

Introduced by

1 A BILL for an Act to create and enact chapter 57-33.2 of the North Dakota Century Code,
2 relating to taxation of distribution and transmission of electric power for retail sale in this state;
3 to amend and reenact sections 57-06-02 and 57-06-05, subsections 13 and 14 of section
4 57-06-06, sections 57-06-18, 57-06-19, 57-06-20, and 57-06-21, and subsection 3 of section
5 57-60-01 of the North Dakota Century Code, relating to assessment and imposition of taxes
6 against electric power companies and imposition of the privilege tax on coal conversion
7 facilities; to repeal sections 57-06-07 and 57-06-17 and chapters 57-33 and 57-33.1 of the
8 North Dakota Century Code, relating to taxation of electric power companies, rural electric
9 cooperatives, and cooperative electrical generating plants; to provide a penalty; to provide a
10 continuing appropriation; and to provide an effective date.

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

12 **SECTION 1. AMENDMENT.** Section 57-06-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **57-06-02. Definitions.** As used in this chapter, unless the context ~~and~~ or subject
15 matter otherwise clearly ~~require~~ requires:

- 16 1. "Company" includes any individual, copartnership, business trust, corporation,
17 limited liability company, joint-stock company, or association.
- 18 2. "Gas company" means a company owning, holding, or operating under lease or
19 otherwise any property in this state for the purpose of furnishing gas, or distributing
20 the same, for public use, by means of pipelines.
- 21 3. "Pipeline company" means a company owning, holding, or operating under a lease
22 or otherwise any property in this state for the purpose of transporting crude oil,
23 natural gas, processed gas, manufactured gas, refined petroleum products, or coal
24 and related products for public use.

4. ~~"Power company" means a company owning or holding, under lease or otherwise, any property in this state and operating it for the purpose of furnishing electric light, electric power, or steam heat for public use.~~

SECTION 2. AMENDMENT. Section 57-06-05 of the North Dakota Century Code is amended and reenacted as follows:

57-06-05. Annual assessment. The state board of equalization, at its annual meeting in August, shall assess the franchises and all operative property of ~~power~~, gas, pipeline, and other companies, covered by this chapter, with reference to the value thereof on the first day of January of that year.

SECTION 3. AMENDMENT. Subsections 13 and 14 of section 57-06-06 of the North Dakota Century Code are amended and reenacted as follows:

13. A description of the personal property, including moneys and credits, held by the company as a whole system, and the part thereof apportioned to the ~~line~~ company's property in North Dakota.

14. The whole length of the ~~lines~~ pipelines of the system operated by the company and the length of the ~~lines~~ pipelines in North Dakota, whether operated as owner, lessee, or otherwise. The length of the ~~line~~ pipeline operated for the whole system and in North Dakota shall be separately reported.

SECTION 4. AMENDMENT. Section 57-06-18 of the North Dakota Century Code is amended and reenacted as follows:

57-06-18. Allocation of assessment of ~~other~~ operative property. All lots and parcels of real estate, not including rights of way, with the buildings, structures, and improvements thereon, ~~dams and powerhouses, substations, shops, and other buildings, electric power, electric light, gas, or steam~~ distribution systems, and other personal property ~~not a part of any single and continuous property~~, must be separately assessed and the assessment must be allocated to the taxing district in which the property is located. The assessment by the state board of equalization covering the property must give a legal description of the real estate and a general description of other property sufficient for identification. The assessment by the board of the operative property must cover the aggregate valuation of the property of any company in any municipality or taxing district of the state as a unit and need not be made in detail.

1 **SECTION 5. AMENDMENT.** Section 57-06-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-06-19. Certification of assessment.** The state tax commissioner shall certify to the
4 county auditor of each county in which the company assessed owns property:

5 4. ~~The the~~ total assessed valuation of the company's property ~~not constituting a~~
6 ~~single and continuous line~~, with information as to the amount in each assessment
7 district within such county.

8 2. ~~The number of miles [kilometers] of line, valuation per mile [1.61 kilometers], and~~
9 ~~total valuation of any property constituting a single and continuous line within each~~
10 ~~taxing district in each county.~~

11 **SECTION 6. AMENDMENT.** Section 57-06-20 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-06-20. Duties of county auditor.** The county auditor, after receiving the statement
14 from the tax commissioner, shall enter the valuations mentioned in section 57-06-19 in the
15 assessment record of the several taxing districts of the county ~~into or through which the lines~~
16 ~~extend, or~~ in which the property is located. Taxes must be extended upon such percentage of
17 full values as is required by law and at the same rate and in the same manner as taxes upon
18 tangible personal property in such taxing districts.

19 **SECTION 7. AMENDMENT.** Section 57-06-21 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-06-21. Reports to county auditors.** On or before the first day of May of each year,
22 each company required to be assessed under this chapter shall file with the county auditor of
23 each county within which any part of its operative property is located a report giving a general
24 description of all its property located within the county, with operative and nonoperative property
25 listed separately. Such report must give the length of the ~~line or lines~~ pipelines within the
26 county and the length in each taxing district of each ~~line~~ pipeline constituting part of a single
27 and continuous ~~line~~ pipeline or property. The company also shall file with the county auditor a
28 map of all of its ~~lines~~ pipelines within the county showing clearly the length of its ~~lines~~ pipelines
29 within each taxing district as of January first of that year and shall file revised maps in
30 subsequent years if changes have been made in its operative property. To facilitate the making
31 of such maps, the county auditor annually, on or before the first day of April, shall mail to the

company an accurate map of the county showing the boundaries of each assessment district and school district.

SECTION 8. Chapter 57-33.2 of the North Dakota Century Code is created and enacted as follows:

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

1. "Commissioner" means the state tax commissioner.
2. "Company" means an individual, partnership, corporation, limited liability company, limited liability partnership, cooperative, or any other organization or association engaged in distribution or transmission of electricity.
3. "Distribution company" means a company engaged in retail sale and distribution of electricity to consumers in this state through distribution lines. However, a municipal power agency operated under chapter 40-33.2 is not a distribution company for purposes of this chapter and is not subject to taxes under section 57-33.2-03.
4. "Distribution line" means a line to transmit electrical energy, designed to operate at a maximum alternating current voltage of less than forty-one and six-tenths kilovolts.
5. "Retail sale" means transfer of electricity to the consumer for consideration.
6. "Transmission company" means a company engaged in transmission of electrical energy through transmission lines.
7. "Transmission line" means a line to transmit electrical energy designed to operate at a voltage of forty-one and six-tenths kilovolts or more.

57-33.2-02. Transmission line mile tax. Transmission lines are subject to taxes per mile [1.61 kilometers] or fraction of a mile as follows:

1. For transmission lines designed to operate at a maximum alternating current voltage of less than fifty-seven kilovolts, a tax of two hundred dollars.
2. For transmission lines designed to operate at a maximum alternating current voltage of fifty-seven kilovolts or more, but less than sixty-nine kilovolts, a tax of three hundred dollars.

- 1 3. For transmission lines designed to operate at a maximum alternating current
2 voltage of sixty-nine kilovolts or more, but less than one hundred fifteen kilovolts, a
3 tax of four hundred dollars.
- 4 4. For transmission lines designed to operate at a maximum alternating current
5 voltage of one hundred fifteen kilovolts or more, but less than two hundred thirty
6 kilovolts, a tax of six hundred dollars.
- 7 5. For transmission lines designed to operate at a maximum alternating current
8 voltage of two hundred thirty kilovolts or more, but less than three hundred
9 forty-five kilovolts, a tax of eight hundred dollars.
- 10 6. For transmission lines designed to operate at a maximum alternating current
11 voltage of three hundred forty-five kilovolts or more, but less than five hundred
12 kilovolts, a tax of one thousand dollars.
- 13 7. For transmission lines designed to operate at a maximum direct current voltage of
14 less than four hundred kilovolts, a tax of one thousand two hundred dollars.
- 15 8. For transmission lines designed to operate at a maximum alternating current
16 voltage of five hundred kilovolts or more, a tax of one thousand three hundred
17 dollars.
- 18 9. For transmission lines designed to operate at a maximum direct current voltage of
19 four hundred kilovolts or more, a tax of one thousand five hundred dollars.

20 **57-33.2-03. Distribution taxes.** A distribution company is subject to taxes consisting
21 of the following two components:

- 22 1. A tax at the rate of seventy-five and eighty-three hundredths cents per megawatt
23 hour for retail sale of electricity delivered through a distribution line to a commercial
24 or industrial consumer in this state during the calendar year.
- 25 2. A tax at the rate of one dollar and twenty-six and thirty-eight hundredths cents per
26 megawatt hour for retail sale of electricity delivered through a distribution line to a
27 consumer, other than a commercial or industrial consumer, in this state during the
28 calendar year.

29 **57-33.2-04. Delinquent taxes.** Taxes under this chapter are due January first for the
30 preceding calendar year and are delinquent if not received by the commissioner by April

1 fifteenth following the due date. The commissioner may grant an extension of up to fifteen days
2 for paying the tax, upon a showing of reasonable necessity.

3 **57-33.2-05. Taxes in lieu of certain personal property taxes.** Taxes imposed by this
4 chapter are taxes upon the privilege of doing business in this state and are in lieu of personal
5 property taxes on distribution lines of a distribution company, transmission lines of a
6 transmission company, and buildings, structures, and improvements used primarily and directly
7 in the delivery of electricity through those lines. Taxes under this chapter are not in lieu of
8 political subdivision and state property taxes on land, portions of buildings used for offices or
9 administrative functions, or other real property not used primarily and directly in the delivery of
10 electricity through transmission or distribution lines.

11 **57-33.2-06. Taxes paid on worthless accounts.** Taxes paid on gross revenue from
12 retail sales to accounts found to be worthless and charged off for income tax purposes may be
13 credited against subsequent payment of taxes under section 57-33.2-03. If accounts that have
14 been claimed as a credit under this section are later collected, tax under section 57-33.2-03
15 must be paid on the amount collected.

16 **57-33.2-07. Powers of commissioner.** The commissioner may require any company
17 subject to taxes imposed by this chapter to furnish any information the commissioner deems
18 necessary to correctly compute the amount of the tax under this chapter. The commissioner
19 may examine the books, records, and files of a company. The commissioner may conduct
20 hearings and compel the attendance of witnesses and the production of books, records, and
21 papers of any company or person and may make any investigation deemed necessary to full
22 and complete disclosure of facts necessary to administer the tax under this chapter. The
23 commissioner may make rules in compliance with chapter 28-32 as necessary for
24 administration of this chapter.

25 **57-33.2-08. Commissioner to audit reports and state board of equalization to**
26 **assess tax.** The tax commissioner may audit reports of distribution companies and
27 transmission companies not later than three years after the due date of the report, or three
28 years after the report was filed, whichever period expires later. The state board of equalization
29 shall assess the tax and, if any additional tax is found due, the tax commissioner shall notify the
30 taxpayer in detail as to the reason for the increase.

1 **57-33.2-09. Transmission line location reports to county auditors.** By May first of
2 each year, each transmission company shall file with the county auditor of each county in which
3 any of its transmission line is located a report showing the length and designed operating
4 voltage of its transmission line within the county and within each taxing district within the
5 county. A transmission company shall file with the report a map showing all its transmission
6 line within the county and showing the length and designed operating voltage of its transmission
7 line within each taxing district in the county. Reports and maps under this section must be
8 based upon designed operating voltage, ownership, and location of transmission lines as of
9 January first of the year of the report. By April first of each year, the county auditor shall
10 provide each transmission company having transmission line in the county with an accurate
11 map of the county showing the boundaries of each taxing district in the county.

12 **57-33.2-10. Commissioner to compute tax on incorrect or omitted reports.** The
13 commissioner may determine whether any report or remittance filed under this chapter is
14 correct and whether the company filing the report or remittance has made an untrue or incorrect
15 report or remittance or failed to make a required report or remittance. The commissioner shall
16 determine the correct amount of taxes due and give immediate written notice to the company
17 filing the incorrect report or remittance or which failed to file the required report or remittance. A
18 company receiving notice from the commissioner of an incorrect or omitted report or remittance
19 shall remit the tax assessed by the commissioner within fifteen days of the notice unless within
20 fifteen days of the notice the company makes application in writing to the commissioner for a
21 hearing before the commissioner under chapter 28-32.

22 The tax becomes delinquent if within fifteen days of the notice the tax is not paid or an
23 application for a hearing is not made. If not paid or appealed, taxes assessed by the decision
24 of the commissioner under chapter 28-32 become delinquent five days after the time for appeal
25 from the commissioner's decision has expired. If an appeal from the commissioner's decision is
26 taken to the district court, unpaid taxes become delinquent five days following final judicial
27 determination.

28 If a company has filed an incorrect report or has failed to file a report as required by this
29 chapter, the commissioner has six years from the date that the report was first due to give the
30 notice provided in this section of taxes due. If false or fraudulent information is given in a report

or if the failure to file a report is due to fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, no time limitation applies to give notice of taxes due.

57-33.2-11. Proceedings and penalty on delinquency. If the tax under this chapter becomes delinquent, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus interest at the rate of one percent per month on the tax due for each calendar month or fraction of a month during which the delinquency continues, except the month within which the tax became due. The penalty must be collected in the manner provided in this chapter. If any company fails to make any report required under this chapter within the time required, the commissioner shall examine the books, records, and files of the company to ascertain the amount of tax due under this chapter and shall add to the amount any accrued penalties. The commissioner may waive the penalty or interest provided by this section for good cause.

57-33.2-12. Lien for tax. The tax under this chapter constitutes a first and paramount lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien is subject to collection, indexing, and other action in the manner provided in section 57-39.2-13 for sales tax liens.

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

57-33.2-14. Refunds. If an overpayment of a tax, penalty, or interest under this chapter was made, the amount of the overpayment must be credited against any amount due under this chapter from the company that made the erroneous payment or the amount must be refunded to the company. A claim for refund must be made within six years after the date the overpayment was received by the commissioner. If a refund is authorized, the commissioner shall certify the amount of refund, reason for refund, and the name of the company entitled to

1 the refund to the office of management and budget, which shall draw a warrant for the refund
2 amount against the funds to which the overpayment was credited.

3 **57-33.2-15. Rules - Bond.** The commissioner may adopt rules to administer this
4 chapter. The commissioner may require a sufficient bond from any company charged with
5 making and filing reports and payment of taxes under this chapter. Any required bond must run
6 to the state of North Dakota and be conditioned upon making and filing of reports as required by
7 law or rule and for prompt payment of all taxes justly due to the state under this chapter.

8 **57-33.2-16. Deposit of revenue - Report to treasurer.** The commissioner shall
9 transfer revenue collected under this chapter to the state treasurer for deposit in the electric
10 transmission and distribution tax fund. With each transfer under this section, the commissioner
11 shall provide a report showing the information necessary for the state treasurer to allocate the
12 revenue under section 57-33.2-15.

13 **57-33.2-17. Allocation - Continuing appropriation.** The electric transmission and
14 distribution tax fund is appropriated as a standing and continuing appropriation to the state
15 treasurer for allocation to counties as provided in this section.

16 1. Revenue from the tax on transmission lines under section 57-33.2-02 must be
17 allocated among counties based on the mileage of transmission lines and the rates
18 of tax on those lines within each county. Revenue received by a county under this
19 subsection must be allocated among taxing districts in the county based on the
20 mileage of transmission lines and the rates of tax on those lines within each taxing
21 district. Revenue from that portion of a transmission line located in more than one
22 taxing district must be allocated among those taxing districts in proportion to their
23 respective current property tax mill rates that apply to the land on which the
24 transmission line is located.

25 2. Revenue from the distribution company tax under section 57-33.2-03 must be
26 allocated to the county in which the retail sale to which the tax applied was made.
27 Revenue received by the county under this subsection must be allocated among
28 taxing districts in the county in proportion to their respective property tax levies in
29 dollars on property within the county in the previous taxable year. A city that
30 operates a municipal power agency under chapter 40-33.2 must be excluded from
31 allocations and computations under this subsection.

1 3. For purposes of this section, "taxing district" means the state, county, and that
2 portion of any political subdivision with authority to levy property taxes which is
3 located within the county.

4 **57-33.2-18. Penalty.** A person who willfully violates any provision of this chapter is
5 guilty of a class A misdemeanor.

6 **SECTION 9. AMENDMENT.** Subsection 3 of section 57-60-01 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 3. "Coal conversion facility" means any of the following:

- 9 a. A plant, other than an electrical generating plant or a coal beneficiation plant,
10 with all additions thereto, which processes or converts coal from its natural
11 form into a form substantially different in chemical or physical properties,
12 including coal gasification, coal liquefaction, and the manufacture of fertilizer
13 and other products, and which uses or is designed to use over five hundred
14 thousand tons [453592.37 metric tons] of coal per year;
- 15 b. An electrical generating plant, with all additions thereto, which processes or
16 converts coal from its natural form into electrical power and which has at least
17 one single electrical energy generation unit with a capacity of ~~one hundred~~
18 ~~twenty~~ eighty thousand kilowatts or more; or
- 19 c. A plant, with all additions thereto, which is designed for coal beneficiation.

20 **SECTION 10. REPEAL.** Sections 57-06-07 and 57-06-17 and chapters 57-33 and
21 57-33.1 of the North Dakota Century Code are repealed.

22 **SECTION 11. EFFECTIVE DATE.** This Act is effective for taxable years beginning
23 after December 31, 2001.