

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2035
(Legislative Council)
(Energy Development and Transmission Committee)

AN ACT to amend and reenact subsection 41 of section 57-39.2-04, subsection 1 of section 57-39.2-04.2, subsection 1 of section 57-40.2-04.2, and section 57-61-01.4 of the North Dakota Century Code, relating to sales and use tax exemptions for beneficiated coal and equipment for certain power plants and a coal severance tax exemption for beneficiated coal or beneficiated coal used to produce steam that is used in certain plants; to provide for a study and a report to the legislative council; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 41 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

- a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
- (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
- c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal ~~from~~ in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.

- d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
- e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
- f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal ~~from~~ in its natural form or beneficiated coal into electrical power.

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

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

- a. (1) "Environmental upgrade" means an investment greater than twenty-five million dollars or one hundred thousand dollars per megawatt of installed nameplate capacity, whichever is less, in machinery, equipment, and related facilities for reducing emissions or increasing efficiency at an existing power plant.
- (2) "Environmental upgrade" for purposes of a process unit means an investment greater than one hundred thousand dollars in machinery, equipment, and related facilities for reducing emissions, increasing efficiency, or enhancing reliability of the equipment at a new or existing process unit.
- b. "Operator" means any person owning, holding, or leasing a power plant or process unit.
- c. "Power plant" means:
 - (1) An electrical generating plant, and all additions to the plant, which processes or converts coal ~~from~~ in its natural form or beneficiated coal into electrical power and which has at least one single electrical energy generation unit with a capacity of fifty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.
 - (3) Any other type of electrical power generating facility excluding the types of power plants identified in paragraphs 1 and 2 which has a capacity of one hundred kilowatts or more and produces electricity for resale or for consumption in a business activity.
- d. "Process unit" means an oil refinery or gas processing plant and all adjacent units that are utilized in the processing of crude oil or natural gas.
- e. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
- f. "Repowering" means an investment of more than two hundred million dollars or one million dollars per megawatt of installed nameplate capacity, whichever is less, in an existing power plant that modifies or replaces the process used for converting coal ~~from~~ in its natural form or beneficiated coal into electric power.

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

57-61-01.4. Severance and sales and use tax exemptions for coal used in certain plants.

No state severance tax may be imposed on coal used in, or coal used to produce steam that is used in, agricultural commodity processing or sugar beet refining plants facilities as defined in subsection 4 of section 57-39.2-04.4 located within North Dakota or adjacent states or any facility owned by the state or a political subdivision of the state. No state severance tax may be imposed on coal purchased for improvement through the process of coal beneficiation defined in subsection 2 of section 57-60-01 which is subsequently used in, or used to produce steam that is used in, agricultural commodity processing facilities located within North Dakota or adjacent states or any facility owned by the state or a political subdivision of the state. The coal mine owner or operator shall require the person purchasing the coal to certify that amount of coal purchased for use in agricultural commodity processing or sugar beet refining purposes. ~~Coal exempted from the severance tax by this section is not subject to sales and use taxes facilities or for beneficiation and subsequent use in agricultural commodity processing facilities or any facility owned by the state or a political subdivision of the state or to produce steam that is used in any of those facilities.~~

SECTION 5. TAX COMMISSIONER STUDY - LEGISLATIVE COUNCIL REPORT.

1. During the 2009-11 and 2011-13 bienniums, the tax commissioner shall conduct a cost-benefit analysis of the coal severance tax exemption authorized under section 57-61-01.4.
2. The tax commissioner shall report the findings and recommendations of the analysis to an interim committee designated by the legislative council during the 2013-14 interim.
3. The report must be based upon information available to the tax commissioner and must include an analysis of the costs and benefits to the state and the taxpayers who qualify for the exemption under section 57-61-01.4.
4. The tax commissioner shall establish the procedure by which the tax commissioner will compile the data and the format in which the tax commissioner will provide this data to the interim committee.
5. The tax commissioner may use confidential tax information filed by or on behalf of a person pursuant to a tax law of this state to compile this report. Confidential tax information must be provided to the interim committee in a manner that will not divulge information specific to any taxpayer.

SECTION 6. EFFECTIVE DATE - EXPIRATION DATE. Sections 1 through 4 of this Act are effective for taxable events occurring after June 30, 2009, and before July 1, 2015, and are thereafter ineffective.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2035.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State