

Sixtieth  
Legislative Assembly  
of North Dakota

**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; and to provide an effective date.

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

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

7 **57-39.2-04.2. (Effective through June 30, 2007) Reduced rate and exemption for**  
8 **power plant construction, production, environmental upgrade, and repowering**  
9 **equipment.**

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

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

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

17 c. "Power plant" means:

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

22 (2) A wind-powered electrical generating facility, on which construction is  
23 completed before January 1, 2011, and all additions to the facility,  
24 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. As used in this section, unless the context otherwise requires:

- 1           a.   (1)   "Environmental upgrade" means an investment greater than twenty-five  
2                   million dollars or one hundred thousand dollars per megawatt of  
3                   installed nameplate capacity, whichever is less, in machinery,  
4                   equipment, and related facilities for reducing emissions or increasing  
5                   efficiency at an existing power plant.
- 6           (2)   "Environmental upgrade" for purposes of a process unit means an  
7                   investment greater than one hundred thousand dollars in machinery,  
8                   equipment, and related facilities for reducing emissions, increasing  
9                   efficiency, or enhancing reliability of the equipment at a new or existing  
10                  process unit.
- 11          b.   "Operator" means any person owning, holding, or leasing a power plant or  
12                  process unit.
- 13          c.   "Power plant" means:
- 14                  (1)   An electrical generating plant, and all additions to the plant, which  
15                          processes or converts lignite from its natural form into electrical power  
16                          and which has at least one single electrical energy generation unit with  
17                          a capacity of one hundred twenty thousand kilowatts or more.
- 18                  (2)   A wind-powered electrical generating facility, on which construction is  
19                          completed before January 1, 2011, and all additions to the facility,  
20                          which provides electrical power through wind generation and which has  
21                          at least one single electrical energy generation unit with a nameplate  
22                          capacity of one hundred kilowatts or more.
- 23                  (3)   An electrical generating facility, and all additions to the facility, which  
24                          provides electrical power through recycled energy sources, as defined  
25                          under section 49-02-25, and which has at least one single electrical  
26                          energy generation unit with a nameplate capacity of one thousand  
27                          kilowatts or more, and which is placed in service after June 1, 2007.
- 28          d.   "Process unit" means an oil refinery or gas processing plant and all adjacent  
29                  units that are utilized in the processing of crude oil or natural gas.

e. "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.

f. "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 or in processing units 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 or to add environmental upgrades to existing process units 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.

**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. (Effective through June 30, 2007) Reduced rate and exemption for power plant construction, production, environmental upgrade, and repowering equipment.**

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

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

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

7           c. "Power plant" means:

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

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

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

20          e. "Repowering" means an investment of more than two hundred million dollars  
21          or one million dollars per megawatt of installed nameplate capacity, whichever  
22          is less, in an existing power plant that modifies or replaces the process used  
23          for converting lignite coal from its natural form into electric power.

24          2. Sales of production or environmental upgrade equipment used exclusively in power  
25          plants or repowering existing power plants that begin construction after June 30,  
26          1991, are exempt from the tax imposed by this chapter.

27          3. Sales of tangible personal property, other than production or environmental  
28          upgrade equipment, which is used in the construction of new power plants or to  
29          add environmental upgrades to existing power plants or repowering existing power  
30          plants are exempt from 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           **(Effective after June 30, 2007) Reduced rate and exemption for power plant**  
12   **construction, production, environmental upgrade, and repowering equipment and oil**  
13   **refinery or gas processing plant environmental upgrade equipment.**

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

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

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

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

27           c. "Power plant" means:

28           (1) An electrical generating plant, and all additions to the plant, which  
29           processes or converts lignite from its natural form into electrical power  
30           and which has at least one single electrical energy generation unit with  
31           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 facility, and all additions to the facility, which  
7                                   provides electrical power through recycled energy sources, as defined  
8                                   under section 49-02-25, and which has at least one single electrical  
9                                   energy generation unit with a nameplate capacity of one thousand  
10                                  kilowatts or more, and which is placed in service after June 1, 2007.
- 11                  d.    "Process unit" means an oil refinery or gas processing plant and all adjacent  
12                                  units that are utilized in the processing of crude oil or natural gas.
- 13                  e.    "Production equipment" means machinery and attachment units, other than  
14                                  replacement parts, directly and exclusively used in the generation,  
15                                  transmission, or distribution of electrical energy for sale by a power plant.
- 16                  f.    "Repowering" means an investment of more than two hundred million dollars  
17                                  or one million dollars per megawatt of installed nameplate capacity, whichever  
18                                  is less, in an existing power plant that modifies or replaces the process used  
19                                  for converting lignite coal from its natural form into electric power.
- 20                  2.    Sales of production or environmental upgrade equipment used exclusively in power  
21                                  plants or repowering existing power plants or in process units that begin  
22                                  construction after June 30, 1991, are exempt from the tax imposed by this chapter.
- 23                  3.    Sales of tangible personal property, other than production or environmental  
24                                  upgrade equipment, which is used in the construction of new power plants or to  
25                                  add environmental upgrades to existing power plants or repowering existing power  
26                                  plants or to add environmental upgrades to existing process units are exempt from  
27                                  the tax imposed by this chapter.
- 28                  4.    To receive the reduced rate or exemption at the time of purchase, the operator  
29                                  must receive from the commissioner a certificate that the tangible personal  
30                                  property or production equipment the operator intends to purchase qualifies for the  
31                                  reduced rate or exemption. If a certificate is not received prior to the purchase, the

1 operator shall pay the applicable tax imposed by this chapter and apply to the  
2 commissioner for a refund.

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

7 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
8 June 30, 2007.