

Testimony of Michael J. Nasi on SB 2238 (relating to the state regional haze plan)

My name is Michael J. Nasi and I am a partner at the law firm of Jackson Walker, LLP in Austin, Texas. I have been practicing environmental law for more than 27 years, including work on behalf of North Dakota industries, industry associations, and in coordination with North Dakota public officials and agency staff, as well as other Energy Council states and members. My practice, which specializes in air quality issues, has involved extensive experience with the Regional Haze program under the Federal Clean Air Act which is the subject of SB 2238. It is an honor to testify before the Senate Energy and Natural Resources Committee in support of SB 2238.

The overarching goal of this legislation as I understand it is to clarify key issues in a way that is rational and fully consistent with what DEQ is already planning to do. The clarifications are necessary because some of the issues addressed in the bill have been muddled with inconsistent guidance at the federal level. The bill and the Senators clarifying amendments make clear that:

- a. DEQ should consider visibility benefits in evaluating control measures;
- b. DEQ should consider total and incremental cost in evaluating control measures; and
- c. DEQ should weigh the visibility and costs in determining which measures are necessary to make reasonable progress.

The bill also includes safeguards that help ensure state law requirements always remain consistent with federal law requirements. For example,

- New control requirements only take effect once EPA approves them, which helps avoid forcing sources to begin implementing controls that are still under review at EPA or in court; and
- If the control requirements are rescinded at the federal level, they must be automatically rescinded at the state level as well.

Some have expressed concern that the bill could slow the planning process down or allow additional challenges, raising the potential threat of an EPA-imposed Federal Implementation Plan (FIP). Those concerns are unfounded because:

- The bill only provides statutory clarification support for the approach DEQ is already planning to do.
- The bill does not require DEQ to take a position that is inconsistent with federal law—both the Obama EPA and the Trump EPA made clear that states may lawfully consider the issues I have noted that the bill clarifies.
- The bill does not create any new basis for challenging the state's plan that would not already exist under existing law.