

SENATE BILL NO. 2238

Introduced by

Senator Bell

1 A BILL for an Act to create and enact section 23.1-06-16 of the North Dakota Century Code,
2 relating to the state regional haze plan; to provide a penalty; and to declare an emergency.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Section 23.1-06-16 of the North Dakota Century Code is created and enacted
5 as follows:

6 **23.1-06-16. Implementation of federal regional haze program requirements.**

7 1. Consistent with the federal Clean Air Act [42 U.S.C. 7401 et seq.] and the regulations
8 adopted under the Clean Air Act, the department shall develop and implement a state
9 regional haze plan for making reasonable progress toward improving visibility in
10 mandatory class I federal areas, as defined under the Clean Air Act, in accordance
11 with this section.

12 2. The state regional haze plan must include:

13 a. An analysis of the primary causes of visibility degradation in the state's
14 mandatory class I federal areas, including natural and international causes of
15 visibility degradation;

16 b. An analysis of the available and technically feasible control measures most likely
17 to improve visibility in mandatory class I federal areas, including control
18 measures that may be applied to stationary sources. In conducting the analysis,
19 the department must:

20 (1) Consider the level of visibility improvement achievable by each control
21 measure evaluated, including whether the control measures individually and
22 collectively can improve visibility by more than a de minimis amount, more
23 than a humanly perceptible amount, and more than the amount needed to

1 make reasonable progress toward natural visibility conditions in mandatory
2 class I federal areas by 2064;

3 (2) Consider, based on site-specific information, the total cost of implementing
4 each control measure; the incremental cost of implementing each control
5 measure compared to other control measures; and, for electric generating
6 units, the potential impact to the price of electricity; and

7 (3) Weigh the total and incremental cost of each individual control measure
8 against the visibility improvements each individual control measure is
9 projected to achieve at mandatory class I federal areas.

10 3. The state regional haze plan may mandate only new control measures the department
11 determines, based on the analysis under subsection 2, are necessary to make
12 reasonable progress toward meeting the national goal of visibility improvement
13 required by the Clean Air Act and further defined by the United States environmental
14 protection agency to be natural visibility conditions by 2064.

15 4. Any control measures imposed on stationary sources subject to permitting under this
16 chapter must be adopted through individual source permitting actions that must allow
17 each source the flexibility to achieve the same level of emission reductions through
18 alternative control measures.

19 5. Before submitting the state regional haze plan to the environmental protection agency,
20 the department shall submit the plan to the energy and natural resources committees
21 of the North Dakota senate and house of representatives for review. Unless the
22 legislative assembly disapproves the plan by a concurrent resolution, the department
23 shall comply, to the extent feasible, with the environmental protection agency's
24 deadline to submit the state regional haze plan to the environmental protection
25 agency. If either of the legislative energy and natural resources committees or the
26 environmental protection agency disapproves the state regional haze plan, the
27 department shall develop and submit as expeditiously as possible a revised plan to
28 address the reasons for the disapproval in accordance with the requirements of this
29 section.

30 6. Any new control measures mandated by the state plan are effective only upon final
31 approval by the environmental protection agency. If federal laws, a federal court, or a

1 final federal agency action renders any control measures included in the state plan
2 unenforceable by the environmental protection agency, the requirement to implement
3 the measures may not be enforced under state law to the same extent the measures
4 are unenforceable under federal law.

5 7. The department may not include in the state regional haze plan any mandatory control
6 measures that have been implemented previously only with the direct assistance of
7 financial support from the state or federal government through a program intended to
8 encourage the development of emerging emission reduction technologies and
9 techniques.

10 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.