

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2035

Introduced by

Legislative Council

(Energy Development and Transmission Committee)

1 A BILL for an Act to amend and reenact subsection 41 of section 57-39.2-04, subsection 1 of
2 section 57-39.2-04.2, subsection 1 of section 57-40.2-04.2, and section 57-61-01.4 of the North
3 Dakota Century Code, relating to sales and use tax exemptions for beneficiated coal and
4 equipment for certain power plants and a coal severance tax exemption for beneficiated coal
5 used in certain plants; to provide for a study and a report to the legislative council; to provide an
6 effective date; and to provide an expiration date.

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

8 **SECTION 1. AMENDMENT.** Subsection 41 of section 57-39.2-04 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 41. Gross receipts from the initial sale of beneficiated coal ~~taxed under chapter 57-60.~~

11 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-39.2-04.2 of the North Dakota
12 Century Code is amended and reenacted as follows:

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

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

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

- 1 b. "Operator" means any person owning, holding, or leasing a power plant or
2 process unit.
- 3 c. "Power plant" means:
- 4 (1) An electrical generating plant, and all additions to the plant, which
5 processes or converts coal ~~from~~ in its natural form or beneficiated coal
6 into electrical power and which has at least one single electrical energy
7 generation unit with a capacity of fifty thousand kilowatts or more.
- 8 (2) A wind-powered electrical generating facility, on which construction is
9 completed before January 1, 2011, and all additions to the facility,
10 which provides electrical power through wind generation and which has
11 at least one single electrical energy generation unit with a nameplate
12 capacity of one hundred kilowatts or more.
- 13 (3) Any other type of electrical power generating facility excluding the types
14 of power plants identified in paragraphs 1 and 2 which has a capacity of
15 one hundred kilowatts or more and produces electricity for resale or for
16 consumption in a business activity.
- 17 d. "Process unit" means an oil refinery or gas processing plant and all adjacent
18 units that are utilized in the processing of crude oil or natural gas.
- 19 e. "Production equipment" means machinery and attachment units, other than
20 replacement parts, directly and exclusively used in the generation,
21 transmission, or distribution of electrical energy for sale by a power plant.
- 22 f. "Repowering" means an investment of more than two hundred million dollars
23 or one million dollars per megawatt of installed nameplate capacity,
24 whichever is less, in an existing power plant that modifies or replaces the
25 process used for converting coal ~~from~~ in its natural form or beneficiated coal
26 into electrical power.

27 **SECTION 3. AMENDMENT.** Subsection 1 of section 57-40.2-04.2 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 1. As used in this section, unless the context otherwise requires:
- 30 a. (1) "Environmental upgrade" means an investment greater than twenty-five
31 million dollars or one hundred thousand dollars per megawatt of

- 1 installed nameplate capacity, whichever is less, in machinery,
2 equipment, and related facilities for reducing emissions or increasing
3 efficiency at an existing power plant.
- 4 (2) "Environmental upgrade" for purposes of a process unit means an
5 investment greater than one hundred thousand dollars in machinery,
6 equipment, and related facilities for reducing emissions, increasing
7 efficiency, or enhancing reliability of the equipment at a new or existing
8 process unit.
- 9 b. "Operator" means any person owning, holding, or leasing a power plant or
10 process unit.
- 11 c. "Power plant" means:
- 12 (1) An electrical generating plant, and all additions to the plant, which
13 processes or converts coal ~~from~~ in its natural form or beneficiated coal
14 into electrical power and which has at least one single electrical energy
15 generation unit with a capacity of fifty thousand kilowatts or more.
- 16 (2) A wind-powered electrical generating facility, on which construction is
17 completed before January 1, 2011, and all additions to the facility,
18 which provides electrical power through wind generation and which has
19 at least one single electrical energy generation unit with a nameplate
20 capacity of one hundred kilowatts or more.
- 21 (3) Any other type of electrical power generating facility excluding the types
22 of power plants identified in paragraphs 1 and 2 which has a capacity of
23 one hundred kilowatts or more and produces electricity for resale or for
24 consumption in a business activity.
- 25 d. "Process unit" means an oil refinery or gas processing plant and all adjacent
26 units that are utilized in the processing of crude oil or natural gas.
- 27 e. "Production equipment" means machinery and attachment units, other than
28 replacement parts, directly and exclusively used in the generation,
29 transmission, or distribution of electrical energy for sale by a power plant.
- 30 f. "Repowering" means an investment of more than two hundred million dollars
31 or one million dollars per megawatt of installed nameplate capacity,

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

4 **SECTION 4. AMENDMENT.** Section 57-61-01.4 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-61-01.4. Severance and sales and use tax exemptions for coal used in certain**
7 **plants.** No state severance tax may be imposed on coal used in agricultural commodity
8 processing or sugar-beet refining plants facilities as defined in subsection 4 of section
9 57-39.2-04.4 located within North Dakota or adjacent states or any facility owned by the state
10 or a political subdivision. No state severance tax may be imposed on coal purchased for
11 improvement through the process of coal beneficiation defined in subsection 2 of section
12 57-60-01 which is subsequently used in agricultural commodity processing facilities located
13 within North Dakota or adjacent states or any facility owned by the state or a political
14 subdivision. The coal mine owner or operator shall require the person purchasing the coal to
15 certify that amount of coal purchased for use in agricultural commodity processing or sugar
16 beet refining purposes. Coal exempted from the severance tax by this section is not subject to
17 sales and use taxes facilities or for beneficiation and subsequent use in agricultural commodity
18 processing facilities or any facility owned by the state or a political subdivision.

19 **SECTION 5. TAX COMMISSIONER STUDY - LEGISLATIVE COUNCIL REPORT.**

- 20 1. During the 2009-11 and 2011-13 bienniums, the tax commissioner shall conduct a
21 cost-benefit analysis of the coal severance tax exemption authorized under section
22 57-61-01.4.
- 23 2. The tax commissioner shall report the findings and recommendations of the
24 analysis to an interim committee designated by the legislative council during the
25 2013-14 interim.
- 26 3. The report must be based upon information available to the tax commissioner and
27 must include an analysis of the costs and benefits to the state and the taxpayers
28 who qualify for the exemption under section 57-61-01.4.
- 29 4. The tax commissioner shall establish the procedure by which the tax commissioner
30 will compile the data and the format in which the tax commissioner will provide this
31 data to the interim committee.

1 5. The tax commissioner may use confidential tax information filed by or on behalf of
2 a person pursuant to a tax law of this state to compile this report. Confidential tax
3 information must be provided to the interim committee in a manner that will not
4 divulge information specific to any taxpayer.

5 **SECTION 6. EFFECTIVE DATE - EXPIRATION DATE.** Sections 1 through 4 of this
6 Act are effective for taxable events occurring after June 30, 2009, and before July 1, 2015, and
7 are thereafter ineffective.