

2013 HOUSE FINANCE AND TAXATION

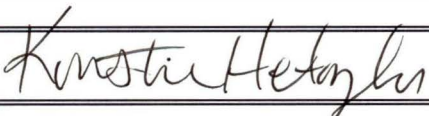
HB 1277

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1277
January 29, 2013
Job 17889

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

A Bill relating to corporate and individual income tax rate reductions.

Minutes:

Chairman Belter: Opened hearing on HB 1277

Representative Kasper: Introduced and reviewed the HB 1277. I support any bill to reduce any tax. After discussing the bill with Mr. Fong's office, it was brought to my attention that some of the brackets may need a few small changes, asks the committee for a little time for this to be done. History shows when the tax brackets have been reduced, the government made more money. This helps increase revenue. (ended 7:45).

Vice Chairman Headland: Is section 3 mirroring legislation that was passed on the federal level on the fiscal cliff negotiations?

Representative Kasper: No. This bill was intended to do two things; reduce the tax on long-term capital gains and dividends and in the event the fiscal cliff occurred, this was made to address that.

Representative Zaiser: You indicated that reducing dividends and capital gain tax would help create wealth but not jobs. The Bush administration did that to encourage development, new jobs, and wealth and in reality it went the other way. Could that happen here?

Representative Kasper: That's a very big question. If you go back to the years of President Bush and look at the economic activity in the U.S. during most of his 10 years the economic activity was booming and revenues were increasing. And then we had the awakening where the market crashed and then the economy. I do not fault President Bush for that activity. I look back to the community redevelopment act of the 1970's, which required banks to change their lending practice, It was warned more than once by Bush Administration and it was ignored by Congress. This is a different issue, these are already people that have stocks and bonds and have saved dollars, and they have already paid taxes on that money.

Representative Zaiser: It's often been said that way of earning money is doing the work and this way is playing with money. What is your response to that?

Representative Kasper: I guess you and I have a philosophical difference in this area. Farmer's farmland, over the course of their lifetimes they have accumulated an asset called farmland with their own sweat. They hopefully save money and in history the farmland increases in value, now the farmer wants to retire and no family to hand farm down to so they have to sell; now they have capital gains. All their years of working they have already paid income taxes. I think it is wrong that part of their well-earned asset is being taken away.

Representative Drovdal: Your discussion on dividends and double taxation, in talking about fairness issues another area would be social security's wages. Have you thought about including this also?

Representative Kasper: I am missing the details of your question?

Representative Drovdal: Repeats question.

Representative Kasper: I don't think we can do anything about that because it is Federal Issue. If we could do anything about that under ND law, I would certainly want an amendment to add it. (ended 16:00)

Bill Shalhoob, Greater North Dakota Chamber: While we support the higher number in HB 1250 I think the higher dividend should be considered. The way this is structured I do believe it would help folks in retirement. Discusses the Governors homestead tax bill.

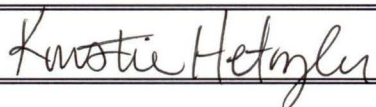
Chairman Belter: Any further testimony in support to 1277? Closes.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1277
February 5, 2013
Job 18337

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

A Bill relating to corporate and individual income tax rate reductions.

Minutes:

Attached amendments #1 and bill #2.

Representative Kasper: Distributed amendments and red and green version of the bill. See attached amendments #1 and bill #2. (ended 8:20)

Chairman Belter: On this social security, take an individual that all their income is derived from property owned in ND but they live in AZ as their permanent home? So they are paying taxes on the rental property, what about their social security?

Representative Kasper: They will be taxed in which ever state they reside in; their income tax would follow that. That is another incentive to keep them here in ND.

Vice Chairman Headland: Did you give any consideration to exempt it all?

Representative Kasper: No. I think everyone should pay a little bit.

Representative Drovdal: I'd like to see a new fiscal note on this if possible.

Representative Kasper: We are asking them to provide it.

Representative Klein: When you talk about qualified dividends are you using the same guidelines the Feds do.

Representative Kasper: Whatever are taxable dividends in ND for tax purposes would qualify to be under the formula.

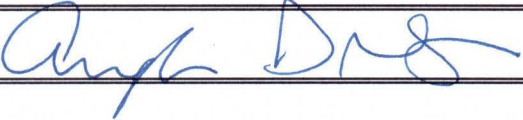
Chairman Belter: Closes.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1277
February 11, 2013
Job 18694

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

A Bill relating to corporate and individual income tax rate reductions.

Minutes:

Amendments #1

Rep Headland distributed and explained amendments.

Chairman Belter: The purpose of the amendments is to amend out everything except section three.

Rep Headland moved the amendment.

Rep Owens seconded.

Voice vote: Motion carries.

Rep Owens made a motion to Do Pass as Amended.

Rep Dockter seconded.

Rep Drovdal: I'm going to resist the motion.

Roll Call Vote

Yes: 9

No: 4

Absent: 1

Carried by: Rep Owens.

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: HB 1277

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(348,900,000)			
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1277 reduces corporation and individual income tax rates, and increases the exclusion for qualified dividends and long term capital gains.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of HB 1277 broadens the income brackets and reduces all corporate income tax rates. Section 2 reduces the number of individual income tax brackets from five to three, and lowers all individual income tax rates. Section 3 expands the exclusion for qualified dividends and long term capital gains.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, HB 1277 is expected to reduce state general fund revenues by an estimated \$348.9 million in the 2013-15 biennium. Corporation rate relief is expected to total -\$81.1 million and individual income tax relief is expected to total -\$206.2 million in the 2013-15 biennium. The expansion of the deduction for qualified dividends and long term capital gains is expected to total -\$61.6 million in the 2013-15 biennium.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/28/2013

VK
2/11/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1277

Page 1, line 1, remove "section 57-38-30, subsection 1 of section 57-38-30.3,"

Page 1, line 2, remove "and"

Page 1, line 3, remove "corporate and"

Page 1, line 3, replace "rate reductions" with "deductions for capital gains, dividends, and interest earnings"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 4

Page 5, line 10, remove "qualified dividend income that is"

Page 5, remove lines 11 and 12

Page 5, line 13, remove "December 31, 2012, and"

Page 5, line 13 overstrike "net and insert immediately thereafter ":

(1) 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, 2012;

(2) Net"

Page 5, line 15, after "amended" insert: ", and

(3) Taxable interest"

Page 5, line 17, replace "and" with an underscored comma

Page 5, line 17, after "gain" insert ", and taxable interest"

Page 5, line 22, overstrike the period

Renumber accordingly

Date: 2-11-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1277

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Headland Seconded By Rep. ~~Droz~~ Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote
Motion carries

Date: 2-11-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1277

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Owens Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh		✓
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser		✓
Rep. Matthew Klein	✓		Rep. Jessica Haak		✓
Rep. David Drovdal		✓	Rep. Marie Strinden		✓
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep. Owens

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1277: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1277 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "section 57-38-30, subsection 1 of section 57-38-30.3,"

Page 1, line 2, remove "and"

Page 1, line 3, remove "corporate and"

Page 1, line 3, replace "rate reductions" with "deductions for capital gains, dividends, and interest earnings"

Page 1, remove lines 5 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 4

Page 5, line 10, remove "qualified dividend income that is"

Page 5, remove lines 11 and 12

Page 5, line 13, remove "December 31, 2012, and"

Page 5, line 13 overstrike "net and insert immediately thereafter ":

(1) 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, 2012;

(2) Net"

Page 5, line 15, after "amended" insert: ", and

(3) Taxable interest"

Page 5, line 17, replace "and" with an underscored comma

Page 5, line 17, after "gain" insert " , and taxable interest"

Page 5, line 22, overstrike the period

Renumber accordingly

2013 SENATE FINANCE AND TAXATION

HB 1277

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1277
3/12/2013
Job Number 19789

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subdivision d of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to individual income tax deductions for capital gains, dividends, and interest earnings; and to provide an effective date.

Minutes:

Testimony Attached

Chairman Cook opened the hearing on HB 1277.

Representative Kasper introduced HB1277.

Senator Miller - How would this appear on the tax statement?

Representative Kasper - It looks like to me there are 2 tax returns for North Dakota and we would probably have to use what is identified as ND1. This return says on a line in the middle of the page 'federal taxable income' and then below it says 'subtractions' and here we would have to add the subtractions outlined and then at the bottom it says North Dakota taxable income, so the people that were taking advantage of this probably have to use this form.

Vice Chairman Campbell - Did you consider doing like 5 or 6 of the other states, just eliminate income tax all together?

Representative Kasper - No I did not consider eliminating it. An incremental movement downward, I've seen works a lot better. This is an attempt to continue to reduce the taxable income of the North Dakota citizens, particularly our seniors and retired folks. They are probably more apt to have this type of income.

Senator Triplett - I was noting the \$73,600,000 fiscal note for the upcoming biennium and wondered if you could share with us where you think this fits in the hierarchy of tax relief this session.

Representative Kasper - Philosophically I believe we over tax our citizens. Philosophically I think we need to target all areas of tax relief. I have worked diligently on property tax relief and property tax reform. I think the number 1 concern of North Dakota citizens is property tax. (5:10)

Carlee McCleod, Utility Shareholders of North Dakota - See attached testimony 1 & 2 in favor of HB1277.

John Olson, NextEra Energy Resources - Handed out attachment 3.

Ellen Joseph, Tax Project Manager, NextEra Energy Resources - See attached testimony 4 in favor of HB 1277.

Senator Triplett - What I think I hear you saying and correct me if I'm wrong, that because the federal government has been so generous to you, you don't have enough income against which to take credits so we need to pretend that the federal government hasn't been so generous.

Ellen Joseph - I would say to allow us the option to elect out of the federal for state purposes.

Senator Triplett - It's just an illusionary opting out, you are still planning to take full advantage of the federal.

Ellen Joseph - Our regulated utility affiliate is required to.

Senator Dotzenrod - You used the term drilling in here. To capitalize intangible drilling in completion costs. What's the difference between tangible drilling and intangible drilling? I didn't think you could drill something that was intangible.

Ellen Joseph - Your right, you can't. As I understand it, when an oil and gas well is drilled the expenses that are incurred to drill those wells are divided into 2 categories. Intangible drilling costs, nothing you can physically touch so it has to do with labor and materials that are expended during the drilling process. Tangible drilling costs are the parts that you can touch and those were each treated differently for income tax purposes.

Senator Dotzenrod - Would the provisions of these things you're asking for then apply to oil companies that are not major integrated companies?

Ellen Joseph - Only if they so elected.

Senator Dotzenrod - So they would be available to them if they wanted.

Ellen Joseph - But if they made the election they would be increasing their North Dakota taxable income because intangible drilling costs are written off immediately for federal income tax purposes, it's an election to be made. On average the drilling costs of a well tend to average between 75-80% intangible drilling costs so a lot of that is deducted upfront so I don't foresee many other taxpayers' purposefully electing not to take that deduction.

Chairman Cook - How many states does NextEra have a physical presence in?

Ellen Joseph - I want to say 26-28 and I apologize for not knowing the exact number.

Chairman Cook - So your federal income taxable income has to be apportioned amongst these states?

Ellen Joseph - Yes but not all states tax us on a unitary basis.

Chairman Cook - So it's because we tax you on a unitary basis this really applies here in North Dakota?

Ellen Joseph - It is one reason, yes.

Chairman Cook - Does our apportionment factor provide a considerable amount of your taxable income in North Dakota?

Ellen Joseph - No

Senator Burckhard - I see you have investments in 3 sectors of North Dakota but none in the Northwest part of the state. Why is that?

Ellen Joseph - I'm not sure I can adequately address your question but I would assume that it has to do with wind resource and/or transmission or some combination thereof that I'm not qualified to answer any further.

Senator Dotzenrod - Did you all consider having a separate bill prepared earlier in the session to have these provision put in?

Ellen Joseph - I think one of the things that spurred us to action was our shock and dismay at Congress enacting on January 2nd yet again to extend bonus depreciation through 2013 which we were not expecting. It was expected to expire in 2012. As it has been going there is no foreseeable end in sight.

Julie Voeck, NextEra Energy Resources, Government Affairs - The question you had asked I believe was why we don't have any development in the Northwest. We actually are involved in the oil and natural gas activities activates up there but we don't have an wind up there in part the ability to get power to other providers is very limited up there, there's not a lot of transmission infrastructure and for us to build a facility up there, we just didn't have the right opportunity or right situation. Certainly if there is infrastructure and an interested buyer we are willing to go other places but that just wasn't where things worked out when we were developing projects.

Chairman Cook closed the hearing on HB 1277.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee

Lewis and Clark Room, State Capitol

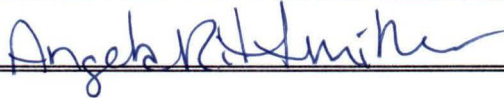
HB 1277

3/26/2013

Job Number 20451

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subdivision d of subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to individual income tax deductions for capital gains, dividends, and interest earnings; and to provide an effective date.

Minutes:

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Chairman Cook opened discussion on HB 1277.

Senator Miller - I'll move a **Do Not Pass**.

Seconded by **Vice Chairman Campbell**.

Roll Call Vote 7-0-0

Carried by **Senator Miller**.

FISCAL NOTE
Requested by Legislative Council
02/22/2013

Revised
Amendment to: HB 1277

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(67,200,000)			
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1277 changes the income tax law governing the exclusion for net long-term capital gain and qualified dividend income to include taxable interest, and increases the amount that is excluded.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed HB 1277 expands the income tax provisions governing the exclusion for net long-term capital gain and qualified dividend to include taxable interest income. It also increases the amount of the exclusion from 30% of the eligible income to 100% of the first \$75,000 of eligible income and 90% of the eligible income exceeding \$75,000. The exclusion only applies to eligible income that is reportable to North Dakota.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed HB 1277 is expected to reduce state general fund revenues by an estimated \$67.2 million for the 2013-15 biennium. NOTE: The fiscal note was corrected to address an oversight in the original note which failed to exclude interest on US obligations which is already not taxable for state income tax purposes.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 03/12/2013

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: HB 1277

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(348,900,000)			
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1277 reduces corporation and individual income tax rates, and increases the exclusion for qualified dividends and long term capital gains.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of HB 1277 broadens the income brackets and reduces all corporate income tax rates. Section 2 reduces the number of individual income tax brackets from five to three, and lowers all individual income tax rates. Section 3 expands the exclusion for qualified dividends and long term capital gains.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, HB 1277 is expected to reduce state general fund revenues by an estimated \$348.9 million in the 2013-15 biennium. Corporation rate relief is expected to total -\$81.1 million and individual income tax relief is expected to total -\$206.2 million in the 2013-15 biennium. The expansion of the deduction for qualified dividends and long term capital gains is expected to total -\$61.6 million in the 2013-15 biennium.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/28/2013

Date: 3-26-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1277

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Campbell

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett	X	
Senator Joe Miller	X				
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1277, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1277 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1277

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1277

Page 2, line 14, replace "3.25%" with "3.10%"

Page 2, line 28, replace "3.25%" with "3.10%"

Page 3, line 10, replace "3.25%" with "3.10%"

Page 3, line 23, replace "3.25%" with "3.10%"

Page 4, line 4, replace "3.25%" with "3.10%"

Page 5, line 7, remove the overstrike over the colon

Page 5, line 8, remove the overstrike over "(1)"

Page 5, line 8, replace "one" with "One"

Page 5, line 10, replace "qualified" with ":

(a) Qualified"

Page 5, line 13, remove ", and"

Page 5, line 13, overstrike "net" and insert immediately thereafter ":

(b) Net"

Page 5, line 15, after "amended" insert ", and

(c) Taxable interest"

Page 5, line 16, overstrike "subdivision" and insert immediately thereafter "paragraph"

Page 5, line 17, replace "and" with an underscored comma

Page 5, line 17, after "gain" insert ", and taxable interest"

Page 5, line 18, remove the overstrike over "(2)"

Page 5, line 22, after "~~state~~" insert "The amount of any social security benefits received by the taxpayer during the taxable year, to the extent those benefits were included in the taxpayer's federal taxable income and are allocated to this state"

Page 5, line 22, remove the overstrike over the overstruck period

Renumber accordingly

Introduced by

Representatives Kasper, Beadle, Becker, Dosch, Headland, Kempenich, Monson, Ruby,
Thoreson

Senators Berry, Miller, Sorvaag

1 A BILL for an Act to amend and reenact section 57-38-30, subsection 1 of section 57-38-30.3,
2 and subdivision d of subsection 2 of section 57-38-30.3 of the North Dakota Century Code,
3 relating to corporate and individual income tax rate reductions; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-38-30. Imposition and rate of tax on corporations.**

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

- 10 1. For the first ~~twenty-five~~fifty thousand dollars of taxable income, at the rate of one and
11 ~~sixty-eight~~thirty-four hundredths percent.
- 12 2. On all taxable income exceeding ~~twenty-five~~fifty thousand dollars and not exceeding
13 ~~fifty-one hundred~~ thousand dollars, at the rate of ~~four~~three and ~~twenty-three~~thirty-eight
14 hundredths percent.
- 15 3. On all taxable income exceeding ~~fifty-one hundred~~ thousand dollars, at the rate of
16 ~~five~~four and ~~fifteen~~twelve hundredths percent.

17 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-38-30.3 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 1. A tax is hereby imposed for each taxable year upon income earned or received in that
20 taxable year by every resident and nonresident individual, estate, and trust. A taxpayer
21 computing the tax under this section is only eligible for those adjustments or credits
22 that are specifically provided for in this section. Provided, that for purposes of this
23 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 ~~\$34,500~~\$50,000

~~4.51%~~1.25%

Over ~~\$34,500~~\$50,000

~~\$520.95~~\$625.00 plus ~~2.82%~~2.25%

but not over ~~\$83,600~~\$125,000

of amount over ~~\$34,500~~\$50,000

Over ~~\$83,600~~\$125,000

~~\$1,905.57~~\$2,312.50 plus

~~3.13%~~3.25%~~3.10%~~

~~but not over \$174,400~~

of amount over

~~\$83,600~~\$125,000

Over ~~\$174,400~~

~~\$4,747.61~~ plus ~~3.63%~~

~~but not over \$379,150~~

of amount over ~~\$174,400~~

Over ~~\$379,150~~

~~\$12,180.04~~ plus ~~3.99%~~

of amount over

~~\$379,150~~

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is:

The tax is equal to:

Not over ~~\$57,700~~\$85,000

~~4.51%~~1.25%

Over ~~\$57,700~~\$85,000

~~\$871.27~~\$1,062.50 plus ~~2.82%~~2.25%

but not over ~~\$139,350~~\$210,000

of amount over ~~\$57,700~~\$85,000

Over ~~\$139,350~~\$210,000

~~\$3,173.80~~\$3,875.00 plus

~~3.13%~~3.25%~~3.10%~~

~~but not over \$212,300~~

of amount over

~~\$139,350~~\$210,000

Over ~~\$212,300~~

~~\$5,457.14~~ plus ~~3.63%~~

1	but not over \$379,150	of amount over \$212,300
2	Over \$379,150	\$11,513.79 plus 3.99%
3		of amount over \$379,150
4	c. Married filing separately.	
5	If North Dakota taxable income is:	The tax is equal to:
6	Not over \$28,850 <u>\$42,500</u>	4.51% <u>1.25%</u>
7	Over \$28,850 <u>\$42,500</u>	\$435.64 <u>\$531.25</u> plus 2.82% <u>2.25%</u>
8	but not over \$69,675 <u>\$105,000</u>	of amount over \$28,850 <u>\$42,500</u>
9	Over \$69,675 <u>\$105,000</u>	\$1,586.90 <u>\$1,937.50</u> plus
10	3.13% <u>3.25%</u> 3.10%	
11	but not over \$106,150	of amount over
12	\$69,675 <u>\$105,000</u>	
13	Over \$106,150	\$2,728.57 plus 3.63%
14	but not over \$189,575	of amount over \$106,150
15	Over \$189,575	\$5,756.90 plus 3.99%
16		of amount over \$189,575
17	d. Head of household.	
18	If North Dakota taxable income is:	The tax is equal to:
19	Not over \$46,250 <u>\$65,000</u>	4.51% <u>1.25%</u>
20	Over \$46,250 <u>\$65,000</u>	\$698.38 <u>\$812.50</u> plus 2.82% <u>2.25%</u>
21	but not over \$119,400 <u>\$180,000</u>	of amount over \$46,250 <u>\$65,000</u>
22	Over \$119,400 <u>\$180,000</u>	\$2,761.21 <u>\$3,400.00</u> plus
23	3.13% <u>3.25%</u> 3.10%	
24	but not over \$193,350	of amount over
25	\$119,400 <u>\$180,000</u>	
26	Over \$193,350	\$5,075.84 plus 3.63%
27	but not over \$379,150	of amount over \$193,350
28	Over \$379,150	\$11,820.38 plus 3.99%
29		of amount over \$379,150
30	e. Estates and trusts.	
31	If North Dakota taxable income is:	The tax is equal to:

1	Not over \$2,300 <u>\$5,000</u>	1.51% <u>1.25%</u>
2	Over \$2,300 <u>\$5,000</u>	\$34.73 <u>\$62.50</u> plus 2.82% <u>2.25%</u>
3	but not over \$5,450 <u>\$10,000</u>	of amount over \$2,300 <u>\$5,000</u>
4	Over \$5,450 <u>\$10,000</u>	\$123.56 <u>\$175.00</u> plus
5	3.13% <u>3.25%</u> 3.10%	
6	but not over \$8,300	of amount over \$5,450 <u>\$10,000</u>
7	Over \$8,300	\$212.77 plus 3.63%
8	but not over \$11,350	of amount over \$8,300
9	Over \$11,350	\$323.48 plus 3.99%
10		of amount over \$11,350
11	f. For an individual who is not a resident of this state for the entire year, or for a	
12	nonresident estate or trust, the tax is equal to the tax otherwise computed under	
13	this subsection multiplied by a fraction in which:	
14	(1) The numerator is the federal adjusted gross income allocable and	
15	apportionable to this state; and	
16	(2) The denominator is the federal adjusted gross income from all sources	
17	reduced by the net income from the amounts specified in subdivisions a and	
18	b of subsection 2.	
19	In the case of married individuals filing a joint return, if one spouse is a resident	
20	of this state for the entire year and the other spouse is a nonresident for part or	
21	all of the tax year, the tax on the joint return must be computed under this	
22	subdivision.	
23	g. The tax commissioner shall prescribe new rate schedules that apply in lieu of the	
24	schedules set forth in subdivisions a through e. The new schedules must be	
25	determined by increasing the minimum and maximum dollar amounts for each	
26	income bracket for which a tax is imposed by the cost-of-living adjustment for the	
27	taxable year as determined by the secretary of the United States treasury for	
28	purposes of section 1(f) of the United States Internal Revenue Code of 1954, as	
29	amended. For this purpose, the rate applicable to each income bracket may not	
30	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 3. AMENDMENT. Subdivision d of subsection 2 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

d. Reduced by ~~thirty percent of:~~

(1) ~~The excess over~~ One hundred percent of the first seventy-five thousand dollars, and ninety percent of any amount exceeding seventy-five thousand dollars, of the combined amount of the taxpayer's ~~qualified~~

~~(a) 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, 2012, and net~~

~~(b) Net long-term capital gain 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; and~~

~~(c) Taxable interest.~~

The adjustment provided by this ~~subdivision~~ paragraph is allowed only to the extent the qualified dividend income and net long-term capital gain, and taxable interest 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~~ The amount of any social security benefits received by the taxpayer during the taxable year, to the extent those benefits were included in the taxpayer's federal taxable income and are allocated to this state.

- 1 **SECTION 4. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
- 2 December 31, 2012.



House Bill 1277
Senate Finance and Tax
Testimony in Support
March 12, 2013

Chairman Cook, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in support of HB 1277.

USND represents approximately 3,000 North Dakotans who own stock in one of three investor-owned utilities operating in North Dakota: Otter Tail, Xcel Energy and Montana Dakota Utilities. Each of these companies offers dividend paying stocks, so this bill directly affects my members by lowering their tax burden.

USND supports efforts to create fairness in taxation, and as such, we support efforts to minimize the tax burden resulting from dividend income tax.

Taxation at the dividend level is often viewed as unfair by investors, because those earnings have already been taxed at least once at the corporate level before being taxed again when earnings reach the individual investor. When the individual investor is taxed again on that same income, the net amount left in the individual's pocket can be less than 50% than the original income.

The majority of our membership is comprised of retirees who depend on their investment income as a part of their retirement budget. Some of my members purchased their stock as part of an investment strategy. Others worked for one of the three companies and earned the stock through company incentives. Their quality of life in retirement is directly impacted by any changes in the structure by which dividends are taxed.

As the state looks to reform certain tax policies in an effort to provide tax relief, we encourage the expansion of these exclusions as part of the overall relief package.

Accompanying my testimony is testimony from one of my members, Bruce McCollom, EnD. Like many of my members, Dr. McCollom worked to pay his way through school and then settled into a career. Throughout his career, he put aside money for his retirement, and at age 68 is now retired and living on his investment income. On behalf of Dr. McCollom and all of my members, I strongly support passage of HB 1277.

Thank you.

House Bill 1277
Testimony in Support
Senate Finance and Tax Committee
March 12, 2013

Chairman Cook, members of the committee, my name is Bruce McCollom. I support House Bill 1277, as amended, in the interest of fairness in the taxation of income from savings and investments.

Fair tax treatment of investment income becomes increasingly important as fewer workers are covered by defined benefit retirement plans and must rely only on savings, investments (in taxable accounts and tax deferred retirement accounts) and social security for retirement income. Unfair tax treatment discourages saving and investing.

The fairness issues are as follows:

1. Inflation - Part of total investment income; be it interest, dividends or capital gains; is not real income at all due to inflation. But income taxes in the US at the federal level and in ND are based on nominal \$ income. Thus savers and investors pay tax on fictitious income. Current interest rates on CDs and many bonds are less than the rate of inflation. In a study published in 1978, Martin Feldstein & Joel Slemrod looked at the experience of a hypothetical investor who bought the S&P 500 stocks in 1957 and sold them in 1977. While the investment doubled in nominal value, in terms of purchasing power, the investor had no gain at all. Feldstein & Slemrod also obtained an anonymous sample of 30,000 individual income tax

returns reporting capital gains on corporate stock in 1973 from the IRS. The individuals paid tax on \$ 4.6 Billion in capital gains. When adjusted for inflation there was actually a loss of nearly \$ 1 Billion in purchasing power. (See National Bureau of Economic Research Working Paper 680, May 1981.) A more up-to-date publication discussing capital gains taxation and inflation for the time period 1959 thru 2006 is Tax Foundation Special Report No. 148 November 2006. It states that "Removing Inflation from the" (tax) "Base is Fair, Pro Growth Concept."

2. Double taxation of corporate income - Most corporations (domestic or foreign) pay taxes on profits. These after-tax profits are either distributed to shareholders who pay tax on the dividends (eventually even dividends paid into tax deferred retirement accounts are taxed again as ordinary income when withdrawn), or they are retained, and thus contribute to the enterprise value of the corporation and shareholders pay capital gains taxes if and when they sell their shares (or they pay taxes at ordinary rates on the shares or proceeds when withdrawn from a tax deferred retirement account).

3. Triple taxation of dividends paid by many foreign corporations to shareholders- Dividend taxes are withheld in the country of origin and then taxed again by the US at the federal level and by ND. Foreign dividend taxes are paid even if the stock is held in tax deferred retirement accounts.

I support HB 1277, as amended and passed by the House.

Thank you.

NextEra Energy Resources A Renewable Energy Leader In North Dakota

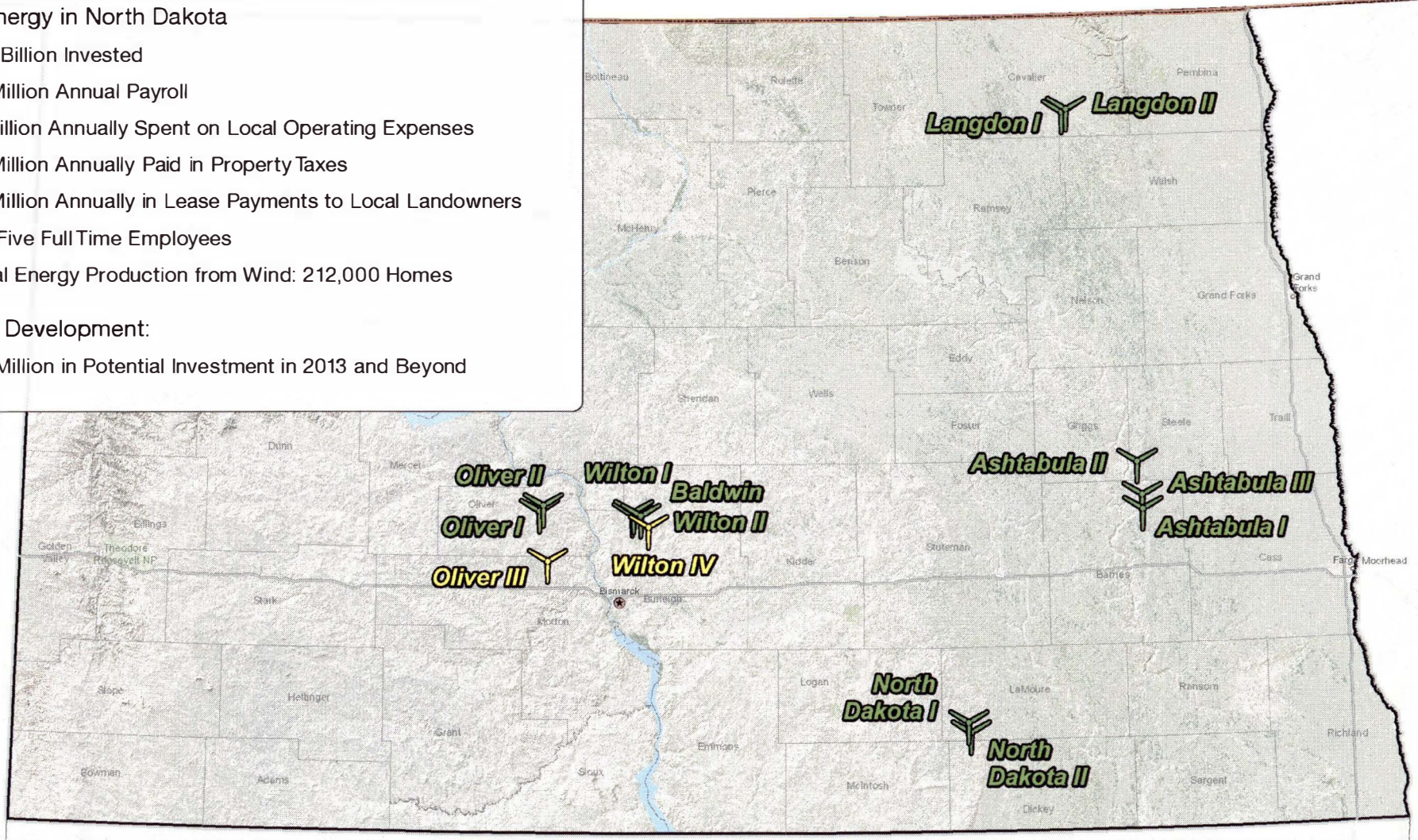


NextEra Energy in North Dakota

- ➔ \$1.45 Billion Invested
- ➔ \$6.0 Million Annual Payroll
- ➔ \$14 Million Annually Spent on Local Operating Expenses
- ➔ \$2.5 Million Annually Paid in Property Taxes
- ➔ \$5.0 Million Annually in Lease Payments to Local Landowners
- ➔ Sixty-Five Full Time Employees
- ➔ Annual Energy Production from Wind: 212,000 Homes

Continued Development:

- ➔ \$250 Million in Potential Investment in 2013 and Beyond



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Testimony for Proposed Tax Legislation

NextEra Energy Resources Tax Representative: Ellen Joseph (Tax Project Manager, NextEra Energy Resources, LLC)

Amendments:

1. "A new subsection is added to North Dakota Century Code Section 57-38-01.3(1) as follows:

 (m) Reduced or increased as necessary to take into account elections made by the taxpayer in the current or prior years in accordance with section 57-38-___ (election out of bonus depreciation), section 57-38-___ (election to capitalize and amortize intangible drilling and completion costs), and section 57-38-___ (election to apply alternative depreciation system)."
2. "A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Election out of "bonus" depreciation solely for North Dakota purposes

Each taxable year, a taxpayer who is eligible to claim a credit for geothermal, solar, wind or biomass energy devices under N.D. Cent. Code Section 57-38-01.8 may elect for purposes of that taxable year to apply the provisions of Internal Revenue Code Section 168(k)(2)(D)(iii), "Election out", to the calculation of the taxpayer's taxable income. This optional annual election may be made regardless of whether or not the taxpayer has applied these provisions of the Internal Revenue Code to the calculation of the taxpayer's federal taxable income. The election out may be made for any taxable year for which an amended tax return may be filed in accordance with the statute of limitations or on an originally filed return."

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

Election to capitalize intangible drilling and completion costs (IDC) solely for North Dakota purposes

Each taxable year, a taxpayer who is not a major integrated oil company as defined by Internal Revenue Code Section 167(h)(5) may elect for purposes of that taxable year to apply the provisions of Internal Revenue Code Section 263(c), Internal Revenue Code Section 59(e) and Treasury Regulations Section 1.612-4 to capitalize intangible drilling and completion costs and amortize them over a 60 month period. This optional annual election may be made regardless of whether or not the taxpayer has elected to expense such intangible drilling costs for purposes of determining the taxpayer's federal taxable income. The election to capitalize intangible drilling and completion costs may be made for any taxable year for which an amended tax return may be filed in accordance with the statute of limitations or on an originally filed return."

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Section(s) of North Dakota Code to be amended – North Dakota Century Code Section 57-38-01.3(1); the election provisions would add new sections to Chapter 57-38.

Why these changes would be beneficial to NextEra Energy Resources – The proposed elections result in an increase in NextEra Energy Resources' (NEER) taxable income before credits, allowing it to utilize tax credits that would otherwise expire; effectively substituting the utilization of tax credits for deductions of depreciation and intangible drilling and completion costs.

How would the amendments impact North Dakota? – The elections can only result in an increase in taxable income in a year in which such an election is made. It is unlikely that many taxpayers would make such elections. Therefore, we anticipate that these provisions would be revenue-neutral for North Dakota for the foreseeable future.

Why should North Dakota consider these amendments? - North Dakota tax law provides an investment tax credit for investment in wind energy in North Dakota. NextEra Energy Resources has invested \$1.45 billion dollars in the state, resulting in the direct creation of 65 jobs and many more indirect jobs. The electricity generated from these investments is enough to power 212,000 homes with a clean and renewable source of energy. In part, NEER's decision to invest was influenced by the availability of the tax credit. However, due in large part to the continued extension of bonus depreciation by the US Congress, and to a lesser degree the ability to expense IDC related to oil and gas drilling operations, NEER has realized virtually no value from these credits, neither from a cash perspective, nor from a financial reporting perspective. One of NEER's affiliates is a major regulated utility in Florida which has a regulatory duty to keep customer bills as low as possible. This duty requires, in part, the deduction of bonus depreciation on the federal consolidated return. Thus, without an option to elect out of bonus depreciation at the state level, an unintended consequence is that the federal bonus depreciation deductions have limited our ability to utilize our investment tax credits providing the unitary group with virtually no value for the credits that were earned on our significant North Dakota capital investment.

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