HOUSE BILL 9

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY
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AN ACT

RELATING TO CLIMATE CHANGE SOLUTIONS; ENACTING THE CLIMATE SOLUTIONS ACT; CREATING THE CLIMATE LEADERSHIP COUNCIL; REQUIRING THE DEVELOPMENT OF A STATEWIDE FRAMEWORK TO ADDRESS CLIMATE CHANGE AND DEVELOP A SUSTAINABLE ECONOMY; ESTABLISHING STATEWIDE GREENHOUSE GAS EMISSIONS REDUCTION REQUIREMENTS; DIRECTING STATE AGENCIES TO ADOPT RULES AS ALLOWED BY AN AGENCY'S EXISTING STATUTORY AUTHORITY TO ACHIEVE STATEWIDE GREENHOUSE GAS EMISSIONS REDUCTIONS AND FOSTER INCLUSION IN WORKFORCE DEVELOPMENT AND PROCUREMENT RELATED TO CLIMATE SOLUTIONS; REQUIRING ANNUAL REPORTING; DIRECTING THE CLIMATE LEADERSHIP COUNCIL TO RECOMMEND AND PRIORITIZE FUNDING FROM THE CLEAN ENERGY GRANTS FUND; AMENDING A DEFINITION IN THE AIR QUALITY CONTROL ACT TO ALLOW FOR GREATER OVERSIGHT OF SOURCES OF AIR POLLUTION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Climate Solutions Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Climate Solutions Act:

A. "council" means the climate leadership council;

B. "climate solutions" means strategies developed by the council to meet the greenhouse gas emissions reductions required pursuant to Section 6 of the Climate Solutions Act and to promote equity, a sustainable economy and high-road employment and training;

C. "disproportionately impacted community" means a community or population of people for which multiple burdens, including environmental and socioeconomic stressors, inequity, poverty, high unemployment, pollution or discrimination, may act to persistently and negatively affect the health, well-being and environment of the community or population and includes tribal communities, communities of color and low-income rural communities and native people, people of color, women, immigrants, formerly incarcerated people, lesbian, gay, bisexual, transgender and queer people and people with disabilities;

D. "economic inclusion" means high-road employment, training and contracting opportunities and includes improved
access to those opportunities for disproportionately impacted communities;

E. "greenhouse gas" means gaseous compounds that absorb infrared radiation emitted from the earth's surface and trap heat in the earth's atmosphere, including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride and sulfur hexafluoride, but not including water vapor;

F. "high-road employment" means jobs with family-sustaining wages and benefits, opportunities for advancement and safe working conditions in industries engaged in sustainable economic development;

G. "mitigation" means the reduction of greenhouse gas emissions or the sequestration of carbon and other greenhouse gases;

H. "net-zero emissions" means a total of zero greenhouse gas emissions, with any emissions netted against quantifiable, enforceable, additional, permanent and verifiable sequestered greenhouse gases, whether sequestered by biological, chemical or geological means;

I. "resilience" means the capability to anticipate, prepare for, respond to and recover from impacts and minimize damage to social well-being, including damage to the economy, health and the environment;

J. "risk" means a combination of the magnitude of a
potential climate change impact and the likelihood that the consequence will occur;

K. "state agency" means a governmental entity within the executive branch of state government or under the direction of the office of the governor;

L. "statewide greenhouse gas emissions" means the total net statewide anthropogenic emissions of greenhouse gases, including emissions from the production of imported electricity and fuels and subtracting any carbon sequestered in the state, expressed as carbon dioxide equivalent calculated using a methodology and data on radiative forcing and atmospheric persistence;

M. "statewide strategy" means the strategy for the state to address and prepare for the impacts of climate change, including impacts on health, the economy, society and the environment, developed by the council pursuant to Section 4 of the Climate Solutions Act; and

N. "sustainable economy" means an economy that supports high-road employment, thriving communities, a healthy environment and worker and community participation in decision making.

SECTION 3. [NEW MATERIAL] CLIMATE LEADERSHIP COUNCIL--CREATED.--

A. The "climate leadership council" is created and is administratively attached to the energy, minerals and
natural resources department. The energy, minerals and natural resources department shall provide administrative and clerical assistance to the council.

B. The council shall:

(1) consist of the secretaries of all cabinet departments as voting members; and

(2) include as advisory members:

   (a) one representative of the state land office;
   
   (b) two representatives of tribal and local governments;
   
   (c) two representatives of disproportionately impacted communities;
   
   (d) three members, with one each having an expertise in mitigation, economic development or workforce development;
   
   (e) two members representing relevant industrial sectors that will be involved in implementing climate solutions; and
   
   (f) the members of the sustainable economic development subgroup that are not members of the council.

C. The council shall be co-chaired by the secretary of energy, minerals and natural resources and the secretary of environment.
D. The co-chairs shall appoint advisory members to the council and subgroups created by the council. Advisory members shall serve for a term of four years and may be reappointed to serve for one additional term.

E. The co-chairs shall convene regular meetings of the council, and any subgroup, throughout the year as needed to carry out the Climate Solutions Act, but no less than quarterly. In addition to the requirements of the Open Meetings Act, meeting notices shall be published in a manner that is reasonably likely to reach members of the public, including tribal members and members of disproportionately impacted communities, that may have an interest in a specific agenda item.

F. Public members of the council or a subgroup of the council may receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

SECTION 4. [NEW MATERIAL] CLIMATE LEADERSHIP COUNCIL--DUTIES--REPORT.--

A. The council shall develop and recommend for implementation a statewide strategy for New Mexico to:

(1) prepare for climate change, reduce vulnerabilities, expand training and access to high-road employment and enhance the resilience of New Mexico's communities, especially disproportionately impacted
communities, of natural and built systems and of economic
sectors to climate impacts and risks;

(2) advance a framework for mitigation
consistent with the statewide greenhouse gas emission
reductions required by Section 6 of the Climate Solutions Act,
with sustainable economic growth and with high-road employment
and training;

(3) support New Mexico's communities in
planning and preparing for and responding to climate change;

(4) advance the recommendations of the
sustainable economic development subgroup; and

(5) support the resilience and sustainability
of the state's economy and its communities, especially
disproportionately impacted communities.

B. The statewide strategy shall include a statewide
plan, timelines for implementation, performance metrics and
budgets and identify specific recommended climate solutions and
agency rules, policies, programs or partnerships to further
resilience, mitigation, diversification and inclusion.

C. To implement the statewide strategy, the council
shall:

(1) advise, recommend and collaborate with
state agencies on implementing climate solutions appropriate to
the jurisdiction of a state agency and may petition a state
agency or a state agency's rulemaking body to adopt rules under
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each agency's statutory authority to implement the recommended
strategies advanced by the council;

   (2) recommend programs to encourage
implementation of climate solutions and create high-road
employment opportunities throughout the state and in particular
in disproportionately impacted communities;

   (3) work with the state land office and
federal bureaus and agencies that manage land and natural
resources in New Mexico on developing and implementing climate
solutions;

   (4) identify legislative changes needed to
address climate change and implement climate solutions; and

   (5) provide recommendations and set
priorities, with an emphasis on disproportionately impacted
communities, equity and expanding a sustainable economy, for
expenditures from the clean energy grants fund when funds are
available.

D. The council shall submit an annual report to the
governor and appropriate interim legislative committees no
later than September 15, 2021 and every year thereafter by
September 15. The report shall include the progress made
toward achieving statewide greenhouse gas emissions reductions
pursuant to Section 6 of the Climate Solutions Act, identify
legislative changes needed to implement the statewide strategy
or identified climate solutions and provide other
recommendations to implement the statewide strategy.

SECTION 5. [NEW MATERIAL] SUSTAINABLE ECONOMIC
DEVELOPMENT SUBGROUP--MEMBERSHIP--DUTIES--STRATEGIC PLAN.--

A. By no later than August 1, 2021, the co-chairs of the council shall convene, in collaboration with the secretaries of economic development and workforce solutions, a sustainable economic development subgroup. The sustainable economic development subgroup shall be co-chaired by the secretaries of economic development and workforce solutions.

B. The voting membership of the sustainable economic development subgroup shall consist of one representative each from the:

1. economic development department;
2. workforce solutions department;
3. department of finance and administration;
4. taxation and revenue department;
5. general services department;
6. higher education department;
7. public education department;
8. state investment council; and
9. Indian affairs department.

C. Advisory members of the sustainable economic development subgroup shall be appointed by the co-chairs of the climate leadership council and shall consist of five members of the council who are not voting members of the sustainable
economic development subgroup and representatives of:

(1) the state land office;
(2) tribal governments and organizations;
(3) local governments; and
(4) organizations with experience in sustainable economic development planning and workforce development and working with disproportionately impacted communities.

D. The sustainable economic development subgroup shall develop a sustainable development strategic plan that provides specific and measurable steps to implement the recommendations contained in the New Mexico clean energy workforce development study commissioned by the workforce solutions department and to expand economic inclusion and development in the equitable attainment of net-zero emissions levels by 2050 and implementation of the climate solutions proposed by the council, including, as appropriate, with the use of an environmental justice screening tool. The sustainable development strategic plan shall:

(1) be informed by input from communities across New Mexico, including, and with a focus on, disproportionately impacted communities and communities likely to be affected by changes in local economic activities in the transition to achieving net-zero emissions levels;

(2) with input from relevant state agencies,
include a plan to implement the recommendations of the New
Mexico clean energy workforce development study;

(3) identify ways to expand and diversify New
Mexico's economy to:

(a) enhance and expand sustainable
economic opportunity, investment and employment;
(b) create new and high-road employment
opportunities;
(c) diversify the state's revenue and
tax base to stabilize the state's budget;
(d) increase overall economic stability
and resilience of the state's economy; and
(e) advance the social, ecological and
cultural resilience of communities;

(4) use state procurement processes to support
supplied diversity and high-road employment opportunities
through best value contracting;

(5) identify methods to support communities in
developing short-term and long-term plans for local sustainable
economic development and job creation that:
(a) advance local community goals and
priorities;
(b) expand opportunities for local
employment and workforce development;
(c) advance economic inclusion for New
...
Mexicans; 

(d) create enhanced opportunities for 
New Mexicans to access capital and resources to create and 
expand sustainable jobs and businesses; 

(e) support communities in expanding 
economic opportunities in ways that are culturally appropriate 
and affirming; and 

(f) ensure that apprenticeship and job 
training programs that receive state funds shall be accessible 
to individuals with limited English proficiency; and 

(6) advise and work with state agencies to 
implement the sustainable development strategic plan with the 
goal of expanding sustainable economic opportunity in New 
Mexico.

E. The sustainable economic development subgroup 
shall provide an annual report, in conjunction with the annual 
report of the council pursuant to Section 4 of the Climate 
Solutions Act, to the governor and the appropriate interim 
legislative committees beginning no later than September 15, 
2021, and every year thereafter on September 15. The report 
shall include progress on implementation of the recommendations 
of the New Mexico clean energy workforce development study, 
identify legislative changes needed to implement the statewide 
strategy, including identified sustainable economic solutions, 
and provide other recommendations to implement the statewide 
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strategy.

SECTION 6. [NEW MATERIAL] STATEWIDE GREENHOUSE GAS EMISSIONS REDUCTIONS--POLICY.--

A. The state shall achieve:

(1) quantifiable and enforceable statewide greenhouse gas emissions reductions that are equivalent to at least fifty percent below 2005 levels by 2030 and net-zero emissions by 2050; and

(2) at least a sixty percent reduction in methane, carbon dioxide and volatile organic compound emissions from the oil and gas sector as compared to 2005 emission levels by 2030.

B. An agency may use a later baseline year for reductions from the oil and gas sector to ensure the quality of emissions data if the agency increases the reduction target proportionately to the size of the sector in the new baseline year as compared to 2005 to meet the statewide emissions reductions pursuant to Subsection A of this section.

SECTION 7. [NEW MATERIAL] STATE AGENCIES--RULEMAKING.--

A. No later than September 30, 2022, a state agency, or rulemaking body that has the authority to adopt rules for a state agency, shall identify the climate solutions that are consistent with the state agency's area of jurisdiction and shall promulgate rules or enact policies, programs or partnerships to implement the identified climate...
solutions and support resilience and mitigation. Rules adopted pursuant to this subsection and Subsection C of this section:

(1) shall ensure the reduction of greenhouse gas emissions across geographic areas and economic sectors of the state;

(2) shall require immediate, reasonable and consistent progress toward the greenhouse gas emissions reductions established in Section 6 of the Climate Solutions Act, taking into account early reductions of emissions greater than the reductions required in determining whether the requirements of a consistent emissions reductions pathway have cumulatively been met;

(3) shall prioritize strategies to reduce air pollution emissions in, and their impacts on, disproportionately impacted communities and Indian nations, tribes and pueblos in New Mexico;

(4) may include regulatory strategies that are being implemented in another jurisdiction, and a state agency may coordinate with another jurisdiction to reduce greenhouse gas emissions; provided that reductions in net greenhouse gas emissions that occur under coordinated programs shall only be accounted for if the implementing rules of each coordinated jurisdiction are sufficiently rigorous to ensure the integrity of the reductions in greenhouse gas emissions in the atmosphere;
(5) shall account for and include under the statewide emissions limit emissions that occur as a result of electricity and fuels imported into the state, regardless of where they occur; and

(6) shall be amended over time to ensure timely progress toward the emissions reductions established by Section 6 of the Climate Solutions Act and cumulative achievement of the associated emission reduction pathway, and to ensure that the other requirements of this subsection are being met.

B. To the extent relevant to a state agency's statutory authority, a state agency, or a state agency's rulemaking body, shall promulgate rules and policies pursuant to Subsection A of this section that:

(1) create incentives to reach emissions limits early, create high-road employment and reduce barriers to implementing climate solutions and developing a sustainable economy while promoting equity;

(2) ensure that climate risks, impacts, mitigation, and harmful emissions reductions are fully considered and accounted for in state programs, planning, investments, infrastructure and natural resource planning and management;

(3) increase energy efficiency statewide, through building and industry standards, incentives for
installing energy-efficient appliances and fixtures, in particular in low-income communities, utilizing renewable energy sources, contracting for the purchase of renewable energy and other energy conservation and efficiency measures;

(4) optimize building performance, including by adopting and implementing requirements and incentives for high-performance, sustainable building design, construction, operation, management, maintenance and deconstruction and reducing the consumption of energy, water and materials;

(5) reduce emissions from vehicles by optimizing vehicle fleets and travel, increasing public transit options, increasing the use of alternative fuel vehicles, increasing the use and availability of low- and zero-emitting vehicles as allowed under Section 177 of the federal Clean Air Act and using regulatory frameworks that are at least as stringent as applicable federal law;

(6) enhance carbon sequestration through natural processes and explore permanent geologic sequestration from industrial sources;

(7) eliminate waste and prevent pollution by, among other things, minimizing the generation of waste and pollutants, diverting more waste for beneficial use, reducing the purchase and use of paper and single-use plastics, increasing the use of compostable and organic materials and decreasing the use of chemicals;
(8) improve the resilience of water supplies, including by reducing water consumption, improving water efficiencies, implementing resilient water management strategies, promoting water reuse and ensuring that climate change impacts and risks are fully considered in state water management decisions;

(9) provide data, science, tools and support to communities to plan for and implement strategies to foster climate resilience and mitigation, including planning with community and industry partners and through coordination of state research, higher education, public education, cultural affairs and extension programs;

(10) require the use of project labor agreements or community workforce agreements for public or publicly regulated contracts or investments; and

(11) establish supplier diversity targets and implementation plans.

C. In addition to the provisions of Subsection A of this section, the department of environment, pursuant to rules adopted by the environmental improvement board by September 30, 2022, and amended as needed, shall ensure that the state attains quantifiable, enforceable reductions in greenhouse gas emissions to meet the statewide emissions reductions established in Section 6 of the Climate Solutions Act and shall, within its statutory authority, address any deficit in
achieving the required emissions reductions statewide. The environmental improvement board's rules:

(1) shall include and provide for the execution of protocols:

  (a) for the department of environment to track all statewide greenhouse gas and air pollutant emissions, quantify emissions from fuels extracted and exported from New Mexico and track the reductions of emissions of greenhouse gases and other harmful pollutants that have been achieved through the implementation of state agency rules pursuant to the Climate Solutions Act;

  (b) for the department of environment to track the impacts of current emissions of air pollutants on disproportionately impacted communities and certify that the state is cumulatively meeting or exceeding the reductions required by the consistently declining emissions reduction pathway pursuant to Paragraph (2) of Subsection A of this section; and

  (c) for how state agencies provide information on a consistent and timely basis to the council for inclusion in the council's annual report required by Subsection D of Section 4 of the Climate Solutions Act; and

(2) may take into account rules that other state agencies have adopted and that remain in effect, to the extent that those rules require quantifiable and enforceable
D. In addition to the provisions of Subsection A of this section, by September 30, 2021, the general services department shall, to the extent authorized within the agency's statutory authority, adopt procurement rules for climate solutions projects to ensure that all New Mexico workers, especially in disproportionately impacted communities, have opportunities to access the jobs created by the implementation of climate solutions, identify ways to ensure that all New Mexicans have an opportunity to participate in governmental procurement for climate solutions projects and consider the use of incentives to achieve inclusion of all interested New Mexicans. If the general services department concludes that additional legislative authority is needed to implement the sustainable development strategic plan developed by the sustainable economic development subgroup, it shall identify the legislative authority needed in the report required pursuant to Subsection E of Section 5 of the Climate Solutions Act.

E. In addition to the provisions of Subsection A of this section, by September 30, 2021, the workforce solutions department, to the extent authorized within the agency's statutory authority, shall adopt workforce development rules for climate solutions projects to ensure that all New Mexico workers have opportunities to access jobs created by the
plementation of climate solutions and that a sustainable economy is created for all workers, with priority given to disproportionately impacted communities. The workforce solutions department shall develop training and registered apprenticeship opportunities for all New Mexicans interested in training for jobs created through the achievement of greenhouse gas emissions reductions and shall consider the use of incentives to achieve inclusion of all interested New Mexicans. If the workforce solutions department concludes that additional legislative authority is needed to implement the sustainable development strategic plan developed by the sustainable economic development subgroup, it shall identify the legislative authority needed in the report required pursuant to Subsection E of Section 5 of the Climate Solutions Act.

SECTION 8. Section 71-7-6 NMSA 1978 (being Laws 2004, Chapter 55, Section 6) is amended to read:

"71-7-6. CLEAN ENERGY GRANTS PROGRAM.--

A. The secretary shall establish the clean energy grants program to provide clean energy grants to:

(1) municipalities and county governments;

(2) state agencies;

(3) state universities;

(4) public schools;

(5) post-secondary educational institutions;
(6) Indian nations, tribes and pueblos.

B. The climate leadership council pursuant to the Climate Solutions Act shall provide recommendations to the secretary and set priorities for expenditures from the clean energy grants fund, when funds are available. The secretary may make grants from the fund for physical projects utilizing clean energy technologies and clean energy education, technical assistance and training programs. The department may use no more than one hundred thousand dollars ($100,000) from the fund for the administration of the grants program and to conduct research or studies directly related to the Advanced Energy Technologies Economic Development Act.

C. The department may adopt rules establishing the application procedure and required qualifications of projects. No single entity shall receive greater than one hundred thousand dollars ($100,000) from the fund. Factors that may be considered in approving or denying disbursements from the fund are the:

(1) the geographic area of the state in which the project is to be conducted in relation to other projects;

(2) percentage of cash or in-kind contributions applied to the total project;

(3) the extent to which the project incorporates an innovative new technology or an innovative
application of an existing technology;

(4) [the] degree to which the project will reduce the entity's energy-related expenditures;

(5) [the] degree to which the project fosters the general public's, students' or a specific government or industry sector's overall understanding and appreciation of clean energy technologies; and

(6) [the] extent to which the project stimulates in-state economic development, including jobs creation, and further development of a commercial market for clean energy technologies.

D. Except as provided otherwise in this section, the department shall disburse:

(1) no less than three hundred thousand dollars ($300,000) to municipalities and county governments;

(2) no less than three hundred thousand dollars ($300,000) to state universities and post-secondary educational institutions;

(3) no less than three hundred thousand dollars ($300,000) to Indian nations, tribes and pueblos; and

(4) no more than two hundred thousand dollars ($200,000) to state agencies and public schools.

E. The minimum disbursements designated in this section may be amended by the department if an insufficient number of qualified projects are applied for by entities.
seeking grant funding within a particular category or categories.

F. The department shall report on disbursements made from the fund to the legislative finance committee prior to each regular legislative session. The report shall include:

(1) a list of recipients receiving disbursements;
(2) the amount of each disbursement;
(3) the date of each disbursement;
(4) a description of each project or expansion funded with a disbursement;
(5) a description of each project's contribution to the state's knowledge and use of clean energy technologies; and
(6) a description of the extent to which the grants program is benefiting the state's environment, public health and economic development."

SECTION 9. Section 74-2-2 NMSA 1978 (being Laws 1967, Chapter 277, Section 2, as amended) is amended to read:

"74-2-2. DEFINITIONS.--As used in the Air Quality Control Act:

A. "air contaminant" means a substance, including any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof;

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B. "air pollution" means the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property;

C. "department" means the department of environment;

D. "director" means the administrative head of a local agency;

E. "emission limitation" or "emission standard" means a requirement established by the environmental improvement board or the local board, the department, the local authority or the local agency or pursuant to the federal act that limits the quantity, rate or concentration, or combination thereof, of emissions of air contaminants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction;

F. "federal act" means the federal Clean Air Act, its subsequent amendments and successor provisions;

G. "federal standard of performance" means a standard of performance, emission limitation or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

H. "hazardous air pollutant" means an air contaminant that has been listed as a hazardous air pollutant.
pursuant to the federal act;

I. "local agency" means the administrative agency established by a local authority pursuant to Paragraph (2) of Subsection A of Section 74-2-4 NMSA 1978;

J. "local authority" means any of the following political subdivisions of the state that have, by following the procedure set forth in Subsection A of Section 74-2-4 NMSA 1978, assumed jurisdiction for local administration and enforcement of the Air Quality Control Act:

   (1) a county that was a class A county as of January 1, 1980; or

   (2) a municipality with a population greater than one hundred thousand located within a county that was a class A county as of January 1, 1980;

K. "local board" means a municipal, county or joint air quality control board created by a local authority;

L. "mandatory class I area" means any of the following areas in this state that were in existence on August 7, 1977:

   (1) national wilderness areas that exceed five thousand acres in size; and

   (2) national parks that exceed six thousand acres in size;

M. "modification" means a physical change in, or change in the method of operation of, a source that results in...
an increase in the potential emission rate of a regulated air contaminant emitted by the source or that results in the emission of a regulated air contaminant not previously emitted, but does not include:

   (1) a change in ownership of the source;

   (2) routine maintenance, repair or replacement;

   (3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the environmental improvement board or the local board or pursuant to the federal act; or

   (4) unless previously limited by enforceable permit conditions:

      (a) an increase in the production rate, if such increase does not exceed the operating design capacity of the source;

      (b) an increase in the hours of operation; or

      (c) use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material or if use of an alternate fuel or raw material is caused by a natural gas curtailment or emergency allocation or [an other] another lack.
of supply of natural gas;

N. "nonattainment area" means for an air contaminant an area that is designated "nonattainment" with respect to that contaminant within the meaning of Section 107(d) of the federal act;

O. "person" includes an individual, partnership, corporation, association, the state or political subdivision of the state and any agency, department or instrumentality of the United States and any of their officers, agents or employees;

P. "potential emission rate" means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department or the local agency pursuant to the Air Quality Control Act or the federal act;

Q. "regulated air contaminant" means an air contaminant, the emission or ambient concentration of which is regulated pursuant to the Air Quality Control Act or the federal act;
R. "secretary" means the secretary of environment;

S. "significant deterioration" means an increase in the ambient concentrations of an air contaminant above the levels allowed by the federal act or federal regulations for that air contaminant in the area within which the increase occurs;

T. "source" means a structure, building, equipment, facility, installation or operation [that emits or may emit an] at, from or by reason of which an air contaminant is emitted;

U. "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction;

V. "state implementation plan" means a plan submitted by New Mexico to the federal environmental protection agency pursuant to 42 U.S.C. Section 7410; and

W. "toxic air pollutant" means an air contaminant, except a hazardous air pollutant, classified by the environmental improvement board or the local board as a toxic air pollutant."

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.