

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 6

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

AN ACT

RELATING TO CLIMATE; ENACTING THE CLEAN FUTURE ACT;
ESTABLISHING GREENHOUSE GAS EMISSIONS LIMITS; REQUIRING
REPORTING; PROVIDING POWERS AND DUTIES; ENACTING A NEW SECTION
OF THE AIR QUALITY CONTROL ACT; DIRECTING THE ENVIRONMENTAL
IMPROVEMENT BOARD TO ADOPT RULES FOR A REGULATORY FRAMEWORK TO
REDUCE GREENHOUSE GAS EMISSIONS FROM SOURCES SUBJECT TO ITS
JURISDICTION; DIRECTING THE ASSESSMENT OF FEES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 5 of this act may be cited as the "Clean Future Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Clean Future Act:

A. "carbon dioxide equivalent" means the metric
tons of a greenhouse gas that have the same global warming

.222147.2

underscored material = new
[bracketed material] = delete

1 potential based on their relative radiative forcing effect over
2 a specified period of time as one metric ton of carbon dioxide
3 in the atmosphere;

4 B. "direct emissions" means greenhouse gas
5 emissions from all regulated sectors;

6 C. "direct emissions reduction" means a
7 quantifiable, permanent and verifiable greenhouse gas
8 reduction, including capture or sequestration by technological
9 or geological means by an entity or facility;

10 D. "disproportionately impacted communities" means
11 disadvantaged communities or communities or populations of
12 people for which multiple burdens, including environmental and
13 socioeconomic stressors, inequity, poverty, high unemployment,
14 pollution or discrimination, may act to persistently and
15 negatively affect the health, well-being and environment of the
16 communities or populations;

17 E. "excess emissions reduction credit" means
18 quantifiable, verifiable and permanent reductions in greenhouse
19 gas emissions, including by direct air capture, carbon
20 sequestration or other technological means, at a source subject
21 to mandatory greenhouse gas reduction requirements in a
22 regulated sector that are in excess of the mandatory
23 requirements;

24 F. "greenhouse gas" means gaseous compounds that
25 absorb infrared radiation emitted from the earth's surface and

1 trap heat in the earth's atmosphere, including carbon dioxide,
2 methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons,
3 nitrogen trifluoride and sulfur hexafluoride, but not including
4 water vapor;

5 G. "net-zero emissions" means direct emissions of
6 greenhouse gases that are eliminated, subject to excess
7 emissions reduction credits, or fully offset;

8 H. "offset" means an additional, quantifiable,
9 permanent, verifiable and enforceable greenhouse gases
10 reduction, removal or sequestration by biological,
11 technological, chemical or geological means, including by
12 direct air capture by technological or biological means, from a
13 source or facility that is not otherwise subject to mandatory
14 greenhouse gas emissions reduction requirements and which
15 reduction, removal or sequestration is measured in terms of
16 metric tons of carbon dioxide equivalent;

17 I. "regulated sector" means any sector or source
18 that is regulated and owned or operated, in whole or in part,
19 by any person and includes electricity generation, both
20 imported and produced in-state; heating, transportation and
21 other fuels combusted in New Mexico; buildings, structures and
22 distribution systems; residential, commercial, institutional
23 and industrial waste management; agricultural and silvicultural
24 practices; and extractive, industrial or other manufacturing
25 processes; and

.222147.2

1 J. "state entity" means a cabinet department of the
2 executive branch of state government, the regulation and
3 licensing department, the state land office, the public
4 regulation commission, the New Mexico department of
5 agriculture, the board of regents of the university of New
6 Mexico and the board of regents of New Mexico state university.

7 **SECTION 3. [NEW MATERIAL] GREENHOUSE GAS EMISSIONS**
8 **LIMITS--ESTABLISHED.--Emissions of greenhouse gases in New**
9 **Mexico shall be limited as follows:**

10 A. by 2030, statewide direct emissions of
11 greenhouse gases shall be fifty percent less than 2005 levels,
12 which may be met by using direct emissions reductions or excess
13 emissions reduction credits; and

14 B. by 2050, statewide direct emissions of
15 greenhouse gases shall be ninety percent less than 2005 levels,
16 which may be met by using direct emissions reductions or excess
17 emissions reduction credits, and all remaining emissions after
18 reductions shall achieve at least net-zero emissions in 2050 or
19 any subsequent year.

20 **SECTION 4. [NEW MATERIAL] REPORTING--DETERMINATION OF**
21 **2005 LEVELS.--**

22 A. Annually, by April 15, beginning the year after
23 the enactment of the Clean Future Act, each state entity shall
24 provide to the department of environment and the energy,
25 minerals and natural resources department information on:

.222147.2

1 (1) the qualitative and quantitative impacts
2 of climate change on the state entity's programs and operations
3 and, to the extent known, on disproportionately impacted
4 communities;

5 (2) the ways in which the state entity is able
6 to integrate climate change adaptation and mitigation practices
7 into its programs or operations;

8 (3) the current and projected future direct
9 emissions of greenhouse gases, to the extent known, from
10 sources or sectors within the state entity's regulatory
11 jurisdiction and the progress being made toward meeting the
12 greenhouse gas emissions limits established in Section 3 of the
13 Clean Future Act; and

14 (4) any additional resources, statutory or
15 regulatory authority or programs that could facilitate efforts
16 by the state entity to reduce direct emissions of greenhouse
17 gases from sources or sectors within the state entity's
18 regulatory jurisdiction to meet the greenhouse gas emissions
19 limits established in Section 3 of the Clean Future Act.

20 B. Annually, by July 1, beginning the year after
21 the enactment of the Clean Future Act, the department of
22 environment and the energy, minerals and natural resources
23 department shall jointly publish a report on the state's
24 progress toward meeting the greenhouse gas emissions limits
25 established in Section 3 of the Clean Future Act. The first

.222147.2

underscoring material = new
~~[bracketed material] = delete~~

1 report published shall determine the 2005 levels of statewide
2 direct emissions of greenhouse gases for purposes of
3 determining compliance with the limits established in Section 3
4 of the Clean Future Act. Additionally, each annual report
5 shall:

6 (1) prioritize coordination with and
7 consideration of environmental and economic progress for, and
8 the avoidance of impacts to, disproportionately impacted
9 communities;

10 (2) contain an inventory of all statewide
11 greenhouse gas emissions based on best available data and
12 information and the progress being made toward achieving the
13 greenhouse gas emissions limits. The inventory shall include,
14 at a minimum, total direct emissions statewide and sector- and
15 source-specific emissions and source-specific greenhouse gas
16 emission information required to be reported pursuant to rules
17 adopted by the environmental improvement board;

18 (3) identify specific policies and regulatory
19 strategies that are either in place or necessary to be in place
20 to achieve the greenhouse gas emissions limits established in
21 Section 3 of the Clean Future Act;

22 (4) identify additional programs that could
23 facilitate achievement of the greenhouse gas emissions limits,
24 including programs to reduce greenhouse gas emissions from
25 light-, medium- and heavy-duty vehicles sold in the state and

1 the adoption of updated building and energy codes, and the
2 budgetary resources needed to implement the programs; and

3 (5) identify opportunities to increase energy
4 efficiency investments and targets for electric utilities,
5 including opportunities for low-income households.

6 SECTION 5. [NEW MATERIAL] POWERS AND DUTIES--DEPARTMENT
7 OF ENVIRONMENT--ENERGY, MINERALS AND NATURAL RESOURCES

8 DEPARTMENT.--The department of environment and the energy,
9 minerals and natural resources department may seek necessary
10 resources from the legislature or other appropriate sources,
11 coordinate the efforts needed in the state and among the state
12 agencies and take any action authorized by law that is deemed
13 necessary or appropriate by the secretary of the respective
14 department for the state to meet the greenhouse gas emissions
15 limits established in Section 3 of the Clean Future Act.

16 SECTION 6. A new section of the Air Quality Control Act,
17 Section 74-2-5.4 NMSA 1978, is enacted to read:

18 "74-2-5.4. [NEW MATERIAL] DUTIES AND POWERS--
19 ENVIRONMENTAL IMPROVEMENT BOARD--LOCAL BOARD--GREENHOUSE GAS
20 EMISSIONS.--

21 A. For the purposes of this section:

22 (1) "carbon dioxide equivalent" means the
23 metric tons of a greenhouse gas that have the same global
24 warming potential based on their relative radiative forcing
25 effect over a specified period of time as one metric ton of

.222147.2

1 carbon dioxide in the atmosphere;

2 (2) "direct emissions" means greenhouse gas
3 emissions from a source;

4 (3) "direct emissions reduction" means a
5 quantifiable, permanent and verifiable greenhouse gas
6 reduction, including capture or sequestration by technological
7 or geological means from a source as approved by the
8 department;

9 (4) "disproportionately impacted communities"
10 means disadvantaged communities or communities or populations
11 of people for which multiple burdens, including environmental
12 and socioeconomic stressors, inequity, poverty, high
13 unemployment, pollution or discrimination, may act to
14 persistently and negatively affect the health, well-being and
15 environment of the communities or populations;

16 (5) "excess emissions reduction credit" means
17 quantifiable, verifiable and permanent reductions in greenhouse
18 gas emissions, including by direct air capture, carbon
19 sequestration or other technological means, at a source subject
20 to mandatory greenhouse gas reduction requirements or limits
21 that are in excess of the mandatory requirements or limits as
22 approved by the department;

23 (6) "greenhouse gas" means gaseous compounds
24 that absorb infrared radiation emitted from the earth's surface
25 and trap heat in the earth's atmosphere, including carbon

.222147.2

1 dioxide, methane, nitrous oxide, hydrofluorocarbons,
2 perfluorocarbons, nitrogen trifluoride and sulfur hexafluoride,
3 but not including water vapor;

4 (7) "net-zero emissions" means direct
5 emissions of greenhouse gases are eliminated, subject to excess
6 emissions reduction credits, or fully offset; and

7 (8) "offset" means an additional,
8 quantifiable, permanent, verifiable and enforceable greenhouse
9 gases reduction, removal or sequestration by biological,
10 chemical or geological means, including by direct air capture
11 by technological or biological means, from a source that is not
12 otherwise subject to mandatory greenhouse gas emissions
13 reduction requirements, and which reduction, removal or
14 sequestration is measured in terms of metric tons of carbon
15 dioxide equivalent.

16 B. No later than June 30, 2025, the department
17 shall petition the environmental improvement board to
18 promulgate rules to reduce greenhouse gas emissions from
19 sources subject to the Air Quality Control Act. In preparing
20 the petition, the department shall hold meetings in at least
21 three distinct regions of the state where disproportionately
22 impacted communities are located and shall consider the input
23 provided by those communities at the meetings in developing the
24 petition.

25 C. Notwithstanding the provisions of Section 74-2-5

.222147.2

underscored material = new
~~[bracketed material] = delete~~

1 NMSA 1978, the environmental improvement board shall have
2 exclusive authority under the Air Quality Control Act to adopt
3 rules to reduce greenhouse gas emissions for purposes of
4 meeting statewide climate goals and emissions limits. The
5 rules shall apply to sources statewide, including sources
6 within the boundaries of a local authority. A local board may
7 adopt greenhouse gas emissions reduction rules in addition to
8 the environmental improvement board rules; provided that rules
9 adopted by the local board shall be at least as stringent as
10 the rules adopted by the environmental improvement board and
11 shall not conflict with rules adopted by the environmental
12 improvement board.

13 D. The environmental improvement board shall:

14 (1) adopt rules that establish the
15 proportionate share of greenhouse gas emission reductions from
16 sources within the board's jurisdiction necessary to achieve:

17 (a) by 2030, statewide direct emissions
18 of greenhouse gases that are less than fifty percent of 2005
19 levels, as determined by the department, which may be met by
20 using direct emissions reductions or excess emissions reduction
21 credits, as determined by the department; and

22 (b) by 2050, statewide direct emissions
23 of greenhouse gases that are less than ninety percent of 2005
24 levels, which may be met by using direct emissions reductions
25 or excess emissions reduction credits, and all remaining

.222147.2

1 emissions after reductions shall be net-zero emissions in 2050
2 or any subsequent year, as determined by the department;

3 (2) consider requirements and reductions
4 achieved or required pursuant to other applicable laws, rules
5 or federal regulations in establishing the proportionate share
6 of emissions reductions from sources within the board's
7 jurisdiction to achieve the limits of Paragraph (1) of this
8 subsection; and

9 (3) adopt rules to achieve the limits
10 established pursuant to Paragraph (1) of this subsection,
11 including:

12 (a) greenhouse gas emissions reporting
13 and disclosure requirements;

14 (b) greenhouse gas emissions permitting,
15 limits and reduction requirements. In setting the limits and
16 reduction requirements, the board shall consider: 1)
17 prioritization of reductions in and avoidance of increased
18 impacts on disproportionately impacted communities; and 2) the
19 impacts of any voluntary actions taken by sources after the
20 effective date of the Clean Future Act but before the
21 initiation of the rulemaking process;

22 (c) protocols for the review and
23 approval by the department of offsets and excess emissions
24 reduction credits. The protocols for verifying the reduction,
25 avoidance or sequestration by an offset or an excess emissions

.222147.2

1 reduction credit shall consider: 1) the requirements of any
2 relevant regional offset or excess emissions reduction credit
3 marketplace; 2) the geographic location of any offsets or
4 excess emissions reduction credits; 3) the greenhouse gas being
5 reduced, avoided or sequestered and the nature of the
6 reduction, avoidance or sequestration activity and the impact
7 of the offset; or 4) the impact of offsets or excess emissions
8 reduction credits on disproportionately impacted communities or
9 environmental justice communities;

10 (d) protocols for the transfer, sale and
11 trading of offsets or excess emissions reduction credits,
12 including potential market mechanisms for the development, sale
13 and trading of offsets or credits and potential participation
14 in any applicable regional markets for the same;

15 (e) requirements for sources or sectors
16 not meeting greenhouse gas emission reduction requirements to
17 obtain offsets or excess emissions reduction credits;

18 (f) reasonable fees to be paid by
19 sources. The fees may be based on total direct emissions from
20 a source, the number of offsets or excess emissions reduction
21 credits a source uses to meet the applicable greenhouse gas
22 emission reduction requirements or the sale or transfer of
23 offsets or excess emissions reduction credits by a source, or a
24 combination thereof, and shall cover the reasonable costs of
25 the department to administer the greenhouse gas emissions rules

.222147.2

1 promulgated by the environmental improvement board. The fees
2 collected pursuant to this subparagraph shall be remitted to
3 the state treasurer and deposited in the general fund; and

4 (g) any other requirements the board
5 deems necessary to achieve the limits established pursuant to
6 Paragraph (1) of this subsection."

underscoring material = new
~~[bracketed material]~~ = delete