

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1410

Introduced by

Representatives Grosz, Hanson, Carlson

Senators Goetz, Krauter, Traynor

1 A BILL for an Act to create and enact a new section to chapter 23-25 of the North Dakota
2 Century Code, relating to when air quality rules that are more strict than federal standards may
3 be adopted and the procedure for adoption of such rules and standards; and to amend and
4 reenact section 23-01-02 of the North Dakota Century Code, relating to the composition of the
5 health council.

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

7 **SECTION 1. AMENDMENT.** Section 23-01-02 of the 1995 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **23-01-02. Health council - Members, terms of office, vacancies, compensation,**
10 **officers, meetings.** The health council consists of ~~nine~~ eleven members appointed by the
11 governor in the following manner: Four persons from the health care field ~~and~~, five persons
12 representing consumer interests, one person from the energy industry, and one from the
13 manufacturing and processing industry. The governor may select members to the council from
14 recommendations submitted by trade, professional, and consumer organizations. On the
15 expiration of the term of any member, the governor, in the manner provided by this section,
16 shall appoint for a term of three years, persons to take the place of members whose terms on
17 the council are about to expire. The officers of the council must be elected annually. Any state
18 agency may serve in an advisory capacity to the health council at the discretion of the council.
19 The council shall meet at least twice each year and at other times as the council or its chairman
20 may direct. The health council shall have as standing committees any committees the council
21 may find necessary. The chairman of the council shall select the members of these
22 committees. The members of the council are entitled to receive the same compensation per
23 day as provided in section 54-35-10 for members of the legislative council and their necessary
24 mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending

1 council meetings or in the performance of any special duties as the council may direct. The per
2 diem and expenses must be audited and paid in the manner in which the expenses of state
3 officers are audited and paid. The compensation provided for in this section may not be paid to
4 any member of the council who received salary or other compensation as a regular employee
5 of the state, or any of its political subdivisions, or any institution or industry operated by the
6 state.

7 **SECTION 2.** A new section to chapter 23-25 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Requirements for adoption of air quality rules more strict than federal standards.**

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

1 include a discussion that characterizes the risks being assessed. The risk
2 characterization must include the following elements:

3 (1) A description of the exposure scenarios used, the natural resources or
4 subpopulations being exposed, and the likelihood of these exposure
5 scenarios expressed in terms of probability.

6 (2) A hazard identification that demonstrates whether exposure to the
7 substance, activity, or condition identified is causally linked to an
8 adverse effect.

9 (3) The major sources of uncertainties in the hazard identification,
10 dose-response, and exposure assessment portions of the risk
11 assessment.

12 (4) When a risk assessment involves a choice of any significant
13 assumption, inference, or model, the department in preparing the risk
14 assessment shall:

15 (a) Rely only upon environmental protection agency approved air
16 dispersion models.

17 (b) Identify the assumptions, inferences, and models that materially
18 affect the outcome.

19 (c) Explain the basis for any choices.

20 (d) Identify any policy decisions or assumptions.

21 (e) Indicate the extent to which any model has been validated by, or
22 conflicts with, empirical data.

23 (f) Describe the impact of alternative choices of assumptions,
24 inferences, or mathematical models.

25 (5) The range and distribution of exposures and risks derived from the risk
26 assessment.

27 c. The risk assessment and cost benefit analysis performed by the department
28 must be independently peer reviewed by qualified experts selected by the air
29 pollution control advisory council.

30 4. This section applies to any petition submitted to the department pursuant to
31 section 23-01-04.1 that identifies air quality rules or standards affecting coal

1 conversion facilities or petroleum refineries that are more strict than federal rules
2 or standards under the Clean Air Act [42 U.S.C. 7401 et seq.] or for which there
3 are no corresponding federal rules or standards, regardless of whether the
4 department has previously adopted the more strict or additional rules or standards
5 pursuant to section 23-01-04.1. This section also applies to any petitions filed
6 under section 23-01-04.1 affecting coal conversion facilities or petroleum refineries
7 that are pending on the effective date of this section for which new rules or
8 standards have not been adopted, and the department shall have a reasonable
9 amount of additional time to comply with the more stringent requirements of this
10 section. To the extent section 23-01-04.1 conflicts with this section, the provisions
11 of this section govern. This section does not apply, however, to existing rules that
12 set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions,
13 or emission standards for particulate matter and sulfur dioxide, but does apply to
14 any new rules governing such matters.