

Introduced by

1 A BILL for an Act to create and enact chapters 57-33.2 and 57-60.1 of the North Dakota  
2 Century Code, relating to taxation of generation, distribution, and transmission of electric power;  
3 to amend and reenact sections 57-02-27.3, 57-06-02, 57-06-03, and 57-06-05, subsections 13  
4 and 14 of section 57-06-06, and sections 57-06-18, 57-06-19, 57-06-20, and 57-06-21 of the  
5 North Dakota Century Code, relating to assessment and imposition of taxes against electric  
6 power companies; to repeal sections 57-06-07, 57-06-17, and 57-06-17.3 and chapters 57-33  
7 and 57-33.1 of the North Dakota Century Code, relating to taxation of electric power  
8 companies, rural electric cooperatives, and cooperative electrical generating plants; to provide  
9 a penalty; to provide a continuing appropriation; and to provide an effective date.

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

11 **SECTION 1. AMENDMENT.** Section 57-02-27.3 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **57-02-27.3. Taxable valuation of ~~centrally assessed~~ wind turbine electric**  
14 **generators.** A ~~centrally assessed~~ wind turbine electric generation unit with a nameplate  
15 generation capacity of one hundred kilowatts or more, on which construction is completed  
16 before January 1, 2011, must be valued at three percent of assessed value to determine  
17 taxable valuation of the property.

18 **SECTION 2. AMENDMENT.** Section 57-06-02 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **57-06-02. Definitions.** As used in this chapter, unless the context ~~and~~ or subject  
21 matter otherwise clearly ~~require~~ requires:

22 1. "Company" includes any individual, copartnership, business trust, corporation,  
23 limited liability company, joint-stock company, or association.

- 1           2. "Gas company" means a company owning, holding, or operating under lease or  
2           otherwise any property in this state for the purpose of furnishing gas, or distributing  
3           the same, for public use, by means of pipelines.
- 4           3. "Pipeline company" means a company owning, holding, or operating under a lease  
5           or otherwise any property in this state for the purpose of transporting crude oil,  
6           natural gas, processed gas, manufactured gas, refined petroleum products, or coal  
7           and related products for public use.
- 8           4. ~~"Power company" means a company owning or holding, under lease or otherwise,~~  
9           ~~any property in this state and operating it for the purpose of furnishing or~~  
10          ~~distributing electric light, electric power, or steam heat for public use.~~
- 11          5. "Transmission line" means a line to transmit electrical energy which operates at a  
12          voltage of forty-one and six-tenths kilovolts or more but does not include a line  
13          owned or operated by an agency or instrumentality of the United States  
14          government.

15           **SECTION 3. AMENDMENT.** Section 57-06-03 of the North Dakota Century Code is  
16          amended and reenacted as follows:

17           **57-06-03. Operative property defined.** The term "operative property" means any and  
18          all property reasonably necessary for use by any company mentioned in section 57-06-02  
19          exclusively in the operation and conduct of the particular kind of business engaged in by it. Any  
20          such property held under a contract for the purchase thereof must be considered for all  
21          purposes of taxation as the property of the company holding the same. Any such property, real  
22          or personal, held by any company under a rental lease must be assessed by the state board of  
23          equalization in the name of such company, if an agreement in writing between the owner  
24          thereof and such company is filed with the tax commissioner requesting that such leased  
25          property be so assessed. Whenever any property of a public utility company required to be  
26          assessed by the state board of equalization under the provisions of this chapter is used partly  
27          for operative purposes and partly for other purposes, either by the company or by others, all  
28          such property that is not exempt under chapter 57-33.2 must be assessed by the state board of  
29          equalization as operative property of the company.

30           **SECTION 4. AMENDMENT.** Section 57-06-05 of the North Dakota Century Code is  
31          amended and reenacted as follows:

1           **57-06-05. Annual assessment.** The state board of equalization, at its annual meeting  
2 in August, shall assess the franchises and all operative property of ~~power~~, gas, pipeline, and  
3 other companies, covered by this chapter, with reference to the value thereof on the first day of  
4 January of that year.

5           **SECTION 5. AMENDMENT.** Subsections 13 and 14 of section 57-06-06 of the North  
6 Dakota Century Code are amended and reenacted as follows:

7           13. A description of the personal property, including moneys and credits, held by the  
8 company as a whole system, and the part thereof apportioned to the ~~line~~  
9 company's property in North Dakota.

10          14. The whole length of the ~~lines~~ pipelines of the system operated by the company and  
11 the length of the ~~lines~~ pipelines in North Dakota, whether operated as owner,  
12 lessee, or otherwise. The length of the ~~line~~ pipeline operated for the whole system  
13 and in North Dakota shall be separately reported.

14          **SECTION 6. AMENDMENT.** Section 57-06-18 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16          **57-06-18. Allocation of assessment of ~~other~~ operative property.** All lots and  
17 parcels of real estate, not including rights of way, with the buildings, structures, and  
18 improvements thereon, ~~dams and powerhouses, substations, shops, and other buildings,~~  
19 ~~electric power, electric light, gas, or steam~~ distribution systems, and other personal property ~~not~~  
20 ~~a part of any single and continuous property~~, must be separately assessed and the assessment  
21 must be allocated to the taxing district in which the property is located. The assessment by the  
22 state board of equalization covering the property must give a legal description of the real estate  
23 and a general description of other property sufficient for identification. The assessment by the  
24 board of the operative property must cover the aggregate valuation of the property of any  
25 company in any municipality or taxing district of the state as a unit and need not be made in  
26 detail.

27          **SECTION 7. AMENDMENT.** Section 57-06-19 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29          **57-06-19. Certification of assessment.** The state tax commissioner shall certify to the  
30 county auditor of each county in which the company assessed owns property:

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

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

7           **SECTION 8. AMENDMENT.** Section 57-06-20 of the North Dakota Century Code is  
8           amended and reenacted as follows:

9           **57-06-20. Duties of county auditor.** The county auditor, after receiving the statement  
10          from the tax commissioner, shall enter the valuations mentioned in section 57-06-19 in the  
11          assessment record of the several taxing districts of the county ~~into or through which the lines~~  
12          ~~extend, or~~ in which the property is located. Taxes must be extended upon such percentage of  
13          full values as is required by law and at the same rate and in the same manner as taxes upon  
14          tangible personal property in such taxing districts.

15          **SECTION 9. AMENDMENT.** Section 57-06-21 of the North Dakota Century Code is  
16          amended and reenacted as follows:

17          **57-06-21. Reports to county auditors.** On or before the first day of May of each year,  
18          each company required to be assessed under this chapter shall file with the county auditor of  
19          each county within which any part of its operative property is located a report giving a general  
20          description of all its property located within the county, with operative and nonoperative property  
21          listed separately. Such report must give the length of the ~~line or lines~~ pipelines within the  
22          county and the length in each taxing district of each ~~line~~ pipeline constituting part of a single  
23          and continuous ~~line~~ pipeline or property. The company also shall file with the county auditor a  
24          map of all of its ~~lines~~ pipelines within the county showing clearly the length of its ~~lines~~ pipelines  
25          within each taxing district as of January first of that year and shall file revised maps in  
26          subsequent years if changes have been made in its operative property. To facilitate the making  
27          of such maps, the county auditor annually, on or before the first day of April, shall mail to the  
28          company an accurate map of the county showing the boundaries of each assessment district  
29          and school district.

30          **SECTION 10.** Chapter 57-33.2 of the North Dakota Century Code is created and  
31          enacted as follows:

1           **57-33.2-01. Definitions.** As used in this chapter:

2           1. "Commissioner" means the state tax commissioner.

3           2. "Company" means an individual, partnership, corporation, limited liability company,  
4           limited liability partnership, cooperative, or any other organization or association  
5           engaged in generation, distribution, or transmission of electricity.

6           3. "Distribution company" means a company engaged in distribution of electricity for  
7           retail sale to consumers in this state through distribution lines. However, a  
8           municipal electric utility operated under chapter 40-33 is not a distribution company  
9           for purposes of this chapter and is not subject to taxes under section 57-33.2-03.

10          4. "Distribution line" means a line to transmit electricity, which operates at a voltage of  
11          less than forty-one and six-tenths kilovolts.

12          5. "Retail sale" means transfer of electricity to the end-use consumer for  
13          consideration.

14          6. "Transmission company" means a company engaged in transmission of electricity  
15          through transmission lines.

16          7. "Transmission line" means a line to transmit electrical energy which operates at a  
17          voltage of forty-one and six-tenths kilovolts or more but does not include a line  
18          owned or operated by an agency or instrumentality of the United States  
19          government.

20          **57-33.2-02. Transmission line mile tax - Exemption.** Transmission lines are subject  
21 to annual taxes per mile [1.61 kilometers] or fraction of a mile based on their nominal operating  
22 voltages on January first of each year, as follows:

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

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

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

- 1           4. For transmission lines that operate at a nominal operating voltage of two hundred  
2           kilovolts or more, but less than three hundred kilovolts, a tax of four hundred fifty  
3           dollars.
- 4           5. For transmission lines that operate at a nominal operating voltage of three hundred  
5           kilovolts or more, but less than four hundred kilovolts, a tax of six hundred dollars.
- 6           6. For transmission lines that operate at a nominal operating voltage of four hundred  
7           kilovolts or more, a tax of nine hundred dollars.
- 8           7. A transmission line of two hundred thirty kilovolts or larger which is initially placed  
9           in service on or after October 1, 2002, is exempt from transmission line taxes  
10          under this section for the first taxable year after the line is initially placed in service,  
11          and transmission line taxes under this section must be reduced by:
- 12          a. Seventy-five percent for the second taxable year of operation of the  
13          transmission line.
- 14          b. Fifty percent for the third taxable year of operation of the transmission line.
- 15          c. Twenty-five percent for the fourth taxable year of operation of the  
16          transmission line.
- 17          After the fourth year, such transmission lines are subject to the standard  
18          transmission line taxes under this section.

19          **57-33.2-03. Distribution taxes.** A distribution company is subject to taxes consisting  
20          of the following two components:

- 21           1. A tax at the rate of fifty-two cents per megawatt-hour for retail sale of electricity  
22           delivered to a consumer in this state during the calendar year.
- 23           2. A tax at the rate of eighty-eight hundredths of one percent of the company's gross  
24           revenue from retail sales of electricity delivered to a consumer in this state during  
25           the calendar year.

26          Distribution taxes do not apply to the sale of electricity to any coal conversion facility subject to  
27          taxation under chapter 57-60.

28          **57-33.2-04. Delinquent taxes.** Taxes under this chapter are due January first for the  
29          preceding calendar year and are delinquent if not received by the commissioner by March first  
30          following the due date.

1           **57-33.2-05. Taxes in lieu of property taxes.** Taxes imposed by this chapter are taxes  
2 upon the privilege of doing business in this state and are in lieu of all real or personal property  
3 taxes levied by the state or any of its political subdivisions upon real or personal property to the  
4 extent the property is owned and used directly by a company in the operation and conduct of  
5 the business of generation or delivery of electricity through distribution or transmission lines.  
6 Taxes under this chapter are not in lieu of property taxes on the following:

- 7           1. Taxes on a wind turbine electric generation unit subject to valuation under section  
8           57-02-27.3.
- 9           2. Taxes on a coal-powered electrical generating plant that is not subject to coal  
10           conversion facility privilege taxes under chapter 57-60.
- 11           3. Property taxes on land on which generation, transmission, or distribution buildings,  
12           structures, or improvements are located, including buildings, structures, or  
13           improvements used for administrative purposes relating to generation,  
14           transmission, or distribution of electricity.
- 15           4. City franchise fees on public utilities.

16 This chapter may not be construed to abridge the power of a governing board of a city to  
17 franchise the construction and operation of a public utility.

18           **57-33.2-06. Taxes paid on worthless accounts.** Distribution taxes paid from retail  
19 sales to accounts found to be worthless and charged off in accordance with generally accepted  
20 accounting principles may be credited against subsequent payment of taxes under section  
21 57-33.2-03. If accounts that have been claimed as a credit under this section are later  
22 collected, tax under section 57-33.2-03 must be paid on the amount collected.

23           **57-33.2-07. Powers of commissioner.** The commissioner may require any company  
24 subject to taxes imposed by this chapter to furnish any information the commissioner deems  
25 necessary to correctly compute the amount of the tax under this chapter. The commissioner  
26 may examine the books, records, and files of a company. The commissioner may conduct  
27 hearings and compel the attendance of witnesses and the production of books, records, and  
28 papers of any company or person and may make any investigation deemed necessary to full  
29 and complete disclosure of facts necessary to administer the tax under this chapter. The  
30 commissioner may make rules in compliance with chapter 28-32 as necessary for  
31 administration of this chapter.

1           **57-33.2-08. Commissioner to audit reports and state board of equalization to**  
2 **assess tax.** The tax commissioner may audit reports of distribution companies and  
3 transmission companies not later than three years after the due date of the report, or three  
4 years after the report was filed, whichever period expires later. The state board of equalization  
5 shall assess the tax and, if any additional tax is found due, the tax commissioner shall notify the  
6 taxpayer in detail as to the reason for the increase.

7           **57-33.2-09. Transmission line location reports and maps to county auditors.** By  
8 May first of each year, each transmission company shall file with the county auditor of each  
9 county in which any of its transmission line is located a report showing the length and nominal  
10 operating voltage of its transmission line within the county and within each taxing district within  
11 the county. A transmission company shall file with the report a map showing all of its  
12 transmission line within the county and showing the length and nominal operating voltage of its  
13 transmission line within each taxing district in the county. Reports and maps under this section  
14 must be based upon nominal operating voltage, ownership, and location of transmission lines  
15 as of January first of each year. By April first of each year, the county auditor shall provide  
16 each transmission company having transmission line in the county with an accurate map of the  
17 county showing the boundaries of each taxing district in the county.

18           **57-33.2-10. Filing of reports and maps with commissioner.** By May first of each  
19 year, each transmission company, distribution company, and each company that is both a  
20 transmission company and a distribution company shall file with the commissioner:

- 21           1. Information about the company, including:
- 22           a. The company name.
  - 23           b. Whether the company is an individual, partnership, association, cooperative,  
24 corporation, limited liability company, or other legal entity and the state or  
25 country and date of original organization and any reorganization,  
26 consolidation, or merger with references to specific laws authorizing such  
27 actions.
  - 28           c. The location of its principal office.
  - 29           d. The place where the company's books, papers, and accounts are kept.
  - 30           e. The name and mailing address of the president, secretary, treasurer, auditor,  
31 superintendent, general manager, and all other general officers.





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

7           **57-33.2-12. Claims for credit or refund.**

- 8           1. A company may file a claim for credit or refund of an overpayment of any tax  
9           imposed by this chapter within six years after the due date of the return or within  
10           six years after the return was filed, whichever period expires later.
- 11           2. A claim for credit or refund must be made by filing with the tax commissioner an  
12           amended return, or other report as prescribed by the tax commissioner,  
13           accompanied by a statement outlining the specific grounds upon which the claim  
14           for credit or refund is based.
- 15           3. The tax commissioner shall notify the company if the state board of equalization  
16           disallows all or part of a claim for credit or refund. The decision of the state board  
17           of equalization denying a claim for credit or refund is final and irrevocable unless  
18           the company brings an action against the state in district court within six months of  
19           the mailing of the notice denying the claim for credit or refund.

20           **57-33.2-13. Preservation of records.** Every company required to make a return and  
21           pay any taxes under this chapter shall preserve records of retail sales as the commissioner may  
22           require. Every company shall preserve for a period of six years and three months all invoices  
23           and other records of electricity delivered to a consumer in this state. All of these books,  
24           invoices, and other records must be open to examination at any time by the commissioner or  
25           any duly authorized agent of the commissioner.

26           **57-33.2-14. Lien for tax.** The tax under this chapter constitutes a first and paramount  
27           lien in favor of the state of North Dakota upon all property and rights to property, whether real or  
28           personal, belonging to the taxpayer. The lien is subject to collection, indexing, and other action  
29           in the manner provided in section 57-39.2-13 for sales tax liens.

30           **57-33.2-15. Corporate officer and limited liability company governor or manager**  
31           **liability.** If a corporation or limited liability company taxable under this chapter fails for any

1 reason to file the required returns or pay the tax due, any of its officers, governors, or managers  
2 having control or supervision of, or charged with the responsibility for making, the returns and  
3 payments, are personally liable for the failure. The dissolution of a corporation or limited liability  
4 company does not discharge an officer's, a governor's, or a manager's liability for a prior failure  
5 of the corporation or limited liability company to make a return or remit the tax due. The sum  
6 due for such a liability may be assessed and collected under the provisions of this chapter for  
7 the assessment and collection of other liabilities.

8 **57-33.2-16. Bond.** The commissioner may require a sufficient bond from any company  
9 charged with making and filing reports and payment of taxes under this chapter. Any required  
10 bond must run to the state of North Dakota and be conditioned upon making and filing of  
11 reports as required by law or rule and for prompt payment of all taxes justly due to the state  
12 under this chapter.

13 **57-33.2-17. Deposit of revenue - Report to treasurer.** The commissioner shall  
14 transfer revenue collected under this chapter to the state treasurer for deposit in the electric  
15 transmission and distribution tax fund. With each transfer under this section, the commissioner  
16 shall provide a report showing the information necessary for the state treasurer to allocate the  
17 revenue under section 57-33.2-18.

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

22 1. Revenue from the tax on transmission lines under section 57-33.2-02 must be  
23 allocated among counties based on the mileage of transmission lines and the rates  
24 of tax on those lines within each county. Revenue received by a county for each  
25 size transmission line under this subsection must be allocated among taxing  
26 districts in the county based on the mileage of that transmission line and the rates  
27 of tax that apply to the land on which that line is located within each taxing district.  
28 Revenue from that portion of a transmission line located in more than one taxing  
29 district must be allocated among those taxing districts in proportion to their  
30 respective most recent property tax mill rates that apply to the land on which the  
31 transmission line is located.

- 1           2. Revenue from the distribution company megawatt-hour tax under subsection 1 of  
2           section 57-33.2-03 must be allocated to the county in which the retail sale to which  
3           the tax applied was made. Revenue received by the county under this subsection  
4           must be allocated among taxing districts in the county in proportion to their most  
5           recent respective property tax levies in dollars on property within the county. A city  
6           that operates a municipal electric utility under chapter 40-33 must be excluded  
7           from allocations and computations under this subsection.
- 8           3. Revenue from the taxes on retail sales paid by a distribution company under  
9           subsection 2 of section 57-33.2-03 must be allocated to each county in which that  
10          distribution company's distribution lines are located in the ratio in which the number  
11          of miles of its lines in each county bears to the total number of miles of lines of the  
12          distribution company in this state. Revenue received by the county under this  
13          subsection must be allocated among taxing districts in the county in proportion to  
14          their most recent respective property tax levies in dollars on property within the  
15          county. A city that operates a municipal electric utility under chapter 40-33 must be  
16          excluded from allocations and computations under this subsection.
- 17          4. For purposes of this section, "taxing district" means the state, county, and that  
18          portion of any political subdivision with authority to levy property taxes which is  
19          located within the county.

20           **57-33.2-19. Penalty.** A person who willfully violates any provision of this chapter is  
21 guilty of a class A misdemeanor.

22           **SECTION 11.** Chapter 57-60.1 of the North Dakota Century Code is created and  
23 enacted as follows:

24           **57-60.1-01. Definitions.** As used in this chapter:

- 25           1. "Commissioner" means the state tax commissioner.  
26           2. "Electrical generating plant" means a facility that produces electrical power from a  
27           source other than coal or wind energy and which has at least one single electrical  
28           energy generation unit with a capacity of five thousand kilowatts or more.  
29           3. "Gross receipts" means all revenue valued in money, whether received in money  
30           or otherwise, derived by an electrical generating plant subject to this chapter from  
31           the production of electricity, but not including any revenue derived from

1           transportation, transmission, distribution, or other events that occur after  
2           completion of the process of production of electricity by the facility.

3           4. "Operator" means any person owning, holding, or leasing an electrical generating  
4           plant and conducting the generation of electricity by the plant.

5           **57-60.1-02. Imposition of taxes - In lieu of ad valorem taxes.** There is imposed  
6 upon the operator of each electrical generating plant a tax paid monthly for the privilege of  
7 producing electricity at such electrical generating plant. The rate of the tax is ninety  
8 one-hundredths of one mill on each kilowatt-hour of electricity produced for the purpose of sale.  
9 The board of county commissioners, by resolution, may grant to the operator of an electrical  
10 generating plant located within the county which begins construction after June 30, 2003, partial  
11 or complete exemption from the tax imposed by this section for a period not exceeding five  
12 years from the date of the first taxable production from the plant. An electrical generating plant  
13 is classified as personal property and taxes imposed by this chapter are in lieu of ad valorem  
14 taxes except taxes on the land on which the electrical generating plant is located.

15           **57-60.1-03. Adoption by reference of provisions governing the privilege tax on**  
16 **coal conversion facilities.** The provisions of chapter 57-60 which are not in conflict with the  
17 provisions of this chapter govern the administration of the tax imposed in this chapter.

18           **57-60.1-04. Allocation of revenue - Continuing appropriation.**

19           1. The state treasurer shall no less than quarterly allocate all moneys received from  
20 each electrical generating plant to the county in which the electrical generating  
21 plant is located.

22           2. Amounts allocated to a county under this section must be allocated within the  
23 county in the same manner property taxes are allocated on the land on which the  
24 electrical generating plant is located.

25           **SECTION 12. REPEAL.** Sections 57-06-07, 57-06-17, and 57-06-17.3 and chapters  
26 57-33 and 57-33.1 of the North Dakota Century Code are repealed.

27           **SECTION 13. EFFECTIVE DATE.** This Act is effective for taxable years beginning  
28 after December 31, 2005.