

Fifty-fifth
Legislative Assembly
of North Dakota

REENGROSSED 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, a cost-benefit analysis that affirmatively demonstrates that the benefits of
17 the more stringent or additional state rules and standards will exceed the
18 anticipated costs, and the independent peer reviews required by this section.
- 19 2. The department shall hold a hearing on any rules or standards proposed for
20 adoption under this section on not less than ninety days' notice. The notice of
21 hearing must specify all studies, opinions, and data that have been relied upon by
22 the department and must state that the studies, risk assessment, and cost-benefit
23 analysis that support the proposed rules or standards are available at the
24 department for inspection and copying. If at any time the department intends to

rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information that were 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 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 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.

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

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