

Introduced by

Legislative Management

(Energy Development and Transmission Committee)

1 A BILL for an Act to amend and reenact sections 57-39.2-04.2 and 57-40.2-04.2 of the North
2 Dakota Century Code, relating to a sales and use tax exemption for materials used in the
3 construction or expansion of a wind-powered electrical generation facility; to provide an effective
4 date; and to provide for retroactive application.

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

6 **SECTION 1. AMENDMENT.** Section 57-39.2-04.2 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-39.2-04.2. Sales tax exemption for power plant construction, production,**
9 **environmental upgrade, and repowering equipment and oil refinery or gas processing**
10 **plant environmental upgrade equipment.**

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

12 a. (1) "Environmental upgrade" means an investment greater than twenty-five
13 million dollars or one hundred thousand dollars per megawatt of installed
14 nameplate capacity, whichever is less, in machinery, equipment, and related
15 facilities for reducing emissions or increasing efficiency at an existing power
16 plant.

17 (2) "Environmental upgrade" for purposes of a process unit means an
18 investment greater than one hundred thousand dollars in machinery,
19 equipment, and related facilities for reducing emissions, increasing
20 efficiency, or enhancing reliability of the equipment at a new or existing
21 process unit.

22 b. "Operator" means any person owning, holding, or leasing a power plant or
23 process unit.

24 c. "Power plant" means:

- 1 (1) An electrical generating plant, and all additions to the plant, which
2 processes or converts coal in its natural form or beneficiated coal into
3 electrical power and which has at least one single electrical energy
4 generation unit with a capacity of fifty thousand kilowatts or more.
- 5 (2) A wind-powered electrical generating facility, ~~on which construction is~~
6 ~~completed before January 1, 2017,~~ and all additions to the facility, which
7 provides electrical power through wind generation and which has at least
8 one single electrical energy generation unit with a nameplate capacity of
9 one hundred kilowatts or more.
- 10 (3) Any other type of electrical power generating facility excluding the types of
11 power plants identified in paragraphs 1 and 2 which has a capacity of one
12 hundred kilowatts or more and produces electricity for resale or for
13 consumption in a business activity.
- 14 d. "Process unit" means an oil refinery or gas processing plant and all adjacent
15 units that are utilized in the processing of crude oil or natural gas.
- 16 e. "Production equipment" means machinery and attachment units, other than
17 replacement parts, directly and exclusively used in the generation, transmission,
18 or distribution of electrical energy for sale by a power plant.
- 19 f. "Repowering" means an investment of more than two hundred million dollars or
20 one million dollars per megawatt of installed nameplate capacity, whichever is
21 less, in an existing power plant that modifies or replaces the process used for
22 converting coal in its natural form or beneficiated coal into electrical power.
- 23 2. Sales of production or environmental upgrade equipment that is delivered on or after
24 January 1, 2007, and used exclusively in power plants or repowering existing power
25 plants or in processing units are exempt from the tax imposed by this chapter.
- 26 3. Sales of tangible personal property, other than production or environmental upgrade
27 equipment, which is used in the construction of new power plants or to expand existing
28 power plants or to add environmental upgrades to existing power plants or repowering
29 existing power plants or to add environmental upgrades to existing process units are
30 exempt from the tax imposed by this chapter.

- 1 4. To receive the exemption at the time of purchase, the operator must receive from the
2 commissioner a certificate that the tangible personal property or production equipment
3 the operator intends to purchase qualifies for the exemption. If a certificate is not
4 received prior to the purchase, the operator shall pay the applicable tax imposed by
5 this chapter and apply to the commissioner for a refund.
- 6 5. If the tangible personal property or production equipment is purchased or installed by
7 a contractor subject to the tax imposed by this chapter, the operator may apply for a
8 refund of the difference between the amount remitted by the contractor and the
9 exemption imposed or allowed by this section.

10 **SECTION 2. AMENDMENT.** Section 57-40.2-04.2 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-40.2-04.2. Use tax exemption for power plant construction, production,**
13 **environmental upgrade, and repowering equipment and oil refinery or gas processing**
14 **plant environmental upgrade equipment.**

- 15 1. As used in this section, unless the context otherwise requires:
- 16 a. (1) "Environmental upgrade" means an investment greater than twenty-five
17 million dollars or one hundred thousand dollars per megawatt of installed
18 nameplate capacity, whichever is less, in machinery, equipment, and related
19 facilities for reducing emissions or increasing efficiency at an existing power
20 plant.
- 21 (2) "Environmental upgrade" for purposes of a process unit means an
22 investment greater than one hundred thousand dollars in machinery,
23 equipment, and related facilities for reducing emissions, increasing
24 efficiency, or enhancing reliability of the equipment at a new or existing
25 process unit.
- 26 b. "Operator" means any person owning, holding, or leasing a power plant or
27 process unit.
- 28 c. "Power plant" means:
- 29 (1) An electrical generating plant, and all additions to the plant, which
30 processes or converts coal in its natural form or beneficiated coal into

1 electrical power and which has at least one single electrical energy
2 generation unit with a capacity of fifty thousand kilowatts or more.

3 (2) A wind-powered electrical generating facility, ~~on which construction is~~
4 ~~completed before January 1, 2015,~~ and all additions to the facility, which
5 provides electrical power through wind generation and which has at least
6 one single electrical energy generation unit with a nameplate capacity of
7 one hundred kilowatts or more.

8 (3) Any other type of electrical power generating facility excluding the types of
9 power plants identified in paragraphs 1 and 2 which has a capacity of one
10 hundred kilowatts or more and produces electricity for resale or for
11 consumption in a business activity.

12 d. "Process unit" means an oil refinery or gas processing plant and all adjacent
13 units that are utilized in the processing of crude oil or natural gas.

14 e. "Production equipment" means machinery and attachment units, other than
15 replacement parts, directly and exclusively used in the generation, transmission,
16 or distribution of electrical energy for sale by a power plant.

17 f. "Repowering" means an investment of more than two hundred million dollars or
18 one million dollars per megawatt of installed nameplate capacity, whichever is
19 less, in an existing power plant that modifies or replaces the process used for
20 converting coal in its natural form or beneficiated coal into electric power.

21 2. Sales of production or environmental upgrade equipment that is delivered on or after
22 January 1, 2007, and used exclusively in power plants or repowering existing power
23 plants or in process units are exempt from the tax imposed by this chapter.

24 3. Sales of tangible personal property, other than production or environmental upgrade
25 equipment, which is used in the construction of new power plants or to expand existing
26 power plants or to add environmental upgrades to existing power plants or repowering
27 existing power plants or to add environmental upgrades to existing process units are
28 exempt from the tax imposed by this chapter.

29 4. To receive the exemption at the time of purchase, the operator must receive from the
30 commissioner a certificate that the tangible personal property or production equipment
31 the operator intends to purchase qualifies for the reduced rate or exemption. If a

1 certificate is not received prior to the purchase, the operator shall pay the applicable
2 tax imposed by this chapter and apply to the commissioner for a refund.

3 5. If the tangible personal property or production equipment is purchased or installed by
4 a contractor subject to the tax imposed by this chapter, the operator may apply for a
5 refund of the difference between the amount remitted by the contractor and the
6 reduced rate or exemption imposed or allowed by this section.

7 **SECTION 3. EFFECTIVE DATE - RETROACTIVE APPLICATION.** Section 1 of this Act is
8 retroactively effective and applies to taxable events occurring after December 31, 2016.
9 Section 2 of this Act is retroactively effective and applies to taxable events occurring after
10 December 31, 2014.