

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2314

Introduced by

Senators Grindberg, Dotzenrod, Oehlke

Representatives Belter, Streyle, Williams

1 A BILL for an Act to amend and reenact section 40-57.1-03 of the North Dakota Century Code,
2 relating to determination of whether a project is a primary sector or retail sector business before
3 a city or county may grant a property tax exemption for that project; to provide for a legislative
4 management study; and to provide an effective date.

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

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

8 **40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of**
9 **taxes - Notice to competitors - Limitations.**

10 1. After negotiation with a potential project operator, a municipality may grant a partial or
11 complete exemption from ad valorem taxation on all buildings, structures, fixtures, and
12 improvements used in or necessary to the operation of a project for a period not
13 exceeding five years from the date of commencement of project operations. A
14 municipality may also grant a partial or complete exemption from ad valorem taxation
15 on buildings, structures, fixtures, and improvements used in or necessary to the
16 operation of a project that produces or manufactures a product from agricultural
17 commodities for all or part of the sixth year through the tenth year from the date of
18 commencement of project operations. Before a municipality may grant a partial or
19 complete exemption from ad valorem taxation under this section, ~~the governing body~~
20 of the municipality must have:
21 a. ~~Received~~The governing body of the municipality must have received the
22 certification of the department of commerce division of economic development
23 and finance that the project is a primary sector business, as defined in
24 subsection 3 of section 40-57.1-02; or

1 b. ~~Established~~The city council or commission, if the project is proposed to be
2 located within the boundaries of a city of fewer than forty thousand population, or
3 the board of county commissioners, of a county of fewer than forty thousand
4 population and if the project is proposed to be located in the county but outside
5 the corporate limits of any city, may grant a partial or complete exemption from
6 ad valorem taxation for a project operating in the retail sector if that governing
7 body has obtained the approval of exemption of property under this subdivision
8 from a majority of the qualified electors of the city or county voting on the
9 question at a city or county election held in conjunction with a statewide general
10 election and if that governing body has established by resolution or ordinance the
11 criteria that will be applied by the governing body to determine whether it is
12 appropriate to grant a partial or complete exemption from ad valorem taxation
13 under this section for a project operating in the retail sector. The ballot for elector
14 approval of exemption of property under this subdivision must present the
15 question at the election for a yes or no vote on the question:

16 Shall the governing body of [name of county or city] be empowered to grant
17 property tax exemptions upon application of new or expanding retail sector
18 businesses?

19 Only a governing body of a city or county that meets the requirements of this
20 subdivision may grant a partial or complete exemption from ad valorem taxation
21 under this section for a project operating in the retail sector. Criteria established
22 by the governing body under this subdivision, at a minimum, must be intended to
23 require:

- 24 (1) Evaluation of the potential positive or adverse consequences for existing
25 retail sector businesses in the municipality from granting the exemption;
26 (2) Evaluation of the short-term and long-term effects for other property
27 taxpayers in the municipality from granting the exemption;
28 (3) A written agreement with the project operator, including performance
29 requirements for which the exemption may be terminated by the governing
30 body of the municipality if those requirements are not met; and

1 (4) Evaluation of whether the project operator would locate the project within
2 the municipality without the exemption.

3 2. In addition to, or in lieu of, a property tax exemption granted under this section, a
4 municipality may establish an amount due as payments in lieu of ad valorem taxes on
5 buildings, structures, fixtures, and improvements used in the operation of a project.
6 The governing body of the municipality shall designate the amount of the payments for
7 each year and the beginning year and the concluding year for payments in lieu of
8 taxes, but the option to make payments in lieu of taxes under this section may not
9 extend beyond the twentieth year from the date of commencement of project
10 operations. To establish the amount of payments in lieu of taxes, the governing body
11 of the municipality may use actual or estimated levels of assessment and taxation or
12 may establish payment amounts based on other factors. The governing body of the
13 municipality may designate different amounts of payments in lieu of taxes in different
14 years to recognize future project expansion plans or other considerations.

15 3. By November first of each year, the municipality that granted the option to make
16 payments in lieu of taxes shall certify to the county auditor the amount of payments
17 in lieu of taxes due under this section in the following year. After receiving the
18 statement from the municipality, the county auditor shall certify the payments in lieu of
19 taxes to the county treasurer for collection at the time when, and in the manner in
20 which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the
21 amount of payments in lieu of taxes under this section, the county treasurer shall
22 apportion and distribute that amount to taxing districts on the basis on which the
23 general real estate tax levy is apportioned and distributed. The municipality may enter
24 into a written agreement with the local school district and any other local taxing
25 districts that wish to enter the agreement for an alternate method of apportionment
26 and distribution. If such an agreement is entered into, the county treasurer shall
27 apportion and distribute the money according to the written agreement. All provisions
28 of law relating to enforcement, administration, collection, penalties, and delinquency
29 proceedings for ad valorem taxes apply to payments in lieu of taxes under this section.
30 However, the discount for early payment of taxes under section 57-20-09 does not
31 apply to payments in lieu of taxes under this section. The buildings, structures,

1 fixtures, and improvements comprising a project for which payments in lieu of taxes
2 are allowed under this section must be excluded from the valuation of property in the
3 taxing district for purposes of determining the mill rate for the taxing district.

4 4. Negotiations with potential project operators for tax exemption or payments in lieu of
5 taxes must be carried on by the city council or commission if the project is proposed to
6 be located within the boundaries of a city, and by the board of county commissioners if
7 the project is proposed to be located outside the corporate limits of any city. A partial
8 exemption must be stated as a percentage of the total ad valorem taxes assessed
9 against the property. Unless the governing body of the municipality determines that
10 there is no existing business within the municipality for which the potential project
11 would be a competitor, the potential project operator shall publish two notices to
12 competitors, the form of which must be prescribed by the tax commissioner, of the
13 application for tax exemption or payments in lieu of taxes in the official newspaper of
14 the municipality at least one week apart. The publications must be completed not less
15 than fifteen nor more than thirty days before the governing body of the municipality is
16 to consider the application. The municipality shall determine whether the granting of
17 the exemption or payments in lieu of taxes, or both, is in the best interest of the
18 municipality, and if it so determines, shall give its approval.

19 5. During the negotiation and deliberation of a property tax exemption or the option to
20 make payments in lieu of taxes under this chapter, a municipality shall include, as
21 nonvoting ex officio members of its governing body, a representative appointed by the
22 school board of each school district affected by the proposed action and a
23 representative appointed by the board of township supervisors of each township
24 affected by the proposed action.

25 6. A city or county may not supersede or expand the provisions of this section under
26 home rule authority.

27 **SECTION 2. LEGISLATIVE MANAGEMENT STUDY.** During the 2013-14 interim, the
28 legislative management shall study methods to assure that an accurate and reliable means is
29 developed to measure effectiveness and accountability of property tax exemptions and other
30 economic development incentives granted by cities and counties and to determine whether
31 other taxpayers in the city or county ultimately derive a measurable benefit from granting of the

1 incentives. The legislative management shall report its findings and recommendations, together
2 with any legislation required to implement the recommendations, to the sixty-fourth legislative
3 assembly.

4 **SECTION 3. EFFECTIVE DATE.** This Act is effective for property tax exemptions granted
5 by a municipality ~~after July 31, 2013~~ to initially become effective for taxable years beginning after
6 December 31, 2014.