

Introduced by

Senator Bell

1 A BILL for an Act to amend and reenact section 23.1-06-07 of the North Dakota Century Code,
2 relating to limitations on regulation of coal-fueled electric generating units; to provide a penalty;
3 and to declare an emergency.

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

5 **SECTION 1. AMENDMENT.** Section 23.1-06-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23.1-06-07. Requirements for adoption of air quality rules more strict than federal**
8 **standards.**

- 9 1. Notwithstanding any other provisions of this title, the department may not adopt air
10 quality rules or standards affecting coal conversion and associated facilities,
11 coal-fueled electric generating units, petroleum refineries, or oil and gas production
12 and processing facilities which are more strict than federal rules or standards under
13 the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air
14 quality rules or standards affecting such facilities when there are no corresponding
15 federal rules or standards, unless the more strict or additional rules or standards are
16 based on a risk assessment that demonstrates a substantial probability of significant
17 impacts to public health or property, a cost-benefit analysis that affirmatively
18 demonstrates that the benefits of the more stringent or additional state rules and
19 standards will exceed the anticipated costs, and the independent peer reviews
20 required by this section.
- 21 2. The department shall hold a hearing on any rules or standards proposed for adoption
22 under this section on not less than ninety days' notice. The notice of hearing must
23 specify all studies, opinions, and data that have been relied upon by the department
24 and must state that the studies, risk assessment, and cost-benefit analysis that

1 support the proposed rules or standards are available at the department for inspection
2 and copying. If the department intends to rely upon any studies, opinions, risk
3 assessments, cost-benefit analyses, or other information not available from the
4 department when it gave its notice of hearing, the department shall give a new notice
5 of hearing not less than ninety days before the hearing which clearly identifies the
6 additional or amended studies, analyses, opinions, data, or information upon which the
7 department intends to rely and conduct an additional hearing if the first hearing has
8 already been held.

9 3. In this section:

10 a. "Cost-benefit analysis" means both the analysis and the written document that
11 contains:

12 (1) A description and comparison of the benefits and costs of the rule and of the
13 reasonable alternatives to the rule. The analysis must include a
14 quantification or numerical estimate of the quantifiable benefits and costs.
15 The quantification or numerical estimate must use comparable assumptions,
16 including time periods, specify the ranges of predictions, and explain the
17 margins of error involved in the quantification methods and estimates being
18 used. The costs that must be considered include the social, environmental,
19 and economic costs that are expected to result directly or indirectly from
20 implementation or compliance with the proposed rule.

21 (2) A reasonable determination whether as a whole the benefits of the rule
22 justify the costs of the rule and that the rule will achieve the rulemaking
23 objectives in a more cost-effective manner than other reasonable
24 alternatives, including the alternative of no government action. In evaluating
25 and comparing the costs and benefits, the department may not rely on cost,
26 benefit, or risk assessment information that is not accompanied by data,
27 analysis, or supporting materials that would enable the department and
28 other persons interested in the rulemaking to assess the accuracy, reliability,
29 and uncertainty factors applicable to the information.

30 b. "Risk assessment" means both the process used by the department to identify
31 and quantify the degree of toxicity, exposure, or other risk posed for the exposed

1 individuals, populations, or resources, and the written document containing an
2 explanation of how the assessment process has been applied to an individual
3 substance, activity, or condition. The risk assessment must include a discussion
4 that characterizes the risks being assessed. The risk characterization must
5 include the following elements:

- 6 (1) A description of the exposure scenarios used, the natural resources or
7 subpopulations being exposed, and the likelihood of these exposure
8 scenarios expressed in terms of probability.
- 9 (2) A hazard identification that demonstrates whether exposure to the
10 substance, activity, or condition identified is causally linked to an adverse
11 effect.
- 12 (3) The major sources of uncertainties in the hazard identification,
13 dose-response, and exposure assessment portions of the risk assessment.
- 14 (4) When a risk assessment involves a choice of any significant assumption,
15 inference, or model, the department, in preparing the risk assessment, shall:
- 16 (a) Rely only upon environmental protection agency-approved air
17 dispersion models.
- 18 (b) Identify the assumptions, inferences, and models that materially affect
19 the outcome.
- 20 (c) Explain the basis for any choices.
- 21 (d) Identify any policy decisions or assumptions.
- 22 (e) Indicate the extent to which any model has been validated by, or
23 conflicts with, empirical data.
- 24 (f) Describe the impact of alternative choices of assumptions, inferences,
25 or mathematical models.
- 26 (5) The range and distribution of exposures and risks derived from the risk
27 assessment.
- 28 c. The risk assessment and cost-benefit analysis performed by the department
29 must be independently peer reviewed by qualified experts selected by the
30 environmental review advisory council.

1 4. This section applies to any petition submitted to the department under section
2 23.1-01-04 which identifies air quality rules or standards affecting coal conversion
3 facilities, coal-fueled electric generating units, or petroleum refineries that are more
4 strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et
5 seq.] or for which there are no corresponding federal rules or standards, regardless of
6 whether the department has previously adopted the more strict or additional rules or
7 standards pursuant to section 23.1-01-04. This section also applies to any petitions
8 filed under section 23.1-01-04 affecting coal conversion facilities, coal-fueled electric
9 generating units, or petroleum refineries that are pending on the effective date of this
10 section for which new rules or standards have not been adopted, and the department
11 shall have a reasonable amount of additional time to comply with the more stringent
12 requirements of this section. To the extent section 23.1-01-04.1 conflicts with this
13 section, the provisions of this section govern. This section does not apply to existing
14 rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive
15 emissions, or emission standards for particulate matter and sulfur dioxide, but does
16 apply to new rules governing those standards.

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