

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2237  
(Senator Bell)

AN ACT to amend and reenact section 23.1-06-07 of the North Dakota Century Code, relating to limitations on regulation of coal-fueled electric generating units; to provide a penalty; and to declare an emergency.

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

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

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

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, coal-fueled electric generating units, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.
2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information not available from the department when it gave its notice of hearing, the department shall give a new notice of hearing not less than ninety days before the hearing which clearly identifies the additional or amended studies, analyses, opinions, data, or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.
3. In this section:
  - a. "Cost-benefit analysis" means both the analysis and the written document that contains:
    - (1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs. The quantification or numerical estimate must use comparable assumptions, including time periods, specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.

- (2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department may not rely on cost, benefit, or risk assessment information that is not accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.
- b. "Risk assessment" means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources, and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:
  - (1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.
  - (2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.
  - (3) The major sources of uncertainties in the hazard identification, dose-response, and exposure assessment portions of the risk assessment.
  - (4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department, in preparing the risk assessment, shall:
    - (a) Rely only upon environmental protection agency-approved air dispersion models.
    - (b) Identify the assumptions, inferences, and models that materially affect the outcome.
    - (c) Explain the basis for any choices.
    - (d) Identify any policy decisions or assumptions.
    - (e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.
    - (f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.
  - (5) The range and distribution of exposures and risks derived from the risk assessment.
- c. The risk assessment and cost-benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the environmental review advisory council.
4. This section applies to any petition submitted to the department under section 23.1-01-04 which identifies air quality rules or standards affecting coal conversion facilities, coal-fueled electric generating units, or petroleum refineries that are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to section 23.1-01-04. This section also applies to any petitions filed under section 23.1-01-04 affecting coal conversion facilities, coal-fueled electric generating units, or petroleum refineries that are

pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent section 23.1-01-04.1 conflicts with this section, the provisions of this section govern. This section does not apply to existing rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to new rules governing those standards.

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

\_\_\_\_\_  
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-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2237 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:        Yeas 47                      Nays 0                      Absent 0

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:        Yeas 94                      Nays 0                      Absent 0

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2021.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2021,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State