

**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; and to provide an effective date.

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

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

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

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

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

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

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

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

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

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

- 27 1. As used in this section, unless the context otherwise requires:
- 28 a. (1) "Environmental upgrade" means an investment greater than twenty-five
- 29 million dollars or one hundred thousand dollars per megawatt of
- 30 installed nameplate capacity, whichever is less, in machinery,

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

1                   for converting coal ~~from~~ in its natural form or beneficiated coal into electric  
2                   power.

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

5                   **57-61-01.4. Severance and sales and use tax exemptions for coal used in certain**  
6 **plants.** No state severance tax may be imposed on coal used in agricultural commodity  
7 processing or sugar beet refining plants facilities as defined in subsection 4 of section  
8 57-39.2-04.4 located within North Dakota or adjacent states. No state severance tax may be  
9 imposed on coal purchased for improvement through the process of coal beneficiation defined  
10 in subsection 2 of section 57-60-01 which is subsequently used in agricultural commodity  
11 processing facilities located within North Dakota or adjacent states. The coal mine owner or  
12 operator shall require the person purchasing the coal to certify that amount of coal purchased  
13 for use in agricultural commodity processing ~~or sugar beet refining purposes.~~ ~~Coal exempted~~  
14 ~~from the severance tax by this section is not subject to sales and use taxes~~ facilities or for  
15 beneficiation and subsequent use in agricultural commodity processing facilities.

16                   **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable events occurring after  
17 June 30, 2009.