

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1046

Introduced by

Legislative Management

(Taxation Committee)

1 A BILL for an Act to amend and reenact section 40-57.1-03 of the North Dakota Century Code,
2 relating to city or county authority to reduce or revoke a previously granted property tax
3 exemption or option to make payments in lieu of taxes; and to provide an effective date.

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

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

7 **40-57.1-03. Municipality's authority to grant or revoke tax exemption or payments**
8 **in lieu of taxes - Notice to competitors - Limitations.**

9 1. After negotiation with a potential project operator, a municipality may grant a partial or
10 complete exemption from ad valorem taxation on all buildings, structures, fixtures, and
11 improvements used in or necessary to the operation of a project for a period not
12 exceeding five years from the date of commencement of project operations. A
13 municipality may also grant a partial or complete exemption from ad valorem taxation
14 on buildings, structures, fixtures, and improvements used in or necessary to the
15 operation of a project that produces or manufactures a product from agricultural
16 commodities for all or part of the sixth year through the tenth year from the date of
17 commencement of project operations.

18 2. In addition to, or in lieu of, a property tax exemption granted under this section, a
19 municipality may establish an amount due as payments in lieu of ad valorem taxes on
20 buildings, structures, fixtures, and improvements used in the operation of a project.
21 The governing body of the municipality shall designate the amount of the payments for
22 each year and the beginning year and the concluding year for payments in lieu of
23 taxes, but the option to make payments in lieu of taxes under this section may not
24 extend beyond the twentieth year from the date of commencement of project

1 operations. To establish the amount of payments in lieu of taxes, the governing body
2 of the municipality may use actual or estimated levels of assessment and taxation or
3 may establish payment amounts based on other factors. The governing body of the
4 municipality may designate different amounts of payments in lieu of taxes in different
5 years to recognize future project expansion plans or other considerations.

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

26 4. Negotiations with potential project operators for tax exemption or payments in lieu of
27 taxes must be carried on by the city council or commission if the project is proposed to
28 be located within the boundaries of a city, and by the board of county commissioners if
29 the project is proposed to be located outside the corporate limits of any city. A partial
30 exemption must be stated as a percentage of the total ad valorem taxes assessed
31 against the property. Unless the governing body of the municipality determines that

1 there is no existing business within the municipality for which the potential project
2 would be a competitor, the potential project operator shall publish two notices to
3 competitors, the form of which must be prescribed by the tax commissioner, of the
4 application for tax exemption or payments in lieu of taxes in the official newspaper of
5 the municipality at least one week apart. The publications must be completed not less
6 than fifteen nor more than thirty days before the governing body of the municipality is
7 to consider the application. The municipality shall determine whether the granting of
8 the exemption or payments in lieu of taxes, or both, is in the best interest of the
9 municipality, and if it so determines, shall give its approval.

10 5. By motion approved by the governing body of the municipality before the beginning of
11 a taxable year for which a property tax exemption or the option to make payments
12 in lieu of taxes under this section previously has been approved by the governing
13 body, a property tax exemption may be revoked or reduced and payments in lieu of
14 taxes may be revoked or increased for that taxable year for reasons specified in a
15 negotiated agreement or if the governing body finds that:

16 a. Information provided by the project operator during the negotiation and
17 deliberation of a property tax exemption or the option to make payments in lieu of
18 taxes has proven to be inaccurate or untrue;

19 b. Use of the property by the project operator does not comply with the reasonable
20 expectations of the governing body at the time the property tax exemption or the
21 option to make payments in lieu of taxes was approved;

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

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

27 6. During the negotiation and deliberation of a property tax exemption or the option to
28 make payments in lieu of taxes under this chapter, a municipality shall include, as
29 nonvoting ex officio members of its governing body, a representative appointed by the
30 school board of each school district affected by the proposed action and a

1 representative appointed by the board of township supervisors of each township
2 affected by the proposed action.

3 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
4 December 31, 2013, regardless of the date a property tax exemption or the option to make
5 payments in lieu of taxes was approved.