

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE TAX, BUSINESS AND TRANSPORTATION COMMITTEE
SUBSTITUTE FOR
SENATE BILL 14

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE CLEAN FUEL STANDARD ACT; PROVIDING FOR THE ESTABLISHMENT OF A CLEAN FUEL STANDARD FOR TRANSPORTATION FUELS; DIRECTING THE ENVIRONMENTAL IMPROVEMENT BOARD TO PROMULGATE RULES TO IMPLEMENT THE CLEAN FUEL STANDARD ACT; IMPLEMENTING THE ASSESSMENT OF AN ANNUAL REGISTRATION FEE; CREATING THE CLEAN FUEL STANDARD FUND SFC→
~~MAKING AN APPROPRIATION~~←SFC.

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

SECTION 1. A new Section 74-14-1 NMSA 1978 is enacted to read:

"74-14-1. [NEW MATERIAL] SHORT TITLE.--Chapter 74, Article 14 NMSA 1978 may be cited as the "Clean Fuel Standard Act"."

SECTION 2. A new Section 74-14-2 NMSA 1978 is enacted to read:

"74-14-2. [NEW MATERIAL] DEFINITIONS.--As used in the Clean Fuel Standard Act:

- A. "board" means the environmental improvement board;
- B. "carbon capture and sequestration" means the process of concentrating carbon dioxide present in flue or exhaust gases, or air, via chemical or physical separation methods and permanently sequestering the captured carbon dioxide by chemical methods such as mineralization or physical methods such as injection into a subsurface geologic formation;
- C. "carbon intensity" means the quantity of fuel life cycle emissions per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule;
- D. "clean fuel standard" means a standard applicable to transportation fuels that reduces greenhouse gas emissions, on average, per unit of fuel energy;

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E. "credit" means a unit of measure assigned to a person who generates greenhouse gas emission reductions that is used to comply with the clean fuel standard, such that one credit is equal to one metric ton of carbon dioxide equivalent;

F. "deficit" means a unit of measure assigned to the provider of a transportation fuel that has a carbon intensity greater than the applicable standard, such that one deficit is equal to one metric ton of carbon dioxide equivalent;

G. "department" means the department of environment;

H. "direct air capture" means chemical or physical separation of carbon dioxide directly from ambient air;

I. "disproportionately impacted communities" means disadvantaged communities or communities or populations 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 communities or populations;

J. "fuel life cycle emissions" means the aggregate quantity of direct and indirect greenhouse gas emissions across the full fuel life cycle, including all stages of fuel and feedstock production and distribution, from extraction or

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feedstock generation through the distribution, delivery and use of the finished fuel by the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential;

K. "fuel pathway" means a detailed description of all stages of production and uses for a transportation fuel, including feedstock generation or extraction, production, distribution and combustion and use of the fuel by the consumer that is used to calculate the fuel life cycle emissions of a transportation fuel;

L. "greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride;

M. "motor vehicle" means "motor vehicle" and "special mobile equipment", as those terms are defined in the Motor Vehicle Code;

N. "provider" means a person that produces in New Mexico or imports into New Mexico transportation fuel; and

O. "transportation fuel" means electricity or a liquid or gaseous fuel that is blended, sold, supplied, offered for sale or used for the propulsion of a motor vehicle, or that is intended for use in a motor vehicle, in New Mexico and that meets applicable standards, specifications and testing requirements for motor vehicle fuel quality. "Transportation fuel" does not mean electricity or liquid or gaseous fuel for

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non-motor vehicle purposes."

SECTION 3. A new Section 74-14-3 NMSA 1978 is enacted to read:

"74-14-3. [NEW MATERIAL] CLEAN FUEL STANDARD-- ESTABLISHED--RULEMAKING.--

A. The board shall adopt rules to implement the Clean Fuel Standard Act.

B. The Clean Fuel Standard Act shall apply to providers.

C. In adopting rules, the board shall take into consideration equivalent programs adopted by other jurisdictions and may coordinate with other jurisdiction to promote regional reductions in greenhouse gas emissions.

D. No later than twenty-four months after the effective date of the Clean Fuel Standard Act, the department shall petition the board to promulgate rules to implement the Clean Fuel Standard Act. The rules shall:

(1) establish the clean fuel standard based on a schedule for annually decreasing the carbon intensity of transportation fuels used in New Mexico. The schedule shall reduce the average amount of greenhouse gas emissions per unit of fuel energy by a minimum of twenty percent below 2018 levels by 2030 and by a minimum of thirty percent below 2018 levels by 2040;

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(2) establish a process to determine carbon intensity values for transportation fuels that does not discriminate against fuels on the basis of having originated in another state or jurisdiction. Nothing in this paragraph shall be construed to prohibit the inclusion or assessment of emissions related to location-specific fuel characteristics, fuel production, storage, transportation, combustion or associated changes in land use in determining the carbon intensity of a transportation fuel;

(3) require the use of nationally or regionally recognized models or protocols for determining fuel life cycle emissions and indirect land use changes in establishing the carbon intensity value for transportation fuels;

(4) establish a process for providers to comply with the Clean Fuel Standard Act by obtaining and retiring credits;

(5) establish a mechanism for the generation of credits, which may include projects in the following sectors: agricultural, aviation, chemical, dairy, energy, film, forestry, manufacturing, mining, oil and gas, waste management or wastewater treatment, transportation, including transportation infrastructure, and utility, including projects or investments consistent with Section 62-8-12 NMSA 1978 to expand transportation electrification. Credits may also be

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generated from carbon capture and sequestration, direct air capture and methane capture and use projects. Credits generated pursuant to this paragraph, except for those generated by direct air capture, shall be generated by activities that either improve the carbon intensity of transportation fuels or reduce greenhouse gas emissions associated with transportation in New Mexico. To generate eligible credits, carbon capture and sequestration, direct air capture and methane capture and use projects shall result in additional, quantifiable, verifiable, permanent and enforceable greenhouse gas emission reductions;

(6) require the annual registration of providers and any person generating credits;

(7) require the assessment of an annual registration fee for providers and any person generating credits that is sufficient to cover the reasonable costs of the department's administration and enforcement of the Clean Fuel Standard Act and implementation of rules. Fees collected pursuant to this paragraph shall be deposited in the clean fuel standard fund;

(8) require providers to demonstrate compliance with the clean fuel standard by balancing credits and deficits on an annual basis and submitting fuel pathway applications, fuel transactions and carbon intensity data to

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the department;

(9) establish a fair market for credit transactions that is administered by the department or a third party. The board shall adopt rules for market management, including transaction fees, cost-containment measures or other mechanisms that enable credits to be traded, sold or banked for future compliance periods and procedures for verifying the validity of credits and deficits generated under the Clean Fuel Standard Act;

(10) require third-party certifications of fuel pathway applications and third-party verifications of fuel transactions and carbon intensity data on an annual basis, at the expense of the provider or any person generating credits;

(11) establish requirements and an accreditation process for third-party verification, including acceptance of verification entities that are accredited by another state that adopts a low-carbon fuel standard and establishes a third-party verification program;

(12) prioritize mechanisms for credit generation that benefit disproportionately impacted, environmental justice and rural communities and reduce cumulative impacts;

(13) require electric utilities that generate credits from electricity used as transportation fuel to track and record all net revenues generated from the credits in a

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regulatory liability solely for subsequent use for the purposes of increasing transportation electrification, including transportation electrification projects, rebates for electric vehicle purchases, education and outreach activities or the provision of direct benefits for current electric vehicle customers; provided that at least thirty percent of net revenues in year one, forty percent of net revenues in year two and fifty percent of net revenues in subsequent years shall be used to support transportation electrification that primarily benefits disproportionately impacted, environmental justice or rural communities. Funding for programs pursuant to this paragraph shall be in addition to funding to expand transportation electrification pursuant to Section 62-8-12 NMSA 1978. For the purposes of this paragraph, "net revenues" means revenues from the sale of credits generated by an electric utility, less the reasonable transaction, administrative and marketing costs associated with program administration, sale of the credits and compliance with this section, which costs shall be presumed to be prudent; and

(14) establish mechanisms to facilitate compliance for providers that are not meeting the clean fuel standard at the end of any compliance period. The rules shall include provisions necessary for the department to hold credit clearance markets.

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E. The department is responsible for the administration of the clean fuel standard and credits, including implementation and enforcement of the rules adopted by the board pursuant to the Clean Fuel Standard Act.

F. As part of the rulemaking required pursuant to this section, the department, in consultation with the New Mexico department of agriculture, shall develop an emergency deferral process for the department, in consultation with stakeholders, to temporarily suspend the implementation of a clean fuel standard to address market conditions. The rules shall require the department to consider a provider's request for emergency deferral."

SECTION 4. A new Section 74-14-4 NMSA 1978 is enacted to read:

"74-14-4. [NEW MATERIAL] CLEAN FUEL STANDARD FUND--
CREATED.--The "clean fuel standard fund" is created SFC→~~as a~~
~~nonreverting fund~~←SFC in the state treasury. The fund consists
of appropriations, gifts, grants, donations, income from
investment of the fund and fees collected from the regulation
of transportation fuels pursuant to the Clean Fuel Standard
Act. Money in the fund is SFC→~~appropriated~~←SFC SFC→~~subject to~~
~~appropriation by the legislature~~←SFC to the department and
shall be administered by the department for staffing and
resources needed for administration and enforcement of rules
pertaining to transportation fuels and greenhouse gas

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emissions. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary's designee. Any unexpended or unencumbered balance in the clean fuel standard fund remaining at the end of any fiscal year shall ~~SFC~~**not**~~SFC~~ revert to the general fund."

SECTION 5. Section 74-1-8 NMSA 1978 (being Laws 1971, Chapter 277, Section 11, as amended) is amended to read:

"74-1-8. BOARD--DUTIES.--

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate rules and standards in the following areas:

(1) food protection;

(2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act of 1974 and rules authorizing imposition of administrative penalties for enforcement;

(3) liquid waste, including exclusive authority to establish on-site liquid waste system fees that are no more than the average charged by the contiguous states to New Mexico for similar permits and services and to implement and administer an inspection and permitting program for on-site

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liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control and establishment of license and registration and other related fees not to exceed fees charged by the United States nuclear regulatory commission for similar licenses as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Imaging and Radiation Therapy Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; ~~and~~

(14) solid waste as provided in the Solid

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Waste Act; and

(15) transportation fuels as provided in the Clean Fuel Standard Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Administrative penalties collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water conservation fund.

D. On-site liquid waste system fees shall be deposited in the environmental health fund.

E. Radiation license and registration and other related fees shall be deposited in the radiation protection fund."

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