

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1279

Introduced by

Representatives Novak, Berg, Hagert, Headland, J. Olson, S. Olson, Porter, Tveit

Senators Boehm, Patten, Thomas

1 A BILL for an Act to amend and reenact sections 57-60-02, 57-60-02.1, 57-60-02.2, 57-60-14,
2 and 57-61-01 of the North Dakota Century Code, relating to ~~an~~ a partial exemption from the coal
3 conversion facilities tax and the imposition of a lignite research tax, allocation of the coal
4 conversion facilities privilege tax and the lignite research tax, and an exemption from the coal
5 severance tax; to provide an effective date; and to provide an expiration date.

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

7 **SECTION 1. AMENDMENT.** Section 57-60-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-60-02. Imposition of taxes. (Effective ~~through~~after June 30, ~~2026~~2036, and ~~through~~**
10 **June 30, 2029)**

11 There is hereby imposed upon the operator of each coal conversion facility a tax paid
12 monthly for the privilege of producing products of such coal conversion facility. The rate of the
13 tax must be computed as follows:

- 14 1. For all coal conversion facilities, except as otherwise provided in this section, the tax is
15 measured by the gross receipts derived from the facility for the preceding month and is
16 in the amount of two percent of its gross receipts. Gross receipts derived from the sale
17 of a capital asset are not subject to the tax imposed by this subsection.
- 18 2. For electrical generating plants, the tax is at a rate of sixty-five one-hundredths of
19 one mill times sixty percent of the installed capacity of each unit times the number of
20 hours in the taxable period. All electrical energy generating units that begin

1 construction or complete repowering are exempt from eighty-five percent of the tax
2 imposed by this subsection for five years from the date of the first taxable production
3 or from the date of the first taxable production after repowering from the unit. If a unit
4 is incapable of generating electricity for eighteen consecutive months, the tax on that
5 unit for taxable periods beginning after the eighteenth month must be reduced by the
6 ratio that the cost of repair of the unit bears to the original cost of the unit. This
7 reduced rate remains in effect until the unit is capable of generating electricity.

8 3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is
9 a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of
10 electricity produced for the purpose of sale. For all electrical generating plants that
11 begin construction or complete repowering, the production from the plants is exempt
12 from the tax imposed by this subsection for five years from the date of the first taxable
13 production or from the date of the first taxable production after repowering from the
14 plant.

15 4. For coal gasification plants, the tax is the greater of either the amount provided in
16 subsection 1 or thirteen and one-half cents on each one thousand cubic feet
17 [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not
18 including any amount of synthetic natural gas in excess of one hundred ten million
19 cubic feet per day.

20 5. For all coal conversion facilities, other than electrical generating plants, the production
21 from the facilities is exempt from eighty-five percent of the tax imposed by this section
22 for a period of five years from the date of first taxable production from the facility. The
23 operator of each facility applying for exemption under this subsection shall certify to
24 the tax commissioner the date of first taxable production of the facility.

25 6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand
26 pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or
27 one and one-quarter percent of the gross receipts derived from such facility for the
28 preceding month, whichever amount is greater. Any amount of beneficiated coal
29 produced in excess of eighty percent of the design capacity of the coal beneficiation
30 plant or produced for use within a coal conversion facility is exempt from such tax.

7. With the exception of the tax imposed under subsection 3, the board of county commissioners, by resolution, may grant the operator of a plant or facility located within the county a partial or complete exemption from up to fifteen percent of the tax imposed under this section for a period not to extend past June 30, ~~2026~~20362029. If a board of county commissioners grants a partial or complete exemption for a specific plant or facility under this subsection, subsection 2 of section 57-60-14 does not apply. Notwithstanding section 57-60-14, any tax collected from a plant or facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15.

Imposition of taxes. (Effective after June 30, ~~2026~~20362029) There is hereby imposed upon the operator of each coal conversion facility a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax must be computed as follows:

1. For all coal conversion facilities, except as otherwise provided in this section, the tax is measured by the gross receipts derived from the facility for the preceding month and is in the amount of two percent of its gross receipts. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.
2. For electrical generating plants, the tax is at a rate of sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical energy generating units that begin construction or complete repowering are exempt from eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production or from the date of the first taxable production after repowering from the unit. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county partial or complete exemption from the remaining fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production or from the date of the first taxable production after repowering from the unit. If a board of county commissioners grants a partial or complete exemption for a specific coal conversion facility under this subsection, the provisions of subsection 2 of section 57-60-14 do not apply as that subsection relates to revenue from the specific unit of the coal conversion facility for

1 which the partial or complete exemption has been granted. Notwithstanding section
2 57-60-14, any tax collected from a unit subject to the exemption provided by this
3 subsection must be allocated entirely to the county for allocation as provided in section
4 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive
5 months, the tax on that unit for taxable periods beginning after the eighteenth month
6 must be reduced by the ratio that the cost of repair of the unit bears to the original cost
7 of the unit. This reduced rate remains in effect until the unit is capable of generating
8 electricity.

9 3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is
10 a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of
11 electricity produced for the purpose of sale. For all electrical generating plants that
12 begin construction or complete repowering, the production from the plants is exempt
13 from the tax imposed by this subsection for five years from the date of the first taxable
14 production or from the date of the first taxable production after repowering from the
15 plant.

16 4. For coal gasification plants, the tax is the greater of either the amount provided in
17 subsection 1 or thirteen and one-half cents on each one thousand cubic feet
18 [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not
19 including any amount of synthetic natural gas in excess of one hundred ten million
20 cubic feet per day.

21 5. a. For all coal conversion facilities, other than electrical generating plants, the
22 production from the facilities is exempt from eighty-five percent of the tax
23 imposed by this section for a period of five years from the date of first taxable
24 production from the facility. The operator of each facility applying for exemption
25 under this subsection shall certify to the tax commissioner the date of first taxable
26 production of the facility.

27 b. The board of county commissioners may, by resolution, grant to the operator of a
28 coal conversion facility, other than an electrical generating plant, located within
29 the county a partial or complete exemption from the remaining fifteen percent of
30 tax imposed by this section for a period not exceeding five years from the date of
31 the first taxable production from the facility. Notwithstanding the provisions of

section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15.

6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or one and one-quarter percent of the gross receipts derived from such facility for the preceding month, whichever amount is greater. Any amount of beneficiated coal produced in excess of eighty percent of the design capacity of the coal beneficiation plant or produced for use within a coal conversion facility is exempt from such tax.

SECTION 2. AMENDMENT. Section 57-60-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-60-02.1. Carbon dioxide capture credit - Reporting requirement.

A coal conversion facility that achieves a twenty percent capture of carbon dioxide emissions during a taxable period is entitled to a twenty percent reduction in the state ~~general~~legacy fund share of the tax imposed under section 57-60-02 during that taxable period. The facility is entitled to an additional reduction of one percent of the state ~~general~~legacy fund share of the tax imposed under section 57-60-02 for every additional two percentage points of its capture of carbon dioxide emissions. A maximum fifty percent reduction of the state ~~general~~legacy fund share of the tax imposed under section 57-60-02 is allowed for eighty percent or more capture of carbon dioxide emissions. A coal conversion facility may receive the reduction in coal conversion tax under this section for ten years from the date of first capture of carbon dioxide emission or for ten years from the date the coal conversion facility is eligible to receive the credit. A coal conversion facility that met the carbon dioxide capture requirements before January 1, 2017, may not claim the reduction under this section.

The operator of a coal conversion facility that receives a credit under this section shall report annually to the legislative council. The report must include:

1. An overview of the carbon dioxide capture project.
2. A status report on the current state of the carbon dioxide capture project, including data on the amount of carbon dioxide produced from the facility before the carbon dioxide capture project and the current carbon dioxide produced and captured from the facility.

3. Any recent changes to enhance the carbon dioxide capture system.
4. Information on the status of federal law and regulations related to the carbon dioxide capture project, including any benefits from the project realized by the operator under federal law and regulations.

SECTION 3. AMENDMENT. Section 57-60-02.2 of the North Dakota Century Code is amended and reenacted as follows:

57-60-02.2. Coal conversion facility tax - Exemption - Lignite research tax - Imposition. (Effective ~~through~~after June 30, ~~2026~~2036, and through June 30, 2029)

1. Excluding the generation tax imposed under subsection 3 of section 57-60-02, a coal conversion facility is exempt from ~~eighty-five~~fifty percent of the state share of the tax imposed under section 57-60-02 ~~and instead~~. The coal conversion facility shall pay a lignite research tax equal to eighty-five percent of the tax imposed under section 57-60-02 before the application of the exemption under this subsection, multiplied by five percent. For purposes of this subsection, the "state share" means eighty-five percent of the tax imposed under section 57-60-02.
2. An electrical generating plant is exempt from fifty percent of the generation tax imposed under subsection 3 of section 57-60-02 ~~and instead~~. The electrical generating plant shall pay a lignite research tax equal to the tax imposed under subsection 3 of section 57-60-02 before the application of the exemption under this subsection, multiplied by five percent.

SECTION 4. AMENDMENT. Section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

57-60-14. Allocation of revenue - Continuing appropriation. (Effective ~~through~~after June 30, ~~2026~~2036, and through June 30, 2029)

1. At least quarterly, the state treasurer shall allocate:
 - a. The lignite research tax collections under section 57-60-02.2 to the lignite research fund for the purposes under section 57-61-01.5.
 - b. An amount equal to the tax exempted under section 57-60-02.2 to the legacy fund to become part of the principal of the legacy fund.
 - c. The remaining coal conversion tax collections under section 57-60-02 to the county.

2. Notwithstanding any other provision of law, the allocation under this section to each county may not be less in each calendar year than the amount certified to the state treasurer for each county under this section in the immediately preceding calendar year. For a county that has received less in a calendar year than the amount certified to the state treasurer for that county in the immediately preceding calendar year, not later than January tenth of the following year, the county auditor shall calculate the amount that is due under this subsection and submit a statement of the amount to the state treasurer. The state treasurer shall verify the stated amount and make the required payment under this subsection to the county, from collections received under section 57-60-02, not later than March first of the following year. The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments. Money received by a county under this subsection must be distributed pursuant to section 57-60-15.

3. Notwithstanding any other provision of law, for a county in which is located a coal conversion facility that was not a coal conversion facility under this chapter before January 1, 2002, for years after 2002, subsection 2 applies to allocations to that county under this section, except that for a county described in this subsection, amounts received for any calendar year must be allocated by the county in the same manner property taxes for the facility were allocated for taxable year 2001.

Allocation of revenue - Continuing appropriation. (Effective after June 30, 2026~~2036~~2029)

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter, fifteen percent to the county and eighty-five percent to the state ~~general fund~~, except moneys received from the tax imposed by subsection 3 of section 57-60-02, which must be ~~deposited in~~allocated to the state ~~general fund~~. ~~Five percent of all funds allocated to the state general fund pursuant to this chapter~~From the amount allocated to the state under this subsection:

a. Five percent must be allocated to the lignite research fund, for the purposes defined in section 57-61-01.5; and

b. The remaining amount must be deposited in the legacy fund to become part of the principal of the legacy fund.

2. Notwithstanding any other provision of law, the allocation under this section to each county may not be less in each calendar year than the amount certified to the state treasurer for each county under this section in the immediately preceding calendar year. For a county that has received less in a calendar year than the amount certified to the state treasurer for that county in the immediately preceding calendar year, not later than January tenth of the following year, the county auditor shall calculate the amount that is due under this subsection and submit a statement of the amount to the state treasurer. The state treasurer shall verify the stated amount and make the required payment under this subsection to the county, from collections received under section 57-60-02, not later than March first of the following year. The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments. Money received by a county under this subsection must be distributed pursuant to section 57-60-15.
3. Notwithstanding any other provision of law, for a county in which is located a coal conversion facility that was not a coal conversion facility under this chapter before January 1, 2002, for years after 2002, subsection 2 applies to allocations to that county under this section, except that for a county described in this subsection, amounts received for any calendar year must be allocated by the county in the same manner property taxes for the facility were allocated for taxable year 2001.

SECTION 5. AMENDMENT. Section 57-61-01 of the North Dakota Century Code is amended and reenacted as follows:

57-61-01. Severance tax upon coal - Imposition - In lieu of sales and use taxes - Payment to the tax commissioner. (Effective through June 30, 2026~~2036~~2029)

1. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax of thirty-seven and one-half cents per ton of two thousand pounds [907.18 kilograms]. The severance tax is in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit the tax for each month, within twenty-five days after the end of each month, to the tax commissioner

1 on reports and forms as the tax commissioner deems necessary. For the purposes of
2 this chapter, commercial leonardite is taxed in the same manner as coal.

3 2. The board of county commissioners, by resolution, may grant to the operator of a mine
4 from which the coal or commercial leonardite is mined a partial or complete exemption
5 from up to seventy percent of the tax imposed under this section for a period not to
6 extend past June 30, 2026~~2036~~2029. Any tax revenue exceeding thirty percent of the
7 tax imposed under this subsection must be allocated to the county under subsection 3
8 of section 57-62-02.

9 **Severance tax upon coal - Imposition - In lieu of sales and use taxes - Payment to the**
10 **tax commissioner. (Effective after June 30, 2026~~2036~~2029)** There is hereby imposed upon
11 all coal severed for sale or for industrial purposes by coal mines within the state a tax of
12 thirty-seven and one-half cents per ton of two thousand pounds [907.18 kilograms]. The
13 severance tax is in lieu of any sales or use taxes imposed by law. Each coal mine owner or
14 operator shall remit the tax for each month, within twenty-five days after the end of each month,
15 to the tax commissioner on reports and forms as the tax commissioner deems necessary. For
16 the purposes of this chapter, commercial leonardite is taxed in the same manner as coal.

17 **SECTION 6. EFFECTIVE DATE.** ~~This~~Section 5 of this Act is effective for taxable production
18 beginning after June 30, 2025. Sections 1 through 4 of this Act are effective for taxable
19 production beginning after June 30, 2026.