- (1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.
 - (2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.
 - (3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.
 - (4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.
 - (5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:
 - (a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.
 - (b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.
 - (c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.
- c. Twenty percent of all revenues allocated to any county for allocation under this subsection must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection ~~56~~ which totals more than seven hundred fifty dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund. In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the

population of that city for purposes of this subdivision must be increased by eight hundred percent. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.

- ~~5-6.~~ a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections ~~34~~ and ~~45~~ must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes.
- b. Thirty-five percent of all revenues allocated to the county infrastructure fund under subsections ~~34~~ and ~~45~~ must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.
- c. Twenty percent of all revenues allocated to any county infrastructure fund under subsections ~~34~~ and ~~45~~ must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. A city may not receive an allocation for a fiscal year under this subsection and subsection ~~45~~ which totals more than seven hundred fifty dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be entitled must be deposited instead in that county's general fund. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.
- ~~6-7.~~ Within ~~sixty~~thirty days after the end of each ~~fiscal~~calendar year, the board of county commissioners of each county that has received an allocation under this section shall file a report for the ~~fiscal~~calendar year with the ~~tax~~ commissioner, in a format prescribed by the ~~tax~~ commissioner, ~~showing~~including:

- a. ~~The amount received by the county in its own behalf, the amount of those funds expended for each purpose to which funds were devoted, and the share of county property tax revenue expended for each of those purposes, and the amount of those funds unexpended at the end of the fiscal year.~~The county's statement of revenues and expenditures; and
- b. The amount available in the county infrastructure fund for allocation to or for the benefit of townships or school districts, the amount allocated to each organized township or school district and the amount expended from each such allocation by that township or school district, the amount expended by the board of county commissioners on behalf of each unorganized township for which an expenditure was made, and the amount available for allocation to or for the benefit of townships or school districts which remained unexpended at the end of the fiscal year.

Within ~~sixty~~^{fifteen} days after the time when reports under this subsection were due, the tax commissioner shall provide ~~a report~~^{the reports} to the legislative council compiling the information from reports received under this subsection.

~~In developing the format for reports under this subsection, the tax commissioner shall consult the energy development impact office and at least two county auditors from oil producing counties.~~

SECTION 2. AMENDMENT. Section 57-51.1-07 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07. Allocation of moneys in oil extraction tax development fund.

Moneys deposited in the oil extraction tax development fund must be transferred monthly by the state treasurer as follows:

1. Twenty percent must be allocated and credited to the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds must be credited to a special trust fund, to be known as the resources trust fund. The resources trust fund must be established in the state treasury and the funds therein must be deposited and invested as are other state funds to earn the maximum amount permitted by law which income must be deposited in the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation and are available to:
 - a. The state water commission for planning for and construction of water-related projects, including rural water systems. These water-related projects must be those which the state water commission has the authority to undertake and construct pursuant to chapter 61-02; and
 - b. The industrial commission for the funding of programs for development of energy conservation and renewable energy sources; for studies for development of cogeneration systems that increase the capacity of a system to produce more than one kind of energy from the same fuel; for studies for development of waste products utilization; and for the making of grants and loans in connection therewith.

2. Twenty percent must be allocated to the common schools trust fund and foundation aid stabilization fund as provided in section 24 of article X of the Constitution of North Dakota.
3. ~~Sixty~~ Thirty percent must be allocated to the legacy fund as provided in section 26 of article X of the Constitution of North Dakota.
4. Thirty percent must be allocated and credited to the state's general fund ~~for general state purposes.~~

SECTION 3. EFFECTIVE DATE. This Act is effective for oil and gas produced after June 30, 2011.

Approved May 17, 2011

Filed May 17, 2011

CHAPTER 485

HOUSE BILL NO. 1077

(Representatives Drovdal, Kempenich, Hatlestad, Onstad)
(Senators Warner, Lyson)

AN ACT to amend and reenact subsections 4 and 5 of section 57-51-15 of the North Dakota Century Code, relating to elimination of the limitation on allocations that may be received by a city under the oil and gas gross production tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁷ **SECTION 1. AMENDMENT.** Subsections 4 and 5 of section 57-51-15 of the North Dakota Century Code are amended and reenacted as follows:

4. a. Forty-five percent of all revenues allocated to any county for allocation under this subsection must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes.
- b. Thirty-five percent of all revenues allocated to any county for allocation under this subsection must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to the county treasurer by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per student cost multiplied by seventy percent, then multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county is entitled to one hundred twenty percent of the county average per student cost multiplied by the number of students in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection.

¹⁷⁷ Section 57-51-15 was also amended by section 6 of House Bill No. 1013, chapter 13, and section 1 of Senate Bill No. 2129, chapter 484.

The countywide allocation to school districts under this subdivision is subject to the following:

- (1) The first three hundred fifty thousand dollars is apportioned entirely among school districts in the county.
 - (2) The next three hundred fifty thousand dollars is apportioned seventy-five percent among school districts in the county and twenty-five percent to the county infrastructure fund.
 - (3) The next two hundred sixty-two thousand five hundred dollars is apportioned two-thirds among school districts in the county and one-third to the county infrastructure fund.
 - (4) The next one hundred seventy-five thousand dollars is apportioned fifty percent among school districts in the county and fifty percent to the county infrastructure fund.
 - (5) Any remaining amount is apportioned to the county infrastructure fund except from that remaining amount the following amounts are apportioned among school districts in the county:
 - (a) Four hundred ninety thousand dollars, for counties having a population of three thousand or fewer.
 - (b) Five hundred sixty thousand dollars, for counties having a population of more than three thousand and fewer than six thousand.
 - (c) Seven hundred thirty-five thousand dollars, for counties having a population of six thousand or more.
- c. Twenty percent of all revenues allocated to any county for allocation under this subsection must be apportioned no less than quarterly by the state treasurer to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. ~~A city may not receive an allocation for a fiscal year under this subsection and subsection 5 which totals more than seven hundred fifty dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in that county's general fund.~~ In determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of this subdivision must be increased by eight hundred percent. If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.
5. a. Forty-five percent of all revenues allocated to a county infrastructure fund under subsections 3 and 4 must be credited by the county treasurer to the county general fund. However, the allocation to a county under this subdivision must be credited to the state general fund if during that fiscal

- year the county does not levy a total of at least ten mills for combined levies for county road and bridge, farm-to-market and federal-aid road, and county road purposes.
- b. Thirty-five percent of all revenues allocated to the county infrastructure fund under subsections 3 and 4 must be allocated by the board of county commissioners to or for the benefit of townships in the county on the basis of applications by townships for funding to offset oil and gas development impact to township roads or other infrastructure needs or applications by school districts for repair or replacement of school district vehicles necessitated by damage or deterioration attributable to travel on oil and gas development-impacted roads. An organized township is not eligible for an allocation of funds under this subdivision unless during that fiscal year that township levies at least ten mills for township purposes. For unorganized townships within the county, the board of county commissioners may expend an appropriate portion of revenues under this subdivision to offset oil and gas development impact to township roads or other infrastructure needs in those townships. The amount deposited during each calendar year in the county infrastructure fund which is designated for allocation under this subdivision and which is unexpended and unobligated at the end of the calendar year must be transferred by the county treasurer to the county road and bridge fund for use on county road and bridge projects.
- c. Twenty percent of all revenues allocated to any county infrastructure fund under subsections 3 and 4 must be allocated by the county treasurer no less than quarterly to the incorporated cities of the county. Apportionment among cities under this subsection must be based upon the population of each incorporated city according to the last official decennial federal census. ~~A city may not receive an allocation for a fiscal year under this subsection and subsection 4 which totals more than seven hundred fifty dollars per capita. Once this per capita limitation has been reached, all excess funds to which a city would otherwise be entitled must be deposited instead in that county's general fund.~~ If a city receives a direct allocation under subsection 1, the allocation to that city under this subsection is limited to sixty percent of the amount otherwise determined for that city under this subsection and the amount exceeding this limitation must be reallocated among the other cities in the county.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2011.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 486

HOUSE BILL NO. 1046

(Legislative Management)
(Taxation Committee)

AN ACT to create and enact a new subsection to section 57-39.2-04 and chapter 57-65 of the North Dakota Century Code, relating to a sales tax exemption for potash and byproducts of potash and taxation of potash and byproducts; to amend and reenact subsection 32 of section 57-02-08 of the North Dakota Century Code, relating to exemption of minerals subject to in lieu of taxes; to provide for a legislative management study; to provide a statement of legislative intent; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁸ **SECTION 1. AMENDMENT.** Subsection 32 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

32. Minerals in place in the earth which at the time of removal from the earth are then subject to taxes imposed under chapter 57-51 ~~or~~, 57-61, or 57-65.

¹⁷⁹ **SECTION 2.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of any potash or byproducts taxable under chapter 57-65.

SECTION 3. Chapter 57-65 of the North Dakota Century Code is created and enacted as follows:

57-65-01. Definitions.

As used in this chapter:

1. "Byproducts" includes any mineral product, or combination or compound thereof, produced during the processing of potash that is sold and includes aluminum, antimony, arsenic, barium, beryllium, bismuth, boron, cadmium, calcium, cerium, cesium, chromium, cobalt, columbium, copper, gallium, gemstones, germanium, gold, gypsum, hafnium, indium, iridium, iron, lanthanum, lead, lithium, magnesium, manganese, mercury, molybdenum, nickel, osmium, palladium, platinum, praseodymium, rare earth metals, rhenium, rhodium, rubidium, ruthenium, samarium, scandium, selenium, silicon, silver, sodium, strontium, tantalum, tellurium, thallium, thorium, tin,

¹⁷⁸ Section 57-02-08 was also amended by section 1 of House Bill No. 1223, chapter 443, and section 1 of Senate Bill No. 2049, chapter 444, and subsection 7 was repealed by section 2 of House Bill No. 1246, chapter 445.

¹⁷⁹ Section 57-39.2-04 was also amended by section 1 of House Bill No. 1334, chapter 468, section 3 of Senate Bill No. 2172, chapter 465, section 1 of House Bill No. 1424, chapter 467, section 13 of Senate Bill No. 2034, chapter 460, and section 1 of Senate Bill No. 2292, chapter 466.

titanium, tungsten, vanadium, yttrium, zinc, and zirconium. The term does not include oil, natural gas, or liquid hydrocarbon, individually or in any combination, coal, carbon dioxide, or severed sand or gravel subject to an extraction or severance tax under any other provisions of this title.

2. "Commissioner" means the tax commissioner.
3. "Gross receipts" means all revenue valued in money, whether received in money or otherwise, realized by the taxpayer for sale of potash or byproducts, whether the sale is before or after transportation, manufacturing, and processing of the product.
4. "Mining facility" includes contiguous land and all structures and improvements on the mining permit area used for mining potash and byproducts and includes the act, process, or work of extracting potash from its naturally occurring environment and transporting or moving potash or byproducts to the point of processing, use, or sale. The term includes the process of leaching potash from its naturally occurring deposit. The term also includes an "extraction facility" as defined in chapter 38-12.
5. "Mining permit area" means the area covered by a permit issued by the industrial commission to mine potash and potash byproducts.
6. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, fiduciary, trustee, receiver, administrator, representative of any kind, or any other group or combination acting as a unit.
7. "Potash" includes muriate of potash [the chemical compound potassium chloride, KCl], sulfate of potash [the chemical compound sulfate, K₂S₀₄], and langbeinite [the chemical compound potassium magnesium sulfate, K₂S₀₄*2MgS₀₄], or any other potassium, magnesium, or mixed-potassium salts, and includes ores, intermediates, products, and reaction products of such compounds.
8. "Processing" includes breaking, crushing, cleaning, drying, sizing, milling, treating, heating, separating, compressing, beneficiation, or loading or unloading for any purpose.
9. "Processing plant" means any facility in North Dakota in which potash or byproducts are extracted, recovered, or produced from a mineral resource and includes any facility in North Dakota associated with the mine in which the primary production from the mining facility is processed or refined.
10. "Taxpayer" includes any person that is a producer of potash or potash byproducts subject to the tax imposed under this chapter.

57-65-02. Imposition of tax on potash.

A tax at the rate of two percent is imposed upon all potash produced within this state. The tax levied attaches to the whole production of potash except any byproducts of potash taxed under section 57-65-03.

1. The tax on potash is assessed against the sales price of the potash in an arm's-length contract between the taxpayer and the purchaser. If a potash sale or transfer is not the result of an arm's-length contract, the tax is calculated by taking a ton of two thousand pounds [907.18 kilograms] of

potash produced times the potash tax rate times the annual average price of potash. The "annual average price of potash" for each twelve-month period beginning July first is the potash producer price index (commodity code PCU212391212391) as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year. For taxable production for the twelve months beginning July 1, 2011, the "annual average price of potash" is three hundred fifty-seven dollars and ten cents.

2. The tax department shall provide the annual average price of potash for the fiscal year to affected taxpayers by written notice mailed before June first.
3. If the potash producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

57-65-03. Imposition of tax on byproducts of potash production.

A subsurface mineral tax of four percent is imposed upon the gross value of all subsurface mineral byproducts produced during the processing of potash produced within this state. The tax levied attaches to the whole production of byproducts. Inventory is not taxable until it is sold. The gross value at the processing plant is the price paid for the byproducts under an arm's-length contract between the taxpayer and the purchaser. In the absence of an arm's-length contract, the gross value at the processing plant is established by the price paid under an arm's-length contract, to which the person paying the tax is a party, for the purchase or sale of byproducts of like kind, character, and quality.

57-65-04. Type of tax.

For purposes of interpreting section 5 of article X of the Constitution of North Dakota, relating to federal land bank taxation and to the taxation of other governmental entities if their immunity from taxation has been waived, the tax under this chapter is a real property tax on subsurface mineral-producing estates and interests.

57-65-05. Potash and byproducts tax to be in lieu of other taxes.

The payment of the taxes under this chapter must be in full and in lieu of all ad valorem taxes by the state, counties, cities, school districts, and other taxing districts upon any property rights attached to or inherent in the right to producing potash and potash byproducts; upon producing potash and potash byproducts leases; upon machinery, appliances, and equipment used in and around any well producing potash or potash byproducts and actually used in the operation of the well; and upon any investment in property. The land and the processing plant, mining facility, or satellite facility must be assessed and taxed as other property within the taxing district in which the property is situated. The tax under this chapter is not in lieu of income taxes.

57-65-06. Duties of tax commissioner and state treasurer.

The tax commissioner shall deposit promptly with the state treasurer all moneys collected under this chapter and accompany each remittance, when possible, with a certificate showing the county where the potash and byproducts were processed. The state treasurer, no less than monthly, shall pay over to the county treasurer of the several counties the money to which they are entitled.

57-65-07. Allocation of revenue.

The tax collected as provided in this chapter is appropriated and must be apportioned as determined by the sixty-third legislative assembly.

57-65-08. Returns and payment of tax on monthly basis - Due date - When delinquent - Extensions.

1. Any person engaged in the production, within this state, of potash or byproducts shall before the twenty-sixth day of the next succeeding month after production, file with the tax commissioner a statement upon forms prescribed by the tax commissioner.
2. The tax under this chapter must be paid on a monthly basis. The tax is due and payable on the twenty-fifth day of the month succeeding the month of production. If the tax is not paid as required by this section, the tax becomes delinquent and must be collected as provided in this chapter.
3. The tax commissioner, upon request and a proper showing of good cause, may grant an extension of time, not to exceed fifteen days, for paying the tax. When the request is granted, the tax is not delinquent until the extended period has expired. A taxpayer who is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve percent per annum from the date the tax was due to the date the tax is paid.
4. All calculations of the tax under this chapter, including production, distribution, and claims for credit or refund, are based on the month of production and must be credited to that month.
5. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

57-65-09. Tax commissioner to audit returns and correct tax.

1. The tax commissioner may determine whether a return required to be filed with the tax commissioner under this chapter is a true and correct return of gross production, and of the value, of the potash and byproducts. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the tax commissioner shall determine the amount of tax due from any information the tax commissioner may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices.
2. The tax commissioner shall have three years after the due date of the original return or three years after the original return is filed, whichever period expires later, to assess the tax and, if additional tax is due, provide notice of the determination of the additional tax to the taxpayer. If there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax before any credits, any additional tax determined to be due may be assessed anytime within six years after the due date of the return or six years after the return was filed, whichever period expires later.
3. If a taxpayer files an amended return, the tax commissioner has two years after the return is filed to audit the return and assess any additional tax attributable to the changes or corrections even though other time periods

prescribed in this section for the assessment of tax may have expired. The provisions of this section do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired as of the end of the two-year period prescribed in this section.

4. If false or fraudulent information is given in the return, or if the failure to file a return is due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed at any time.
5. If before the expiration of the time periods prescribed in subsections 1, 2, and 3 the tax commissioner and a person consent in writing to an extension of time for the assessment of the tax, an assessment of additional tax may be made at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If a person refuses to consent to an extension of time or a renewal thereof, the tax commissioner may make an assessment based on the best information available. The period agreed upon in this subsection, including extensions, expires upon issuance of an assessment by the tax commissioner.
6. Any person who consents to an extension of time for assessment of tax must be presumed to have consented to a similar extension for refund.

57-65-10. Interest and penalties.

1. Reports from the taxpayer are delinquent after the last day fixed for their filing, and every person required to file a report is subject to a penalty of twenty-five dollars per day of delinquency for each property upon which the person fails or refuses to file the reports. The penalties under this subsection are for failure to file reports and are in addition to the penalties imposed by subsection 2 and constitute a lien against the assets of the person failing or refusing to file the reports. The penalties prescribed under this section must be collected in the same manner as potash and byproducts taxes and must be apportioned as other potash and byproducts tax penalties.
2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:
 - a. If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return filed on or before the due date or extended due date prescribed, there must be added to the tax a penalty of five percent of the tax due, or five dollars, whichever is greater.
 - b. If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return on or before the due date or extended due date prescribed, there must be added a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater.
 - c. If upon audit of a taxpayer's return additional tax is found to be due, there must be added to the tax the penalty provided in subdivision a or b.
3. In addition to other increases to tax and penalty provided in this chapter, a taxpayer is subject to interest as follows:

- a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
 - b. If any amount of tax imposed by this chapter is not paid on or before the due date or extended due date for the payment, there must be added to the tax interest at the rate of one percent per month or fraction of a month during which the return was required to be filed or the tax became due.
 - c. If upon audit an additional tax is found to be due, there must be added to the additional tax due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
 - d. If the mathematical verification of a taxpayer's return results in additional tax due, there must be added to the additional tax interest at the rate of one percent of the additional tax due for each month or fraction of a month during which the return was required to be filed or the tax became due.
4. The tax commissioner, for good cause shown, may waive the penalty or the interest provided in this section.

57-65-11. Refund claims.

1. A taxpayer may file a claim for credit or refund of an overpayment of tax within three years of the due date of the return or three years after the return was filed. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax before any credits, a claim for refund of tax may be filed within six years after the due date of the return or six years after the return was filed, whichever period expires last.
2. If any taxpayer consents to an extension of time for the assessment of tax under subsection 5 of section 57-65-09, the period of time for filing a claim for credit or refund will be similarly extended. If an assessment is issued under this circumstance, the taxpayer has sixty days from the assessment to file a claim for refund. If a claim for refund is filed in any year extended by an agreement under subsection 5 of section 57-65-09, the tax commissioner may assess additional tax for any year extended by the same agreement which has otherwise expired. The additional assessment is limited to the issues raised in the claim for credit or refund.
3. Every 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 is based.
4. In all cases of overpayment, duplicate payment, or payment made in error, the tax commissioner shall issue a certificate containing the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the office of management and budget, a warrant must be issued to the taxpayer for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned potash and

byproducts tax in the state treasury and a pro rata share must be charged against the county entitled to share in the tax. Interest arising from refunds of overpayments, duplicate payments, and erroneous payments must be allowed and paid at the rate of ten percent per annum and accrues for payment from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later.

57-65-12. Minimum refunds and collections.

1. A refund may not be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. The tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the same manner as other revenue under this chapter.
2. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalties and interest.

57-65-13. Protest and appeal.

1. If upon audit the tax commissioner finds additional tax due or disallows a credit or a claim for refund, the tax commissioner shall notify the person of that finding. The notice must inform the person of the reasons for assessment of additional tax or the change in refund or credit claimed. Notice of deficiency must be sent by first-class mail and must set forth the reasons for the finding.
2. A person has thirty days, or ninety days if the person is outside the United States, to file a written protest objecting to the tax commissioner's assessment of additional tax due or disallowance of a credit or a claim for refund. The protest must set forth the basis for the protest and any other information which may be required by the tax commissioner. If a person fails to file a written protest within the time provided, the tax commissioner's finding becomes finally and irrevocably fixed. If a person protests only a portion of the tax commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
3. If a protest is filed, the tax commissioner shall reconsider the assessment of additional tax due or disallowance of a credit or claim for refund. The reconsideration may include further examination by the tax commissioner or the tax commissioner's representative of a person's books, papers, records, or memoranda. The tax commissioner, upon request, may grant the person an informal conference.
4. Within a reasonable time after protest, the tax commissioner shall notify the taxpayer of the tax commissioner's reconsideration of assessment of additional tax due or disallowance of a credit or claim for refund. The amount set forth in that notice becomes finally and irrevocably fixed unless the person within thirty days commences formal administrative review as provided for in chapter 28-32 by the filing of a complaint. The complaint must be personally served on the tax commissioner or sent by certified mail.
5. Upon written request, the tax commissioner may grant an extension of time to file a protest as provided for in subsection 2 or an extension of time to commence formal review as provided for in subsection 4.

57-65-14. Lien for tax - Preservation of lien - Satisfaction of lien.

1. The tax, penalty, and interest assessed under this chapter is, at all times, a first and paramount lien against the taxpayer's property, both real and personal. The provisions of this chapter requiring the taxpayer to pay the tax do not release the taxpayer from that liability. If the tax, penalty, and interest are not paid, the tax, penalty, and interest may be recovered at the suit of the state, upon relation to the tax commissioner, in any court of competent jurisdiction of the county where any such property, assets, and effects are located.
2. Any judgment creditor or lien claimant acquiring any interest in or lien on any property situated in this state, before the tax commissioner files in the central indexing system maintained by the secretary of state a notice of the lien provided for in this section, takes free of or has priority over the lien. The tax commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien. The notice of the lien is effective as of eight a.m. of the first day following the indexing of the notice.
3. Upon payment of tax, penalty, and interest, if applicable, or a penalty assessed under section 57-65-10, as to which the tax commissioner has indexed a notice in the central indexing system, the tax commissioner shall index a satisfaction of the lien in the central indexing system.
4. The tax commissioner is exempt from the payment of the fees otherwise provided for by law for the indexing of the lien or satisfaction.

57-65-15. Delinquent taxes - Sale of property.

When any tax provided for in this chapter becomes delinquent, the tax commissioner shall issue warrants directed to the sheriff of any county where the tax is due, or any part of the tax accrued, for the collection of the tax, interest, and penalty. The sheriff to whom the warrant is directed shall proceed to levy upon the property, assets, and effects of the person liable for such tax and shall sell the same and make return upon execution. The state of North Dakota, through the tax commissioner, is authorized to make bids at any such sale to the amount of tax, penalty, and costs accrued.

57-65-16. Bond - Reports - Actions.

1. The tax commissioner may require a sufficient bond from any person charged with the making and filing of reports and the payment of the taxes imposed under this chapter. The bond must run to the state of North Dakota and must be conditioned upon the making and filing of reports as required by law, upon compliance with the rules and regulations of the tax commissioner, and for the prompt payment by the principal of all taxes justly due the state under this chapter.

2. When any reports required have not been filed, or may be insufficient to furnish all the information required by the tax commissioner, the tax commissioner shall institute in the name of the state of North Dakota upon relation of the tax commissioner any necessary action or proceedings in the courts having jurisdiction to enjoin such person from continuing operations until such reports have been filed as required. In all proper cases an injunction must issue without bond from the state of North Dakota. Upon showing that the state is in danger of losing its claims or the property is being mismanaged, dissipated, or concealed, a receiver must be appointed.

57-65-17. Penalty.

Any person intentionally violating this chapter is guilty of a class A misdemeanor.

57-65-18. Powers of tax commissioner.

The tax commissioner is charged with the administration of this chapter and shall enforce the assessment, levy, and collection of taxes imposed under this chapter. The tax commissioner may require any person engaged in the production of subsurface minerals or byproducts to furnish any additional information the tax commissioner determines necessary for the purpose of correctly computing the amount of potash and byproducts tax. The tax commissioner may examine the books, records, and files of such person, and conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person, and may make any investigation or hold any inquest determined necessary to a full and complete disclosure of the facts as to the amount of production from any potash mining facility, processing plant, or satellite facility, or of any company or other producer for taxing purposes.

57-65-19. Rules - Legislative intent.

It is the intention of the legislative assembly that potash mining, environmental protection, and reclamation rules, at a minimum, must establish a high degree of protection for surface owners, surface and underground water, productive capacity of soils, and public health and safety and that the adopting agency will promote participation of public officials and members of the public in counties in which potash mining will be conducted.

SECTION 4. LEGISLATIVE INTENT - IMPACT LOANS 2013-15 BIENNIUM. It is the intent of the sixty-second legislative assembly that the sixty-third legislative assembly will provide a source for up to \$2,000,000, or so much of the sum as may be necessary, for loans to potash development-impacted political subdivisions, for the biennium beginning July 1, 2013, and ending June 30, 2015, to be repaid from the future proceeds of tax allocations under chapter 57-65.

SECTION 5. LEGISLATIVE MANAGEMENT STUDY - POTASH MINING TAXATION. During the 2011-12 interim, the legislative management shall study potash mining and taxation issues. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-third legislative assembly.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable production occurring after June 30, 2011.

Approved April 28, 2011
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