

Sixty-first  
Legislative Assembly  
of North Dakota

Introduced by

(At the request of the Department of Commerce)

1 A BILL for an Act to amend and reenact subsection 41 of section 57-39.2-04, subsection 1  
2 of section 57-39.2-04.2, subsection 1 of section 57-40.2-04.2, and section 57-61-01.4 of the  
3 North Dakota Century Code, relating to sales and use tax exemptions for power plants, and  
4 exemption of beneficiated coal used in certain plants from the coal severance tax; and to  
5 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  
8 Dakota Century Code is amended and reenacted as follows.

9 41. Gross receipts from the initial sale of beneficiated coal ~~taxed under chapter~~  
10 ~~57-60.~~

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

13 1. As used in this section, unless the context otherwise requires:  
14 a. (1) "Environmental upgrade" means an investment greater than  
15 twenty-five million dollars or one hundred thousand dollars per  
16 megawatt of installed nameplate capacity, whichever is less, in  
17 machinery, equipment, and related facilities for reducing emissions or  
18 increasing efficiency at an existing power plant.  
19 (2) "Environmental upgrade" for purposes of a process unit means an  
20 investment greater than one hundred thousand dollars in machinery,

equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.

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

c. "Power plant" means:

(1) An electrical generating plant, and all additions to the plant, which processes or converts coal ~~from~~ in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.

(2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

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

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

e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the

generation, transmission, or distribution of electrical energy for sale  
by a power plant.

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

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

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

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

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

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

- c. "Power plant" means:

(1) An electrical generating plant, and all additions to the plant, which processes or converts coal ~~from~~ in its natural form or beneficiated coal into electrical power and which has at least one single electrical

energy generation unit with a capacity of fifty thousand kilowatts or more.

(2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

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

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

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

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

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

1           **57-61-01.4. Severance and sales and use tax exemptions for coal used in**  
2 **certain plants.** No state severance tax may be imposed on coal used in agricultural  
3 commodity processing facilities as defined in subsection 4 of section 57-39.2-04.4 ~~or sugar~~  
4 ~~beet refining plants~~ located within North Dakota or adjacent states. No state severance tax  
5 may be imposed on coal purchased for improvement through the process of coal  
6 beneficiation defined in subsection 2 of section 57-60-01 that is subsequently used in  
7 agricultural commodity processing facilities located within North Dakota or adjacent states.  
8 The coal mine owner or operator shall require the person purchasing the coal to certify that  
9 amount of coal purchased for use in agricultural commodity processing ~~or sugar beet~~  
10 ~~refining purposes~~ facilities or for beneficiation and subsequent use in agricultural  
11 commodity processing facilities. ~~Coal exempted from the severance tax by this section is~~  
12 ~~not subject to sales and use taxes.~~

13           **SECTION 5. EFFECTIVE DATE.** Sections 1, 2, and 3 of this Act are effective for  
14 taxable events occurring after June 30, 2009.