

Proposed

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 520

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
ENACTING THE CLEAN FUTURE ACT; ESTABLISHING STATEWIDE  
GREENHOUSE GAS EMISSIONS LIMITS; REQUIRING GREENHOUSE GAS  
EMISSIONS REPORTING; AMENDING THE OIL AND GAS ACT TO ESTABLISH  
CERTAIN GAS CAPTURE REQUIREMENTS; PROVIDING THAT CERTAIN STATE  
ENTITIES APPLY CLIMATE EQUITY PRINCIPLES TO POLICY AND RULE  
DEVELOPMENT.

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

**SECTION 1.** Section 70-2-12 NMSA 1978 (being Laws 1978,  
Chapter 71, Section 1, as amended) is amended to read:

"70-2-12. ENUMERATION OF POWERS.--

A. The oil conservation division of the energy,  
minerals and natural resources department may:

(1) collect data;

.225457.2

underscoring material = new  
[bracketed material] = delete

- 1 (2) make investigations and inspections;
- 2 (3) examine properties, leases, papers, books
- 3 and records;
- 4 (4) examine, check, test and gauge oil and gas
- 5 wells, tanks, plants, refineries and all means and modes of
- 6 transportation and equipment;
- 7 (5) hold hearings;
- 8 (6) provide for the keeping of records and the
- 9 making of reports and for the checking of the accuracy of the
- 10 records and reports;
- 11 (7) limit and prorate production of crude
- 12 petroleum oil or natural gas or both as provided in the Oil and
- 13 Gas Act; and
- 14 (8) require either generally or in particular
- 15 areas certificates of clearance or tenders in connection with
- 16 the transportation of crude petroleum oil or natural gas or any
- 17 products of either or both oil and products or both natural gas
- 18 and products.

19 B. The oil conservation division may make rules and  
20 orders for the purposes and with respect to the subject matter  
21 stated in this subsection:

- 22 (1) to require dry or abandoned wells to be
- 23 plugged in a way so as to confine the crude petroleum oil,
- 24 natural gas or water in the strata in which it is found and to
- 25 prevent it from escaping into other strata; pursuant to Section

.225457.2

1 70-2-14 NMSA 1978, the division shall require financial  
2 assurance conditioned for the performance of the rules;

3 (2) to prevent crude petroleum oil, natural  
4 gas or water from escaping from strata in which it is found  
5 into other strata;

6 (3) to require reports showing locations of  
7 all oil or gas wells and for the filing of logs and drilling  
8 records or reports;

9 (4) to prevent the drowning by water of any  
10 stratum or part thereof capable of producing oil or gas or both  
11 oil and gas in paying quantities and to prevent the premature  
12 and irregular encroachment of water or any other kind of water  
13 encroachment that reduces or tends to reduce the total ultimate  
14 recovery of crude petroleum oil or gas or both oil and gas from  
15 any pool;

16 (5) to prevent fires;

17 (6) to prevent "blow-ups" and "caving" in the  
18 sense that the conditions indicated by such terms are generally  
19 understood in the oil and gas business;

20 (7) to require wells to be drilled, operated  
21 and produced in such manner as to prevent injury to neighboring  
22 leases or properties;

23 (8) to identify the ownership of oil or gas  
24 producing leases, properties, wells, tanks, refineries,  
25 pipelines, plants, structures and all transportation equipment

.225457.2

1 and facilities;

2 (9) to require the operation of wells with  
3 efficient gas-oil ratios and to fix such ratios;

4 (10) to fix the spacing of wells;

5 (11) to determine whether a particular well or  
6 pool is a gas or oil well or a gas or oil pool, as the case may  
7 be, and from time to time to classify and reclassify wells and  
8 pools accordingly;

9 (12) to determine the limits of any pool  
10 producing crude petroleum oil or natural gas or both and from  
11 time to time redetermine the limits;

12 (13) to regulate the methods and devices  
13 employed for storage in this state of oil or natural gas or any  
14 product of either, including subsurface storage;

15 (14) to permit the injection of natural gas or  
16 of any other substance into any pool in this state for the  
17 purpose of repressuring, cycling, pressure maintenance,  
18 secondary or any other enhanced recovery operations;

19 (15) to regulate the disposition, handling,  
20 transport, storage, recycling, treatment and disposal of  
21 produced water during, or for reuse in, the exploration,  
22 drilling, production, treatment or refinement of oil or gas,  
23 including disposal by injection pursuant to authority delegated  
24 under the federal Safe Drinking Water Act, in a manner that  
25 protects public health, the environment and fresh water

.225457.2

1 resources;

2 (16) to determine the limits of any area  
3 containing commercial potash deposits and from time to time  
4 redetermine the limits;

5 (17) to regulate and, where necessary,  
6 prohibit drilling or producing operations for oil or gas within  
7 any area containing commercial deposits of potash where the  
8 operations would have the effect unduly to reduce the total  
9 quantity of the commercial deposits of potash that may  
10 reasonably be recovered in commercial quantities or where the  
11 operations would interfere unduly with the orderly commercial  
12 development of the potash deposits;

13 (18) to spend the oil and gas reclamation fund  
14 and do all acts necessary and proper to plug dry and abandoned  
15 oil and gas wells and to restore and remediate abandoned well  
16 sites and associated production facilities in accordance with  
17 the provisions of the Oil and Gas Act, the rules adopted under  
18 that act and the Procurement Code, including disposing of  
19 salvageable equipment and material removed from oil and gas  
20 wells being plugged by the state;

21 (19) to make well price category  
22 determinations pursuant to the provisions of the federal  
23 Natural Gas Policy Act of 1978 or any successor act and, by  
24 regulation, to adopt fees for such determinations, which fees  
25 shall not exceed twenty-five dollars (\$25.00) per filing. Such

.225457.2

1 fees shall be credited to the account of the oil conservation  
2 division by the state treasurer and may be expended as  
3 authorized by the legislature;

4 (20) to regulate the construction and  
5 operation of oil treating plants and to require the posting of  
6 bonds for the reclamation of treating plant sites after  
7 cessation of operations;

8 (21) to regulate the disposition of  
9 nondomestic wastes resulting from the exploration, development,  
10 production or storage of crude oil or natural gas to protect  
11 public health and the environment; and

12 (22) to regulate the disposition of  
13 nondomestic wastes resulting from the oil field service  
14 industry, the transportation of crude oil or natural gas, the  
15 treatment of natural gas or the refinement of crude oil to  
16 protect public health and the environment, including  
17 administering the Water Quality Act as provided in Subsection E  
18 of Section 74-6-4 NMSA 1978.

19 C. The oil conservation division shall conduct  
20 tribal consultation in the promulgation of rules for the  
21 purposes of this section.

22 D. The oil conservation division shall require that  
23 a permit or approval associated with oil and gas development is  
24 subject to conditions ensuring that at least ninety-eight  
25 percent of produced gas is captured or beneficially reused for

.225457.2

1 the permit or approval to be valid."

2 SECTION 2. Section 74-2-2 NMSA 1978 (being Laws 1967,  
3 Chapter 277, Section 2, as amended) is amended to read:

4 "74-2-2. DEFINITIONS.--As used in the Air Quality Control  
5 Act:

6 A. "air contaminant" means a substance, including  
7 any particulate matter, fly ash, dust, fumes, gas, mist, smoke,  
8 vapor, micro-organisms, radioactive material, any combination  
9 thereof or any decay or reaction product thereof;

10 B. "air pollution" means the emission, except  
11 emission that occurs in nature, into the outdoor atmosphere of  
12 one or more air contaminants in quantities and of a duration  
13 that may with reasonable probability injure human health or  
14 animal or plant life or as may unreasonably interfere with the  
15 public welfare, visibility or the reasonable use of property;

16 C. "carbon dioxide equivalent" means the metric  
17 tons of a greenhouse gas that have the same global warming  
18 potential based on their relative radiative forcing effect over  
19 a specified period of time as one metric ton of carbon dioxide  
20 in the atmosphere;

21 [~~G.~~] D. "department" means the department of  
22 environment;

23 E. "direct emissions" means anthropogenic  
24 greenhouse gas emissions and includes emissions from  
25 electricity generated in-state and out-of-state, transportation

.225457.2

1 and heating fuels combusted in the state, buildings,  
2 structures, distribution systems, waste management and  
3 agricultural, silvicultural and other manufacturing processes;

4           ~~[D.]~~ F. "director" means the administrative head of  
5 a local agency;

6           ~~[E.]~~ G. "emission limitation" or "emission  
7 standard" means a requirement established by the environmental  
8 improvement board or the local board, the department, the local  
9 authority or the local agency or pursuant to the federal act  
10 that limits the quantity, rate or concentration, or combination  
11 thereof, of emissions of air contaminants on a continuous  
12 basis, including any requirements relating to the operation or  
13 maintenance of a source to assure continuous reduction;

14           ~~[F.]~~ H. "federal act" means the federal Clean Air  
15 Act, its subsequent amendments and successor provisions;

16           ~~[G.]~~ I. "federal standard of performance" means a  
17 standard of performance, emission limitation or emission  
18 standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

19           J. "greenhouse gas" means gaseous compounds that  
20 absorb infrared radiation emitted from the earth's surface and  
21 trap heat in the earth's atmosphere, including carbon dioxide,  
22 methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons,  
23 nitrogen trifluoride and sulfur hexafluoride, but not including  
24 water vapor;

25           ~~[H.]~~ K. "hazardous air pollutant" means an air



1 contaminant that has been listed as a hazardous air pollutant  
2 pursuant to the federal act;

3 ~~[F.]~~ L. "local agency" means the administrative  
4 agency established by a local authority pursuant to Paragraph  
5 (2) of Subsection A of Section 74-2-4 NMSA 1978;

6 ~~[J.]~~ M. "local authority" means any of the  
7 following political subdivisions of the state that have, by  
8 following the procedure set forth in Subsection A of Section  
9 74-2-4 NMSA 1978, assumed jurisdiction for local administration  
10 and enforcement of the Air Quality Control Act:

11 (1) a county that was a class A county as of  
12 January 1, 1980; or

13 (2) a municipality with a population greater  
14 than one hundred thousand located within a county that was a  
15 class A county as of January 1, 1980;

16 ~~[K.]~~ N. "local board" means a municipal, county or  
17 joint air quality control board created by a local authority;

18 ~~[L.]~~ O. "mandatory class I area" means any of the  
19 following areas in this state that were in existence on August  
20 7, 1977:

21 (1) national wilderness areas that exceed five  
22 thousand acres in size; and

23 (2) national parks that exceed six thousand  
24 acres in size;

25 ~~[M.]~~ P. "modification" means a physical change in,

.225457.2

1 or change in the method of operation of, a source that results  
2 in an increase in the potential emission rate of a regulated  
3 air contaminant emitted by the source or that results in the  
4 emission of a regulated air contaminant not previously emitted,  
5 but does not include:

6 (1) a change in ownership of the source;

7 (2) routine maintenance, repair or  
8 replacement;

9 (3) installation of air pollution control  
10 equipment, and all related process equipment and materials  
11 necessary for its operation, undertaken for the purpose of  
12 complying with regulations adopted by the environmental  
13 improvement board or the local board or pursuant to the federal  
14 act; or

15 (4) unless previously limited by enforceable  
16 permit conditions:

17 (a) an increase in the production rate,  
18 if such increase does not exceed the operating design capacity  
19 of the source;

20 (b) an increase in the hours of  
21 operation; or

22 (c) use of an alternative fuel or raw  
23 material if, prior to January 6, 1975, the source was capable  
24 of accommodating such fuel or raw material or if use of an  
25 alternate fuel or raw material is caused by a natural gas

.225457.2

1 curtailment or emergency allocation or [~~an other~~] another lack  
2 of supply of natural gas;

3 Q. "net-zero emissions" means allowable direct  
4 emissions of greenhouse gases that are fully offset;

5 [~~N.~~] R. "nonattainment area" means for an air  
6 contaminant an area that is designated "nonattainment" with  
7 respect to that contaminant within the meaning of Section  
8 107(d) of the federal act;

9 S. "offset" means a quantifiable, enforceable,  
10 additional, permanent and verifiable greenhouse gas reduction  
11 or sequestration by biological, chemical or geological means  
12 measured in terms of metric tons of carbon dioxide equivalent;

13 [~~Q.~~] T. "person" includes an individual,  
14 partnership, corporation, association, the state or political  
15 subdivision of the state and any agency, department or  
16 instrumentality of the United States and any of their officers,  
17 agents or employees;

18 [~~P.~~] U. "potential emission rate" means the  
19 emission rate of a source at its maximum capacity to emit a  
20 regulated air contaminant under its physical and operational  
21 design, provided any physical or operational limitation on the  
22 capacity of the source to emit a regulated air contaminant,  
23 including air pollution control equipment and restrictions on  
24 hours of operation or on the type or amount of material  
25 combusted, stored or processed, shall be treated as part of its

.225457.2

1 physical and operational design only if the limitation or the  
2 effect it would have on emissions is enforceable by the  
3 department or the local agency pursuant to the Air Quality  
4 Control Act or the federal act;

5 [Q.] V. "regulated air contaminant" means an air  
6 contaminant, the emission or ambient concentration of which is  
7 regulated pursuant to the Air Quality Control Act or the  
8 federal act;

9 [R.] W. "secretary" means the secretary of  
10 environment;

11 [S.] X. "significant deterioration" means an  
12 increase in the ambient concentrations of an air contaminant  
13 above the levels allowed by the federal act or federal  
14 regulations for that air contaminant in the area within which  
15 the increase occurs;

16 [T.] Y. "source" means a structure, building,  
17 equipment, facility, installation or operation that emits or  
18 may emit an air contaminant;

19 [U.] Z. "standard of performance" means a  
20 requirement of continuous emission reduction, including any  
21 requirement relating to operation or maintenance of a source to  
22 assure continuous emission reduction;

23 [V.] AA. "state implementation plan" means a plan  
24 submitted by New Mexico to the federal environmental protection  
25 agency pursuant to 42 U.S.C. Section 7410; and

.225457.2

1           [~~W-~~] BB. "toxic air pollutant" means an air  
 2 contaminant, except a hazardous air pollutant, classified by  
 3 the environmental improvement board or the local board as a  
 4 toxic air pollutant."

5           **SECTION 3.** A new section of the Air Quality Control Act  
 6 is enacted to read:

7           "[NEW MATERIAL] GREENHOUSE GAS EMISSIONS REDUCTION  
 8 TARGETS.--Annual emissions of greenhouse gases in the state, as  
 9 measured in carbon dioxide equivalents, shall be limited as  
 10 follows:

11           A. by 2030, statewide direct emissions of  
 12 greenhouse gases shall be at least fifty percent less than 2005  
 13 levels;

14           B. by 2040, statewide direct emissions of  
 15 greenhouse gases shall be at least seventy-five percent less  
 16 than 2005 levels;

17           C. by 2050 and in every subsequent year, statewide  
 18 direct emissions of greenhouse gases shall be at least ninety  
 19 percent less than 2005 levels; and

20           D. by 2050 and in every subsequent year, any  
 21 remaining statewide direct emissions of greenhouse gases shall  
 22 be at least matched by quantifiable, enforceable, additional,  
 23 permanent and verifiable offsets to achieve net-zero emissions  
 24 in 2050 and every subsequent year."

25           **SECTION 4.** [NEW MATERIAL] SHORT TITLE.--Sections 4

.225457.2

underscored material = new  
 [bracketed material] = delete

1 through 7 of this act may be cited as the "Clean Future Act".

2 SECTION 5. [NEW MATERIAL] DEFINITIONS.--As used in the  
3 Clean Future Act:

4 A. "direct emissions" means anthropogenic  
5 greenhouse gas emissions and includes emissions from  
6 electricity generated in-state and out-of-state, transportation  
7 and heating fuels combusted in the state, buildings,  
8 structures, distribution systems, waste management and  
9 agricultural, silvicultural and other manufacturing processes;

10 B. "disproportionately impacted communities" means  
11 a community or populations of people for which multiple  
12 burdens, including environmental and socioeconomic stressors,  
13 inequity, poverty, high unemployment, pollution or  
14 discrimination, may act to persistently and negatively affect  
15 the health, well-being and environment of the community or  
16 population and includes tribal communities, communities of  
17 color, low-income rural communities, native people, people of  
18 color, women, immigrants, youth, formerly incarcerated people,  
19 lesbian, gay, bisexual, transgender and queer people and people  
20 with disabilities;

21 C. "greenhouse gas" means gaseous compounds that  
22 absorb infrared radiation emitted from the earth's surface and  
23 trap heat in the earth's atmosphere, including carbon dioxide,  
24 methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons,  
25 nitrogen trifluoride and sulfur hexafluoride, but not including

.225457.2

1 water vapor; and

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

8 SECTION 6. [NEW MATERIAL] STATE ENTITIES--CLIMATE EQUITY  
9 AND ENVIRONMENTAL JUSTICE REVIEW OF CLIMATE CHANGE-RELATED  
10 RESPONSE ACTIONS.--

11 A. Except when expressly prohibited by law, a state  
12 entity shall apply the following climate equity principles to  
13 policy and rule development:

- 14 (1) engage and prioritize reductions in
- 15 disproportionately impacted communities;
- 16 (2) respect tribal sovereignty and require
- 17 collaboration and consultation;
- 18 (3) maintain accountability and transparency;
- 19 (4) incorporate traditional knowledge and
- 20 experience;
- 21 (5) advance equitable economic transition;
- 22 (6) prioritize creating and maintaining
- 23 universal access to utilities; and
- 24 (7) reduce health and environmental impacts.

25 B. The implementation of the equity principles in

.225457.2

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

1 Subsection A of this section may be explained through guidance  
2 issued by the climate change task force, either now in  
3 existence or that might be developed in the future, so long as  
4 the guidance or any amendments thereto is developed using a  
5 public review and comment process.

6 SECTION 7. [NEW MATERIAL] REPORTING--DETERMINATION OF  
7 2005 DIRECT GREENHOUSE GAS EMISSION LEVELS.--

8 A. By April 15, 2024 and by April 15 of each  
9 successive year, each state entity shall provide to designees  
10 of the department of environment and the energy, minerals and  
11 natural resources department information on:

12 (1) the qualitative and quantitative impacts  
13 of climate change on the state entity's programs and operations  
14 and, to the extent known, on disproportionately impacted  
15 communities;

16 (2) prior and future actions by the state  
17 entity to integrate climate change adaptation and mitigation  
18 practices into the state entity's programs or operations;

19 (3) the existing and projected future direct  
20 emissions of greenhouse gases, to the extent known, from  
21 sources or sectors that are subject to the state entity's  
22 regulatory jurisdiction for the purposes of monitoring or  
23 reducing greenhouse gas emissions and the progress being made  
24 by those sources and sectors toward meeting the statewide  
25 climate goals and greenhouse gas emissions limits established

.225457.2



1 in the Clean Future Act; and

2 (4) any additional authority or resources  
 3 needed or impediments that, if addressed, could facilitate  
 4 efforts by the state entity to meet statewide climate goals and  
 5 reduce direct emissions of greenhouse gases from sources or  
 6 sectors within that state entity's regulatory jurisdiction to  
 7 meet greenhouse gas emissions limits established in the Clean  
 8 Future Act.

9 B. By July 1, 2024 and by July 1 of each successive  
 10 year, the department of environment and the energy, minerals  
 11 and natural resources department shall jointly publish a report  
 12 on the state's annual progress toward meeting the statewide  
 13 climate goals and the greenhouse gas emissions limits  
 14 established in the Clean Future Act. The first report  
 15 published shall report on the state's annual programs and  
 16 determine the 2005 levels of statewide direct emissions of  
 17 greenhouse gases. Additionally, each annual report shall:

18 (1) prioritize coordination with and  
 19 consideration of environmental and economic progress for, and  
 20 the avoidance of impacts to, disproportionately impacted  
 21 communities;

22 (2) contain an inventory of all statewide  
 23 greenhouse gas emissions based on best available data and  
 24 information and the progress being made toward achieving the  
 25 greenhouse gas emission limits established in the Clean Future

.225457.2

underscored material = new  
 [bracketed material] = delete

1 Act; provided that the inventory includes, at a minimum, total  
2 direct emissions statewide and any sector- or source-specific  
3 greenhouse gas emission information required to be reported  
4 pursuant to rules adopted by any applicable state or federal  
5 entity and in effect at the time such report is prepared;

6 (3) identify specific policies and regulatory  
7 strategies that are either in place or necessary to achieve the  
8 greenhouse gas emissions reductions; and

9 (4) be distributed to Indian nations, tribes  
10 and pueblos in the state.

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