

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2035

Introduced by

Legislative Management

(Energy Development and Transmission Committee)

1 A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota  
2 Century Code, relating to a sales tax exemption for tangible personal property used to construct  
3 a fertilizer or chemical processing facility; to amend and reenact section 40-57.1-03 and  
4 subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code, relating to  
5 requirements of a city or county granting a property tax exemption and a use tax exemption for  
6 tangible personal property used to construct a fertilizer or chemical processing facility; to  
7 provide for a legislative management study; and to provide for a retroactive effective date.

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

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

11 ~~40-57.1-03. (Effective for the first taxable year beginning after December 31, 2013)-~~  
12 ~~Municipality's authority to grant or revoke tax exemption or payments in lieu of taxes --~~  
13 ~~Notice to competitors -- Limitations.~~

- 14 1. ~~After negotiation with a potential project operator, a municipality may grant a partial or~~  
15 ~~complete exemption from ad valorem taxation on all buildings, structures, fixtures, and~~  
16 ~~improvements used in or necessary to the operation of a project for a period not~~  
17 ~~exceeding five years from the date of commencement of project operations. A~~  
18 ~~municipality may also grant a partial or complete exemption from ad valorem taxation~~  
19 ~~on buildings, structures, fixtures, and improvements used in or necessary to the~~  
20 ~~operation of a project that produces or manufactures a product from agricultural~~  
21 ~~commodities for all or part of the sixth year through the tenth year from the date of~~  
22 ~~commencement of project operations.~~  
23 2. ~~In addition to, or in lieu of, a property tax exemption granted under this section, a~~  
24 ~~municipality may establish an amount due as payments in lieu of ad valorem taxes on~~

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

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

- 1           4. ~~Negotiations with potential project operators for tax exemption or payments in lieu of~~  
2           ~~taxes must be carried on by the city council or commission if the project is proposed to~~  
3           ~~be located within the boundaries of a city, and by the board of county commissioners if~~  
4           ~~the project is proposed to be located outside the corporate limits of any city. A partial~~  
5           ~~exemption must be stated as a percentage of the total ad valorem taxes assessed~~  
6           ~~against the property. Unless the governing body of the municipality determines that~~  
7           ~~there is no existing business within the municipality for which the potential project~~  
8           ~~would be a competitor, the potential project operator shall publish two notices to~~  
9           ~~competitors, the form of which must be prescribed by the tax commissioner, of the~~  
10           ~~application for tax exemption or payments in lieu of taxes in the official newspaper of~~  
11           ~~the municipality at least one week apart. The publications must be completed not less~~  
12           ~~than fifteen nor more than thirty days before the governing body of the municipality is~~  
13           ~~to consider the application. The municipality shall determine whether the granting of~~  
14           ~~the exemption or payments in lieu of taxes, or both, is in the best interest of the~~  
15           ~~municipality, and if it so determines, shall give its approval.~~
- 16           5. ~~By motion approved by the governing body of the municipality before the beginning of~~  
17           ~~a taxable year for which a property tax exemption or the option to make payments~~  
18           ~~in lieu of taxes under this section previously has been approved by the governing~~  
19           ~~body, a property tax exemption may be revoked or reduced and payments in lieu of~~  
20           ~~taxes may be revoked or increased for that taxable year for reasons specified in a~~  
21           ~~negotiated agreement or if the governing body finds that:~~
- 22           a. ~~Information provided by the project operator during the negotiation and~~  
23           ~~deliberation of a property tax exemption or the option to make payments in lieu of~~  
24           ~~taxes has proven to be inaccurate or untrue;~~
- 25           b. ~~Use of the property by the project operator does not comply with the reasonable~~  
26           ~~expectations of the governing body at the time the property tax exemption or the~~  
27           ~~option to make payments in lieu of taxes was approved;~~
- 28           c. ~~The property has been improved to a substantially greater extent than the~~  
29           ~~governing body reasonably anticipated at the time the property tax exemption or~~  
30           ~~the option to make payments in lieu of taxes was approved; or~~

- 1           d. ~~There has been a change of ownership of the property since the property tax~~  
2           ~~exemption or the option to make payments in lieu of taxes was approved.~~
- 3           6. ~~During the negotiation and deliberation of a property tax exemption or the option to~~  
4           ~~make payments in lieu of taxes under this chapter, a municipality shall include, as~~  
5           ~~nonvoting ex officio members of its governing body, a representative appointed by the~~  
6           ~~school board of each school district affected by the proposed action and a~~  
7           ~~representative appointed by the board of township supervisors of each township~~  
8           ~~affected by the proposed action.~~

9           ~~(Effective for taxable years beginning after December 31, 2014) Municipality's~~  
10          **authority to grant or revoke tax exemption or payments in lieu of taxes - Notice to**  
11          **competitors - Limitations.**

- 12          1. After negotiation with a potential project operator, a municipality may grant a partial or  
13          complete exemption from ad valorem taxation on all buildings, structures, fixtures, and  
14          improvements used in or necessary to the operation of a project for a period not  
15          exceeding five years from the date of commencement of project operations. A  
16          municipality may also grant a partial or complete exemption from ad valorem taxation  
17          on buildings, structures, fixtures, and improvements used in or necessary to the  
18          operation of a project that produces or manufactures a product from agricultural  
19          commodities for all or part of the sixth year through the tenth year from the date of  
20          commencement of project operations. Before a municipality may grant a partial or  
21          complete exemption from ad valorem taxation under this section:
- 22          a. The governing body of the municipality must have received the certification of the  
23          department of commerce division of economic development and finance that the  
24          project is a primary sector business, as defined in subsection 3 of section  
25          40-57.1-02; or
- 26          b. The city council or commission, if the project is proposed to be located within the  
27          boundaries of a city of fewer than forty thousand population, or the board of  
28          county commissioners, of a county of fewer than forty thousand population and if  
29          the project is proposed to be located in the county but outside the corporate limits  
30          of any city, may grant a partial or complete exemption from ad valorem taxation  
31          for a project operating in the retail sector if that governing body has obtained the

1 approval of exemption of property under this subdivision from a majority of the  
2 qualified electors of the city or county voting on the question at a city or county  
3 election held in conjunction with a statewide general election and if that  
4 governing body has established by resolution or ordinance the criteria that will be  
5 applied by the governing body to determine whether it is appropriate to grant a  
6 partial or complete exemption from ad valorem taxation under this section for a  
7 project operating in the retail sector. The ballot for elector approval of exemption  
8 of property under this subdivision must present the question at the election for a  
9 yes or no vote on the question:

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

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

- 18 (1) Evaluation of the potential positive or adverse consequences for existing  
19 retail sector businesses in the municipality from granting the exemption;
- 20 (2) Evaluation of the short-term and long-term effects for other property  
21 taxpayers in the municipality from granting the exemption;
- 22 (3) A written agreement with the project operator, including performance  
23 requirements for which the exemption may be terminated by the governing  
24 body of the municipality if those requirements are not met; and
- 25 (4) Evaluation of whether the project operator would locate the project within  
26 the municipality without the exemption.

- 27 2. In addition to, or in lieu of, a property tax exemption granted under this section, a  
28 municipality may establish an amount due as payments in lieu of ad valorem taxes on  
29 buildings, structures, fixtures, and improvements used in the operation of a project.  
30 The governing body of the municipality shall designate the amount of the payments for  
31 each year and the beginning year and the concluding year for payments in lieu of

1 taxes, but the option to make payments in lieu of taxes under this section may not  
2 extend beyond the twentieth year from the date of commencement of project  
3 operations. To establish the amount of payments in lieu of taxes, the governing body  
4 of the municipality may use actual or estimated levels of assessment and taxation or  
5 may establish payment amounts based on other factors. The governing body of the  
6 municipality may designate different amounts of payments in lieu of taxes in different  
7 years to recognize future project expansion plans or other considerations.

8 3. Before a governing body may grant a partial or complete exemption from ad valorem  
9 taxation or the option to make payments in lieu of ad valorem taxes under this chapter,  
10 the governing body shall consult with the department of commerce. If the department  
11 of commerce determines that the total project costs are estimated to exceed one  
12 billion dollars, the department of commerce shall conduct a public hearing and notice  
13 of that hearing must be provided to each affected taxing district and any existing  
14 business within the municipality for which the potential project would be a competitor.

15 4. 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 4-5. 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 5-6. By motion approved by the governing body of the municipality before the beginning of  
20 a taxable year for which a property tax exemption or the option to make payments  
21 in lieu of taxes under this section previously has been approved by the governing  
22 body, a property tax exemption may be revoked or reduced and payments in lieu of  
23 taxes may be revoked or increased for that taxable year for reasons specified in a  
24 negotiated agreement or if the governing body finds that:

- 25 a. Information provided by the project operator during the negotiation and  
26 deliberation of a property tax exemption or the option to make payments in lieu of  
27 taxes has proven to be inaccurate or untrue;
- 28 b. Use of the property by the project operator does not comply with the reasonable  
29 expectations of the governing body at the time the property tax exemption or the  
30 option to make payments in lieu of taxes was approved;

1 c. The property has been improved to a substantially greater extent than the  
2 governing body reasonably anticipated at the time the property tax exemption or  
3 the option to make payments in lieu of taxes was approved; or

4 d. There has been a change of ownership of the property since the property tax  
5 exemption or the option to make payments in lieu of taxes was approved.

6 ~~6-7.~~ During the negotiation and deliberation of a property tax exemption or the option to  
7 make payments in lieu of taxes under this chapter, a municipality shall include, as  
8 nonvoting ex officio members of its governing body, a representative appointed by the  
9 school board of each school district affected by the proposed action and a  
10 representative appointed by the board of township supervisors of each township  
11 affected by the proposed action.

12 ~~7-8.~~ A city or county may not supersede or expand the provisions of this section under  
13 home rule authority.

14 **SECTION 2.** A new section to chapter 57-39.2 of the North Dakota Century Code is created  
15 and enacted as follows:

16 **Sales and use tax exemption for materials used to construct a fertilizer or chemical**  
17 **processing facility.**

18 1. Gross receipts from sales of tangible personal property used to construct or expand a  
19 fertilizer or chemical processing facility in this state are exempt from taxes under this  
20 chapter. To be exempt, the tangible personal property must be incorporated in the  
21 structure of the facility or used in the construction process to the point of having no  
22 residual economic value. Tangible personal property used to replace an existing facility  
23 or portion of a facility does not qualify for exemption under this section unless the  
24 replacement creates an expansion of the facility.

25 2. To receive the exemption under this section at the time of purchase, the owner of the  
26 processing facility must receive from the tax commissioner a certificate that the  
27 tangible personal property used to construct or expand the processing facility which  
28 the owner intends to purchase qualifies for exemption. If a certificate is not received  
29 before the purchase, the owner shall pay the applicable tax imposed by this chapter  
30 and apply to the tax commissioner for a refund.



1       3. If the tangible personal property is purchased or installed by a contractor subject to the  
2       tax imposed by this chapter, the owner may apply for a refund of the difference  
3       between the amount remitted by the contractor and the exemption imposed or allowed  
4       by this section. Application for refund must be made at the times and in the manner  
5       directed by the tax commissioner and must include sufficient information to permit the  
6       tax commissioner to verify the sales and use taxes paid and the exempt status of the  
7       sale or use.

8       4. For purposes of this section, a fertilizer or chemical processing facility means a  
9       processing plant that produces for retail or wholesale a fertilizer, chemical, or chemical  
10      derivative from natural gas, natural gas liquids, or crude oil components.

11      **SECTION 3. AMENDMENT.** Subsection 4 of section 57-40.2-03.3 of the North Dakota  
12 Century Code is amended and reenacted as follows:

- 13      4. The tax imposed by this section does not apply to:
- 14          a. Production equipment or tangible personal property as authorized or approved  
15             for exemption by the tax commissioner under section 57-39.2-04.2;
  - 16          b. Machinery, equipment, or other tangible personal property used to construct an  
17             agricultural commodity processing facility as authorized or approved for  
18             exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
  - 19          c. Tangible personal property used to construct or expand a system used to  
20             compress, process, gather, or refine gas recovered from an oil or gas well in this  
21             state or used to expand or build a gas-processing facility in this state as  
22             authorized or approved for exemption by the tax commissioner under section  
23             57-39.2-04.5;
  - 24          d. Tangible personal property used to construct or expand a qualifying oil refinery as  
25             authorized or approved for exemption by the tax commissioner under section  
26             57-39.2-04.6;
  - 27          e. Tangible personal property used to construct or expand a qualifying facility as  
28             authorized or approved for exemption by the tax commissioner under section  
29             57-39.2-04.10;

- 1           f. Tangible personal property used to construct or expand a qualifying facility as  
2           authorized or approved for exemption by the tax commissioner under section  
3           57-39.2-04.11; ~~or~~
- 4           g. Telecommunications infrastructure that is capable of providing  
5           telecommunications service as authorized or approved for exemption by the  
6           commissioner under chapter 57-39.2; or
- 7           h. Tangible personal property used to construct or expand a qualifying fertilizer or  
8           chemical processing facility as authorized or approved for exemption by the tax  
9           commissioner under section 1 of this Act.

10           **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ECONOMIC DEVELOPMENT**

11   **IMPACT.** During the 2015-16 interim, the legislative management shall consider studying the  
12   impact of large economic development projects on political subdivisions. The study may include  
13   a review of the current process for seeking out input from political subdivisions potentially  
14   impacted by a large economic development project and any mechanisms in place to address  
15   the potential impact. The legislative management shall report its findings and recommendations,  
16   together with any legislation required to implement the recommendations, to the sixty-fifth  
17   legislative assembly.

18           **SECTION 5. EFFECTIVE DATE - RETROACTIVE APPLICATION.** Section 1 of this Act is  
19   effective for taxable years beginning after December 31, 2014. Sections 2 and 3 of this Act are  
20   retroactively effective, and apply to taxable events occurring after December 31, 2014.