

SENATE FINANCE COMMITTEE SUBSTITUTE
FOR SENATE BILL 11

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

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; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Clean Fuel Standard Act."

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

A. "board" means the environmental improvement

1 board;

2 B. "carbon intensity" means the quantity of fuel
3 lifecycle emissions per unit of fuel energy, expressed in grams
4 of carbon dioxide equivalent per megajoule;

5 C. "clean fuel standard" means a standard
6 applicable to transportation fuels that reduces greenhouse gas
7 emissions, on average, per unit of fuel energy;

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

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

17 F. "department" means the department of
18 environment;

19 G. "fuel lifecycle emissions" means the aggregate
20 quantity of direct and indirect greenhouse gas emissions across
21 the full fuel lifecycle, including all stages of fuel and
22 feedstock production and distribution, from extraction or
23 feedstock generation through the distribution, delivery and use
24 of the finished fuel by the ultimate consumer, where the mass
25 values for all greenhouse gases are adjusted to account for

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1 their relative global warming potential;

2 H. "fuel pathway" means a detailed description of
3 all stages of production and uses for a transportation fuel,
4 including feedstock generation or extraction, production,
5 distribution and combustion and use of the fuel by the consumer
6 that is used to calculate the fuel lifecycle emissions of a
7 transportation fuel;

8 I. "greenhouse gas" means carbon dioxide, methane,
9 nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur
10 hexafluoride;

11 J. "motor vehicle" means "motor vehicle" as defined
12 in the Motor Vehicle Code;

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

15 L. "transportation fuel" means electricity or a
16 liquid or gaseous fuel that is blended, sold, supplied, offered
17 for sale or used for the propulsion of a motor vehicle, or that
18 is intended for use in a motor vehicle, in New Mexico and that
19 meets applicable standards, specifications and testing
20 requirements for motor vehicle fuel quality.

21 SECTION 3. [NEW MATERIAL] CLEAN FUEL STANDARD--
22 ESTABLISHED--RULEMAKING.--

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

25 B. The Clean Fuel Standard Act shall apply to

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1 providers.

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

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

10 (1) establish the clean fuel standard based on
11 a schedule for annually decreasing the carbon intensity of
12 transportation fuels used in New Mexico. The schedule shall
13 reduce the average amount of greenhouse gas emissions per unit
14 of fuel energy by a minimum of ten percent below 2018 levels by
15 2030 and by a minimum of twenty-eight percent below 2018 levels
16 by 2040. For years after 2040, the board shall determine
17 additional reductions and the time frames for achieving the
18 reductions;

19 (2) establish a process to determine carbon
20 intensity values for transportation fuels;

21 (3) require the use of nationally or
22 regionally recognized models or protocols for determining fuel
23 lifecycle emissions and indirect land use changes in
24 establishing the carbon intensity value for transportation
25 fuels;

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

4 (5) establish a mechanism for a person to
5 generate credits, including persons involved in agricultural,
6 aviation, chemical, carbon sequestration, dairy, direct air
7 capture, energy, film, forestry, manufacturing, methane capture
8 and use, mining, oil and gas, transportation, waste management
9 or wastewater treatment sectors. Greenhouse gas emission
10 reductions eligible for the generation of credits pursuant to
11 this paragraph shall be quantifiable, verifiable, permanent and
12 enforceable;

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

15 (7) require the assessment of annual
16 registration fees for providers and any person generating
17 credits sufficient to cover the reasonable costs of the
18 department's administration and enforcement of the Clean Fuel
19 Standard Act and implementation of rules. Fees collected
20 pursuant to this paragraph shall be deposited in the clean fuel
21 standard fund;

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

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

1 the department;

2 (9) establish a fair market for credit
3 transactions that is administered by the department or a third
4 party. The board shall adopt rules for market management,
5 including transaction fees, a credit price cap or other
6 mechanisms that enable credits to be traded or to be banked for
7 future compliance periods and procedures for verifying the
8 validity of credits and deficits generated under the Clean Fuel
9 Standard Act;

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

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

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

23 (13) require electric utilities that generate
24 credits from electricity used as transportation fuel to use at
25 least fifty percent of the revenues generated from the credits

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1 for transportation electrification projects, rebates for
2 electric vehicle purchases or the provision of direct benefits
3 for current electric vehicle customers; provided that of the
4 fifty percent, at least thirty percent in year one, forty
5 percent in year two and fifty percent in subsequent years shall
6 be used to support transportation electrification that
7 primarily benefits disproportionately impacted, environmental
8 justice or rural communities.

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

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

21 SECTION 4. [NEW MATERIAL] CLEAN FUEL STANDARD FUND--
22 CREATED.--The "clean fuel standard fund" is created in the
23 state treasury. The fund consists of fees collected from the
24 regulation of transportation fuels pursuant to the Clean Fuel
25 Standard Act. Money in the fund is appropriated to the

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1 department and shall be administered by the department for
2 staffing and resources needed for administration and
3 enforcement of rules pertaining to transportation fuels.
4 Disbursements from the fund shall be by warrant drawn by the
5 secretary of finance and administration pursuant to vouchers
6 signed by the secretary of environment or the secretary of
7 environment's designee. Any unexpended or unencumbered balance
8 in the clean fuel standard fund remaining at the end of any
9 fiscal year shall not revert to the general fund.

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

12 "74-1-8. BOARD--DUTIES.--

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

16 (1) food protection;

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

23 (3) liquid waste, including exclusive
24 authority to establish on-site liquid waste system fees that
25 are no more than the average charged by the contiguous states

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1 to New Mexico for similar permits and services and to implement
2 and administer an inspection and permitting program for on-site
3 liquid waste systems;

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

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

11 (6) noise control;

12 (7) nuisance abatement;

13 (8) vector control;

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

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

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

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

25 (13) hazardous wastes and underground storage

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1 tanks as provided in the Hazardous Waste Act; ~~[and]~~

2 (14) solid waste as provided in the Solid
3 Waste Act; and

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

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

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

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

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