

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; to amend and reenact
3 sections 57-06-02, 57-06-03, and 57-06-05, subsections 13 and 14 of section 57-06-06,
4 sections 57-06-18, 57-06-19, 57-06-20, and 57-06-21 of the North Dakota Century Code,
5 relating to assessment and imposition of taxes against electric power companies; to repeal
6 chapters 57-33 and 57-33.1 and sections 57-06-07 and 57-06-17 of the North Dakota Century
7 Code, relating to taxation of electric power companies, rural electric cooperatives, and
8 cooperative electrical generating plants; to provide a penalty; to provide a continuing
9 appropriation; and to provide an effective date.

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

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

13 **57-06-02. Definitions.** As used in this chapter, unless the context ~~and~~ or subject
14 matter otherwise clearly ~~require~~ requires:

- 15 1. "Company" includes any individual, copartnership, business trust, corporation,
16 limited liability company, joint-stock company, or association.
- 17 2. "Gas company" means a company owning, holding, or operating under lease or
18 otherwise any property in this state for the purpose of furnishing gas, or distributing
19 the same, for public use, by means of pipelines.
- 20 3. "Pipeline company" means a company owning, holding, or operating under a lease
21 or otherwise any property in this state for the purpose of transporting crude oil,
22 natural gas, processed gas, manufactured gas, refined petroleum products, or coal
23 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 57-06-03 of the North Dakota Century Code is amended and reenacted as follows:

57-06-03. Operative property defined. The term "operative property" means any and all property reasonably necessary for use by any company mentioned in section 57-06-02 exclusively in the operation and conduct of the particular kind of business engaged in by it. Any such property held under a contract for the purchase thereof must be considered for all purposes of taxation as the property of the company holding the same. Any such property, real or personal, held by any company under a rental lease must be assessed by the state board of equalization in the name of such company, if an agreement in writing between the owner thereof and such company is filed with the tax commissioner requesting that such leased property be so assessed. Whenever any property of a public utility company required to be assessed by the state board of equalization under the provisions of this chapter is used partly for operative purposes and partly for other purposes, either by the company or by others, all such property that is taxable must be assessed by the state board of equalization as operative property of the company.

SECTION 3. 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 4. 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 5. 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.

SECTION 6. AMENDMENT. Section 57-06-19 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

57-06-20. Duties of county auditor. The county auditor, after receiving the statement from the tax commissioner, shall enter the valuations mentioned in section 57-06-19 in the assessment record of the several taxing districts of the county ~~into or through which the lines extend, or~~ in which the property is located. Taxes must be extended upon such percentage of

full values as is required by law and at the same rate and in the same manner as taxes upon tangible personal property in such taxing districts.

SECTION 8. AMENDMENT. Section 57-06-21 of the North Dakota Century Code is amended and reenacted as follows:

57-06-21. Reports to county auditors. On or before the first day of May of each year, each company required to be assessed under this chapter shall file with the county auditor of each county within which any part of its operative property is located a report giving a general description of all its property located within the county, with operative and nonoperative property listed separately. Such report must give the length of the ~~line or lines~~ pipelines within the county and the length in each taxing district of each ~~line~~ pipeline constituting part of a single and continuous ~~line~~ pipeline or property. The company also shall file with the county auditor a map of all of its ~~lines~~ pipelines within the county showing clearly the length of its ~~lines~~ pipelines within each taxing district as of January first of that year and shall file revised maps in subsequent years if changes have been made in its operative property. To facilitate the making 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 9. 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 distribution of electricity for retail sale to consumers in this state through distribution lines. However, a municipal electric utility operated under chapter 40-33 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 electricity, 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 end-use consumer for consideration.

6. "Transmission company" means a company engaged in transmission of electricity 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 but does not include a line owned or operated by an agency or instrumentality of the United States government.

57-33.2-02. Transmission line mile tax. Transmission lines are subject to annual taxes per mile [1.61 kilometers] or fraction of a mile based on their nominal operating voltages on April first of each year, as follows:

1. For transmission lines that operate at a nominal operating alternating current voltage of less than fifty-seven kilovolts, a tax of two hundred dollars.

2. For transmission lines that operate at a nominal operating alternating current voltage of fifty-seven kilovolts or more, but less than sixty-nine kilovolts, a tax of three hundred dollars.

3. For transmission lines that operate at a nominal operating alternating current voltage of sixty-nine kilovolts or more, but less than one hundred fifteen kilovolts, a tax of four hundred dollars.

4. For transmission lines that operate at a nominal operating alternating current voltage of one hundred fifteen kilovolts or more, but less than two hundred thirty kilovolts, a tax of six hundred dollars.

5. For transmission lines that operate at a nominal operating alternating current voltage of two hundred thirty kilovolts or more, but less than three hundred forty-five kilovolts, a tax of eight hundred dollars.

6. For transmission lines that operate at a nominal operating alternating current voltage of three hundred forty-five kilovolts or more, but less than five hundred kilovolts, a tax of one thousand dollars.

7. For transmission lines that operate at a nominal operating direct current voltage of less than four hundred kilovolts, a tax of one thousand two hundred dollars.

8. For transmission lines that operate at a nominal operating alternating current voltage of five hundred kilovolts or more, a tax of one thousand three hundred dollars.

9. For transmission lines that operate at a nominal operating direct current voltage of four hundred kilovolts or more, a tax of one thousand five hundred dollars.

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

1. A tax at the rate of seventy-five and eighty-three hundredths cents per megawatt hour for retail sale of electricity delivered through a distribution line to a commercial or industrial consumer in this state during the calendar year.

2. A tax at the rate of one dollar and twenty-six and thirty-eight hundredths cents per megawatt hour for retail sale of electricity delivered through a distribution line to a consumer, other than a commercial or industrial consumer, in this state during the calendar year.

57-33.2-04. Delinquent taxes. Taxes under this chapter are due January first for the preceding calendar year and are delinquent if not received by the commissioner by March first following the due date.

57-33.2-05. Taxes in lieu of property taxes. Taxes imposed by this chapter are taxes upon the privilege of doing business in this state and are in lieu of all real or personal property taxes levied by the state or any of its political subdivisions upon real or personal property to the extent the property is owned and used directly by the distribution company or transmission company in the operation and conduct of the business of delivery of electricity through distribution or transmission lines. Taxes under this chapter are not in lieu of property taxes on an electrical generating plant that is not subject to coal conversion facility privilege taxes under chapter 57-60. Taxes under this chapter are not in lieu of city franchise fees on electric public utilities. This chapter may not be construed to abridge the power of a governing board of a city to franchise the construction and operation of an electric public utility.

57-33.2-06. Taxes paid on worthless accounts. Taxes paid on gross revenue from retail sales to accounts found to be worthless and charged off in accordance with generally accepted accounting principles may be credited against subsequent payment of taxes under

1 section 57-33.2-03. If accounts that have been claimed as a credit under this section are later
2 collected, tax under section 57-33.2-03 must be paid on the amount collected.

3 **57-33.2-07. Powers of commissioner.** The commissioner may require any company
4 subject to taxes imposed by this chapter to furnish any information the commissioner deems
5 necessary to correctly compute the amount of the tax under this chapter. The commissioner
6 may examine the books, records, and files of a company. The commissioner may conduct
7 hearings and compel the attendance of witnesses and the production of books, records, and
8 papers of any company or person and may make any investigation deemed necessary to full
9 and complete disclosure of facts necessary to administer the tax under this chapter. The
10 commissioner may make rules in compliance with chapter 28-32 as necessary for
11 administration of this chapter.

12 **57-33.2-08. Commissioner to audit reports and state board of equalization to**
13 **assess tax.** The tax commissioner may audit reports of distribution companies and
14 transmission companies not later than three years after the due date of the report, or three
15 years after the report was filed, whichever period expires later. The state board of equalization
16 shall assess the tax and, if any additional tax is found due, the tax commissioner shall notify the
17 taxpayer in detail as to the reason for the increase.

18 **57-33.2-09. Transmission line location reports and maps to county auditors.** By
19 May first of each year, each transmission company shall file with the county auditor of each
20 county in which any of its transmission line is located a report showing the length and nominal
21 operating voltage of its transmission line within the county and within each taxing district within
22 the county. A transmission company shall file with the report a map showing all its transmission
23 line within the county and showing the length and nominal operating voltage of its transmission
24 line within each taxing district in the county. Reports and maps under this section must be
25 based upon nominal operating voltage, ownership, and location of transmission lines as of April
26 first of the year of the report. By April first of each year, the county auditor shall provide each
27 transmission company having transmission line in the county with an accurate map of the
28 county showing the boundaries of each taxing district in the county.

29 **57-33.2-10. Filing of reports and maps with commissioner.** By May first of each
30 year, each transmission company, distribution company, and each company that is both a
31 transmission company and a distribution company shall file with the commissioner:

1. Information about the company including:

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, superintendent, 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 and map filed with any county auditor under section 57-33.2-09.

3. The megawatt hours of electricity delivered through its distribution lines for retail sale to consumers in each county during the most recently completed calendar year, showing sales to commercial or industrial consumers in a separate category from sales to other consumers.

4. Any other information the commissioner requires.

57-33.2-11. Commissioner to compute tax on incorrect or omitted reports. The commissioner may determine whether any report or remittance filed under this chapter is correct and whether the company filing the report or remittance has made an untrue or incorrect report or remittance or failed to make a required report or remittance. The commissioner shall determine the correct amount of taxes due and give immediate written notice to the company filing the incorrect report or remittance or which failed to file the required report or remittance. A company receiving notice from the commissioner of an incorrect or omitted report or remittance shall remit the tax assessed by the commissioner within fifteen days of the notice unless within fifteen days of the notice the company makes application in writing to the commissioner for a hearing before the commissioner under chapter 28-32.

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

7 If a company has filed an incorrect report or has failed to file a report as required by this
8 chapter, the commissioner has six years from the date that the report was first due to give the
9 notice provided in this section of taxes due. If false or fraudulent information is given in a report
10 or if the failure to file a report is due to fraudulent intent or willful attempt of the taxpayer in any
11 manner to evade the tax, no time limitation applies to give notice of taxes due.

12 **57-33.2-12. Proceedings and penalty on delinquency.** If the tax under this chapter
13 becomes delinquent, there is imposed a penalty of five dollars or a sum equal to five percent of
14 the tax due, whichever is greater, plus interest at the rate of one percent per month on the tax
15 due for each calendar month or fraction of a month during which the delinquency continues,
16 except the month within which the tax became due. The penalty must be collected in the
17 manner provided in this chapter. If any company fails to make any report required under this
18 chapter within the time required, the commissioner shall examine the books, records, and files
19 of the company to ascertain the amount of tax due under this chapter and shall add to the
20 amount any accrued penalties. The commissioner may waive the penalty or interest provided
21 by this section for good cause.

22 **57-33.2-13. Lien for tax.** The tax under this chapter constitutes a first and paramount
23 lien in favor of the state of North Dakota upon all property and rights to property, whether real or
24 personal, belonging to the taxpayer. The lien is subject to collection, indexing, and other action
25 in the manner provided in section 57-39.2-13 for sales tax liens.

26 **57-33.2-14. Corporate officer and limited liability company governor or manager**
27 **liability.** If a corporation or limited liability company taxable under this chapter fails for any
28 reason to file the required returns or pay the tax due, any of its officers, governors, or managers
29 having control or supervision of, or charged with the responsibility for making, the returns and
30 payments, are personally liable for the failure. The dissolution of a corporation or limited liability
31 company does not discharge an officer's, a governor's, or a manager's liability for a prior failure

1 of the corporation or limited liability company to make a return or remit the tax due. The sum
2 due for such a liability may be assessed and collected under the provisions of this chapter for
3 the assessment and collection of other liabilities.

4 **57-33.2-15. Refunds.** If an overpayment of a tax, penalty, or interest under this
5 chapter was made, the amount of the overpayment must be credited against any amount due
6 under this chapter from the company that made the erroneous payment or the amount must be
7 refunded to the company. A claim for refund must be made within six years after the date the
8 overpayment was received by the commissioner. If a refund is authorized, the commissioner
9 shall certify the amount of refund, reason for refund, and the name of the company entitled to
10 the refund to the office of management and budget, which shall draw a warrant for the refund
11 amount against the funds to which the overpayment was credited.

12 **57-33.2-16. Bond.** The commissioner may require a sufficient bond from any company
13 charged with making and filing reports and payment of taxes under this chapter. Any required
14 bond must run to the state of North Dakota and be conditioned upon making and filing of
15 reports as required by law or rule and for prompt payment of all taxes justly due to the state
16 under this chapter.

17 **57-33.2-17. Deposit of revenue - Report to treasurer.** The commissioner shall
18 transfer revenue collected under this chapter to the state treasurer for deposit in the electric
19 transmission and distribution tax fund. With each transfer under this section, the commissioner
20 shall provide a report showing the information necessary for the state treasurer to allocate the
21 revenue under section 57-33.2-18.

22 **57-33.2-18. Allocation - Continuing appropriation.** The electric transmission and
23 distribution tax fund is appropriated as a standing and continuing appropriation to the state
24 treasurer for allocation and distribution to counties by April first of each year as provided in this
25 section.

- 26 1. Revenue from the tax on transmission lines under section 57-33.2-02 must be
27 allocated among counties based on the mileage of transmission lines and the rates
28 of tax those lines within each county. Revenue received by a county under this
29 subsection must be allocated among taxing districts in the county based on the
30 mileage of transmission lines and the rates of tax that would apply to the land on
31 which those lines are located within each taxing district if the land was taxable.

1 Revenue from that portion of a transmission line located in more than one taxing
2 district must be allocated among those taxing districts in proportion to their
3 respective current property tax mill rates that would apply to the land on which the
4 transmission line is located if the land was taxable.

5 2. Revenue from the distribution company tax under section 57-33.2-03 must be
6 allocated to the county in which the retail sale to which the tax applied was made.
7 Revenue received by the county under this subsection must be allocated among
8 taxing districts in the county in proportion to their most recent respective property
9 tax levies in dollars on property within the county. A city that operates a municipal
10 electric utility under chapter 40-33 must be excluded from allocations and
11 computations under this subsection.

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

15 **57-33.2-19. Penalty.** A person who willfully violates any provision of this chapter is
16 guilty of a class A misdemeanor.

17 **SECTION 10. REPEAL.** Chapters 57-33 and 57-33.1 and sections 57-06-07 and
18 57-06-17 of the North Dakota Century Code are repealed.

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