



North Dakota Legislative Council

Prepared for the Tax Reform and Relief Advisory Committee
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ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - COAL PROCESSING FACILITY THAT UTILIZES COAL AS A FEEDSTOCK SALES TAX EXEMPTION

Pursuant to North Dakota Century Code Section 54-35-26, created by Senate Bill No. 2057 (2015), a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee during each 6-year review period. The purpose of the review is to ensure economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum is provided to assist in the review of the sales tax exemption for coal processing facilities that utilize coal as a feedstock and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE COAL PROCESSING FACILITY THAT UTILIZES COAL AS A FEEDSTOCK SALES TAX EXEMPTION

Sections 57-39.2-04.21 and 57-40.2-03.3 provide a sales and use tax exemption for materials used to construct or expand a coal processing facility that utilizes coal as a feedstock. For purposes of the exemption, a coal processing facility that utilizes coal as a feedstock is a facility that extracts critical minerals or rare earth elements from lignite coal or 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. A critical mineral is defined as 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, including aluminum, antimony, arsenic, barite, bauxite, beryllium, bismuth, cesium, chromium, cobalt, fluor spar, 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. Rare earth elements are defined as 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.

To receive the exemption at the time of purchase, the facility owner must receive a certificate from the Tax Commissioner verifying the tangible personal property the facility owner intends to purchase qualifies for the exemption. To qualify for the exemption, the tangible personal property must be incorporated in the facility or used in the construction process to the point of having no residual economic value.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING THE COAL PROCESSING FACILITY THAT UTILIZES COAL AS A FEEDSTOCK SALES TAX EXEMPTION

The sales and use tax exemption for materials used to construct or expand a coal processing facility that utilizes coal as a feedstock was enacted in 2023 with the passage of House Bill No. 1511. Upon a review of the legislative history for the bill, the perceived goal of the Legislative Assembly in creating the exemption was to incentivize construction of new facilities focused on rare earth elements and critical minerals as part of a strategy to position the state as a leader in domestic rare earth and critical mineral production. Testimony emphasized the exemption provides an opportunity to diversify and expand coal production and may attract global investment. Testimony also indicated lignite processing facilities that

target rare earth elements or critical minerals could support other industries, including manufacturers of building materials and batteries. The estimated fiscal impact of the exemption could not be determined during the 2023 legislative session.

**DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE
ANALYSIS OF THE COAL PROCESSING FACILITY THAT
UTILIZES COAL AS A FEEDSTOCK SALES TAX EXEMPTION**

To effectively analyze the incentive, the committee may wish to collect data pertaining to the following items:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive; and
5. Benefits that flow to out-of-state concerns resulting from the incentive.

The committee also may wish to solicit testimony from:

1. The Department of Commerce;
2. The Tax Department;
3. The Economic Development Association of North Dakota; and
4. Coal and energy industry representatives.