

1 HOUSE BILL 138

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

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5 Ryan Lane  
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10 AN ACT

11 RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL  
12 ACT; CHANGING THE DATE ON WHICH STANDARDS OF PERFORMANCE THAT  
13 LIMIT CARBON DIOXIDE EMISSIONS FROM CERTAIN ELECTRIC GENERATING  
14 FACILITY SOURCES WILL APPLY FROM JANUARY 1, 2023 TO JANUARY 1,  
15 2026.  
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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 74-2-5 NMSA 1978 (being Laws 1967,  
19 Chapter 277, Section 5, as amended) is amended to read:

20 "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT  
21 BOARD--LOCAL BOARD.--

22 A. The environmental improvement board or the local  
23 board shall prevent or abate air pollution.

24 B. The environmental improvement board or the local  
25 board shall:

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1 (1) adopt, promulgate, publish, amend and  
2 repeal rules and standards consistent with the Air Quality  
3 Control Act to attain and maintain national ambient air quality  
4 standards and prevent or abate air pollution, including:

5 (a) rules prescribing air standards  
6 within the geographic area of the environmental improvement  
7 board's jurisdiction or the local board's jurisdiction or any  
8 part thereof; and

9 (b) standards of performance that limit  
10 carbon dioxide emissions to no more than one thousand one  
11 hundred pounds per megawatt-hour on and after January 1, [2023]  
12 2026 for a new or existing source that is an electric  
13 generating facility with an original installed capacity  
14 exceeding three hundred megawatts and that uses coal as a fuel  
15 source; and

16 (2) adopt a plan for the regulation, control,  
17 prevention or abatement of air pollution, recognizing the  
18 differences, needs, requirements and conditions within the  
19 geographic area of the environmental improvement board's  
20 jurisdiction or the local board's jurisdiction or any part  
21 thereof.

22 C. If the environmental improvement board or the  
23 local board determines that emissions from sources within the  
24 environmental improvement board's jurisdiction or the local  
25 board's jurisdiction cause or contribute to ozone

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1 concentrations in excess of ninety-five percent of the primary  
2 national ambient air quality standard for ozone promulgated  
3 pursuant to the federal act, the environmental improvement  
4 board or the local board shall adopt a plan, including rules,  
5 to control emissions of oxides of nitrogen and volatile organic  
6 compounds to provide for attainment and maintenance of the  
7 standard. Rules adopted pursuant to this subsection shall be  
8 limited to sources of emissions within the area of the state  
9 where the ozone concentrations exceed ninety-five percent of  
10 the primary national ambient air quality standard.

11 D. Rules adopted by the environmental improvement  
12 board or the local board may:

13 (1) include rules to protect visibility in  
14 mandatory class I areas to prevent significant deterioration of  
15 air quality and to achieve national ambient air quality  
16 standards in nonattainment areas; provided that the rules shall  
17 be at least as stringent as required by the federal act and  
18 federal regulations pertaining to visibility protection in  
19 mandatory class I areas, pertaining to prevention of  
20 significant deterioration and pertaining to nonattainment  
21 areas;

22 (2) prescribe standards of performance for  
23 sources and emission standards for hazardous air pollutants  
24 that shall be at least as stringent as required by federal  
25 standards of performance;

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1 (3) include rules governing emissions from  
2 solid waste incinerators that shall be at least as stringent as  
3 any applicable federal emission limitations;

4 (4) include rules requiring the installation  
5 of control technology for mercury emissions that removes the  
6 greater of what is achievable with best available control  
7 technology or ninety percent of the mercury from the input fuel  
8 for all coal-fired power plants, except for coal-fired power  
9 plants constructed and generating electric power and energy  
10 before July 1, 2007;

11 (5) require notice to the department or the  
12 local agency of the intent to introduce or permit the  
13 introduction of an air contaminant into the air within the  
14 geographical area of the environmental improvement board's  
15 jurisdiction or the local board's jurisdiction; and

16 (6) require any person emitting any air  
17 contaminant to:

18 (a) install, use and maintain emission  
19 monitoring devices;

20 (b) sample emissions in accordance with  
21 methods and at locations and intervals as may be prescribed by  
22 the environmental improvement board or the local board;

23 (c) establish and maintain records of  
24 the nature and amount of emissions;

25 (d) submit reports regarding the nature

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1 and amounts of emissions and the performance of emission  
2 control devices; and

3 (e) provide any other reasonable  
4 information relating to the emission of air contaminants.

5 E. Any rule adopted pursuant to this section shall  
6 be at least as stringent as federal law, if any, relating to  
7 control of motor vehicle emissions.

8 F. In making its rules, the environmental  
9 improvement board or the local board shall give weight it deems  
10 appropriate to all facts and circumstances, including:

11 (1) character and degree of injury to or  
12 interference with health, welfare, visibility and property;

13 (2) the public interest, including the social  
14 and economic value of the sources and subjects of air  
15 contaminants; and

16 (3) technical practicability and economic  
17 reasonableness of reducing or eliminating air contaminants from  
18 the sources involved and previous experience with equipment and  
19 methods available to control the air contaminants involved.

20 G. Before the environmental improvement board or  
21 local board adopts a rule that is more stringent than the  
22 federal act or federal regulations, or that applies to sources  
23 not subject to regulation pursuant to the federal act or  
24 regulations, the environmental improvement board or local board  
25 shall make a determination, based on substantial evidence and

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after notice and public hearing, that the proposed rule will be more protective of public health and the environment."