

**SECOND ENGROSSMENT
with House Amendments**

Fifty-seventh
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2299

Introduced by

Senators G. Nelson, Krauter

Representatives Belter, Boucher

1 A BILL for an Act to create and enact a new subdivision to subsection 7 of section 57-60-01 of
2 the North Dakota Century Code, relating to coal conversion facility gross receipts; to amend
3 and reenact sections 49-06-02 and 57-39.2-02.1, subsection 44 of section 57-39.2-04, section
4 57-39.2-26.1, subsection 9 of section 57-40.2-01, section 57-40.2-02.1, subdivision b of
5 subsection 3 of section 57-60-01, and sections 57-60-02, 57-60-14, 57-61-01, 57-61-01.7, and
6 57-62-02 of the North Dakota Century Code, relating to sales and use taxes on coal, the coal
7 severance tax, allocation of coal development funds, the privilege tax on coal conversion
8 facilities, allocation of the privilege tax on coal conversion facilities, and the expiration date for
9 certain severance tax reductions; to repeal section 57-61-01.8 of the North Dakota Century
10 Code, relating to a coal severance tax reduction for coal burned in small boilers; to provide a
11 continuing appropriation; and to provide an effective date.

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

13 **SECTION 1. AMENDMENT.** Section 49-06-02 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **49-06-02. Value of property for ratemaking purposes - Determination.** The value
16 of the property of a public utility, as determined by the commission for ratemaking purposes, is
17 the money honestly and prudently invested therein by the utility including construction work in
18 progress for new facilities that use lignite mined in this state to generate electricity, as well as
19 additions or modifications to existing lignite facilities, less accrued depreciation. The
20 commission shall allow a public utility for those new or existing facilities utilizing lignite mined in
21 this state as its primary fuel:

22 1. To recover its research and development costs incurred to develop lignite more
23 cleanly, efficiently, or economically, including a reasonable rate of return on capital
24 expenditures; ~~and~~

1 2. To recover its incremental costs of complying with federal environmental laws,
2 including a reasonable rate of return on capital expenditures. The commission
3 may allow these costs to be recovered by an environmental surcharge that may be
4 added to existing rates; and

5 3. To recover all costs resulting from a coal severance tax pursuant to chapter 57-61
6 and all costs resulting from a coal conversion tax pursuant to chapter 57-60. The
7 commission shall allow the inclusion of these costs in the base rates and the
8 inclusion in the automatic adjustment clause of any of these costs not in base
9 rates.

10 **SECTION 2. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code
11 is amended and reenacted as follows:

12 **57-39.2-02.1. (Effective through June 30, 2001) Sales tax imposed.**

- 13 1. Except as otherwise expressly provided in subsections 2 and 3 for sales of mobile
14 homes used for residential or business purposes; for sales of farm machinery, farm
15 machinery repair parts, and irrigation equipment used exclusively for agricultural
16 purposes; and for sales of coal, and except as otherwise expressly provided in this
17 chapter, there is imposed a tax of five percent upon the gross receipts of retailers
18 from all sales at retail including the leasing or renting of tangible personal property
19 as provided in this section, within this state of the following to consumers or users:
- 20 a. Tangible personal property, consisting of goods, wares, or merchandise,
21 except mobile homes used for residential or business purposes and farm
22 machinery, farm machinery repair parts, and irrigation equipment used
23 exclusively for agricultural purposes.
 - 24 b. The furnishing or service of communication services or steam other than
25 steam used for processing agricultural products.
 - 26 c. Tickets or admissions to places of amusement or entertainment or athletic
27 events, including amounts charged for participation in an amusement,
28 entertainment, or athletic activity, and including the furnishing of bingo cards
29 and the playing of any machine for amusement or entertainment in response
30 to the use of a coin. The tax imposed by this section applies only to eighty

- 1 percent of the gross receipts collected from coin-operated amusement
2 devices.
- 3 d. Magazines and other periodicals.
- 4 e. The leasing or renting of a hotel or motel room or tourist court
5 accommodations.
- 6 f. The leasing or renting of tangible personal property the transfer of title to
7 which has not been subjected to a retail sales tax under this chapter or a use
8 tax under chapter 57-40.2.
- 9 g. Coal used for heating buildings in this state and coal used in agricultural
10 processing or sugar beet refining plants located within this state or adjacent
11 states.
- 12 2. There is imposed a tax of three percent upon the gross receipts of retailers from all
13 sales at retail of mobile homes used for residential or business purposes, except
14 as provided in subsection 35 of section 57-39.2-04, and of new farm machinery
15 and new irrigation equipment used exclusively for agricultural purposes, including
16 the leasing or renting of new farm machinery and new irrigation equipment used
17 exclusively for agricultural purposes within this state to consumers or users. There
18 is imposed a tax of one and one-half percent upon the gross receipts of retailers
19 from all sales at retail of used farm machinery, farm machinery repair parts, and
20 used irrigation equipment used exclusively for agricultural purposes, including the
21 leasing or renting of used farm machinery and used irrigation equipment used
22 exclusively for agricultural purposes within this state to consumers or users. For
23 purposes of this subsection, "used" means:
- 24 a. Tax under this chapter has been paid on a previous sale;
- 25 b. Originally purchased outside this state and previously owned by a farmer; or
- 26 c. Has been under lease or rental for three years or more.
- 27 3. There is imposed a tax of seventy-five cents per ton of two thousand pounds
28 [907.18 kilograms] on all sales at retail of coal, except for coal used for heating
29 buildings in this state and coal used in agricultural processing or sugar beet
30 refining plants located within this state or adjacent states.

1 4. In the case of a contract for the construction of highways, roads, streets, bridges,
2 and buildings for which the bid was submitted prior to December 9, 1986, the
3 contractor receiving the award is liable only for the sales or use tax at the rate of
4 tax in effect on the date the bid was submitted.

5 **(Effective after June 30, 2001) Sales tax imposed.**

- 6 1. Except as otherwise expressly provided in ~~subsections~~ subsection 2 and 3 for
7 sales of mobile homes used for residential or business purposes; for sales of farm
8 machinery, farm machinery repair parts, and irrigation equipment used exclusively
9 for agricultural purposes; ~~and for sales of coal~~, and except as otherwise expressly
10 provided in this chapter, there is imposed a tax of five percent upon the gross
11 receipts of retailers from all sales at retail including the leasing or renting of
12 tangible personal property as provided in this section, within this state of the
13 following to consumers or users:
- 14 a. Tangible personal property, consisting of goods, wares, or merchandise,
15 except mobile homes used for residential or business purposes and farm
16 machinery, farm machinery repair parts, and irrigation equipment used
17 exclusively for agricultural purposes.
 - 18 b. The furnishing or service of communication services or steam other than
19 steam used for processing agricultural products.
 - 20 c. Tickets or admissions to places of amusement or entertainment or athletic
21 events, including amounts charged for participation in an amusement,
22 entertainment, or athletic activity, and including the furnishing of bingo cards
23 and the playing of any machine for amusement or entertainment in response
24 to the use of a coin. The tax imposed by this section applies only to eighty
25 percent of the gross receipts collected from coin-operated amusement
26 devices.
 - 27 d. Magazines and other periodicals.
 - 28 e. The leasing or renting of a hotel or motel room or tourist court
29 accommodations.

- 1 f. The leasing or renting of tangible personal property the transfer of title to
2 which has not been subjected to a retail sales tax under this chapter or a use
3 tax under chapter 57-40.2.
- 4 g. Coal mined in this state and used for heating buildings ~~in this state and~~,
5 except for coal used in agricultural processing or sugar beet refining plants
6 ~~located within this state or adjacent states.~~
- 7 2. There is imposed a tax of three percent upon the gross receipts of retailers from all
8 sales at retail of mobile homes used for residential or business purposes, except
9 as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm
10 machinery repair parts, and irrigation equipment used exclusively for agricultural
11 purposes, including the leasing or renting of farm machinery and irrigation
12 equipment used exclusively for agricultural purposes within this state to consumers
13 or users.
- 14 3. ~~There is imposed a tax of seventy five cents per ton of two thousand pounds~~
15 ~~[907.18 kilograms] on all sales at retail of coal, except for coal used for heating~~
16 ~~buildings in this state and coal used in agricultural processing or sugar beet~~
17 ~~refining plants located within this state or adjacent states.~~
- 18 4. In the case of a contract for the construction of highways, roads, streets, bridges,
19 and buildings for which the bid was submitted prior to December 9, 1986, the
20 contractor receiving the award is liable only for the sales or use tax at the rate of
21 tax in effect on the date the bid was submitted.

22 **SECTION 3. AMENDMENT.** Subsection 44 of section 57-39.2-04 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 44. Gross receipts from all sales of coal used in agricultural processing or sugar beet
25 refining plants located within this state ~~or adjacent states which are exempted from~~
26 ~~the tax imposed by chapter 57-64.~~

27 **SECTION 4. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code
28 is amended and reenacted as follows:

- 29 **57-39.2-26.1. Allocation of revenues among political subdivisions and coal**
30 **development fund.** Notwithstanding any other provision of law, a portion of sales, use, and
31 motor vehicle excise tax collections, ~~excluding collections allocated under subsection 3,~~ equal

1 to forty percent of an amount determined by multiplying the quotient of one percent divided by
2 the general sales tax rate, that was in effect when the taxes were collected, times the net sales,
3 use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3
4 must be deposited by the state treasurer in the state aid distribution fund. The state tax
5 commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle
6 excise tax net revenues that must be deposited in the state aid distribution fund as determined
7 under this section. Revenues deposited in the state aid distribution fund are provided as a
8 standing and continuing appropriation and must be allocated as follows:

- 9 1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties
10 in the first month after each quarterly period as provided in this subsection.
- 11 a. Ten and four-tenths percent of the amount must be allocated among counties
12 with a population of one hundred thousand or more, based upon the
13 proportion each such county's population bears to the total population of all
14 such counties.
- 15 b. Eighteen percent of the amount must be allocated among counties with a
16 population of forty thousand or more but fewer than one hundred thousand,
17 based upon the proportion each such county's population bears to the total
18 population of all such counties.
- 19 c. Twelve percent of the amount must be allocated among counties with a
20 population of twenty thousand or more but fewer than forty thousand, based
21 upon the proportion each such county's population bears to the total
22 population of all such counties.
- 23 d. Fourteen percent of the amount must be allocated among counties with a
24 population of ten thousand or more but fewer than twenty thousand, based
25 upon the proportion each such county's population bears to the total
26 population of all such counties.
- 27 e. Twenty-three and two-tenths percent of the amount must be allocated among
28 counties with a population of five thousand or more but fewer than ten
29 thousand, based upon the proportion each such county's population bears to
30 the total population of all such counties.

1 f. Eighteen and three-tenths percent of the amount must be allocated among
2 counties with a population of two thousand five hundred or more but fewer
3 than five thousand, based upon the proportion each such county's population
4 bears to the total population of all such counties.

5 g. Four and one-tenth percent of the amount must be allocated among counties
6 with a population of fewer than two thousand five hundred, based upon the
7 proportion each such county's population bears to the total population of all
8 such counties.

9 A county shall deposit all revenues received under this subsection in the county
10 general fund. Each county shall reserve a portion of its allocation under this
11 subsection for further distribution to, or expenditure on behalf of, townships, rural
12 fire protection districts, rural ambulance districts, soil conservation districts, county
13 recreation service districts, county hospital districts, the Garrison diversion
14 conservancy district, the southwest water authority, and other taxing districts within
15 the county, excluding school districts, cities, and taxing districts within cities. The
16 share of the county allocation under this subsection to be distributed to a township
17 must be equal to the percentage of the county share of state aid distribution fund
18 allocations that township received during calendar year 1996. The governing
19 boards of the county and township may agree to a different distribution.

20 2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the
21 first month after each quarterly period as provided in this subsection.

22 a. Fifty-three and nine-tenths percent of the amount must be allocated among
23 cities with a population of twenty thousand or more, based upon the
24 proportion each such city's population bears to the total population of all such
25 cities.

26 b. Sixteen percent of the amount must be allocated among cities with a
27 population of ten thousand or more but fewer than twenty thousand, based
28 upon the proportion each such city's population bears to the total population
29 of all such cities.

30 c. Four and nine-tenths percent of the amount must be allocated among cities
31 with a population of five thousand or more but fewer than ten thousand,

- 1 based upon the proportion each such city's population bears to the total
2 population of all such cities.
- 3 d. Thirteen and one-tenth percent of the amount must be allocated among cities
4 with a population of one thousand or more but fewer than five thousand,
5 based upon the proportion each such city's population bears to the total
6 population of all such cities.
- 7 e. Six and four-tenths percent of the amount must be allocated among cities with
8 a population of five hundred or more but fewer than one thousand, based
9 upon the proportion each such city's population bears to the total population
10 of all such cities.
- 11 f. Three and five-tenths percent of the amount must be allocated among cities
12 with a population of two hundred or more but fewer than five hundred, based
13 upon the proportion each such city's population bears to the total population
14 of all such cities.
- 15 g. Two and two-tenths percent of the amount must be allocated among cities
16 with a population of fewer than two hundred, based upon the proportion each
17 such city's population bears to the total population of all such cities.

18 A city shall deposit all revenues received under this subsection in the city general
19 fund. Each city shall reserve a portion of its allocation under this subsection for
20 further distribution to, or expenditure on behalf of, park districts and other taxing
21 districts within the city, excluding school districts. The share of the city allocation
22 under this subsection to be distributed to a park district must be equal to the
23 percentage of the city share of state aid distribution fund allocations that park
24 district received during calendar year 1996, up to a maximum of thirty percent.
25 The governing boards of the city and park district may agree to a different
26 distribution.

- 27 ~~3. Notwithstanding any other provision of law, the sales and use tax collections on~~
28 ~~coal imposed by subsection 3 of section 57-39.2-02.1 and subsection 3 of section~~
29 ~~57-40.2-02.1 must be deposited in the coal development fund established under~~
30 ~~section 57-61-10 and distributed under section 57-62-02.~~

1 **SECTION 5. AMENDMENT.** Subsection 9 of section 57-40.2-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 9. "Use" means the exercise by any person of any right or power over tangible
4 personal property incident to the ownership or possession of that property,
5 including the storage, use, or consumption of that property in this state, except that
6 it does not include processing, or the sale of that property in the regular course of
7 business. "Use" also means the severing of sand; or gravel; ~~or coal~~ from the soil
8 of this state for use within or outside this state.

9 **SECTION 6. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **57-40.2-02.1. (Effective through June 30, 2001) Use tax imposed.**

- 12 1. Except as otherwise expressly provided in subsections 2 and 3 for purchases of
13 mobile homes used for residential or business purposes, for purchases of farm
14 machinery, farm machinery repair parts, and irrigation equipment used exclusively
15 for agricultural purposes, and for purchases of coal used for heating buildings in
16 this state and used in agricultural processing or sugar beet refining plants located
17 within this state or adjacent states, an excise tax is imposed on the storage, use,
18 or consumption in this state of tangible personal property purchased at retail for
19 storage, use, or consumption in this state, at the rate of five percent of the
20 purchase price of the property. Except as limited by section 57-40.2-11, an excise
21 tax is imposed on the storage, use, or consumption in this state of tangible
22 personal property not originally purchased for storage, use, or consumption in this
23 state at the rate of five percent of the fair market value of the property at the time it
24 was brought into this state.
- 25 2. An excise tax is imposed on the storage, use, or consumption in this state of
26 mobile homes used for residential or business purposes, except as provided in
27 subsection 19 of section 57-40.2-04, and of new farm machinery and new irrigation
28 equipment used exclusively for agricultural purposes purchased at retail for
29 storage, use, or consumption in this state at the rate of three percent of the
30 purchase price thereof. Except as limited by section 57-40.2-11, and except as
31 provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the

- 1 storage, use, or consumption in this state of mobile homes used for residential or
2 business purposes and of new farm machinery and new irrigation equipment used
3 exclusively for agricultural purposes not originally purchased for storage, use, or
4 consumption in this state at the rate of three percent of the fair market value of
5 mobile homes used for residential or business purposes and of new farm
6 machinery and new irrigation equipment used exclusively for agricultural purposes
7 at the time it was brought into this state. An excise tax is imposed on the storage,
8 use, or consumption in this state of used farm machinery, farm machinery repair
9 parts, and used irrigation equipment used exclusively for agricultural purposes
10 purchased at retail for storage, use, or consumption in this state at the rate of one
11 and one-half percent of the purchase price thereof. Except as limited by section
12 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this
13 state of used farm machinery, farm machinery repair parts, and used irrigation
14 equipment used exclusively for agricultural purposes not originally purchased for
15 storage, use, or consumption in this state at the rate of one and one-half percent of
16 the fair market value of the used farm machinery, farm machinery repair parts, and
17 used irrigation equipment used exclusively for agricultural purposes at the time it
18 was brought into this state. For purposes of this subsection, "used" means:
- 19 a. Tax under this chapter has been paid on a previous sale;
 - 20 b. Originally purchased outside this state and previously owned by a farmer; or
 - 21 c. Has been under lease or rental for three years or more.
- 22 3. An excise tax is imposed on the storage, use, or consumption in this state of coal
23 at the rate of seventy-five cents per ton of two thousand pounds [907.18
24 kilograms], except for coal used for heating buildings in this state and coal used in
25 agricultural processing or sugar beet refining plants located within this state or
26 adjacent states.
- 27 4. An excise tax is imposed on the storage, use, or consumption in this state of
28 natural gas consumed by a final user at the rate of four percent from January 1,
29 1993, through December 31, 1993; three percent from January 1, 1994, through
30 December 31, 1994; and two percent after December 31, 1994, if sales tax has not
31 been applied as provided by section 57-39.2-03.6.

1 5. In the case of a contract awarded for the construction of highways, roads, streets,
2 bridges, and buildings prior to December 1, 1986, the contractor receiving the
3 award shall be liable only for the sales or use tax at the rate of tax in effect on the
4 date of contract.

5 **(Effective after June 30, 2001) Use tax imposed.**

- 6 1. Except as otherwise expressly provided in ~~subsections~~ subsection 2 and 3 for
7 purchases of mobile homes used for residential or business purposes, for
8 purchases of farm machinery, farm machinery repair parts, and irrigation
9 equipment used exclusively for agricultural purposes, ~~and for purchases of coal~~
10 ~~used for heating buildings in this state and used in agricultural processing or sugar~~
11 ~~beet refining plants located within this state or adjacent states,~~ an excise tax is
12 imposed on the storage, use, or consumption in this state of tangible personal
13 property purchased at retail for storage, use, or consumption in this state, at the
14 rate of five percent of the purchase price of the property. Except as limited by
15 section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption
16 in this state of tangible personal property not originally purchased for storage, use,
17 or consumption in this state at the rate of five percent of the fair market value of
18 the property at the time it was brought into this state.
- 19 2. An excise tax is imposed on the storage, use, or consumption in this state of
20 mobile homes used for residential or business purposes, except as provided in
21 subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair
22 parts, and irrigation equipment used exclusively for agricultural purposes
23 purchased at retail for storage, use, or consumption in this state at the rate of three
24 percent of the purchase price thereof. Except as limited by section 57-40.2-11,
25 and except as provided in subsection 35 of section 57-39.2-04, an excise tax is
26 imposed on the storage, use, or consumption in this state of mobile homes used
27 for residential or business purposes and of farm machinery, farm machinery repair
28 parts, and irrigation equipment used exclusively for agricultural purposes not
29 originally purchased for storage, use, or consumption in this state at the rate of
30 three percent of the fair market value of mobile homes used for residential or
31 business purposes and of farm machinery, farm machinery repair parts, and

1 irrigation equipment used exclusively for agricultural purposes at the time it was
2 brought into this state.

3 3. ~~An excise tax is imposed on the storage, use, or consumption in this state of coal~~
4 ~~at the rate of seventy five cents per ton of two thousand pounds [907.18~~
5 ~~kilograms], except for coal used for heating buildings in this state and coal used in~~
6 ~~agricultural processing or sugar beet refining plants located within this state or~~
7 ~~adjacent states.~~

8 4. An excise tax is imposed on the storage, use, or consumption in this state of
9 natural gas consumed by a final user at the rate of four percent from January 1,
10 1993, through December 31, 1993; three percent from January 1, 1994, through
11 December 31, 1994; and two percent after December 31, 1994, if sales tax has not
12 been applied as provided by section 57-39.2-03.6.

13 ~~5.~~ 4. In the case of a contract awarded for the construction of highways, roads, streets,
14 bridges, and buildings prior to December 1, 1986, the contractor receiving the
15 award shall be liable only for the sales or use tax at the rate of tax in effect on the
16 date of contract.

17 **SECTION 7. AMENDMENT.** Subdivision b of subsection 3 of section 57-60-01 of the
18 North Dakota Century Code is amended and reenacted as follows:

19 b. An electrical generating plant, with all additions thereto, which processes or
20 converts coal from its natural form into electrical power and which has at least
21 one single electrical energy generation unit with a capacity of ~~one hundred~~
22 ~~twenty thousand~~ ten thousand kilowatts or more; or

23 **SECTION 8.** A new subdivision to subsection 7 of section 57-60-01 of the North Dakota
24 Century Code is created and enacted as follows:

25 Prior to January 1, 2010, any revenue received by the operator of a coal
26 gasification plant to the extent the quotient of the gross receipts realized by
27 the operator divided by the synthetic natural gas produced and sold during a
28 month, in units of one thousand cubic feet [28316.85 units] of synthetic gas,
29 exceeds the ceiling price. For calendar years 2001 and 2002, ceiling price
30 means \$4.25 for each thousand cubic feet [28316.85 liters] of synthetic
31 natural gas produced and sold; and the ceiling price for 2003 is \$4.35; for

1 2004, \$4.45; for 2005, \$4.55; for 2006, \$4.65; for 2007, \$4.75; for 2008,
2 \$4.86; and for 2009, \$4.97;

3 **SECTION 9. AMENDMENT.** Section 57-60-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **57-60-02. Imposition of taxes.** There is hereby imposed upon the operator of each
6 coal conversion facility a tax paid monthly for the privilege of producing products of such coal
7 conversion facility. The rate of the tax must be computed as follows:

- 8 1. For all coal conversion facilities, except as otherwise provided in this section, the
9 tax is measured by the gross receipts derived from such facility for the preceding
10 month and is in the amount of ~~two and one-half~~ four and one-tenth percent of such
11 gross receipts. For purposes of this subsection, "gross receipts" of a coal
12 gasification plant do not include any amount that is received by the operator of the
13 plant for production of synthetic natural gas in excess of one hundred ten million
14 cubic feet per day. Gross receipts derived from the sale of a capital asset are not
15 subject to the tax imposed by this subsection.
- 16 2. For electrical generating plants, the tax is at a rate of ~~twenty-five~~ sixty-five
17 one-hundredths of one mill times sixty percent of the installed capacity of each unit
18 times the number of hours in the taxable period. All electrical generating plants
19 that begin construction after June 30, 1991, are exempt from ~~sixty-five~~ eighty-five
20 percent of the tax imposed by this subsection for five years from the date of the
21 first taxable production from the plant. The board of county commissioners may,
22 by resolution, grant to the operator of an electrical generating plant located within
23 the county which begins construction after June 30, 1991, partial or complete
24 exemption from the remaining ~~thirty-five~~ fifteen percent of the tax imposed by this
25 subsection for a period not exceeding five years from the date of the first taxable
26 production from the plant. Notwithstanding section 57-60-14, any tax collected
27 from a plant subject to the exemption provided by this subsection must be
28 allocated entirely to the county for allocation as provided in section 57-60-15. If a
29 unit is incapable of generating electricity for eighteen consecutive months, the tax
30 on that unit for taxable periods beginning after the eighteenth month must be
31 reduced by the ratio that the cost of repair of the unit bears to the original cost of

- 1 the unit. This reduced rate remains in effect until the unit is capable of generating
2 electricity.
- 3 3. For electrical generating plants, in addition to the tax imposed by subsection 2,
4 there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt
5 hour of electricity produced for the purpose of sale. For all electrical generating
6 plants that begin construction after June 30, 1991, the production from the plants is
7 exempt from the tax imposed by this subsection for five years from the date of the
8 first taxable production from the plant.
- 9 4. For coal gasification plants, the tax is the greater of either the amount provided in
10 subsection 1 or ~~seven~~ thirteen and one-half cents on each one thousand cubic feet
11 [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not
12 including any amount of synthetic natural gas in excess of one hundred ten million
13 cubic feet per day.
- 14 5. a. For all coal conversion facilities, other than electrical generating plants, the
15 production from the facilities is exempt from ~~sixty-five~~ eighty-five percent of
16 the tax imposed by this section for a period of five years from the date of first
17 taxable production from the facility or for a period of five years from April 20,
18 1987, whichever is later. The operator of each facility applying for exemption
19 under this subsection shall certify to the tax commissioner the date of first
20 taxable production of the facility.
- 21 b. The board of county commissioners may, by resolution, grant to the operator
22 of a coal conversion facility, other than an electrical generating plant, located
23 within the county a partial or complete exemption from the remaining
24 ~~thirty-five~~ fifteen percent of tax imposed by this section for a period not
25 exceeding five years from the date of the first taxable production from the
26 facility. Notwithstanding the provisions of section 57-60-14, any tax collected
27 which is based upon the production of a facility subject to the exemption
28 provided by this subsection must be allocated entirely to the county for
29 allocation as provided in section 57-60-15.
- 30 6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand
31 pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale,

1 or one and one-quarter percent of the gross receipts derived from such facility for
2 the preceding month, whichever amount is greater. Any amount of beneficiated
3 coal produced in excess of eighty percent of the design capacity of the coal
4 beneficiation plant is exempt from such tax.

5 **SECTION 10. AMENDMENT.** Section 57-60-14 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-60-14. Allocation of revenue - Continuing appropriation.**

- 8 1. The state treasurer shall no less than quarterly allocate all moneys received from
9 all coal conversion facilities in each county pursuant to the provisions of this
10 chapter and moneys received for those taxes for which a credit is allowed pursuant
11 to section 57-60-06, notwithstanding the provisions of section 57-33.1-08,
12 ~~thirty-five~~ fifteen percent to the county and ~~sixty-five~~ eighty-five percent to the state
13 general fund, except moneys received from the tax imposed by subsection 3 of
14 section 57-60-02 and through December 31, 2009, the first \$41,666.67 each
15 month from the tax imposed by subsections 1 and 4 of section 57-60-02, which
16 must be deposited in the state general fund.
- 17 2. Notwithstanding any other provision of law, the allocation under this section to
18 each county may not be less in each calendar year than the amount certified to the
19 state treasurer for each county under this section in the immediately preceding
20 calendar year, except that through December 31, 2009, the portion of the revenue
21 allocation to each county which is attributable to a coal gasification coal conversion
22 facility must exclude consideration of calendar year 2001, and be based on
23 calendar year 2000 or the appropriate year after 2001, whichever is greater. For a
24 county that has received less in a calendar year than the amount certified to the
25 state treasurer for that county in the immediately preceding calendar year, not later
26 than January tenth of the following year, the county auditor shall calculate the
27 amount that is due under this subsection and submit a statement of the amount to
28 the state treasurer. The state treasurer shall verify the stated amount and make
29 the required payment under this subsection to the county, from collections
30 received under section 57-60-02, not later than March first of the following year.
31 The funds needed to make the distribution to counties under this subsection are

1 appropriated on a continuing basis for making these payments. Money received
2 by a county under this subsection must be distributed pursuant to section
3 57-60-15.

4 3. Notwithstanding any other provision of law, for a county in which is located a coal
5 conversion facility that was not a coal conversion facility under this chapter before
6 the effective date of section 7 of this Act, that county must receive for calendar
7 year 2002 at least as much under this section as was received by that county and
8 taxing districts in that county in property taxes for that facility for taxable year 2001.
9 For years after 2002, subsection 2 applies to allocations to that county under this
10 section, except that for a county described in this subsection, amounts received for
11 any calendar year must be allocated by the county in the same manner property
12 taxes for the facility were allocated for taxable year 2001.

13 **SECTION 11. AMENDMENT.** Section 57-61-01 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **57-61-01. Severance tax upon coal - Imposition - In lieu of sales and use taxes -**
16 **Payment to the tax commissioner.** There is hereby imposed upon all coal severed for sale or
17 for industrial purposes by coal mines within the state a tax of ~~seventy-five~~ thirty-seven and
18 one-half cents per ton of two thousand pounds [907.18 kilograms]. Such severance tax is in
19 lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit
20 such tax for each month, within twenty-five days after the end of each month, to the state tax
21 commissioner upon such reports and forms as the tax commissioner deems necessary.

22 **SECTION 12. AMENDMENT.** Section 57-61-01.7 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-61-01.7. Severance tax reduction for coal mined for out-of-state shipment.** For
25 coal subject to taxes under this chapter which is shipped out of state after June 30, ~~1995,~~ and
26 ~~before July 1, 2000~~ 2001:

- 27 1. ~~The coal is exempt from fifty percent of the taxes imposed under section 57-61-01.~~
28 2. The coal is subject to ~~fifteen~~ thirty percent of the taxes imposed under section
29 57-61-01 and the entire revenue under this subsection must be deposited in the
30 coal development trust fund for use as provided in subsection 1 of section

1 57-62-02 and allocation to the lignite research fund as provided in subsection 2 of
2 section 57-61-01.5.

3 ~~3.~~ 2. In addition to the taxes under subsection ~~2~~ 1, the coal may be subject to up to
4 ~~thirty-five~~ seventy percent of the severance taxes imposed under section 57-61-01
5 at the option of the county in which the coal is mined. The board of county
6 commissioners, by resolution, may grant to the operator of a mine from which the
7 coal is shipped out of state a partial or complete exemption from this portion of the
8 severance tax. Any tax revenue from full or partial taxation under this subsection
9 must be allocated to the county under subsection 2 of section 57-62-02.

10 ~~4.~~ 3. Taxes imposed under section 57-61-01.5 apply to coal subject to this section and
11 must be allocated as provided in section 57-61-01.5.

12 **SECTION 13. AMENDMENT.** Section 57-62-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **57-62-02. Allocation of moneys in coal development fund.** Moneys deposited in
15 the coal development fund shall be apportioned monthly by the state treasurer as follows:

16 1. ~~Fifteen~~ Thirty percent must be deposited in a permanent trust fund in the state
17 treasury, to be known as the coal development trust fund, pursuant to section 21 of
18 article X of the Constitution of North Dakota. Those funds held in trust and
19 administered by the board of university and school lands on March 5, 1981,
20 pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560,
21 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be
22 deposited in the trust fund created pursuant to this subsection. The fund must be
23 held in trust and administered by the board of university and school lands for loans
24 to coal impacted counties, cities, and school districts as provided in section
25 57-62-03 and for loans to school districts pursuant to chapter 15-60. The board of
26 university and school lands may invest such funds as are not loaned out as
27 provided in this chapter and may consult with the state investment board as
28 provided by law. The income, including interest payments on loans, from the trust
29 must be used first to replace uncollectible loans made from the fund and the
30 balance must be deposited in the state's general fund. Loan principal payments
31 must be redeposited in the trust fund. The trust fund must be perpetual and held in

- 1 trust as a replacement for depleted natural resources subject to the provisions of
2 this chapter and chapter 15-60.
- 3 2. ~~Thirty five~~ Seventy percent must be allocated to the coal-producing counties and
4 must be distributed among such counties in such proportion as the number of tons
5 [metric tons] of coal severed at each mining operation bears to the total number of
6 tons [metric tons] of coal severed in the state during such monthly period.
7 Allocations under subdivisions a and b must be apportioned by the state treasurer
8 as follows:
- 9 a. If the tipple of the currently active coal mining operation in a county is not
10 within fifteen miles [24.14 kilometers] of another county in which no coal is
11 mined, the revenue apportioned according to this subdivision must be
12 allocated as follows:
- 13 (1) Thirty percent must be paid by the state treasurer to the incorporated
14 cities of the county based upon the population of each incorporated city
15 according to the last official regular or special federal census or the
16 census taken in accordance with the provisions of chapter 40-02 in
17 case of a city incorporated subsequent to such census.
- 18 (2) Forty percent must be paid to the county treasurer who shall deposit it
19 in the county general fund to be used for general governmental
20 purposes.
- 21 (3) Thirty percent must be apportioned by the state treasurer to school
22 districts within the county on the average daily membership basis, as
23 certified to the state treasurer by the county superintendent of schools.
- 24 b. If the tipple of a currently active coal mining operation in a county is within
25 fifteen miles [24.14 kilometers] of another county in which no coal is mined,
26 the revenue from the production not exceeding the production limitation in a
27 calendar year which is apportioned from that coal mining operation according
28 to this subsection must be allocated, subject to the definitions of terms and
29 the requirements in paragraph 4, as provided in this subdivision. For
30 purposes of this subdivision, the production limitation is three million eight
31 hundred thousand tons [3447302.02 metric tons] through calendar year 1995,

1 three million six hundred thousand tons [3265865.07 metric tons] in calendar
2 years 1996 and 1997, and three million four hundred thousand tons
3 [3084428.12 metric tons] in calendar years after 1997. Revenue from
4 production exceeding the production limitation in a calendar year from that
5 coal mining operation must be allocated only within the coal-producing county
6 under subdivision a. Allocations under this subdivision must be made as
7 follows:

8 (1) Thirty percent must be paid by the state treasurer to the incorporated
9 cities of the coal-producing county and to any city of a
10 non-coal-producing county when any portion of the city lies within
11 fifteen miles [24.14 kilometers] of the tipple of the currently active coal
12 mining operation in the coal-producing county, based upon the
13 population of each incorporated city according to the last official regular
14 or special federal census or the census taken in accordance with the
15 provisions of chapter 40-02 in case of a city incorporated subsequent to
16 such census.

17 (2) Forty percent must be divided by the state treasurer between the
18 general fund of the coal-producing county and the general fund of any
19 non-coal-producing county when any portion of the latter county lies
20 within fifteen miles [24.14 kilometers] of the tipple of the currently active
21 coal mining operation in the coal-producing county. The
22 non-coal-producing county portion must be based upon the ratio which
23 the assessed valuation of all quarter sections of land in that county, any
24 portion of which lies within fifteen miles [24.14 kilometers] of the tipple
25 of the currently active coal mining operation, bears to the combined
26 assessed valuations of all land in the coal-producing county and the
27 quarter sections of land in the non-coal-producing county within fifteen
28 miles [24.14 kilometers] of the tipple of the currently active coal mining
29 operation. The county director of tax equalization of the coal-producing
30 county shall certify to the state treasurer the number of quarter sections
31 of land in the non-coal-producing counties which lie at least in part

1 within fifteen miles [24.14 kilometers] of the tipple of the currently active
2 coal mining operation and their assessed valuations.

3 (3) Thirty percent must be apportioned by the state treasurer to school
4 districts within the coal-producing county and to school districts in
5 adjoining non-coal-producing counties when a portion of those school
6 districts' land includes any of the quarter sections of land certified by
7 the director of tax equalization to the state treasurer to be eligible to
8 share county funds as provided for in paragraph 2. The county
9 superintendent of the non-coal-producing counties shall certify to the
10 state treasurer the number of students actually residing on these
11 quarter sections lying outside the coal-producing county and each
12 school district in non-coal-producing counties shall receive a portion of
13 the money under this paragraph based upon the ratio of the number of
14 children residing on quarter sections of that school district within the
15 fifteen-mile [24.14-kilometer] radius of the tipple of a currently active
16 coal mining operation to the total number of schoolchildren from the
17 coal-producing county combined with all the schoolchildren certified to
18 be living on quarter sections within fifteen miles [24.14 kilometers] of
19 the tipple of the currently active coal mining operation in the
20 coal-producing county.

21 (4) For the purposes of this subsection:

22 (a) The terms "currently active coal mining operation in a county",
23 "currently active coal mining operation in the coal-producing
24 county", and "currently active coal mining operation" mean a coal
25 mining operation that produced more than one hundred fifty
26 thousand tons [136077.71 metric tons] of coal in a
27 coal-producing county during the prior quarterly period.

28 (b) The term "coal-producing county" means a county in which more
29 than one hundred fifty thousand tons [136077.71 metric tons] of
30 coal were mined in the prior quarterly period.

- 1 (c) The term "another county in which no coal is mined" means a
2 county in which not more than seventy-five thousand tons
3 [68038.86 metric tons] of coal were mined in the prior quarterly
4 period.
- 5 (d) The terms "non-coal-producing county" and "non-coal-producing
6 counties" mean any county in which not more than seventy-five
7 thousand tons [68038.86 metric tons] of coal were mined in the
8 prior quarterly period.
- 9 (e) In computing each amount to be paid as provided in paragraph 1,
10 2, or 3 for coal severance tax revenue from coal mined during a
11 monthly period, the state treasurer shall deduct from the
12 allocation the amount of coal severance tax revenue, if any, that
13 the governmental body in the non-coal-producing county
14 received from the coal mined in the non-coal-producing county
15 during the same monthly period.

16 ~~3. Fifty percent shall be deposited in the state's general fund, except that after~~
17 ~~June 30, 1997, the revenue allocated to the state general fund under this~~
18 ~~subsection which is attributable to severance taxes on new coal production from~~
19 ~~clean coal demonstration projects must be deposited in the lignite research fund~~
20 ~~for partial funding of the state share of the clean coal demonstration project~~
21 ~~generating the new coal production.~~

22 **SECTION 14. REPEAL.** Section 57-61-01.8 of the North Dakota Century Code is
23 repealed.

24 **SECTION 15. EFFECTIVE DATE.** Section 7 of this Act is effective for taxable events
25 occurring after December 31, 2001, and the remainder of this Act is effective for taxable events
26 occurring after June 30, 2001.