FIRST ENGROSSMENT

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2297

Introduced by

Senators Cook, Klein, Triplett

Representatives Belter, Monson, Mueller

A BILL for an Act to create and enact chapter 57-33.2 of the North Dakota Century Code, relating to taxation of generation, distribution, and transmission of electric power; to amend and reenact sections 10-13-04, 17-05-12, 49-21.1-01.1, 57-06-03, 57-06-17.3, and 57-60-06 of the North Dakota Century Code, relating to references to assessment and imposition of taxes against centrally assessed electric power companies and taxation of rural electric cooperatives and cooperative electrical generating plants; to repeal chapters 57-33 and 57-33.1 of the North Dakota Century Code, relating to taxation of rural electric cooperatives and cooperative electrical generating plants; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-13-04 of the North Dakota Century Code is amended and reenacted as follows:

10-13-04. Members of electric cooperatives. All persons who are not receiving central station service and who reside in rural areas proposed to be served by a cooperative organized under this chapter shall be eligible to membership in the cooperative. No person other than the incorporators shall be, become, or remain a member of a cooperative unless such person shall use or agree to use electrical energy or the facilities, supplies, equipment, and services furnished by a cooperative.

"Rural area" means any area not included within the boundaries of an incorporated city having a population in excess of twenty-five hundred inhabitants at the time a corporation or cooperative commences to operate electric facilities or to furnish electric energy in such an area, and includes both the farm and nonfarm population thereof. No change thereafter in the population of a rural area, as defined herein, regardless of the reason for such change, shall

operate to affect in any way its status as a rural area for the purposes of this chapter ~~and of chapter 57-33~~.

An electric cooperative organized under this chapter may become a member of another such electric cooperative and may avail itself fully of the facilities and services thereof.

SECTION 2. AMENDMENT. Section 17-05-12 of the North Dakota Century Code is amended and reenacted as follows:

17-05-12. Exemption from property taxes. Transmission facilities built under this chapter are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by ~~subsection 2 of~~ section ~~57-33.1-02~~ 57-33.2-02 without application of the discounts provided in that ~~subsection~~ section.

SECTION 3. AMENDMENT. Section 49-21.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-21.1-01.1. Electricity transmission and distribution lines - Differentiation. Except for purposes of transmission facility siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title and ~~chapters 57-33 and 57-33.1~~ chapter 57-33.2, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are distribution lines.

SECTION 4. 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 that is not exempt under this chapter by reason of an election filed under chapter 57-33.2 and which is 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 not exempt under this chapter by reason of an election filed under chapter 57-33.2 must be assessed by the state board of equalization as operative property of the company.

SECTION 5. AMENDMENT. Section 57-06-17.3 of the North Dakota Century Code is amended and reenacted as follows:

57-06-17.3. New transmission line property tax exemption. A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is not taxable under chapter 57-33.2 and is initially placed in service on or after October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and property taxes as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

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

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to ~~the same manner of imposition and allocation as the tax imposed by subsection 2 of section 57-33.1-02~~ allocation among counties in the proportion that the miles of that transmission line in the county bears to the miles of that transmission line in the state. Revenues received by each county must be deposited in the county general fund.

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

SECTION 6. 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. "Collector system" means all property used or constructed to interconnect individual wind turbines within a wind farm into a common project, including step-up transformers, electrical collection equipment, collector substation transformers, and communication systems.
2. "Commissioner" means the state tax commissioner.
3. "Company" means an individual, partnership, corporation, limited liability company, limited liability partnership, cooperative, or any other organization or association engaged in generation, distribution, or transmission of electricity. A company subject to taxation under chapter 57-06, is not a "company" for purposes of this chapter unless it files an irrevocable election with the commissioner to be treated as a company under this chapter by October 1, 2009, for taxable periods after December 31, 2009; by October 1, 2010, for taxable periods after December 31, 2010; by October 1, 2011, for taxable periods after December 31, 2011; or by October 1, 2012, for taxable periods after December 31, 2012. Property subject to taxation under this chapter which is owned by a company that is otherwise taxable under chapter 57-06 which files an election under this chapter is exempt from taxation under chapter 57-06.
4. "Distribution company" means a company engaged in distribution of electricity for retail sale to consumers in this state through distribution lines. The term does not include a municipal electric utility operated under chapter 40-33 and that utility is not subject to taxes under section 57-33.2-03.
5. "Distribution line" means a line to transmit electricity which operates at a voltage of less than forty-one and six-tenths kilovolts.
6. "Retail sale" means transfer of electricity to the end-use consumer for consideration. The term does not include the sale of electricity to a coal

conversion facility that became operational before January 1, 2009, and which is subject to taxation under chapter 57-60.

7. "Transmission company" means a company engaged in transmission of electricity through transmission lines.

8. "Transmission line" means a line to transmit electrical energy which operates 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.

9. "Wind farm" means all property used or constructed for the purpose of producing electricity for commercial purposes utilizing the wind as an energy source and with a nameplate capacity of at least two thousand five hundred kilowatts. The term includes the collector system.

10. "Wind generator" means an individual wind turbine with a generation capacity of one hundred kilowatts or more which is connected to a transmission or distribution system.

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

1. For transmission lines that operate at a nominal operating voltage of less than fifty kilovolts, a tax of fifty dollars.

2. For transmission lines that operate at a nominal operating voltage of fifty kilovolts or more, but less than one hundred kilovolts, a tax of one hundred dollars.

3. For transmission lines that operate at a nominal operating voltage of one hundred kilovolts or more, but less than two hundred kilovolts, a tax of two hundred dollars.

4. For transmission lines that operate at a nominal operating voltage of two hundred kilovolts or more, but less than three hundred kilovolts, a tax of four hundred dollars.

5. For transmission lines that operate at a nominal operating voltage of three hundred kilovolts or more, a tax of six hundred dollars.

6. A transmission line initially placed in service after January 1, 2009, is exempt from transmission line taxes under this section for the first taxable year after the line is

initially placed in service, and transmission line taxes under this section must be reduced by:

a. Seventy-five percent for the second taxable year of operation of the transmission line.

b. Fifty percent for the third taxable year of operation of the transmission line.

c. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation, such transmission lines are subject to the standard transmission line taxes under this section.

57-33.2-03. Distribution taxes. A distribution company is subject to a tax at the rate of one dollar per megawatt-hour for retail sale of electricity delivered to a consumer in this state during the calendar year. Distribution taxes under this section do not apply to the sale of electricity to any coal conversion facility that became operational before January 1, 2009, and which is subject to taxation under chapter 57-60.

57-33.2-04. Wind generation taxation - Taxation of generation from sources other than coal - Taxation of coal generation not subject to coal conversion taxes. Wind generators, including wind farms and associated collector systems, generators of electricity from sources other than coal owned by a company subject to taxation under this chapter, and generators of electricity from coal which are not subject to coal conversion taxes under chapter 57-60 are subject to taxes under this section.

1. Wind generators, wind farms, and associated collector systems are subject to taxes consisting of the following two components:

   a. A tax of two dollars and fifty cents per kilowatt times the rated capacity of the wind generator.

   b. A tax of one-half of one mill per kilowatt-hour of electricity generated by the wind generator during the taxable period.

2. Grid-connected generators that are part of a project with generation capacity of one hundred kilowatts or more not produced from coal or wind, or produced from coal and not subject to coal conversion taxes under chapter 57-60, are subject to taxes consisting of the following two components:

   a. Fifty cents per kilowatt times the rated capacity of the generation unit.

b. One mill per kilowatt-hour of electricity generated by the production unit during the taxable period.

57-33.2-05. Taxes in lieu of property taxes. Taxes imposed by the state board of equalization under 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 by a company in the operation and conduct of the business of generation or delivery of electricity through distribution or transmission lines. Taxes under this chapter are not in lieu of property taxes on the following:

1. Property taxes on land on which generation, transmission, or distribution buildings, structures, or improvements are located, including buildings, structures, or improvements used for administrative purposes relating to generation, transmission, or distribution of electricity.
2. City franchise fees on public utilities.

This chapter does not abridge the power of a governing board of a city to franchise the construction and operation of a public utility.

57-33.2-06. Transmission and distribution line location reports to county auditors. By May first of each year, each transmission or distribution company shall file, with the county auditor of each county in which any of its transmission or distribution line is located, a report showing the length and nominal operating voltage of its transmission and distribution line within the county and within each taxing district within the county. Reports under this section must be based upon nominal operating voltage, ownership, and location of transmission and distribution lines as of January first of each year. Reports under this section must be prepared to distinguish transmission lines from distribution lines. By April first of each year, the county auditor shall provide each transmission or distribution company having a transmission or distribution line in the county with an accurate map of the county showing the boundaries of each taxing district in the county.

57-33.2-07. Filing of reports with commissioner. By May first of each year, each wind farm, wind generator, and generator of electricity from sources other than coal subject to the coal conversion tax and each transmission company, distribution company, and each company that is both a transmission company and a distribution company shall file with the

commissioner on a form prescribed by the commissioner any and all information required by the commissioner. The form must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the August meeting of the state board of equalization. Required information includes:

1. a. The company name.

   b. Whether the company is an individual, partnership, association, cooperative, corporation, limited liability company, or other legal entity and the state or country and date of original organization and any reorganization, consolidation, or merger with references to specific laws authorizing such actions.

   c. The location of its principal office.

   d. The place where the company's books, papers, and accounts are kept.

   e. The name and mailing address of the president, secretary, treasurer, auditor, general manager, and all other general officers.

   f. The name and mailing address of the chief officer or managing agent and any general officers of the company who reside in this state.

2. A copy of each report filed with any county auditor under section 57-33.2-06.

3. A report on the megawatt-hours of electricity produced by wind generators and generators of electricity from sources other than coal in each county in the state and a map showing the location of each generator and its rated capacity, and all components of the collector system, if any.

4. A report on the megawatt-hours of electricity delivered for retail sale to consumers in each taxing district in each county during the most recently completed calendar year.

57-33.2-08. Delinquent taxes - Penalty. Taxes under this chapter are due January first for the preceding taxable year and are delinquent if not received by the commissioner by March first following the due date. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon an additional audit an additional tax is found to be due, there must be added to the tax due a penalty at the rate of one percent of the tax due for each month or fraction of a month during the first year during which the tax remains unpaid, computed from March first. From and after January first of the year following the year in which the taxes

become due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes must be charged until the taxes and penalties are paid, with the interest charges to be prorated to the nearest full month for a fractional year of delinquency.

57-33.2-09. Taxes paid on worthless accounts. Distribution taxes paid 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 section 57-33.2-03. If accounts that have been claimed as a credit under this section are later collected, a tax under section 57-33.2-03 must be paid on the amount collected.

57-33.2-10. Powers of commissioner. The commissioner may require any company subject to taxes imposed by this chapter to furnish any information the commissioner determines necessary to compute correctly the amount of the tax under this chapter. The commissioner may examine the books, records, and files of a company. The commissioner may conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any company or person and may make any investigation deemed necessary to obtain a full and complete disclosure of facts necessary to administer the tax under this chapter.

57-33.2-11. Commissioner to audit reports and state board of equalization to assess tax. The commissioner may audit reports of distribution companies and transmission companies not later than three years after the due date of the report, or three years after the report was filed, whichever period expires later. The state board of equalization shall assess the tax and, if any additional tax is found due, the commissioner shall notify the taxpayer in detail as to the reason for the increase.

57-33.2-12. Deficiency, protest, and appeal.

1. When the amount of taxes due is understated on a return because of a mathematical or clerical error, the commissioner shall notify the company of the error and the amount of additional taxes due. This notice is not a notice of deficiency and the company has no right to protest.
2. If upon an audit the commissioner finds additional taxes due, the commissioner shall notify the company and the state board of equalization of the deficiency in the tax amount. A notice of deficiency must be sent to the company by first-class mail

and must state the amount of additional taxes due and set forth the reasons for the increase.

3. A company has thirty days from the date of mailing of the notice of deficiency to file a written protest with the state board of equalization objecting to the assessment of additional taxes due. The protest must set forth the basis for the protest and any other information that may be required by the state board of equalization. If a company fails to file a written protest within the time provided, the amount of additional taxes stated in the notice of deficiency becomes finally and irrevocably fixed. If a company protests only a portion of the commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.

4. If a protest is filed, the state board of equalization shall reconsider the assessment of additional taxes due.

5. Within six months after the protest is filed, the state board of equalization shall mail to the company a notice of reconsideration and assessment which must respond to the company's protest and assess the amount of any additional taxes due. The amount set forth in that notice becomes finally and irrevocably fixed unless the company brings an action against the state in district court within six months of the mailing of the notice of reconsideration and assessment.

57-33.2-13. Claims for credit or refund.

1. A company may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within six months after the due date of the return or within six months after the return was filed, whichever period expires later.

2. A claim for credit or refund must be made by filing with the commissioner an amended return, or other report as prescribed by the commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.

3. The commissioner shall notify the company if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the company brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

57-33.2-14. Preservation of records. Every company required to make a return and pay any taxes under this chapter shall preserve records of retail sales as the commissioner may require. Every company shall preserve for a period of three years and three months all invoices and other records of electricity delivered to a consumer in this state. All of these books, invoices, and other records must be open to examination at any time by the commissioner or any duly authorized agent of the commissioner.

57-33.2-15. 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.

57-33.2-16. 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 this chapter for the assessment and collection of other liabilities.

57-33.2-17. Bond. The commissioner may require a sufficient bond from any company charged with making and filing reports and payment of taxes under this chapter. Any required bond must run to the state of North Dakota and be conditioned upon making and filing of reports as required by law or rule and for prompt payment of all taxes justly due to the state under this chapter.

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

57-33.2-19. Allocation - Continuing appropriation. The electric generation, transmission, and distribution tax fund is appropriated as a continuing appropriation to the state

treasurer for allocation and distribution to counties by April first of each year as provided in this section. The commissioner shall make the necessary allocations to the counties. The county auditors shall make the necessary allocations to the taxing districts.

1. Revenue from the tax on transmission lines under section 57-33.2-02 must be allocated among counties based on the mileage of transmission lines and the rates of tax on those lines within each county. Revenue received by a county for each size of transmission line under this subsection must be allocated one-third to the county and two-thirds among the county and other taxing districts in the county based on the mileage of that transmission line and the rates of tax that apply where that line is located within each taxing district. Revenue from that portion of a transmission line located in more than one taxing district must be allocated among those taxing districts in proportion to their respective most recent property tax mill rates that apply where the transmission line is located.
2. Revenue from the distribution company tax under section 57-33.2-03 must be allocated fifty percent to the county in which the retail sale to which the tax applied was made and fifty percent among counties based on the mileage of the distribution company's distribution lines and the rate of tax on those lines within each county. Revenue received by the county under this subsection based on the location of retail sales must be allocated among taxing districts in the county based on the location of the retail sale and the most recent respective property tax levies in dollars within the taxing districts in which the retail sales occurred. Revenue received by a county under this subsection based on mileage of distribution lines must be allocated among the county and other taxing districts in the county based on the mileage of that distribution line and the rates of tax that apply to the land on which that line is located within each taxing district. Revenue from that portion of a distribution line located in more than one taxing district must be allocated among those taxing districts in proportion to their respective most recent property tax mill rates that apply to the land on which the distribution line is located.
3. Revenue from the generation taxes under section 57-33.2-04 must be allocated to the county in which the generator is located. Revenue received by the county under this subsection must be allocated among taxing districts in which the

generator is located in proportion to their respective most recent property tax mill rates that apply to the land on which the wind farm and associated collector system, wind generator, or other generation unit is located.

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

57-33.2-20. Penalty. If any company refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the commissioner shall use the best facts and estimates available to determine the tax due. The tax must be imposed upon the basis of that information. If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add a penalty of ten percent of the tax due for failure to make the required report which must be collected as a part of the tax, but the commissioner, upon application, may grant extensions of time within which the returns must be filed. For good cause shown, the commissioner may waive all or any part of the penalty that attached under this section.

SECTION 7. AMENDMENT. Section 57-60-06 of the North Dakota Century Code is amended and reenacted as follows:

57-60-06. Property classified and exempted from ad valorem taxes - In lieu of certain other taxes - Credit for certain other taxes. Each coal conversion facility must be classified as personal property and is exempt from all ad valorem taxes except for taxes on the land on which such facility is located. The taxes imposed by this chapter are in lieu of ad valorem taxes on the property so classified as personal property. ~~The taxes imposed by this chapter are also in lieu of those taxes imposed by chapters 57-33 and 57-33.1 on cooperative electrical generating plants that qualify as coal conversion facilities as defined in this chapter for gross receipts derived from the operation of such plants.~~

SECTION 8. REPEAL. Chapters 57-33 and 57-33.1 of the North Dakota Century Code are repealed.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2009.