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HOUSE BILL 653

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Benjamin H. Rodefer

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING A NEW SECTION OF THE AIR QUALITY CONTROL ACT TO PROVIDE AUTHORITY TO THE ENVIRONMENTAL IMPROVEMENT BOARD TO ADOPT RULES TO REDUCE GREENHOUSE GAS EMISSIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Air Quality Control Act is enacted to read:

"[NEW MATERIAL] GREENHOUSE GAS EMISSIONS--ENVIRONMENTAL IMPROVEMENT BOARD--CAP AND TRADE RULES.--

A. The board shall adopt rules to reduce greenhouse gas emissions in New Mexico. The rules shall require affected greenhouse gas emission sources to reduce greenhouse gas emissions and establish a program for trading emission reduction allowances in a greenhouse gas cap and trade program

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1 that provides for:

2 (1) affected sources to reduce greenhouse gas  
3 emissions;

4 (2) a greenhouse gas emissions trading and  
5 banking program;

6 (3) a method for establishing and allocating  
7 emission allowances and other emission reduction units,  
8 including the free distribution of allowances to electricity  
9 providers covered by the program after the annual reduction is  
10 made to the cap;

11 (4) three-year compliance periods beginning  
12 January 1, 2012;

13 (5) emissions and allowance monitoring,  
14 tracking, recordkeeping and terms and conditions for allowances  
15 or other actions that may be necessary to verify compliance  
16 with this section;

17 (6) mandatory emissions reporting requirements  
18 for:

19 (a) sources subject to the board's  
20 authority pursuant to Section 74-2-5 NMSA 1978 that emit annual  
21 emissions equal to or greater than ten thousand metric tons of  
22 carbon dioxide equivalent; or

23 (b) entities for whom ten thousand  
24 metric tons or more of carbon dioxide equivalent is  
25 attributable due to imported electricity or residential,

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1 commercial, industrial or transportation fuels;

2 (7) public disclosure of facility-level  
3 aggregated carbon dioxide equivalent emissions; provided that  
4 such disclosure may be delayed for market-related reasons;

5 (8) public disclosure of other data and  
6 information, except upon a showing pursuant to Section 74-2-11  
7 NMSA 1978;

8 (9) methods and requirements for auctioning  
9 allowances, including coordinated regional auction processes  
10 and minimum annual auctions of ten percent of the state's total  
11 allowance cap;

12 (10) early reduction allowances, including  
13 criteria to quantify and grant such allowances; and

14 (11) offset allowances, including criteria to  
15 quantify and grant such allowances, such as accreditation of  
16 third-party verifiers.

17 B. In adopting rules pursuant to this section, the  
18 board shall:

19 (1) design rules, including the distribution  
20 of allowances, that are equitable, minimize costs, including  
21 costs to end-user energy consumers, maximize total benefits to  
22 the state and recognize early action to reduce greenhouse gas  
23 emissions;

24 (2) ensure that activities undertaken to  
25 comply with the rules do not substantially adversely affect

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1 low-income communities;

2 (3) ensure that affected sources that have  
3 voluntarily reduced their greenhouse gas emissions prior to  
4 implementation of this section receive appropriate credit for  
5 early voluntary reductions;

6 (4) consider cost-effectiveness of the rules;

7 (5) consider overall societal benefits,  
8 including reductions in other air pollutants, diversification  
9 of energy sources and other benefits to the economy,  
10 environment and health;

11 (6) minimize the administrative burden of  
12 implementing and complying with the rules;

13 (7) minimize leakage and competitive  
14 disadvantages to New Mexico industries consistent with federal  
15 constitutional requirements; and

16 (8) consider whether the allowance market is  
17 of sufficient size to promote liquidity and reduce costs.

18 C. By January 1, 2010, the department shall  
19 establish and adjust as appropriate the statewide greenhouse  
20 gas emissions level in 2000 and the statewide greenhouse gas  
21 emissions limit that is equivalent to ten percent below that  
22 level by 2020. The department shall establish and adjust as  
23 appropriate the post-2020 greenhouse gas emissions limit not  
24 less than three years in advance of the effective date of the  
25 limit.

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1           D. The department shall coordinate and participate  
2 with other states, regional organizations and the federal  
3 government for implementation of this section.

4           E. Any violation of a rule, regulation, order,  
5 emission limitation, emission reduction measure or other  
6 measure adopted by the board pursuant to this section shall be  
7 deemed a violation of a permit or regulation, as applicable,  
8 and shall be subject to enforcement pursuant to the Air Quality  
9 Control Act.

10          F. Any affected source that does not hold  
11 sufficient allowances at the end of each compliance period may  
12 be assessed a civil penalty equal to the market value of three  
13 allowances assessed at the end of the compliance period for  
14 every metric ton of carbon dioxide equivalent not covered by an  
15 allowance.

16          G. In the event of extraordinary circumstances,  
17 catastrophic events or threat of significant economic harm, the  
18 governor may adjust the applicable deadlines for individual  
19 regulations or for the state in the aggregate to the earliest  
20 feasible date after the deadline. The adjustment period shall  
21 not exceed one year unless approved by the legislature. The  
22 governor shall, within ten days of invoking this subsection,  
23 provide written notification to the legislature of the action  
24 undertaken.

25          H. The department shall report annually to the

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1 appropriate interim legislative committee on the status of  
2 implementation of this section.

3 I. As used in this section:

4 (1) "affected source" means:

5 (a) any source subject to the board's  
6 authority pursuant to Section 74-2-5 NMSA 1978 that annually  
7 emits twenty-five thousand metric tons or more of carbon  
8 dioxide equivalent; or

9 (b) any entity for whom twenty-five  
10 thousand metric tons or more of carbon dioxide equivalent is  
11 attributable due to imported electricity or residential,  
12 commercial, industrial or transportation fuels;

13 (2) "allowance" means an authorization to emit  
14 during a specified year up to one ton of carbon dioxide  
15 equivalent;

16 (3) "banking" means the carryover of unused  
17 allowances or offsets from one compliance period to another;

18 (4) "board" means the environmental  
19 improvement board;

20 (5) "carbon dioxide equivalent" means a metric  
21 measure used to compare emissions from various greenhouse gases  
22 based upon their global warming potential;

23 (6) "entity" means any individual, estate,  
24 trust, receiver, cooperative association, club, corporation,  
25 company, firm, partnership, limited liability company, limited

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1 liability partnership, joint venture, syndicate, other  
2 association or gas, water or electric utility owned or operated  
3 by a county or municipality;

4 (7) "greenhouse gas" means any of the  
5 following gases:

- 6 (a) carbon dioxide;
- 7 (b) methane;
- 8 (c) nitrous oxide;
- 9 (d) hydrofluorocarbons;
- 10 (e) perfluorocarbons; and
- 11 (f) sulfur hexafluoride;

12 (8) "greenhouse gas emissions limit" means an  
13 authorization to emit up to a level of carbon dioxide  
14 equivalent specified by the department;

15 (9) "leakage" means a reduction in emissions  
16 of greenhouse gases within the state that is offset by  
17 emissions of greenhouse gases outside the state;

18 (10) "offset allowance" means an allowance  
19 issued to a project determined by the department to reduce a  
20 carbon dioxide equivalent emissions that occurs outside an  
21 affected source sector and that is real, verifiable, surplus,  
22 permanent and enforceable; and

23 (11) "sector" means any entity with the same  
24 North American industry classification system code as an  
25 affected source."

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Section 2. DELAYED REPEAL.--Section 1 of this act is repealed on the first day of the month following certification by the secretary of environment, after a public hearing, to the secretary of finance and administration, the legislative council service and the New Mexico compilation commission that a federal program that will result in emission reductions at least as great as required by Section 1 of this 2009 act has been implemented in New Mexico and that the federal program recognizes allowances distributed in New Mexico, early action credits and offset projects developed pursuant to the provisions of Section 1 of this act.

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.