

**HOUSE BILL NO. 1454**

Introduced by

Representatives Belter, Hanson

Senators Kinnoin, Urlacher

1 A BILL for an Act to amend and reenact subsection 3 of section 57-39.2-02.1, subsection 9 of  
2 section 57-40.2-01, subsection 3 of section 57-40.2-02.1, sections 57-61-01.5, and 57-61-01.8  
3 of the North Dakota Century Code, relating to a sales and use tax on coal, a reduced severance  
4 tax for coal burned in small boilers, and a tax for coal research, development, and marketing  
5 programs; to provide for severability; to provide a contingent effective date; and to declare an  
6 emergency.

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

8 **SECTION 1. AMENDMENT.** Subsection 3 of section 57-39.2-02.1 of the 1997  
9 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10 3. There is imposed a tax of ~~six cents per million British thermal units~~ seventy-five  
11 cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of  
12 coal, except for coal used for heating buildings in this state and coal used in  
13 agricultural processing or sugar beet refining plants located within this state or  
14 adjacent states.

15 **SECTION 2. AMENDMENT.** Subsection 9 of section 57-40.2-01 of the 1997  
16 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17 9. "Use" means the exercise by any person of any right or power over tangible  
18 personal property incident to the ownership or possession of that property,  
19 including the storage, use, or consumption of that property in this state, except that  
20 it does not include processing, or the sale of that property in the regular course of  
21 business. "Use" also means the severing of sand ~~or~~, gravel, or coal from the soil  
22 of this state for use within or outside of this state.

23 **SECTION 3. AMENDMENT.** Subsection 3 of section 57-40.2-02.1 of the 1997  
24 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1           3. An excise tax is imposed on the storage, use, or consumption in this state of coal  
2           at the rate of ~~six cents per million British thermal units~~, seventy-five cents per ton of  
3           two thousand pounds [907.18 kilograms] except for coal used for heating buildings  
4           in this state and coal used in agricultural processing or sugar beet refining plants  
5           located within this state or adjacent states.

6           **SECTION 4. AMENDMENT.** Section 57-61-01.5 of the 1997 Supplement to the North  
7           Dakota Century Code is amended and reenacted as follows:

8           **57-61-01.5. Separate and additional coal severance tax and use tax - Lignite**  
9           **research, development, and marketing program - Continuing appropriation -**  
10          **Administration.**

11           1. There is hereby imposed upon all coal severed or delivered for sale or use or for  
12           industrial purposes ~~by coal mines~~ within the state a tax, separate from and  
13           additional to the tax imposed by section 57-61-01, subsection 3 of section  
14           57-39.2-02.1, and subsection 3 of section 57-39.2-26.1, of two cents per ton of two  
15           thousand pounds [907.18 kilograms]. All of the provisions of this chapter for  
16           administration of the coal severance tax apply to the tax imposed under this  
17           section. The state tax commissioner shall transfer revenue from the tax imposed  
18           by this section to the state treasurer for deposit in a special fund in the state  
19           treasury, which is hereby created, to be known as the lignite research fund. Such  
20           moneys must be used for contracts for land reclamation research projects and for  
21           research, development, and marketing of lignite and products derived from lignite.  
22           The industrial commission shall adopt rules for submission and consideration of  
23           research, development, and marketing proposals and entering into contracts under  
24           the lignite research, development, and marketing program.

25           2. The state treasurer shall deposit in the lignite research fund, seventy percent of the  
26           taxes collected and deposited subsequent to July 1, 1994, in the permanent trust  
27           fund established by section 21 of article X of the Constitution of North Dakota and  
28           shall, beginning in July 1991, no less than monthly, deposit in the lignite research  
29           fund seventy percent of the taxes collected and deposited in the permanent trust  
30           fund. All moneys in the lignite research fund as well as any moneys received from  
31           federal and private sources for lignite research, development, and marketing,

1 including interest on all such moneys, are hereby appropriated to the industrial  
2 commission, and may be spent only within limits of legislative appropriations, for  
3 the administration, development, and funding of the lignite research, development,  
4 and marketing program.

5 **SECTION 5. AMENDMENT.** Section 57-61-01.8 of the 1997 Supplement to the North  
6 Dakota Century Code is amended and reenacted as follows:

7 **57-61-01.8. Tax reduction for coal burned in small boilers - Expiration date.** For  
8 coal subject to taxes under this title which is burned in coal-fired boilers within this state or  
9 adjacent states in which the generating station has a total capacity of not more than two  
10 hundred ten megawatts, after June 30, 1999, and through June 30, 2003:

- 11 1. The coal is exempt from fifty percent of the taxes imposed under sections  
12 57-61-01, 57-39.2-02.1, and 57-40.2-02.1;
- 13 2. The coal is subject to fifteen percent of the taxes imposed under section 57-61-01  
14 and the entire revenue under this subsection must be deposited in the coal  
15 development trust fund for use as provided in subsection 1 of section 57-62-02 and  
16 allocated to the lignite research fund as provided in subsection 2 of section  
17 57-61-01.5;
- 18 3. In addition to the taxes under subsection 2, the coal is subject to thirty-five percent  
19 of the severance taxes imposed under section 57-61-01, and an exemption from a  
20 portion of the tax imposed by this subsection may be granted by a city, school  
21 district, or the board of county commissioners of the county in which the coal is  
22 mined. The board of county commissioners, governing body of a city, or school  
23 board of a school district, by resolution, may grant to an operator of a mine that  
24 supplies coal to such a small coal-fired generating station, a partial or complete  
25 exemption from that county's, city's, or school district's share of revenues from the  
26 severance tax for all such coal. Any tax revenue from full or partial taxation under  
27 this subsection must be allocated as provided in subsection 2 of section 57-62-02,  
28 except that a political subdivision that has granted a partial or complete exemption  
29 from its share of severance tax revenues must be omitted from the allocation or  
30 have its allocation adjusted to reflect the reduction it has granted; and

1           4. Taxes imposed under section 57-61-01.5 apply to coal subject to this section and  
2                   must be allocated as provided in that section.

3           **SECTION 6. SEVERABILITY.** In the event that any part of this Act is adjudged by any  
4 court of competent and final jurisdiction to be invalid or unconstitutional, such judgment does  
5 not affect nor invalidate any other part of this Act, but is confined in its operation to the part or  
6 parts of this Act directly involved in the controversy in which such judgment has been rendered.

7           **SECTION 7. EFFECTIVE DATE.** This Act becomes effective upon a final and  
8 unappealable order by a court of competent jurisdiction that the provisions of chapter 496 of the  
9 1997 Session Laws are unconstitutional. If this Act takes effect it becomes effective on the date  
10 a court enters such an order, but only if that date is before July 1, 2001.

11           **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.