

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1268

Introduced by

Representatives Belter, Delzer, Kerzman

Senators Christmann, Freborg, O'Connell

1 A BILL for an Act to create and enact a new subsection to section 57-60-01 of the North Dakota
2 Century Code, relating to definitions for coal conversion facilities privilege tax purposes; to
3 amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2, subsection 3 of section 57-60-01,
4 and section 57-60-02 of the North Dakota Century Code, relating to sales, use, and coal
5 conversion facilities privilege tax exemptions and rate reductions for environmental upgrade
6 and repowering of a power plant; and to provide an effective date.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code
9 is amended and reenacted as follows:

10 **57-39.2-04.2. Reduced rate and exemption for power plant construction and,**
11 **production, environmental upgrade, and repowering equipment.**

12 1. As used in this section, unless the context otherwise requires:

13 a. "Environmental upgrade" means an investment greater than twenty-five
14 million dollars or one hundred thousand dollars per megawatt of installed
15 nameplate capacity, whichever is less, in machinery, equipment, and related
16 facilities for reducing emissions or increasing efficiency at an existing power
17 plant.

18 b. "Operator" means any person owning, holding, or leasing a power plant.

19 ~~b.~~ c. "Power plant" means:

20 (1) An electrical generating plant, and all additions to the plant, which
21 processes or converts lignite from its natural form into electrical power
22 and which has at least one single electrical energy generation unit with
23 a capacity of one hundred twenty thousand kilowatts or more.

- 1 (2) A wind-powered electrical generating facility, on which construction is
2 completed before January 1, 2011, and all additions to the facility,
3 which provides electrical power through wind generation and which has
4 at least one single electrical energy generation unit with a nameplate
5 capacity of one hundred kilowatts or more.
- 6 (3) An electrical generating plant, which utilizes noncoal or waste heat, and
7 all additions to the plant, which has at least one single electrical energy
8 generation unit with a capacity of five thousand kilowatts or more.
- 9 e. d. "Production equipment" means machinery and attachment units, other than
10 replacement parts, directly and exclusively used in the generation,
11 transmission, or distribution of electrical energy for sale by a power plant.
- 12 e. "Repowering" means an investment of more than two hundred million dollars
13 or one million dollars per megawatt of installed nameplate capacity, whichever
14 is less, in an existing power plant that modifies or replaces the process used
15 for converting lignite coal from its natural form into electric power.
- 16 2. Sales of production or environmental upgrade equipment used exclusively in
17 power plants or repowering existing power plants that begin construction after June
18 30, 1991, are exempt from the tax imposed by this chapter.
- 19 3. Sales of tangible personal property, other than production or environmental
20 upgrade equipment, which is used in the construction of new power plants or to
21 add environmental upgrades to existing power plants or repowering existing power
22 plants are exempt from the tax imposed by this chapter.
- 23 4. To receive the reduced rate or exemption at the time of purchase, the operator
24 must receive from the commissioner a certificate that the tangible personal
25 property or production equipment the operator intends to purchase qualifies for the
26 reduced rate or exemption. If a certificate is not received prior to the purchase, the
27 operator shall pay the ~~five percent sales~~ applicable tax rate ~~imposed by this~~
28 chapter and apply to the commissioner for a refund.
- 29 5. If the tangible personal property or production equipment is purchased or installed
30 by a contractor subject to the tax imposed by this chapter, the operator may apply

for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 2. AMENDMENT. Section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-04.2. Reduced rate and exemption for power plant construction and, production, environmental upgrade, and repowering equipment.

1. As used in this section, unless the context otherwise requires:

a. "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.

b. "Operator" means any person owning, holding, or leasing a power plant.

~~b.~~ c. "Power plant" means:

(1) An electrical generating plant, and all additions to the plant, which processes or converts lignite 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 kilowatts or more.

(2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

(3) An electrical generating plant, which utilizes noncoal or waste heat, and all additions to the plant, which has at least one single electrical energy generation unit with a capacity of five thousand kilowatts or more.

~~e.~~ d. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.

e. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever

1 is less, in an existing power plant that modifies or replaces the process used
2 for converting lignite coal from its natural form into electric power.

3 2. Sales of production or environmental upgrade equipment used exclusively in
4 power plants or repowering existing power plants that begin construction after
5 June 30, 1991, are exempt from the tax imposed by this chapter.

6 3. Sales of tangible personal property, other than production or environmental
7 upgrade equipment, which is used in the construction of new power plants or to
8 add environmental upgrades to existing power plants or repowering existing power
9 plants are exempt from the tax imposed by this chapter.

10 4. To receive the reduced rate or exemption at the time of purchase, the operator
11 must receive from the commissioner a certificate that the tangible personal
12 property or production equipment the operator intends to purchase qualifies for the
13 reduced rate or exemption. If a certificate is not received prior to the purchase, the
14 operator shall pay the ~~five percent sales~~ applicable tax rate imposed by this
15 chapter and apply to the commissioner for a refund.

16 5. If the tangible personal property or production equipment is purchased or installed
17 by a contractor subject to the tax imposed by this chapter, the operator may apply
18 for a refund of the difference between the amount remitted by the contractor and
19 the reduced rate or exemption imposed or allowed by this section.

20 **SECTION 3. AMENDMENT.** Subsection 3 of section 57-60-01 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 3. "Coal conversion facility" means any of the following:

23 a. A plant, other than an electrical generating plant or a coal beneficiation plant,
24 with all additions thereto, which processes or converts coal from its natural
25 form into a form substantially different in chemical or physical properties,
26 including coal gasification, coal liquefaction, and the manufacture of fertilizer
27 and other products, and which uses or is designed to use over five hundred
28 thousand tons [453592.37 metric tons] of coal per year;

29 b. An electrical generating plant, with all additions thereto, which processes or
30 converts coal from its natural form into electrical power and which has at least

one single electrical energy generation unit with a capacity of ten thousand kilowatts or more; or

c. A plant, with all additions thereto, which is designed for coal beneficiation.

d. A gas-fired electrical generating facility, and all additions to the facility, which generates electrical power through the consumption of gas produced by the conversion of lignite from its natural form into gas and has a capacity of ten thousand kilowatts or more.

SECTION 4. A new subsection to section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

"Repowering" means replacing the existing process of converting lignite from its natural form into electrical power at an existing generating plant to a process that reduces emissions, increases efficiency, and involves an investment of over two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less.

SECTION 5. 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 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 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 or added repowering after June 30, 1991, are exempt from eighty-five

1 percent of the tax imposed by this subsection for five years from the date of the
2 first taxable production or from the date of the first taxable production after
3 repowering from the plant. The board of county commissioners may, by resolution,
4 grant to the operator of an electrical generating plant located within the county
5 which begins construction after June 30, 1991, partial or complete exemption from
6 the remaining fifteen percent of the tax imposed by this subsection for a period not
7 exceeding five years from the date of the first taxable production or from the date
8 of the first taxable production after repowering from the plant. Notwithstanding
9 section 57-60-14, any tax collected from a plant subject to the exemption provided
10 by this subsection must be allocated entirely to the county for allocation as
11 provided in section 57-60-15. If a unit is incapable of generating electricity for
12 eighteen consecutive months, the tax on that unit for taxable periods beginning
13 after the eighteenth month must be reduced by the ratio that the cost of repair of
14 the unit bears to the original cost of the unit. This reduced rate remains in effect
15 until the unit is capable of generating electricity.

16 3. For electrical generating plants, in addition to the tax imposed by subsection 2,
17 there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt
18 hour of electricity produced for the purpose of sale. For all electrical generating
19 plants that begin construction or added repowering after June 30, 1991, the
20 production from the plants is exempt from the tax imposed by this subsection for
21 five years from the date of the first taxable production or from the date of the first
22 taxable production after repowering from the plant.

23 4. For coal gasification plants, the tax is the greater of either the amount provided in
24 subsection 1 or thirteen and one-half cents on each one thousand cubic feet
25 [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not
26 including any amount of synthetic natural gas in excess of one hundred ten million
27 cubic feet per day.

28 5. a. For all coal conversion facilities, other than electrical generating plants, the
29 production from the facilities is exempt from eighty-five percent of the tax
30 imposed by this section for a period of five years from the date of first taxable
31 production from the facility or for a period of five years from April 20, 1987,

1 whichever is later. The operator of each facility applying for exemption under
2 this subsection shall certify to the tax commissioner the date of first taxable
3 production of the facility.

4 b. The board of county commissioners may, by resolution, grant to the operator
5 of a coal conversion facility, other than an electrical generating plant, located
6 within the county a partial or complete exemption from the remaining fifteen
7 percent of tax imposed by this section for a period not exceeding five years
8 from the date of the first taxable production from the facility. Notwithstanding
9 the provisions of section 57-60-14, any tax collected which is based upon the
10 production of a facility subject to the exemption provided by this subsection
11 must be allocated entirely to the county for allocation as provided in section
12 57-60-15.

13 6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand
14 pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or
15 one and one-quarter percent of the gross receipts derived from such facility for the
16 preceding month, whichever amount is greater. Any amount of beneficiated coal
17 produced in excess of eighty percent of the design capacity of the coal
18 beneficiation plant is exempt from such tax.

19 **SECTION 6. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
20 June 30, 2005.