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HOUSE BILL 613

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Candy Spence Ezzell

AN ACT

RELATING TO AGRICULTURE; ENACTING THE AGRICULTURAL CARBON CREDIT ACT; PROVIDING PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Agricultural Carbon Credit Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Agricultural Carbon Credit Act:

A. "application" means the spraying, spreading or distribution of product as a foliar spray on plants contained within a designated area or applied to the surface or subsurface of the land within a designated area;

B. "best management practice" means a document created by a certified agronomist detailing the quantity, timing and location for the application of certified material

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1 within a designated area;

2 C. "business as usual" means the normal and usual  
3 operational practices performed by a registrant over a five-  
4 year period within the designated area prior to the use of  
5 certified material, which practices are substantiated by  
6 written or electronic records and attested to under penalty of  
7 perjury;

8 D. "carbon credit" means a credit granted for  
9 reducing emissions of carbon dioxide or other greenhouse gases  
10 by an equivalent of one metric ton of carbon dioxide;

11 E. "carbon credit certification" means proof that a  
12 registrant has complied with the requirements of the  
13 Agricultural Carbon Credit Act in generating carbon credits;

14 F. "certified material" means any fertilizer, soil  
15 conditioner, micronutrient or bio-nutrient certified for use on  
16 agricultural land by the United States department of  
17 agriculture or the New Mexico department of agriculture and  
18 that is environmentally benign, non-carcinogenic and nontoxic  
19 to humans or animals;

20 G. "chain of custody" means a record regarding a  
21 carbon credit, including its origination, manufacture,  
22 ownership and final disposition;

23 H. "department" means the New Mexico department of  
24 agriculture;

25 I. "designated area" means the specific

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1 geographical area designated by a registrant in its application  
2 for carbon credit certification with a defined start and end  
3 date between which the carbon credit is to be created;

4 J. "director" means the director of the department;

5 K. "emission" means any release of a pollutant into  
6 the atmosphere;

7 L. "humus" means the organic component of soil  
8 consisting of stover, stems, leaves, root mass or other plant  
9 material remaining on, or tilled into, the soil that is  
10 decomposed by microorganisms;

11 M. "pollutant" means a substance designated by the  
12 federal environmental protection agency as being harmful to the  
13 environment;

14 N. "reduction" means a demonstrable decrease in the  
15 quantity released of a pollutant relative to business as usual;

16 O. "registrant" means a person that has submitted  
17 the required documentation to, and has been accepted by, the  
18 director into the carbon credit program pursuant to the  
19 Agricultural Carbon Credit Act;

20 P. "soil conditioner" means a product that is added  
21 to soil to improve the soil's physical properties, usually to  
22 improve soil texture, nutrient retention, water retention,  
23 drainage or fertility; and

24 Q. "supplier" means a person providing certified  
25 material.

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1           SECTION 3.   ~~[NEW MATERIAL]~~ BEST MANAGEMENT PRACTICE

2   APPLICATION.--

3           A.   A designated area producing food for human or  
4   animal consumption or for any other use by humans, such as  
5   clothing, shall utilize and adhere to a best management  
6   practice.

7           B.   The best management practice shall be developed  
8   by a certified agronomist with knowledge of the certified  
9   material proposed for the designated area.

10          C.   The best management practice shall account for  
11   the environmental conditions at the designated area location,  
12   soil condition and soil sample analyses performed by a  
13   certified laboratory, fertilizers proposed, micronutrient  
14   requirements and the use of certified materials.

15          D.   The best management practice on designated areas  
16   intended to grow crops shall incorporate the requirement to  
17   maintain or increase crop yields, accounting for seasonal  
18   environmental variations and growing conditions.

19          E.   The following shall be included in the chain of  
20   title:

- 21                   (1)   the best management practice;
- 22                   (2)   any pre-planting and post-planting soil  
23   analyses;
- 24                   (3)   applications of fertilizer, micronutrient  
25   and certified material, including rates of application; and

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1 (4) crop yields.

2 SECTION 4. [NEW MATERIAL] CARBON CREDIT CERTIFICATION.--

3 A. Carbon credit certification may be used to  
4 create carbon credits using one of the methods defined in this  
5 section.

6 B. Carbon credits shall be issued by the director  
7 upon presentation of documentation showing a reduction in  
8 nitrogen fertilizer applied to a designated area as follows:

9 (1) each carbon credit shall represent one  
10 metric ton equivalent of carbon dioxide; and

11 (2) the number of carbon credits issued shall  
12 be calculated as follows:

13 
$$m\text{TCO}_2e = 18.64(e^{0.0073R_1} - e^{0.0073R_2})m\text{TCO}_2/\text{Ac},$$

14 where:

15 (a)  $R_1$  = business as usual baseline  
16 nitrogen application rates in pounds per acre;

17 (b)  $R_2$  = reduced application rate of  
18 nitrogen in pounds per acre;

19 (c)  $m\text{TCO}_2e$  = metric tons of carbon  
20 dioxide equivalent representing one carbon offset;

21 (d)  $m\text{TCO}_2$  = metric tons of carbon  
22 dioxide;

23 (e)  $e$  = Euler's number, which is  
24 approximately 2.71828; and

25 (f)  $\text{Ac}$  = acre of land.

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1           C. Carbon credits shall be issued by the director  
2 upon presentation of documentation showing a measurable or  
3 scientifically inferred reduction in the emission of nitrous  
4 oxide from a designated area. Two hundred ninety-eight carbon  
5 credits shall be issued for each metric ton of nitrous oxide  
6 reduced.

7           D. Carbon credits shall not be issued for both a  
8 reduction in nitrogen fertilizer applied and a reduction in  
9 nitrous oxide emissions.

10           SECTION 5. [NEW MATERIAL] CARBON CREDIT CERTIFICATION  
11 REQUIREMENT.--

12           A. Carbon credit certification shall only be issued  
13 upon:

14                   (1) the submission of documentation showing a  
15 reduction in one or more pollutants, which qualifies for carbon  
16 offsets pursuant to the Agricultural Carbon Credit Act; or

17                   (2) a chain of title and any other supporting  
18 documentation, having been submitted showing compliance with  
19 the provisions of the Agricultural Carbon Credit Act.

20           B. The director shall be allowed to remove soil  
21 samples or foliage samples from designated areas for the  
22 purpose of verifying the application of certified material on  
23 designated areas.

24           C. The director shall be allowed to obtain samples  
25 of fertilizers, micronutrients and certified material being

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1 applied to a designated area to verify adherence to the best  
2 management practice.

3 D. Any additional records, such as electronic  
4 application records from farm equipment, may be obtained to  
5 prove application locations and rates as detailed in the best  
6 management practice.

7 SECTION 6. [NEW MATERIAL] CARBON CREDIT TRACKING.--

8 A. A carbon credit created pursuant to the  
9 Agricultural Carbon Credit Act shall be tracked utilizing a  
10 chain of custody.

11 B. The chain of custody shall include:

12 (1) the identity and physical location of a  
13 person obtaining certification of a carbon credit;

14 (2) the identity of an entity obtaining  
15 ownership of a carbon credit following the certification of a  
16 carbon credit;

17 (3) the identity and physical location of an  
18 entity retiring a carbon credit by applying a carbon credit to  
19 an emission, thereby reducing the effective quantity of a  
20 pollutant emitted; and

21 (4) a record of a carbon credit being retired.

22 C. Each chain of custody record shall have a time  
23 stamp.

24 D. The records in the chain of custody shall be  
25 immutable, auditable and publicly available.

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1           E. Chain of custody records shall be maintained by  
2 the director or by a third party for a minimum of three years  
3 after the creation of a carbon credit.

4           **SECTION 7. [NEW MATERIAL] CARBON CREDIT CERTIFICATION**  
5 **ADMINISTRATION.--**

6           A. The department shall promulgate such rules as  
7 are necessary to implement the carbon credit certification  
8 program.

9           B. The director shall create the forms needed by  
10 registrants to request participation in the carbon credit  
11 certification program.

12           C. The director shall have the power to audit chain  
13 of custody and chain of title records, verify the documents in  
14 a chain of custody or chain of title, ensure compliance with  
15 the Agricultural Carbon Credit Act and issue verified carbon  
16 credit certifications.

17           D. The director may investigate suspected  
18 noncompliance or fraud and invalidate carbon credits not  
19 certified in compliance with the Agricultural Carbon Credit  
20 Act.

21           E. The director may contract with third parties to  
22 perform audits and investigations.

23           **SECTION 8. [NEW MATERIAL] SOIL FERTILITY IMPROVEMENT.--**

24 Carbon credit certification may be used to create carbon  
25 credits upon presentation of documentation to the director

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1 showing a measurable increase in near-surface organic product  
2 in the form of humus over the previous year. The humus  
3 increase must be demonstrated by the analysis of a minimum of  
4 four random soil samples to a six-inch depth over each acre  
5 claimed. The average humus content in metric tons for each  
6 acre will be calculated. One carbon credit shall be issued for  
7 each metric ton of humus increased per acre.

8 SECTION 9. [NEW MATERIAL] AUDITS AND INVALIDATION.--

9 A. The director may randomly, or upon suspicion of  
10 fraud, audit the chain of custody and any records used to  
11 certify carbon credits. Upon finding inaccuracies or fraud,  
12 the director may require appropriate actions deemed necessary  
13 to correct the records.

14 B. A time frame of not less than fourteen days and  
15 not more than thirty days shall be allowed to correct the chain  
16 of custody, correct deficient documentation or produce other  
17 documentation to show compliance with the Agricultural Carbon  
18 Credit Act. After the allowed time, a carbon credit may be  
19 invalidated for noncompliance.

20 C. If intentional fraud is discovered during an  
21 investigation or audit, the carbon credit shall be invalidated.

22 SECTION 10. [NEW MATERIAL] CERTIFICATION FEES.--

23 A. The director shall promulgate rules to establish  
24 a fee schedule for the certification of carbon credits.

25 B. Carbon credit certification fees shall not

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1 exceed one hundred five percent of the actual cost of  
2 processing the documentation.

3 C. Fees may be set by the department for the  
4 certification of carbon credits as follows:

5 (1) the fees shall not exceed five percent of  
6 the market value of the carbon credit; and

7 (2) the fees shall be imposed on a person  
8 obtaining certification of carbon credits from the designated  
9 area.

10 D. The market value shall be determined using the  
11 previous day's closing value of any publicly traded financial  
12 instrument related to carbon credits certified by the director.

13 SECTION 11. [NEW MATERIAL] DEPARTMENT LIABILITY.--Neither  
14 the director nor the department shall be liable for costs or  
15 losses incurred due to an invalidation or loss of carbon  
16 credits.

17 SECTION 12. [NEW MATERIAL] RETIREMENT.--Any carbon credit  
18 shall be deemed invalid after its application toward the  
19 reduction in the net emissions of a greenhouse gas emitter.

20 SECTION 13. [NEW MATERIAL] PENALTIES.--Registrants,  
21 documentation providers or suppliers found to have caused the  
22 invalidation of a carbon credit due to fraud or other criminal  
23 intent shall be subject to a civil fine set by the department  
24 not to exceed five times the combined market value of the  
25 invalidated carbon credits.

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