

SENATE BILL NO. 2238

Introduced by

Senator Bell

1 A BILL for an Act to create and enact section 23.1-06-16 of the North Dakota Century Code,
2 relating to the state regional haze plan; to provide a penalty; and to declare an emergency.

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

4 **SECTION 1.** Section 23.1-06-16 of the North Dakota Century Code is created and enacted
5 as follows:

6 **23.1-06-16. Implementation of federal regional haze program requirements.**

7 1. Consistent with the federal Clean Air Act [42 U.S.C. 7401 et seq.] and the regulations
8 adopted under the Clean Air Act, the department shall develop and implement a state
9 regional haze plan ~~for making reasonable progress toward improving visibility in~~
10 ~~mandatory class I federal areas, as defined under the Clean Air Act,~~ in accordance
11 with this section.

12 2. The state regional haze plan must include:

13 ~~a. An an analysis of the primary causes of visibility degradation in the state's~~
14 ~~mandatory class I federal areas, including natural and international causes of~~
15 ~~visibility degradation;~~

16 ~~b. An analysis of the available and technically feasible control measures most likely~~
17 ~~to improve visibility in class I federal areas, including control measures that may~~
18 ~~be applied to stationary sources. In conducting the analysis, the department~~
19 ~~must:~~

20 ~~(1) Consider the level of visibility improvement achievable by each control~~
21 ~~measure evaluated, including whether the control measures individually and~~
22 ~~collectively can improve visibility by more than a de minimis amount, more~~
23 ~~than a humanly perceptible amount, and more than the amount needed to~~

1 make reasonable progress toward natural visibility conditions in mandatory-
2 class I federal areas by 2064;

3 ~~———— (2) Consider, based on site specific information, the total cost of implementing-~~
4 ~~each control measure; the incremental cost of implementing each control-~~
5 ~~measure compared to other control measures; and, for electric generating-~~
6 ~~units, the potential impact to the price of electricity; and~~

7 ~~———— (3) Weigh the total and incremental cost of each individual control measure-~~
8 ~~against the visibility improvements each individual control measure is-~~
9 ~~projected to achieve at mandatory class I federal areas.~~

10 ~~———— 3. The state regional haze plan may mandate only new control measures the department-~~
11 ~~determines, based on the analysis under subsection 2, are necessary to make-~~
12 ~~reasonable progress toward meeting the national goal of visibility improvement-~~
13 ~~required by the Clean Air Act and further defined by the United States environmental-~~
14 ~~protection agency to be natural visibility conditions by 2064.~~

15 ~~———— 4. Any control measures imposed on stationary sources subject to permitting under this-~~
16 ~~chapter must be adopted through individual source permitting actions that must allow-~~
17 ~~each source the flexibility to achieve the same level of emission reductions through-~~
18 ~~alternative control measures.~~

19 ~~———— 5. Before submitting the state regional haze plan to the environmental protection agency,-~~
20 ~~the department shall submit the plan to the energy and natural resources committees-~~
21 ~~of the North Dakota senate and house of representatives for review. Unless the-~~
22 ~~legislative assembly disapproves the plan by a concurrent resolution, the department-~~
23 ~~shall comply, to the extent feasible, with the environmental protection agency's-~~
24 ~~deadline to submit the state regional haze plan to the environmental protection-~~
25 ~~agency. If either of the legislative energy and natural resources committees-~~
26 ~~or impairment.~~

27 ———— 3. In developing a periodic comprehensive revision of the state implementation plan, the
28 department shall consider whether additional measures are necessary to make
29 reasonable progress toward meeting the national goal of visibility improvement, as
30 required by the federal Clean Air Act [42 U.S.C. 7401 et seq.] and further defined by
31 the United States environmental protection agency to be natural visibility conditions by

1 2064. The department may not require controls the department has determined serve
2 only to increase total costs with little corresponding visibility benefit.

3 4. If the environmental protection agency disapproves the state regional haze plan, the
4 department shall~~may~~ develop and submit as expeditiously as possible a revised plan
5 to address the reasons for the disapproval in accordance with the requirements of this
6 section.

7 ~~6-5.~~ Any new control measures mandated by the state regional haze plan are effective only
8 upon final approval by the environmental protection agency.

9 6. If federal laws, a federal court, or a final federal agency action renders any control
10 measures included in the state plan unenforceable by the environmental protection
11 agency, the requirement to implement the measures may not be enforced under state
12 law to the same extent the measures are unenforceable under federal law.

13 ~~7. The department may not include in the state regional haze plan any mandatory control~~
14 ~~measures that have been implemented previously only with the direct assistance of~~
15 ~~financial support from the state or federal government through a program intended to~~
16 ~~encourage the development of emerging emission reduction technologies and~~
17 ~~techniques.~~

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