

**FISCAL NOTE**  
**Requested by Legislative Council**  
**03/26/2015**

Amendment to: SB 2035

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 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.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
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 2035 with House Amendments creates a sales tax exemption for materials used to construct a fertilizer or chemical processing plant, changes certain provisions regarding a city or county granting property tax exemptions, and authorizes interim studies.

- 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.*

There is at least one \$3 billion dollar plant under consideration that may break ground this spring that would qualify for this exemption. It is unknown what share of the cost of this \$3 billion plant might be subject to this exemption (beyond the existing law exemption for manufacturing equipment -- this exemption would include building materials). Additionally, other chemical processing plants may be built in the biennium that would also qualify for this exemption. The overall fiscal impact is unknown.

The changes to the provisions regarding the authorization of property tax exemptions contained in Section 1 will possibly result in fewer property tax exemptions being granted by cities and counties in the 2015-17 biennium. This may result in less shifting of property taxes from new, exempt projects onto other existing properties. It is not possible to estimate the magnitude of this potential change.

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.*

- 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 or a part of the appropriation is 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:** 03/26/2015

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**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 03/26/2015



**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/24/2015**

Amendment to: SB 2035

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Revenues						
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**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 02/25/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/19/2014**

Bill/Resolution No.: SB 2035

- 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.*

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SB 2035 creates a sales tax exemption for materials used to construct a fertilizer or chemical processing plant.

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There is at least one \$3 billion dollar plant under consideration that may break ground this spring that would qualify for this exemption. It is unknown what share of the cost of this \$3 billion plant might be subject to this exemption (over and above the existing law exemption for manufacturing equipment -- this exemption would include building materials). Additionally, other chemical processing plants may be built in the biennium that would also qualify for this exemption. The overall fiscal impact is unknown.

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**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 01/15/2015

**2015 SENATE FINANCE AND TAXATION**

**SB 2035**

## 2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB2035  
1/19/2015  
22096

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Katie Oliver for Alice Grove*

### Explanation or reason for introduction of bill/resolution:

Relating to a sales tax exemption for tangible personal property used to construct a fertilizer or chemical processing facility; to amend and reenact subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code, relating to a use tax exemption for tangible personal property used to construct a fertilizer or chemical processing facility; and to provide for a retroactive effective date.

### Minutes:

Attachment #1, 2, 3, 4, 5

The committee was called back to order by Chairman Cook. Tim Dawson with Legislative Council was present to explain the bill, not to testify in favor of or opposition to the bill.

Senator Dotzenrod: We have had a sales tax exemption for ag processing facilities on the books for some time. That would not apply in this case?

Tim Dawson: That is correct.

Senator Bekkedahl: Does this apply to any of the extraction taxes levied on the gas that is delivered to the plant?

Tim Dawson: No.

Senator Dotzenrod: If someone builds a plant to process gas it seems to me that it you could be covering more than a fertilizer plant.

Tim Dawson: Subsection 4 on page 2 defines it.

Alan Anderson: Commissioner with the North Dakota Department of Commerce testified in favor of the bill. See attachment #1.

Chairman Cook: How do we realize if this exemption is needed to make the pant actually come to fruition?

Alan Anderson: I think some of those you could ask our partners. What I would say is that we have some very good incentives on the books and we use those for the primary sector industries that we are really trying to encourage investment.

Chairman Cook: Any idea what the difference in dollar amounts is between the exemption on equipment and machinery versus building materials?

Alan Anderson: Our current estimate they would get about a \$33,000,000 sales tax value from it and this additional would be \$10,000,000. So it is about a quarter or a third, somewhere in that range.

Senator Triplett: In your testimony you said the CHS plant has announced that they are moving forward with it. If they have already decided to move forward with an investment of this sort then a new exemption should be unnecessary. The extent to which we want to have 3 or 4 of the largest investments in our history happen all at once in quick order is a question in my mind given that we already have an enormous workforce shortage, we already have communities across the state struggling mightily to keep up with infrastructure. Why we would give an additional incentive to speed up the decision making to impact more of our communities in that way. There is an argument for orderly development and I am not sure that this is a good move. When the legislature gave those exemptions to ag processing it was because we were in a declining economy, we were losing people, we were sending all of our commodities out of state and we saw that as a way to regenerate the economy of North Dakota at a time that it was failing.

Alan Anderson: If not diversify now than when? What you are seeing is coal prices being very low, commodity prices being very low on the agriculture side, oil prices being very low. It will put an impact on our revenues coming into the state. The best way to balance and have more ratable revenue coming in is through a diversified economy. Many companies in the past have done exactly what we are suggesting with moving down the value chain of a certain industry. The reason they did that is to diversify so that when one commodity went down they could balance with the other. To me this is the exact perfect time to go forward with a project like this. The third item I would say is that not all counties in North Dakota have had the same amount of growth stress that those in western North Dakota. There have actually been 8-12 counties that are still declining; they would greatly appreciate this type of program.

Senator Triplett: The Chairman has brought in a bill that I like a lot which is that we start a rolling, every 6 years serious study of what our tax exemptions, from the past, are doing and if they are affective. If what we want is targeted investment then maybe we put conditions on it.

Alan Anderson: Commerce also supports very much having a review of our incentive programs in a cyclical basis so truly understand. There is always some subjectivity weather that one particular was the one that got them over the hump to make the investment but I think listening to the private partners will help.

Chairman Cook: I think that this is a good conversation to have especially in regards to reviewing this every 6 years.

Senator Laffen: If we just changed North Dakota's laws like this one to just simply state if you use a North Dakota commodity as a feedstock to some sort of production plant that all the sales tax would be exempt for everybody. Would we be missing anybody?

Alan Anderson: I would need to look at it a little bit to make a determination on how that impacts it. What I would say is with all of these facilities we wouldn't recommend going forward unless we thought that they could be world-class and could compete on a world-wide basis.

Senator Bekkedahl: In terms of the long term revenue, other than local property tax, income tax related to job structure, what is the long term revenue stream payback to the state of North Dakota?

Alan Anderson: I don't know if we have done a long term economic analysis, we could. I can assure you it would be huge and I think that the Chairman would be the best to answer the question of what the value has been of the Mandan refinery to Morton County over the last 60 years and if a sales tax exemption during the early times of 1954 has been paid out not only through property tax, additional sales tax, great paying jobs over the last 60 years. These are projects that will benefit the state for decades to come.

Shane Goettle: Badlands NGL, testified in favor of the bill. See attachment #2.

Chairman Cook: How large of a footprint will they need?

Shane Goettle: We think that the sweet spot is somewhere between 1,000-2,000 acres, in terms of land it will use. Now, there is going to be a buffer around it and the plant will sit within the buffer.

Senator Triplett: When you say that Badlands is proceeding with the development, construction, startup and operation can you just say what that means relative to the likelihood that it will happen. Have they got financing in place?

Shane Goettle: We had an A round in which we raised what we needed to help finance some of the engineering that needed to be done for a plant of this size as well as undertake a number of studies. One of them that is underway right now is to do some accurate projections of the amount of natural gas that will be available over the next ten years as well as a transportation study that I mentioned. Once we have some ethane sourced and committed for a long period of time to then take the marketing agreement that we have with Vinmar and the contracts that we have signed with feedstock suppliers and take that to Wall Street for the equity and the financing. That has been soft circled; we have had the number of conversations with investors that looks very promising.

Senator Triplett: Does the company have an estimated timeline of when they might have financing in place?



Shane Goettle: We are a little bit passed our timeline to have that wrapped up. I am optimistic that we will have some deals there.

Jake Hamlin: Director of state government relations for CHS. Spoke in favor of the bill.

Senator Triplett: You talk about temporary jobs in the Jamestown area, do you plan on setting up crew camps for those people?

Jake Hamlin: Yes, one of the many factors we are evaluating with respect to the project what I will say is that I believe that Stutsman County and the city of Jamestown have developed standards for crew camps so we would follow those for anything that needs to be constructed.

Senator Triplett: Does your company expect to have to come back to the legislature or request your community to have to come back to the legislature to upgrade a system of roads for you or to build a waste water treatment plant.

Jake Hamlin: Both at the state and local levels we have had great support from officials to be able to have a long term vision to determine if we need any additional investments in things and I think where we are at right now we don't see any need for additional infrastructure specific to roads.

Ron Ness: North Dakota Petroleum Council spoke in favor of the bill.

Randy Schneider: North Dakota Ethanol Producers Association. See attached testimony #3.

Kayla Pulvermacher: North Dakota Farmers Union, spoke in support of the bill.

Joel Gilberston: Eagles Ledge, spoke in support of the bill.

Connie Ova: CEO, Jamestown/Stutsman Development Corporation and vice president of the Economic Development Association of North Dakota. See attachment #4.

Dena Weisy: Greater North Dakota Chamber, presented testimony written by Jon Godfred. See attachment #5.

There was no further testimony in support and no testimony in opposition. Chairman Cook closed the hearing on SB 2035

# 2015 SENATE STANDING COMMITTEE MINUTES

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

SB2035  
2/18/2015  
Job #24059

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Alice Grove*

### Explanation or reason for introduction of bill/resolution:

Committee work.

### Minutes:

**Chairman Cook** opened the committee work on SB2035.

Sales tax exemption for chemical plant and a fertilizer plant. We are talking about potential for a \$4 billion chemical plant; one \$3 billion fertilizer plant in Stutsman County, I believe another one in Grand Forks. I thought we heard a great argument on the floor of the senate yesterday and to why we should not be giving a sales tax exemption for the building of a fertilizer plant. That's what I heard. It's an issue that we need to deal with here. I think what is missing in this discussion, and we saw it yesterday, is some sort of relationship, conversation or study, between the state and local governments when the potential of a project of this magnitude comes along. We, I think, seen Stutsman County competing for other areas in the state for the fertilizer plant. There were local incentives given. It does create an impact on Stutsman County. I think the real unfortunate county is Barnes County. They had no say in any of the incentives that were given. They are tremendously impacted. I'm not sure when the chemical plant might be built, if it will be built within the next two years. The fertilizer plant, they think they've got a bigger issue and that's water. I don't see it being built in the next 2 years. I don't know if there is some way we can put something on this bill to create the mechanism the means for these discussions to take place but they are needed discussions you have to have before you start giving incentives out on projects of this magnitude. Barnes County should have been involved in the discussion. Local government and the state should be. I bring that up. That's my one red flag on this thing.

**Senator Triplett** -- I appreciate your comments about the project being held up because of water issues. They decide to go ahead and build it and then, what, it just puts more pressure on the state to move the Missouri River more quickly toward them before we might otherwise be ready to make that call, since the federal government seems a little slow to be picking up that project. I agree with you, wholeheartedly, that this is not just all of the affected local governments but, certainly, all of the relative state agencies not to be included in the conversation too before decisions of this sort are made. You can't just

make a problem for yourself and then come running to the state and say now we need a gazillion dollars to fix the problem that we brought upon ourselves.

**Senator Bekkedahl** -- I would agree with what Senator Triplett said. One of the things that I would like to see and maybe there is a provision that the Department of Commerce has to be involved in these discussions; or somehow the state. Maybe there are legislative council members there but there should be a process where everybody can be involved. What we did in our local northwest area of North Dakota was at one point we talked about, instead of all of us when it was really slim pickings up there, competing for the same projects; Minot would put "x" number of dollars on the table and then Williston would put "x" numbers and Tioga would be out of the mix because they couldn't compete. What I brought forward in that region was we should do a swat analysis of our strengths and weaknesses as our communities and say if it's a Hess project that involved oil and gas and Tioga is the place, we should all support that. Because that is their strength. If it's something that has to do with retail development and Minot is the strength, we should support Minot. I don't know how you do that on the state level but instead of all of us fighting for the same small pickings and putting us in the position that Stutsman County's in right now where they have given away a lot of the farm to make this happen and there's some suffering for that, we need to be at that table and we need to start looking at strengths and weaknesses and putting these places where they fit. Water is going to be a situation here and probably should have been a larger analysis piece of the puzzle before they placed it where they need.

**Chairman Cook** -- We all want the fertilizer plant to be built in North Dakota. There's a benefit to the farmers to have this fertilizer produced in the state of North Dakota, To what degree it becomes a commodity that is going to get sold out of the state, if that's where they get the highest price, I don't think it's going to drive the price of fertilizer down. Anybody got an idea of how we might do something here?

**Senator Dotzenrod** -- To add to the line of thinking on this fertilizer project, the benefits are going to spread out and conceivably over a big area. What we are seeing around the country is states competing against other states. We had quite a competition on that corn sugar plant down at Wahpeton. (meter 6:15-6:50). The big battery plant that is in Nevada now, Nevada's incentives are going to cost Nevada around \$1 billion for siteing that facility there. What you are seeing around the country is states, and you saw this with automobile plants in the southeast and a lot of big operations the states are having to, if they are going to be in the game, they are going to have to make some pretty significant concessions to get these. In the tax committee here, a lot of our decisions are based on keeping us competitive, making the environment friendly for business, doing what we can, giving up state resources, passing bills that reduce our revenues and doing this with the idea that we want to be part of that system. I don't think it's just Stutsman County. I think, we as a state, as policy makers, are actively engaged in the process of giving up revenues to try to make the environment here as friendly as we can. What happened in Stutsman County, I think they put some incentives out there that other counties did. When the corn sweetener plant was built in Richland County, there was property tax exemptions and other things put on the table. The Hankinson Ethanol Plant it was 5 year property tax exemptions and other things offered that were part of it and, in today's world, that's just being real. This possible plastic product that would be made from natural gas, we are not sure where it's going to get



built. Hopefully it will come to North Dakota but before it is done, we will be there trying to do what we can to provide incentives to get them here, and it will cost us some state revenues to do that. I don't necessarily object to that. I think that's really the kind of world we are living in today. I think that we are participating here at this table when we have passed these sales tax and other exemptions, we're giving up revenues, just as Stutsman gave up revenues. Sitting the water issue aside, because that could be terrifically a huge problem before we're done, the big problem I see up there with that operation is the volume of weight, the freight, the volume of heavy stuff that's got to be hauled in and out of there all the time, it's going to be the pervertible beehive.

**Chairman Cook** -- I agree we all are and we are going to make a decision here before long on this bill. My question is: for some of these tremendously large projects, should there be some mechanism in place where there needs to be a conversation between all the parties involved and that can be impacted by it, to look at the big picture as far as incentives.

**Senator Triplett** -- One way to get us further involved in the conversation would be to have a do not pass on this bill. I think that would send people a message that maybe it's time to engage the legislature a little sooner in the process. I note that these are manufacturing plants and they already have huge sales tax exemptions and this is an additional one for the tangible personal property. I had the sense, listening to everyone who testified in favor of this bill, that this is not a make or break for any of these decisions. It's just one more way of coming to the table to ask for additional reduction in taxes. I especially appreciated the honesty of the fellow who was talking about the Devils Lake project and he said that their decision is based, number one on feedstock availability, number two on the fact of there being a shortage of diesel within the states so they see a need for their product and, number three, the fact that the property they have proposed has the ability to expand in the future. He didn't exactly put a number 4 on this one but then he followed by saying this bill is not a defining factor but is definitely a benefit. Well, of course it's a benefit if you have to pay fewer taxes, it helps your bottom line. I'm not sure if this is such a big deal for anybody. If we really were sitting here rolling in cash, as everyone expected when these bills were drafted, and the truth is, we are not rolling in cash and we've had a pretty stern little wake-up call about not giving away the ship. I won't make the motion if other people want more time to think about it, but I am prepared to make a do not pass motion whenever the chair thinks it is appropriate.

**Chairman Cook** -- I would like to point out though that the chemical plant, I recall from their testimony, their cost of building here is 140% of what it would be somewhere else. That's a factor that we live with in North Dakota right now with construction costs compared to the rest. Let's set this aside. Maybe there will be a conversation or two that we can have.

**Senator Dotzenrod** -- One thing that strikes me about all these projects is the tremendous impact on the DOT. Essentially, to get these things to work somebody's got to spend a lot of money in getting the roads in and out of there right and that is a lot of the money. DOT has a fairly large part of their operation is in planning. They do have plans that go out quite a way. It seems if we were going to try to find a way so that there isn't these surprise bills and we get extra bills thrown at us that if you could require or somehow have a commerce department policy that you get the DOT involved and start having them participate in the

planning process, I think that would be one big step forward. That is a huge impact item on these processing plants.

**Chairman Cook** -- I remember sitting on an interim transportation committee listening to a DOT report talking about the truck traffic going to an ethanol plant and the cost to maintain the roads to go to that plant. And I had the same thought, why didn't we have this conversation before we ever did what we did.

**Senator Bekkedahl** -- I can respond to that because I've dealt with the DOT for many years and Senator Oehlke would be the expert with transportation committee, but the response that we've gotten in the past in our region to development projects and we've been very good about bringing the project at its infancy discussion phase to the DOT. The response we used to get was when the project is developed and when it is built and when the roads are beat up then we'll deal with the issue. I think it had to do with the lack of adequate funding more than it did anything else. The other issue that I think is important here to Senator Dotzenrod's discussion is, if you go over there and look at their thousand employee base, I think their planning staff is very small in consideration to what they have for employee base. At one point it was 3 or 4 employees. Planning has been an issue and I think with the increased dollars you are seeing appropriated to them, they are getting better at that.

**Senator Oehlke** -- I am on the transportation committee and their 5 year plan, definitely includes these areas. I think one of the things that they have learned, particularly from the out west areas, is that monies that are going into transportation, it is costing more to build roads that's because they are insisting that if they are going to put money into roads they have to built up to 105,000# capacity use so that they don't get obliterated when they get driven on with heavy trucks. Everybody has heavy trucks. Senator Dotzenrod, you probably have a semi. Every farmer has those now. That is not an exception. So these heavy trucks definitely need the built up roads in order to operate on them. It does cost more but they are going to last and the maintenance on them is going to be much less.

**Senator Bekkedahl** -- One more follow-up, my perception of how we deal with this as a state is that these are all infrastructure issues. You have physical infrastructure with the road systems and the water systems and all those things need to be in place; and you have tax infrastructure. We have to meld this all together somehow. My goal has always been that the state is competitive on a long-term basis with other states for other projects and where we spend our harvested money from oil and gas tax resources, which are enormous, we've already seen that, if we can use it in all these infrastructure areas to place the framework that makes us the most competitive state. That's where I think we need to go.

**Senator Laffen** -- I think we are the most competitive state. That's why we are growing the fastest. There's a lot of states that have the resources we have but it is happening here because of our policies. One could argue that we are maybe too competitive. One could argue that it is happening too fast here but I think pricing will adjust that. I'm pretty proud of North Dakota and the policies we've got in place that is allowing to happen what's happening because I can tell you from a business that serves all of that, it raises every ship.

**Chairman Cook** -- We are going to have to take care of this here this afternoon. Give her some thought, come with them. We can always put an amendment on.

# 2015 SENATE STANDING COMMITTEE MINUTES

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

SB2035  
2/23/2015  
Job #24236

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Alice Grove*

### Explanation or reason for introduction of bill/resolution:

Committee work.

### Minutes:

Attachment #1

**Chairman Cook** opened the committee work on SB2035.

Sales tax exemption for chemical and fertilizer plants. We've had a couple of discussions on it. I've handed out amendments (**Attachment #1**). The meat of the amendments start on the bottom of page 4. Projects after June 30, 2015, would have a cap on the amount of property tax relief that they could give. The cap I set, not for any intelligent reason, at \$1 million. That would be the cap, if they wanted to go over that cap, they would need to go to the Department of Commerce. The Department of Commerce may authorize an increase in the maximum benefit under this subsection during the life of the project, upon request of the municipality that granted the tax benefit, and a showing that the increase would be in the best interest of the taxing districts in which the project is to be located. Consideration and action by the Department of Commerce of the request under this section must be conducted at a public hearing and notice of that meeting must be provided to each affected taxing district and any existing business with the municipality for which the potential project would be a competitor. The types of projects I'm thinking of here, folks, we find ourselves in kind of a new area when we start seeing \$4 billion and \$3 billion projects being built. Projects like that don't only affect the political sub. I'm thinking the county in which its located but it's also to affect neighboring counties. As we discussed last week, it's wise to somehow generate a discussion between all players that are involved in formulating a big picture economic development incentive. That is the intent.

**Senator Triplett** -- I think I agree with the general premise of your proposed amendment but on the last paragraph of the amendment on page 5, if it were to go to the Department of Commerce, that the required showing would be that it would be in the best interest of the taxing districts in which the project is located. It seems to me that sort of a showing should be within the prevue of the local folks. That is their job. But what you said out loud is that you are concerned about spill-over effects on other taxing jurisdictions and that does seem to need to be more the prevue of the state, to take into consideration the larger picture. Maybe, when it gets to the level of the Department of Commerce the showing would be that



it is in the best interest of the region or the state. Something that gets it beyond just the taxing district in which it is located because I think that belongs to the local board.

**Chairman Cook** -- Best interest of the state?

**Senator Triplett** -- That would make it better for me.

**Senator Laffen** -- I assume that Commerce would have full authority then, in between, to make that decision without us. It's just their decision to be able to go beyond that?

**Chairman Cook** -- That's my intent. The Department of Commerce, of course, answers to the executive director of the state, the governor. I would think that the Department of Commerce, at that point, would also be contemplating whatever state incentives might be offered. And I don't look at it as if we are giving the Department of Commerce some extra authority that we don't have. We don't have it right now. The intent of the amendments is to create some vehicle in which a discussion can happen.

**Senator Dotzenrod** -- The term, municipality, some of these projects are not occurring in a municipality. The tax decision is made by a county. Counties are municipalities? Okay.

**Senator Laffen** -- Word of this amendment got out over the weekend and I got a lot of phone calls from economic developers and people who have an interest in this. The concern, that most of them had, was that there are a lot of states that really would like these projects. They are not in the position that we are right now, in terms of economic development and we aren't giving away cash like the other states are. Their fear is that, with a \$1 million cap, that is all the incentive they can use as a promotion, not knowing at all if Commerce would go beyond that. The cap becomes the limit, when they are trying to promote these projects. They are saying that we are up against states that are writing \$20 million checks to try to get projects like this.

**Chairman Cook** -- I don't see it as something that would hinder our ability to compete. I suppose we could put something on here that would put a time certain as far as how many days the Department of Commerce could have to conduct the hearing and make a decision. The local municipality is not going to be the one giving away the cash. It's going to be the state and I would see this would aid that decision.

**Senator Dotzenrod** -- When we are talking about the \$1 million cap, are we talking about the 5 year property tax exemption? Because I think wherever you go in North Dakota, or probably any other state around us, it's almost a prerequisite to getting a project. It's fairly normal. Maybe we've got enough economic development in this state. If we want to cut it off or reduce it, that's a policy decision the legislature could make. If we want to take the attitude that the incentives and the process we've set up for other projects would be carried forward and we want to have that become the way we do things, we should accept the fact that a 5 year property tax exemption is what it is. I think we got into this issue because of the question of, what's the states obligation, if we're going to have this big project and it's driven by local developers and local people giving away tax benefits. How do you get the state involved in the process so that we don't get surprised with requests for many millions of dollars for road and infrastructure improvements? I think it's a big change.



**Chairman Cook** -- I'm not looking at this effecting 99 1/2% of all economic development projects where local governments give property tax exemptions. I'm looking at those types of projects that are of the magnitude of what we see in our state right now: \$4 billion chemical plant, \$3 billion fertilizer plant. Those are the ones that I think it is wise to get local and state conversations going at the same time as they are negotiating with the developers. And maybe the \$1 million is too low. Maybe that number has to be higher.

**Senator Triplett** -- Just following up on Senator Dotzenrod's comments, you did indicate that the \$1 million was kind of pulled out of the rabbit hat, did you check with the Association of Counties or the economic development folks or anybody to know if you are accurate when you say it wouldn't apply to 99% of them? Maybe we should get that information so that we know what we are talking about.

**Chairman Cook** -- No, I didn't. That is why we are here this morning. I share the amendments. I visited with counties last week. And I think the feeling was that we need to have a conversation at the table.

Justin is here. I would recommend comments about what they think about the \$1 million cap. I can tell you that this gentleman, Terry Traynor, is probably going to say something about he doesn't want Commerce to get in the way of counties competing for business.

**Terry Traynor, Association of Counties** -- I did have a discussion with the county commissioners on our legislative committee on Friday after having a discussion with the chairman. I apologize if that caused a firestorm of e-mails. I thought that was the intention: to get some input on that. There was understanding of the issue and why it was being proposed. Most of the more urban county commissioners were uncomfortable with it, for the reasons that you point it. It seems like, all of the sudden, they are advocating their responsibility to Commerce when it comes to those major projects. I can see the wisdom in this when we are talking about big projects. It seems to me like a million dollars is too low. That would be a one hundred percent exemption per one year on a billion dollar project. If it's a billion dollar project, I'm guessing as Senator Dotzenrod said, 5 years is common. More common, on some of those large projects, is payment in lieu of taxes, where they will do 180 and then step it down over 10 years, which would probably be more in the neighborhood of \$10 million. A million might be a little on the low side for what is being proposed. It was a general reluctance to get behind this from the more urban counties because they felt that they were losing something to state control.

**Chairman Cook** -- And that reluctance would diminish if it was \$10 million.

**Terry Traynor** -- Certainly that would help. I don't know if it would totally go away.

**Senator Triplett** -- Would any part of the reluctance go away with the suggestion that I made on page 5, 3<sup>rd</sup> paragraph down, starting on the 4<sup>th</sup> line, it would say that the granting of the increase would be in the best interest of the state, rather than in the taxing districts in which the project is located.

**Terry Traynor** -- Absolutely. I think that is a real good distinction because, frankly, the commissioners understood that we were talking about projects that affect more than one county and that, to me, is the only reason that the state has an interest.

**Chairman Cook** -- Justin, do you have a comment about the amount of the cap?

**Justin Dever, Department of Commerce** -- I would concur this this amount is probably quite low. There is mention of a 5 year exemption, for value added ag projects it could be actually a 10 year exemption. So if an ethanol plant, for example, were to receive this over 10 years, I'm guessing the \$1 million is quite low for a \$300 million project. I'm not sure what the exact amount is. I don't know if \$10 million gets you closer to that. If the goal is to have 99% of the projects not be impacted, you may want additional information to find out what that number could be.

**Senator Triplett** -- Is that information that you could get for us?

**Justin Dever** -- I would hope that the tax department might be able to look at some state averages or something as far as property taxes paid.

**Senator Triplett** -- Is that to say, you don't have the information in your office?

**Justin Dever** -- As far as I know, property tax is decided at the local level. We don't provide any input on that.

**Chairman Cook** -- Terry, can I ask you another question? The other concern I have about even putting another number in here, let's take a look at the fertilizer plant in Stutsman County. Stutsman County negotiated an, in lieu of taxes, I believe it was \$3 million a year over 20 years. Could Stutsman County even calculate, at that point, what the tax benefit is?

**Terry Traynor** -- I was just communicating with the auditor there and asking him if he could do that and he is calculating as we speak. He did point out one thing, in response to my initial email, these projects are not done without Commerce's involvement. A project of this nature, even one much smaller, the local economic development and the city or the county commission, they are in contact with Commerce immediately because it is so important to have that coordinated effort to secure a project like that. They wanted to make that clear.

**Chairman Cook** -- You would have to have some idea of what the taxable value of the property is, that's my question.

**Terry Traynor** -- I'm assuming when they came up with the \$3 million they knew what it would have been otherwise.

**Chairman Cook** -- About the amendments, I would suggest that we, on page 4, subsection 3, change 1 to 10, so it's \$10 million; and I would suggest that we put Senator Triplett's suggested change on the paragraph 3 on page 5 where we delete taxing districts in which the project is located and just put in, of the state. Committee, I would hope that we could put these amendments on. I don't know where they will be at the end when it's over with

but I think what they bring to this discussion is a discussion that needs to happen and I'd like to see this go over to the House with this discussion.

**Senator Laffen** -- Are we just trying to get Commerce involved or are we trying to give them enough leverage to steer?

**Chairman Cook** -- I'm trying to create a situation where everybody that is impacted has a seat at the table when the negotiating is going on. The county is still going to have to make its decision. It's going to be limited at \$10 million without Commerce's blessing. Hopefully when Commerce gives their blessing, they are giving it with a big picture look.

**Senator Dotzenrod** -- On page 5, 3<sup>rd</sup> paragraph, it starts out, the Department of Commerce may authorize an increase in the maximum tax benefit, does that also then imply that they may not authorize an increase. That is, they would have, at that point, the authority to say "no more" to the local. We are granting that the Department of Commerce the right to exercise control over a municipalities taxing authority.

**Chairman Cook** -- You are right. We are.

**Senator Dotzenrod** -- It does seem like it's a pretty significant change and it's a little hard to know if the criteria that the Commerce Department would use; in a way it almost seems like we are giving them a policy making role. I'm not too comfortable with this sort of approach. The position we are in right now and I know there was some concern with the cost to the state with that Stutsman County project and then there is this \$1 billion project with the plastics and what could happen with state obligations. But the state always has the right to say no. The state can say, you requested this many million. We will give you this much.

**Chairman Cook** -- Senator Dotzenrod, under what circumstances do you think the Department of Commerce would say no?

**Senator Dotzenrod** -- I guess, offhand, I would think the Commerce Department would be on the same page as the local subdivision and say, do what you have to do; this is an important project that has state-wide significance. It will result in more employment, good paying jobs. Do what you need to do.

**Senator Triplett** -- The reason that I like the amendment, if we fix it to say the commerce is looking out for the interests of the state, as a whole, is because I think, having served as a county commissioner for 16 years in my county, I understand that county commissioners are provincial and they are supposed to be. It's not their job to be concerned about whether a particular project is going to drift over and cause impact in the next county. I think your amendment is offering a place at the table really for the people in the next county so it's not so much that we are giving over power to Commerce as it is that we are delegating to Commerce the convening authority to invite folks from the next county in to a public hearing to express their concerns. So this whole thing about Stutsman County/Barnes County that we were discussing last week, it would give Barnes County a place at the table to say, this project is going to impact us negatively and you can't just give away the ship to get them there and then expect us to bear the burdens. That's how I'm seeing it.

**Chairman Cook** -- Senator Triplett and Senator Dotzenrod, that's exactly my intent but back to my question, under what circumstances would Department of Commerce say, no. If I was to answer that question, I'd say the only circumstance in which they would say, no, is circumstances in which everybody agreed that no is the right answer. That the project is coming and the \$10 million that the county is giving for property tax relief is all that is going to be needed because probably something else is put in place. I can't see any other circumstance than that where the Department of Commerce would say no. The project is still coming. They are not going to lose a project.

**Senator Laffen** -- I'm trying to understand the timing of when these decisions might be relayed to a developer who wants to do a big project like that. Let's say that it is a \$5 billion project and the property tax exemptions really in a close range of \$50 million and they need commerce to go beyond the 10 now. Is the city or county who is talking to that big project, are they bringing Commerce in? I assume immediately so that when they put an offer on the table they have already talked to Commerce and got it cleared. So this would not be limiter. Some of the people I heard from said, we are going to be limited now to \$10 million until we can get Commerce to step in and we don't want to be limited at the table. I'm trying to understand the timing of all that.

**Chairman Cook** -- Senator Laffen, if you were building a \$5 or \$4 billion project in the state of North Dakota, do you not think that you would be communicating yourself as the developer to the Department of Commerce, the governor and every local entity?

**Senator Laffen** -- Yeah, I would think I would be, probably first.

**Chairman Cook** -- They are too. They are all being communicated with right now. What's missing is all of them just sitting at a table and having a good discussion on it.

**Senator Triplett** -- Do we have anybody from the tax department here who could answer the question of whether they have that information available where the 99% would be drawn?

**Linda Leadbetter** -- I was just going to respond that we do have a data base but we do not have averages broken down so we would have to gather than information. I will head upstairs and see how quickly I can get it done. Specifically, the question would be?

Senator Triplett -- Relative to the amendment that is out here, where would the top 1% break out? What would be the top 1%? Maybe the question would really be, what would be the guesstimated value of a \$2 billion project?

**Chairman Cook** -- We've got a cap here of \$10 million dollars. What size project would \$10 million affect in property tax relief? Looking at what local governments can give in relief.

**Linda Leadbetter** -- If I could have a copy of the amendments then I can make sure that I am looking to the right information.



**Chairman Cook** -- We are going to set this, and we will come back either this afternoon or tomorrow morning once we get our data, we will finish up on this bill.

# 2015 SENATE STANDING COMMITTEE MINUTES

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

SB2035  
2/23/2015  
Job #24271

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Alice Grove*

## Explanation or reason for introduction of bill/resolution:

Committee work.

## Minutes:

Attachment #1

**Chairman Cook** opened the committee work on SB2035.

You have a set of amendments before you. **(Attachment #1)** We had a little discussion this morning on this topic and my hope was that somebody in the room would be real smart and come up with a right way to do it and we found that person and Justin drafted these amendments and I like them. You can see them on the bottom of page 4, subsection 3. And then you will see at the end of the bill, a new section 4, just requesting a legislative management study of such large projects. We've got to make one change to this, if you will turn to the front page of the amendments, the second line, page 1, line 4, after to insert, it says requiring department of commerce approval, that is an oversight, that should have been changed. What that should read, instead of requiring department of commerce approval, it should read requirements of a city or county granting a property tax exemption and. Just to clean up the title.

**Senator Unruh** -- I would move amendments to SB2035, 15.0240.02003 with the language changed for the page 1, line 4, as previously stated.

**Seconded by Senator Laffen.**

**Senator Dotzenrod** -- Looking at these amendments. If you look at page 1, section 1, the title and the paragraphs are all overstruck and that overstruck continues on page 2 and then there's new language on page 3 that looks like the same thing but the date is taken out.

**Chairman Cook** -- What's the date?

**Senator Dotzenrod** -- Effective, beginning after December 31, 2014.

**Chairman Cook** -- It's no longer needed. It's just clean-up.

**Senator Dotzenrod** -- In the title, the part that is overstruck, there's no overstrike over 40-57.1-03, so when we pick up again on page 3, all that language, including the title, is the new 40-57.1-03? Am I reading that right?

**Chairman Cook** -- Yes, and it's just policy that is in place today.

**Senator Dotzenrod** -- Is the text that is on page 3 essentially a repeat of existing law or is that some new language that we are putting in? It's new?

**Chairman Cook** -- Yes.

**Senator Triplett** -- I don't have any objections to the language that you've put now in subsection 3 on page 4, but it doesn't really get to the notion that we were talking about this morning of impact being to taxing districts other than those where the project is going to be located. It says a hearing must be provided to each affected taxing district and any existing business within the municipality for which the potential project would be a competitor. It's really just taking a project within a county and then elevating the hearing to the department of commerce level so it doesn't get that engagement that you were looking for. It doesn't seem like it gets the engagement of nearby counties or the regional aspects that we were talking about this morning.

**Chairman Cook** -- I thought it.

**Senator Triplett** -- Tell me how.

**Chairman Cook** -- ...provided to each affected taxing district. I read that and assumed that would, in the case of the fertilizer plant in Stutsman County, would have affected Barnes County.

**Senator Triplett** -- I guess I was reading both of them as being modified by the phrase, within the municipality for which the potential project would be a competitor. Maybe that is not the correct way of reading it.

**Chairman Cook** -- You may be right.

**Senator Triplett** -- It may be that that modifying clause only relates to the thing directly in front of it, and then it is okay.

**Chairman Cook** -- Senator Triplett, I think that as this bill moves through that section is going to get a little bit more wordsmithing. I'm comfortable with sending it out as it is.

**Senator Dotzenrod** -- Along that same thinking, you could say, any existing business within or adjoining, but it may not be a critical part of it.

**Chairman Cook** -- All in favor of these amendments, say aye. Voice vote aye unanimous. We have before us, SB2035, as amended.

**Senator Unruh** -- I would move a do pass on SB2035, as amended.

**Seconded by Senator Bekkedahl.**

**Senator Dotzenrod** -- This bill has been talked about within the context of 2 big projects: the fertilizer plant at Spiritwood and then this other potential project of the plastics. In the case of Spiritwood where they have already granted the exemption, does this bill have any effect?

**Chairman Cook** -- I'd say that it doesn't.

**Senator Dotzenrod** -- That's what I would think. That it doesn't.

**Chairman Cook** -- I think the project at Spiritwood is contingent upon some things happening yet.

Roll call vote on SB2035, as amended. 7-0-0.

**Carrier: Senator Laffen**



February 23, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2035

Page 1, line 3, after "reenact" insert "section 40-57.1-03 and"

Page 1, line 4, after "to" insert "requiring department of commerce approval for certain property tax benefits and"

Page 1, line 5, after the semicolon insert "to provide for a legislative management study;"

Page 1, line 5, after "for" insert "an effective date and"

Page 1, after line 7, insert:

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

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

- ~~1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.~~
- ~~2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.~~
- ~~3. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for~~

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

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

- ~~e. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or~~
  - ~~d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.~~
- ~~6. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.~~

**~~(Effective for taxable years beginning after December 31, 2014)~~**

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

1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations. Before a municipality may grant a partial or complete exemption from ad valorem taxation under this section:
  - a. The governing body of the municipality must have received the certification of the department of commerce division of economic development and finance that the project is a primary sector business, as defined in subsection 3 of section 40-57.1-02; or
  - b. The city council or commission, if the project is proposed to be located within the boundaries of a city of fewer than forty thousand population, or the board of county commissioners, of a county of fewer than forty thousand population and if the project is proposed to be located in the county but outside the corporate limits of any city, may grant a partial or complete exemption from ad valorem taxation for a project operating in the retail sector if that governing body has obtained the approval of exemption of property under this subdivision from a majority of the qualified electors of the city or county voting on the question at a city or county election held in conjunction with a statewide general election and if that governing body has established by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant a partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. The ballot for elector approval

of exemption of property under this subdivision must present the question at the election for a yes or no vote on the question:

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

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

- (1) Evaluation of the potential positive or adverse consequences for existing retail sector businesses in the municipality from granting the exemption;
  - (2) Evaluation of the short-term and long-term effects for other property taxpayers in the municipality from granting the exemption;
  - (3) A written agreement with the project operator, including performance requirements for which the exemption may be terminated by the governing body of the municipality if those requirements are not met; and
  - (4) Evaluation of whether the project operator would locate the project within the municipality without the exemption.
2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.
3. Before a governing body may grant a partial or complete exemption from ad valorem taxation or the option to make payments in lieu of ad valorem taxes under this chapter, the governing body shall consult with the department of commerce. If the department of commerce determines that the total project costs are estimated to exceed one billion dollars, the department of commerce shall conduct a public hearing and notice of that hearing must be provided to each affected taxing district and any existing business within the municipality for which the potential project would be a competitor.
4. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the

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

4-5. Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

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

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

property tax exemption or the option to make payments in lieu of taxes was approved;

- c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or
- d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.

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

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

Page 3, after line 9, insert:

**"SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ECONOMIC DEVELOPMENT IMPACT.** During the 2015-16 interim, the legislative management shall consider studying the impact of large economic development projects on political subdivisions. The study may include a review of the current process for seeking out input from political subdivisions potentially impacted by a large economic development project and any mechanisms in place to address the potential impact. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Page 3, line 10, replace "This" with "Section 1 of this Act is effective for taxable years beginning after December 31, 2014. Sections 2 and 3 of this"

Page 3, line 10, replace "is" with "are"

Page 3, line 11, replace "applies" with "apply"

Renumber accordingly



1 of 6  
TV  
2/23/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2035

Page 1, line 3, after "reenact" insert "section 40-57.1-03 and"

Page 1, line 4, after "to" insert "requirements of a city or county granting a property tax exemption and"

Page 1, line 5, replace "and" with "to provide for a legislative management study; and"

Page 1, after line 7, insert:

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

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

1. ~~After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.~~
2. ~~In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.~~
3. ~~By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of~~



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

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



~~exemption or the option to make payments in lieu of taxes was approved; or~~

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

**(Effective for taxable years beginning after December 31, 2014)**

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

- 1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations. Before a municipality may grant a partial or complete exemption from ad valorem taxation under this section:
  - a. The governing body of the municipality must have received the certification of the department of commerce division of economic development and finance that the project is a primary sector business, as defined in subsection 3 of section 40-57.1-02; or
  - b. The city council or commission, if the project is proposed to be located within the boundaries of a city of fewer than forty thousand population, or the board of county commissioners, of a county of fewer than forty thousand population and if the project is proposed to be located in the county but outside the corporate limits of any city, may grant a partial or complete exemption from ad valorem taxation for a project operating in the retail sector if that governing body has obtained the approval of exemption of property under this subdivision from a majority of the qualified electors of the city or county voting on the question at a city or county election held in conjunction with a statewide general election and if that governing body has established by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant a partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. The ballot for elector approval of exemption of property under this subdivision must present the question at the election for a yes or no vote on the question:

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

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

- (1) Evaluation of the potential positive or adverse consequences for existing retail sector businesses in the municipality from granting the exemption;
  - (2) Evaluation of the short-term and long-term effects for other property taxpayers in the municipality from granting the exemption;
  - (3) A written agreement with the project operator, including performance requirements for which the exemption may be terminated by the governing body of the municipality if those requirements are not met; and
  - (4) Evaluation of whether the project operator would locate the project within the municipality without the exemption.
2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.
3. Before a governing body may grant a partial or complete exemption from ad valorem taxation or the option to make payments in lieu of ad valorem taxes under this chapter, the governing body shall consult with the department of commerce. If the department of commerce determines that the total project costs are estimated to exceed one billion dollars, the department of commerce shall conduct a public hearing and notice of that hearing must be provided to each affected taxing district and any existing business within the municipality for which the potential project would be a competitor.
4. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for



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

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

- c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or
  - d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.
- ~~6.7.~~ During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.
- ~~7.8.~~ A city or county may not supersede or expand the provisions of this section under home rule authority."

Page 3, after line 9, insert:

**"SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ECONOMIC DEVELOPMENT IMPACT.** During the 2015-16 interim, the legislative management shall consider studying the impact of large economic development projects on political subdivisions. The study may include a review of the current process for seeking out input from political subdivisions potentially impacted by a large economic development project and any mechanisms in place to address the potential impact. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Page 3, line 10, replace "This" with "Section 1 of this Act is effective for taxable years beginning after December 31, 2014. Sections 2 and 3 of this"

Page 3, line 10, replace "is" with "are"

Page 3, line 11, replace "applies" with "apply"

Renumber accordingly

Date: 2-23-15Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 2035**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: 15.0240.02003

Recommendation: ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Sen. Unruh Seconded By Sen. Laffen  
voice vote

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 2.23.15Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 2035**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: 15.0240.02004 Title .03000

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
 Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Unruh Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 7 No 0Absent 0Floor Assignment Sen. Laffen

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



REPORT OF STANDING COMMITTEE

SB 2035: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2035 was placed on the Sixth order on the calendar.

Page 1, line 3, after "reenact" insert "section 40-57.1-03 and"

Page 1, line 4, after "to" insert "requirements of a city or county granting a property tax exemption and"

Page 1, line 5, replace "and" with "to provide for a legislative management study; and"

Page 1, after line 7, insert:

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

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

1. ~~After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.~~
2. ~~In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.~~
3. ~~By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution.~~



If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

4. Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.
5. By motion approved by the governing body of the municipality before the beginning of a taxable year for which a property tax exemption or the option to make payments in lieu of taxes under this section previously has been approved by the governing body, a property tax exemption may be revoked or reduced and payments in lieu of taxes may be revoked or increased for that taxable year for reasons specified in a negotiated agreement or if the governing body finds that:
  - a. Information provided by the project operator during the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes has proven to be inaccurate or untrue;
  - b. Use of the property by the project operator does not comply with the reasonable expectations of the governing body at the time the property tax exemption or the option to make payments in lieu of taxes was approved;
  - c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or
  - d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.
6. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each

~~school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.~~

~~(Effective for taxable years beginning after December 31, 2014)~~

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

1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations. Before a municipality may grant a partial or complete exemption from ad valorem taxation under this section:
  - a. The governing body of the municipality must have received the certification of the department of commerce division of economic development and finance that the project is a primary sector business, as defined in subsection 3 of section 40-57.1-02; or
  - b. The city council or commission, if the project is proposed to be located within the boundaries of a city of fewer than forty thousand population, or the board of county commissioners, of a county of fewer than forty thousand population and if the project is proposed to be located in the county but outside the corporate limits of any city, may grant a partial or complete exemption from ad valorem taxation for a project operating in the retail sector if that governing body has obtained the approval of exemption of property under this subdivision from a majority of the qualified electors of the city or county voting on the question at a city or county election held in conjunction with a statewide general election and if that governing body has established by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant a partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. The ballot for elector approval of exemption of property under this subdivision must present the question at the election for a yes or no vote on the question:

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

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

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



- (2) Evaluation of the short-term and long-term effects for other property taxpayers in the municipality from granting the exemption;
  - (3) A written agreement with the project operator, including performance requirements for which the exemption may be terminated by the governing body of the municipality if those requirements are not met; and
  - (4) Evaluation of whether the project operator would locate the project within the municipality without the exemption.
2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.
3. Before a governing body may grant a partial or complete exemption from ad valorem taxation or the option to make payments in lieu of ad valorem taxes under this chapter, the governing body shall consult with the department of commerce. If the department of commerce determines that the total project costs are estimated to exceed one billion dollars, the department of commerce shall conduct a public hearing and notice of that hearing must be provided to each affected taxing district and any existing business within the municipality for which the potential project would be a competitor.
4. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

- 4.5. Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.
- 5.6. By motion approved by the governing body of the municipality before the beginning of a taxable year for which a property tax exemption or the option to make payments in lieu of taxes under this section previously has been approved by the governing body, a property tax exemption may be revoked or reduced and payments in lieu of taxes may be revoked or increased for that taxable year for reasons specified in a negotiated agreement or if the governing body finds that:
- a. Information provided by the project operator during the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes has proven to be inaccurate or untrue;
  - b. Use of the property by the project operator does not comply with the reasonable expectations of the governing body at the time the property tax exemption or the option to make payments in lieu of taxes was approved;
  - c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or
  - d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.
- 6.7. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.
- 7.8. A city or county may not supersede or expand the provisions of this section under home rule authority."

Page 3, after line 9, insert:

**"SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ECONOMIC DEVELOPMENT IMPACT.** During the 2015-16 interim, the legislative management shall consider studying the impact of large economic development projects on

political subdivisions. The study may include a review of the current process for seeking out input from political subdivisions potentially impacted by a large economic development project and any mechanisms in place to address the potential impact. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Page 3, line 10, replace "This" with "Section 1 of this Act is effective for taxable years beginning after December 31, 2014. Sections 2 and 3 of this"

Page 3, line 10, replace "is" with "are"

Page 3, line 11, replace "applies" with "apply"

Renumber accordingly



**2015 HOUSE FINANCE AND TAXATION**

**SB 2035**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2035  
3/9/2015  
24497

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Mary Brucker*

### Explanation or reason for introduction of bill/resolution:

A bill relating to sales tax exemption for tangible personal property used to construct a fertilizer or chemical processing facility; relating to requirements of city or county granting property tax exemption and use tax exemption for tangible personal property used to construct fertilizer or chemical processing facility.

### Minutes:

Attachment #1, 2, 3, 4, 5, 6, 7

**Chairman Headland:** Opened hearing.

**Emily Thompson, Legislative Council:** Introduced bill. This bill pertains to a sales and use tax exemption for tangible personal property used for fertilizer or chemical processing facilities. It also allows governing bodies to grant a property tax exemption for fertilizer or chemical processing facilities. The property tax exemption was not in the bill as originally passed out of the Energy Development Transmission Committee; this was added on as an amendment on the senate side. Section 1 of the bill pertains to property tax exemption. There is no longer effective for tax years prior and before certain dates which has been consolidated all into one section. A municipality has the option to grant a partial or complete exemption from ad valorem taxation and it would now apply to the fertilizer and chemical plants as well. Additional language has been added to section 6 of the bill; the Department of Commerce determines that the total project costs are estimated to exceed \$1 billion then they shall conduct a public hearing and shall provide notice of that hearing to each affected taxing district and any existing businesses within the municipality for which that fertilizer project operator may be a competitor. Section 2 of the bill pertains to the sales and use tax exemptions. It applies to materials used to construct a fertilizer or a chemical processing facility. Section 3 is the addition in the use tax section to reflect that exemption. In section 4 there was a study added for the 2015-16 interim to study the impact of large economic development projects on political subdivisions. This will include a review of the current process for seeking input from political subdivisions that are potentially impacted by these large economic development projects and any mechanisms in place to address this potential impact.

**Chairman Headland:** Do both effective dates mean the same thing?

**Emily Thompson:** One is effective for property taxes and the other is for the sales and use taxes. The property tax section uses the language "taxable years" and sections two and three pertain to a sales and use tax that is taxable events occurring after and that is a retroactive effective date.

**Chairman Headland:** We will take testimony in support of SB 2035.

**Alan Anderson, North Department of Commerce:** Distributed testimony in support. See attachment #1. (Ended testimony at 10:00)

**Jake Hamlin, State Government Affairs Director for CHS:** Distributed testimony in support. See attachment #2.

**Shane Goettle, Badlands NGLs:** Distributed testimony in support. See attachment #3. (Ended testimony at 22:05)

**Chairman Headland:** In the language in section 1 subsection 3 where the Commerce Department is going to be required to hold a meeting because of the size of this project; are you okay with it?

**Shane Goettle:** Absolutely. Those conversations should be taking place anyway. There is no ultimate decision making authority here; it's just a place to air public concerns about the impact of the project. On a project like that you end up doing that anyway at the county level when you're rezoning and seeking your conditional use permit. This puts it in the other arena with the state and helps flush that out and help the state contemplate how it can best help. We're more than willing to participate in that process.

**Representative Kading:** If the sales exemption doesn't go through would this proposed project still be profitable?

**Shane Goettle:** This isn't as much of a go or no go decision in North Dakota as much as it is how we convince the capital markets that we need to raise money. We also need to convince them that North Dakota is the place to do this and we have a good business climate. I think it probably would be profitable without this but we have to track capital to the project and answer that question why North Dakota with all the risks and costs. That's what this is about to us and the signal North Dakota wants to send.

**Representative Steiner:** Does the \$40-60 oil have an impact?

**Shane Goettle:** What's very interesting in this is to take a look at plastics. It hasn't dropped at all. Plastics grow with the economies of the world. The drop in the price of oil is in essence helped us with producers. When you have \$100 oil they are not so concerned with what it can do for their natural gas; it's a problem so just get rid of it. Our model has really introduced a way to add value for the producers and I think we have their attention. We think that with some of the options we've put in the play this could help them with some additional drilling capital.

**Chairman Headland:** A lot of the large projects we've seen require large amounts of water. Will this project require large amounts of water as well?

**Shane Goettle:** This project's water use is for cooling only so a lot of what we bring into the facility can be recycled through. We don't need it for the manufacturing process. This has less a demand for water than a fertilizer facility would.

**Representative Froseth:** On page 4 subsection 1 the sales tax exemption would be for five years and when that sales tax exemption runs out the municipality may grant a property tax exemption from the sixth year through the tenth year. Those two exemptions wouldn't run in unison with each other; they'd run at separate time periods, correct?

**Shane Goettle:** This is the way it currently works now. Our political subs can offer a five year property tax exemption. There is authority to extend that. There is also the ability to negotiate a payment in lieu of taxes or a pilot for the project. Nothing has changed there. The only difference is that if you have a project more than \$1 billion the Commerce Department has to bring together all the players for this hearing.

**Representative Froseth:** A local municipality can assess a partial property tax on the project as the value goes forward, correct?

**Shane Goettle:** That's exactly right.

**Laney Herauf, Greater North Dakota Chamber:** Distributed testimony in support. See attachment #4. Also distributed testimony from various businesses. See attachment #5.

**Kelvin Hullet, North Dakota Chamber of Commerce:** I just want to ask for passage of this bill. I think one of the important things that Mr. Goettle talked about was the signal we are sending to the market. The projects we are working on are so dramatically different with the size and the scope of anything we have done before. As we look at these sorts of bills and sending a signal to the marketplace it is imperative we make sure that as we look at diversifying our economy we keep moving forward.

**Kayla Pulvermacre, North Dakota Farmers Union:** We stand in support of SB 2035. The project in Spiritwood is a project we've been involved in since its inception and we're excited about the opportunities it will bring to North Dakota.

**Connie Ova, Jamestown/Stutsman Development Corporation and Economic Development Association of North Dakota:** Distributed testimony in support. See attachment #6.

**Representative Froseth:** Has your organization approached the county commissioners about a property tax exemption?

**Connie Ova:** The county commissioners have already offered a property tax exemption and that's in place. The Jamestown/Stutsman Development Corporation is providing support to that. We are involved in a 20 year incentive to go towards that property tax exemption.

**Representative Steiner:** Are you going to need more state support if both plants open?

**Connie Ova:** We have worked with the HIF fund; we have a couple projects that are moving forward in Jamestown. Our housing shortage is very real so we will need much more support for housing as these two projects move forward.

**Randy Schneider, North Dakota Ethanol Producers Association:** Distributed testimony in support. See attachment #7.

**Chairman Headland:** Any further testimony in support? Is there any opposition? Are there any questions for the tax department? Seeing none we will close the hearing on SB 2035.

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2035  
3/24/2015  
25359

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A bill relating to sales tax exemption for tangible personal property used to construct a fertilizer or chemical processing facility; relating to requirements of city or county granting property tax exemption and use tax exemption for tangible personal property used to construct fertilizer or chemical processing facility.

### Minutes:

Attachment #1, 2

**Donnita Wald, Legislative Council:** Distributed proposed amendment 15.0240.03000 and marked up bill; see attachment #1 and 2. Explained attached amendment.

**Chairman Headland:** Is there a certain time this permit is good for?

**Donnita Wald:** I don't know that. I would assume the permit is good for the time the department of health goes out and discovers they are not meeting their air quality standards that are set forth in that permit.

**Chairman Headland:** If you fall under this parameter and chose not to build you could come back in 20 years and take advantage of it if you plan to build at that time. Could we add language saying that construction has to begin within a certain time frame?

**Donnita Wald:** We can do that. Do you want me to contact the people we were working on the amendment with to see what that would be? We thought we would put in a drop dead date for construction.

**Chairman Headland:** We could allow for five years and if neither project has started they would need to revisit.

**Donnita Wald:** We could do that.

**Chairman Headland:** Are there provisions in the permit that would require construction in a time frame?

**Donnita Wald:** We can find that out.



**Representative Schneider:** On line 16 with the exemption qualifications it appears that any entity can receive this exemption under the terms of a where it is only required that they may be owned directly or indirectly by the fertilizer or chemical processing facility or by an unrelated third party. Do we know who is involved in it or how many entities?

**Chairman Headland:** It's been brought to my attention that one of the plants is going to demand such an extreme amount of power to operate that they have not determined whether they are going to have to build their own generation or if private industry would build that generation. I think they are trying to cover themselves. The way it is written it would cover somebody else as well, would it not?

**Donnita Wald:** That is correct.

**Chairman Headland:** Don't we already have a current exemption for natural gas generation?

**Donnita Wald:** We do but I believe that is at the well site. That exemption would not apply to this.

**Chairman Headland:** I need to have some discussions with the people involved.

**Representative Hatlestad:** What does the cap have to do with the phased in construction project where we build one building today, build another one two years down the road and two years another and so on?

**Chairman Headland:** It's my understanding that the total scope of the project is going to be spelled out what is in that permit and that's all we're going to allow to be exempt if this provision were to pass. If they decide to add another building at another stage they are going to have to come back and ask for expansion. This bill as amended will not allow for expansion.

**Donnita Wald:** The permit does expire if construction is not commenced within 18 months after receipt of the permit. It says if construction is discontinued for a period of 18 months or more or if construction is not completed within a reasonable time.

**Chairman Headland:** That's a certain area of century code?

**Donnita Wald:** Yes.

**Chairman Headland:** Can we write that in to the bill?

**Donnita Wald:** I don't know how we would interpret if construction is not completed within a reasonable time or if you just wanted it to say 18 months after receipt of the permit.

**Chairman Headland:** I'm more concerned with the start rather than the completion.

**Donnita Wald:** We will use this type of language but we won't reference it. The department of health can extend that 18 month period.

**Chairman Headland:** For the initial start?

**Donnita Wald:** Yes. They can request an extension at the request of the operator. They can't if it's a phased in construction project because each phase must commence construction within 18 months of the projected and approved commencement date.

**Chairman Headland:** I don't necessarily want that.

**Donnita Wald:** We can make it any time frame you want.

**Chairman Headland:** Let me have that discussion.

**Representative Klein:** The same thing is going on at the power plant where the company that does the ethanol is completely separated from Great River Energy.

**Chairman Headland:** But do we want the exemption to extend to them?

**Representative Schneider:** On page 2 line 6, what is included in this? How broad is this exemption? It includes fertilizer or any kind of chemical and crude oil components.

**Justin Dever, Department of Commerce:** Yes, it would include plastics and that is the intent of this. There is a project that has been announced, Badland NGL, to do just that.

**Representative Schneider:** Are there other things we are looking at? What else does the commerce department think might fit into this since crude oil has a lot of products derived from it?

**Justin Dever:** In general this is attempting to add value to our energy resources. The projects that have been announced to date include the Badland NGL, fertilizer plants, and maybe some additional ones. A study was conducted to look at these opportunities. There are different products out there that North Dakota could have an advantage with and that is what we're looking at.

**Representative Schneider:** Could we get further help on a fiscal note?

**Justin Dever:** The reason it would have a large fiscal impact is because there are large projects coming in. We feel there would be a net positive return on investment for those projects.

**Chairman Headland:** It would really be undeterminable because you wouldn't have any idea who would build. There are three plants today that we're talking about and the possibility for spin off. Is this wide open to any size?

**Justin Dever:** This is sales tax exemptions, not credits. There are different sizes of air quality permits. To be competitive there is economies of scale involved here. I don't know that a small enterprise could theoretically work.

**Chairman Headland:** Donnita, is that something we can find out?

**Donnita Wald:** We can find that out.

**Representative Mitskog:** The fiscal impact of this project is the entire \$4 billion. Is that what we're looking at exempting for the sales tax?

**Justin Dever:** There is already a sales tax exemption for manufacturing that these projects would already qualify for. That would exempt any of the equipment. This bill provides for a sales tax exemption that is broader than that. The facility would include the construction materials but wouldn't include the labor costs or engineering.

**Representative Mitskog:** Can you reference any projects that would qualify for sales tax exemptions, past or present?

**Justin Dever:** These are really the first projects of this scope. I suppose some of the closest would be the ethanol plants which are already exempted under the value added agriculture exemption. I don't have that information in front of me.

**Representative Mitskog:** In your opinion, do you think the language in here is tight enough that we're not opening the door to a lot of other projects?

**Justin Dever:** The proposed amendments would provide further limits to this. There would be limits to this that we don't have on other sales tax exemptions. As it was proposed we were hoping it would be a broader application because we think this would provide a lot of economic development to the state.

**Representative Schneider:** Can we put a sunset on something like this so we can see how broad it continues to be in five or six years?

**Chairman Headland:** We're cutting new ground here and I think the only reason we are looking at a sunset is that some believe we should have required a sunset provision on prior sales tax exemptions. I think it's to try and have a provision on the books that if nothing gets built we don't have this outstanding exemption that is out there for anybody to discover.

**Representative Schneider:** I'm thinking of a sunset regardless of the construction so that we can look at it again.

**Chairman Headland:** That's a question I would like to ask the industry leaders that are supporting this particular bill.

**Representative Steiner:** They are talking about taking the gas at a rail terminal and compressing it so the oil is conditioned as it leaves for other markets across the country.

They believe it would be less flammable. Would they be included in this? Are you aware of these smaller businesses that are looking to come in the next year or two?

**Justin Dever:** I don't believe they would qualify under this exemption. I'm wondering if they would qualify under the exemption that was approved last session, the liquefied natural gas exemption.

**Representative Steiner:** This says natural gas liquids. Are there companies out there that are working on similar projects that are a much larger scope than this one plant we've discussed?

**Justin Dever:** I'm not sure what you described would fit the definition. On page 2 of this it talks about a processing plant that produces for retail or wholesale of fertilizer, chemical, or chemical derivative. We don't believe that gas processing would qualify under this but there are other exemptions they might qualify under.

**Representative Mitskog:** Are there other programs with sunsets that would be appropriate in this exemption?

**Justin Dever:** The tax incentives for economic development purposes will be reviewed with the passage of SB 2057 so that will occur at least once every six years. We helped draft the bill without the sunset and we were comfortable without the sunset knowing full well the legislature can review these every two years as they see fit.

**Donnita Wald:** The list is very long on who is required to get an air quality permit. Any processing that emits different gases would require a permit.

**Chairman Headland:** Any size project that is going to process is going to need an air quality permit?

**Donnita Wald:** I go back to the definition of chemical or fertilizer plant in this bill and it's a limiting factor in this.

**Chairman Headland:** Was the language in subsection 5, the definition of the facility of a processing plant, crafted or changed in the senate from what was the initial draft of the bill?

**Donnita Wald:** No. Everything in black is what the senate had and is still in the bill. The language in red and green is the new language of what the amendment does.

**Chairman Headland:** That was new language crafted in the initial bill?

**Donnita Wald:** Yes. There are a lot of exemptions we have in both the income tax and the sales tax where in the statute itself the parameters are set. It is a sunset, it's just within the text of the statute and that's what this is doing too.

**Chairman Headland:** It would be my hope that we can address this bill tomorrow. I think the amendment may need some fine tuning yet.

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2035  
3/25/2015  
25410

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Mary Brucher*

### Explanation or reason for introduction of bill/resolution:

A bill relating to sales tax exemption for tangible personal property used to construct a fertilizer or chemical processing facility; relating to requirements of city or county granting property tax exemption and use tax exemption for tangible personal property used to construct fertilizer or chemical processing facility.

### Minutes:

Attachments #1, 2

**Chairman Headland:** Donnita has worked further on the amendment we discussed yesterday. I'll let her explain it.

**Donnita Wald, General Counsel for the Office of State Tax Commissioner:** Distributed proposed amendments and marked up bill 15.0240.03000 and explained; see attachments #1 and 2. We pushed that date back from December 31, 2016 to June 30, 2017 to get the permit or to get a notice from the Department of Health that the air quality permit application is complete. We added the language on lines 24 and 25 saying the denial, expiration, or revocation of a permit terminates the exemption. I believe that addresses what the committee was discussing and alleviates those concerns. I've discussed this with Shane and Cory and they believe this addresses those issues.

**Representative Hatlestad:** Do you say the permit is good for 18 months?

**Donnita Wald:** Yes.

**Representative Hatlestad:** So in 18 months the exemption is gone?

**Donnita Wald:** Yes. It expires if they haven't commenced construction. All of this incorporates without putting 18 months in the statute. If the Department of Health takes action that terminates it or denies it or it expires under their rules there is no exemption.

**Representative Hatlestad:** If you're building the permit will not expire in 18 months?

**Donnita Wald:** That is correct.



**Chairman Headland:** We have the amendment dated March 25, 2015 before us.

**Representative Klein:** Made a motion to adopt the amendment 15.0240.03000 dated March 25, 2015.

**Vice Chairman Owens:** Seconded.

**Voice vote:** Motion carried.

**Representative Klein:** Made a motion for a do pass as amended.

**Vice Chairman Owens:** Seconded.

**Representative Steiner:** What was the reason for adding the \$100,000 from the oil and gas research fund in the study?

**Chairman Headland:** It's because there is concern if there is adequate supply of certain products for these plants. Mr. Ness asked for it.

**Roll call vote:** 13 yes    1 no    0 absent

**Motion carries for a do pass as amended.**

**Vice Chairman Owens will carry this bill.**

March 25, 2015

CA  
3/25/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2035

Page 1, line 7, replace "a" with "studies by the"

Page 1, line 7, replace "study" with "and industrial commission"

Page 8, line 18, remove "or expand"

Page 8, line 19, after "state" insert ", and any component integral to the fertilizer or chemical processing plant."

Page 8, line 22, remove "Tangible personal property used to replace an existing facility"

Page 8, remove line 23

Page 8, line 24, replace "replacement creates an expansion of the facility." with "The exemption provided in this section applies to all phases of construction under the permit or application for permit required by subsection 2. An integral component to the fertilizer or chemical processing plant:

- a. May be owned directly or indirectly by the fertilizer or chemical processing facility, or by an unrelated third party;
  - b. Must be located at the facility site; and
  - c. Must be necessary for the plant's processing of fertilizer or chemicals.
- 2. On or before June 30, 2017, the owner of the fertilizer or chemical processing plant must receive from the department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section."

Page 8, line 25, replace "2." with "3."

Page 8, line 27, remove "or expand"

Page 9, line 1, replace "3." with "4."

Page 9, line 8, replace "4." with "5."

Page 10, line 7, remove "or expand"

Page 10, line 9, replace "1" with "2"

Page 10, after line 17, insert:

**"SECTION 5. OIL AND GAS RESEARCH - NATURAL GAS PRODUCTION STUDY.** The industrial commission may use the sum of one hundred thousand dollars from the oil and gas research fund, or so much of the amount as may be necessary, pursuant to its continuing appropriation under section 57-51.1-07.3 for the purpose of contracting for an independent, non-matching natural gas production study."

Re-number accordingly

Date: 3-25-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2035

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15. 0240.03000 Dated March 25, 2015

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Klein Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Voie vote = Motion carries.

Date: 3-25-15  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2035

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: March 25, 2015 amendments

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Klein Seconded By Rep Owens

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓	✓			
REP TROTTIER	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Owens

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



**REPORT OF STANDING COMMITTEE**

**SB 2035, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2035 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "a" with "studies by the"

Page 1, line 7, replace "study" with "and industrial commission"

Page 8, line 18, remove "or expand"

Page 8, line 19, after "state" insert ", and any component integral to the fertilizer or chemical processing plant."

Page 8, line 22, remove "Tangible personal property used to replace an existing facility"

Page 8, remove line 23

Page 8, line 24, replace "replacement creates an expansion of the facility." with "The exemption provided in this section applies to all phases of construction under the permit or application for permit required by subsection 2. An integral component to the fertilizer or chemical processing plant:

- a. May be owned directly or indirectly by the fertilizer or chemical processing facility, or by an unrelated third party;
  - b. Must be located at the facility site; and
  - c. Must be necessary for the plant's processing of fertilizer or chemicals.
2. On or before June 30, 2017, the owner of the fertilizer or chemical processing plant must receive from the department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section."

Page 8, line 25, replace "2." with "3."

Page 8, line 27, remove "or expand"

Page 9, line 1, replace "3." with "4."

Page 9, line 8, replace "4." with "5."

Page 10, line 7, remove "or expand"

Page 10, line 9, replace "1" with "2"

Page 10, after line 17, insert:

**"SECTION 5. OIL AND GAS RESEARCH - NATURAL GAS PRODUCTION STUDY.**  
The industrial commission may use the sum of one hundred thousand dollars from the oil and gas research fund, or so much of the amount as may be necessary, pursuant to its continuing appropriation under section 57-51.1-07.3 for the purpose of contracting for an independent, non-matching natural gas production study."

Renumber accordingly

**2015 CONFERENCE COMMITTEE**

**SB 2035**

# 2015 SENATE STANDING COMMITTEE MINUTES

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

SB2035  
4/6/2015  
Job #25849

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

### Explanation or reason for introduction of bill/resolution:

Conference Committee

### Minutes:

Chairman Laffen called the conference committee on SB2035 to order. Senators Laffen, Unruh & Dotzenrod; Rep. Headland, Owens & Haak all present.

**Sen. Laffen** -- Let's start by having you guys explain the changes that you made.

**Rep. Headland** -- The changes to 2035 that were made in the House are reflective of our desire to have some sort of sunset on the bill. So the language that we came up with that everyone seemed to agree to was for at the time when the air quality permit was deemed complete that would be enough for the company to take that certificate or letter to the tax commissioner and then the tax commissioner would approve the exemption. We also added a study of natural gas production because I think there is some question as to whether or not there is enough available ethyl for these projects, collectively. We thought it was important to study that. That is the change that the House made.

**Sen. Laffen** -- And the rest of the language is clean-up?

**Rep. Headland** -- That is correct. I think that is just clarifying. There may be pieces that may be owned by third parties. I think that is all undetermined. But if it is all part of the project and would be part of the air quality permit then they could be an unrelated business or party.

**Sen. Laffen** -- I haven't talked to my side on this issue at all but I can speak for myself, I have no angst with the extra study piece at all. I am a little nervous about the sunset being so quick in that these are big projects and I want to make sure that this is long enough so that the people who are putting them together have some assurance that the sales tax exemption will be there when they get through all of this.

**Sen. Unruh** -- I have similar concerns, maybe for a bit different reason, I am just not convinced that the sunset date should be contingent upon receiving the air quality permit.

I've gone after those myself before and it can be very interesting trying to obtain those and I know the companies that are affected by this are in the process of obtaining those. My question was there anything else that the committee considered as a contingency for tripping that sunset date? Was there anything else looked at?

**Rep. Headland** -- We looked at a solid date, drop dead date, and with the players involved and we know about the plants that we are addressing in this particular bill, currently, it was indicated to us that 2 of them have already received approval of the air quality permit and the other one thought there would be absolutely no reason they wouldn't get approval. The example they used was if it was located next to the refinery out here, the air quality would be better after it went through whatever process at the plant than the air would be going in. They were agreeable with the language. We understand that we may be putting at risk some possible new discussions but we felt that the timeframe, between now and next legislative session, is so short that if there were any new discussions out there we would be aware of them and that, if we weren't aware of them, the 2 year timeframe would certainly give us time and opportunity to come back next session and address it then. (meter 6:07-6:30)

**Sen. Unruh** -- I can't say that I necessarily disagree with their being some type of end date on this but would the committee be open to looking at an alternative way of doing that? That is something that I would like to investigate.

**Rep. Headland** -- From my perspective, I am willing to look at anything. If there is a way to make this more palatable for everyone, I am certainly willing to look at anything.

**Sen. Unruh** -- Subsection h, under section 3, you took out the word, or expand, after the word construct, I'm just wondering if we could get an explanation on that as well.

**Sen. Laffen** -- I think that is throughout the bill, you took out the, and expand, component. Someone want to comment on what the thoughts were?

**Rep. Owens** -- In the discussion we talked about there was a lot of angst about, well here we are doing another one and now all these companies will expand. What about the people here expanding? This is supposed to be for new jobs, new facilities, new manufacturing, new chemical plants, so the committee felt like we should take expand out and narrow focus it on new people coming in. That is also why they wanted to shorten the time up.

**Rep. Headland** -- I'm not sure that I remember it that way. Not sure of the rational for doing it that way.

**Sen. Laffen** -- I'm good with removing the expansions.

**Sen. Dotzenrod** -- The only reason I can think of to be concerned about the expand is that sometime you will hear this, a tax break, a 5 year property tax or some other sort of tax incentive is offered to a hardware store or a small manufacturer and it is competing against another business downtown. One got the break and another one didn't. There sometimes is a question of are we providing breaks and if you had a company that wanted to get into



some of this and expand an operation they have, they would feel left out. Are you going to have a situation where a new company gets an advantage over an existing company? (meter 10:55-11:43)

**Rep. Headland** -- I think our reason to take expand out of the language is because we have language in here now that the exemption is going to be provided on the air quality permit for what is in that permit only. In the future, if they wish to expand beyond what they have stated in the air quality permit, I think we thought that they should come back and ask for further exemption. We were trying to limit it to the projects as they were designed and not to have a never-ending sales tax exemption for a particular plant.

**Sen. Laffen** -- I am still just a little nervous about the sunset. Would it be okay if I brought up commerce and just asked their thoughts on sunset? Alan, could you talk about the sunset, does it cause any issues out there that you would see?

**Alan Anderson, Commerce Department** -- First off, thank you for all your work on this bill. It is extremely important and it is critical when you start talking about the largest investments ever in North Dakota. We are talking about \$3 billion, \$4 billion facilities. And those are covered in the bill. The problem that I would have with the exemption is that it really keeps us from working additional deals down the road. For example, the CHS project; that one we have been working on for 2 ½ years already. Companies will come in and they will look at it and their biggest challenge, always, is to get the financing. They look on a long-term horizon so when you say sunset in the language, then they automatically just kind of put that to the side because there is not a guarantee then and there never is but they think that there's a different plan maybe for that particular exemption. It's much better with the request to do a look-back on all of our incentives. With having that look-back, it will force us to always update and bring back the information to all of you to see is, it really working in the way that you thought. (meter 15:00-15:22)

**Rep. Headland** -- Mr. Anderson, doesn't the uncertainty, when you are talking about discussions with other companies, already exist with the passage of 2057 because you are going to have to explain to them that every exemption, including what we are discussing, is going to be looked at by an interim committee with the possibility of making changes? I don't see how our amendment is going to change what we've already passed into law.

**Alan Anderson** -- The difference is that it's a message that you are sending. Companies know that. For example, when Williston got themselves in a little bit of a challenge with regards to their financing on long-term, it had to do with the loan agency, the bonding agencies, looking at the sunset that was triggered off of the last improvement on the formula change. In reality it's more than likely going to change but it may change to the better. (meter 16:54-17:17)

**Sen. Laffen** -- The amendment that you made is intended to really limit this exemption to the few that are being looked at right now? We must know who they are. They must be in process? Grand Forks, Spiritwood, and the plastics plant, are those the three?

**Rep. Headland** -- Yeah, I think you are right in your assumption. I don't know if a plan could be put forward that quickly. We thought it was important to limit the state's exposure.

Can the state handle 15 of these plants coming on line at one time? (meter 18:14-18:27) I think we are willing to take a look at something other than what we've got in the form of the sunset, but we would have to see what that is.

**Sen. Laffen** -- Do you just want to come back another day and think about it on both sides?

**Sen. Dotzenrod** -- My sense of the problem with the June, 30, 2017, is that we adjourn here and 6 months or a year later the people at commerce run across a project that they would like to see come here and they start working with them and they say we really can't do anything because we've got 8 or 12 months until June 30. That doesn't give you enough time to get that permit thing and we're not sure what the next legislature will do. It clouds the picture for someone who comes up who is not on list right now. I'm thinking of 4 or 6 years out, or something like that. It puts an end date in there for the legislature and it gives them some control. (meter 19:45-20:18)

**Rep. Headland** -- I can't disagree with what you've said; however, the end date, June 30 gets us through another legislative session before that date occurs. We will be back and able to address it. It's important that we get these plants that we are discussing here built. Beyond that, there is a question whether there is enough capability to even provide gas to any of these plants. The study will help us in that decision making process. I don't think we are jeopardizing future projects with this language.

**Rep. Haak** -- When these potential projects are looking at a state to come in, you are saying that they don't like any kind of dead date. You are saying that you would like to see this extended out forever, or until...

**Alan Anderson** -- Anytime that you put that end date, that sunset portion, it sends that message that, well, it's just a brief little moment for the incentive and maybe it won't continue again. Whereas if we continue on with reevaluating, that can change but it is signaling the decision makers on those projects.

**Rep. Haak** -- What does brief mean to a company looking to invest?

**Alan Anderson** -- It depends on the size of the investment. My background was oil and gas and refining, brief often was, if you were going to invest and I never dealt with a couple billion dollar project, then you are looking at least 20-30 year window. If you are doing something for a couple million dollars, you are probably only looking at it on a 2-5 year standpoint.

**Sen. Laffen** -- I would be more comfortable with a 2019 date only that these are such big projects, I'm nervous that in a 2 year window most people would look at this as a \$4 billion project and say I can't get that done in a 2 year window but if I had a 4 year certainty it would give a bit more security.

**Rep. Headland** -- Are you talking about the date that we have in our version?

**Sen. Laffen** -- Yes, in your version.

**Sen. Unruh** -- I would agree with that, that we will be back before that 2017 date, but I would also argue Mr. Anderson's point that it creates a level of uncertainty for any new project that comes in. They will just have to postpone any plans to see if we extend that date next session. I am uncomfortable with that 2017 date because it adds that layer of uncertainty to any new projects coming forward.

**Rep. Headland** -- I don't mean to go back and forth on this, but we've got 3 plants that we are talking about here that went ahead without any of this stuff. The fact that we are extending it by removing a sunset for everybody, it may change the game. It may not. I don't think that we can make the argument that we are completely creating an exasperating job for commerce by having this sunset on it.

**Sen. Dotzenrod** -- This is an interesting concept that we offer an incentive for a project but we are not really thinking that we want to keep that offer out there for the long-term. I had not heard that that you need to think, do we have the natural gas available. (meter 25:30-26:53)

**Rep. Owens** -- We actually have done it on a smaller scale in another area before and it was beautiful the way it worked, the incentive, because it seems logical that government would kick-start something but not support it for the rest of its life. In 2005, we had 5 E85 pumps in the state and what we did was eliminated the gas tax on the E85 gasoline for the first million gallons and we did an incentive to put in an E85 tank and it expired. And, now how many places have the E85? I'd dare you to find a gas station that doesn't. It kick-started that program around the state and we had it in for a little while and we had a sunset and it went away. We've done it before. It can work. The question here is the size of the investment and what is that timeframe that we need to consider; and whether or not it is for new industry or existing industry or both?

**Sen. Laffen** -- Any other thoughts? We will think about it and adjourn.

# 2015 SENATE STANDING COMMITTEE MINUTES

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

SB2035  
4/7/2015  
Job #25886

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Alice Grove*

### Explanation or reason for introduction of bill/resolution:

Conference Committee

### Minutes:

Chairman Laffen opened the conference committee work on SB2035. Senators Laffen, Unruh & Dotzenrod; Representatives Headland, Owens & Haak all present.

**Sen. Laffen** -- We left this and we are down to one issue on this bill and that is the sunset. The discussion from our side, the sunset makes us nervous in that we are trying to create an incentive and then we put it in there that it is only good for 2 years. My nervousness comes just in the next company, somebody that we don't yet know, would look at this and say, I can't get a project of this size done in 2 years, and not that these tax incentives are always the make or break deal, but it is a big part of the formula. I think we left wondering if there was another way to structure that. Any thoughts?

**Rep. Headland** -- I think we are open to looking at an alternative but, frankly, I think we think that the way we have drafted the amendment, the projects we are talking about, are going to be able to move forward and that we will be back in 2 years, if another project comes along, and we will be able to look at the incentive, again, if need be and make changes if that is the case. We still feel that the sunset is important to us in the House.

**Sen. Laffen** -- Please explain why you think we need a sunset at all? As I look at the bill, it is an incentive for these kinds of companies to come. In my mind, the more the merrier. They bring jobs. That is why we are trying to do it. Why have a sunset at all?

**Rep. Headland** -- I think we are trying to learn from past experiences, when we've allowed incentives to go on into perpetuity, we've always found that there is a point where you need to address what's on the books. We are just trying to not add to that future problem.

**Sen. Laffen** -- We could come back in 2 years and get rid of the disincentive. The only difference in my mind is that one of them doesn't have that sort of, in your face, that this may not be there when you get to the end.



**Rep. Headland** -- I look at another bill that we've dealt with, it's an incentive that we provided last session for automation for primary sector manufacturing. We had a sunset on that and I don't think that there was anything, for one thing, we found out that the money got used and I think it is easier to come back and ask to remove the sunset than it is to come back and say, you know what the incentive is out there and now we are going to take it away. We are looking forward and I think we are trying to position ourselves so we can find out if the incentive is effective and, if it's not, it's easier to just let the sunset move forward than it is to try to come back and put a sunset on an existing exemption.

**Rep. Owens** -- What I've noticed, in the time that I've been here, and I've been on finance and taxation the whole time I've been in the House is that once we put it on without a sunset it becomes forever and ever and it becomes expected. And then let's ask for this and let's ask for that. If it has a sunset, at least there is another discussion about it. I know that we've got the review and it's going to be a wonderful thing. (meter 5:10-6:35)

**Sen. Laffen** -- I don't think it is contingent on when you start construction at all, you need the air quality permit within that 2 year window and then you would qualify.

**Rep. Owens** -- Even after the sunset? That was my point. The sales tax exemption would still go on for a while. The key is just acquiring that initial permit. And so, see, the sunset is really about the sunset of acquiring the permit for the catalyst to activate the sales tax exemption, not construction completion.

**Sen. Laffen** -- Which, granted, does make it a little easier than trying to get the whole project pulled together and getting it permitted in that timeframe.

**Sen. Unruh** -- I agree with a lot of the things that Rep. Owens said. A lot of the time here, in finance and taxation, we address these exemptions or incentives with either a cap on the total amount that qualifies or we put a sunset on it, or we just let it go into perpetuity. If our thought process is that if there is somebody that comes in, we will just change it next session, I feel that it would be more appropriate for us to just allow for that to happen now and provide a little bit of certainty for those projects that are taking a look at our state and not hold them up any further by having to wait until we pass something to take something out of code next session. I think this is a really great incentive and I think we could take care of the evaluation part of it and see whether or not it is working with the legislation that we've been talking about. I agree that we need to be taking a look at these things. We need to make sure that things aren't in code in perpetuity. I feel that we could take the sunset language out but still, in effect, have a sunset due to the 6 year evaluation.

**Rep. Haak** -- There is really no guarantee because every time we meet as a legislature you can reevaluate the tax exemptions and we can either take them away or add more of them.

**Sen. Dotzenrod** -- When I was considering this in our committee environment and we were looking at it the first time, one of the thoughts I had is not just the next 2 years or 4 years but 10-20 years out. Can we envision a set of circumstances where we would have a plant that would fit the kind of definitions that are in this bill that was looking at North Dakota where we would say that we really don't want that plant here? I think, if that's the case, then I think the sunset makes sense. But if we are going to be competing with states

around us for a fairly extended period of time for the kinds of things that these companies are doing, it seems pretty clear we are going to have to make some offers, some concessions, get into the business of competing. I don't know if there is going to be another plant of any significant size built without some property tax concessions made locally, some package that the state can put together to try to make it attractive to get that plant to come here. This sales tax is one of those things where you put \$100 in at the outset expecting to get \$1,000 over the next period of years. (meter 11:53-14:03)

**Sen. Laffen** -- My thoughts on your conversation there, I don't think we would ever get to a point where there would be projects like those come along that we didn't want. I just don't think there will be that many of them. I think it's possible that there could come a time where we would say they are able to come on their own without the incentive; we don't need to do that anymore because there are 4 of them here, they are making the plastics and now the next companies are using that company and therefore we don't have to give them. We want to incentive the first group, hopefully they build enough momentum and the next ones come and pay their full way. I think that is where we are trying to get. For me, I don't mind a sunset in here, I would just like to see it be long enough that the first group of them have some more certainty.

**Rep. Headland** -- You just echoed my sentiments. This is an incentive. It's specific to fertilizer and chemical processing. Within this bill, we have put in a study, essentially, looking at trying to determine, do we have enough gas available for these 3 plants today? (meter 15:43-17:05) We crafted legislation that we knew had a good chance of passing on the House floor. Without some kind of an end-game, a sunset, I'm not sure.

**Sen. Laffen** -- Want to think one more time? Or, any suggestions?

**Sen. Dotzenrod** -- Would any of the conferees be willing to go from 2 years to 4 years?

**Rep. Headland** -- Like I said at the beginning, we are willing to look at something that you bring forward. I am not going to commit to saying 4 years is fine, let's move on, until I see how it is crafted.

**Sen. Laffen** -- I would recommend that we adjourn for today and the first action when we come back is to propose 4 years. We will bring that and give you time to think about that.

**Rep. Headland** -- That would just be language at the end?

**Sen. Laffen** -- I was thinking about amending your section for the permitting from June 30, 2017 to 2019.

**Rep. Headland** -- On or before June 30, 2019.

**Sen. Laffen** -- These are such large projects, I think this will work for the first 3 but I would like it to also be available for somebody else to look at.

Committee adjourned.

# 2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

SB2035  
4/15/2015  
Job #26135

☐ Subcommittee  
☒ Conference Committee

Committee Clerk Signature

*Alice Grove*

## Explanation or reason for introduction of bill/resolution:

Conference Committee

## Minutes:

Attachment #1

Chairman Laffen opened the conference committee on SB2035. Senators Laffen, Unruh and Dotzenrod; Representatives Headland, Owens, and Haak all present.

**Sen. Laffen** -- Sen. Unruh has handed out some amendments. **(Attachment #1)** What they do is to leave the bill exactly as you had amended it but changes the sunset from 2017 to 2019.

**Rep. Headland** -- To move this bill, I think this is an amendment that we can live with in the House, and if my committee members agree, I would move the House recede from its amendments and further amend.

**Sen. Unruh** -- Seconded

**Sen. Laffen** -- We have a motion and a second. Discussion?

Roll call vote on SB2035: Senators 3 yes; Representatives 3 yes. Carried.

**Carriers: Sen. Laffen and Representative Headland**

April 7, 2015

1 of 2

40  
4/15/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2035

That the House recede from its amendments as printed on pages 992 and 993 of the Senate Journal and pages 1183 and 1184 of the House Journal and that Engrossed Senate Bill No. 2035 be amended as follows:

Page 1, line 7, replace "a" with "studies by the"

Page 1, line 7, replace "study" with "and industrial commission"

Page 8, line 18, remove "or expand"

Page 8, line 19, after "state" insert ", and any component integral to the fertilizer or chemical processing plant."

Page 8, line 22, remove "Tangible personal property used to replace an existing facility"

Page 8, remove line 23

Page 8, line 24, replace "replacement creates an expansion of the facility." with "The exemption provided in this section applies to all phases of construction under the permit or application for permit required by subsection 2. An integral component to the fertilizer or chemical processing plant:

- a. May be owned directly or indirectly by the fertilizer or chemical processing facility, or by an unrelated third party;
- b. Must be located at the facility site; and
- c. Must be necessary for the plant's processing of fertilizer or chemicals.

- 2. On or before June 30, 2019, the owner of the fertilizer or chemical processing plant must receive from the department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section."

Page 8, line 25, replace "2." with "3."

Page 8, line 27, remove "or expand"

Page 9, line 1, replace "3." with "4."

Page 9, line 8, replace "4." with "5."

Page 10, line 7, remove "or expand"

Page 10, line 9, replace "1" with "2"

Page 10, after line 17, insert:

**"SECTION 5. OIL AND GAS RESEARCH - NATURAL GAS PRODUCTION STUDY.** The industrial commission may use the sum of one hundred thousand dollars from the oil and gas research fund, or so much of the amount as may be necessary, pursuant to its continuing



appropriation under section 57-51.1-07.3 for the purpose of contracting for an independent, nonmatching natural gas production study."

Renumber accordingly

Date: 4/15/2015  
Roll Call Vote #1

**2015 SENATE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB2035 as engrossed

**Senate Finance & Tax 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**  
                    **15.0240.03003**  
☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Headland      Seconded by: Senator Unruh

Senators	4/6	4/7	4/15	Yes	No		Representatives	4/5	4/7	4/15	Yes	No
Sen. Laffen	x	x	x	x			Rep. Headland	x	x	x	x	
Sen. Unruh	x	x	x	x			Rep. Owens	x	x	x	x	
Sen. Dotzenrod	x	x	x	x			Rep. Haak	x	x	x	x	
Total Senate Vote				3	0		Total Rep. Vote				3	0

Vote Count      Yes: 6      No: 0      Absent: 0

Senate Carrier Senator Laffen      House Carrier Representative Headland

LC Number 15.0240.03003 . 05000 of amendment

LC Number \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**SB 2035, as engrossed:** Your conference committee (Sens. Laffen, Unruh, Dotzenrod and Reps. Headland, Owens, Haak) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 992-993, adopt amendments as follows, and place SB 2035 on the Seventh order:

That the House recede from its amendments as printed on pages 992 and 993 of the Senate Journal and pages 1183 and 1184 of the House Journal and that Engrossed Senate Bill No. 2035 be amended as follows:

Page 1, line 7, replace "a" with "studies by the"

Page 1, line 7, replace "study" with "and industrial commission"

Page 8, line 18, remove "or expand"

Page 8, line 19, after "state" insert ", and any component integral to the fertilizer or chemical processing plant."

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Page 8, remove line 23

Page 8, line 24, replace "replacement creates an expansion of the facility." with "The exemption provided in this section applies to all phases of construction under the permit or application for permit required by subsection 2. An integral component to the fertilizer or chemical processing plant:

- a. May be owned directly or indirectly by the fertilizer or chemical processing facility, or by an unrelated third party;
  - b. Must be located at the facility site; and
  - c. Must be necessary for the plant's processing of fertilizer or chemicals.
2. On or before June 30, 2019, the owner of the fertilizer or chemical processing plant must receive from the department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section."

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Page 10, after line 17, insert:

**"SECTION 5. OIL AND GAS RESEARCH - NATURAL GAS PRODUCTION STUDY.**  
The industrial commission may use the sum of one hundred thousand dollars from the oil and gas research fund, or so much of the amount as may be necessary, pursuant to its

continuing appropriation under section 57-51.1-07.3 for the purpose of contracting for an independent, nonmatching natural gas production study."

Renumber accordingly

Engrossed SB 2035 was placed on the Seventh order of business on the calendar.



**2015 TESTIMONY**

**SB 2035**

#1

**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2035  
JANUARY 19, 2015, 9:45 A.M.  
SENATE FINANCE AND TAXATION COMMITTEE  
LEWIS AND CLARK ROOM  
SENATOR DWIGHT COOK, CHAIRMAN**

**ALAN ANDERSON – COMMISSIONER, ND DEPARTMENT OF COMMERCE**

Good morning, Mr. Chairman and members of the committee, my name is Alan Anderson and I serve as the Commissioner for the North Dakota Department of Commerce, as well as chairman of the EmPower North Dakota Commission.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bill 2035. This is a bill that was recommended by the Commission and approved by the interim Energy Development and Transmission committee. A complete list of bills recommended and supported by the Commission is below:

- Senate Bill No. 2032 – Oil and Gas Development Strategic Planning Authority.
- Senate Bill No. 2033 – Oil & Gas Tax Trigger Mechanism.
- Senate Bill No. 2034 – Oil Gathering Pipelines Sales Tax Exemption.
- Senate Bill No. 2035 – Value-Added Energy Facility Sales Tax Exemption.
- Senate Bill No. 2036 – Coal Beneficiation.
- Senate Bill No. 2037 – Wind Energy Incentives & New Coal Mine Sales Tax Exemption.

Senate Bill 2035 relates to a sales tax exemption for value-added energy facilities, similar to the sales tax exemption provided for value-added agriculture facilities. This includes fertilizer plants or chemical processing facilities. Currently, these facilities could qualify under the sales tax exemption provided for manufacturing (NDCC § 57-39.2-04.3) which would exempt machinery or equipment used in the manufacturing process. The new exemption in SB 2035 would include all tangible personal property, including the structure of the facility.

There have been projects announced recently that would be made more competitive through this exemption. CHS announced they are moving forward with a \$3 billion plant near the Spiritwood Energy Park that will convert natural gas into fertilizer. Northern Plains Nitrogen has announced plans to construct a fertilizer plant near Grand Forks. And Badlands NGL has proposed building a \$4 billion polyethylene manufacturing plant in North Dakota. Each of these projects would be the largest private investment in North Dakota's history.

Mr. Chairman and members of the Finance and Taxation Committee, I respectfully request your favorable consideration of Senate Bill 2035. That concludes my testimony and I am happy to entertain any questions.

#2  
1-19-15

Testimony to the Senate Finance & Tax Committee  
Chairman Dwight Cook  
Shane Goettle, Project Consultant/Lobbyist  
Badlands NGLs, LLC  
[sgoettle@badlandsngls.com](mailto:sgoettle@badlandsngls.com)

### SENATE BILL 2035

Mr. Chairman and members of the Committee, my name is Shane Goettle. In addition to serving as a lobbyist today on behalf of Badlands NGLs, LLC, ("Badlands"), I have been actively involved with the development of Badland's large-scale polyethylene project for the past two years and serve as its North Dakota-based project consultant. I am here today in both capacities to testify in favor of SB 2035.

For decades now, North Dakota has supported the development of value-added agriculture projects through the use of the very incentives you are now considering today for the value-added energy sector. Already, some of our bio-fuels plants have been built with the value-added energy incentives that are on the books. We can now take that success in value-added agriculture and apply it to value-added energy.

We have tremendous opportunities in North Dakota to turn both crude and natural gas components into exciting projects for our home state, diversifying our economy and setting the stage to expand not only our energy-base, but also our manufacturing and export sectors; which brings to one such opportunity.

### BADLANDS NGL's, LLC

Badlands NGL's, LLC ("Badlands") is a Delaware limited liability company. It's principals and strategic partners have considerable experience in development, construction and management of natural gas liquid ("NGL") to polyolefin products. After several years of work dedicated towards investigating NGL to polyolefin opportunities in the North Dakota Williston

Basin ("WB"), Badlands has concluded that the results and recommendations set forth in the IHS study completed this past summer for the EmPower Commission and the North Dakota Department of Commerce have merit.

### PROJECT

Badlands is proceeding with the development, construction, start-up and operation of a fully integrated NGL sourced ethane gas to polyethylene ("PE") manufacturing facility in North Dakota. Based upon engineering, technical and marketing work completed to-date, Badlands intends to design and construct a 1.5 million metric ton ("MT") PE complex (approximately 3.3 billion annual pounds of PE production). Badlands preliminary engineering studies confirm \$4.2 billion CAPEX and confirm aggressive but feasible completion date of Q-4 2017.

Preliminary costs for the project are just over \$4.0 billion excluding the costs of ethane gathering and certain NGL processing infrastructure.

### ETHANE FEEDSTOCK

Based upon a 1.5 million MT ethane gas to ethylene capacity and 350 day per year operation, Badlands will require 95 Mb/d of ethane feedstock. The Williston Basin's current ethane production is in excess of 200 thousand barrels per day (Mb/d) of ethane. Ethane has only two uses, petrochemicals (ethylene) and "rejection" into natural gas supply. There are two Williston Basin "rejection" outlets; WBI Pipeline and Northern Border Pipeline.

After taking into consideration almost 600 Mb/d of 2015-2020 new Gulf Coast petrochemical ethane demand and 300 Mb/d of ethane export demand, U.S. ethane supply will result in as much as 800 Mb/d of U.S. "ethane rejection"

Williston Basin NGL sourced ethane is the most physically and economically remote from Gulf Coast petrochemical demand. Badlands believes that development of substantial



local uses for WB NGL sourced ethane will be an indispensable part of the Williston Basin's continued economic development.

To acquire our feedstock, Badlands is currently engaged in multiple negotiations and discussions with Williston Basin oil and gas producers, Williston Basin midstream companies and gas processors, and Williston Basin pipeline companies regarding ethane aggregation strategies for the Badlands PE project. Badlands is committed to maximizing the value of Bakken ethane for producers, their midstream partners and all gas processors.

In addition to working with larger ethane producers and suppliers, Badlands also intends to solicit ethane supply agreements with smaller WB producers, suppliers & processors, and pipeline entities. At this time Badlands believes that smaller gas processors generate in excess of 30 Mb/d of NGL sourced ethane.

### **PRODUCT & MARKET**

Badlands intends to produce PE products including linear low density PE ("LLDPE"), high density PE (HDPE") with a focus on newer PE products such as metallocene LLDPE and bimodal HDPE.

Vinmar Projects ("Vinmar") is an affiliate company of Vinmar Group. Since 1999, Vinmar has assisted in the development of several world scale petrochemical projects in the Middle East, Asia, and South America. In each case, Vinmar provides long term product off-take services in support of project finance for the development partners.

Vinmar and Badlands have signed a mutually binding, fifteen year product off-take Memorandum of Understanding for 100% of the PE product to be produced by the Badlands project. Vinmar and Badlands intend to market a majority of our PE products within the U.S.



markets, which, as described by IHS, are closer in location to a North Dakota PE facility than to a Gulf Coast PE facility.

### **TECHNOLOGY SELECTION & CONSTRUCTION**

In addition to Badlands and Vinmar, another key project participant includes Tecnicas Reunidas ("TR") of Madrid, Spain. TR is a Spanish public company with 2013 revenues in excess of \$4 billion, over \$10 billion in contracts backlog, and in 2013 TR was the 7th largest petrochemicals and polymers EPC contractor in the world. TR is presently completing 5 projects in Western Canada.

TR is presently completing a preliminary engineering analysis for Badlands. This work is scheduled for completion very soon and will include completion of technology evaluations and ethane to ethylene and ethylene to PE licensor selection, ethane aggregation engineering and planning and final site selection.

Badlands, Vinmar and TR continue to work with two major ethane to ethylene licensors and two major ethylene to PE licensors and anticipates project technology selection prior to year end 2014.

### **OPERATION**

The project will be developed and operated by a Badlands affiliate that will be structured as a Master Limited Partnership ("MLP"). The MLP will be headquartered in Bismarck, North Dakota. The MLP will employ approximately 500 highly trained and qualified persons in manufacturing, marketing, administrative, safety, financial and senior executive positions.

Badlands and its advisors and strategic partners continue to address infrastructure challenges unique to the development of a world scale PE facility in North Dakota. Both TR and Vinmar have considerable experience and success in project development, construction and

operation in worldwide locations that present challenges similar to and in many cases more challenging than conditions in the North Dakota WB.

In addition, Badlands continues to enjoy very strong support of the North Dakota business community, North Dakota elected officials and North Dakota investors. North Dakota elected officials and agencies have provided Badlands with by far the most business friendly and pro-development environment in the United States.

Badlands has been fortunate to attract many of North Dakota's leading business and community leaders as Badlands investors. The North Dakota business community continues to assist Badlands with ethane aggregation strategies and planning.

Badlands continues to discuss debt and equity capital markets needs with major financial industry advisors and investors.

### CONCLUSION

Despite the strengths of the development team, the development partners, and strong economic fundamentals driving the development of the Badland's project. There are still many, many associated risks. Applying a sales and use tax exemption to the materials used in a construction, as SB 2035 proposes to do, would send a very strong signal of support from the state of North Dakota.

There is no guaranty that value-added energy projects will take off in this state. The crude and natural gas feedstocks can and are being shipped to other states where value is then added elsewhere. This is a highly competitive environment with some very big players. The Badlands project itself, to arrive at its \$4.2 billion capitalization, added 40% to its development and constructions costs because of the remoteness of North Dakota, our tight labor supply, our

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cold weather and our distance from other obvious place to consider developing a world-scale PE plant.

Passing SB 2035 through the legislature would send a signal to the world that North Dakota stands ready to provide a significant and robust boost to value-added energy projects. I ask for your favorable consideration and would be happy to address any questions.

#3



**Testimony of Randy Schneider**  
President, North Dakota Ethanol Producers Association

**In Support of SB 2035**  
Senate Finance and Taxation  
January 19, 2015

Chairman Cook and members of the committee:

My name is Randy Schneider, and I am the President of the North Dakota Ethanol Producers Association (NDEPA) and represent the ethanol industry on the ND EmPower Commission. I am here today to voice support for SB 2035 as it creates an incentive to attract and develop new industries that will add value to products currently produced in the state.

The North Dakota Ethanol Producers Association represents the state's four ethanol plants, as well as industry stakeholders. One of NDEPA's legislative priorities is supporting incentives to value-add products produced at the plants, which include ethanol, distillers grain (livestock feed), corn oil and CO<sub>2</sub>. A recent study authorized during the 2013 Legislative Session and conducted by IHS over the interim, revealed opportunities in these areas for both natural gas and ethanol. This bill will provide a tool giving North Dakota a competitive advantage in attracting these industries to the state.

North Dakota's ethanol industry currently exports roughly 96 percent of the 400 million gallons of ethanol produced in the state and 80 to 90 percent of the 1.1 million tons of distillers grains. Having additional markets would provide increased stability for the industry. Long term, attraction of fertilizer and chemical industries will allow additional dollars to stay in North Dakota by increasing the amount of products used in state through value-added markets and decrease the amount exported.

The ND EmPower Commission recommended this bill and it was introduced by the Interim Energy Committee as both groups recognize the economic opportunity for the community and state should a fertilizer or chemical processing facility locate here. The attraction of these industries is an excellent opportunity to further diversify the economy.

For these reasons, I would urge your favorable consideration of SB 2035.





#4

**Testimony of Connie Ova, Chief Executive Officer  
Jamestown/Stutsman Development Corporation  
In Support of SB 2035  
January 19, 2015**

Chairman Cook and members of the Senate Finance and Taxation Committee, I'm Connie Ova, CEO of the Jamestown/Stutsman Development Corporation (JSDC), and vice president of the Economic Development Association of North Dakota (EDND). On behalf of Jamestown/Stutsman Development Corporation and EDND, I would like to express our support for SB 2035.

EDND represents more than 80 state economic development organizations on the front line of economic development efforts throughout North Dakota. The primary purpose of the organization is to support the creation of new wealth and the diversification of North Dakota's economy. As we move forward to enhance the state's economy in all business sectors, and in all parts of the state, the need for diversification of the economy is apparent.

A diversified industry opportunity that uses natural gas currently being flared in the oil patch could include fertilizer manufacturing facilities as well as chemical processing facilities. EDND and Jamestown/Stutsman County Development Corporation are very much in support. Specifically, a North Dakota fertilizer manufacturing facility is beneficial to our agricultural producers by ensuring them a reliable domestic supply of nitrogen fertilizers essential to help farmers raise healthy, profitable crops to feed a growing global population.

A North Dakota-based fertilizer manufacturing plant will convert natural gas, piped in from the Bakken, to produce a range of nitrogen fertilizer products and byproducts, providing our farmers with a lower-cost local source of fertilizer while reducing flaring and creating jobs and economic activity. These type projects have tremendous benefits for our state and local communities. Stutsman County and the entire state of North Dakota is very much dependent on agriculture and value-added agriculture, and it is imperative to have the ability to purchase fertilizer in a timely manner without the fear of shortages as experienced in the past with continued shipping inefficiencies. The commitment to farmers will help to reverse a long supply chain for this type of fertilizer.



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Currently, the United States imports more than half of the nitrogen used by farmers. North Dakota is at the end of the supply chain that brings nitrogen from foreign countries to the Gulf Coast and up the Mississippi River. This type of plant will make the fertilizer where it is used on the Great Plains. And, it will provide good jobs to those wanting to live and raise their families in North Dakota.

On behalf of JSDC and EDND, I urge the committee's support of SB 2035.

#5



Testimony of Jon Godfread  
Greater North Dakota Chamber of Commerce  
SB 2035  
January 19, 2015

Mr. Chairman and members of the committee, my name is Jon Godfread. I am the Vice President of Government Affairs at the Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we support SB2035.

The GNDC supports this proactive legislation because it will help us in our long term goal of diversifying our economy. We live in an Agriculture state, incentivizing a fertilizer manufacturer and chemical processing plant, simply makes sense in this state. We have the natural gas that can be converted into fertilizers and chemicals that can be used by our agriculture community to continue to help feed the world.

Now more than ever it is clear that we need to continue to look for ways to diversify our economy so if one sector takes a dip other sectors are there to help ensure our economic well-being. Agriculture seems like a logical first step in bridging the gap between our energy industries and diversifying our economy. This is an opportunity to bring a much needed product that is used by one of our largest industries to where it will be used, cutting down the need for our Agriculture community to need to rely on supply chains and transportation disruptions.

Also, with the piece of legislation that would put these very incentives under review periodically, we now that if this incentive is not operating the way it should be it will be up for review and again we as a business community will have to come and defend this incentive before this body to show its value. If the value isn't there it will then be removed.

We need to continue to look for new opportunities and new products that can be made with our abundant natural resources, in business it often comes down to market or incentive. In North Dakota we have a lot an attractive business climate; however we have workforce issues, infrastructure issues, and transportation issues we are a rural state, thus, its incentives like these that can put North Dakota over the top and incentivize the very activity we are looking for.

Thank you for allowing me to testify, we would support a DO PASS recommendation on SB 2035. I would now be happy to attempt to answer any questions.

Champions  Business

PO Box 2639 P: 701-222-0929  
Bismarck, ND 58502 F: 701-222-1611

[www.ndchamber.com](http://www.ndchamber.com)

February 23, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2035

Page 1, line 3, after "reenact" insert "section 40-57.1-03 and"

Page 1, line 4, after "to" insert "imposing a cap on the amount of property tax benefit that may be allowed for the life of a new or expanding business and"

Page 1, line 5, after "for" insert "an effective date and"

Page 1, after line 7, insert:

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

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

- ~~1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.~~
- ~~2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.~~
- ~~3. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of~~



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

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



exemption or the option to make payments in lieu of taxes was approved; or

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

**(Effective for taxable years beginning after December 31, 2014)**

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

- 1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations. Before a municipality may grant a partial or complete exemption from ad valorem taxation under this section:
  - a. The governing body of the municipality must have received the certification of the department of commerce division of economic development and finance that the project is a primary sector business, as defined in subsection 3 of section 40-57.1-02; or
  - b. The city council or commission, if the project is proposed to be located within the boundaries of a city of fewer than forty thousand population, or the board of county commissioners, of a county of fewer than forty thousand population and if the project is proposed to be located in the county but outside the corporate limits of any city, may grant a partial or complete exemption from ad valorem taxation for a project operating in the retail sector if that governing body has obtained the approval of exemption of property under this subdivision from a majority of the qualified electors of the city or county voting on the question at a city or county election held in conjunction with a statewide general election and if that governing body has established by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant a partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. The ballot for elector approval of exemption of property under this subdivision must present the question at the election for a yes or no vote on the question:



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

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

- (1) Evaluation of the potential positive or adverse consequences for existing retail sector businesses in the municipality from granting the exemption;
  - (2) Evaluation of the short-term and long-term effects for other property taxpayers in the municipality from granting the exemption;
  - (3) A written agreement with the project operator, including performance requirements for which the exemption may be terminated by the governing body of the municipality if those requirements are not met; and
  - (4) Evaluation of whether the project operator would locate the project within the municipality without the exemption.
2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.
3. A project that, after June 30, 2015, is granted a partial or complete exemption from ad valorem taxation or the option to make payments in lieu of ad valorem taxes, or both, on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project is limited to an amount of tax benefit under this chapter during the life of the project not exceeding one million dollars.

For purposes of this subsection, the county director of tax equalization of the county or counties in which the project is located shall make an annual assessment of the project property, including the land, within the county and provide the property's true and full and taxable valuation to the county auditor of the county or counties in which the project property is located. The county auditor shall determine the property tax obligation that would have applied by applying the taxable year mill rate of each taxing district in the county to the taxable valuation, reducing that



amount by the five percent discount for early payment of property taxes, and subtracting from the resulting amount ninety-five percent of the consolidated amount of any property taxes actually imposed on the property within the county for that taxable year. The amount determined is the tax benefit under this chapter within the county for the property for that taxable year for purposes of this section.

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The county auditor shall provide the amount of the tax benefit under this chapter within the county for the property for that taxable year for purposes of this section to the project operator and the department of commerce. The county auditor shall maintain a cumulative record of the tax benefit under this chapter received during the life of each project within the county and provide that information to the county auditor of any other county in which project property is located and to the project operator and the department of commerce.

The department of commerce may authorize an increase in the maximum tax benefit under this subsection during the life of the project upon request of the municipality that granted the tax benefit and a showing that the increase would be in the best interests of the taxing districts in which the project is located. Consideration and action by the department of commerce of a request under this subsection must be conducted at a public meeting and notice of that meeting must be provided to each affected taxing district and any existing business within the municipality for which the potential project would be a competitor.

4. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.
- 4.5. Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located

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outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

- 5.6. By motion approved by the governing body of the municipality before the beginning of a taxable year for which a property tax exemption or the option to make payments in lieu of taxes under this section previously has been approved by the governing body, a property tax exemption may be revoked or reduced and payments in lieu of taxes may be revoked or increased for that taxable year for reasons specified in a negotiated agreement or if the governing body finds that:
- a. Information provided by the project operator during the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes has proven to be inaccurate or untrue;
  - b. Use of the property by the project operator does not comply with the reasonable expectations of the governing body at the time the property tax exemption or the option to make payments in lieu of taxes was approved;
  - c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or
  - d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.
- 6.7. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.
- 7.8. A city or county may not supersede or expand the provisions of this section under home rule authority."

Page 3, line 10, replace "This" with " Section 1 of this Act is effective for taxable years beginning after December 31, 2014. Sections 2 and 3 of this"

Page 3, line 10, replace the second "is" with "are"

Page 3, line 11, replace "applies" with "apply"

Renumber accordingly

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2035

Page 1, line 3, after "reenact" insert "section 40-57.1-03 and"

Page 1, line 4, after "to" insert "requiring department of commerce approval for certain property tax benefits and"

Page 1, line 5, after the semicolon insert "to provide for a legislative management study;"

Page 1, line 5, after "for" insert "an effective date and"

Page 1, after line 7, insert:

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

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

- ~~1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.~~
- ~~2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.~~
- ~~3. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for~~



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

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

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- e. ~~The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or~~
  - d. ~~There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.~~
  - 6. ~~During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.~~

**~~(Effective for taxable years beginning after December 31, 2014)~~**

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

- 1. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations. Before a municipality may grant a partial or complete exemption from ad valorem taxation under this section:
  - a. The governing body of the municipality must have received the certification of the department of commerce division of economic development and finance that the project is a primary sector business, as defined in subsection 3 of section 40-57.1-02; or
  - b. The city council or commission, if the project is proposed to be located within the boundaries of a city of fewer than forty thousand population, or the board of county commissioners, of a county of fewer than forty thousand population and if the project is proposed to be located in the county but outside the corporate limits of any city, may grant a partial or complete exemption from ad valorem taxation for a project operating in the retail sector if that governing body has obtained the approval of exemption of property under this subdivision from a majority of the qualified electors of the city or county voting on the question at a city or county election held in conjunction with a statewide general election and if that governing body has established by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant a partial or complete exemption from ad valorem taxation under this section for a project operating in the retail sector. The ballot for elector approval



of exemption of property under this subdivision must present the question at the election for a yes or no vote on the question:

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

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

- (1) Evaluation of the potential positive or adverse consequences for existing retail sector businesses in the municipality from granting the exemption;
  - (2) Evaluation of the short-term and long-term effects for other property taxpayers in the municipality from granting the exemption;
  - (3) A written agreement with the project operator, including performance requirements for which the exemption may be terminated by the governing body of the municipality if those requirements are not met; and
  - (4) Evaluation of whether the project operator would locate the project within the municipality without the exemption.
2. In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.
3. Before a governing body may grant a partial or complete exemption from ad valorem taxation or the option to make payments in lieu of ad valorem taxes under this chapter, the governing body shall consult with the department of commerce. If the department of commerce determines that the total project costs are estimated to exceed one billion dollars, the department of commerce shall conduct a public hearing and notice of that hearing must be provided to each affected taxing district and any existing business within the municipality for which the potential project would be a competitor.
4. By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the

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

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- 4.5. Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.
- 5.6. By motion approved by the governing body of the municipality before the beginning of a taxable year for which a property tax exemption or the option to make payments in lieu of taxes under this section previously has been approved by the governing body, a property tax exemption may be revoked or reduced and payments in lieu of taxes may be revoked or increased for that taxable year for reasons specified in a negotiated agreement or if the governing body finds that:
- a. Information provided by the project operator during the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes has proven to be inaccurate or untrue;
  - b. Use of the property by the project operator does not comply with the reasonable expectations of the governing body at the time the

property tax exemption or the option to make payments in lieu of taxes was approved;

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- c. The property has been improved to a substantially greater extent than the governing body reasonably anticipated at the time the property tax exemption or the option to make payments in lieu of taxes was approved; or
  - d. There has been a change of ownership of the property since the property tax exemption or the option to make payments in lieu of taxes was approved.
- 6-7. During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.
- 7-8. A city or county may not supersede or expand the provisions of this section under home rule authority."

Page 3, after line 9, insert:

**"SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ECONOMIC DEVELOPMENT IMPACT.** During the 2015-16 interim, the legislative management shall consider studying the impact of large economic development projects on political subdivisions. The study may include a review of the current process for seeking out input from political subdivisions potentially impacted by a large economic development project and any mechanisms in place to address the potential impact. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Page 3, line 10, replace "This" with "Section 1 of this Act is effective for taxable years beginning after December 31, 2014. Sections 2 and 3 of this"

Page 3, line 10, replace "is" with "are"

Page 3, line 11, replace "applies" with "apply"

Renumber accordingly



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**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2035**

**MARCH 9, 2015, 9:00 A.M.**

**HOUSE FINANCE AND TAXATION COMMITTEE**

**REPRESENTATIVE CRAIG HEADLAND, CHAIRMAN**

**ALAN ANDERSON – COMMISSION, ND DEPARTMENT OF COMMERCE**

Good morning, Mr. Chairman and members of the committee, my name is Alan Anderson and I serve as the Commissioner for the North Dakota Department of Commerce, as well as chairman of the EmPower North Dakota Commission.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bill 2035. This is a bill that was recommended by the Commission and approved by the interim Energy Development and Transmission committee. A list of the bills the House of Representatives will be seeing that has been recommended and supported by the Commission is below:

- Senate Bill No. 2034 – Oil Gathering Pipelines Sales Tax Exemption.
- Senate Bill No. 2035 – Value-Added Energy Facility Sales Tax Exemption.
- Senate Bill No. 2036 – Coal Beneficiation.
- Senate Bill No. 2037 – Wind Energy Incentives.
- Senate Bill No. 2318 – Carbon Dioxide Capture Equipment Used for Enhanced Oil Recovery.

Senate Bill 2035 relates to a sales tax exemption for value-added energy facilities, similar to the sales tax exemption provided for value-added agriculture facilities. This includes fertilizer plants or chemical processing facilities. Currently, these facilities could qualify under the sales tax exemption provided for manufacturing (NDCC § 57-39.2-04.3) which would exempt machinery or equipment used in the manufacturing process. The new exemption in SB 2035 would include all tangible personal property, including the structure of the facility.

There have been projects announced recently that would be made more competitive through this exemption. CHS announced they are moving forward with a \$3 billion plant near the Spiritwood Energy Park that will convert natural gas into fertilizer. Northern Plains Nitrogen has announced plans to construct a fertilizer plant near Grand Forks. And Badlands NGL has proposed building a \$4 billion polyethylene manufacturing plant in North Dakota. Each of these projects would be the largest private investment in North Dakota's history.

The Senate approved amendments that do two things, both relating to large economic development projects. First, they amended the bill to add another step for municipalities to grant property tax exemptions for economic development projects costing over \$1 billion. This step would involve the Department of Commerce holding a public hearing and inviting impacted communities. The municipality would still have sole authority over granting the exemption.

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The second amendment is a legislative management study regarding the impact of large economic development projects on political subdivisions.

Mr. Chairman and members of the Finance and Taxation Committee, I respectfully request your favorable consideration of Senate Bill 2035. That concludes my testimony and I am happy to entertain any questions.



Chairman Headland, members-of-the-committee, my name is Jake Hamlin, State Government Affairs Director for CHS. CHS, the nation's leading farmer-owned cooperative, is an energy, grains and foods company headquartered in Inver Grove Heights, Minnesota. CHS is owned by 600,000 farmers through member cooperatives and CHS retail locations.

Mr. Chairman, members-of-the-committee, thank you for the opportunity to speak in support of SB2035. Let me begin by stating, CHS has received support from all levels of government regarding the proposed CHS Fertilizer Plant at Spiritwood. Officials from Spiritwood Township, Stutsman County, the City of Jamestown, Stutsman Rural Water, Garrison Diversion Conservancy District, the State Water Commission, Department of Commerce and Governor Dalrymple have been essential to CHS' review of the financial and regulatory considerations related to the fertilizer plant project.

Local support includes – approval by the Stutsman County Board of Commissioners for a negotiated proposal for payment in lieu of tax in October 2014; approval by the Jamestown Stutsman Development Corporation Board of Directors for job training incentives; and ongoing review and analysis by Stutsman Rural Water and the State Water Commission to identify a permanent, reliable source of water. SB2035, the proposal to exempt materials used to construct the fertilizer plant, is another key component in the development of the proposed CHS Fertilizer Plant at Spiritwood.

Chairman Headland, members-of-the-committee, thank you for the opportunity to testify on this legislation. I would be pleased to answer any questions.



Helping farmers raise healthy, profitable crops

## CHS FERTILIZER PLANT AT SPIRITWOOD, N.D.



In September 2014, the CHS Board of Directors approved the construction of a multi-billion-dollar nitrogen fertilizer manufacturing plant to be built in Spiritwood, N.D. This plant will supply the region's farmers with consistent, reliable supplies of nitrogen-based crop nutrients essential to growing corn, wheat and other crops. CHS is pursuing this project with a strong focus on safety, the environment and community investment.

Fertilizer plays a key role in helping to feed the world's growing population. There is significant need for nitrogen fertilizers within the tri-state region. That need continues to grow as U.S. corn production moves northward. Having a local, domestic supplier will reduce dependence on imported fertilizer and provide farmers in this region with a reliable supply of fertilizer when they need it most. In addition to helping area farmers, the plant will help strengthen the regional economy.



### Designed for safety and efficiency

The CHS fertilizer plant at Spiritwood, N.D., will employ state-of-the-art safety and operational technologies – including features that will help reduce emissions – and will be a leader in process efficiency.

The plant will:

- Operate 24 hours a day, 365 days a year
- Produce three types of fertilizers: anhydrous ammonia, urea and urea ammonium nitrate (UAN)
- Produce diesel exhaust fluid (DEF), used by the transportation and heavy equipment industries as an additive to reduce NOx emissions

CHS is committed to world class safety in both construction and operation of the plant. It will also follow the OSHA Voluntary Protection Program, which promotes excellence in workplace safety practices.

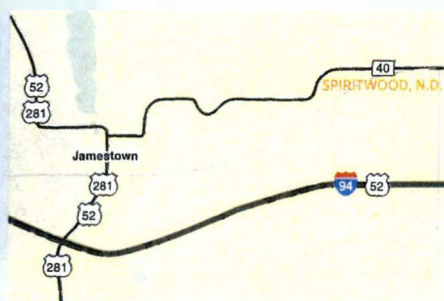
The plant will produce more than 2,425 short tons of anhydrous ammonia daily, which will be further processed into urea and UAN. The plant will require an estimated 88,000 MMBTU/day of natural gas, approximately 50 megawatt-hours of electricity and 3,800-4,200 gallons/minute of water.

### Helping North Dakota farmers feed the world

CHS has a long history of serving North Dakota agriculture. Based in Minnesota, CHS currently has more than 1,300 employees in North Dakota. We serve customers through N.D. agronomy, energy and convenience store locations and we have a leading sunflower operation based at Grandin, N.D.

## 160-180 FULL-TIME EMPLOYEES

Once operational, as well as during construction, the plant will spur new, local spending for workers' food, lodging, clothing, entertainment and other needs.



**Located 10 miles northeast of Jamestown,** this strategic location has ample market, abundant natural gas supply, and close proximity to Interstate 94 and the BNSF railway. The majority of production will be used within a 200-mile radius of the facility, serving retailers and farmers in the Dakotas and parts of Minnesota, Montana and Canada.



## CHS and CHS Foundation Giving

### \$3.54 MILLION TO NORTH DAKOTA COMMUNITIES SINCE 2010

#### North Dakota contribution highlights:

<b>\$1.2 MILLION</b>	Rural youth support through North Dakota FFA, 4-H and North Dakota Farmers Union Camping and Generation Key programs
<b>\$1.1 MILLION</b>	Rural leadership programs, disaster relief, and a \$1.50 match to employee United Way contributions to help build vibrant communities
<b>\$1 MILLION</b>	Flood relief to North Dakota in 2011
<b>\$250,000</b>	Commodity Trading Laboratory at North Dakota State University
<b>\$150,000</b>	Precision ag curriculum at Bismarck State College
<b>\$100,000</b>	Scholarships to students at Bismarck State College, North Dakota State University, Dickinson State University, Minot State and University of North Dakota
<b>\$85,000</b>	Awarded since 2013 for local safety grants to rural North Dakota communities, providing such things as grain bin rescue equipment

### Strong North Dakota stewardship

CHS is committed to supporting the communities in which we do business. For decades, CHS and the CHS Foundation have made substantial contributions to North Dakota programs (including flood relief) to help build vibrant communities, improve agriculture safety and develop future leaders. Since 2011, CHS has also honored and rewarded individuals in North Dakota through our Cenex® Tanks of Thanks® program.

### Sharing success with area farmers

As a farmer-owned cooperative, CHS shares a portion of its earnings directly with farmers, ranchers and local co-ops. **In the last five years, CHS has returned more than \$2.4 billion to its owners across the country.**

### Dedicated to safe operations

CHS is a Fortune 100 company and the nation's leading farm supply cooperative, supplying crop nutrients, grain marketing services, livestock feed, food, food ingredients, business solutions and energy products (including Cenex® brand refined fuels, lubricants and propane). For more than 80 years, CHS has served the petroleum and agricultural industries with a strong track record of safely handling chemicals. Visit [chsinc.com](http://chsinc.com) to learn more about CHS and visit [chsstewards.com](http://chsstewards.com) to read about the health and safety commitment at our refineries, pipelines and other facilities.

If you have questions, please contact Annette Degnan, Marketing Communications Director, at (651) 355-6126 or [annette.degnan@chsinc.com](mailto:annette.degnan@chsinc.com).

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## CHS PATRONAGE

CASH DISTRIBUTIONS IN

**NORTH DAKOTA, 2000-2014**  
**\$527 million**

### Plant Chronology

#### September 2012

Announced project and began Pre-FEED (Front-End Engineering Design)

#### February 2013

Began FEED study for Lump Sum Turnkey (LSTK) fertilizer project

#### January 2014

Completed FEED study

#### March 2014

Received and reviewed Engineering, Procurement and Construction (EPC) bid proposal

#### April 2014

Announced project on hold for further evaluation and began reorganization of project structure

#### September 2014

CHS Board of Directors approved project

#### October 2014

Contractor begins development of Lump Sum Turnkey proposal





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Testimony to the House Finance & Tax Committee  
Chairman Craig Headland  
Shane Goettle, Project Consultant/Lobbyist  
Badlands NGLs, LLC  
[sgoettle@badlandsnngls.com](mailto:sgoettle@badlandsnngls.com)

### SENATE BILL 2035

Mr. Chairman and members of the Committee, my name is Shane Goettle. In addition to serving as a lobbyist today on behalf of Badlands NGLs, LLC, ("Badlands"), I have been actively involved with the development of Badland's large-scale polyethylene project for the past two years and serve as its North Dakota-based project consultant. I am here today in both capacities to testify in favor of SB 2035.

For decades now, North Dakota has supported the development of value-added agriculture projects through the use of the very incentives you are now considering today for the value-added energy sector. Already, some of our bio-fuels plants (ethanol and bio-diesel) have been built with the value-added energy incentives that are on the books. We can now take that success in value-added agriculture and apply it to value-added energy.

We have tremendous opportunities in North Dakota to turn both crude and natural gas components into exciting projects for our home state, diversifying our economy and setting the stage to expand not only our energy-base, but also our manufacturing and export sectors; which brings me to one such opportunity.

### BADLANDS NGL's, LLC

Badlands NGL's, LLC ("Badlands") is a Delaware limited liability company. It's principals and strategic partners have considerable experience in development, construction and management of natural gas liquid ("NGL") to polyolefin products. After several years of work dedicated towards investigating NGL to polyolefin opportunities in the North Dakota Williston



Basin ("WB"), Badlands has concluded that the results and recommendations set forth in the IHS study completed this past summer for the EmPower Commission and the North Dakota Department of Commerce have merit.

### **PROJECT**

Badlands is proceeding with the development, construction, start-up and operation of a fully integrated NGL sourced ethane gas to polyethylene ("PE") manufacturing facility in North Dakota. Based upon engineering, technical and marketing work completed to-date, Badlands intends to design and construct a 1.5 million metric ton ("MT") PE complex (approximately 3.3 billion annual pounds of PE production). Badlands preliminary engineering studies confirm \$4.2 billion CAPEX, excluding the costs of ethane gathering and certain NGL processing infrastructure. The studies also confirm an aggressive, and I will stress "aggressive", but feasible completion date of Q-4 2017 or Q-1 2018.

### **ETHANE FEEDSTOCK**

Based upon a 1.5 million MT ethane gas to ethylene capacity and 350 day per year operation, Badlands will require 95 Mb/d of ethane feedstock. At today's production rate, the Williston Basin currently produces in excess of 200 thousand barrels per day (Mb/d) of ethane. Thus, there is more than enough ethane feedstock in the Williston Basin to supply our proposed facility.

Ethane has only two uses, petrochemicals (ethylene) and "rejection" into our natural gas supply to be utilized merely for its BTU value. There are two Williston Basin "rejection" outlets: the WBI Pipeline and the Northern Border Pipeline.

After taking into consideration almost 600 Mb/d of 2015-2020 new Gulf Coast petrochemical ethane demand and 300 Mb/d of ethane export demand, U.S. ethane supply will result in as much as 800 Mb/d of U.S. "ethane rejection"

Williston Basin NGL sourced ethane is the most physically and economically remote from Gulf Coast petrochemical demand. Badlands believes that development of substantial local uses for WB NGL sourced ethane will be an indispensable part of the Williston Basin's continued economic development.

To acquire our feedstock, Badlands is currently engaged in multiple negotiations and discussions with Williston Basin oil and gas producers, midstream companies and gas processors, and pipeline companies regarding ethane aggregation strategies for the Badlands PE project. Badlands is committed to maximizing the value of Bakken ethane for producers, their midstream partners and all gas processors.

In addition to working with larger ethane producers and suppliers, Badlands also intends to solicit ethane supply agreements with smaller Williston Basin producers, suppliers & processors, and pipeline entities. At this time, Badlands believes that smaller gas processors generate in excess of 30 Mb/d of NGL sourced ethane.

### **PRODUCT & MARKET**

Badlands intends to produce PE products including linear low density PE ("LLDPE") and high density PE (HDPE"), with a focus on newer PE products such as metallocene LLDPE and bimodal HDPE.

Vinmar Projects ("Vinmar") is an affiliate company of Vinmar Group. Since 1999, Vinmar has assisted in the development of several world scale petrochemical projects in the

Middle East, Asia, and South America. In each case, Vinmar provides long term product off-take services in support of project finance for the development partners.

Vinmar and Badlands have signed a mutually binding, fifteen year product off-take Memorandum of Understanding for 100% of the PE product that will be produced by the Badlands PE facility. Vinmar and Badlands intend to market a majority of our PE products within the U.S. markets, such as the Chicago area, which, as described by IHS, are closer in location to a North Dakota PE facility than to a Gulf Coast PE facility. This gives us a slight transportation advantage over Gulf Coast PE facilities.

### **TECHNOLOGY SELECTION & CONSTRUCTION**

In addition to Badlands and Vinmar, another key project participant includes Tecnicas Reunidas ("TR") of Madrid, Spain. TR is a Spanish public company with 2013 revenues in excess of \$4 billion, over \$10 billion in contracts backlog, and in 2013 TR was the seventh largest petrochemicals and polymers EPC contractor in the world. TR is presently completing five projects in Western Canada.

TR is currently completing a preliminary engineering analysis for Badlands. This work is scheduled for completion very soon and will include completion of technology evaluations and ethane to ethylene and ethylene to PE licensor selection, ethane aggregation engineering and planning and final site selection.

Badlands, Vinmar and TR continue to work with two major ethane to ethylene licensors and two major ethylene to PE licensors and we have already zeroed in on our technology selection for the project.

### OPERATION

The PE project will be developed and operated by a Badlands affiliate that will be structured as a Master Limited Partnership ("MLP"). The MLP will be headquartered in Bismarck, North Dakota. The MLP will employ approximately 500 highly trained and qualified persons in manufacturing, marketing, administrative, safety, financial and senior executive positions.

Badlands and its advisors and strategic partners continue to address infrastructure challenges unique to the development of a world scale PE facility in North Dakota. Both TR and Vinmar have considerable experience and success in project development, construction and operation in worldwide locations that present challenges similar to and in many cases more challenging than conditions in the North Dakota WB.

In addition, Badlands continues to enjoy very strong support of the North Dakota business community, North Dakota elected officials and North Dakota investors. North Dakota elected officials and agencies have provided Badlands with by far the most business friendly and pro-development environment in the United States.

Badlands has been fortunate to attract many of North Dakota's leading business and community leaders as Badlands investors. The North Dakota business community continues to assist Badlands with ethane aggregation strategies and planning.

Badlands also continues to discuss debt and equity capital markets needs with major financial industry advisors and investors.

### CONCLUSION

Despite the strengths of the development team, the development partners, and strong economic fundamentals driving the development of the Badland's project, there are many



associated risks. There is no guaranty that value-added energy projects will take off in this state. The crude and natural gas feed stocks can and are being shipped to other states where value is then added elsewhere. This is a highly competitive environment with some very big players. The Badlands project itself, to arrive at its \$4.2 billion capitalization, added 40% to its development and constructions costs because of the remoteness of North Dakota, our tight labor supply, our cold weather and our distance from other obvious places to consider developing a world-scale PE plant.

Applying a sales and use tax exemption to the materials used in construction, as SB 2035 proposes to do, would send a very strong signal of support from the state of North Dakota. Such a signal is something we can easily highlight in the capital markets, where the question is already being asked, "Why North Dakota?"

Passing SB 2035 through the legislature would send a signal to the world that North Dakota stands ready to provide a significant and robust boost to value-added energy projects. I ask for your favorable consideration and would be happy to address any questions.

Testimony of Laney Herauf  
Greater North Dakota Chamber of Commerce  
SB 2035  
March 9, 2015

Mr. Chairman and members of the committee, my name is Laney Herauf. I am the Government and Regulatory Affairs Specialist Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we support SB2035.

The GNDC supports this proactive legislation because it will help us in our long term goal of diversifying our economy. We live in an Agriculture state, incentivizing a fertilizer manufacturer and chemical processing plant, simply makes sense in this state. We have the natural gas that can be converted into fertilizers and chemicals that can be used by our agriculture community to continue to help feed the world.

Now more than ever it is clear that we need to continue to look for ways to diversify our economy so if one sector takes a dip other sectors are there to help ensure our economic well-being. Agriculture seems like a logical first step in bridging the gap between our energy industries and diversifying our economy. This is an opportunity to bring a much needed product that is used by one of our largest industries to where it will be used, cutting down the need for our Agriculture community to need to rely on supply chains and transportation disruptions.

Also, with the piece of legislation that would put these very incentives under review periodically, we now that if this incentive is not operating the way it should be it will be up for review and again we as a business community will have to come and defend this incentive before this body to show its value. If the value isn't there it will then be removed.

We need to continue to look for new opportunities and new products that can be made with our abundant natural resources, in business it often comes down to market or incentive. In North Dakota we have a lot an attractive business climate; however we have workforce issues, infrastructure issues, and transportation issues we are a rural state, thus, its incentives like these that can put North Dakota over the top and incentivize the very activity we are looking for.

Thank you for allowing me to testify, we would support a DO PASS recommendation on SB 2035. I would now be happy to attempt to answer any questions.

House Finance and Taxation Committee,

As major representatives of North Dakota business, we stand in full support of Senate Bill 2035. This bill creates a sales tax exemption for value-added energy facilities including fertilizer plants and chemical processing facilities. This is similar to the already existing sales tax exemption provided for value-added agriculture facilities.

North Dakota's business climate would greatly benefit from this policy. The 2015 legislative body has two prime examples before it.

First, there are two potential fertilizer plants. These billion dollar projects will give local coops and farmers easier access to anhydrous ammonia, urea and UAN liquid fertilizer. As one of the nation's leading agricultural states, the benefits of direct access to fertilizers are incalculable to North Dakota ag producers.

Second, there is one plastics plant is in the beginning stages of developing a four billion dollar fully integrated NGL sourced ethane gas to polyethylene manufacturing facility. North Dakota will benefit from approximately 500 highly trained personnel in the Bismarck headquarters for the project. Dabbling into the plastics market is a natural one for North Dakota. We have many of the necessary raw materials available at our fingertips and yet, NO facilities are currently being built. This could be the just the beginning of an entirely new industry in North Dakota, a chemical industry that can add value to our energy resources. The spin off effects of a chemical industry have the potential to substantially diversify our economy and grow our tax base. The incentives offered in SB 2035 already exist for value added agriculture, and could go a long ways towards moving these projects from concept to completion.

There are a number of reasons why North Dakota could be a challenging place for businesses. Our low unemployment rate, the cost of construction, our location and weather all play into a company's decision, but our attractive business and tax policy makes up for all the negatives.

North Dakota must continue to diversify its economy and efficiently utilize its natural resources. By utilizing its oil and gas resources, North Dakota can bring economic engines to communities outside of the Bakken. Now is the time to focus on diversifying the state's economy.

We urge the committee to recognize that when companies look to locate a facility, it's just as easy to ship natural gas to area where the demand for the commodity exists, currently that is outside of North Dakota. We strongly urge your favorable consideration of Senate Bill 2035. Let's show the nation that we are a business friendly state and North Dakota is open for business.

Sincerely,

Greater North Dakota Chamber  
North Dakota Petroleum Council  
Associated General Contractors of North Dakota  
North Dakota Petroleum Marketers Association  
North Dakota Retail Association  
North Dakota Propane Gas Association  
North Dakota Bankers Association

Auto Dealers Association of North Dakota  
North Dakota Implement Dealers Association  
North Dakota Motor Carriers Association  
John Olson, on behalf of CHS  
Independent Community Banks of North Dakota  
Utility Shareholders of North Dakota  
CenturyLink

Champions  for Business

PO Box 2639 P: 701-222-0929  
Bismarck, ND 58502 F: 701-222-1611



**Testimony of Connie Ova, Chief Executive Officer  
Jamestown/Stutsman Development Corporation  
In Support of SB 2035  
March 9, 2015**

Chairman Headland and members of the House Finance and Taxation Committee, I'm Connie Ova, CEO of the Jamestown/Stutsman Development Corporation (JSDC), and vice president of the Economic Development Association of North Dakota (EDND). On behalf of Jamestown/Stutsman Development Corporation and EDND, I would like to express our support for SB 2035.

EDND represents more than 80 state economic development organizations on the front line of economic development efforts throughout North Dakota. The primary purpose of the organization is to support the creation of new wealth and the diversification of North Dakota's economy. As we move forward to enhance the state's economy in all business sectors, and in all parts of the state, the need for diversification of the economy is apparent.

A diversified industry opportunity that uses natural gas currently being flared in the oil patch could include fertilizer manufacturing facilities as well as chemical processing facilities. EDND and Jamestown/Stutsman County Development Corporation are very much in support. Specifically, a North Dakota fertilizer manufacturing facility is beneficial to our agricultural producers by ensuring them a reliable domestic supply of nitrogen fertilizers essential to help farmers raise healthy, profitable crops to feed a growing global population.

A North Dakota-based fertilizer manufacturing plant will convert natural gas, piped in from the Bakken, to produce a range of nitrogen fertilizer products and byproducts, providing our farmers with a lower-cost local source of fertilizer while reducing flaring and creating jobs and economic activity. These type projects have tremendous benefits for our state and local communities. Stutsman County and the entire state of North Dakota is very much dependent on agriculture and value-added agriculture, and it is imperative to have the ability to purchase fertilizer in a timely manner without the fear of shortages as experienced in the past with continued shipping inefficiencies. The commitment to farmers will help to reverse a long supply chain for this type of fertilizer.



Currently, the United States imports more than half of the nitrogen used by farmers. North Dakota is at the end of the supply chain that brings nitrogen from foreign countries to the Gulf Coast and up the Mississippi River. This type of plant will make the fertilizer where it is used on the Great Plains. And, it will provide good jobs to those wanting to live and raise their families in North Dakota.

On behalf of JSDC and EDND, I urge the committee's support of SB 2035.

**Testimony of Randy Schneider**  
President, North Dakota Ethanol Producers Association  
**In Support of SB 2035**  
House Finance and Taxation  
March 9, 2015

SB 2035  
3-9-15  
# 7

Chairman Headland and members of the committee:

My name is Randy Schneider, and I am the president of the North Dakota Ethanol Producers Association (NDEPA) and represent the ethanol industry on the ND EmPower Commission. I am here today to voice support for SB 2035 as it creates an incentive to attract and develop new industries that will add value to products currently produced in the state.

The North Dakota Ethanol Producers Association represents the state's four ethanol plants, as well as industry stakeholders. One of NDEPA's legislative priorities is supporting incentives to value-add products produced at the plants, which include ethanol, distillers grains (livestock feed), corn oil and CO<sub>2</sub>. A recent study authorized during the 2013 Legislative Session and conducted by IHS over the interim revealed opportunities in these areas for both natural gas and ethanol. This bill will provide a tool giving North Dakota a competitive advantage in attracting these industries to the state.

North Dakota's ethanol industry currently exports roughly 96 percent of the 400 million gallons of ethanol produced in the state and 80 to 90 percent of the 1.1 million tons of distillers grains. Having additional markets would provide increased stability for the industry. Long term, attraction of fertilizer and chemical industries will allow additional dollars to stay in North Dakota by increasing the amount of products used in state through value-added markets and decreasing the amount exported.

The ND EmPower Commission recommended this bill, and it was introduced by the Interim Energy Committee as both groups recognize the economic opportunity for the community and state should a fertilizer or chemical processing facility locate here. The attraction of these industries is an excellent opportunity to further diversify the economy.

For these reasons, I would urge your favorable consideration of SB 2035.

Prepared by the Office  
of State Tax Commissioner  
March 24, 2015

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2035

Page 8, line 18, remove "or expand"

Page 8, line 19, after "state" insert ", and any component integral to the fertilizer or chemical processing plant."

Page 8, line 22, replace "Tangible personal property used to replace an existing facility" with "The exemption provided in this section applies to all phases of construction under the permit or application for permit required by subsection 2. An integral component to the fertilizer or chemical processing plant:

- a. May be owned directly or indirectly by the fertilizer or chemical processing facility, or by an unrelated third party;
- b. Must be located at the facility site; and
- c. Must be necessary for the plant's processing of fertilizer or chemicals."

Page 8, remove lines 23 through 24

Page 8, after line 24, insert:

- "2. On or before December 31, 2016, the owner of the fertilizer or chemical processing plant must receive from the department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section."

Page 8, line 25, replace "2." with "3."

Page 8, line 27, remove "or expand"

Page 9, line 1, replace "3." with "4."

Page 9, line 8, replace "4." with "5."

Page 10, line 7, remove "or expand"

Page 10, line 9, replace "1" with "2"

Page 10, after line 17, insert:

**"SECTION 5. OIL AND GAS RESEARCH – NATURAL GAS PRODUCTION STUDY.**  
The amount of \$100,000 from the oil and gas research fund, or so much of the amount as may be necessary, may be used by the industrial commission for the purpose of contracting for an independent, nonmatching natural gas production study."

Renumber accordingly



PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2035

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

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

- 5        1.        Gross receipts from sales of tangible personal property used to construct ~~or~~  
6        ~~expand~~ a fertilizer or chemical processing facility in this state, and any  
7        component integral to the fertilizer or chemical processing plant, are exempt from  
8        taxes under this chapter. To be exempt, the tangible personal property must be  
9        incorporated in the structure of the facility or used in the construction process to  
10       the point of having no residual economic value. ~~Tangible personal property used~~  
11       ~~to replace an existing facility or portion of a facility does not qualify for exemption~~  
12       ~~under this section unless the replacement creates an expansion of the facility.~~

13       The exemption provided in this section applies to all phases of construction  
14       under the permit or application for permit required by subsection 2. An integral  
15       component to the fertilizer or chemical processing plant:

- 16       a.        May be owned directly or indirectly by the fertilizer or chemical processing  
17       facility, or by an unrelated third party;  
18       b.        Must be located at the facility site; and  
19       c.        Must be necessary for the plant's processing of fertilizer or chemicals.

- 20       2.        On or before December 31, 2016, the owner of the fertilizer or chemical  
21       processing plant must receive from the department of health an air quality permit  
22       or a notice that the air quality permit application is complete. The owner shall  
23       provide this documentation to the tax commissioner to qualify for the exemption  
24       under this section.

- 25       ~~2. 3.~~       To receive the exemption under this section at the time of purchase, the owner of  
26       the processing facility must receive from the tax commissioner a certificate that  
27       the tangible personal property used to construct ~~or expand~~ the processing facility  
28       which the owner intends to purchase qualifies for exemption. If a certificate is not  
29       received before the purchase, the owner shall pay the applicable tax imposed by  
30       this chapter and apply to the tax commissioner for a refund.

- 31       ~~3. 4.~~       If the tangible personal property is purchased or installed by a contractor subject  
32       to the tax imposed by this chapter, the owner may apply for a refund of the

difference between the amount remitted by the contractor and the exemption imposed or allowed by this section. Application for refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

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

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

4. The tax imposed by this section does not apply to:

- a. Production equipment or tangible personal property as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.2;
- b. Machinery, equipment, or other tangible personal property used to construct an agricultural commodity processing facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
- c. Tangible personal property used to construct or expand a system used to compress, process, gather, or refine gas recovered from an oil or gas well in this state or used to expand or build a gas-processing facility in this state as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.5;
- d. Tangible personal property used to construct or expand a qualifying oil refinery as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.6;
- e. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.10;
- f. Tangible personal property used to construct or expand a qualifying facility as authorized or approved for exemption by the tax commissioner under section 57-39.2-04.11; or

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

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

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

15               **SECTION 5. OIL AND GAS RESEARCH – NATURAL GAS PRODUCTION STUDY.**

16   The amount of \$100,000 from the oil and gas research fund, or so much of the amount as may  
17   be necessary, may be used by the industrial commission for the purpose of contracting for an  
18   independent, nonmatching natural gas production study.

SB 2035  
3-25-15  
#1 p.1

15.0240.03000

Prepared by the Office  
of State Tax Commissioner  
March 25, 2015

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2035

Page 8, line 18, remove "or expand"

Page 8, line 19, after "state" insert ", and any component integral to the fertilizer or chemical processing plant,"

Page 8, line 22, replace "Tangible personal property used to replace an existing facility" with "The exemption provided in this section applies to all phases of construction under the permit or application for permit required by subsection 2. An integral component to the fertilizer or chemical processing plant:

- a. May be owned directly or indirectly by the fertilizer or chemical processing facility, or by an unrelated third party;
- b. Must be located at the facility site; and
- c. Must be necessary for the plant's processing of fertilizer or chemicals."

Page 8, remove lines 23 through 24

Page 8, after line 24, insert:

- "2. On or before June 30, 2017, the owner of the fertilizer or chemical processing plant must receive from the department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section."

Page 8, line 25, replace "2." with "3."

Page 8, line 27, remove "or expand"

Page 9, line 1, replace "3." with "4."

Page 9, line 8, replace "4." with "5."

Page 10, line 7, remove "or expand"

Page 10, line 9, replace "1" with "2"



Page 10, after line 17, insert:

**"SECTION 5. OIL AND GAS RESEARCH – NATURAL GAS PRODUCTION STUDY.**  
The amount of \$100,000 from the oil and gas research fund, or so much of the amount as may be necessary, may be used by the industrial commission for the purpose of contracting for an independent, nonmatching natural gas production study."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2035

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

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

1. Gross receipts from sales of tangible personal property used to construct ~~or expand~~ a fertilizer or chemical processing facility in this state, and any component integral to the fertilizer or chemical processing plant, are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value. ~~Tangible personal property used to replace an existing facility or portion of a facility does not qualify for exemption under this section unless the replacement creates an expansion of the facility.~~ The exemption provided in this section applies to all phases of construction under the permit or application for permit required by subsection 2. An integral component to the fertilizer or chemical processing plant:

- a. May be owned directly or indirectly by the fertilizer or chemical processing facility, or by an unrelated third party;
- b. Must be located at the facility site; and
- c. Must be necessary for the plant's processing of fertilizer or chemicals.

2. On or before June 30, 2017, the owner of the fertilizer or chemical processing plant must receive from the department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section.

~~2.~~ 3. To receive the exemption under this section at the time of purchase, the owner of the processing facility must receive from the tax commissioner a certificate that the tangible personal property used to construct ~~or expand~~ the processing facility

1 which the owner intends to purchase qualifies for exemption. If a certificate is not  
2 received before the purchase, the owner shall pay the applicable tax imposed by  
3 this chapter and apply to the tax commissioner for a refund.

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

11 4. 5. For purposes of this section, a fertilizer or chemical processing facility means a  
12 processing plant that produces for retail or wholesale a fertilizer, chemical, or  
13 chemical derivative from natural gas, natural gas liquids, or crude oil  
14 components.

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

17 4. The tax imposed by this section does not apply to:

- 18 a. Production equipment or tangible personal property as authorized or  
19 approved for exemption by the tax commissioner under section 57-39.2-  
20 04.2;
- 21 b. Machinery, equipment, or other tangible personal property used to  
22 construct an agricultural commodity processing facility as authorized or  
23 approved for exemption by the tax commissioner under section 57-39.2-  
24 04.3 or 57-39.2-04.4;
- 25 c. Tangible personal property used to construct or expand a system used to  
26 compress, process, gather, or refine gas recovered from an oil or gas well  
27 in this state or used to expand or build a gas-processing facility in this  
28 state as authorized or approved for exemption by the tax commissioner  
29 under section  
30 57-39.2-04.5;
- 31 d. Tangible personal property used to construct or expand a qualifying oil  
32 refinery as authorized or approved for exemption by the tax commissioner  
33 under section 57-39.2-04.6;
- 34 e. Tangible personal property used to construct or expand a qualifying

1 facility as authorized or approved for exemption by the tax commissioner  
2 under section 57-39.2-04.10;

3 f. Tangible personal property used to construct or expand a qualifying  
4 facility as authorized or approved for exemption by the tax commissioner  
5 under section 57-39.2-04.11; or

6 g. Telecommunications infrastructure that is capable of providing  
7 telecommunications service as authorized or approved for exemption by  
8 the commissioner under chapter 57-39.2; or

9 h. Tangible personal property used to construct or expand a qualifying  
10 fertilizer or chemical processing facility as authorized or approved for  
11 exemption by the tax commissioner under section 42 of this Act.

#### 12 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ECONOMIC DEVELOPMENT**

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

#### 20 **SECTION 5. OIL AND GAS RESEARCH – NATURAL GAS PRODUCTION STUDY.**

21 The amount of \$100,000 from the oil and gas research fund, or so much of the amount as may  
22 be necessary, may be used by the industrial commission for the purpose of contracting for an  
23 independent, nonmatching natural gas production study.



April 7, 2015

1  
4-15-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2035

That the House recede from its amendments as printed on pages 992 and 993 of the Senate Journal and pages 1183 and 1184 of the House Journal and that Engrossed Senate Bill No. 2035 be amended as follows:

Page 1, line 7, replace "a" with "studies by the"

Page 1, line 7, replace "study" with "and industrial commission"

Page 8, line 18, remove "or expand"

Page 8, line 19, after "state" insert ", and any component integral to the fertilizer or chemical processing plant,"

Page 8, line 22, remove "Tangible personal property used to replace an existing facility"

Page 8, remove line 23

Page 8, line 24, replace "replacement creates an expansion of the facility." with "The exemption provided in this section applies to all phases of construction under the permit or application for permit required by subsection 2. An integral component to the fertilizer or chemical processing plant:

a. May be owned directly or indirectly by the fertilizer or chemical processing facility, or by an unrelated third party;

b. Must be located at the facility site; and

c. Must be necessary for the plant's processing of fertilizer or chemicals.

2. On or before June 30, 2019, the owner of the fertilizer or chemical processing plant must receive from the department of health an air quality permit or a notice that the air quality permit application is complete. The owner shall provide this documentation to the tax commissioner to qualify for the exemption under this section. Denial, expiration, or revocation of a permit terminates the exemption under this section."

Page 8, line 25, replace "2." with "3."

Page 8, line 27, remove "or expand"

Page 9, line 1, replace "3." with "4."

Page 9, line 8, replace "4." with "5."

Page 10, line 7, remove "or expand"

Page 10, line 9, replace "1" with "2"

Page 10, after line 17, insert:

**"SECTION 5. OIL AND GAS RESEARCH - NATURAL GAS PRODUCTION STUDY.** The industrial commission may use the sum of one hundred thousand dollars from the oil and gas research fund, or so much of the amount as may be necessary, pursuant to its continuing

appropriation under section 57-51.1-07.3 for the purpose of contracting for an independent, nonmatching natural gas production study."

Renumber accordingly

1.2  
SB 2035  
4-16-15