

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2141

Introduced by

Senators Urlacher, Erbele, O'Connell

Representatives Brandenburg, Kretschmar, S. Meyer

1 A BILL for an Act to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2 of the North
2 Dakota Century Code, relating to a sales and use tax exemption for materials used to construct
3 a waste heat electric generation facility; to provide an effective date; and to provide an
4 expiration date.

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

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

8 **57-39.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for**
9 **power plant construction, production, environmental upgrade, and repowering**
10 **equipment.**

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

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

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

18 c. "Power plant" means:

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

23 (2) A wind-powered electrical generating facility, on which construction is
24 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.

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

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

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

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

5. If the tangible personal property or production equipment is purchased or installed 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.

(Effective after June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.

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

2 a. (1) "Environmental upgrade" means an investment greater than twenty-five
3 million dollars or one hundred thousand dollars per megawatt of
4 installed nameplate capacity, whichever is less, in machinery,
5 equipment, and related facilities for reducing emissions or increasing
6 efficiency at an existing power plant.

7 (2) "Environmental upgrade" for purposes of a process unit means an
8 investment greater than one hundred thousand dollars in machinery,
9 equipment, and related facilities for reducing emissions, increasing
10 efficiency, or enhancing reliability of the equipment at a new or existing
11 process unit.

12 b. "Operator" means any person owning, holding, or leasing a power plant or
13 process unit.

14 c. "Power plant" means:

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

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

24 (3) An electrical generating facility, and all additions to the facility, which
25 provides electrical power through recycled energy sources, as defined
26 under section 49-02-25, and which has at least one single electrical
27 energy generation unit with a nameplate capacity of one thousand
28 kilowatts or more, and which is placed in service after June 1, 2007.

29 d. "Process unit" means an oil refinery or gas processing plant and all adjacent
30 units that are utilized in the processing of crude oil or natural gas.

- 1 e. "Production equipment" means machinery and attachment units, other than
2 replacement parts, directly and exclusively used in the generation,
3 transmission, or distribution of electrical energy for sale by a power plant.
- 4 f. "Repowering" means an investment of more than two hundred million dollars
5 or one million dollars per megawatt of installed nameplate capacity,
6 whichever is less, in an existing power plant that modifies or replaces the
7 process used for converting lignite coal from its natural form into electrical
8 power.
- 9 2. Sales of production or environmental upgrade equipment used exclusively in
10 power plants or repowering existing power plants or in processing units that begin
11 construction after June 30, 1991, are exempt from the tax imposed by this chapter.
- 12 3. Sales of tangible personal property, other than production or environmental
13 upgrade equipment, which is used in the construction of new power plants or to
14 add environmental upgrades to existing power plants or repowering existing power
15 plants or to add environmental upgrades to existing process units are exempt from
16 the tax imposed by this chapter.
- 17 4. To receive the reduced rate or exemption at the time of purchase, the operator
18 must receive from the commissioner a certificate that the tangible personal
19 property or production equipment the operator intends to purchase qualifies for the
20 reduced rate or exemption. If a certificate is not received prior to the purchase, the
21 operator shall pay the applicable tax imposed by this chapter and apply to the
22 commissioner for a refund.
- 23 5. If the tangible personal property or production equipment is purchased or installed
24 by a contractor subject to the tax imposed by this chapter, the operator may apply
25 for a refund of the difference between the amount remitted by the contractor and
26 the reduced rate or exemption imposed or allowed by this section.

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

29 **57-40.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for**
30 **power plant construction, production, environmental upgrade, and repowering**
31 **equipment.**

- 1 1. As used in this section, unless the context otherwise requires:
 - 2 a. "Environmental upgrade" means an investment greater than twenty-five
3 million dollars or one hundred thousand dollars per megawatt of installed
4 nameplate capacity, whichever is less, in machinery, equipment, and related
5 facilities for reducing emissions or increasing efficiency at an existing power
6 plant.
 - 7 b. "Operator" means any person owning, holding, or leasing a power plant.
 - 8 c. "Power plant" means:
 - 9 (1) An electrical generating plant, and all additions to the plant, which
10 processes or converts lignite from its natural form into electrical power
11 and which has at least one single electrical energy generation unit with
12 a capacity of one hundred twenty thousand kilowatts or more.
 - 13 (2) A wind-powered electrical generating facility, on which construction is
14 completed before January 1, 2011, and all additions to the facility,
15 which provides electrical power through wind generation and which has
16 at least one single electrical energy generation unit with a nameplate
17 capacity of one hundred kilowatts or more.
 - 18 d. "Production equipment" means machinery and attachment units, other than
19 replacement parts, directly and exclusively used in the generation,
20 transmission, or distribution of electrical energy for sale by a power plant.
 - 21 e. "Repowering" means an investment of more than two hundred million dollars
22 or one million dollars per megawatt of installed nameplate capacity,
23 whichever is less, in an existing power plant that modifies or replaces the
24 process used for converting lignite coal from its natural form into electric
25 power.
- 26 2. Sales of production or environmental upgrade equipment used exclusively in
27 power plants or repowering existing power plants that begin construction after
28 June 30, 1991, are exempt from the tax imposed by this chapter.
- 29 3. Sales of tangible personal property, other than production or environmental
30 upgrade equipment, which is used in the construction of new power plants or to

add environmental upgrades to existing power plants or repowering existing power plants are exempt from the tax imposed by this chapter.

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

5. If the tangible personal property or production equipment is purchased or installed 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.

(Effective after June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment and oil refinery or gas processing plant environmental upgrade equipment.

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

a. (1) "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.

(2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.

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

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

- 1 and which has at least one single electrical energy generation unit with
2 a capacity of one hundred twenty thousand kilowatts or more.
- 3 (2) A wind-powered electrical generating facility, on which construction is
4 completed before January 1, 2011, and all additions to the facility,
5 which provides electrical power through wind generation and which has
6 at least one single electrical energy generation unit with a nameplate
7 capacity of one hundred kilowatts or more.
- 8 (3) An electrical generating facility, and all additions to the facility, which
9 provides electrical power through recycled energy sources, as defined
10 under section 49-02-25, and which has at least one single electrical
11 energy generation unit with a nameplate capacity of one thousand
12 kilowatts or more, and which is placed in service after June 1, 2007.
- 13 d. "Process unit" means an oil refinery or gas processing plant and all adjacent
14 units that are utilized in the processing of crude oil or natural gas.
- 15 e. "Production equipment" means machinery and attachment units, other than
16 replacement parts, directly and exclusively used in the generation,
17 transmission, or distribution of electrical energy for sale by a power plant.
- 18 f. "Repowering" means an investment of more than two hundred million dollars
19 or one million dollars per megawatt of installed nameplate capacity,
20 whichever is less, in an existing power plant that modifies or replaces the
21 process used for converting lignite coal from its natural form into electric
22 power.
- 23 2. Sales of production or environmental upgrade equipment used exclusively in
24 power plants or repowering existing power plants or in process units that begin
25 construction after June 30, 1991, are exempt from the tax imposed by this chapter.
- 26 3. Sales of tangible personal property, other than production or environmental
27 upgrade equipment, which is used in the construction of new power plants or to
28 add environmental upgrades to existing power plants or repowering existing power
29 plants or to add environmental upgrades to existing process units are exempt from
30 the tax imposed by this chapter.

1 4. To receive the reduced rate or exemption at the time of purchase, the operator
2 must receive from the commissioner a certificate that the tangible personal
3 property or production equipment the operator intends to purchase qualifies for the
4 reduced rate or exemption. If a certificate is not received prior to the purchase, the
5 operator shall pay the applicable tax imposed by this chapter and apply to the
6 commissioner for a refund.

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

11 **SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for
12 taxable events occurring after June 30, 2007, and before July 1, 2011, and is thereafter
13 ineffective.