

SENATE BILL NO. 2239

Introduced by

Senator Bell

1 A BILL for an Act to create and enact section 23.1-06-17 of the North Dakota Century Code,
2 relating to regulation of greenhouse gas emissions; to provide a penalty; and to declare an
3 emergency.

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

5 **SECTION 1.** Section 23.1-06-17 of the North Dakota Century Code is created and enacted
6 as follows:

7 **23.1-06-17. Implementation of federal greenhouse gas regulations.**

- 8 1. If the department is required under the federal Clean Air Act [42 U.S.C. 7401 et seq.]
9 and the regulations adopted under the Clean Air Act to develop and implement a state
10 plan for regulating the emission of greenhouse gases from electric generating units,
11 the department shall implement the plan in compliance with this section.
- 12 2. In developing the state plan, the department shall minimize the extent to which any
13 actions required by the plan may affect:
- 14 a. The utilization of the most economic sources of electricity generation within the
15 state;
- 16 b. The economic viability of dispatchable sources of generation within the state;
- 17 c. The cost of electricity to consumers;
- 18 d. The ability of the utility sector to realize a reasonable return on investment; and
- 19 e. The reliability of the electricity system to provide continuous electricity service.
- 20 3. In developing the state plan, the department shall consider the extent to which any
21 actions required by the plan will affect the global climate.
- 22 4. Any control measures imposed as part of the state plan on stationary sources subject
23 to permitting under this chapter:

- 1 a. May be imposed only through individual source permitting actions that must allow
2 each source the flexibility to achieve the same level of emission reductions
3 through alternative control measures; and
- 4 b. May not necessitate or require the redefining of any stationary source. For
5 purposes of this subdivision, a redefining of a stationary source includes requiring
6 a change in the primary fuel or energy resource of the stationary source.
- 7 5. In imposing new control measures on individual sources under the state plan, the
8 department shall consider, to the greatest extent feasible:
- 9 a. The variability in emission rates from the individual sources to which the control
10 measures apply;
- 11 b. The impact of equipment degradation over the useful life of individual sources;
12 and
- 13 c. Any emission reductions already achieved through actions undertaken by the
14 individual sources before adoption of the state plan.
- 15 6. Before submitting the state plan to the United States environmental protection agency,
16 the department shall submit the state plan to the energy and natural resources
17 committee of the North Dakota senate for review. Unless the legislative assembly
18 disapproves the state plan by a concurrent resolution, the department shall comply, to
19 the extent feasible, with the environmental protection agency's deadline to submit the
20 state plan to the environmental protection agency. If the energy and natural resources
21 committee of the North Dakota senate or the environmental protection agency
22 disapproves the state plan, the department shall develop and submit as expeditiously
23 as possible a revised state plan addressing the reasons for the disapproval in
24 accordance with this section.
- 25 7. Unless expressly mandated by federal law or approved by a concurrent resolution of
26 the legislative assembly, the state plan may not:
- 27 a. Establish mandatory annual limits on the total mass of greenhouse gases emitted
28 by the state or an individual stationary source; or
- 29 b. Authorize trading of emission credits between separate stationary sources as a
30 means of demonstrating compliance with the state plan.

1 8. Any new control measures mandated by the state plan are effective only upon final
2 approval by the environmental protection agency. If federal laws, a federal court, or a
3 final federal agency action renders any control measures included in the state plan
4 unenforceable by the environmental protection agency, the requirement to implement
5 the measures may not be enforced under state law to the same extent the measures
6 are unenforceable under federal law.

7 9. The department may not include in the state plan any mandatory control measures
8 that have been implemented previously only with the direct assistance of financial
9 support from the state or federal government through a program intended to
10 encourage the development of emerging emission reduction technologies and
11 techniques.

12 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.