

SENATE BILL NO. 2268

Introduced by

Senators Krebsbach, O'Connell, Seymour

Representatives Ekstrom, Froseth, Kerzman

1 A BILL for an Act to provide for waste rubber recycling, abatement and remediation of waste
2 rubber tire stockpiles, and to recover the components of petroleum-based products.

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

4 **SECTION 1. Definitions.** As used in this Act, unless the context or subject matter
5 otherwise requires:

- 6 1. "Abate and abatement" means:
- 7 a. To remove waste rubber tires from a waste rubber tire dump or waste rubber
8 tire stockpile by processing or properly disposing of the tires on an
9 enforceable schedule ensuring compliance with the prohibitions of this Act; or
- 10 b. Action taken pursuant to authority under a state program to process or
11 properly dispose of waste tires.
- 12 2. "Added value" means the net added value of the resource recovery technology, as
13 compared to the next best alternative technology, for all technologies claiming to
14 be able to recover the resources embedded in waste petroleum-based products.
15 This term includes incremental changes in annualized capital costs and operating
16 and management costs.
- 17 3. "Annual outcome" means the outcome in a particular year for the resource
18 recovery technology.
- 19 4. "Beneficial use" means the use of solid waste material, which would otherwise
20 need to be placed in a landfill or disposed of through alternative means, in such a
21 manner that the nature of the use constitutes a reuse of the solid waste material or
22 its constituent components rather than disposal in a landfill. Beneficial uses
23 include:

- 1 a. Incorporation of a solid waste material which is a legitimate substitute for a
2 raw material into a product marketable to an end user.
- 3 b. Recovery of the constituent components in a manner that allows for the reuse
4 of the constituent components by industry.
- 5 c. Recovery of the oil embedded in solid waste material for the generation of
6 electricity with an emphasis on the use of oil for distributed generation.
- 7 d. Waste rubber that is reformed into another rubber-based product may be
8 considered to be beneficially used only if there is no viable technology to
9 recover the energy or material embedded in waste rubber for reuse in
10 industry.
- 11 e. Waste rubber that is burned as tire-derived fuel for the purposes of recovering
12 usable energy may be considered to be beneficially used only if there is no
13 viable technology to recover the energy or material embedded in waste rubber
14 for reuse in industry or in distributed generation.
- 15 f. Waste rubber that is used in civil engineering projects may be considered to
16 be beneficially used only if there is no viable technology to recover the energy
17 or material embedded in waste rubber for reuse in industry.
- 18 5. "Best available technology" means the use of technologies that are economical,
19 environmentally friendly, and state-of-the-art currently in use for processing
20 petroleum-based products, including waste rubber.
- 21 6. "Carbon equivalent emissions displaced" means an estimate based upon known
22 science of the amount of the carbon equivalent emissions displaced due to the use
23 of the resource recovery technologies.
- 24 7. "Carbon monoxide displaced" means an estimate based upon known science of
25 the amount of carbon monoxide displaced annually due to the use of resource
26 recovery technologies.
- 27 8. "Collection site" means a facility, installation, building, or site, including all of the
28 contiguous area under the control of a person controlled by the same person used
29 for the storage or disposal of more than four hundred waste rubber tires but not
30 including shredded rubber tire material that has been properly disposed.
- 31 9. "Commerce" means the department of commerce.

- 1 10. "Commerce of life" means those activities, business and personal, that people
2 engage in and which require that public resources are available to the general
3 public on an equal basis.
- 4 11. "Constituent components" means the raw materials used to manufacture the
5 original rubber product.
- 6 12. "Cumulative outcome" means the outcome through a particular year for the
7 resource recovery technology.
- 8 13. "Department of health" means the state department of health.
- 9 14. "Direct coal displaced" means the total direct coal that would have been consumed
10 by conventional technologies in providing the raw materials used to make
11 petroleum-based products had not the resource recovery technology entered the
12 market, minus the direct coal consumed by the resource recovery technology.
13 Coal includes metallurgical coal, steam coal, and net coal coke imports.
- 14 15. "Direct electricity displaced" means the total direct electricity that would have been
15 consumed by conventional technologies had not the resource recovery technology
16 comprising the planning unit entered the market, minus the direct electricity
17 consumed by the resource recovery technology.
- 18 16. "Direct energy displaced from feedstocks" means the total direct energy from
19 feedstocks that would have been consumed by conventional technologies had not
20 the resource recovery technology entered the market, minus the direct energy from
21 feedstocks consumed by the resource recovery technology. Feedstocks include
22 combustible fuels forms used for nonenergy products such as asphalt or
23 petrochemicals.
- 24 17. "Direct energy displaced from waste rubber products" means the total direct energy
25 from waste rubber products that would have been consumed by electric generation
26 units as tire-derived fuel comprising the current market had not the resource
27 recovery technology entered the current market, minus the direct energy from
28 waste rubber products recovered by the resource recovery technology.
- 29 18. "Direct natural gas displaced" means the total direct natural gas that would have
30 been consumed by conventional technologies had not the resource recovery
31 technology entered the market, minus the direct natural gas consumed by the

- 1 resource recovery technology. Natural gas includes pipeline fuel natural gas and
2 compressed natural gas.
- 3 19. "Direct petroleum displaced" means the total direct petroleum that would have
4 been consumed by conventional technologies had not the resource recovery
5 technology entered the market, minus the direct petroleum consumed by the
6 resource recovery technology. Petroleum includes distillate fuel, jet fuel, motor
7 gasoline, residual fuel, liquid petroleum gasoline, and other petroleum.
- 8 20. "Emergency response services" means those fire and ambulance services
9 provided by state, county, and city governments and by volunteer rural ambulance
10 and fire departments to the public in the commerce of life.
- 11 21. "End use" means that a product requires no further processing or manufacturing
12 and is suitable for reuse in industry or use by a consumer for the rubber based
13 product's intended application and is not merely a means of inappropriate disposal.
- 14 22. "End user" means the ultimate customer of the recovered constituent components
15 of a rubber-based finished product.
- 16 23. "Energy cost-savings" means the estimate of dollar savings resulting from the
17 fuel-related cost reductions that are due to the use of resource recovery
18 technology.
- 19 24. "Environmental credit" means an administratively created asset that is based upon
20 the amount of pollution avoided or displaced due to the recovery of the constituent
21 components suitable for reuse in industry, thus avoiding the need to extract and
22 refine finite natural resources.
- 23 25. "Environmental resource" means air and water used in the manufacture of
24 petroleum-based products.
- 25 26. "Highest and best use" means those technologies or processes that produce
26 products whose value either as energy or as an industrial material is greater than
27 the value of competing energy or material.
- 28 27. "Hydrocarbon displaced" means an estimate, based upon known science, of the
29 amount of hydrocarbons displaced due to use of the resource recovery technology.
- 30 28. "Inappropriate disposal" means the placement of waste rubber, including waste
31 rubber tires, in landfills, aboveground storage, or monofill.

- 1 29. "Industrial material" means the use of the recovered constituent components from
2 rubber-based products which is suitable for use in the manufacturing industry.
- 3 30. "Life cycle outcomes" means the outcome over the lifetime of the technology for
4 recovery of the resources from waste petroleum-based products.
- 5 31. "Material" means the physical products embedded in waste petroleum-based
6 products.
- 7 32. "Monofill" means a place designed solely to receive and store waste rubber,
8 including tires.
- 9 33. "Natural resource" means those hydrocarbon-based resources used in the
10 manufacture of petroleum-based products and in the commerce of life.
- 11 34. "New tires" means tires that have never been placed on a motor vehicle wheel rim
12 or tires placed on a motor vehicle before its original retail sale.
- 13 35. "Net economic benefit" means the summation of energy cost-savings, nonenergy
14 cost-savings, consumer investment, consumer expenditures, and other
15 government expenditures for a particular year due to the use of the resource
16 recovery technology.
- 17 36. "Nitrogen oxide displaced" means an estimate, based upon known science, of the
18 amount of nitrogen oxides displaced due to the use of the resource recovery
19 technology to process waste petroleum-based products, including waste rubber.
- 20 37. "Noncompliant waste rubber stockpile" means a facility, including a waste rubber
21 tire storage facility, parcel of property, or site designated by the department of
22 health in accordance with this Act, where four hundred or more waste rubber tires
23 or mechanically processed waste rubber tires have been accumulated, stored, or
24 buried in a manner that the state department of health or a court of competent
25 jurisdiction has determined violates any judicial administrative order, decree, law,
26 regulation, permit, or stipulation relating to waste rubber tires, waste rubber tire
27 storage facilities, or solid waste.
- 28 38. "Nonenergy cost-savings" means those dollar savings or costs related to
29 nonfuel-related operations that are due to the use of the resource recovery
30 technology. The term includes items such as extension of proven reserves of
31 natural resources and reduction in costs of pollution.

- 1 39. "Other direct energy displaced" means the total direct energy from other sources
2 that would have been consumed by conventional technologies had not the
3 resource recovery technology entered the market, minus the direct energy from
4 other sources consumed by the resource recovery technology. Other direct energy
5 sources include those not covered by electricity, natural gas, petroleum, coal,
6 biomass, feedstocks, and wastes.
- 7 40. "Other environmental benefits" means an estimate, based upon known science, of
8 the amount of nonemission pollutants displaced annually due to the use of the
9 resource recovery technology to process waste petroleum-based products,
10 including waste rubber.
- 11 41. "Other government expenditures" means the anticipated expenditures by the state,
12 county, and city governments directly related to the providing of traffic services,
13 landfill operating costs, and emergency response due to fires.
- 14 42. "Other greenhouse emissions displaced" means an estimate, based upon known
15 science, of the amount of greenhouse emissions other than sulfur dioxide, nitrogen
16 oxide, carbon monoxide, carbon, particulates, and volatile organic compounds
17 displaced due to the use of the resource recovery technology to process waste
18 petroleum-based products, including waste rubber.
- 19 43. "Petroleum-based product" means products that are made out of natural rubber,
20 synthetic rubber, or other natural resources.
- 21 44. "PM10 displaced" means an estimate, based upon known science, of the amount
22 of particulate matter smaller than ten microns in diameter due to the use of the
23 resource recovery technology to process waste petroleum-based products,
24 including waste rubber.
- 25 45. "Process" means to produce or manufacture usable materials or energy with real
26 economic value from waste petroleum-based products, including waste rubber
27 tires.
- 28 46. "Properly disposed" means the conversion of waste rubber into a rubber-based
29 product or into the constituent components for resale in industry. Placing waste
30 rubber, including whole tires, into a landfill, a monofill, or a tire stockpile containing
31 whole tires or shredded rubber tires may not be considered properly disposed.

- 1 47. "Public resource" means the traffic services, emergency response services, rural
2 ambulance and fire services, and public works services consumed by the public in
3 the commerce of life.
- 4 48. "Real economic value" means the highest and best use of the recovered
5 constituent components from petroleum-based products.
- 6 49. "Recyclables" means solid waste materials that exhibit the potential to be used to
7 make marketable products for end users.
- 8 50. "Recycle" means to use recyclables in manufacturing a rubber-based product for
9 an end use other than burning the actual waste rubber for recovery of usable
10 energy in a civil engineering application, tire-derived fuels, or shredded tire
11 material.
- 12 51. "Recycling fee" means that fee charged consumers for the costs of disposal of
13 waste rubber, including fee collection, transportation, and processing.
- 14 52. "Removed from service" means removed within this state from the service for
15 which the tires were intended to be used when the tires and tire casings were
16 separated for retreading.
- 17 53. "Resource" means the environmental, natural, and public resources consumed or
18 used in the manufacture of petroleum-based products and in the commerce of life.
- 19 54. "Resource conservation" means the use of the recovered energy and material from
20 petroleum-based products by industry so that the need to use natural and
21 environmental resources is decreased.
- 22 55. "Resource recovery" means the recovery of the energy and material contained in
23 waste petroleum-based products in a manner that allows for reuse in industry.
- 24 56. "Resource recovery funds" means those funds collected by a tire retailer and used
25 to recover the resources embedded in waste rubber and to offset the moneys used
26 by the state, counties, and cities to provide traffic services, emergency response
27 services, and other governmental expenditures.
- 28 57. "Resource recovery technology" means the use of a technology or process that
29 allows for the recovery of the constituent components of waste petroleum-based
30 products for beneficial uses in an economical and environmental manner.

- 1 58. "Retail sale" means the sale to any person in the state for any purpose other than
2 resale.
- 3 59. "Shredded tire material" means tire material resulting from tire shredding that
4 produces pieces four square inches or less in size that do not hold water when
5 stored in piles.
- 6 60. "Solid waste material" means solid waste composed of petroleum-based products,
7 including plastic and rubber.
- 8 61. "Sulfur dioxide displaced" means an estimate, based upon known science, of the
9 amount of sulfur dioxide displaced due to the use of the resource recovery
10 technology to process waste petroleum-based products, including waste rubber.
- 11 62. "Tax commissioner" means the state tax commissioner.
- 12 63. "Tire" means any pneumatic or solid tire, including a tire manufactured for use on
13 any type of motor vehicle, construction, farm implement, tractor tires or other
14 offroad equipment, aircraft, or industrial machinery.
- 15 64. "Tire collector" means a person that owns or operates a collection site.
- 16 65. "Tire dump" means a tire collection site without a collector or processor permit that
17 is maintained, operated, used, or allowed to be used for the disposal, storing, or
18 depositing of waste rubber tires.
- 19 66. "Tire hauler" means a person engaged in picking up or transporting waste tires to a
20 storage or disposal facility.
- 21 67. "Tire processor" means a person that processes waste tires to produce or
22 manufacture usable materials or to recover energy.
- 23 68. "Tire service or tire retailer" means any person or business in this state that either
24 sells or installs new tires, hoses, or belts for use on any vehicle and any person or
25 business that engages in the retail sale of new motor vehicles. A person who is
26 not the end point of sale, any governmental agency, and a political subdivision are
27 excluded from this term.
- 28 69. "Tire stockpile" means a waste rubber tire storage facility operating pursuant to a
29 permit issued by the state department of health at which either shredded rubber
30 tire material from fifty or more waste tires or whole rubber tires are stored for future
31 processing or disposal.

- 1 70. "Traffic services" means policing, emergency response, planning, courts, street
2 lighting, parking enforcement, and driver training.
- 3 71. "Unfunded mandate" means those services provided to the public because of the
4 mandate for safety, health, and welfare but which are not fully paid for by the users
5 of the services, such as traffic services and emergency response services by rural
6 ambulances and fire departments.
- 7 72. "Unreimbursed traffic services" means those state, county, and city costs for traffic
8 services funded by property taxes or state income taxes.
- 9 73. "Waste rubber" means any solid waste that consists of a petroleum-based product,
10 such as belts, hoses, or tires.
- 11 74. "Waste rubber tire" means any solid waste that consists of whole tires or portions
12 of tires. Tire casings separated for retreading and tires with sufficient tread for
13 resale are included under this term; however, crumb rubber is not considered a
14 solid waste.
- 15 75. "Waste rubber tire storage facility" means a facility at which waste tires are stored
16 and for which a permit or registration has been issued.

17 **SECTION 2. Legislative findings.** The legislative assembly finds that:

- 18 1. For the next century North Dakota will generate approximately six hundred forty
19 thousand waste rubber tires each year;
- 20 2. There are over two million waste rubber tires stored or dumped in aboveground
21 piles across the state;
- 22 3. Current waste rubber tire collection and disposal practices present a substantial
23 threat to human health and the environment and ensure the number of waste tires
24 stored or dumped in aboveground piles will continue to grow;
- 25 4. Waste rubber tire piles are a breeding habitat for disease-carrying mosquitoes,
26 rodents, and other pests;
- 27 5. Waste rubber tire piles may be ignited causing potentially catastrophic fires;
- 28 6. Waste rubber tires contain significant amounts of energy and petroleum-based
29 material which if recovered could substantially reduce the need to extract or import
30 natural resources, transport those natural resources, and refine those natural

- 1 resources into the raw materials needed to manufacture rubber-based products,
2 including rubber tires;
- 3 7. North Dakota is highly dependent on foreign oil;
- 4 8. It is important to our national interest that processes or technologies that permit the
5 reusing of the petroleum embedded in waste rubber products be developed and
6 used to recover the energy and constituent materials for use in industry;
- 7 9. There are substantial opportunities for recycling and reuse of the actual waste
8 rubber as rubber-derived products;
- 9 10. There are substantial opportunities for recycling and reuse of the constituent
10 materials found in waste rubber tires to be used in tire retreading, asphalt
11 pavement containing recycled rubber, rubber products, and as tire-derived fuel;
- 12 11. There are substantial opportunities for recovery and reuse of the constituent
13 components embedded in waste rubber, including waste rubber tires;
- 14 12. Waste rubber, including waste tires, are stored energy and could be converted to
15 oil used to generate electricity;
- 16 13. It is in the interest of the public to have stable, reliable, and affordable energy
17 supplies, including electricity;
- 18 14. Property taxes in this state are rising and need to be stabilized;
- 19 15. North Dakota is a rural state that depends upon the availability of the highway
20 patrol, county sheriff's departments, and city police departments to provide traffic
21 services and to be available to assist in the event of a traffic accident;
- 22 16. Throughout this state there are many citizens who volunteer their time, energy, and
23 resources to staff rural ambulances and fire departments;
- 24 17. In 2003 the department of transportation estimated there were approximately
25 seven billion three hundred million miles of vehicle travel;
- 26 18. In 2003 the department of transportation estimated that the highway patrol, county
27 sheriff's departments, and city police departments responded to numerous vehicle
28 accidents;
- 29 19. In 2003 North Dakota farmers, manufacturers, and travelers required the use of
30 those emergency services provided by either county, city, or volunteer ambulance
31 and fire departments;

- 1 20. In order to protect the public's health, safety, and welfare, state, county, and city
2 governments have a mandate to provide traffic services, emergency services, and
3 rural ambulance and fire services to the public at large, including vehicle traffic
4 without concern for who has to pay;
- 5 21. Under the current mandate to provide public resources for traffic services and
6 emergency services much of the burden falls upon property and income taxpayers;
- 7 22. Not everyone who uses or has the benefit of traffic services, emergency services,
8 public resources, and fire and ambulance services pays property or income taxes
9 in the state;
- 10 23. It is only fair that the users of traffic services pay a reasonable fee for part of the
11 traffic services and fire and ambulance services received;
- 12 24. Current fees paid for tire disposal are not used as consumers believe;
- 13 25. It is unfair for people to pay for a service that they do not receive;
- 14 26. It is possible that some of the disposal fees could be more efficiently allocated so
15 as to contribute to the payment of traffic services, thereby reducing the burden on
16 property and income taxpayers;
- 17 27. Although several counties and cities have established waste tire programs and
18 disposal requirements to protect human health and the environment, the efforts of
19 individual counties and cities are often frustrated by the lack of comparable
20 programs in neighboring counties and cities; and
- 21 28. Additional financial resources are necessary to encourage waste rubber recycling
22 and proper disposal and the abatement of existing waste rubber tire dumps.

23 **SECTION 3. Purpose.** The purpose of this Act is:

- 24 1. To further the common good through the responsible stewardship of resources,
25 including environmental, natural, and public resources;
- 26 2. To assure that the life cycle of all petroleum-based products, including
27 rubber-based tires, hoses, and belts, used in this state is managed in a manner
28 that is environmentally sound and which maximizes the economic value of
29 recovered energy and material to the citizens of the state and our nation by
30 permitting reuse of the constituent components of petroleum-based products in
31 industry; and

- 1 3. To assure that the end users of traffic services, emergency response services,
2 public resources, and rural ambulance and fire departments pay for part of the cost
3 of the unreimbursed traffic and emergency response services so as to reduce the
4 burden on property and income taxpayers.

5 **SECTION 4. Waste management priorities for petroleum-based products.** In the
6 interest of public health, safety, and welfare, to conserve natural resources, to promote
7 recovery of the constituent components of waste petroleum-based products, to encourage
8 recycling and market development for the recovered components of petroleum-based products,
9 and to support the national agenda for reducing our dependence on foreign oil, the state
10 establishes a policy on the management of waste petroleum-based products, based upon
11 known science, that states:

- 12 1. The waste management priorities for petroleum-based products in this state are to:
- 13 a. Reduce the amount of waste generated, yearly, through the collection of
14 waste products at the time of origination;
- 15 b. Remediate that waste, provided there are viable technologies available to
16 recover the resources contained in the waste according to a plan established
17 by the state department of health;
- 18 c. Remediate waste rubber tire stockpiles located in city and county landfills, at
19 illegal or noncompliant waste rubber piles, or located at the location of tire
20 retailers;
- 21 d. Recycle the waste, including waste rubber into value-added products that
22 provide the maximum environmental, fiscal, and natural resource benefit to
23 the state;
- 24 e. Encourage the development and use of technologies that beneficially use
25 waste rubber in an environmentally acceptable manner; and
- 26 f. Encourage the use of technologies that can recover the constituent
27 components required to manufacture petroleum-based products that presently
28 cannot be economically recycled or otherwise beneficially used.
- 29 2. State government must make an essential contribution to the development and
30 implementation of environmentally, economically, and technically viable waste
31 rubber management programs and technologies.

1 **SECTION 5. Acceptance of waste rubber.** Any tire service or retailer shall:

2 1. Until December 31, 2020, accept from a customer waste rubber, including waste
3 tires of approximately the same size and in a quantity equal to the number of new
4 tires purchased or installed by the customer; and

5 2. Until December 31, 2020, post written notice in a prominent location, which must
6 be at least eight and one-half inches by fourteen inches in size and contain the
7 following language:

8 "The legislative assembly in the interest of national energy security, public
9 health, safety, and welfare and in order to conserve natural resources and prevent
10 pollution has established this Act which requires us to accept and manage waste
11 rubber such as tires, belts, and hoses from vehicles in exchange for an equal
12 number of new rubber-based products such as tires, belts, and hoses that we sell
13 or install.

14 We are required to charge a separate and distinct waste rubber management
15 and recycling fee for each new tire we sell. This fee is established by the state
16 department of health.

17 Any additional tire management and recycling costs are included in the
18 advertised price of the new tire."

19 **SECTION 6. Duties of state department of health.**

20 1. Abatement of the daily waste rubber flow.

21 a. By July 1, 2005, the state department of health shall prepare a plan to handle
22 the waste rubber generated daily, including waste rubber tires;

23 b. The state department of health shall notify all tire retailers that they will be
24 required to collect all waste rubber, including waste rubber tires, beginning
25 September 1, 2005;

26 c. The state department of health shall notify all registered tire collectors and
27 transporters of the requirements of this Act;

28 d. The state department of health shall establish criteria for collecting,
29 transporting, and disposal of waste rubber;

- 1 e. The state department of health shall have authority to enter all sites where
2 waste rubber tire stockpiles are located for the purpose of investigation and
3 abatement;
- 4 f. The state department of health shall establish standards for collecting, storing,
5 transporting, shredding, and added value processing of waste rubber;
- 6 g. The state department of health shall establish a process for paying fees for
7 collecting, storing, transporting, shredding, and processing of waste rubber;
8 and
- 9 h. The state department of health shall establish fees for all waste rubber
10 products based upon their weight, category, and the base fees established in
11 section 9 of this Act.
- 12 2. Abatement of waste rubber stockpiles.
- 13 a. Not later than one year after the effective date of this Act, the state
14 department of health shall prepare and submit to the governor and the
15 legislative assembly a comprehensive plan designed to abate all waste tire
16 stockpiles by December 31, 2020.
- 17 b. The plan must establish a waste rubber tire stockpile abatement priority list
18 and schedule for abatement of each waste rubber tire stockpile based on
19 potential adverse impacts upon public health, safety or welfare, the
20 environment, or natural resources.
- 21 c. The plan must include a description of how the state department of health
22 intends to manage the abatement funds collected to assure that abatement
23 funds are used to economically and systematically remove aboveground tire
24 piles with the goal of achieving total removal by July 1, 2020.
- 25 d. The plan should include the state department of health's estimated census of
26 the number of waste rubber tire stockpiles, where they are located in the
27 state, the individual or entity who owns the waste rubber tire stockpile, and the
28 number of waste rubber tires believed to be stored at each site.
- 29 e. The plan must also include a proposed amnesty period for owners of the
30 waste rubber stockpile to work with the state department of health to develop
31 a plan to remediate the waste rubber tires located on their premises.

- 1 (1) If the owners of the waste rubber stockpile comply, they must be
2 allowed to be considered a permitted collection site and are entitled to
3 receive financial assistance from the state department of health for the
4 remediation of the waste rubber tire stockpile on their property.
- 5 (2) If the owner of the waste rubber stockpile fails to comply, then the state
6 department of health may declare the waste rubber tire stockpile to be
7 illegal and shall proceed to remediate the waste rubber tire stockpile
8 under the provisions of subsection 4.
- 9 f. The owner or operator of a permitted waste rubber tire stockpile shall, at the
10 state department of health's request, submit to and cooperate with any and all
11 remedial measures necessary for the abatement of waste rubber tire
12 stockpiles with funds from the state department of health.
- 13 3. Assist tire service or retailers to abate waste rubber located on their premises.
- 14 a. Not later than one year after the effective date of this Act, the state
15 department of health shall prepare and submit to the governor and the
16 legislative assembly a comprehensive plan designed to abate all waste rubber
17 tire stockpiles located on the premises of tire retailers by December 31, 2015.
- 18 b. This plan must establish a waste rubber tire stockpile abatement priority list
19 and schedule for abatement of each waste rubber tire stockpile based on
20 potential adverse impacts upon public health, safety or welfare, the
21 environment, or natural resources.
- 22 c. The plan must also include a census of the number of waste rubber tire
23 stockpiles, where they are located in the state, the individual or entity who
24 owns the waste rubber tire stockpile, and the number of waste rubber tires
25 believed to be stored at each site.
- 26 d. The plan must also include a proposed amnesty period for tire retailers to
27 work with the state department of health to develop a plan to remediate the
28 waste rubber tires located on their premises.
- 29 (1) If the tire retailer complies, they must be allowed to be considered a
30 permitted collection site and are entitled to receive financial assistance

- 1 from the state department of health for the remediation of the waste
2 rubber tire stockpiles on their property.
- 3 (2) If the tire retailer fails to comply, then the state department of health
4 may declare the tire retailer or owner of the waste rubber tire stockpile
5 to be illegal and shall proceed to remediate the waste rubber tire
6 stockpile under the provisions of subsection 4.
- 7 e. The tire retailer shall, at the state department of health's request, submit to
8 and cooperate with any and all remedial measures necessary for the
9 abatement of waste rubber tire stockpiles with funds from the state
10 department of health.
- 11 4. Prepare requests for proposals. Not later than one year from the effective date of
12 this Act, the state department of health shall publish requests for proposals to seek
13 contractors to prepare whole and mechanically processed waste tires situated at
14 noncompliant waste tire stockpiles for arrangement in accordance with fire safety
15 requirements and for removal for appropriate processing, recycling, or beneficial
16 use. Disposal may be considered only as a last option.
- 17 5. Illegal waste rubber stockpiles.
- 18 a. In the case of illegal waste tire stockpiles, the expenses of remedial and fire
19 safety activities at a noncompliant waste tire stockpile must be paid by the
20 person who owned, operated, or maintained the noncompliant waste tire
21 stockpile, or from the waste tire management and recycling fund and is a debt
22 recoverable by the state from all persons who owned, operated, or maintained
23 the noncompliant waste tire stockpile, and a lien and charge may be placed
24 on the premises upon which the noncompliant waste tire stockpile is
25 maintained and upon any real or personal property, equipment, vehicles, and
26 inventory controlled by that person.
- 27 b. Moneys recovered must be paid to the state department of health for use for
28 further abatement.
- 29 c. If execution upon a judgment for the recovery of the expenses of any such
30 remedial and fire safety activities at a noncompliant waste tire stockpile is
31 returned wholly or partially unsatisfied, such judgment, if docketed in the place

1 and manner required by law to make a judgment of a court of record, a lien
2 upon real property, is a first lien upon the premises, and has preference over
3 all other liens and encumbrances whatever. Notwithstanding the foregoing,
4 the lien does not have preference over any mortgage or other encumbrance
5 for the benefit of the state or a public benefit corporation thereof.

6 d. The state department of health shall make all reasonable efforts to recover
7 the full amount of any funds expended from the waste tire management and
8 recycling fund for abatement or remediation of illegal or noncompliant waste
9 rubber tire stockpiles through litigation or cooperative agreements.

10 e. All moneys recovered, repaid, or reimbursed pursuant to this section must be
11 deposited with the state treasurer and credited to the fund.

12 **SECTION 7. Duties of department of commerce.** Not later than one year after the
13 effective date of this Act and continuing annually thereafter, the department of commerce, to
14 ensure the economic sustainability of the state's resources, businesses, and way of life shall:

15 1. Assist in the development of new technologies designed to recover resources from
16 waste petroleum-based products for reuse in industry with an emphasis on
17 higher-value end uses;

18 2. Analyze the potential for strategically using the oil recovered from waste rubber as
19 fuel for peak power generation in order to reduce the costs of electricity for
20 counties and cities by:

21 a. Consulting with electric utilities about providing a long-term supply of oil for
22 peak power generation within their service area, whether in this state, and
23 determine the appropriate form of repayment and environmental credits for
24 using the recovered oil and for the value of the oil used to generate peak
25 power, including cash or an in-kind exchange of electricity using the electric
26 utility's off-peak power generation; and

27 b. Advising the state department of health about the potential economic value to
28 all the citizens of the state if the oil was strategically used to help lower the
29 cost of electricity;

30 3. Provide industrial and consumer education on other benefits of recycled waste tire
31 products through the preparation of fact sheets and public workshops;

- 1 4. Prepare an annual summary report and analysis of markets and disposition of both
2 stockpiled tires and annually generated waste tires. This report must be submitted
3 to the state department of health and legislative assembly by the last day of March
4 of each year;
- 5 5. Find optimal uses for energy recovered on behalf of state refining and electrical
6 generation; and
- 7 6. Negotiate with the processors of the waste for ownership of the oil recovered from
8 waste petroleum products, including waste rubber, if the department of commerce
9 determines that it can maximize the value of the oil in a manner which will reduce
10 the costs of state, county, and local governments for electricity. The fee must be
11 established based upon the value of the oil to the processor and not the value to
12 the state.

13 **SECTION 8. Prohibition on land burial.**

- 14 1. A person may not knowingly dispose of waste rubber tires in a landfill except as
15 provided in subsection 2.
- 16 2. Moneys from the fund may not be used to dispose of waste tires in a landfill unless
17 the state department of health has determined that it is not feasible to convert the
18 waste tires to a beneficial use. Department-approved beneficial uses of scrap
19 tire-derived material for leachate collection systems, or gas collection systems, in
20 the construction or operation of a landfill are not considered proper disposal.

21 **SECTION 9. Resource recovery and conservation fee.**

- 22 1. Until December 31, 2010, a resource recovery and conservation fee of thirty-nine
23 cents per pound must be charged on each new rubber-based product sold for
24 automobile, industry, and agricultural use. The fee must be paid by the purchaser
25 to the tire service at the time the new tire or new motor vehicle is purchased. The
26 resource recovery fee does not apply to:
 - 27 a. Recapped or resold tires;
 - 28 b. Mail-order sales; or
 - 29 c. The sale of new motor vehicle tires to a person solely for the purpose of
30 resale provided the subsequent retail sale in this state is subject to the fee.

- 1 2. Until December 31, 2020, the retailer of tires, belts, and hoses shall collect on
2 behalf of the state various fees from the purchaser of the new rubber-based
3 products at the time of the sale and shall remit such fees to the tax commissioner
4 with the quarterly report filed pursuant to subsection 3:
 - 5 a. The fees imposed must be stated as an invoice item separate and distinct
6 from the selling price of the tire.
 - 7 b. The fee must be based upon the weight and category of petroleum-based
8 product sold and must be adjusted every two years according to the
9 consumer price index.
 - 10 c. Any additional management and recycling costs of the retailer must be
11 included in the published selling price of the new tire.
- 12 3. Until March 31, 2020, each tire service maintaining a place of business in this state
13 shall make a return to the tax commissioner on a quarterly basis, with the return for
14 December, January, and February being due on or before the immediately
15 following March thirty-first; the return for March, April, and May being due on or
16 before the immediately following June thirtieth; the return for June, July, and
17 August being due on or before the immediately following September thirtieth; and
18 the return for September, October, and November being due on or before the
19 immediately following December thirty-first.
 - 20 a. Each return must include:
 - 21 (1) The name of the tire service;
 - 22 (2) The address of the tire service's principal place of business and the
23 address of the principal place of business, if that is a different address,
24 from which the tire service engages in the business of making retail
25 sales of tires;
 - 26 (3) The name and signature of the person preparing the return;
 - 27 (4) The total number of new tires sold at retail for the preceding quarter and
28 the total number of new tires placed on motor vehicles before original
29 retail sale;
 - 30 (5) The amount of waste tire management and recycling fees due; and

- 1 (6) Such other reasonable information as the tax commissioner may
2 require.
- 3 b. Copies of each report must be retained by the tire service for three years. If a
4 tire service ceases business, it shall file a final return and remit all fees due
5 under this Act with the tax commissioner not more than one month after
6 discontinuing that business.
- 7 4. All waste tire management and recycling fees collected by the tax commissioner
8 must be transferred to the appropriate state agencies as prescribed in section 10 of
9 this Act.

10 **SECTION 10. Use of resource recovery fees.** Funds from the resource recovery fund
11 established in section 9 of this Act must be made available to the following departments for the
12 following purposes:

- 13 1. The state department of health must receive fifteen cents per pound for collection,
14 transportation, shredding, and added value processing.
- 15 a. Tire retailers must receive five cents per pound for collecting the waste
16 rubber, including waste rubber tires and the RTE fee.
- 17 b. Transporters must receive three cents per pound for transportation.
- 18 c. Shredders must receive four cents per pound for shredding.
- 19 d. Added value processors must receive between one cent and three cents per
20 pound for technologies that add the highest real economic value.
- 21 2. The state department of health must receive six cents per pound to assist city,
22 county, and rural emergency response providers, rural ambulance departments
23 must receive two cents per pound, rural fire departments must receive two cents
24 per pound, city and county fire and emergency response services must receive two
25 cents per pound pro rata.
- 26 3. The department of transportation must receive six cents per pound for the highway
27 patrol, county sheriff's departments, and local law enforcement, the North Dakota
28 highway patrol must receive two cents per pound, county sheriff's departments and
29 local law enforcement must receive four cents per pound pro rata.
- 30 4. The department of commerce must receive eleven cents per pound to be used as
31 follows:

- 1 a. Two cents per pound for financing demonstration projects or studies to
2 determine how to maximize the material recovered.
- 3 b. Two cents per pound for the department of commerce to use to fund electric
4 transmission projects.
- 5 c. Five cents per pound to permit the purchase of the energy recovered from
6 waste rubber by the state under the following criteria:
- 7 (1) There is an opportunity to obtain a higher value for the recovered
8 energy through the generation of peak electrical power;
- 9 (2) There is a need for a long-term supply contract with the electric utility;
- 10 (3) A reasonable fee is paid to the processor for the oil; and
- 11 (4) There is a need for the state to use the environmental credits attached
12 to the energy to help state industries meet the state department of
13 health and the United States environmental protection agency rules for
14 air pollution.

15 Any funds not used for a given year must be returned to the fund and be added to
16 the total funds available for disbursement for abatement purposes in the following
17 year.

- 18 5. There is an administrative fee of two cents per pound for state administrative
19 expenses. The agencies affected by this Act must devise a formula for sharing the
20 administrative expenses based upon the requirements of the agency.

21 **SECTION 11. Ranking of resource recovery technologies.** The state department of
22 health and the department of commerce shall develop criteria for ranking resource recovery
23 technologies and the establishment of environmental credits saved on an annual outcome, a
24 cumulative outcome, and a life cycle outcome, for each resource recovery technology
25 considered for approval by the departments so as to meet the purpose of this Act as follows:

- 26 1. Avoidance of pollution. An environmental credit must be established to recognize
27 the inherent value of reusing the petroleum-based products embedded in waste
28 rubber products and other petroleum-based products so that the energy and
29 material recovered may be used again for industrial applications and the
30 concurrent avoidance of pollution.

- 1 2. The metrics to determine the environmental credit must use known science to
2 determine the amount of:
 - 3 a. Carbon equivalent emissions displaced;
 - 4 b. Carbon monoxide displaced;
 - 5 c. Hydrocarbon displaced;
 - 6 d. Nitrogen oxide displaced;
 - 7 e. Sulfur oxide displaced; and
 - 8 f. PM10 displaced;
 - 9 g. Volatile organic compounds displaced;
 - 10 h. Mercury displaced; and
 - 11 i. Other environmental benefits.
- 12 3. Savings of energy and natural resources. The state department of health and the
13 department of commerce shall develop a set of metrics based upon current
14 science by which to examine resource recovery technologies to determine the
15 amount of natural resources saved and resource recovery technology considered
16 for approval.
- 17 4. The metrics to determine the energy and natural resources saved must use known
18 science to determine the amount of:
 - 19 a. Direct coal displaced;
 - 20 b. Direct electricity displaced;
 - 21 c. Direct energy displaced from feedstocks;
 - 22 d. Direct natural gas displaced;
 - 23 e. Energy cost-savings;
 - 24 f. Other direct energy displaced; and
 - 25 g. Total primary energy displaced.
- 26 5. Consumer, industry, and governmental savings. The state department of health
27 and the department of commerce shall develop a set of metrics by which to
28 examine the financial impact of the use of the resource recovery technology
29 considered for approval.
- 30 6. The metrics to determine the financial savings must include:
 - 31 a. Energy cost-savings;

- 1 b. Net economic benefit;
- 2 c. Nonenergy cost-savings; and
- 3 d. Other governmental expenditures.
- 4 7. The state department of health and the department of commerce shall establish a
- 5 set of metrics to allow for an environmental credit to be attached to the energy or
- 6 material recovered from the petroleum-based material so that the end user of the
- 7 recovered energy or material may use that environmental credit in another state or
- 8 country.
- 9 8. The state department of health and the department of commerce shall provide a
- 10 method for determining credits which result in credits that are quantifiable, surplus,
- 11 and legally enforceable and shall set forth the manner in which credits will be
- 12 banked and traded, and the manner in which such transactions will be tracked and
- 13 accounted for acceptance by another state or country.
- 14 9. If federal law or regulations need to be changed so as to allow the end user of the
- 15 recovered energy or material to use the environmental credit in another state or
- 16 country, then the state department of health and the department of commerce shall
- 17 use their best efforts to assist that end user in securing the appropriate changes in
- 18 federal law or regulations, including providing the data obtained by the state
- 19 department of health related to the environmental credit.