

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2299
(Senators G. Nelson, Krauter)
(Representatives Belter, Boucher)

AN ACT to create and enact a new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code, relating to coal conversion facility gross receipts; to amend and reenact sections 49-06-02 and 57-39.2-02.1, subsection 44 of section 57-39.2-04, section 57-39.2-26.1, subsection 9 of section 57-40.2-01, section 57-40.2-02.1, subdivision b of subsection 3 of section 57-60-01, and sections 57-60-02, 57-60-14, 57-61-01, 57-61-01.7, and 57-62-02 of the North Dakota Century Code, relating to sales and use taxes on coal, the coal severance tax, allocation of coal development funds, the privilege tax on coal conversion facilities, allocation of the privilege tax on coal conversion facilities, and the expiration date for certain severance tax reductions; to repeal section 57-61-01.8 of the North Dakota Century Code, relating to a coal severance tax reduction for coal burned in small boilers; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-06-02 of the North Dakota Century Code is amended and reenacted as follows:

49-06-02. Value of property for ratemaking purposes - Determination. The value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility including construction work in progress for new facilities that use lignite mined in this state to generate electricity, as well as additions or modifications to existing lignite facilities, less accrued depreciation. The commission shall allow a public utility for those new or existing facilities utilizing lignite mined in this state as its primary fuel:

1. To recover its research and development costs incurred to develop lignite more cleanly, efficiently, or economically, including a reasonable rate of return on capital expenditures; ~~and~~
2. To recover its incremental costs of complying with federal environmental laws, including a reasonable rate of return on capital expenditures. The commission may allow these costs to be recovered by an environmental surcharge that may be added to existing rates; and
3. To recover all costs resulting from a coal severance tax pursuant to chapter 57-61 and all costs resulting from a coal conversion tax pursuant to chapter 57-60. The commission shall allow the inclusion of these costs in the base rates and the inclusion in the automatic adjustment clause of any of these costs not in base rates.

SECTION 2. AMENDMENT. Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. (Effective through June 30, 2001) Sales tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for sales of mobile homes used for residential or business purposes; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; and for sales of coal, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
 - d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
 - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
 - g. Coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. There is imposed a tax of one and one-half percent upon the gross receipts of retailers from all sales at retail of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of used farm machinery and used irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. For purposes of this subsection, "used" means:
- a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.
3. There is imposed a tax of seventy-five cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
4. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

(Effective after June 30, 2001) Sales tax imposed.

1. Except as otherwise expressly provided in ~~subsections subsections 2 and 3~~ for sales of mobile homes used for residential or business purposes; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; ~~and for sales of coal~~; and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail

including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
 - d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
 - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
 - g. Coal mined in this state and used for heating buildings in this state and, except for coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within this state to consumers or users.
 3. ~~There is imposed a tax of seventy five cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.~~
 4. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

SECTION 3. AMENDMENT. Subsection 44 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

44. Gross receipts from all sales of coal used in agricultural processing or sugar beet refining plants located within this state ~~or adjacent states which are exempted from the tax imposed by chapter 57-64.~~

SECTION 4. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of revenues among political subdivisions and coal development fund. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, ~~excluding collections allocated under subsection 3,~~ equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in

effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
 - a. Ten and four-tenths percent of the amount must be allocated among counties with a population of one hundred thousand or more, based upon the proportion each such county's population bears to the total population of all such counties.
 - b. Eighteen percent of the amount must be allocated among counties with a population of forty thousand or more but fewer than one hundred thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - c. Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - d. Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - e. Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - f. Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - g. Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.

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

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.
 - a. Fifty-three and nine-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more, based upon the proportion each such city's population bears to the total population of all such cities.

- b. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- c. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- d. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- e. Six and four-tenths percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- f. Three and five-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.
- g. Two and two-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

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

3. ~~Notwithstanding any other provision of law, the sales and use tax collections on coal imposed by subsection 3 of section 57-39.2-02.1 and subsection 3 of section 57-40.2-02.1 must be deposited in the coal development fund established under section 57-61-10 and distributed under section 57-62-02.~~

SECTION 5. AMENDMENT. Subsection 9 of section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand; or gravel; ~~or coal~~ from the soil of this state for use within or outside this state.

SECTION 6. AMENDMENT. Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.1. (Effective through June 30, 2001) Use tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for purchases of mobile homes used for residential or business purposes, for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an

excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. An excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of one and one-half percent of the purchase price thereof. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of one and one-half percent of the fair market value of the used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. For purposes of this subsection, "used" means:
 - a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.
3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of seventy-five cents per ton of two thousand pounds [907.18 kilograms], except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.
5. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

(Effective after June 30, 2001) Use tax imposed.

1. Except as otherwise expressly provided in ~~subsections 2 and 3~~ for purchases of mobile homes used for residential or business purposes, for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, ~~and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states,~~ an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by

section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.
3. ~~An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of seventy-five cents per ton of two thousand pounds [907.18 kilograms], except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.~~
4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.
5. ~~4.~~ In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 7. AMENDMENT. Subdivision b of subsection 3 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

- b. An electrical generating plant, with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of ~~one hundred twenty thousand~~ ten thousand kilowatts or more; or

SECTION 8. A new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

Prior to January 1, 2010, any revenue received by the operator of a coal gasification plant to the extent the quotient of the gross receipts realized by the operator divided by the synthetic natural gas produced and sold during a month, in units of one thousand cubic feet [28316.85 units] of synthetic gas, exceeds the ceiling price. For calendar years 2001 and 2002, ceiling price means \$4.25 for each thousand cubic feet [28316.85 liters] of synthetic natural gas produced and sold; and the ceiling price for 2003 is \$4.35; for 2004, \$4.45; for 2005, \$4.55; for 2006, \$4.65; for 2007, \$4.75; for 2008, \$4.86; and for 2009, \$4.97;

SECTION 9. AMENDMENT. Section 57-60-02 of the North Dakota Century Code is amended and reenacted as follows:

57-60-02. Imposition of taxes. There is hereby imposed upon the operator of each coal conversion facility a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax must be computed as follows:

1. For all coal conversion facilities, except as otherwise provided in this section, the tax is measured by the gross receipts derived from such facility for the preceding month and is in the amount of ~~two and one-half~~ four and one-tenth percent of such gross receipts. For purposes of this subsection, "gross receipts" of a coal gasification plant do not include any amount that is received by the operator of the plant for production of synthetic natural gas in excess of one hundred ten million cubic feet per day. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.
2. For electrical generating plants, the tax is at a rate of ~~twenty-five~~ sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction after June 30, 1991, are exempt from ~~sixty-five~~ eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county which begins construction after June 30, 1991, partial or complete exemption from the remaining ~~thirty-five~~ fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production from the plant. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.
3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction after June 30, 1991, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production from the plant.
4. For coal gasification plants, the tax is the greater of either the amount provided in subsection 1 or ~~seven~~ thirteen and one-half cents on each one thousand cubic feet [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not including any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day.
5.
 - a. For all coal conversion facilities, other than electrical generating plants, the production from the facilities is exempt from ~~sixty-five~~ eighty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility or for a period of five years from April 20, 1987, whichever is later. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.
 - b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete exemption from the remaining ~~thirty-five~~ fifteen percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15.
6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or one and one-quarter percent of the gross receipts derived from such facility for the preceding month, whichever amount is greater. Any amount of beneficiated coal produced in excess

of eighty percent of the design capacity of the coal beneficiation plant is exempt from such tax.

SECTION 10. AMENDMENT. Section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

57-60-14. Allocation of revenue - Continuing appropriation.

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, ~~thirty-five~~ fifteen percent to the county and ~~sixty-five~~ eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67 each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund.
2. Notwithstanding any other provision of law, the allocation under this section to each county may not be less in each calendar year than the amount certified to the state treasurer for each county under this section in the immediately preceding calendar year, except that through December 31, 2009, the portion of the revenue allocation to each county which is attributable to a coal gasification coal conversion facility must exclude consideration of calendar year 2001, and be based on calendar year 2000 or the appropriate year after 2001, whichever is greater. For a county that has received less in a calendar year than the amount certified to the state treasurer for that county in the immediately preceding calendar year, not later than January tenth of the following year, the county auditor shall calculate the amount that is due under this subsection and submit a statement of the amount to the state treasurer. The state treasurer shall verify the stated amount and make the required payment under this subsection to the county, from collections received under section 57-60-02, not later than March first of the following year. The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments. Money received by a county under this subsection must be distributed pursuant to section 57-60-15.
3. Notwithstanding any other provision of law, for a county in which is located a coal conversion facility that was not a coal conversion facility under this chapter before the effective date of section 7 of this Act, that county must receive for calendar year 2002 at least as much under this section as was received by that county and taxing districts in that county in property taxes for that facility for taxable year 2001. For years after 2002, subsection 2 applies to allocations to that county under this section, except that for a county described in this subsection, amounts received for any calendar year must be allocated by the county in the same manner property taxes for the facility were allocated for taxable year 2001.

SECTION 11. AMENDMENT. Section 57-61-01 of the North Dakota Century Code is amended and reenacted as follows:

57-61-01. Severance tax upon coal - Imposition - In lieu of sales and use taxes - Payment to the tax commissioner. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax of ~~seventy-five~~ thirty-seven and one-half cents per ton of two thousand pounds [907.18 kilograms]. Such severance tax is in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit such tax for each month, within twenty-five days after the end of each month, to the state tax commissioner upon such reports and forms as the tax commissioner deems necessary.

SECTION 12. AMENDMENT. Section 57-61-01.7 of the North Dakota Century Code is amended and reenacted as follows:

57-61-01.7. Severance tax reduction for coal mined for out-of-state shipment. For coal subject to taxes under this chapter which is shipped out of state after June 30, 1995, and before July 1, 2000 2001:

1. ~~The coal is exempt from fifty percent of the taxes imposed under section 57-61-01.~~
2. The coal is subject to ~~fifteen~~ thirty percent of the taxes imposed under section 57-61-01 and the entire revenue under this subsection must be deposited in the coal development trust fund for use as provided in subsection 1 of section 57-62-02 and allocation to the lignite research fund as provided in subsection 2 of section 57-61-01.5.
3. ~~2.~~ In addition to the taxes under subsection ~~2~~ 1, the coal may be subject to up to ~~thirty-five~~ seventy percent of the severance taxes imposed under section 57-61-01 at the option of the county in which the coal is mined. The board of county commissioners, by resolution, may grant to the operator of a mine from which the coal is shipped out of state a partial or complete exemption from this portion of the severance tax. Any tax revenue from full or partial taxation under this subsection must be allocated to the county under subsection 2 of section 57-62-02.
4. ~~3.~~ Taxes imposed under section 57-61-01.5 apply to coal subject to this section and must be allocated as provided in section 57-61-01.5.

SECTION 13. AMENDMENT. Section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

57-62-02. Allocation of moneys in coal development fund. Moneys deposited in the coal development fund shall be apportioned monthly by the state treasurer as follows:

1. ~~Fifteen~~ Thirty percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter 15-60. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the state's general fund. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15-60.
2. ~~Thirty-five~~ Seventy percent must be allocated to the coal-producing counties and must be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such monthly period. Allocations under subdivisions a and b must be apportioned by the state treasurer as follows:
 - a. If the tipple of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned according to this subdivision must be allocated as follows:
 - (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.

- (2) Forty percent must be paid to the county treasurer who shall deposit it in the county general fund to be used for general governmental purposes.
 - (3) Thirty percent must be apportioned by the state treasurer to school districts within the county on the average daily membership basis, as certified to the state treasurer by the county superintendent of schools.
- b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in this subdivision. For purposes of this subdivision, the production limitation is three million eight hundred thousand tons [3447302.02 metric tons] through calendar year 1995, three million six hundred thousand tons [3265865.07 metric tons] in calendar years 1996 and 1997, and three million four hundred thousand tons [3084428.12 metric tons] in calendar years after 1997. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:
- (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.
 - (3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active

coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.

(4) For the purposes of this subsection:

- (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
- (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.
- (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
- (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
- (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.

~~3. Fifty percent shall be deposited in the state's general fund, except that after June 30, 1997, the revenue allocated to the state general fund under this subsection which is attributable to severance taxes on new coal production from clean coal demonstration projects must be deposited in the lignite research fund for partial funding of the state share of the clean coal demonstration project generating the new coal production.~~

SECTION 14. REPEAL. Section 57-61-01.8 of the North Dakota Century Code is repealed.

SECTION 15. EFFECTIVE DATE. Section 7 of this Act is effective for taxable events occurring after December 31, 2001, and the remainder of this Act is effective for taxable events occurring after June 30, 2001.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2299.

Senate Vote: Yeas 48 Nays 0 Absent 1

House Vote: Yeas 94 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State