Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2268

Introduced by

Senators Krebsbach, O'Connell, Seymour

Representatives Ekstrom, Froseth, Kerzman

A BILL for an Act to provide for waste rubber recycling, abatement and remediation of waste rubber tire stockpiles, and to recover the components of petroleum-based products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Abate and abatement" means:
   a. To remove waste rubber tires from a waste rubber tire dump or waste rubber tire stockpile by processing or properly disposing of the tires on an enforceable schedule ensuring compliance with the prohibitions of this Act; or
   b. Action taken pursuant to authority under a state program to process or properly dispose of waste tires.
2. "Added value" means the net added value of the resource recovery technology, as compared to the next best alternative technology, for all technologies claiming to be able to recover the resources embedded in waste petroleum-based products. This term includes incremental changes in annualized capital costs and operating and management costs.
3. "Annual outcome" means the outcome in a particular year for the resource recovery technology.
4. "Beneficial use" means the use of solid waste material, which would otherwise need to be placed in a landfill or disposed of through alternative means, in such a manner that the nature of the use constitutes a reuse of the solid waste material or its constituent components rather than disposal in a landfill. Beneficial uses include:

a. Incorporation of a solid waste material which is a legitimate substitute for a raw material into a product marketable to an end user.

b. Recovery of the constituent components in a manner that allows for the reuse of the constituent components by industry.

c. Recovery of the oil embedded in solid waste material for the generation of electricity with an emphasis on the use of oil for distributed generation.

d. Waste rubber that is reformed into another rubber-based product may be considered to be beneficially used only if there is no viable technology to recover the energy or material embedded in waste rubber for reuse in industry.

e. Waste rubber that is burned as tire-derived fuel for the purposes of recovering usable energy may be considered to be beneficially used only if there is no viable technology to recover the energy or material embedded in waste rubber for reuse in industry or in distributed generation.

f. Waste rubber that is used in civil engineering projects may be considered to be beneficially used only if there is no viable technology to recover the energy or material embedded in waste rubber for reuse in industry.

5. "Best available technology" means the use of technologies that are economical, environmentally friendly, and state-of-the-art currently in use for processing petroleum-based products, including waste rubber.

6. "Carbon equivalent emissions displaced" means an estimate based upon known science of the amount of the carbon equivalent emissions displaced due to the use of the resource recovery technologies.

7. "Carbon monoxide displaced" means an estimate based upon known science of the amount of carbon monoxide displaced annually due to the use of resource recovery technologies.

8. "Collection site" means a facility, installation, building, or site, including all of the contiguous area under the control of a person controlled by the same person used for the storage or disposal of more than four hundred waste rubber tires but not including shredded rubber tire material that has been properly disposed.

9. "Commerce" means the department of commerce.

10. "Commerce of life" means those activities, business and personal, that people engage in and which require that public resources are available to the general public on an equal basis.

11. "Constituent components" means the raw materials used to manufacture the original rubber product.

12. "Cumulative outcome" means the outcome through a particular year for the resource recovery technology.

13. "Department of health" means the state department of health.

14. "Direct coal displaced" means the total direct coal that would have been consumed by conventional technologies in providing the raw materials used to make petroleum-based products had not the resource recovery technology entered the market, minus the direct coal consumed by the resource recovery technology. Coal includes metallurgical coal, steam coal, and net coal coke imports.

15. "Direct electricity displaced" means the total direct electricity that would have been consumed by conventional technologies had not the resource recovery technology comprising the planning unit entered the market, minus the direct electricity consumed by the resource recovery technology.

16. "Direct energy displaced from feedstocks" means the total direct energy from feedstocks that would have been consumed by conventional technologies had not the resource recovery technology entered the market, minus the direct energy from feedstocks consumed by the resource recovery technology. Feedstocks include combustible fuels forms used for nonenergy products such as asphalt or petrochemicals.

17. "Direct energy displaced from waste rubber products" means the total direct energy from waste rubber products that would have been consumed by electric generation units as tire-derived fuel comprising the current market had not the resource recovery technology entered the current market, minus the direct energy from waste rubber products recovered by the resource recovery technology.

18. "Direct natural gas displaced" means the total direct natural gas that would have been consumed by conventional technologies had not the resource recovery technology entered the market, minus the direct natural gas consumed by the

resource recovery technology. Natural gas includes pipeline fuel natural gas and compressed natural gas.

19. "Direct petroleum displaced" means the total direct petroleum that would have been consumed by conventional technologies had not the resource recovery technology entered the market, minus the direct petroleum consumed by the resource recovery technology. Petroleum includes distillate fuel, jet fuel, motor gasoline, residual fuel, liquid petroleum gasoline, and other petroleum.

20. "Emergency response services" means those fire and ambulance services provided by state, county, and city governments and by volunteer rural ambulance and fire departments to the public in the commerce of life.

21. "End use" means that a product requires no further processing or manufacturing and is suitable for reuse in industry or use by a consumer for the rubber based product's intended application and is not merely a means of inappropriate disposal.

22. "End user" means the ultimate customer of the recovered constituent components of a rubber-based finished product.

23. "Energy cost-savings" means the estimate of dollar savings resulting from the fuel-related cost reductions that are due to the use of resource recovery technology.

24. "Environmental credit" means an administratively created asset that is based upon the amount of pollution avoided or displaced due to the recovery of the constituent components suitable for reuse in industry, thus avoiding the need to extract and refine finite natural resources.

25. "Environmental resource" means air and water used in the manufacture of petroleum-based products.

26. "Highest and best use" means those technologies or processes that produce products whose value either as energy or as an industrial material is greater than the value of competing energy or material.

27. "Hydrocarbon displaced" means an estimate, based upon known science, of the amount of hydrocarbons displaced due to use of the resource recovery technology.

28. "Inappropriate disposal" means the placement of waste rubber, including waste rubber tires, in landfills, aboveground storage, or monofill.

29. "Industrial material" means the use of the recovered constituent components from rubber-based products which is suitable for use in the manufacturing industry.

30. "Life cycle outcomes" means the outcome over the lifetime of the technology for recovery of the resources from waste petroleum-based products.

31. "Material" means the physical products embedded in waste petroleum-based products.

32. "Monofill" means a place designed solely to receive and store waste rubber, including tires.

33. "Natural resource" means those hydrocarbon-based resources used in the manufacture of petroleum-based products and in the commerce of life.

34. "New tires" means tires that have never been placed on a motor vehicle wheel rim or tires placed on a motor vehicle before its original retail sale.

35. "Net economic benefit" means the summation of energy cost-savings, nonenergy cost-savings, consumer investment, consumer expenditures, and other government expenditures for a particular year due to the use of the resource recovery technology.

36. "Nitrogen oxide displaced" means an estimate, based upon known science, of the amount of nitrogen oxides displaced due to the use of the resource recovery technology to process waste petroleum-based products, including waste rubber.

37. "Noncompliant waste rubber stockpile" means a facility, including a waste rubber tire storage facility, parcel of property, or site designated by the department of health in accordance with this Act, where four hundred or more waste rubber tires or mechanically processed waste rubber tires have been accumulated, stored, or buried in a manner that the state department of health or a court of competent jurisdiction has determined violates any judicial administrative order, decree, law, regulation, permit, or stipulation relating to waste rubber tires, waste rubber tire storage facilities, or solid waste.

38. "Nonenergy cost-savings" means those dollar savings or costs related to nonfuel-related operations that are due to the use of the resource recovery technology. The term includes items such as extension of proven reserves of natural resources and reduction in costs of pollution.

39. "Other direct energy displaced" means the total direct energy from other sources that would have been consumed by conventional technologies had not the resource recovery technology entered the market, minus the direct energy from other sources consumed by the resource recovery technology. Other direct energy sources include those not covered by electricity, natural gas, petroleum, coal, biomass, feedstocks, and wastes.

40. "Other environmental benefits" means an estimate, based upon known science, of the amount of nonemission pollutants displaced annually due to the use of the resource recovery technology to process waste petroleum-based products, including waste rubber.

41. "Other government expenditures" means the anticipated expenditures by the state, county, and city governments directly related to the providing of traffic services, landfill operating costs, and emergency response due to fires.

42. "Other greenhouse emissions displaced" means an estimate, based upon known science, of the amount of greenhouse emissions other than sulfur dioxide, nitrogen oxide, carbon monoxide, carbon, particulates, and volatile organic compounds displaced due to the use of the resource recovery technology to process waste petroleum-based products, including waste rubber.

43. "Petroleum-based product" means products that are made out of natural rubber, synthetic rubber, or other natural resources.

44. "PM10 displaced" means an estimate, based upon known science, of the amount of particulate matter smaller than ten microns in diameter due to the use of the resource recovery technology to process waste petroleum-based products, including waste rubber.

45. "Process" means to produce or manufacture usable materials or energy with real economic value from waste petroleum-based products, including waste rubber tires.

46. "Properly disposed" means the conversion of waste rubber into a rubber-based product or into the constituent components for resale in industry. Placing waste rubber, including whole tires, into a landfill, a monofill, or a tire stockpile containing whole tires or shredded rubber tires may not be considered properly disposed.

47. "Public resource" means the traffic services, emergency response services, rural ambulance and fire services, and public works services consumed by the public in the commerce of life.

48. "Real economic value" means the highest and best use of the recovered constituent components from petroleum-based products.

49. "Recyclables" means solid waste materials that exhibit the potential to be used to make marketable products for end users.

50. "Recycle" means to use recyclables in manufacturing a rubber-based product for an end use other than burning the actual waste rubber for recovery of usable energy in a civil engineering application, tire-derived fuels, or shredded tire material.

51. "Recycling fee" means that fee charged consumers for the costs of disposal of waste rubber, including fee collection, transportation, and processing.

52. "Removed from service" means removed within this state from the service for which the tires were intended to be used when the tires and tire casings were separated for retreading.

53. "Resource" means the environmental, natural, and public resources consumed or used in the manufacture of petroleum-based products and in the commerce of life.

54. "Resource conservation" means the use of the recovered energy and material from petroleum-based products by industry so that the need to use natural and environmental resources is decreased.

55. "Resource recovery" means the recovery of the energy and material contained in waste petroleum-based products in a manner that allows for reuse in industry.

56. "Resource recovery funds" means those funds collected by a tire retailer and used to recover the resources embedded in waste rubber and to offset the moneys used by the state, counties, and cities to provide traffic services, emergency response services, and other governmental expenditures.

57. "Resource recovery technology" means the use of a technology or process that allows for the recovery of the constituent components of waste petroleum-based products for beneficial uses in an economical and environmental manner.

58. "Retail sale" means the sale to any person in the state for any purpose other than resale.

59. "Shredded tire material" means tire material resulting from tire shredding that produces pieces four square inches or less in size that do not hold water when stored in piles.

60. "Solid waste material" means solid waste composed of petroleum-based products, including plastic and rubber.

61. "Sulfur dioxide displaced" means an estimate, based upon known science, of the amount of sulfur dioxide displaced due to the use of the resource recovery technology to process waste petroleum-based products, including waste rubber.

62. "Tax commissioner" means the state tax commissioner.

63. "Tire" means any pneumatic or solid tire, including a tire manufactured for use on any type of motor vehicle, construction, farm implement, tractor tires or other offroad equipment, aircraft, or industrial machinery.

64. "Tire collector" means a person that owns or operates a collection site.

65. "Tire dump" means a tire collection site without a collector or processor permit that is maintained, operated, used, or allowed to be used for the disposal, storing, or depositing of waste rubber tires.

66. "Tire hauler" means a person engaged in picking up or transporting waste tires to a storage or disposal facility.

67. "Tire processor" means a person that processes waste tires to produce or manufacture usable materials or to recover energy.

68. "Tire service or tire retailer" means any person or business in this state that either sells or installs new tires, hoses, or belts for use on any vehicle and any person or business that engages in the retail sale of new motor vehicles. A person who is not the end point of sale, any governmental agency, and a political subdivision are excluded from this term.

69. "Tire stockpile" means a waste rubber tire storage facility operating pursuant to a permit issued by the state department of health at which either shredded rubber tire material from fifty or more waste tires or whole rubber tires are stored for future processing or disposal.

70. "Traffic services" means policing, emergency response, planning, courts, street lighting, parking enforcement, and driver training.

71. "Unfunded mandate" means those services provided to the public because of the mandate for safety, health, and welfare but which are not fully paid for by the users of the services, such as traffic services and emergency response services by rural ambulances and fire departments.

72. "Unreimbursed traffic services" means those state, county, and city costs for traffic services funded by property taxes or state income taxes.

73. "Waste rubber" means any solid waste that consists of a petroleum-based product, such as belts, hoses, or tires.

74. "Waste rubber tire" means any solid waste that consists of whole tires or portions of tires. Tire casings separated for retreading and tires with sufficient tread for resale are included under this term; however, crumb rubber is not considered a solid waste.

75. "Waste rubber tire storage facility" means a facility at which waste tires are stored and for which a permit or registration has been issued.

SECTION 2. Legislative findings. The legislative assembly finds that:

1. For the next century North Dakota will generate approximately six hundred forty thousand waste rubber tires each year;
2. There are over two million waste rubber tires stored or dumped in aboveground piles across the state;
3. Current waste rubber tire collection and disposal practices present a substantial threat to human health and the environment and ensure the number of waste tires stored or dumped in aboveground piles will continue to grow;
4. Waste rubber tire piles are a breeding habitat for disease-carrying mosquitoes, rodents, and other pests;
5. Waste rubber tire piles may be ignited causing potentially catastrophic fires;
6. Waste rubber tires contain significant amounts of energy and petroleum-based material which if recovered could substantially reduce the need to extract or import natural resources, transport those natural resources, and refine those natural

resources into the raw materials needed to manufacture rubber-based products, including rubber tires;

7. North Dakota is highly dependent on foreign oil;

8. It is important to our national interest that processes or technologies that permit the reusing of the petroleum embedded in waste rubber products be developed and used to recover the energy and constituent materials for use in industry;

9. There are substantial opportunities for recycling and reuse of the actual waste rubber as rubber-derived products;

10. There are substantial opportunities for recycling and reuse of the constituent materials found in waste rubber tires to be used in tire retreading, asphalt pavement containing recycled rubber, rubber products, and as tire-derived fuel;

11. There are substantial opportunities for recovery and reuse of the constituent components embedded in waste rubber, including waste rubber tires;

12. Waste rubber, including waste tires, are stored energy and could be converted to oil used to generate electricity;

13. It is in the interest of the public to have stable, reliable, and affordable energy supplies, including electricity;

14. Property taxes in this state are rising and need to be stabilized;

15. North Dakota is a rural state that depends upon the availability of the highway patrol, county sheriff's departments, and city police departments to provide traffic services and to be available to assist in the event of a traffic accident;

16. Throughout this state there are many citizens who volunteer their time, energy, and resources to staff rural ambulances and fire departments;

17. In 2003 the department of transportation estimated there were approximately seven billion three hundred million miles of vehicle travel;

18. In 2003 the department of transportation estimated that the highway patrol, county sheriff's departments, and city police departments responded to numerous vehicle accidents;

19. In 2003 North Dakota farmers, manufacturers, and travelers required the use of those emergency services provided by either county, city, or volunteer ambulance and fire departments;

20. In order to protect the public's health, safety, and welfare, state, county, and city governments have a mandate to provide traffic services, emergency services, and rural ambulance and fire services to the public at large, including vehicle traffic without concern for who has to pay;
21. Under the current mandate to provide public resources for traffic services and emergency services much of the burden falls upon property and income taxpayers;
22. Not everyone who uses or has the benefit of traffic services, emergency services, public resources, and fire and ambulance services pays property or income taxes in the state;
23. It is only fair that the users of traffic services pay a reasonable fee for part of the traffic services and fire and ambulance services received;
24. Current fees paid for tire disposal are not used as consumers believe;
25. It is unfair for people to pay for a service that they do not receive;
26. It is possible that some of the disposal fees could be more efficiently allocated so as to contribute to the payment of traffic services, thereby reducing the burden on property and income taxpayers;
27. Although several counties and cities have established waste tire programs and disposal requirements to protect human health and the environment, the efforts of individual counties and cities are often frustrated by the lack of comparable programs in neighboring counties and cities; and
28. Additional financial resources are necessary to encourage waste rubber recycling and proper disposal and the abatement of existing waste rubber tire dumps.

SECTION 3. Purpose. The purpose of this Act is:

1. To further the common good through the responsible stewardship of resources, including environmental, natural, and public resources;
2. To assure that the life cycle of all petroleum-based products, including rubber-based tires, hoses, and belts, used in this state is managed in a manner that is environmentally sound and which maximizes the economic value of recovered energy and material to the citizens of the state and our nation by permitting reuse of the constituent components of petroleum-based products in industry; and

3. To assure that the end users of traffic services, emergency response services, public resources, and rural ambulance and fire departments pay for part of the cost of the unreimbursed traffic and emergency response services so as to reduce the burden on property and income taxpayers.

SECTION 4. Waste management priorities for petroleum-based products. In the interest of public health, safety, and welfare, to conserve natural resources, to promote recovery of the constituent components of waste petroleum-based products, to encourage recycling and market development for the recovered components of petroleum-based products, and to support the national agenda for reducing our dependence on foreign oil, the state establishes a policy on the management of waste petroleum-based products, based upon known science, that states:

1. The waste management priorities for petroleum-based products in this state are to:
   a. Reduce the amount of waste generated, yearly, through the collection of waste products at the time of origination;
   b. Remediate that waste, provided there are viable technologies available to recover the resources contained in the waste according to a plan established by the state department of health;
   c. Remediate waste rubber tire stockpiles located in city and county landfills, at illegal or noncompliant waste rubber piles, or located at the location of tire retailers;
   d. Recycle the waste, including waste rubber into value-added products that provide the maximum environmental, fiscal, and natural resource benefit to the state;
   e. Encourage the development and use of technologies that beneficially use waste rubber in an environmentally acceptable manner; and
   f. Encourage the use of technologies that can recover the constituent components required to manufacture petroleum-based products that presently cannot be economically recycled or otherwise beneficially used.
2. State government must make an essential contribution to the development and implementation of environmentally, economically, and technically viable waste rubber management programs and technologies.

SECTION 5. Acceptance of waste rubber. Any tire service or retailer shall:

1. Until December 31, 2020, accept from a customer waste rubber, including waste tires of approximately the same size and in a quantity equal to the number of new tires purchased or installed by the customer; and
2. Until December 31, 2020, post written notice in a prominent location, which must be at least eight and one-half inches by fourteen inches in size and contain the following language:

"The legislative assembly in the interest of national energy security, public health, safety, and welfare and in order to conserve natural resources and prevent pollution has established this Act which requires us to accept and manage waste rubber such as tires, belts, and hoses from vehicles in exchange for an equal number of new rubber-based products such as tires, belts, and hoses that we sell or install.

We are required to charge a separate and distinct waste rubber management and recycling fee for each new tire we sell. This fee is established by the state department of health.

Any additional tire management and recycling costs are included in the advertised price of the new tire."

SECTION 6. Duties of state department of health.

1. Abatement of the daily waste rubber flow.
   a. By July 1, 2005, the state department of health shall prepare a plan to handle the waste rubber generated daily, including waste rubber tires;
   b. The state department of health shall notify all tire retailers that they will be required to collect all waste rubber, including waste rubber tires, beginning September 1, 2005;
   c. The state department of health shall notify all registered tire collectors and transporters of the requirements of this Act;
   d. The state department of health shall establish criteria for collecting, transporting, and disposal of waste rubber;

e. The state department of health shall have authority to enter all sites where waste rubber tire stockpiles are located for the purpose of investigation and abatement;

f. The state department of health shall establish standards for collecting, storing, transporting, shredding, and added value processing of waste rubber;

g. The state department of health shall establish a process for paying fees for collecting, storing, transporting, shredding, and processing of waste rubber; and

h. The state department of health shall establish fees for all waste rubber products based upon their weight, category, and the base fees established in section 9 of this Act.

2. Abatement of waste rubber stockpiles.

a. Not later than one year after the effective date of this Act, the state department of health shall prepare and submit to the governor and the legislative assembly a comprehensive plan designed to abate all waste tire stockpiles by December 31, 2020.

b. The plan must establish a waste rubber tire stockpile abatement priority list and schedule for abatement of each waste rubber tire stockpile based on potential adverse impacts upon public health, safety or welfare, the environment, or natural resources.

c. The plan must include a description of how the state department of health intends to manage the abatement funds collected to assure that abatement funds are used to economically and systematically remove aboveground tire piles with the goal of achieving total removal by July 1, 2020.

d. The plan should include the state department of health's estimated census of the number of waste rubber tire stockpiles, where they are located in the state, the individual or entity who owns the waste rubber tire stockpile, and the number of waste rubber tires believed to be stored at each site.

e. The plan must also include a proposed amnesty period for owners of the waste rubber stockpile to work with the state department of health to develop a plan to remediate the waste rubber tires located on their premises.

(1) If the owners of the waste rubber stockpile comply, they must be allowed to be considered a permitted collection site and are entitled to receive financial assistance from the state department of health for the remediation of the waste rubber tire stockpile on their property.

(2) If the owner of the waste rubber stockpile fails to comply, then the state department of health may declare the waste rubber tire stockpile to be illegal and shall proceed to remediate the waste rubber tire stockpile under the provisions of subsection 4.

f. The owner or operator of a permitted waste rubber tire stockpile shall, at the state department of health's request, submit to and cooperate with any and all remedial measures necessary for the abatement of waste rubber tire stockpiles with funds from the state department of health.

3. Assist tire service or retailers to abate waste rubber located on their premises.

a. Not later than one year after the effective date of this Act, the state department of health shall prepare and submit to the governor and the legislative assembly a comprehensive plan designed to abate all waste rubber tire stockpiles located on the premises of tire retailers by December 31, 2015.

b. This plan must establish a waste rubber tire stockpile abatement priority list and schedule for abatement of each waste rubber tire stockpile based on potential adverse impacts upon public health, safety or welfare, the environment, or natural resources.

c. The plan must also include a census of the number of waste rubber tire stockpiles, where they are located in the state, the individual or entity who owns the waste rubber tire stockpile, and the number of waste rubber tires believed to be stored at each site.

d. The plan must also include a proposed amnesty period for tire retailers to work with the state department of health to develop a plan to remediate the waste rubber tires located on their premises.

(1) If the tire retailer complies, they must be allowed to be considered a permitted collection site and are entitled to receive financial assistance

from the state department of health for the remediation of the waste rubber tire stockpiles on their property.

(2) If the tire retailer fails to comply, then the state department of health may declare the tire retailer or owner of the waste rubber tire stockpile to be illegal and shall proceed to remediate the waste rubber tire stockpile under the provisions of subsection 4.

e. The tire retailer shall, at the state department of health's request, submit to and cooperate with any and all remedial measures necessary for the abatement of waste rubber tire stockpiles with funds from the state department of health.

4. Prepare requests for proposals. Not later than one year from the effective date of this Act, the state department of health shall publish requests for proposals to seek contractors to prepare whole and mechanically processed waste tires situated at noncompliant waste tire stockpiles for arrangement in accordance with fire safety requirements and for removal for appropriate processing, recycling, or beneficial use. Disposal may be considered only as a last option.

5. Illegal waste rubber stockpiles.

a. In the case of illegal waste tire stockpiles, the expenses of remedial and fire safety activities at a noncompliant waste tire stockpile must be paid by the person who owned, operated, or maintained the noncompliant waste tire stockpile, or from the waste tire management and recycling fund and is a debt recoverable by the state from all persons who owned, operated, or maintained the noncompliant waste tire stockpile, and a lien and charge may be placed on the premises upon which the noncompliant waste tire stockpile is maintained and upon any real or personal property, equipment, vehicles, and inventory controlled by that person.

b. Moneys recovered must be paid to the state department of health for use for further abatement.

c. If execution upon a judgment for the recovery of the expenses of any such remedial and fire safety activities at a noncompliant waste tire stockpile is returned wholly or partially unsatisfied, such judgment, if docketed in the place

and manner required by law to make a judgment of a court of record, a lien upon real property, is a first lien upon the premises, and has preference over all other liens and encumbrances whatever. Notwithstanding the foregoing, the lien does not have preference over any mortgage or other encumbrance for the benefit of the state or a public benefit corporation thereof.

d. The state department of health shall make all reasonable efforts to recover the full amount of any funds expended from the waste tire management and recycling fund for abatement or remediation of illegal or noncompliant waste rubber tire stockpiles through litigation or cooperative agreements.

e. All moneys recovered, repaid, or reimbursed pursuant to this section must be deposited with the state treasurer and credited to the fund.

SECTION 7. Duties of department of commerce. Not later than one year after the effective date of this Act and continuing annually thereafter, the department of commerce, to ensure the economic sustainability of the state's resources, businesses, and way of life shall:

1. Assist in the development of new technologies designed to recover resources from waste petroleum-based products for reuse in industry with an emphasis on higher-value end uses;
2. Analyze the potential for strategically using the oil recovered from waste rubber as fuel for peak power generation in order to reduce the costs of electricity for counties and cities by:
   a. Consulting with electric utilities about providing a long-term supply of oil for peak power generation within their service area, whether in this state, and determine the appropriate form of repayment and environmental credits for using the recovered oil and for the value of the oil used to generate peak power, including cash or an in-kind exchange of electricity using the electric utility's off-peak power generation; and
   b. Advising the state department of health about the potential economic value to all the citizens of the state if the oil was strategically used to help lower the cost of electricity;
3. Provide industrial and consumer education on other benefits of recycled waste tire products through the preparation of fact sheets and public workshops;

4. Prepare an annual summary report and analysis of markets and disposition of both stockpiled tires and annually generated waste tires. This report must be submitted to the state department of health and legislative assembly by the last day of March of each year;
5. Find optimal uses for energy recovered on behalf of state refining and electrical generation; and
6. Negotiate with the processors of the waste for ownership of the oil recovered from waste petroleum products, including waste rubber, if the department of commerce determines that it can maximize the value of the oil in a manner which will reduce the costs of state, county, and local governments for electricity. The fee must be established based upon the value of the oil to the processor and not the value to the state.

SECTION 8. Prohibition on land burial.

1. A person may not knowingly dispose of waste rubber tires in a landfill except as provided in subsection 2.
2. Moneys from the fund may not be used to dispose of waste tires in a landfill unless the state department of health has determined that it is not feasible to convert the waste tires to a beneficial use. Department-approved beneficial uses of scrap tire-derived material for leachate collection systems, or gas collection systems, in the construction or operation of a landfill are not considered proper disposal.

SECTION 9. Resource recovery and conservation fee.

1. Until December 31, 2010, a resource recovery and conservation fee of thirty-nine cents per pound must be charged on each new rubber-based product sold for automobile, industry, and agricultural use. The fee must be paid by the purchaser to the tire service at the time the new tire or new motor vehicle is purchased. The resource recovery fee does not apply to:
   a. Recapped or resold tires;
   b. Mail-order sales; or
   c. The sale of new motor vehicle tires to a person solely for the purpose of resale provided the subsequent retail sale in this state is subject to the fee.

2. Until December 31, 2020, the retailer of tires, belts, and hoses shall collect on behalf of the state various fees from the purchaser of the new rubber-based products at the time of the sale and shall remit such fees to the tax commissioner with the quarterly report filed pursuant to subsection 3:
   a. The fees imposed must be stated as an invoice item separate and distinct from the selling price of the tire.
   b. The fee must be based upon the weight and category of petroleum-based product sold and must be adjusted every two years according to the consumer price index.
   c. Any additional management and recycling costs of the retailer must be included in the published selling price of the new tire.
3. Until March 31, 2020, each tire service maintaining a place of business in this state shall make a return to the tax commissioner on a quarterly basis, with the return for December, January, and February being due on or before the immediately following March thirty-first; the return for March, April, and May being due on or before the immediately following June thirtieth; the return for June, July, and August being due on or before the immediately following September thirtieth; and the return for September, October, and November being due on or before the immediately following December thirty-first.
   a. Each return must include:
      (1) The name of the tire service;
      (2) The address of the tire service's principal place of business and the address of the principal place of business, if that is a different address, from which the tire service engages in the business of making retail sales of tires;
      (3) The name and signature of the person preparing the return;
      (4) The total number of new tires sold at retail for the preceding quarter and the total number of new tires placed on motor vehicles before original retail sale;
      (5) The amount of waste tire management and recycling fees due; and

(6) Such other reasonable information as the tax commissioner may require.

b. Copies of each report must be retained by the tire service for three years. If a tire service ceases business, it shall file a final return and remit all fees due under this Act with the tax commissioner not more than one month after discontinuing that business.

4. All waste tire management and recycling fees collected by the tax commissioner must be transferred to the appropriate state agencies as prescribed in section 10 of this Act.

SECTION 10. Use of resource recovery fees. Funds from the resource recovery fund established in section 9 of this Act must be made available to the following departments for the following purposes:

1. The state department of health must receive fifteen cents per pound for collection, transportation, shredding, and added value processing.
   a. Tire retailers must receive five cents per pound for collecting the waste rubber, including waste rubber tires and the RTE fee.
   b. Transporters must receive three cents per pound for transportation.
   c. Shredders must receive four cents per pound for shredding.
   d. Added value processors must receive between one cent and three cents per pound for technologies that add the highest real economic value.
2. The state department of health must receive six cents per pound to assist city, county, and rural emergency response providers, rural ambulance departments must receive two cents per pound, rural fire departments must receive two cents per pound, city and county fire and emergency response services must receive two cents per pound pro rata.
3. The department of transportation must receive six cents per pound for the highway patrol, county sheriff's departments, and local law enforcement, the North Dakota highway patrol must receive two cents per pound, county sheriff's departments and local law enforcement must receive four cents per pound pro rata.
4. The department of commerce must receive eleven cents per pound to be used as follows:

a. Two cents per pound for financing demonstration projects or studies to determine how to maximize the material recovered.

b. Two cents per pound for the department of commerce to use to fund electric transmission projects.

c. Five cents per pound to permit the purchase of the energy recovered from waste rubber by the state under the following criteria:

(1) There is an opportunity to obtain a higher value for the recovered energy through the generation of peak electrical power;

(2) There is a need for a long-term supply contract with the electric utility;

(3) A reasonable fee is paid to the processor for the oil; and

(4) There is a need for the state to use the environmental credits attached to the energy to help state industries meet the state department of health and the United States environmental protection agency rules for air pollution.

Any funds not used for a given year must be returned to the fund and be added to the total funds available for disbursement for abatement purposes in the following year.

5. There is an administrative fee of two cents per pound for state administrative expenses. The agencies affected by this Act must devise a formula for sharing the administrative expenses based upon the requirements of the agency.

SECTION 11. Ranking of resource recovery technologies. The state department of health and the department of commerce shall develop criteria for ranking resource recovery technologies and the establishment of environmental credits saved on an annual outcome, a cumulative outcome, and a life cycle outcome, for each resource recovery technology considered for approval by the departments so as to meet the purpose of this Act as follows:

1. Avoidance of pollution. An environmental credit must be established to recognize the inherent value of reusing the petroleum-based products embedded in waste rubber products and other petroleum-based products so that the energy and material recovered may be used again for industrial applications and the concurrent avoidance of pollution.

2. The metrics to determine the environmental credit must use known science to determine the amount of:
   a. Carbon equivalent emissions displaced;
   b. Carbon monoxide displaced;
   c. Hydrocarbon displaced;
   d. Nitrogen oxide displaced;
   e. Sulfur oxide displaced; and
   f. PM10 displaced;
   g. Volatile organic compounds displaced;
   h. Mercury displaced; and
   i. Other environmental benefits.
3. Savings of energy and natural resources. The state department of health and the department of commerce shall develop a set of metrics based upon current science by which to examine resource recovery technologies to determine the amount of natural resources saved and resource recovery technology considered for approval.
4. The metrics to determine the energy and natural resources saved must use known science to determine the amount of:
   a. Direct coal displaced;
   b. Direct electricity displaced;
   c. Direct energy displaced from feedstocks;
   d. Direct natural gas displaced;
   e. Energy cost-savings;
   f. Other direct energy displaced; and
   g. Total primary energy displaced.
5. Consumer, industry, and governmental savings. The state department of health and the department of commerce shall develop a set of metrics by which to examine the financial impact of the use of the resource recovery technology considered for approval.
6. The metrics to determine the financial savings must include:
   a. Energy cost-savings;

b. Net economic benefit;

c. Nonenergy cost-savings; and

d. Other governmental expenditures.

7. The state department of health and the department of commerce shall establish a set of metrics to allow for an environmental credit to be attached to the energy or material recovered from the petroleum-based material so that the end user of the recovered energy or material may use that environmental credit in another state or country.

8. The state department of health and the department of commerce shall provide a method for determining credits which result in credits that are quantifiable, surplus, and legally enforceable and shall set forth the manner in which credits will be banked and traded, and the manner in which such transactions will be tracked and accounted for acceptance by another state or country.

9. If federal law or regulations need to be changed so as to allow the end user of the recovered energy or material to use the environmental credit in another state or country, then the state department of health and the department of commerce shall use their best efforts to assist that end user in securing the appropriate changes in federal law or regulations, including providing the data obtained by the state department of health related to the environmental credit.