

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 a sales and use tax exemption for materials used in the  
3 construction or expansion of a wind-powered electrical generation facility; to provide an effective  
4 date; and to provide for retroactive application.

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

6 **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **57-39.2-04.2. Sales tax exemption for power plant construction, production,**  
9 **environmental upgrade, and repowering equipment and oil refinery or gas processing**  
10 **plant environmental upgrade equipment.**

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

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

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

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

24 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, 2017,~~ 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           **SECTION 2. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **57-40.2-04.2. Use tax exemption for power plant construction, production,**  
13 **environmental upgrade, and repowering equipment and oil refinery or gas processing**  
14 **plant environmental upgrade equipment.**

- 15           1. As used in this section, unless the context otherwise requires:
- 16           a. (1) "Environmental upgrade" means an investment greater than twenty-five  
17           million dollars or one hundred thousand dollars per megawatt of installed  
18           nameplate capacity, whichever is less, in machinery, equipment, and related  
19           facilities for reducing emissions or increasing efficiency at an existing power  
20           plant.
- 21           (2) "Environmental upgrade" for purposes of a process unit means an  
22           investment greater than one hundred thousand dollars in machinery,  
23           equipment, and related facilities for reducing emissions, increasing  
24           efficiency, or enhancing reliability of the equipment at a new or existing  
25           process unit.
- 26           b. "Operator" means any person owning, holding, or leasing a power plant or  
27           process unit.
- 28           c. "Power plant" means:
- 29           (1) An electrical generating plant, and all additions to the plant, which  
30           processes or converts coal in its natural form or beneficiated coal into

1                   electrical power and which has at least one single electrical energy  
2                   generation unit with a capacity of fifty thousand kilowatts or more.

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

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

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

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

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

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

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

29                 4. To receive the exemption at the time of purchase, the operator must receive from the  
30                  commissioner a certificate that the tangible personal property or production equipment  
31                  the operator intends to purchase qualifies for the reduced rate or exemption. If a

1 certificate is not received prior to the purchase, the operator shall pay the applicable  
2 tax imposed by this chapter and apply to the commissioner for a refund.

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

7 **SECTION 3. EFFECTIVE DATE - RETROACTIVE APPLICATION.** Section 1 of this Act is  
8 retroactively effective and applies to taxable events occurring after December 31, 2016.  
9 Section 2 of this Act is retroactively effective and applies to taxable events occurring after  
10 December 31, 2014.