

Sixty-second  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2031**

Introduced by

Legislative Management

(Energy Development and Transmission Committee)

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 the exemption from sales and use tax for construction  
3 materials used in a wind-powered electrical generating 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 is  
6 amended and reenacted as follows:

7 **57-39.2-04.2. (Effective through June 30, 2015) Sales tax exemption for power plant**  
8 **construction, production, environmental upgrade, and repowering equipment and oil**  
9 **refinery or gas processing plant environmental upgrade equipment.**

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

11 a. (1) "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 (2) "Environmental upgrade" for purposes of a process unit means an  
17 investment greater than one hundred thousand dollars in machinery,  
18 equipment, and related facilities for reducing emissions, increasing  
19 efficiency, or enhancing reliability of the equipment at a new or existing  
20 process unit.

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

23 c. "Power plant" means:

1                   (1) An electrical generating plant, and all additions to the plant, which  
2                   processes or converts coal in its natural form or beneficiated coal into  
3                   electrical power and which has at least one single electrical energy  
4                   generation unit with a capacity of fifty thousand kilowatts or more.

5                   (2) A wind-powered electrical generating facility, ~~on which construction is~~  
6                   ~~completed before January 1, 2015,~~ and all additions to the facility, which  
7                   provides electrical power through wind generation and which has at least  
8                   one single electrical energy generation unit with a nameplate capacity of  
9                   one hundred kilowatts or more.

10                  (3) Any other type of electrical power generating facility excluding the types of  
11                  power plants identified in paragraphs 1 and 2 which has a capacity of one  
12                  hundred kilowatts or more and produces electricity for resale or for  
13                  consumption in a business activity.

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

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

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

23                  2. Sales of production or environmental upgrade equipment that is delivered on or after  
24                  January 1, 2007, and used exclusively in power plants or repowering existing power  
25                  plants or in processing units are exempt from the tax imposed by this chapter.

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

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

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

10       **(Effective after June 30, 2015) Sales tax exemption for power plant construction,**  
11       **production, environmental upgrade, and repowering equipment and oil refinery or gas**  
12       **processing plant environmental upgrade equipment.**

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 installed  
16               nameplate capacity, whichever is less, in machinery, equipment, and related  
17               facilities for reducing emissions or increasing efficiency at an existing power  
18               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.

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

26           c. "Power plant" means:

27           (1) An electrical generating plant, and all additions to the plant, which  
28               processes or converts coal from its natural form into electrical power and  
29               which has at least one single electrical energy generation unit with a  
30               capacity of fifty thousand kilowatts or more.

(2) A wind-powered electrical generating facility, ~~on which construction is completed before January 1, 2015,~~ 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) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.

d. "Process unit" means an oil refinery or gas processing plant and all adjacent 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 coal from its natural form into electrical power.

2. Sales of production or environmental upgrade equipment that is delivered on or after January 1, 2007, and used exclusively in power plants or repowering existing power plants or in processing units 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 expand existing 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 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 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.

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

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

7        **57-40.2-04.2. (Effective through June 30, 2015) Use tax exemption for power plant**  
8        **construction, production, environmental upgrade, and repowering equipment and oil**  
9        **refinery or gas processing plant environmental upgrade equipment.**

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

- 11       a. (1) "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       (2) "Environmental upgrade" for purposes of a process unit means an  
17       investment greater than one hundred thousand dollars in machinery,  
18       equipment, and related facilities for reducing emissions, increasing  
19       efficiency, or enhancing reliability of the equipment at a new or existing  
20       process unit.
- 21       b. "Operator" means any person owning, holding, or leasing a power plant or  
22       process unit.
- 23       c. "Power plant" means:
- 24       (1) An electrical generating plant, and all additions to the plant, which  
25       processes or converts coal in its natural form or beneficiated coal into  
26       electrical power and which has at least one single electrical energy  
27       generation unit with a capacity of fifty thousand kilowatts or more.
- 28       (2) A wind-powered electrical generating facility, ~~on which construction is~~  
29       ~~completed before January 1, 2015,~~ and all additions to the facility, which  
30       provides electrical power through wind generation and which has at least

1                   one single electrical energy generation unit with a nameplate capacity of  
2                   one hundred kilowatts or more.

3                   (3) Any other type of electrical power generating facility excluding the types of  
4                   power plants identified in paragraphs 1 and 2 which has a capacity of one  
5                   hundred kilowatts or more and produces electricity for resale or for  
6                   consumption in a business activity.

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

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

12                  f. "Repowering" means an investment of more than two hundred million dollars or  
13                  one million dollars per megawatt of installed nameplate capacity, whichever is  
14                  less, in an existing power plant that modifies or replaces the process used for  
15                  converting coal in its natural form or beneficiated coal into ~~electric~~electrical  
16                  power.

17                  2. Sales of production or environmental upgrade equipment that is delivered on or after  
18                  January 1, 2007, and used exclusively in power plants or repowering existing power  
19                  plants or in process units are exempt from the tax imposed by this chapter.

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

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

30                  5. If the tangible personal property or production equipment is purchased or installed by  
31                  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, 2015) Use tax 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 coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
  - (2) A wind-powered electrical generating facility, ~~on which construction is completed before January 1, 2015,~~ 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) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one

1                               hundred kilowatts or more and produces electricity for resale or for  
2                               consumption in a business activity.

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

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

8               f.    "Repowering" means an investment of more than two hundred million dollars or  
9                       one million dollars per megawatt of installed nameplate capacity, whichever is  
10                      less, in an existing power plant that modifies or replaces the process used for  
11                      converting coal from its natural form into ~~electric~~electrical power.

12           2.   Sales of production or environmental upgrade equipment that is delivered on or after  
13                   January 1, 2007, and used exclusively in power plants or repowering existing power  
14                   plants or in process units are exempt from the tax imposed by this chapter.

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

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

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

29           **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
30           June 30, 2011.