

Fifty-fifth  
Legislative Assembly  
of North Dakota

## 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.

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

5 **SECTION 1.** A new section to chapter 23-25 of the North Dakota Century Code is  
6 created and enacted as follows:

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

8 1. Notwithstanding any other provisions of this title, the department may not adopt air  
9 quality rules or standards affecting coal conversion and associated facilities,  
10 petroleum refineries, or oil and gas production and processing facilities which are  
11 more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401  
12 et seq.], nor may the department adopt air quality rules or standards affecting such  
13 facilities when there are no corresponding federal rules or standards, unless the  
14 more strict or additional rules or standards are based on a risk assessment that  
15 demonstrates a substantial probability of significant impacts to public health or  
16 property and a cost-benefit analysis that affirmatively demonstrates that the  
17 benefits of the more stringent or additional state rules and standards will exceed  
18 the anticipated costs. Further, the department may not adopt such rules or  
19 standards unless the proposed rules or standards are recommended for adoption  
20 by the air pollution control advisory council after the air pollution control advisory  
21 council has had an opportunity to review the final risk assessment and cost-benefit  
22 analysis, the independent peer reviews required by this section, and any other  
23 information, opinions, or data that will be used to support the proposed rules or  
24 standards.

1           2.    The department shall hold a hearing on any rules or standards proposed for  
2                   adoption under this section on not less than ninety days' notice. The notice of  
3                   hearing must specify all studies, opinions, and data that have been relied upon by  
4                   the department and must state that the studies, risk assessment, and cost-benefit  
5                   analysis that support the proposed rules or standards are available at the  
6                   department for inspection and copying. If at any time the department intends to  
7                   rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other  
8                   information that were not available from the department when it gave its notice of  
9                   hearing, the department shall give a new notice of hearing not less than ninety  
10                  days prior to the hearing that clearly identifies the additional or amended studies,  
11                  analyses, opinions, data or information upon which the department intends to rely  
12                  and conduct an additional hearing if the first hearing has already been held.

13          3.    In this section:

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

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

26                  (2)   A reasonable determination whether as a whole the benefits of the rule  
27                         justify the costs of the rule and that the rule will achieve the rulemaking  
28                         objectives in a more cost-effective manner than other reasonable  
29                         alternatives, including the alternative of no government action. In  
30                         evaluating and comparing the costs and benefits, the department shall  
31                         not rely on cost, benefit, or risk assessment information that is not

1 accompanied by data, analysis, or supporting materials that would  
2 enable the department and other persons interested in the rulemaking  
3 to assess the accuracy, reliability, and uncertainty factors applicable to  
4 the information.

5 b. "Risk assessment" means both the process used by the department to identify  
6 and quantify the degree of toxicity, exposure, or other risk posed for the  
7 exposed individuals, populations, or resources and the written document  
8 containing an explanation of how the assessment process has been applied  
9 to an individual substance, activity, or condition. The risk assessment must  
10 include a discussion that characterizes the risks being assessed. The risk  
11 characterization must include the following elements:

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

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

18 (3) The major sources of uncertainties in the hazard identification,  
19 dose-response, and exposure assessment portions of the risk  
20 assessment.

21 (4) When a risk assessment involves a choice of any significant  
22 assumption, inference, or model, the department in preparing the risk  
23 assessment shall:

24 (a) Rely only upon environmental protection agency approved air  
25 dispersion models.

26 (b) Identify the assumptions, inferences, and models that materially  
27 affect the outcome.

28 (c) Explain the basis for any choices.

29 (d) Identify any policy decisions or assumptions.

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

- 1 (f) Describe the impact of alternative choices of assumptions,  
2 inferences, or mathematical models.
- 3 (5) The range and distribution of exposures and risks derived from the risk  
4 assessment.
- 5 c. The risk assessment and cost benefit analysis performed by the department  
6 must be independently peer reviewed by qualified experts selected by the air  
7 pollution control advisory council.
- 8 4. This section applies to any petition submitted to the department pursuant to section  
9 23-01-04.1 that identifies air quality rules or standards affecting coal conversion  
10 facilities or petroleum refineries that are more strict than federal rules or standards  
11 under the Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no  
12 corresponding federal rules or standards, regardless of whether the department  
13 has previously adopted the more strict or additional rules or standards pursuant to  
14 section 23-01-04.1. This section also applies to any petitions filed under section  
15 23-01-04.1 affecting coal conversion facilities or petroleum refineries that are  
16 pending on the effective date of this section for which new rules or standards have  
17 not been adopted, and the department shall have a reasonable amount of  
18 additional time to comply with the more stringent requirements of this section. To  
19 the extent section 23-01-04.1 conflicts with this section, the provisions of this  
20 section govern.