

**LFC Requester:**

**Austin Davidson**

## AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** Jan 23, 2026

*Check all that apply:*

**Bill Number:** SB 18

Original

Correction

Amendment

Substitute

**Sponsor:** Sen. Mimi Stewart, Sen. Angel Charley, Rep. Kristina Ortez, Rep. Andrea Romero

**Agency Name and Code Number:** 305 – New Mexico Department of Justice

**Person Writing**

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Codification

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### SECTION II: FISCAL IMPACT

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY26</b>	<b>FY27</b>	<b>FY28</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

**Synopsis:** SB 18 creates specific limitations for statewide greenhouse gas emissions and empowers the Environmental Improvement Board and Local Board to create a statewide emissions reduction plan and promulgate rules to achieve the plan. SB 18 generally creates an administrative framework for overseeing the plan, managing data, and communicating aspects of the plan to relevant government stakeholders.

**Section 1:** Amends NMSA 1978, §74-1-3 (“Environmental Improvement”) to add the definition of “greenhouse gas” and “statewide greenhouse gas emissions.”

**Section 2:** Adds a new section to the Environmental Improvement Act, §74-1-19, codifying specific greenhouse gas emissions limits for the state, given as percentages of 2005’s emissions.

**Section 3:** Amends NMSA 1978, §74-2-2 (“Air Pollution”) to add definitions for “greenhouse gas,” “greenhouse gas intensity,” “non-reservation Indian land,” “reservation” and “statewide greenhouse gas emissions.” The definitions for greenhouse gas (GHG) and statewide GHG emissions are the same for Sections 1 & 3.

**Section 4:** Amends NMSA 1978, §74-2-5.4 (“Air Pollution”) to provide the Environmental Improvement Board (EIB) and the local board with additional powers and duties to regulate greenhouse gas emissions.

**Subsection A** provides the authority for these boards to adopt and modify a plan to meet the emissions targets in Section 2 and to conduct rulemaking to promulgate regulations for achieving the steps of the plan.

**Subsection B** provides that the rules promulgated under subsection A may only apply to stationary sources that emit enumerated amounts of GHGs.

**Subsection C** provides that by September 30, 2027, the EIB and the local board shall adopt GHG monitoring and reporting requirements that take into account data reporting requirements in other laws, and include requirements for the oil and gas industry. The rules are to take effect January 1, 2028.

**Subsection D** provides that by September 20, 2028, the EIB and the local board shall adopt a rule that certifies emissions offsets through removal of GHGs from the atmosphere

(“carbon capture”) or reduction of emissions from sources not subject to the Environmental Improvement Act. It further requires that any certified removal or reduction project must be located within the state.

**Subsection E** provides mandatory criteria for EIB and the local board to consider in making plans and promulgating rules under SB 18. These criteria include both reliance on specific data and certification every two years that the rules will achieve the emissions standards, as well as consideration of other relevant laws.

**Subsection F** provides optional criteria for EIB and the local board to consider in making plans and promulgating rules under SB 18.

**Subsection G** provides that, by December 31, 2028, and annually thereafter, NMED and other relevant federal, state, local and Tribal entities, shall publish a greenhouse gas emissions report.

**Subsection H** provides a Tribal consultation requirement for rulemaking.

**Subsection I** requires NMED to submit an annual report to the governor, legislature, and the Tribal governments.

**Subsection J** requires EIB to set a fee schedule for implementing the provisions of this section.

## FISCAL IMPLICATIONS

Under 74-1-8.1 NMSA, the Attorney General is available to the Environmental Improvement Board for obtaining independent legal advice. SB 18’s addition of new monitoring and permitting requirements could lead to additional legal analysis and therefore resources required from the NMDOJ, but SB 18 does not appropriate additional funds to the NMDOJ.

## SIGNIFICANT ISSUES

While New Mexico has established statutory authority to regulate greenhouse gas emissions through the Environmental Improvement Act (NMSA 1978, § 74-1-1, *et seq*) and the Air Quality Control Act (NMSA 1978, § 74-2-1, *et seq*), this authority operates within a complex framework of federal law, notably the Federal Power Act (16 U.S.C. §§ 791, *et seq*) and Clean Air Act (42 U.S.C. §§ 7401, *et seq*). This complexity is heightened by the evolving interpretation of federal standards under the current administration, which amplifies the risk of federal preemption and regulatory conflicts.

SB 18 intersects with federal law in the following primary areas:

1. Interaction with the Federal Power Act

Federal preemption is the legal principle rooted in the U.S. Constitution’s Supremacy Clause, where federal law overrides or invalidates conflicting state or local laws. Federal law preemption can be express or implied. In instances where there is no express intent by Congress to preempt state law, courts have recognized two distinct forms of implied preemption: field preemption and conflict preemption. *Gade*, 505 U.S. at 98, 112 S.Ct. 2374; *United Nuclear Corp. v. Gen. Atomic Co.*, 1980–NMSC–094, ¶ 186, 96 N.M. 155. Field preemption occurs when “federal law so occupies the field that state courts are prevented from asserting jurisdiction.” *State v. McHorse*, 1973–NMCA–144, ¶ 16, 85 N.M. 753. Congressional intent to occupy the field may be found if a “scheme of federal regulation [is] so pervasive as to make reasonable the inference that Congress left no room for the [s]tates to supplement it.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230,

67 S.Ct. 1146 (1947). Conflict preemption arises when there is “an unavoidable conflict between the state law and the federal law, or [where] the state law is an obstacle to the full accomplishment of congressional objectives.” *Alliance Health of Santa Teresa, Inc. v. Nat'l Presto Indus., Inc.*, 2005–NMCA–053, ¶ 31. Such a conflict should be found, however, only if “it is impossible to comply with both state and federal requirements, or if state law obstructs the congressional objectives underlying the federal law.” *Azar v. Prudential Ins. Co. of Am.*, 2003–NMCA–062, ¶ 35, 133 N.M. 669. *See State v. Herrera*, 2014-NMCA-003, ¶ 9, 315 P.3d 311, 314.

The Federal Power Act (FPA) creates the potential for preemption of state greenhouse gas regulations affecting electric utilities. Section 3 of SB 18 amends definitions within the Air Quality Control Act to include “statewide greenhouse gas emissions” which encompasses total net anthropogenic emissions of greenhouse gases within the state, *including emissions from the out-of-state production of electricity for use within the state*. Federal law has delegated authority to the Federal Energy Regulatory Commission (FERC) to regulate the transmission and wholesale sale of electricity in interstate commerce. *See* 16 U.S.C. § 824. As a result, including out-of-state electricity production in the state’s accounting of greenhouse gas emissions may be viewed as an attempt to indirectly regulate out-of-state utilities and interstate energy markets, areas typically reserved for FERC and potentially preempted by federal law.

## 2. Interaction with the Clean Air Act

Under 42 U.S.C. § 7410 *et seq.*, the Clean Air Act establishes a cooperative federalism framework that generally supports state authority to regulate greenhouse gas emissions. However, developments at the federal level create significant uncertainty about the future interaction between state and federal greenhouse gas regulatory authority. For example, the Greenhouse Gas Reporting Program (GHGRP) was established by the Environmental Protection Agency (EPA) under the authority of the Clean Air Act (CAA) to monitor emissions from large industrial sources. In 2025, the EPA proposed to eliminate most of these requirements, which may affect the legal landscape for challenges to similar state programs. [See: EPA Releases Proposal to End the Burdensome, Costly Greenhouse Gas Reporting Program, Saving up to \\$2.4 Billion | US EPA](#). In particular, SB 18’s Section 4(C) mandate that the environmental improvement board and local board adopt greenhouse gas monitoring and reporting requirements may be inconsistent with impending federal standards, potentially triggering preemption challenges to the extent new state rules conflict with federal Clean Air Act programs.

Similarly, the difference between how “stationary sources” are treated under state versus federal law – especially emissions thresholds and aggregation rules – may lead to litigation or federal enforcement challenges. SB 18 Section 4(B) applies to any stationary source that individually has the potential to emit 10,000 metric tons or more of greenhouse gases annually in New Mexico, and further aggregates emissions from multiple sources under common ownership to capture groups emitting 25,000 metric tons or more. Federal regulation of stationary sources remains in flux. In 2010, the EPA promulgated its “tailoring rule,” which authorized regulation of greenhouse gas emissions from large stationary sources through the CAA’s Title V operating permit programs. The threshold used to determine if sources were subject to regulation for greenhouse gas emissions

(100,000 tons annually of CO<sub>2</sub> equivalent emissions<sup>1</sup>) was altered following the Supreme Court’s 2014 ruling in *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014). After this ruling, the EPA was prohibited from requiring stationary sources to obtain Title V permits based *solely* on their greenhouse gas emissions. The Court determined that EPA lacked the statutory authority to tailor the CAA by rewriting the unambiguous emissions thresholds set by Congress. Consequently, while the 100,000 tons threshold is no longer applicable as a trigger for permitting, the EPA maintained its authority to regulate greenhouse gases at so-called “anyway” sources – facilities that already triggered permitting requirements due to their emissions of conventional pollutants. The EPA may still regulate these sources if the greenhouse gas emissions exceed a *de minimis* level, which the EPA has traditionally set at 75,000 tons annually. Draft rules to further alter these regulations, and potentially eliminate the existing legal basis for federal greenhouse gas permitting entirely, are being considered by the current administration in 2026.

Despite the rapidly changing legal landscape regarding greenhouse gas regulation, the 10,000 individual and 25,000 aggregated emissions thresholds established under SB 18 are lower and broader than those standards utilized under federal law. This divergence means that SB 18 may regulate a greater number of emitting sources than federal law currently does, creating the potential for overlapping or conflicting compliance obligations. For example, the interplay between those entities with valid federal Title V permits that fail to meet new state emissions standards remains unclear. These disparate emissions standards yield an increased risk of preemption challenges under the CAA.

Furthermore, SB 18's criteria supporting aggregation of stationary sources for purposes of determining the greenhouse gas emissions is different than aggregation standards under federal law. For aggregation purposes, the EPA employs a three-factor test to determine if two or more facilities should be aggregated for purposes of determining whether thresholds are met for greenhouse gas regulation. The factors are whether the building/facility/structures: (1) have the same industrial grouping; (2) are located on one property or on contiguous or adjacent properties; and (3) are under common control of the same person(s). *See* 40 CFR 51.166. This test requires the establishment of all three factors, whereas SB 18 only requires common ownership or control for aggregation purposes.

### 3. Commerce Clause Concerns

SB 18 may result in legal challenges under the Commerce Clause (Article I, Section 8 of the United States Constitution), which grants Congress the power to regulate commerce among the states, and serves as the primary constitutional foundation for broad federal regulatory authority over interstate economic activity. SB 18 Section 1(J) amends the state’s Environmental Improvement Act to define “state greenhouse gas emissions” to include emissions within the state, and *emissions from out-of-state production of electricity for use within the state*, for purposes of the statewide emissions cap. This may be viewed as extraterritorial regulation, over which courts have historically been circumspect. In *Healy v. Beer Institute*, 491 U.S. 324 (1989), the Supreme Court outlined the factors lower courts are to consider in determining whether a state’s regulatory action

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<sup>1</sup> CO<sub>2</sub> equivalent emissions – referenced as CO<sub>2</sub>e in the Code of Federal Regulations – is a metric used to compare emissions of different greenhouse gases based on their global warming potential.

yields impermissible extraterritorial affects which limit interstate commerce. The *Healy* court established that:

1. The Commerce Clause precludes the application of a state statute to commerce that takes place wholly outside the state's borders, whether or not the commerce has effects within the state. *Healy* at pg. 336, *citing Edgar v. MITE Corp*, 457 U.S. 624 (1982);
2. A statute that directly controls commerce occurring wholly outside the boundaries of a state exceeds the inherent limits of the enacting state's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the state. *Healy* at pg. 336, *citing Brown-Forman*, 476 U.S. 573 (1986); and
3. The practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other states and what effect would arise if not one, but many or every state, adopted similar legislation. *Healy* at pg. 336.

Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state. The Commerce Clause dictates that no state may force an out-of-state merchant to seek regulatory approval in one state before undertaking a transaction in another. *Healy* at pgs. 336-337. SB 18's application to out-of-state production of electricity may be viewed as controlling or impacting the commercial decisions of companies that exist wholly outside New Mexico and seeking to regulate conduct in neighboring states, which would exceed the state's authority under the Commerce Clause.

## **PERFORMANCE IMPLICATIONS**

N/A.

## **ADMINISTRATIVE IMPLICATIONS**

Under 74-1-8.1 NMSA, the Attorney General is one source available to the Environmental Improvement Board for obtaining independent legal advice. SB 18's addition of new monitoring and permitting requirements could lead to additional legal analysis required by the NMDOJ.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A.

## **TECHNICAL ISSUES**

N/A.

## **OTHER SUBSTANTIVE ISSUES**

Under Section 4(A), the explicit requirement of new rules and plans on short timelines may strain state administrative capacities or lead to inconsistent regulations if not harmonized with prior state rulemakings.

## **ALTERNATIVES**

N/A.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

N/A.