

**FIRST ENGROSSMENT
with House Amendments**

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 or
5 beneficiated coal used to produce steam that is used in certain plants; to provide for a study
6 and a report to the legislative council; to provide an effective date; and to provide an expiration
7 date.

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

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

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

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

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.

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

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

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

1 4. The tax commissioner shall establish the procedure by which the tax commissioner
2 will compile the data and the format in which the tax commissioner will provide this
3 data to the interim committee.

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

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