

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1511
(Representatives Novak, Bosch, Hagert, Headland, Ista, Mock, Porter)
(Senators Kannianen, Kreun, Patten)

AN ACT to create and enact a new subdivision to subsection 3 of section 54-35-26, a new section to chapter 57-39.2, a new subdivision to subsection 3 of section 57-40.2-03.3, and a new section to chapter 57-61 of the North Dakota Century Code, relating to evaluation of economic development tax incentives, a sales and use tax exemption for materials used to construct or expand a coal processing facility that utilizes coal as a feedstock, and severance and sales and use tax exemptions for coal used in a coal processing facility that utilizes coal as a feedstock; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 3 of section 54-35-26 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for materials used to construct or expand a coal processing facility that utilizes coal as a feedstock.

SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for materials used to construct or expand a coal processing facility that utilizes coal as a feedstock.

1. Gross receipts from sales of tangible personal property used to construct or expand a coal processing facility that utilizes coal as a feedstock in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated in the structure of the facility or used in the construction process to the point of having no residual economic value.
2. For purposes of this section:
 - a. "Coal processing facility that utilizes coal as a feedstock" means a facility that:
 - (1) Extracts critical minerals or rare earth elements from lignite coal; or
 - (2) Creates tangible personal property other than electricity, water, gas, or steam from lignite coal, including lignite coal from which critical minerals or rare earth elements have been extracted.
 - b. "Critical mineral" means a nonfuel mineral or mineral material essential to the economic or national security of the United States and which has a supply chain vulnerable to disruption. The term includes aluminum, antimony, arsenic, barite, bauxite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite, hafnium, helium, indium, lithium, magnesium, manganese, niobium, platinum group metals, potash, the rare earth elements group, rhenium, rubidium, scandium, strontium, tantalum, tellurium, tin, titanium, tungsten, uranium, vanadium, and zirconium.
 - c. "Rare earth elements" means any of a series of metallic elements of which the oxides are classed as rare earths and which include the elements of the lanthanide series, yttrium and scandium.

3. The owner of the facility must receive from the tax commissioner a certificate that the tangible personal property used to construct or expand a facility qualifying under this section which the owner intends to purchase qualifies for the exemption.

SECTION 3. A new subdivision to subsection 3 of section 57-40.2-03.3 of the North Dakota Century Code is created and enacted as follows:

Tangible personal property as authorized or approved for exemption by the tax commissioner as provided in section 2 of this Act.

SECTION 4. A new section to chapter 57-61 of the North Dakota Century Code is created and enacted as follows:

Severance and sales and use tax exemptions for coal used in a coal processing facility that utilizes coal as a feedstock.

1. Severance tax may not be imposed on the first one million tons [907,184.74 metric tons] of coal per year used as a feedstock by a coal processing facility that utilizes coal as a feedstock in this state as defined in section 2 of this Act.
2. The owner or operator of a coal processing facility that utilizes coal as a feedstock shall certify to the coal mine owner or operator the amount of coal measured in tons:
 - a. Purchased for use as a feedstock by the facility.
 - b. Used as a feedstock by the facility for extraction of critical minerals or rare earth elements from lignite coal.
 - c. Used as a feedstock by the facility to create tangible personal property other than electricity, water, gas, or steam from lignite coal, including lignite coal from which critical minerals or rare earth elements have been extracted.
 - d. Resold or used in any manner other than as a feedstock at the facility, including use in an electrical generating plant or coal gasification facility.
3. The coal mine owner or operator shall report the amounts certified under subsection 2. The amount of coal certified under subdivision d of subsection 2 is not eligible for the exemption in this section. The coal mine owner or operator shall report the amount of coal certified under subdivision d of subsection 2 on its return for the month following the month of certification and shall remit the severance tax due with the return. The tax commissioner shall waive penalty and interest under section 57-61-05 for severance tax remitted in accordance with this subsection.

SECTION 5. EFFECTIVE DATE. Sections 2, 3, and 4 of this Act are effective for taxable events occurring after June 30, 2023.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1511.

House Vote: Yeas 87 Nays 4 Absent 3

Senate Vote: Yeas 44 Nays 2 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State