2013 SENATE FINANCE AND TAXATION

SB 2325

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
2/6/2013
Job Number 18364

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Testimony Attached

Chairman Cook opened the hearing on SB 2325.

Senator Burckhard introduced SB 2325.

Chairman Cook - This is just to keep the REC's whole with the IOU's depending upon what we do with the property tax, is that correct?

Senator Burckhard - A level playing field, I agree.

Chairman Cook - And to what degree we change that one dollar per megawatt hour current tax has to be tied closely with what we do with other property tax.

Senator Burckhard - I would agree.

Senator Oehlke - Are all the companies that distribute electricity, co-ops?

Senator Burckhard - No

Senator Oehlke - When we just say companies then, does this include other companies as well?

Senator Burckhard - Investor and electric utilities pay property taxes based on assessed value whereas co-ops pay on another basis, in lieu of property taxes. That is the difference.

Harlan Fuglesten, ND Association of Rural Electric Cooperatives - See attached testimony 1 in favor of SB 2325.

Chairman Cook - I'm not sure if I got lost somewhere along the line, but you made the comment that there could be a political subdivision that gets a larger share of a smaller pie?

Harlan Fuglesten - Yes

Chairman Cook - As a result of this change?

Harlan Fuglesten - I wasn't implying that it would be a result of this change. The only part would be the smaller pie part would be from this bill, but no, that's existing law.

Senator Triplett - When you look at this bill by its self it looks like you're asking for a 25% reduction in your taxes but when you consider them with all of the other taxes that you pay and you've pretty well done the math for us here that you have over $21 million per year in a wide variety of taxes. If you include the tax reduction you're asking for here into the larger package it looks like about a 7.5% overall, does that feel about right?

Harlan Fuglestenv - I would guess that's probably true. (17:05)

Senator Triplett - How did you arrive at the amount of reduction that you were asking for?

Harlan Fuglestenv - I've spent a good deal of time trying to analyze it. We spent about a decade doing spreadsheets figuring out who was where. When we looked at it in detail in 2008-09 we felt we were about 35% above where the investor owned utilities were at, at that time. We asked for about a 20% reduction from our base which cut down the differential in my estimation by about 10%. (18:37)

Senator Oehlke - If there's a territorial dispute between an REC and an independent or another REC or something, who adjudicates that?

Harlan Fuglestenv - It's determined by the Public Service Commission.

Senator Miller - I'm wondering what a megawatt hour is costing you?

Harlan Fuglestenv - The retail value of a megawatt hour would be about $90 and I would say the wholesale cost would be about $60.

Carlee McLeod, Utility Shareholders of North Dakota - We are neutral on this bill at this time. It was our understanding it was a placeholder and we do support fairness across the board in competition.

Sarah Meier, Tax Department provided a proposed amendment, attachment 2.

Chairman Cook closed the hearing on SB 2325.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
2/11/2013
Job Number 18673

☐ Conference Committee

Committee Clerk Signature	Angela Rittenmiller

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2325.

Chairman Cook - I'm a little confused here. I thought it was more or less a place holder in case some property tax policy changes this session that would tip the balance in fairness between IOU's and REC's. I think some of the testimony indicated that they think that balance is tipped right now, but regardless I think we need to pass this out and get it over to the House to stay around until we know what our actual property tax will look like. That is when we need to look at the fairness issue between REC's and IOU's. I would make one suggestion though and that is to make sure that we have another say in that issue before it gets passed out at the end, is that we change the $.75 to $.85.

Senator Triplett - Are you saying there is an identical bill in the House?

Chairman Cook - No. This bill was introduced just to keep this issue on the table until we know what our property tax relief is going to look like because there is a good chance that if we increase the mill levy buy down, then the IOU's benefit greatly from that and there's no benefit to the REC's at which time we need to adjust this number.

Discussion followed on what that number should be.

Chairman Cook - We have amendments from Sara Meier. There are some wind companies out there that are considering opting in to this tax proposal.

Senator Burckhard - I'll move the Meier amendment.

Seconded by **Senator Oehlke**.

Verbal Vote 6-0-1

Senator Burckhard - I'll move to change the $.75 to $.85.

Seconded by **Senator Oehlke**.

Verbal Vote 5-1-0

Senator Burckhard - I'll move a **Do Pass as Amended and re-refer to Appropriations**.

Seconded by **Vice Chairman Campbell**.

Roll Call Vote 6-0-1

Carried by **Senator Burckhard**.

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(3,600,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2325 reduces the distribution tax rate for companies engaged in the distribution of electricity.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2325 reduces the distribution tax rate from $1.00 to $.75 per megawatt-hour for the retail sale of electricity.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2325 is expected to reduce county revenue by an estimated $3.6 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/04/2013

13.0820.01001
Title.02000

Adopted by the Finance and Taxation Committee
February 11, 2013

2-11-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2325

Page 1, line 8, replace "seventy-five" with "eighty-five"

Renumber accordingly

Date: 2-11-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2325

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number (Meier Amendment)

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Burckhard Seconded By Senator Oehlke

Senators	Yes	No	Senator	Yes	No
Chariman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Tom Campbell			Senator Connie Triplett		
Senator Joe Miller					
Senator Dave Oehlke					
Senator Randy Burckhard					

Total (Yes) 6 No 0

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

verbal vote

Date: 2-11-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2325

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0820.01001 title 02000

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Burckhard Seconded By Senator Oehlke

Senators	Yes	No	Senator	Yes	No
Chariman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Tom Campbell			Senator Connie Triplett		
Senator Joe Miller					
Senator Dave Oehlke					
Senator Randy Burckhard					

Total (Yes) 5 No 1

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Changing $.75 to $.85

verbal vote

Date: 2-11-13
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2325

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Burckhard Seconded By Senator Campbell

Senators	Yes	No	Senator	Yes	No
Chariman Dwight Cook	X		Senator Jim Dotzenrod	X	
Vice Chairman Tom Campbell	X		Senator Connie Triplett	X	
Senator Joe Miller					
Senator Dave Oehlke	X				
Senator Randy Burckhard	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Burckhard

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2325: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2325 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "seventy-five" with "eighty-five"

Renumber accordingly

2013 SENATE APPROPRIATIONS

SB 2325

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

SB 2325
02-20-2013
Job # 19227

☐ Conference Committee

Committee Clerk Signature	Alice Delzer

Explanation or reason for introduction of bill/resolution:

Relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity

Minutes:

See attached testimony

Chairman Holmberg called the committee to order on Wednesday, February 20, 2013 In reference to SB 2325. All committee members were present. Brady Larson from Legislative Council and Joe Morissette from OMB were also present.

Senator Dwight Cook, District 34 of Mandan: Introduced the bill and presented Testimony attached # 1 Amendment # 13.0820.02001. He explained what the bill does and asks for your favorable consideration. It is a bill that was introduced this session with the consideration that there will be changes in the property taxes and that these changes could very easily give considerable reductions in the property tax liability that the IOU's pay. I would hope it is our goal that we always keep these two different entities on an equal playing field. When I signed off on 2325 it was short an amendment, please put on these amendments. They are a continuation of the opt in policy for people who are not covered by this tax to opt in. The companies that want to opt in will be opting in to a higher tax. They are opting in because it is a certain tax.

Senator Mathern: I do have a question, what was the vote?

Senator Cook: 6-0 do pass on the amendment.

Chairman Holmberg: Anyone else wanting to testify on the bill?

Harlan Fuglesten with ND Association of Rural Electric Cooperatives: We support the bill and provided Testimony attached # 2.

Senator Robinson: Moved the amendment # 13.0820.02001.

Senator Krebsbach: Seconded the motion.

A voice vote was taken and it carried.

Senator Robinson: Moved a Do Pass as Amended.

Senator O'Connell: Seconded the motion.

A Roll Call vote was taken. Yea: 13; Nay: 0; Absent: 0.

It will go back to Finance & Tax.

Senator Burckhard: Will carry the bill.

The hearing was closed on SB 2325.

FISCAL NOTE
Requested by Legislative Council
02/12/2013

Amendment to: SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(2,150,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2325 reduces the distribution tax rate for companies engaged in the distribution of electricity.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of engrossed SB 2325 reduces the distribution tax rate from $1.00 to $.85 per megawatt-hour for the retail sale of electricity.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed SB 2325 is expected to reduce county revenue by an estimated $2.15 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/14/2013

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(3,600,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2325 reduces the distribution tax rate for companies engaged in the distribution of electricity.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2325 reduces the distribution tax rate from $1.00 to $.75 per megawatt-hour for the retail sale of electricity.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2325 is expected to reduce county revenue by an estimated $3.6 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/04/2013

13.0820.02001
Title.03000

Prepared by the Legislative Council staff for
Senator Cook
February 19, 2013

4B
2/20/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2325

Page 1, line 1, after "reenact" insert "subsection 3 of section 57-33.2-01 and"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 3 of section 57-33.2-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~2013, for taxable periods after December 31, ~~2009~~2013; by October 1, ~~2010~~2014, for taxable periods after December 31, ~~2010~~2014; by October 1, ~~2011~~2015, for taxable periods after December 31, ~~2011~~2015; or by October 1, ~~2012~~2016, for taxable periods after December 31, ~~2012~~2016. 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."

Renumber accordingly

Date: 2-20-13

Roll Call Vote # 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0820.02001

Action Taken Amendment

Motion Made By Robinson Seconded By Krebsbach

Senators	Yes	No	Senator	Yes	No
Chariman Ray Holmberg			Senator Tim Mathern		
Co-Vice Chairman Bill Bowman			Senator David O'Connell		
Co-Vice Chair Tony Grindberg			Senator Larry Robinson		
Senator Ralph Kilzer			Senator John Warner		
Senator Karen Krebsbach					
Senator Robert Erbele					
Senator Terry Wanzek					
Senator Ron Carlisle					
Senator Gary Lee					

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

If the vote is on an amendment, briefly indicate intent:

Voice
passed

Date: 2-20-13

Roll Call Vote # 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DPA

Motion Made By Robinson Seconded By O'Connell

Senators	Yes	No	Senator	Yes	No
Chariman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment F + T Burckhard

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2325, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2325 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 3 of section 57-33.2-01 and"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 3 of section 57-33.2-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~2013, for taxable periods after December 31, ~~2009~~2013; by October 1, ~~2010~~2014, for taxable periods after December 31, ~~2010~~2014; by October 1, ~~2011~~2015, for taxable periods after December 31, ~~2011~~2015; or by October 1, ~~2012~~2016, for taxable periods after December 31, ~~2012~~2016. 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."

Renumber accordingly

2013 HOUSE FINANCE AND TAXATION

SB 2325

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2325
March 13, 2013
Job #19851

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Explanation or reason for introduction of bill/resolution:

A Bill relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity.

Minutes:

Attached testimony #1

Senator Burckhard: Introduced bill. This deals with the distribution tax rate for companies engaged in the distribution of electricity. It will change one of the in lieu of property taxes that electric coops pay from $1 per megawatt of retail sales to $.85 per megawatt. For the past two sessions the legislature has provided 75 mills of property tax relief to assessed property taxpayers including investor owned utilities. Such relief did not pertain to electric coops because of the way they pay their taxes in lieu of. Without some in lieu of property tax relief electric coops will have an even greater tax burden compared to the electric invested utilities. This legislation levels the playing field between the rural electric coops and the investor owned utilities. The distribution tax is divided amongst hundreds of taxing districts and they will see a substantial dollar reduction.

Representative Schmidt: Why doesn't this include a coal conversion facility?

Senator Burckhard: I will leave that to someone else.

Harlan Fuglesten, North Dakota Association of Rural Electric Cooperatives: See attached testimony #1.

Representative Froseth: Do the coops pay sales and use tax on all that material that is being put into new construction in the western part of the state?

Harlan Fuglesten: Yes, we are not exempt from sales taxation.

Representative Froseth: Is that 5%?

Harlan Fuglesten: It's the same tax that everyone pays.

Representative Klein: In 2009 what percentage of reduction did you have when you had that change made with the redistribution and so forth?

Harlan Fuglesten: In 2009 we estimated our tax relief from changing from the 2% gross receipts tax to the $1 per hour megawatt hour tax was around 20 percent. That was somewhat comparable to the 75 mill buy down and was one reason why we chose that number. Going into that session our data show that we were about 35% higher than the investor owned utilities in terms of what taxes we were paying per megawatt hour. That was before considering the 20% tax reduction that was being provided through the 75 mill buy down.

Representative Drovdal: That $2.1 million fiscal note is for the counties. Have you had a conversation with the counties about the replacement taxes and are they comfortable with it?

Harlan Fuglesten: We've had several conversations with the Association of Counties as we did back in 2009. One of the things that has restrained our ability or desire to request property tax relief is that we know that whatever we get in relief is taken out of the funds that are available to our counties and townships and political subdivisions. They didn't come in on the senate side and testify against us. They are looking at trying to drive some other revenue streams to pick up any losses like this that may occur. I assume they are willing to work with us on that.

Representative Schmidt: What is in law that says they are not eligible for this?

Harlan Fuglesten: That particular provision relates to the Great Plains Synfuels plant which is on the campus of Basin Electric and the power supply comes from Basin Electric. Both Basin Electric and the Great Plains Synfuels plant both pay coal conversion taxes which is an in lieu tax so that exemption carried forward existing exemptions because they are already paying millions of dollars in coal conversion taxes in lieu of property. There is one other provision in this bill which is in section 1 and was added at the request of the tax department in the senate. This would extend the opt in period for the tax plan under which the coops operate to other generation transmission and distribution facility owners for another four years. The investor owned utilities have not opted in to this tax line under which we operate. Other public utilities such as Minnesota Power that owns transmission and wind facilities have opted into the plan and there may be other companies who want to do this in the future and we want to give them the opportunity.

Representative Klein: Which companies have opted in?

Harlan Fuglesten: Minnesota Power or Elite and Moorhead Public Service which has some transmission line in North Dakota. The tax department may have other examples as well.

Representative Froseth: That is specifically for companies that aren't based in North Dakota?

Harlan Fuglesten: They could be based in North Dakota or out of state but they would have to be operating generation, transmission, or distribution electric facilities. Our comprehensive tax plan for the electric utilities doesn't just relate to retail distribution although that's the only tax that we're proposing to lower in this bill. It also includes transmission line taxes and generation line taxes such as a formula based tax on wind and a line mile tax on transmission. There are specific taxes for each of these functions that are in lieu of property taxes.

Chairman Belter: Further testimony in support of 2325? Any opposition? Any neutral testimony? If not, we will close the hearing on S 2325.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2325
March 19, 2013
Job #20171

☐ Conference Committee

Committee Clerk Signature Mary Brucker

Minutes:

Attached proposed amendments #1.

Chairman Belter: This is the electric coop tax.

Representative Schmidt: Distributed amendments #1. Explained amendments.

Chairman Belter: The reasoning behind the 35% decrease is so that it will coincide with the 35% reduction that we passed out of the house on corporate tax?

Representative Schmidt: That's correct; it will level the playing field.

Chairman Belter: The thought here is that hopefully we can hold our 35% but if we don't this bill will probably need some adjustment and get it into compliance with whatever the final figure is for the corporate tax.

Representative Drovdal: The 35% you're referring to is the income tax reduction and this is the property tax?

Chairman Belter: That's true. This would be the difference in the property tax.

Representative Froseth: Is there any way you can tell this is comparing apples to apples? Thirty five percent on the property tax on all properties compared to 35% reduction on the way they assess their tax on power lines?

Chairman Belter: I can't answer that.

Representative Drovdal: Isn't the profit from these coops passed on to their memberships then they pay tax on it and we reduce their membership tax?

Representative Froseth: This is the new property tax on their power transmission lines which is a centrally assessed tax based on the amount of kilowatts they carry.

Chairman Belter: Disregard what I said about the income tax.

Representative Drovdal: Did you say we have given a 35% reduction in property tax?

Chairman Belter: In the house we did.

Representative Klein: The cooperatives pay two taxes; a transmission line tax that goes to the counties and a gross revenue tax based on their sales. This could be accomplished but it won't be an easy task because you're trying to calculate property tax and what this total was.

Representative Dockter: I see for the counties a fiscal note of $2,500,000. Representative Schmidt, did you figure a fiscal impact?

Representative Schmidt: No.

Vice Chairman Headland: You could easily do the math on that.

Chairman Belter: Maybe we should hold this.

Representative Schmidt: I can ask Harlan and get a better idea of what this is about.

Chairman Belter: Yes let's do this tomorrow.

Representative Klein: On the county tax the transmission line tax they pay goes to the counties directly so that doesn't come into the other system.

Representative Dockter: I just looked on the fiscal note and it only had an impact on the county so it won't affect the county it will just affect the other system.

Representative Klein: No. There is a separate tax for the transmission lines and that is taxed by the voltage of the transmission lines. Typically the transmission lines are out in the county areas so around Bismarck there isn't much transmission line tax because that is distribution.

Chairman Belter: We will hold this for more information.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2325
March 20, 2013
Job #20209

☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Minutes:

Chairman Belter: I believe there were some questions on taxation from Representative Klein.

Representative Klein: We discussed earlier how the RECs are relating their taxes to the iou taxes and they have now got information from Ottertail but they don't have the information yet from Excel or MDU to make the relationship so that the percentage we're allowing for the investor owned utilities for a decrease is going to be similar to what they are asking for.

Harlan Fuglesten, North Dakota Association of Rural Electric Cooperatives: Yes, we are lacking somewhat in final details in two respects with regard to this tax bill; one is that we don't know what the legislature is going to end up doing this session with regard to additional property tax relief for assessed taxpayers and secondly we don't have a final figure yet for the 2012 tax year to compare on an apples to apples basis between how the cooperatives are taxed on their transmission distribution property and how the investor owned utilities are taxed. I can't fix the first problem yet which is why we've asked this committee to pass our bill with a different percentage than what is on the senate bill so the bill can go to conference and looked at later in the session when the final determinations are made about how the property tax relief is going to be provided to assessed property taxpayers which is how the investor owned utilities are taxed. With respect to how we're taxed currently in relationship to the investor owned utilities I have enough information to say that I believe without question we are paying substantially more on our transmission and distribution taxes than the investor owned utilities if we compare it on a comparable basis such as how much tax we pay per megawatt hour of electricity sold at retail. I've asked Carlee McLeod of the Utility Shareholders to assist me in trying to obtain the information from the investor owned utilities. I just got the information from Ottertail Power and preliminarily my numbers show that for electric cooperatives we pay about $1.23 per megawatt hour of tax that is embedded into every megawatt hour of electricity we sell at retail and that is basically in state transmission and distribution properties and land tax and things. Ottertail pays about $.88 per megawatt hour of embedded transmission and distribution taxes. When we did this analysis four years ago when we got our tax plan revised and passed in the legislature Ottertail was the utility that was closest to us with regard to tax burden. Excel and MDU were paying somewhat less in embedded tax than either Ottertail or the cooperatives. I don't have their numbers yet as it's more difficult to get because they pay a central assessment that combines both their electric and gas utility operations. I have to rely on internal documents from them to separate those out and provide me with the electric only figures. We would need about a 28% reduction in our tax to get to the level that Ottertail is at currently and that's without looking at whatever additional tax relief might be provided this legislative session.

Representative Klein: Until we get the final figures this $.65 you suggested yesterday we should go ahead and do this until we get to the final and then it will be resolved?

Harlan Fuglesten: That is right. We wanted to bracket it and give you a sense of what the minimums and maximums would be. It could even be a little more than 35% to get complete fairness. We wanted a different number in there than the senate numbers so that we could take it to conference and give you the data we put together and try to get something that is fair; it doesn't need to be 35% if there's less property tax relief provided.

Vice Chairman Headland: Why are all the investor owned utilities paying at different rates?

Harlan Fuglesten: In 2009 we tried to bring our rate down closer to what the investor owned utilities were paying. We had difficulty going the whole way because every dollar we were asking for in tax relief was coming out of the pockets of the townships and counties and school districts. Even our own members were concerned that we limit the impact of that on our local government agencies. We knew with what we requested in 2009 we were paying more than the investor owned utilities and that was before accounting for the 75 mill buy down program started. We were willing to accept paying 20 or 25% or more than the investor owned utilities on a temporary basis but now that 75 mill buy down has been built into the formula for the past four years and it looks like it will continue into the future so at some point we don't want that differential to get out of hand even further. It looks like with additional tax relief this year for our assessed property taxpayers we will be in a situation where our consumers are paying more taxes than other utility consumers.

Vice Chairman Headland: Why are MDU, Ottertail, and Excel Energy's tax rates different as they are all investor owned?

Harlan Fuglesten: Each of the utilities is taxed on a central assessment basis. That central assessment basis is not transparent in the same way that an exact formula is like the taxes we pay. In the central assessed system you take a utility like Excel Energy that operates in multiple states and they first look at the entire operation of that utility nationwide then they look at the North Dakota component and determine what share of the larger component is to the entire operation then look at the costs, profitability, etc. They are moving things in and out of the formula and leveling things. There are so many things that make it come out different.

Representative Drovdal: Could you tell me how the tax for cooperatives see a split when they go back to the county?

Harlan Fuglesten: Our transmission taxes go back primarily to the county. Our distribution taxes are distributed to the political subdivisions in the same way as property taxes are based upon the mill rates and the dollars that those mill rates create then apportioned accordingly.

Vice Chairman Headland: Any other questions for Mr. Fuglesten? We will stand at ease until the chairman returns.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2325
March 20, 2013
Job #20210

☐ Conference Committee

Committee Clerk Signature *Mary Brucker*

Minutes:

Attached amendment .03001

Representative Schmidt: Based on our discussion we had earlier this morning the amendment that I would make to the bill is to change from the $.85 to $.65. **Made a motion to accept the amendment.**

Representative Zaiser: Seconded.

VOICE VOTE: MOTION CARRIED.

Chairman Belter: What are the committee's wishes?

Representative Schmidt: Made a motion for a Do Pass as Amended.

Representative Klein: Seconded.

Representative Trottier: Are we responsible for addressing the offset to the counties in any way?

Chairman Belter: No, this bill would not do anything for the counties.

Representative Trottier: It would be a negative to the counties?

Chairman Belter: Yes.

Vice Chairman Headland: There's really no mechanism in this bill currently and I think in conference committee or another piece of legislation that already deals with it would be the proper place to address it. I think we should pass the bill as it is.

Chairman Belter: Any other discussion?

ROLL CALL VOTE: 14 YES 0 NO 0 ABSENT

Representative Klein will carry this bill.

FISCAL NOTE
Requested by Legislative Council
02/12/2013

Amendment to: SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(2,150,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2325 reduces the distribution tax rate for companies engaged in the distribution of electricity.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of engrossed SB 2325 reduces the distribution tax rate from $1.00 to $.85 per megawatt-hour for the retail sale of electricity.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed SB 2325 is expected to reduce county revenue by an estimated $2.15 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/14/2013

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(3,600,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2325 reduces the distribution tax rate for companies engaged in the distribution of electricity.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2325 reduces the distribution tax rate from $1.00 to $.75 per megawatt-hour for the retail sale of electricity.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2325 is expected to reduce county revenue by an estimated $3.6 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/04/2013

13.0820.03001
Title.04000

Adopted by the Finance and Taxation Committee

March 20, 2013

YK
3/20/13

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2325

Page 1, line 22, replace "eighty-five" with "sixty-five"

Renumber accordingly

Date: 3-20-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2325

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
$.85 to .65 line 22
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Schmidt Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad	VOICE		– MOTION		
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt			– CARRIES		
	VOTE				

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

If the vote is on an amendment, briefly indicate intent:

Change line 22 from $.85 to .65.

Date: 3-20-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2325

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Schmidt Seconded By Rep Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	√		Rep. Scot Kelsh	√	
Vice Chairman Craig Headland	√		Rep. Steve Zaiser	√	
Rep. Matthew Klein	√		Rep. Jessica Haak	√	
Rep. David Drovdal	√		Rep. Marie Strinden	√	
Rep. Glen Froseth	√				
Rep. Mark Owens	√				
Rep. Patrick Hatlestad	√				
Rep. Wayne Trottier	√				
Rep. Jason Dockter	√				
Rep. Jim Schmidt	√				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. ~~[illegible]~~ Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2325, as reengrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2325 was placed on the Sixth order on the calendar.

Page 1, line 22, replace "eighty-five" with "sixty-five"

Renumber accordingly

2013 CONFERENCE COMMITTEE

SB 2325

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
4/10/2013
Job Number 21084

☒ Conference Committee

Committee Clerk Signature	Angela Rittenuike

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Conference Committee

Present: Senator Burckhard, Senator Miller, Senator Dotzenrod
Representative Klein, Representative Dockter, Representative Strinden

Senator Burckhard opened the conference committee on SB 2325.

Senator Burckhard - We know this as the reduction of the distribution tax rate for companies engaged in the distribution of electricity. I am told that we probably shouldn't come to a conclusion until at least, there are 2 other House bills out there that deal with property tax relief and those are HB 1319 and HB 1198. Those both will deal with property taxes.

Representative Klein - Because we don't know what the rates are going to be for the IOU's this is to take care of the rural electrics which are as you said paid in lieu of taxes, but until we can find out what the rate is going to be there this is supposed to match it ad we at this time can't do anything until these 2 bills are finished so we can find out what that rate is. (2:03)

Senator Miller - Do we feel that at this point if we were to just go home right now with our property tax, do we feel this 35% is close...

Representative Klein - At this time that is a rough guess that the REC's did based on some comparisons with Ottertail but Ottertail is probably close to more rural and not so much city like Excel Energy or MDU would be but they didn't have all the data from MDU or Excel Energy which are more concentrated instead of spread out like the rural electrics are. They are trying to get some comparison between all 3 of them and then relate that to what their system would be.

Senator Burckhard - What they have in common is they serve electric utility service. Not natural gas or other kinds of services.
Representative Klein - To break out MDU and Excel Energy it becomes a real problem so they've kind of tried to match as much as possible with Ottertail which has maybe more rural smaller communities than MDU and Excel.

Senator Miller - Just to make sure we are kind of within that ballpark with this fiscal note.

Senator Dotzenrod - It just looks like the House version which is $.65. Given what we know now today that looks like the version we're going to be pretty close to.

Senator Burckhard closed discussion on SB 2325.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
4/29/2013
Job Number 21604

☒ Conference Committee

Committee Clerk Signature Angela Pittenger

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Present: Senator Burckhard, Senator Miller, Senator Dotzenrod
Representative Klein, Representative Dockter

Senator Burckhard opened the conference committee on SB 2325.

Representative Klein - We've done a little looking at some of the number and have some figures from the REC's but until the other bill is resolved we really don't know what those numbers are going to come out like.

Senator Burckhard - You are referring to HB 1319 and HB 1198.

Representative Klein - We can't do anything.

Sara Meier, Tax Department - I'm under the assumption that we really don't know where HB 1319 is at, is it 50 or 60?

Senator Miller - For the sake of this bill just assume that they will go with the 50 mill cap. So then we need to adjust this accordingly. Where should we be at?

Sara Meier - Just doing a straight line calculation of what the 50 mills would contribute, I looked up the 2012 tax that were levied and just the real property taxes, none of the special taxes were included and calculated from that how much of it was the school district general fund. The average mill levy for the school district general fund came up to be about 109.53 mills. From that I reduced 50 mills, so the mill levy would end up being 59.53. Comparing the tax before that reduction for the whole state and how much the school district taxes contributed to that entire tax I came up with a difference in percentage of about 12.5%. There are some outlying contributions to that percentage, what the rate should probably be; with some assumptions I would say 15% would be more appropriate for a reduction.

Senator Miller - So we just accordingly adjust it by the percentage of the increase in the program.

Sara Meier - Just from 2012 to 2013 with the 50 mill reduction. I calculated what a 60 mill would be and that is around 18% and 65 would be 19.5%.

Representative Dockter - So what we are talking here is the percentage that we would have to get it so after the mill buy down we will be at 15%. There is still a difference between what they pay, the REC's and the other organizations, but this just has to do with the portion with the mill buy down, is that correct?

Sara Meier - That's correct.

Senator Burckhard - This bill came out of the Senate with .85 and then the House came out with .65. How is there such a difference?

Representative Klein - I don't know.

Representative Dockter - We knew going in that we wouldn't have a number until these other bills were resolved. That's all I can answer.

Senator Dotzenrod - The bill started out on the Senate side and there was an awareness I think in the committee and particularly the chairman that this was a bill that we really wouldn't be able to do justice to until we got to the end and saw where the other bills fell so the committee amended the bill to some number that we knew would absolutely require a conference committee.

Harlan Fuglesten, North Dakota Association of Rural Electric Cooperatives - Ms. Meier came up with a calculation of about 12.5%. I guess I would disagree with that in a couple respects. One is, I looked at the numbers and looked at what 50 mills reduction would be based upon total valuation and I believe that number is $138.8 million and using the numbers that the tax department had for the 2012 state total they had $836.5 million roughly. When I do the math that comes out to about 16.6%. They look some percentages in two different areas with two different bases and subtracted the difference and got to 12%. I don't think that's the right way to do it. The second thing is more fundamental and that is that for the past 2 sessions there has been a 75 mill buy down program which is being eliminated and that was done on a temporary 2 year by 2 year basis. That is being incorporated into HB 1319 and would be the property tax reform portion of the bill. When that becomes permanent it permanently puts us at a disadvantage from a tax standpoint in relationship to the investor owned utilities. (11:07)

Senator Burckhard closed the conference committee on HB 2325.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
4/30/2013
Job Number 21630

☒ Conference Committee

Committee Clerk Signature	Angela Rittmiller

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Present: Senator Burckhard, Senator Miller, Senator Dotzenrod
Representative Klein, Representative Dockter, Representative Strinden

Senator Burckhard opened the conference committee on SB 2325.

Representative Klein - I think after you sort of dislodged our tax bill this morning we don't know where we are at. That is one of the hinge pins on this one along with some others. Until some of those things fall into place I don't think we can act on this.

Senator Burckhard closed the conference committee on SB 2325.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
5/1/2013
Job Number 21652

☒ Conference Committee

Committee Clerk Signature	Angela Pittman

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Present: Senator Burckhard, Senator Miller, Senator Dotzenrod
Representative Klein, Representative Dockter, Representative Strinden

Senator Burckhard opened the conference committee on SB 2325.

Representative Dockter handed out proposed amendments 13.0820.03003.

Representative Klein - One of the things that we had started out with on the House side was to include everybody on the reduction in taxes. Not only individuals but the companies that help make it possible. I think the idea of the financial institutions tax, which predates North Dakota citizenship, was kind of an anarchism that existed and should be corrected to get them into the same situation. The rest of it I think is just responding to what the public wants. (7:15)

Senator Miller - I think it's important, that, while I agree with what you are proposing, it's important to remember that this has been defeated in the Senate. There needs to be, because of the time period we are in with regard to the end of the session we need to move this along. There are so many important components to these amendments, particularly the financial institutions tax, I think we instead, consider leaving the rate reductions for corporate and individual off these amendments and just proceed with everything else in the bill. There is a $250 million proposed in SB 2156. Unless the House would like to offer an alternative proposal that perhaps would be somewhere between those. The Senate was very interested in passing the child care tax credit and that has been removed.

Representative Klein - I think this is some of the things that we felt in the beginning that needed to be addressed and I'm certainly not adverse to some kind of a compromise. (9:45)

Senator Dotzenrod - Representative Klein indicated something about the public and the public has indicated that they would like to have this rate reduction made a little higher than what the Senate...

Representative Klein - I believe we are trying to respond to what the public wants and I think we are trying to share the good things that have happened in North Dakota and not only with the individuals but also the companies that helped make that happen. This is why we included the corporation tax reduction.

Senator Dotzenrod - Do you think the Senate's position with the corporate income tax cuts that are in SB 2156 are just not adequate?

Representative Klein - Right now I'm not familiar with what those numbers are. (12:10)

Representative Dockter - My position has been this whole time, it's the people's money. We are trying to give it back. (12:36)

Senator Dotzenrod - The last time we got a reading from the voters was when the income tax was on the ballot in 2008 and they turned down the income tax reductions on a ratio of 70 - 30 statewide. There wasn't one legislative district in the state that supported reducing income taxes.

Representative Dockter - A lot of things have changed since 2008. We have a lot of money and I think we need to give it back to the citizens.

Senator Dotzenrod - I think this session will be characterized by the nature of that. That aspect is part of what we are doing. There is a substantial amount of tax cutting going on in this legislature. HB 1319 has $714 million of property tax cuts, and I suppose you could argue that the rest of the money that's in HB 1319 is also a reduction in rates on property in that that funding that goes to support the schools, if it wasn't in there would have to be picked up by property owners. So there is quite a bit of support in the legislature and in the bills we have passed to reduce taxes. I suppose we are getting down to a question of should it be property tax rates or income tax rates. (14:45)

Representative Klein - I would move the amendments. (LC# 13.0820.03003)

Seconded by **Representative Dockter**.

Roll Call Vote: Senators 1 yea - 2 nay Reps 2 yea - 1 nay MOTION FAILED

Senator Dotzenrod - These amendments that were proposed here it looks if you go to page 5 and look at section 12 I believe that everything after that are tax rate reductions.

Representative Dockter - That is correct, section 12 and 13.

Senator Dotzenrod - If someone were to move these amendments minus sections 12, 13, & 14...

Senator Miller - Senator Dotzenrod section 14 within itself, it's a good piece of legislation in case the federal government was to mess with their system. By moving it to 40% it lowers the capital gains taxes as an exclusion to a certain point and I think that is an important thing to keep in there. (19:24)

Representative Klein - Section 14 was put in there because at the time we originally discussed this bill the federal system for dividend reduction was going to go away. Well, they extended it but meanwhile we had brought in this language and we said we would just leave it in there because we never know what the feds are going to do but at least the state would then allow that dividend credit.

Representative Dockter - There is no effect as long as the tax law stays the same, it's just a safeguard.

Senator Miller - I would move the amendments minus section 12 & 13.

Seconded by **Senator Dotzenrod**.

Representative Strinden - Since we are putting in the Houses wish list minus a couple of things, do we want to discuss, since the Senate likes it, adding back in the childcare credit?

Senator Dotzenrod - I have some amendments that do that. I thought we would vote on this and then I would bring these amendments up and we could have a discussion about them and see if there is any interest in adding them.

Representative Klein - We did pass a bill on childcare yesterday that pretty much handled a good part of that. It didn't cover this credit, but it did handle a great part of that.

Roll Call Vote: Senators 3 yea - 0 nay Reps 1 yea - 2 nay MOTION FAILED

Senator Dotzenrod handed out proposed amendments 13.0820.03004.

Representative Klein - I believe this is similar to previous bills we have had in this legislature in past sessions. I recall one that maybe was 2 sessions ago that kind of addressed the same thing and it didn't go at that time.

Representative Strinden - I've been looking over HB 1422 and this does cover I think a different kind and an expanded type of incentive for having childcare. I in my opinion don't think that we have addressed the childcare crisis in North Dakota enough, especially in the western part of the state. I can see that this could be an incentive for companies who are operating in oil producing counties to offer affordable childcare so parents don't have to find it elsewhere or not at all.

Senator Burckhard closed the conference committee on SB 2325.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
5/1/2013
Job Number 21660

☒ Conference Committee

Committee Clerk Signature	Angela Rithmiller

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Present: Senator Burckhard, Senator Oehlke, Senator Dotzenrod
Representative Klein, Representative Dockter, Representative Strinden

Senator Burckhard opened the conference committee on SB 2325.

Representative Klein - A couple of proposals, to begin with, I believe we have done enough for childcare. We have looked at that thing several sessions ago; I don't feel we need to provide tax credits to big companies like Microsoft. Going on to what we discussed earlier on these amendments, leaving out sections 12 & 13, we are amenable to that but we would also like to make a proposal since you have tax benefits of $250 million in SB 2156 we would like to propose a compromise at $300 million and go from there, and then end up doing the little thing in the original bill and agree to that and finish it up.

Discussion followed on catching up Senator Oehlke on what has been going on in the committee.

Senator Dotzenrod - The Senate position that it passed out in SB 2156 was $250 million in corporate and personal income tax. I guess I'm feeling that that is probably a position that I don't want to go any further on. If we felt that we were short, that there was a certain amount of extra tax reductions that we really needed to put in place I would favor adding on to what we are offering in tax reductions on property. I think $250 million on income taxes is from my point of view, I don't see any reason to go any higher than that. If we need to negotiate more on higher property tax reductions I guess I'm open to that.

Representative Klein - Are you willing to meet us in the middle and go from there?

Senator Dotzenrod - No, I'm not. I think that the position that the Senate had of $250 million seems to me to be pretty high. The Governor's proposal was $125 million, we are up to $250 million, we have one of the lowest income taxes in the nation, and the idea that that is a need when we have property tax issues all over the state that really need attention and we've had so much discussion all over the state with measure 2. If we are concerned about trying to push more tax relief I would be in favor of extending something on property. (8:05)

Senator Oehlke - I'm curious what a total fiscal note would look like on that proposal. I think we need to find out what is going on with HB 1319.

Marcy Dickerson, Tax Department briefly went over Sara Meier's calculation.

Representative Strinden - Version 3000 of this bill with the $.85 the counties would lose $2,150,000.

Senator Dotzenrod - I guess there is a difference between the House and the Senate on where we stand relative to income tax. I think the Senate's position is that if we did the $250 million and we felt that is good, we can stop there. The House feels they want to do more. I still don't know the right number, but as far as what is felt, I was interested primarily in getting the financial institutions tax, getting rid of that existing tax and going to the corporate tax. There is a small angel fund reference in there; I think we should keep that and then the reference to the capital gains rate change. As far as amending something in to the bill that deals with rates and income tax, I thought maybe we could just not do that. We would end up with something that represented these other changes mostly to do with the financial institutions and let it go at that.

Senator Burckhard - I agree Senator Dotzenrod, I don't think SB 2325 should deal with corporate or individual income tax.

Representative Klein - Right now I think we need to get a fiscal note on the original and go from there.

Senator Burckhard closed the conference committee on SB 2325.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
5/2/2013
Job Number 21663

☒ Conference Committee

Committee Clerk Signature	Angela R. Smith

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Present: Senator Burckhard, Senator Oehlke, Senator Dotzenrod
Representative Klein, Representative Dockter, Representative Strinden

Senator Burckhard opened the conference committee on SB 2325.

Representative Klein - Since we talked yesterday you pretty much agreed to the proposed amendments we had and then we will put the figure of 20% in there and go.

Senator Burckhard - I would like to propose amendment 13.0820.03009 which addresses the financial institutions tax and the angel fund.

John Walstad, Legislative Council went through proposed amendment 13.0820.03009.

Senator Dotzenrod - We are repealing in section 17 we are taking out the chapter that has the financial institution tax 57-35.3. To do the carry forward loss and some other things you have in here, you refer back to that chapter. When we repeal it I suppose we can refer to it even though it's not there?

John Walstad - I think the references say a loss under 57-35.3 as it existed before January 1, 2013. So we are just referring to the law that was there. The law itself will disappear.

Representative Klein - I would move the amendments .03009.

Seconded by **Representative Dockter**.

Roll Call Vote: Senators - 3 yea 0 nay Reps - 3 yea 0 nay MOTION CARRIES

Senator Burckhard - Next I have an amendment that addresses the original idea of this bill which was electric distributions tax. I will move amendment 13.0820.03007.

Seconded by **Representative Strinden**.

Representative Klein - I believe at this time we can't support this amendment. You're going way beyond what was the original idea that we had in the House and I think the cost would put us in trouble.

Senator Burckhard - Some would say that this is a discussion about fairness and you think $.75 is incorrect?

Representative Klein - At this point yes we do.

Senator Oehlke - I thought it came over from the House at $.65. So you must have supported it somewhere along the way.

Representative Klein - Part of what we did in the House, we wanted to get this bill to committee and we chose a number. We didn't have any idea what that real number would be at that time.

Senator Dotzenrod - I suppose the question about what is the appropriate number depends on what the objective is. What are you trying to accomplish by doing this. I'm not really looking at it from the standpoint of how does it impact the revenue loss, I'm more concerned about in the competitive marketplace that we have out there between the IOU's and the REC's that we don't have something that ends up creating a distortion or a burden that is placed on one system over the other. It's my impression that $.75 would be that number. That would get us fairly close at this time. That is how the bill was introduced.

Representative Klein - I don't 100% disagree with what Senator Dotzenrod is saying, but at this stage of the game, we are in day 79, I think we need to move this thing out and I would suggest or hope that a study is included in the OMB bill to take a look at this entire operation of where we are at between the two.

Roll Call Vote: Senators - 3 yea 0 nay Reps - 1 yea 2 nay MOTION FAILED

Senator Burckhard - I would move amendment 13.0820.03008. It addresses the same issue it just changes $.85 to $.80 instead of $.75.

Seconded by **Senator Dotzenrod**.

Representative Klein - Do you have a fiscal note?

Marcy Dickerson, Tax Department - The sheet I distributed is in lieu of a fiscal note. (attachment 1-CC)

Roll Call Vote: Senators - 3 yea 0 nay Reps - 1 yea 2 nay MOTION FAILED

Representative Klein - I'd move an amendment at 20%.

Senator Burckhard - That is what we just voted on. The last amendment was on $.80 which is 20%.

Representative Klein - I'm sorry. I'd like to reconsider the 20%. (amendment 13.0820.03008)

Seconded by **Senator Oehlke**.

Roll Call Vote (To Reconsider):
Senators - 3 yea 0 nay **Reps - 3 yea 0 nay** **MOTION CARRIES**

Senator Burckhard - I will move again the same amendment .03008 changing $.85 to $.80 and that is 20%.

Seconded by **Senator Dotzenrod**.

Roll Call Vote: Senators - 3 yea 0 nay Reps - 3 yea 0 nay MOTION CARRIES

Representative Klein - There is one other thing I think should be considered and that is the study I referred to earlier. It will probably have to go into the OMB bill. I really think we need to take a look at this thing. I know this doesn't make a lot of people happy but at this stage of the game I think we need to move this out and get it done, but I also think we need to take a look at where we are at in the long term here. (23:47) I don't want to put it in this bill I just wanted to put that out there.

Committee adjourned.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
5/2/2013
Job Number 21665

☒ Conference Committee

Committee Clerk Signature	

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Present: Senator Burckhard, Senator Oehlke, Senator Dotzenrod
Representative Klein, Representative Dockter, Representative Strinden

Senator Burckhard opened the conference committee on SB 2325.

Senator Burckhard - We have one more item of business to accomplish before we can adjourn. In our review of the amendment we forgot to include the portion that talks about dividends. We need to further amend our conference committee report to include that. Is there a motion?

Representative Klein - So moved.

Seconded by **Senator Oehlke**.

Verbal Vote (To Reconsider): 5 yea 1 nay

Senator Burckhard - Now we need to amend to include that section.

The committee agreed it was best to wait until they had a hard copy of the amendment to look at to assure accuracy.

Committee adjourned.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2325
5/2/2013
Job Number 21668

☒ Conference Committee

Committee Clerk Signature	Angela Rittenback

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 57-33.2-03 of the North Dakota Century Code, relating to reduction of the distribution tax rate for companies engaged in the distribution of electricity; and to provide an effective date.

Minutes:

Present: Senator Burckhard, Senator Oehlke, Senator Dotzenrod
Representative Klein, Representative Dockter, Representative Strinden

Senator Burckhard opened the conference committee on SB 2325.

Representative Klein - I'd move we reconsider our actions where we approved amendment .03009.

Seconded by **Senator Oehlke**.

Verbal Vote (To Reconsider): 6 yea 0 nay

Representative Klein - I would move amendment 13.0820.03010.

Seconded by **Representative Dockter**.

Senator Burckhard - I have read this thing word for word and it does include the new rate for the electric distribution tax at $.80, it has the dividends fix, it's got the angel fund, and the financial institutions tax.

Senator Dotzenrod - The only difference between what we are doing here and what we did earlier today is the addition of section 12 right?

Senator Burckhard - Correct

Senator Dotzenrod - I think it's about $8 million if I understand it. It's probably not going to be effective depending on what the federal government does.

Representative Klein - When we had this bill originally the feds had not approved the new tax deal. They have since approved it which is similar so we wouldn't have needed this but we thought we would keep it in anyway should the feds change it again. At least for the state then, the people who were collecting dividends would get that credit. (2:57)

Senator Dotzenrod - If nothing changes with the federal government over the next 2 years does this section have a fiscal impact?

Donnita Wald, Tax Department - We are changing the 30% to 40%. That is the change and that change is an $8 million fiscal note.

Senator Burckhard - If nothing changes in the federal law?

Donnita Wald - It's still going to be $8 million because of the change in the 30% to 40%.

Senator Dotzenrod - The $8 million is in the event that nothing changes at the federal level and this provision becomes law in North Dakota. If the federal governments were to change over the next 2 years would that change the fiscal impact of this?

Donnita Wald - When this bill was introduced at that time the Bush tax cuts hadn't been reinstated and there were 2 particular provisions we were concerned about that North Dakota piggy backs off of. The qualified dividend is one of them. What the feds did was they made this particular provision permanent so it shouldn't have an effect. It was just changed then from 30% to 40%. The $8 million is for this biennium. It's the 40% that makes that change.

Senator Dotzenrod - I will probably not support the amendment because of that section, the $8 million. I suppose you could argue that given the fiscal condition of North Dakota today we shouldn't worry about the $8 million. And that probably is not a bad argument, but I guess I'm thinking as a group of people that are 65 and over, part of the argument is that there is a lot of people who are retired and this is part of their retirement income. I would argue that there is a group of people in North Dakota that are having some difficulty with property taxes. We do have the homestead credit that we have expanded and that will help a lot with that, but for those people who don't qualify for that I think that, I don't have the data to support the assertion I would make, but I would assert that there are, for those in this group that are having this income, they may not be what people would call wealthy but in general that is a group of people in the 65 and older who are generally speaking compared to the young taxpayers who are paying into the social security system and not collecting from it. If I could have my way I would take the $8 million and put it into property tax relief but of course we have a significant amount of money there, so, just thought I would mention that.

Roll Call Vote: Senators - 2 yea 1 nay Reps - 3 yea 0 nay MOTION CARRIES

Committee adjourned.

13.0820.05000

FISCAL NOTE

Requested by Legislative Council
05/02/2013

Amendment to: Reengrossed SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			$(3,390,000)	$11,590,000		
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(2,868,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Second engrossed SB 2325 with Conference Committee Amendments reduces the distribution tax rate for companies engaged in the distribution of electricity, repeals the Financial Institutions Tax, and makes income tax changes.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 7 of second engrossed SB 2325 with Conference Committee Amendments reduces the distribution tax rate from $1.00 to $.80 per megawatt-hour for the retail sale of electricity. Section 12 increase the long-term capital gain and qualified dividend income exclusion for individuals from 30% to 40%. Section 16 increases the portion of the sales and use, gross receipts, ad motor vehicle excise tax collections deposited into the state aid distribution fund from 40% to 43.5% for the purpose of replacing the decrease in revenues to counties and their political subdivisions resulting from the repeal of the financial institutions tax. Section 17 repeals the financial institutions tax.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, second engrossed SB 2325 with Conference Committee Amendments is expected to reduce county revenue by an estimated $2.868 million in the 2013-15 biennium from the reduction in the tax on the distribution of electricity. The repeal of the financial institutions tax and imposition of the corporate income tax for financial institutions is expected to result in a net increase in state general fund revenues of $22.5 million. The repeal of the existing financial institution tax is expected to reduce state general fund revenues $7.3 million in the 2013-15 biennium. The increase in the long-term capital gain and qualified dividend income exclusion is expected to reduce state general fund revenues by an estimated $7 million in the 2013-15 biennium. The expanded transfer to the state aid distribution fund is expected to reduce state general fund revenues and increase state aid distribution fund revenues by an estimated $11.59 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 05/03/2013

FISCAL NOTE
Requested by Legislative Council
03/21/2013

Amendment to: SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(5,019,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Second engrossed SB 2325 with House Amendments reduces the distribution tax rate for companies engaged in the distribution of electricity.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of second engrossed SB 2325 with House Amendments reduces the distribution tax rate from $1.00 to $.65 per megawatt-hour for the retail sale of electricity.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, second engrossed SB 2325 with House Amendments is expected to reduce county revenue by an estimated $5.019 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 03/23/2013

FISCAL NOTE
Requested by Legislative Council
02/12/2013

Amendment to: SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(2,150,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2325 reduces the distribution tax rate for companies engaged in the distribution of electricity.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of engrossed SB 2325 reduces the distribution tax rate from $1.00 to $.85 per megawatt-hour for the retail sale of electricity.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, engrossed SB 2325 is expected to reduce county revenue by an estimated $2.15 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/14/2013

FISCAL NOTE
Requested by Legislative Council
01/29/2013

Bill/Resolution No.: SB 2325

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		$(3,600,000)	
Cities			
School Districts			
Townships			

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2325 reduces the distribution tax rate for companies engaged in the distribution of electricity.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of SB 2325 reduces the distribution tax rate from $1.00 to $.75 per megawatt-hour for the retail sale of electricity.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

If enacted, SB 2325 is expected to reduce county revenue by an estimated $3.6 million in the 2013-15 biennium.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck
Agency: Office of Tax Commissioner
Telephone: 328-3402
Date Prepared: 02/04/2013

Prepared by the Legislative Council staff for
Representative Dockter
May 1, 2013

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2325

That the House recede from its amendments as printed on page 918 of the Senate Journal and page1010 of the House Journal and that Reengrossed Senate Bill No. 2325 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 57-38, two new subsections to section 57-38-34, a new subsection to section 57-38-38, and a new subsection to section 57-38-40 of the North Dakota Century Code, relating to corporate and individual income tax credits and transition of financial institutions to corporate income tax treatment; to"

Page 1, line 1, after "reenact" insert "subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "57-33.2-03" insert ", subsection 3 of section 57-38-01.3, subsections 1 and 3 of section 57-38-01.26, subsections 5 and 7 of section 57-38-01.32, section 57-38-30, subsection 1 of section 57-38-30.3, subdivisions c, d, and f of subsection 2 of section 57-38-30.3, and section 57-39.2-26.1"

Page 1, line 3, after "electricity" insert ", individual and corporation income tax rates, and credits and increased allocations from the state aid distribution fund; to repeal chapter 57-35.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections ~~57-35.3-03,~~ 57-38-30~~,~~ and 57-38-30.3.

SECTION 2. AMENDMENT. Subsection 8 of section 40-63-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Taxpayer" means an individual, corporation, ~~financial institution,~~ or trust subject to the taxes imposed by chapter ~~57-35.3 or~~ 57-38 and includes a partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity.

SECTION 3. AMENDMENT. Subsection 5 of section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

5. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapter ~~57-35.3 or~~ 57-38.

SECTION 4. AMENDMENT. Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

40-63-06. Historic preservation and renovation tax credit.

A credit against state tax liability as determined under sections ~~57-35.3-03,~~ 57-38-30~~,~~ and 57-38-30.3 is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

SECTION 5. AMENDMENT. Subsections 3 and 4 of section 40-63-07 of the North Dakota Century Code are amended and reenacted as follows:

3. A renaissance fund organization is exempt from any tax imposed by chapter ~~57-35.3 or~~ 57-38. An exemption under this section may be passed through to any shareholder, partner, and owner if the renaissance fund organization is a passthrough entity for tax purposes. A corporation ~~or financial institution~~ entitled to the exemption provided by this subsection shall file required returns and report income to the tax commissioner as required by the provisions of ~~those chapters~~<u>chapter 57-38</u> as if the exemption did not exist. If an employer, this subsection does not exempt a renaissance fund organization from complying with the income tax withholding laws.

4. A credit against state tax liability as determined under section ~~57-35.3-03,~~ 57-38-30~~,~~ or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made."

Page 2, after line 2, insert:

"**SECTION 8. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources<u>, including a net operating loss calculated under chapter 57-35.3 for tax years beginning before January 1, 2013</u>. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

SECTION 9. AMENDMENT. Subsections 1 and 3 of section 57-38-01.26 of the North Dakota Century Code are amended and reenacted as follows:

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is ~~one~~five hundred ~~fifty~~ thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.

3. An angel fund must:

   a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.

   b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. ~~Early-stage and mid-stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.~~Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.

   c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.

   d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.

   e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.

   f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.

   g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.

   h. Be in compliance with the securities laws of this state.

i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:

(1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;

(2) The dollar amount remitted by the taxpayer or passthrough entity; and

(3) The date the payment was received by the angel fund for the investment.

j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.

SECTION 10. AMENDMENT. Subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code are amended and reenacted as follows:

5. The aggregate amount of tax credits allowed to all eligible contributors is limited to fifteen million dollars per biennium. ~~This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.~~

7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income ~~or financial institutions~~ tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.

SECTION 11. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Financial institutions - Net operating losses - Credit carryovers.

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:

a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under subsection 8 of section 57-38-34; and

b. Is binding until the earlier of:

(1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or

(2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.

2. If an election is made under this section, the following apply:

   a. A subchapter S corporation may not file a consolidated return.

   b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward in the same number of years the financial institution would have been entitled under chapter 57-35.3.

   c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

SECTION 12. AMENDMENT. Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations.

A tax is hereby imposed upon the taxable income of every domestic and foreign corporation which must be levied, collected, and paid annually as in this chapter provided:

1. For the first ~~twenty-five~~fifty thousand dollars of taxable income, at the rate of one and ~~sixty-eight~~twenty-six hundredths percent.

2. ~~On all taxable income exceeding twenty-five thousand dollars and not exceeding fifty thousand dollars, at the rate of four and twenty-three hundredths percent.~~

~~3.~~ On all taxable income exceeding fifty thousand dollars, at the rate of ~~five~~three and ~~fifteen~~eighty-seven hundredths percent.

SECTION 13. AMENDMENT. Subsection 1 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. A taxpayer computing the tax under this section is only eligible for those adjustments or credits that are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return under this chapter, but who has not computed a federal taxable income figure, shall compute a federal taxable income figure using a pro forma return in order to determine a federal taxable income figure to be used as a starting point in computing state income tax under this section. The tax for individuals is equal to North Dakota taxable income multiplied by the rates in the applicable rate schedule in subdivisions a through d corresponding to an individual's filing status used for federal income tax purposes. For an estate or trust, the schedule in subdivision e must be used for purposes of this subsection.

   a. Single, other than head of household or surviving spouse.

If North Dakota taxable income is: The tax is equal to:

Not over ~~$34,500~~$36,250 ~~1.51%~~1.13%

Over ~~$34,500~~$36,250 ~~$520.95~~$410.53 plus ~~2.82%~~2.12%

but not over ~~$83,600~~$87,850 of amount over ~~$34,500~~$36,250

Over ~~$83,600~~$87,850 ~~$1,905.57~~$1,501.87 plus ~~3.13%~~2.35%

but not over ~~$174,400~~$183,250 of amount over ~~$83,600~~$87,850

Over ~~$174,400~~$183,250 ~~$4,747.61~~$3,741.39 plus ~~3.63%~~2.72%

but not over ~~$379,150~~$398,350 of amount over ~~$174,400~~$183,250

Over ~~$379,150~~$398,350 ~~$12,180.04~~$9,597.49 plus ~~3.99%~~2.99%

of amount over ~~$379,150~~$398,350

b. Married filing jointly and surviving spouse.

If North Dakota taxable income is: The tax is equal to:

Not over ~~$57,700~~$60,650 ~~1.51%~~1.13%

Over ~~$57,700~~$60,650 ~~$871.27~~$686.86 plus ~~2.82%~~2.12%

but not over ~~$139,350~~$146,400 of amount over ~~$57,700~~$60,650

Over ~~$139,350~~$146,400 ~~$3,173.80~~$2,500.47 plus ~~3.13%~~2.35%

but not over ~~$212,300~~$223,050 of amount over ~~$139,350~~$146,400

Over ~~$212,300~~$223,050 ~~$5,457.14~~$4,299.83 plus ~~3.63%~~2.72%

but not over ~~$379,150~~$398,350 of amount over ~~$212,300~~$223,050

Over ~~$379,150~~$398,350 ~~$11,513.79~~$9,072.37 plus ~~3.99%~~2.99%

of amount over ~~$379,150~~$398,350

c. Married filing separately.

If North Dakota taxable income is:	The tax is equal to:
Not over ~~$28,850~~$30,325	~~1.51%~~1.13%
Over ~~$28,850~~$30,325 but not over ~~$69,675~~$73,200	~~$435.64~~$343.43 plus ~~2.82%~~2.12% of amount over ~~$28,850~~$30,325
Over ~~$69,675~~$73,200 but not over ~~$106,150~~$111,525	~~$1,586.90~~$1,250.24 plus ~~3.13%~~2.35% of amount over ~~$69,675~~$73,200
Over ~~$106,150~~$111,525 but not over ~~$189,575~~$199,175	~~$2,728.57~~$2,149.92 plus ~~3.63%~~2.72% of amount over ~~$106,150~~$111,525
Over ~~$189,575~~$199,175	~~$5,756.90~~$4,536.19 plus ~~3.99%~~2.99% of amount over ~~$189,575~~$199,175

d. Head of household.

If North Dakota taxable income is:	The tax is equal to:
Not over ~~$46,250~~$48,600	~~1.51%~~1.13%
Over ~~$46,250~~$48,600 but not over ~~$119,400~~$125,450	~~$698.38~~$555.40 plus ~~2.82%~~2.12% of amount over ~~$46,250~~$48,600
Over ~~$119,400~~$125,450 but not over ~~$193,350~~$203,150	~~$2,761.21~~$2,175.78 plus ~~3.13%~~2.35% of amount over ~~$119,400~~$125,450
Over ~~$193,350~~$203,150 but not over ~~$379,150~~$398,350	~~$5,075.84~~$3,999.79 plus ~~3.63%~~2.72% of amount over ~~$193,350~~$203,150
Over ~~$379,150~~$398,350	~~$11,820.38~~$9,314.11 plus ~~3.99%~~2.99% of amount over ~~$379,150~~$398,350

e. Estates and trusts.

If North Dakota taxable income is:	The tax is equal to:
Not over ~~$2,300~~$2,450	~~1.51%~~1.13%
Over ~~$2,300~~$2,450 but not over ~~$5,450~~$5,700	~~$34.73~~$27.75 plus ~~2.82%~~2.12% of amount over ~~$2,300~~$2,450
Over ~~$5,450~~$5,700 but not over ~~$8,300~~$8,750	~~$123.56~~$96.49 plus ~~3.13%~~2.35% of amount over ~~$5,450~~$5,700
Over ~~$8,300~~$8,750 but not over ~~$11,350~~$11,950	~~$212.77~~$168.09 plus ~~3.63%~~2.72% of amount over ~~$8,300~~$8,750
Over ~~$11,350~~$11,950	~~$323.48~~$255.21plus ~~3.99%~~2.99% of amount over ~~$11,350~~$11,950

f. For an individual who is not a resident of this state for the entire year, or for a nonresident estate or trust, the tax is equal to the tax otherwise computed under this subsection multiplied by a fraction in which:

(1) The numerator is the federal adjusted gross income allocable and apportionable to this state; and

(2) The denominator is the federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 2.

In the case of married individuals filing a joint return, if one spouse is a resident of this state for the entire year and the other spouse is a nonresident for part or all of the tax year, the tax on the joint return must be computed under this subdivision.

g. The tax commissioner shall prescribe new rate schedules that apply in lieu of the schedules set forth in subdivisions a through e. The new schedules must be determined by increasing the minimum and maximum dollar amounts for each income bracket for which a tax is imposed by the cost-of-living adjustment for the taxable year as determined by the secretary of the United States treasury for purposes of section 1(f) of the United States Internal Revenue Code of 1954, as amended. For this purpose, the rate applicable to each income bracket may not be changed, and the manner of applying the cost-of-living adjustment must be the same as that used for adjusting the income brackets for federal income tax purposes.

h. The tax commissioner shall prescribe an optional simplified method of computing tax under this section that may be used by an individual taxpayer who is not entitled to claim an adjustment under subsection 2 or credit against income tax liability under subsection 7.

SECTION 14. AMENDMENT. Subdivisions c, d, and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 11 of this Act.

d. Reduced by ~~thirty~~forty percent of:

(1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.

(2) ~~The qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008.~~ Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 11 of this Act.

SECTION 15. Two new subsections to section 57-38-34 of the North Dakota Century Code are created and enacted as follows:

7. For a person that was subject to the tax under chapter 57-35.3 for the calendar year ending December 31, 2012, payment of the tax under this chapter is due six months after the due date of the return as required under this section. The provisions of subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under this subsection. This subsection applies to the first tax year beginning after December 31, 2012.

8. A person that previously reported under chapter 57-35.3 on a calendar year basis and files its federal income tax return on a fiscal year basis must file a short period return for the period beginning January 1, 2013, and ending on the last day of the tax year in calendar year 2013.

SECTION 16. A new subsection to section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

11. This section applies if additional tax would be due under the provisions of chapter 57-35.3 in effect for taxable years beginning before January 1, 2013.

SECTION 17. A new subsection to section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

16. A person that would have been entitled to a credit or refund under chapter 57-35.3 for a taxable year beginning before January 1, 2013, may file a claim for refund or credit of an overpayment of tax.

SECTION 18. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions.

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to ~~forty~~forty-three and one-half percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

   a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:

      (1) Thirty-two percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

   b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:

      (1) Forty percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

   A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period based upon the proportion each city's population bears to the total population of all cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

SECTION 19. REPEAL. Chapter 57-35.3 of the North Dakota Century Code is repealed."

Page 2, line 3, replace "This" with "Section 19 of this Act is effective for taxable events occurring after June 30, 2014, and the remainder of this"

Renumber accordingly

Prepared by the Legislative Council staff for
Senator Dotzenrod
May 1, 2013

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2325

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to an employer-provided child care income tax credit;"

Page 2, after line 2, insert:

"**SECTION 3.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Employer-provided child care credit.

1. An employer is allowed a credit against the tax imposed under section 57-38-30 or 57-38-30.3 for providing a qualified child care facility. The amount of the credit under this section is fifty percent of the qualified child care expenditures incurred by the employer. Qualified child care expenditures under this section may not be used in the calculation of any other income tax deduction or credit allowed under state law.

2. For purposes of this section:

   a. "Employer" means a taxpayer who employs one or more full-time equivalent employees and whose primary source of income is from a business other than the business of providing child care services.

   b. "Qualified child care expenditure" means any amount paid or incurred:

      (1) To acquire, construct, rehabilitate, or expand property:

         (a) That is to be used as part of a qualified child care facility;

         (b) For which a deduction under federal law for depreciation, or amortization in lieu of depreciation, is allowable; and

         (c) That does not constitute part of the principal residence of the taxpayer or any employee of the taxpayer;

      (2) For the direct costs necessary for the operation of the child care facility;

      (3) For the indirect or overhead costs properly attributable to the child care facility, including insurance, utilities, front office salaries, property taxes, legal fees, and advertising; or

      (4) Under a contract with a qualified child care facility to provide child care services to employees of the taxpayer, including any amount paid to the child care facility for additional direct or indirect costs of the facility.

   The term "qualified child care expenditure" does not include expenses in excess of the fair market value of such care.

c. "Qualified child care facility" means a facility the principal use of which is to provide child care assistance to the taxpayer's employees and that meets the requirements of all applicable laws and regulations of the state and local government in which it is located.

(1) The term "qualified child care facility" does not apply to a facility which is the principal residence of the operator of the facility.

(2) A facility may not be treated as a qualified child care facility with respect to a taxpayer unless:

(a) Enrollment in the facility is open to employees of the taxpayer during the taxable year; and

(b) Eligibility for enrollment must be offered to all employees on an equal opportunity basis.

3. The taxpayer shall claim the total credit amount for the taxable year in which the qualified child care expenditures are made, except depreciated property expenditures shall be claimed in the taxable year in which the property is placed in service. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year.

4. If two or more taxpayers share in the qualified child care expenditures, each taxpayer must be allowed the credit in relation to the respective share paid or incurred by each taxpayer of the total expenditures for the facility in each taxable year.

5. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the next five succeeding taxable years.

6. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.

7. To receive the tax credit provided under this section, a taxpayer shall claim the credit in the form and manner as may be prescribed by the tax commissioner.

8. It is the intent of the legislative assembly that the credit provided in this section must be liberally construed and interpreted to effectuate the expansion of child care availability in the state."

Renumber accordingly

Prepared by the Legislative Council staff for
Senator Burckhard
May 2, 2013

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2325

That the House recede from its amendments as printed on page 918 of the Senate Journal and page 1010 of the House Journal and that Reengrossed Senate Bill No. 2325 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 57-38, two new subsections to section 57-38-34, a new subsection to section 57-38-38, and a new subsection to section 57-38-40 of the North Dakota Century Code, relating to corporate and individual income tax credits and transition of financial institutions to corporate income tax treatment; to"

Page 1, line 1, after "reenact" insert "subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "57-33.2-03" insert ", subsection 3 of section 57-38-01.3, subsections 1 and 3 of section 57-38-01.26, subsections 5 and 7 of section 57-38-01.32, subdivisions c and f of subsection 2 of section 57-38-30.3, and section 57-39.2-26.1"

Page 1, line 3, after "electricity" insert ", individual and corporation income tax rates, and credits and increased allocations from the state aid distribution fund; to repeal chapter 57-35.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections ~~57-35.3-03,~~ 57-38-30~~,~~ and 57-38-30.3.

SECTION 2. AMENDMENT. Subsection 8 of section 40-63-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Taxpayer" means an individual, corporation, ~~financial institution,~~ or trust subject to the taxes imposed by chapter ~~57-35.3 or~~ 57-38 and includes a partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity.

SECTION 3. AMENDMENT. Subsection 5 of section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

5. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapter ~~57-35.3 or~~ 57-38.

SECTION 4. AMENDMENT. Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

40-63-06. Historic preservation and renovation tax credit.

A credit against state tax liability as determined under sections ~~57-35.3-03,~~ 57-38-30~~,~~ and 57-38-30.3 is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

SECTION 5. AMENDMENT. Subsections 3 and 4 of section 40-63-07 of the North Dakota Century Code are amended and reenacted as follows:

3. A renaissance fund organization is exempt from any tax imposed by chapter ~~57-35.3 or~~ 57-38. An exemption under this section may be passed through to any shareholder, partner, and owner if the renaissance fund organization is a passthrough entity for tax purposes. A corporation ~~or financial institution~~ entitled to the exemption provided by this subsection shall file required returns and report income to the tax commissioner as required by the provisions of ~~those chapters~~<u>chapter 57-38</u> as if the exemption did not exist. If an employer, this subsection does not exempt a renaissance fund organization from complying with the income tax withholding laws.

4. A credit against state tax liability as determined under section ~~57-35.3-03,~~ 57-38-30~~,~~ or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made."

Page 2, after line 2, insert:

"**SECTION 8. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources<u>, including a net operating loss calculated under chapter 57-35.3 for tax years beginning before January 1, 2013</u>. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

SECTION 9. AMENDMENT. Subsections 1 and 3 of section 57-38-01.26 of the North Dakota Century Code are amended and reenacted as follows:

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is ~~one~~five hundred ~~fifty~~ thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.

3. An angel fund must:

   a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.

   b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. ~~Early stage and mid stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.~~Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.

   c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.

   d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.

   e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.

   f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.

   g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.

   h. Be in compliance with the securities laws of this state.

i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:

(1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;

(2) The dollar amount remitted by the taxpayer or passthrough entity; and

(3) The date the payment was received by the angel fund for the investment.

j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.

SECTION 10. AMENDMENT. Subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code are amended and reenacted as follows:

5. The aggregate amount of tax credits allowed to all eligible contributors is limited to fifteen million dollars per biennium. ~~This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.~~

7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income ~~or financial institutions~~ tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.

SECTION 11. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Financial institutions - Net operating losses - Credit carryovers.

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:

a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under subsection 8 of section 57-38-34; and

b. Is binding until the earlier of:

(1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or

(2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.

2. If an election is made under this section, the following apply:

a. A subchapter S corporation may not file a consolidated return.

b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward in the same number of years the financial institution would have been entitled under chapter 57-35.3.

c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

SECTION 12. AMENDMENT. Subdivisions c and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 11 of this Act.

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 11 of this Act.

SECTION 13. Two new subsections to section 57-38-34 of the North Dakota Century Code are created and enacted as follows:

7. For a person that was subject to the tax under chapter 57-35.3 for the calendar year ending December 31, 2012, payment of the tax under this chapter is due six months after the due date of the return as required under this section. The provisions of subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under this subsection. This subsection applies to the first tax year beginning after December 31, 2012.

8. A person that previously reported under chapter 57-35.3 on a calendar year basis and files its federal income tax return on a fiscal year basis must file a short period return for the period beginning January 1, 2013, and ending on the last day of the tax year in calendar year 2013.

SECTION 14. A new subsection to section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

11. This section applies if additional tax would be due under the provisions of chapter 57-35.3 in effect for taxable years beginning before January 1, 2013.

SECTION 15. A new subsection to section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

16. A person that would have been entitled to a credit or refund under chapter 57-35.3 for a taxable year beginning before January 1, 2013, may file a claim for refund or credit of an overpayment of tax.

SECTION 16. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions.

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to ~~forty~~forty-three and one-half percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

    a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:

        (1) Thirty-two percent of the amount must be allocated equally among the counties; and

        (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

    b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:

        (1) Forty percent of the amount must be allocated equally among the counties; and

        (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

    A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period based upon the proportion each city's population bears to the total population of all cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

SECTION 17. REPEAL. Chapter 57-35.3 of the North Dakota Century Code is repealed."

Page 2, line 3, replace "This" with "Section 17 of this Act is effective for taxable events occurring after June 30, 2014, and the remainder of this"

Renumber accordingly

Prepared by the Legislative Council staff for
Senator Burckhard
May 2, 2013

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2325

That the House recede from its amendments as printed on page 918 of the Senate Journal and page 1010 of the House Journal and that Reengrossed Senate Bill No. 2325 be amended as follows:

Page 1, line 22, replace "eighty-five" with "seventy-five"

Renumber accordingly

13.0820.03008
Title.

Prepared by the Legislative Council staff for
Senator Burckhard
May 2, 2013

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2325

That the House recede from its amendments as printed on page 918 of the Senate Journal and page 1010 of the House Journal and that Reengrossed Senate Bill No. 2325 be amended as follows:

Page 1, line 22, replace "eighty-five" with "eighty"

Renumber accordingly

Prepared by the Legislative Council staff for
Senator Burckhard
May 2, 2013

5-2-13
1 of 7

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2325

That the House recede from its amendments as printed on page 918 of the Senate Journal and page 1010 of the House Journal and that Reengrossed Senate Bill No. 2325 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 57-38, two new subsections to section 57-38-34, a new subsection to section 57-38-38, and a new subsection to section 57-38-40 of the North Dakota Century Code, relating to corporate and individual income tax credits and transition of financial institutions to corporate income tax treatment; to"

Page 1, line 1, after "reenact" insert "subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "57-33.2-03" insert ", subsection 3 of section 57-38-01.3, subsections 1 and 3 of section 57-38-01.26, subsections 5 and 7 of section 57-38-01.32, subdivisions c, d, and f of subsection 2 of section 57-38-30.3, and section 57-39.2-26.1"

Page 1, line 3, after "electricity" insert ", individual and corporation income tax rates, and credits and increased allocations from the state aid distribution fund; to repeal chapter 57-35.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections ~~57-35.3-03,~~ 57-38-30~~,~~ and 57-38-30.3.

SECTION 2. AMENDMENT. Subsection 8 of section 40-63-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Taxpayer" means an individual, corporation, ~~financial institution,~~ or trust subject to the taxes imposed by chapter ~~57-35.3 or~~ 57-38 and includes a partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity.

SECTION 3. AMENDMENT. Subsection 5 of section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

5. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapter ~~57-35.3 or~~ 57-38.

SECTION 4. AMENDMENT. Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

40-63-06. Historic preservation and renovation tax credit.

A credit against state tax liability as determined under sections ~~57-35.3-03,~~ 57-38-30~~,~~ and 57-38-30.3 is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

SECTION 5. AMENDMENT. Subsections 3 and 4 of section 40-63-07 of the North Dakota Century Code are amended and reenacted as follows:

3. A renaissance fund organization is exempt from any tax imposed by chapter ~~57-35.3 or~~ 57-38. An exemption under this section may be passed through to any shareholder, partner, and owner if the renaissance fund organization is a passthrough entity for tax purposes. A corporation ~~or financial institution~~ entitled to the exemption provided by this subsection shall file required returns and report income to the tax commissioner as required by the provisions of ~~those chapters~~chapter 57-38 as if the exemption did not exist. If an employer, this subsection does not exempt a renaissance fund organization from complying with the income tax withholding laws.

4. A credit against state tax liability as determined under section ~~57-35.3-03,~~ 57-38-30~~,~~ or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made."

Page 1, line 22, replace "eighty-five" with "eighty"

Page 2, after line 2, insert:

"**SECTION 8. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources, including a net operating loss calculated under chapter 57-35.3 for tax years beginning before January 1, 2013. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

SECTION 9. AMENDMENT. Subsections 1 and 3 of section 57-38-01.26 of the North Dakota Century Code are amended and reenacted as follows:

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is ~~one~~five hundred ~~fifty~~ thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.

3. An angel fund must:

   a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.

   b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. ~~Early stage and mid stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.~~Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.

   c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.

   d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.

   e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.

   f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.

   g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.

   h. Be in compliance with the securities laws of this state.

i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:

(1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;

(2) The dollar amount remitted by the taxpayer or passthrough entity; and

(3) The date the payment was received by the angel fund for the investment.

j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.

SECTION 10. AMENDMENT. Subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code are amended and reenacted as follows:

5. The aggregate amount of tax credits allowed to all eligible contributors is limited to fifteen million dollars per biennium. ~~This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.~~

7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income ~~or financial institutions~~ tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.

SECTION 11. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Financial institutions - Net operating losses - Credit carryovers.

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:

a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under subsection 8 of section 57-38-34; and

b. Is binding until the earlier of:

(1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or

(2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.

2. If an election is made under this section, the following apply:

   a. A subchapter S corporation may not file a consolidated return.

   b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward in the same number of years the financial institution would have been entitled under chapter 57-35.3.

   c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

SECTION 12. AMENDMENT. Subdivisions c, d, and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 11 of this Act.

d. Reduced by ~~thirty~~forty percent of:

   (1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.

   (2) ~~The qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008.~~Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 11 of this Act.

SECTION 13. Two new subsections to section 57-38-34 of the North Dakota Century Code are created and enacted as follows:

For a person that was subject to the tax under chapter 57-35.3 for the calendar year ending December 31, 2012, payment of the tax under this chapter is due six months after the due date of the return as required under this section. The provisions of subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under this subsection. This subsection applies to the first tax year beginning after December 31, 2012.

A person that previously reported under chapter 57-35.3 on a calendar year basis and files its federal income tax return on a fiscal year basis must file a short period return for the period beginning January 1, 2013, and ending on the last day of the tax year in calendar year 2013.

SECTION 14. A new subsection to section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

This section applies if additional tax would be due under the provisions of chapter 57-35.3 in effect for taxable years beginning before January 1, 2013.

SECTION 15. A new subsection to section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

A person that would have been entitled to a credit or refund under chapter 57-35.3 for a taxable year beginning before January 1, 2013, may file a claim for refund or credit of an overpayment of tax.

SECTION 16. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions.

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to ~~forty~~forty-three and one-half percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

   a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:

      (1) Thirty-two percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:

(1) Forty percent of the amount must be allocated equally among the counties; and

(2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period based upon the proportion each city's population bears to the total population of all cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

SECTION 17. REPEAL. Chapter 57-35.3 of the North Dakota Century Code is repealed."

Page 2, line 3, replace "This" with "Section 16 of this Act is effective for taxable events occurring after June 30, 2014, and the remainder of this"

Renumber accordingly

Date 5/1/2013

Roll Call Vote # 1

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate **Finance & Taxation** **Committee**

Action Taken

☐ SENATE accede to House Amendments

☐ SENATE accede to House Amendments and further amend

☐ HOUSE recede from House amendments

☒ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Klein Seconded by: Representative Dockter

Senators	4/10	4/29	4/30	5/1	Yes	No		Representatives	4/10	4/29	4/30	5/1	Yes	No
Senator Burckhard	X	X	X	X		X		Representative Klein	X	X	X	X	X	
Senator Miller	X	X	X	X	X			Representative Dockter	X	X	X	X	X	
Senator Dotzenrod	X	X	X	X		X		Representative Strinden	X		X	X		X
Total Senate Vote					1	2		Total Rep. Vote					2	1

Vote Count Yes: 3 No: 3 Absent: 0

Senate Carrier ______ House Carrier ______

LC Number 13.0820 . 03003 of amendment

LC Number ______ . ______ of engrossment

MOTION FAILED

Date 5/1/2013

Roll Call Vote # 2

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate **Finance & Taxation** **Committee**

Action Taken

☐ SENATE accede to House Amendments

☐ SENATE accede to House Amendments and further amend

☐ HOUSE recede from House amendments

☒ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Miller Seconded by: Senator Dotzenrod

Senators	4/10	4/29	4/30	5/1	Yes	No		Representatives	4/10	4/29	4/30	5/1	Yes	No
Senator Burckhard	X	X	X	X	**X**			Representative Klein	X	X	X	X		**X**
Senator Miller	X	X	X	X	**X**			Representative Dockter	X	X	X	X		**X**
Senator Dotzenrod	X	X	X	X	**X**			Representative Strinden	X		X	X	**X**	
Total Senate Vote					**3**	**0**		Total Rep. Vote					**1**	**2**

Vote Count Yes: 4 No: 2 Absent: 0

Senate Carrier ____________ House Carrier ____________

LC Number 13.0820 . 03004 of amendment

LC Number ____________ . ____________ of engrossment

MOTION FAILED

Date 5/2/2013

Roll Call Vote # 3

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate **Finance & Taxation** **Committee**

Action Taken

☐ SENATE accede to House Amendments

☐ SENATE accede to House Amendments and further amend

☐ HOUSE recede from House amendments

☒ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Klein Seconded by: Representative Dockter

Senators	5/1	5/2	5/2	Yes	No		Representatives	5/1	5/2	5/2	Yes	No
Senator Burckhard	X	X	X	**X**			Representative Klein	X	X	X	**X**	
Senator Dotzenrod	X	X	X	**X**			Representative Dockter	X	X	X	**X**	
Senator Oehlke	X	X	X	**X**			Representative Strinden	X	X	X	**X**	
Total Senate Vote				**3**	**0**		Total Rep. Vote				**3**	**0**

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier House Carrier

LC Number 13.0820 . 03009 of amendment

LC Number . of engrossment

MOTION CARRIES

Date 5/2/2013

Roll Call Vote # 4

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate **Finance & Taxation** **Committee**

Action Taken
- ☐ SENATE accede to House Amendments
- ☐ SENATE accede to House Amendments and further amend
- ☐ HOUSE recede from House amendments
- ☒ HOUSE recede from House amendments and amend as follows
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Burckhard Seconded by: Representative Strinden

Senators	5/1	5/2	5/2	Yes	No		Representatives	5/1	5/2	5/2	Yes	No
Senator Burckhard	X	X	X	**X**			Representative Klein	X	X	X		**X**
Senator Dotzenrod	X	X	X	**X**			Representative Dockter	X	X	X		**X**
Senator Oehlke	X	X	X	**X**			Representative Strinden	X	X	X	**X**	
Total Senate Vote				**3**	**0**		Total Rep. Vote				**1**	**2**

Vote Count Yes: 4 No: 2 Absent: 0

Senate Carrier ____________ House Carrier ____________

LC Number 13.0820 . 03007 of amendment

LC Number ____________ . ____________ of engrossment

MOTION FAILED

Date 5/2/2013

Roll Call Vote # 5

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate Finance & Taxation **Committee**

Action Taken

☐ SENATE accede to House Amendments

☐ SENATE accede to House Amendments and further amend

☐ HOUSE recede from House amendments

☒ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Burckhard Seconded by: Senator Dotzenrod

Senators	5/1	5/2	5/2	Yes	No		Representatives	5/1	5/2	5/2	Yes	No
Senator Burckhard	X	X	X	x			Representative Klein	X	X	X		x
Senator Dotzenrod	X	X	X	x			Representative Dockter	X	X	X		x
Senator Oehlke	X	X	X	x			Representative Strinden	X	X	X	x	
Total Senate Vote				3	0		Total Rep. Vote				1	2

Vote Count Yes: 4 No: 2 Absent: 0

Senate Carrier ________ House Carrier ________

LC Number 13.0820 . 03008 of amendment

LC Number ________ . ________ of engrossment

MOTION FAILED

Date 5/2/2013

Roll Call Vote # 6

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate **Finance & Taxation** **Committee**

Action Taken

☐ SENATE accede to House Amendments

☐ SENATE accede to House Amendments and further amend

☐ HOUSE recede from House amendments

☐ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Klein Seconded by: Senator Oehlke

Senators	5/1	5/2	5/2	Yes	No		Representatives	5/1	5/2	5/2	Yes	No
Senator Burckhard	X	X	X	x			Representative Klein	X	X	X	x	
Senator Dotzenrod	X	X	X	x			Representative Dockter	X	X	X	x	
Senator Oehlke	X	X	X	x			Representative Strinden	X	X	X	x	
Total Senate Vote				3	0		Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier ________ House Carrier ________

LC Number ________ . ________ of amendment

LC Number ________ . ________ of engrossment

MOTION TO RECONSIDER (amendment .03008) CARRIES

Date 5/2 2013

Roll Call Vote # 7

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate **Finance & Taxation** **Committee**

Action Taken

☐ SENATE accede to House Amendments

☐ SENATE accede to House Amendments and further amend

☐ HOUSE recede from House amendments

☒ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Burckhard Seconded by: Senator Dotzenrod

Senators	5/1	5/2	5/2	Yes	No		Representatives	5/1	5/2	5/2	Yes	No
Senator Burckhard	X	X	X	x			Representative Klein	X	X	X	x	
Senator Dotzenrod	X	X	X	x			Representative Dockter	X	X	X	x	
Senator Oehlke	X	X	X	x			Representative Strinden	X	X	X	x	
Total Senate Vote				3	0		Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier ______ House Carrier ______

LC Number 13.0820 . 03008 of amendment

LC Number ______ . ______ of engrossment

MOTION CARRIES

Date 5/2/2013

Roll Call Vote # 8

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate Finance & Taxation Committee

Action Taken ☐ SENATE accede to House Amendments

☐ SENATE accede to House Amendments and further amend

☐ HOUSE recede from House amendments

☐ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Klein Seconded by: Senator Oehlke

Senators	5/1	5/2	5/2	Yes	No		Representatives	5/1	5/2	5/2	Yes	No
Senator Burckhard	X	X	X	x			Representative Klein	X	X	X	x	
Senator Dotzenrod	X	X	X		x		Representative Dockter	X	X	X	x	
Senator Oehlke	X	X	X	x			Representative Strinden	X	X	X	x	
Total Senate Vote				2	1		Total Rep. Vote				3	0

Vote Count Yes: 5 No: 1 Absent: 0

Senate Carrier ____________ House Carrier ____________

LC Number ____________ . ____________ of amendment

LC Number ____________ . ____________ of engrossment

MOTION TO RECONSIDER ACTIONS

Date 5/2/2013

Roll Call Vote # 9

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate Finance & Taxation Committee

Action Taken
☐ SENATE accede to House Amendments
☐ SENATE accede to House Amendments and further amend
☐ HOUSE recede from House amendments
☐ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Klein Seconded by: Senator Oehlke

Senators	5/1	5/2	5/2	Yes	No		Representatives	5/1	5/2	5/2	Yes	No
Senator Burckhard	X	X	X	**X**			Representative Klein	X	X	X	**X**	
Senator Dotzenrod	X	X	X	**X**			Representative Dockter	X	X	X	**X**	
Senator Oehlke	X	X	X	**X**			Representative Strinden	X	X	X	**X**	
Total Senate Vote				3	0		Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier __________ House Carrier __________

LC Number __________ . __________ of amendment

LC Number __________ . __________ of engrossment

MOTION TO RECONSIDER 13.0820.03009

Date 5/2/2013

Roll Call Vote # 10

2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 2325 as (re) engrossed

Senate Finance & Taxation Committee

Action Taken

☐ SENATE accede to House Amendments

☐ SENATE accede to House Amendments and further amend

☐ HOUSE recede from House amendments

☒ HOUSE recede from House amendments and amend as follows

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Klein Seconded by: Representative Dockter

Senators	5/1	5/2	5/2	Yes	No	Representatives	5/1	5/2	5/2	Yes	No
Senator Burckhard	X	X	X	X		Representative Klein	X	X	X	X	
Senator Dotzenrod	X	X	X		X	Representative Dockter	X	X	X	X	
Senator Oehlke	X	X	X	X		Representative Strinden	X	X	X	X	
Total Senate Vote				2	1	Total Rep. Vote				3	0

Vote Count Yes: 5 No: 1 Absent: 0

Senate Carrier Senator Burckhard House Carrier Representative Klein

LC Number 13.0820 . 03010 of amendment

LC Number . of engrossment

MOTION CARRIES

REPORT OF CONFERENCE COMMITTEE

SB 2325, as reengrossed: Your conference committee (Sens. Burckhard, Dotzenrod, Oehlke and Reps. Klein, Dockter, Strinden) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 918, adopt amendments as follows, and place SB 2325 on the Seventh order:

That the House recede from its amendments as printed on page 918 of the Senate Journal and page 1010 of the House Journal and that Reengrossed Senate Bill No. 2325 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 57-38, two new subsections to section 57-38-34, a new subsection to section 57-38-38, and a new subsection to section 57-38-40 of the North Dakota Century Code, relating to corporate and individual income tax credits and transition of financial institutions to corporate income tax treatment; to"

Page 1, line 1, after "reenact" insert "subsection 5 of section 11-37-08, subsection 8 of section 40-63-01, subsection 5 of section 40-63-04, section 40-63-06, subsections 3 and 4 of section 40-63-07,"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "57-33.2-03" insert ", subsection 3 of section 57-38-01.3, subsections 1 and 3 of section 57-38-01.26, subsections 5 and 7 of section 57-38-01.32, subdivisions c, d, and f of subsection 2 of section 57-38-30.3, and section 57-39.2-26.1"

Page 1, line 3, after "electricity" insert ", individual and corporation income tax rates, and credits and increased allocations from the state aid distribution fund; to repeal chapter 57-35.3 of the North Dakota Century Code, relating to elimination of the financial institutions tax"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 5 of section 11-37-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections ~~57-35.3-03,~~ 57-38-30~~,~~ and 57-38-30.3.

SECTION 2. AMENDMENT. Subsection 8 of section 40-63-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Taxpayer" means an individual, corporation, ~~financial institution,~~ or trust subject to the taxes imposed by chapter ~~57-35.3 or~~ 57-38 and includes a partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity.

SECTION 3. AMENDMENT. Subsection 5 of section 40-63-04 of the North Dakota Century Code is amended and reenacted as follows:

5. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapter ~~57-35.3 or~~ 57-38.

SECTION 4. AMENDMENT. Section 40-63-06 of the North Dakota Century Code is amended and reenacted as follows:

40-63-06. Historic preservation and renovation tax credit.

A credit against state tax liability as determined under sections ~~57-35.3-03,~~ 57-38-30~~,~~ and 57-38-30.3 is allowed for investments in the historic preservation or renovation of property within the renaissance zone. The amount of the credit is twenty-five percent of the amount invested, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years.

SECTION 5. AMENDMENT. Subsections 3 and 4 of section 40-63-07 of the North Dakota Century Code are amended and reenacted as follows:

3. A renaissance fund organization is exempt from any tax imposed by chapter ~~57-35.3 or~~ 57-38. An exemption under this section may be passed through to any shareholder, partner, and owner if the renaissance fund organization is a passthrough entity for tax purposes. A corporation ~~or financial institution~~ entitled to the exemption provided by this subsection shall file required returns and report income to the tax commissioner as required by the provisions of ~~those chapters~~chapter 57-38 as if the exemption did not exist. If an employer, this subsection does not exempt a renaissance fund organization from complying with the income tax withholding laws.

4. A credit against state tax liability as determined under section ~~57-35.3-03,~~ 57-38-30~~,~~ or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made."

Page 1, line 22, replace "eighty-five" with "eighty"

Page 2, after line 2, insert:

"**SECTION 8. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources, including a net operating loss calculated under chapter 57-35.3 for tax years beginning before January 1, 2013. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

SECTION 9. AMENDMENT. Subsections 1 and 3 of section 57-38-01.26 of the North Dakota Century Code are amended and reenacted as follows:

1. A taxpayer is entitled to a credit against state income tax liability under section 57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic organization created under the laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount remitted by the taxpayer to an angel fund during the taxable

year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The aggregate lifetime credits under this section that may be obtained by an individual, married couple, passthrough entity and its affiliates, or other taxpayer is ~~one~~five hundred ~~fifty~~ thousand dollars. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.

3. An angel fund must:

a. Be a partnership, limited partnership, corporation, limited liability company, limited liability partnership, trust, or estate organized on a for-profit basis which is headquartered in this state.

b. Be organized for the purpose of investing in a portfolio of at least three primary sector companies that are early-stage and mid-stage private, nonpublicly traded enterprises with strong growth potential. For purposes of this section, an early-stage entity means an entity with annual revenues of up to two million dollars and a mid-stage entity means an entity with annual revenues over two million dollars not to exceed ten million dollars. ~~Early stage and mid stage entities do not include those that have more than twenty-five percent of their revenue from income-producing real estate.~~Investments in real estate or real estate holding companies are not eligible investments by certified angel funds. Any angel fund certified before January 1, 2013, which has invested in real estate or a real estate holding company is not eligible for recertification.

c. Consist of at least six accredited investors as defined by securities and exchange commission regulation D, rule 501.

d. Not have more than twenty-five percent of its capitalized investment assets owned by an individual investor.

e. Have at least five hundred thousand dollars in commitments from accredited investors and that capital must be subject to call to be invested over an unspecified number of years to build a portfolio of investments in enterprises.

f. Be member-managed or a manager-managed limited liability company and the investor members or a designated board that includes investor members must make decisions as a group on which enterprises are worthy of investments.

g. Be certified as an angel fund that meets the requirements of this section by the department of commerce.

h. Be in compliance with the securities laws of this state.

i. Within thirty days after the date on which an investment in an angel fund is made, the angel fund shall file with the tax commissioner and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the angel fund the following:

(1) The name, address, and social security number or federal employer identification number of the taxpayer or passthrough entity that made the investment;

(2) The dollar amount remitted by the taxpayer or passthrough entity; and

(3) The date the payment was received by the angel fund for the investment.

j. Within thirty days after the end of a calendar year, the angel fund shall file with the tax commissioner a report showing the name and principal place of business of each enterprise in which the angel fund has an investment.

SECTION 10. AMENDMENT. Subsections 5 and 7 of section 57-38-01.32 of the North Dakota Century Code are amended and reenacted as follows:

5. The aggregate amount of tax credits allowed to all eligible contributors is limited to fifteen million dollars per biennium. ~~This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.~~

7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income ~~or financial institutions~~ tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.

SECTION 11. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Financial institutions - Net operating losses - Credit carryovers.

1. A subchapter S corporation that was a financial institution under chapter 57-35.3 may elect to be treated as a taxable corporation under chapter 57-38. If an election is made under this section, the election:

   a. Must be made in the form and manner prescribed by the tax commissioner on the return filed for the tax year beginning on January 1, 2013, or the return filed for the short period required under subsection 8 of section 57-38-34; and

   b. Is binding until the earlier of:

      (1) The end of the tax year for which the taxpayer reports a tax liability after tax credits; or

      (2) The beginning of the tax year for which the taxpayer elects to be recognized as a subchapter S corporation under section 57-38-01.4.

2. If an election is made under this section, the following apply:

   a. A subchapter S corporation may not file a consolidated return.

   b. Any unused credit carryovers earned by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward in the same number of years the financial institution would have been entitled under chapter 57-35.3.

   c. Any unused net operating losses incurred by a financial institution under chapter 57-35.3 for tax years beginning before January 1, 2013, may be carried forward for the same number of years the financial institution would have been entitled under chapter 57-35.3.

SECTION 12. AMENDMENT. Subdivisions c, d, and f of subsection 2 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

c. Reduced by the amount equal to the earnings that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 11 of this Act.

d. Reduced by ~~thirty~~forty percent of:

(1) The excess of the taxpayer's net long-term capital gain for the taxable year over the net short-term capital loss for that year, as computed for purposes of the Internal Revenue Code of 1986, as amended. The adjustment provided by this subdivision is allowed only to the extent the net long-term capital gain is allocated to this state.

(2) ~~The qualified dividend income that is taxed at the same rate as long-term capital gain for federal income tax purposes under Internal Revenue Code provisions in effect on December 31, 2008.~~Qualified dividends as defined under Internal Revenue Code section 1(h)(11), added by section 302(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108-27; 117 Stat. 752; 2 U.S.C. 963 et seq.], but only if taxed at a federal income tax rate that is lower than the regular federal income tax rates applicable to ordinary income. If, for any taxable year, qualified dividends are taxed at the regular federal income tax rates applicable to ordinary income, the reduction allowed under this subdivision is equal to thirty percent of all dividends included in federal taxable income. The adjustment provided by this subdivision is allowed only to the extent the qualified dividend income is allocated to this state.

f. Increased by an amount equal to the losses that are passed through to a taxpayer in connection with an allocation and apportionment to North Dakota under ~~chapter 57-35.3~~section 11 of this Act.

SECTION 13. Two new subsections to section 57-38-34 of the North Dakota Century Code are created and enacted as follows:

For a person that was subject to the tax under chapter 57-35.3 for the calendar year ending December 31, 2012, payment of the tax under this chapter is due six months after the due date of the return as required under this section. The provisions of subdivision a of subsection 1 of section 57-38-45 do not apply to the tax due under this subsection. This subsection applies to the first tax year beginning after December 31, 2012.

A person that previously reported under chapter 57-35.3 on a calendar year basis and files its federal income tax return on a fiscal year basis must file a short period return for the period beginning January 1, 2013, and ending on the last day of the tax year in calendar year 2013.

SECTION 14. A new subsection to section 57-38-38 of the North Dakota Century Code is created and enacted as follows:

This section applies if additional tax would be due under the provisions of chapter 57-35.3 in effect for taxable years beginning before January 1, 2013.

SECTION 15. A new subsection to section 57-38-40 of the North Dakota Century Code is created and enacted as follows:

<u>A person that would have been entitled to a credit or refund under chapter 57-35.3 for a taxable year beginning before January 1, 2013, may file a claim for refund or credit of an overpayment of tax.</u>

SECTION 16. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions.

Notwithstanding any other provision of law, a portion of sales, gross receipts, use, and motor vehicle excise tax collections, equal to ~~forty~~<u>forty-three and one-half</u> percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, gross receipts, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-39.5, 57-39.6, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, gross receipts, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.

   a. Sixty-four percent of the amount must be allocated among the seventeen counties with the greatest population, in the following manner:

      (1) Thirty-two percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

   b. Thirty-six percent of the amount must be allocated among all counties, excluding the seventeen counties with the greatest population, in the following manner:

      (1) Forty percent of the amount must be allocated equally among the counties; and

      (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.

   A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison Diversion Conservancy District, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period based upon the proportion each city's population bears to the total population of all cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

SECTION 17. REPEAL. Chapter 57-35.3 of the North Dakota Century Code is repealed."

Page 2, line 3, replace "This" with "Section 16 of this Act is effective for taxable events occurring after June 30, 2014, and the remainder of this"

Renumber accordingly

Reengrossed SB 2325 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

SB 2325

Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the Senate Finance and Taxation Committee
On SB 2325
February 6, 2013

Mr. Chairman and members of the committee, my name is Harlan Fuglesten with the North Dakota Association of Rural Electric Cooperatives. Our Association represents 16 distribution cooperatives and five generation and transmission cooperatives operating in North Dakota. On behalf of our Association and its member cooperatives, we support SB 2325.

The bill itself is easy to explain. It requests a 25% reduction in the megawatt hour tax paid in lieu of property taxes on electric distribution facilities owned by our co-ops. The reason for this bill takes a little more explaining. Basically, however, it comes down to requesting a fair adjustment to this tax formula as the legislature continues to provide property tax relief to assessed property taxpayers, such as the investor-owned utilities (IOU).

Co-op Property Taxes

At a Fargo area legislative breakfast in December, I highlighted a few of our legislative goals for the 2013 Legislative Session, including property tax fairness for our electric cooperatives. Following the presentation, one legislator prefaced a question he asked about co-op taxes by stating, "I didn't even know electric co-ops paid taxes." This is a common misperception. In fact, our cooperatives are among the largest taxpayers in the state, paying over $21 million per year in property and in lieu property taxes on our generation, transmission, and distribution facilities. Taxes paid include the coal conversion tax on electric generation ($13 million), transmission line taxes ($1.3 million), assessed taxes on land used for utilities purposes ($.5 million), and a megawatt hour tax on the retail sales of electricity ($6.5 million).

SB 2325 only deals with the megawatt hour tax. This is because the coal conversion tax is the same for co-ops and investor-owned utilities (IOUs), the transmission line taxes we pay are fair and reasonable, and the land tax is a tax assessed like other property taxes. While some other businesses pay in lieu property taxes, such as telecommunication companies, electric co-ops and IOU electric providers are the only companies in competition that pay different property taxes.

Investor-owned Utility Property Taxes

As noted, the IOUs pay the same coal conversion tax as the co-ops. They also receive a declining exemption for building new high voltage transmission lines and then pay a flat $300/line mile tax, similar to the co-ops. For all other generation, transmission and distribution property, IOUs pay assessed property taxes. This means they have benefitted these past four years from the 75 mill buy down, and will benefit in the future from any additional general property tax relief provided by the legislature this year. I want to be clear that we have no problem with that, but if our co-ops are to get any property tax relief we need to ask for it separately. That is why we requested that SB 2325 be introduced.

Earlier Co-op Property Tax Changes

We appeared before this committee in 2009 to ask for a change in our in lieu property tax formulas because of serious concerns that our taxes put us at a competitive disadvantage in relationship to the IOUs. Competitive tax neutrality is not a new concern. Electric utility property tax reform was one of the main focuses of the Electric Industry Competition Committee, a statutory legislative committee that met from 1997 – 2007. During the 10 years the committee studied electric industry taxation, we made several proposals to establish a common tax system for co-ops and IOUs based on uniform formulas. The main reason we failed to agree on a common plan was that all the formulas we tried resulted in lowering co-op taxes and raising IOU taxes. This is because we carried a heavier tax burden than the IOUs when compared on objective measures such as revenue, megawatt hour sales, or miles of transmission line.

2009 Tax Plan

By 2009, we saw that the tax differential that existed between co-ops and IOUs would only widen further if we did not seek to reform the electric co-op tax formulas. SB 2297 passed in 2009 is now the tax law under which we operate. While the tax plan was mandatory for co-ops, one of the features of that law provided a four-year opt-in period for other electric facility owners subject to assessed taxation. This feature was included to encourage uniformity, but also to test the fairness of the plan. The four year period is now ended without Xcel, MDU or Otter Tail opting in. Some other companies that own generation or transmission facilities have opted into the plan, however, and the Tax Department may offer an amendment to SB 2325 to extend this opt in period. We would have no objection to such an amendment.

The 2009 law change dealt with several different taxes, but the most fundamental change for our co-ops was changing the 2% gross receipts tax to a $1/megawatt hour tax. We estimated this would lower our distribution tax by almost 20% but would still leave us paying somewhat more than the IOUs when compared on the same basis, such as sales or revenue. On top of that, the IOUs and other taxpayers received substantial property tax relief in 2009 through the 75 mill buy down of school mill rates. At the time, this relief was viewed as temporary, but the relief was continued the next biennium and is now being proposed as permanent, together with additional property tax relief. That is why we now believe it is time to ask the legislature to take another look at the distribution tax we pay, and adjust it downward.

Fiscal Impact

In preparation for this tax discussion, we surveyed our co-ops regarding their megawatt hour sales in 2012 that will be used to calculate their 2013 tax liability. North Dakota's electric cooperatives sold 7.5 million megawatt hours in 2012 compared to 6.5 million megawatt hours the previous year. This represents an increase of about 16%. Most of this increase is in areas affected by oil and gas development. The increase might have been even larger but for the mild winter and dry summer that reduced electric heat sales and grain drying in much of the state. We would anticipate additional electric sales growth in 2013.

Robust sales growth means more tax revenues to counties and other political subdivisions to mitigate somewhat the loss of revenue through a reduction in the formula. Also, if additional school mills are bought down in conjunction with providing a greater share of state school funding, this will re-direct a larger share of the megawatt tax to the non-school political subdivisions. This is because the megawatt hour tax is distributed on a pro rata basis according to the revenue raised in dollars by the mill rates assessed by each political subdivision where the property is located and the sales occur.

Finally, any reduction in revenue that occurs due to this formula change should not be substantial to any single taxing district as the megawatt hour tax is distributed among all 53 counties and hundreds of other taxing districts within these counties.

Conclusion

In conclusion, electric cooperatives pay a lot of property related taxes. Electric co-ops want to be treated fairly in relation to other utility companies and property taxpayers. We believe a 25% reduction in our megawatt hour tax is supportable based upon our current tax disparity which will only get worse if additional assessed property tax relief is provided to others this session. We urge you to pass SB 2325 so we can obtain tax relief similar to what other taxpayers have been provided. Thank you very much for your time. I would be happy to answer any questions the committee may have.

Presented by Sara Meier
Office of State Tax Commissioner

PROPOSED AMENDMENTS TO SENATE BILL NO. 2325

AMENDMENT. Subsection 3 of section 57-33.2-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~2013, for taxable periods after December 31, ~~2009~~2013; by October 1, ~~2010~~2014, for taxable periods after December 31, ~~2010~~2014; by October 1, ~~2011~~2015, for taxable periods after December 31, ~~2011~~2015; or by October 1, ~~2012~~2016, for taxable periods after December 31, ~~2012~~2016. 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.

13.0820.02001
Title.

Prepared by the Legislative Council staff for Senator Cook
February 19, 2013

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2325

Page 1, line 1, after "reenact" insert "subsection 3 of section 57-33.2-01 and"

Page 1, after line 4, insert:

"**SECTION 1. AMENDMENT.** Subsection 3 of section 57-33.2-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~2013, for taxable periods after December 31, ~~2009~~2013; by October 1, ~~2010~~2014, for taxable periods after December 31, ~~2010~~2014; by October 1, ~~2011~~2015, for taxable periods after December 31, ~~2011~~2015; or by October 1, ~~2012~~2016, for taxable periods after December 31, ~~2012~~2016. 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."

Renumber accordingly

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Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the Senate Appropriations Committee
On SB 2325
February 20, 2013

Mr. Chairman and members of the committee, my name is Harlan Fuglesten with the North Dakota Association of Rural Electric Cooperatives. Our Association represents 16 distribution cooperatives and five generation and transmission cooperatives operating in North Dakota. On behalf of our Association and its member cooperatives, we support SB 2325.

The bill seeks a 15% reduction in the retail megawatt hour tax paid in lieu of property taxes on electric distribution facilities owned by our co-ops. The percentage reduction right now is really a placeholder until we have more information. Basically, we hope this bill can be a vehicle for making a fair adjustment to this tax formula as the legislature continues to debate granting additional property tax relief to assessed property taxpayers, such as the investor-owned utilities (IOU). At present, we don't know exactly how or how much assessed property tax relief the legislature will provide, but we believe the legislature should adjust our taxes to be sure we are treated fairly when the final property tax decisions are made this session.

Co-op Property Taxes

There is a common misperception that our electric cooperatives do not pay taxes. In fact, our cooperatives are among the largest taxpayers in the state, paying over $21 million per year in property and in lieu property taxes on our generation, transmission, and distribution facilities. Taxes paid include the coal conversion tax on electric generation ($13 million), transmission line taxes ($1.3 million), assessed taxes on land used for utilities purposes ($.5 million), and a megawatt hour tax on the retail sales of electricity ($6.5 million).

SB 2325 only deals with the megawatt hour tax. This is because the coal conversion tax is the same for co-ops and investor-owned utilities (IOUs), we believe the transmission line taxes we pay are fair and reasonable, and the land tax is assessed like other property taxes. While some other businesses pay in lieu property taxes, such as telecommunication companies, electric co-ops and IOU electric providers are the only companies in competition that pay different property taxes.

Investor-owned Utility Property Taxes

Unless an IOU opted in to the in lieu tax plan, with a couple exceptions, the IOUs pay assessed property taxes on their generation, transmission and distribution facilities. This means they have benefitted these past four years from the 75 mill buy down, and will benefit in the future from any additional general property tax relief provided by the legislature this year. I want to be clear that we have no problem with that, but if our co-ops are to get any property tax relief we need to ask for it separately. That is why we requested that SB 2325 be introduced.

Earlier Co-op Property Tax Changes

In 2009, we asked for a change in our in lieu property tax formulas because of serious concerns that our taxes put us at a competitive disadvantage in relationship to the IOUs. Competitive tax neutrality is not a new concern. Electric utility property tax reform was one of the main focuses of the Electric Industry Competition Committee, a statutory legislative committee that met from 1997 – 2007.

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During the 10 years the committee studied electric industry taxation, we made several proposals to establish a common tax system for co-ops and IOUs based on uniform formulas. The main reason we failed to agree on a common plan was that all the formulas we tried resulted in lowering co-op taxes and raising IOU taxes. This is because we carried a heavier tax burden than the IOUs when compared on objective measures such as revenue, megawatt hour sales, or miles of transmission line.

2009 Tax Plan

By 2009, we saw that the tax differential that existed between co-ops and IOUs would only widen further if we did not seek to reform the electric co-op tax formulas. SB 2297 passed in 2009 is now the tax law under which we operate. While the tax plan was mandatory for co-ops, one of the features of that law provided a four-year opt-in period for other electric facility owners subject to assessed taxation. This feature was included to encourage uniformity, but also to test the fairness of the plan. The four year period has now ended without Xcel, MDU or Otter Tail opting in. Some other companies that own generation or transmission facilities have opted into the plan, however, and we have no objection to amending this bill to extend the opt-in period for another four years.

The 2009 law change dealt with several different taxes, but the most fundamental change for our co-ops was changing the 2% gross receipts tax to a $1/megawatt hour tax. We estimated this would lower our distribution tax by almost 20% but would still leave us paying somewhat more than the IOUs when compared on the same basis, such as sales or revenue. On top of that, the IOUs and other taxpayers received substantial property tax relief in 2009 through the 75 mill buy down of school mill rates. At the time, this relief was viewed as temporary, but the relief was continued the next biennium and is now being proposed again, together with additional property tax relief. That is why we now believe it is time to ask the legislature to take another look at the distribution tax we pay, and adjust it downward.

Fiscal Impact

In its current form, SB 2325 would have about a $7,500 impact on the state because of the one mill of property tax that goes to support the UND Medical School. The remaining impact would be a reduction in revenue to political subdivisions.

We surveyed our co-ops regarding their retail sales in 2012 which will be used to calculate their 2013 tax liability. North Dakota's electric cooperatives sold 7.5 million retail megawatt hours of electricity in 2012 compared to 6.5 million megawatt hours the previous year. This represents an increase of about 16%. We would anticipate additional electric sales growth in 2013.

Robust sales growth means more tax revenue to counties and other taxing districts to mitigate somewhat the loss of revenue through a reduction in the formula. Also, any reduction in revenue that occurs due to this formula change should not be substantial to any single taxing district as the megawatt hour tax is distributed among all 53 counties and hundreds of other taxing districts within these counties.

Conclusion

In conclusion, electric cooperatives pay a lot of property related taxes. Electric co-ops want to be treated fairly in relation to other utility companies and property taxpayers. We believe a reduction in our megawatt hour tax is supportable based upon our current tax disparity which will only get worse if additional assessed property tax relief is provided to others this session. We urge you to give a DO PASS recommendation to SB 2325 to keep this bill moving forward to the House for further consideration. It is our hope that when the legislature adjourns, we will be able to say that the legislature considered the fairness of the property taxes electric co-ops pay, and that we got an adjustment that was fair and reasonable in relation to the taxes others pay. Thank you very much for your time. I would be happy to answer any questions the committee may have.

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Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the House Finance and Taxation Committee
On SB 2325
March 13, 2013

Mr. Chairman and members of the committee, my name is Harlan Fuglesten with the North Dakota Association of Rural Electric Cooperatives. I'm testifying in support of SB 2325 on behalf of our Association and its 16 distribution cooperative and five generation and transmission cooperative members operating in North Dakota.

SB 2325 would reduce the $1/megawatt hour tax on retail sales that cooperatives pay in lieu of property taxes to $.85 or a 15% reduction. The percentage reduction right now is really a placeholder until it can be determined how much property tax relief the legislature will grant this year to assessed property taxpayers. Basically, we hope the House will pass this bill with a greater reduction, such as $.65/megawatt hour or 35%, which is the relief provided to property taxpayers in the bills the House sent over to the Senate. With differing amounts of relief, this bill then could go to a conference committee for a final determination of what is a fair adjustment to this tax formula when the legislature comes to its final decisions on the property tax relief it will provide to assessed property taxpayers, such as the investor-owned utilities (IOU).

Co-op Property Taxes

There is a common misperception that our electric cooperatives do not pay taxes. In fact, our cooperatives are among the largest taxpayers in the state, paying over $21 million per year in property and in lieu property taxes on our generation, transmission, and distribution facilities. Taxes paid include the coal conversion tax on electric generation ($13 million), transmission line taxes ($1.3 million), assessed taxes on land used for utility purposes ($.5 million), and a megawatt hour tax on the retail sale of electricity ($6.5 million).

SB 2325 only deals with the megawatt hour tax. This is because the coal conversion tax is the same for co-ops and investor-owned utilities (IOUs), we believe the transmission line taxes we pay are fair and reasonable, and the land tax is assessed like other property taxes. While some other businesses pay in lieu property taxes, electric co-ops and IOU electric providers are the only competitive companies that pay different property taxes.

Investor-owned Utility Property Taxes

None of the three investor-owned retail electric utilities have opted-in to the plan under which co-ops are taxed, so these IOUs primarily pay assessed property taxes on their generation, transmission and distribution facilities. This means they have benefitted these past four years from the 75 mill buy down, and will benefit in the future from any additional general property tax relief provided by the legislature this year. I want to be clear that we have no problem with that. We are simply asking that we get similar property tax relief.

2009 Property Tax Changes

In 2009, we asked for a change in our in lieu property tax formulas because of serious concerns that our taxes put us at a competitive disadvantage in relationship to the IOUs and we knew the problem would only get worse if we didn't propose changes to how we paid property taxes. Competitive tax neutrality is not a new concern. Electric utility property tax reform was one of the main focuses of the Electric Industry Competition Committee, a statutory legislative committee that met from 1997 – 2007. During the 10 years the committee studied electric industry taxation, we made several proposals to establish a common tax system for co-ops and IOUs based on uniform formulas. The main reason we failed to agree on a common plan was that all the formulas we tried resulted in lowering co-op taxes and raising IOU taxes. This is because we carried a heavier tax burden than the IOUs when compared on objective measures such as revenue, megawatt hour sales, or miles of transmission line.

SB 2297, passed in 2009, is now the tax law under which we operate. While the tax plan was mandatory for co-ops, one of the features of that law provided a four-year opt-in period for other electric facility owners subject to assessed taxation. This feature was included to encourage uniformity, but also to test the fairness of the plan. While Xcel, MDU and Otter Tail have not opted-in to the plan, some other companies that own generation or transmission facilities have opted-in, including Minnesota Power which owns wind farms and a transmission line in the state. The Tax Department proposed an amendment in the Senate to SB 2325 to extend the opt-in period for another four years so new and existing companies could still opt-in. We support this amendment.

The 2009 law change dealt with several different taxes, but the most fundamental change for our co-ops was changing the 2% gross receipts tax to a $1/megawatt hour tax on retail sales. We estimated this would lower our distribution tax by almost 20% but would still leave us paying somewhat more than the IOUs when compared on the same basis, such as sales or revenue. On top of that, the IOUs and other taxpayers received substantial property tax relief in 2009 through the 75 mill buy down of school mill rates. At the time, this relief was viewed as temporary, but the relief was continued the next biennium and is now still being considered again, together with additional property tax relief. That is why we now believe it is time to ask the legislature to take another look at the distribution tax we pay, and adjust it downward.

Fiscal Impact

With a 15% reduction, the fiscal impact would be somewhat over a million dollars per year for each year of the biennium. Obviously, if the final reduction is over 30%, the loss of revenue to local political subdivisions would be over $2 million each year.

We surveyed our co-ops regarding their retail sales in 2012 which will be used to calculate their 2013 tax liability. North Dakota's electric cooperatives sold 7.5 million retail megawatt hours of electricity in 2012 compared to 6.5 million megawatt hours the previous year. This represents an increase of about 16%. We would anticipate additional electric sales growth in 2013.

Robust sales growth means more tax revenue to counties and other taxing districts to mitigate somewhat the loss of revenue through a reduction in the formula. Also, any reduction in revenue that occurs due to this formula change should not be substantial to any single taxing district as the megawatt hour tax is distributed among all 53 counties and hundreds of other taxing districts within these counties.

Conclusion

In conclusion, electric cooperatives pay a lot of property related taxes. Electric co-ops want to be treated fairly in relation to other utility companies and property taxpayers. We believe a reduction in our megawatt hour tax is supportable based upon our current tax disparity and the proposals for general property tax relief under consideration this session. We urge you to amend the bill to provide a

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larger percentage reduction than the Senate provided and then give it your DO PASS recommendation. It is our hope that when the legislature adjourns, we will be able to say that the legislature considered the fairness of the property taxes electric co-ops pay, and that we got an adjustment that was fair and reasonable in relation to the taxes others pay. Thank you very much for your time. I would be happy to answer any questions the committee may have.

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Amendment for SB 2325

Talking Points

The rural electric cooperatives would like to see SB 2325 amended to reduce the rate of the retail megawatt hour tax in section 2 of the bill from \$.85/mWh, which the rate included in the bill as it passed in the Senate, to \$.65/mWh. This would lower the tax rate by 35% instead of 15%.

1. The Senate passed the bill with a 15% rate as a placeholder to move it to the House for further consideration, with the understanding that the final rate should be determined after the legislature agrees on the level of reduction for assessed property taxpayers. Since this will likely not occur until later in the session, the House should pass the bill with a different rate to put the bill into a conference committee.
2. The 35% figure is supported by the fact that this is the level of relief the House provided to assessed taxpayers in the bills forwarded to the Senate in HB 1198 and HB 1319.
3. The RECs are currently working with the IOUs to obtain the actual taxes paid by the IOUs in 2012 so that an up-to-date and fairly accurate comparison of the relative tax burdens paid by the IOUs and RECs on their instate transmission/distribution systems as measured against retail sales volume.