

Sixty-third  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2314

Introduced by

Senators Grindberg, Dotzenrod, Oehlke

Representatives Belter, Streyle, Williams

1 A BILL for an Act to amend and reenact section 40-57.1-03 of the North Dakota Century Code,  
2 relating to determination of whether a project is a primary sector or retail sector business before  
3 a city or county may grant a property tax exemption for that project; to provide for a legislative  
4 management study; and to provide an effective date.

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

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

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

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

21 a. Received the certification of the department of commerce division of economic  
22 development and finance that the project is a primary sector business, as defined  
23 in subsection 3 of section 40-57.1-02; or

1           **b.** Established by resolution or ordinance the criteria that will be applied by the  
2                   governing body to determine whether it is appropriate to grant a partial or  
3                   complete exemption from ad valorem taxation under this section for a project  
4                   operating in the retail sector. Criteria established by the governing body under  
5                   this subdivision, at a minimum, must be intended to require:

6                   (1) Evaluation of the potential positive or adverse consequences for existing  
7                   retail sector businesses in the municipality from granting the exemption;

8                   (2) Evaluation of the short-term and long-term effects for other property  
9                   taxpayers in the municipality from granting the exemption;

10                  (3) A written agreement with the project operator, including performance  
11                  requirements for which the exemption may be terminated by the governing  
12                  body of the municipality if those requirements are not met; and

13                  (4) Evaluation of whether the project operator would locate the project within  
14                  the municipality without the exemption.

15           **2.** In addition to, or in lieu of, a property tax exemption granted under this section, a  
16                   municipality may establish an amount due as payments in lieu of ad valorem taxes on  
17                   buildings, structures, fixtures, and improvements used in the operation of a project.  
18                   The governing body of the municipality shall designate the amount of the payments for  
19                   each year and the beginning year and the concluding year for payments in lieu of  
20                   taxes, but the option to make payments in lieu of taxes under this section may not  
21                   extend beyond the twentieth year from the date of commencement of project  
22                   operations. To establish the amount of payments in lieu of taxes, the governing body  
23                   of the municipality may use actual or estimated levels of assessment and taxation or  
24                   may establish payment amounts based on other factors. The governing body of the  
25                   municipality may designate different amounts of payments in lieu of taxes in different  
26                   years to recognize future project expansion plans or other considerations.

27           **3.** By November first of each year, the municipality that granted the option to make  
28                   payments in lieu of taxes shall certify to the county auditor the amount of payments  
29                   in lieu of taxes due under this section in the following year. After receiving the  
30                   statement from the municipality, the county auditor shall certify the payments in lieu of  
31                   taxes to the county treasurer for collection at the time when, and in the manner in

1 which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the  
2 amount of payments in lieu of taxes under this section, the county treasurer shall  
3 apportion and distribute that amount to taxing districts on the basis on which the  
4 general real estate tax levy is apportioned and distributed. The municipality may enter  
5 into a written agreement with the local school district and any other local taxing  
6 districts that wish to enter the agreement for an alternate method of apportionment  
7 and distribution. If such an agreement is entered into, the county treasurer shall  
8 apportion and distribute the money according to the written agreement. All provisions  
9 of law relating to enforcement, administration, collection, penalties, and delinquency  
10 proceedings for ad valorem taxes apply to payments in lieu of taxes under this section.  
11 However, the discount for early payment of taxes under section 57-20-09 does not  
12 apply to payments in lieu of taxes under this section. The buildings, structures,  
13 fixtures, and improvements comprising a project for which payments in lieu of taxes  
14 are allowed under this section must be excluded from the valuation of property in the  
15 taxing district for purposes of determining the mill rate for the taxing district.

16 4. Negotiations with potential project operators for tax exemption or payments in lieu of  
17 taxes must be carried on by the city council or commission if the project is proposed to  
18 be located within the boundaries of a city, and by the board of county commissioners if  
19 the project is proposed to be located outside the corporate limits of any city. A partial  
20 exemption must be stated as a percentage of the total ad valorem taxes assessed  
21 against the property. Unless the governing body of the municipality determines that  
22 there is no existing business within the municipality for which the potential project  
23 would be a competitor, the potential project operator shall publish two notices to  
24 competitors, the form of which must be prescribed by the tax commissioner, of the  
25 application for tax exemption or payments in lieu of taxes in the official newspaper of  
26 the municipality at least one week apart. The publications must be completed not less  
27 than fifteen nor more than thirty days before the governing body of the municipality is  
28 to consider the application. The municipality shall determine whether the granting of  
29 the exemption or payments in lieu of taxes, or both, is in the best interest of the  
30 municipality, and if it so determines, shall give its approval.

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

7            **SECTION 2. LEGISLATIVE MANAGEMENT STUDY.** During the 2013-14 interim, the  
8            legislative management shall study methods to assure that an accurate and reliable means is  
9            developed to measure effectiveness and accountability of property tax exemptions and other  
10          economic development incentives granted by cities and counties and to determine whether  
11          other taxpayers in the city or county ultimately derive a measurable benefit from granting of the  
12          incentives. The legislative management shall report its findings and recommendations, together  
13          with any legislation required to implement the recommendations, to the sixty-fourth legislative  
14          assembly.

15          **SECTION 3. EFFECTIVE DATE.** This Act is effective for property tax exemptions granted  
16          by a municipality after July 31, 2013.