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SENATE BILL 48

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Timothy M. Keller and Emily Kane

AN ACT

RELATING TO PUBLIC HEALTH; ESTABLISHING A HEALTH IMPACT ASSESSMENT PROGRAM IN THE DEPARTMENT OF ENVIRONMENT; REQUIRING THAT CERTAIN CONSTRUCTION OR DEVELOPMENT PROJECTS OBTAIN A CERTIFICATE OF HEALTH IMPACT; PROVIDING FOR THE ESTABLISHMENT OF A HEALTH IMPACT ADVISORY COMMITTEE; PROVIDING FOR RULEMAKING; PROVIDING FOR APPEALS; AMENDING A SECTION OF THE HEALTH INFORMATION SYSTEM ACT TO REQUIRE THE DEPARTMENT OF HEALTH TO USE ITS HEALTH INFORMATION SYSTEM TO ISSUE COMMUNITY HEALTH INDEXES FOR NEW MEXICO COUNTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Health Impact Assessment Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the .194503.2

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1 Health Impact Assessment Act:

2 A. "applicant" means an applicant for a certificate  
3 of health impact or for a renewal of an existing certificate of  
4 health impact;

5 B. "department" means the department of  
6 environment; and

7 C. "secretary" means the secretary of environment.

8 SECTION 3. [NEW MATERIAL] HEALTH IMPACT ASSESSMENT

9 PROGRAM--ESTABLISHMENT--ADVISORY COMMITTEE--RULEMAKING.--

10 A. The secretary shall establish a health impact  
11 assessment program in the department to promote healthy  
12 communities, eliminate health disparities among communities and  
13 protect the human environment. The health impact assessment  
14 program shall develop a health impact assessment and a program  
15 for issuing certificates of health impact for use statewide  
16 pursuant to the provisions of Section 5 of the Health Impact  
17 Assessment Act.

18 B. The secretary shall adopt and promulgate rules  
19 to establish:

20 (1) procedures for requesting, applying for,  
21 reviewing, taking public comment on and appealing the  
22 department's ruling on issuance of a certificate of health  
23 impact;

24 (2) acceptable health impact standards for  
25 purposes of issuing or denying a certificate of health impact;

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1 (3) the use of county health indexes in the  
2 health impact assessment procedure;

3 (4) a procedure for enhanced public  
4 notification of and involvement in developing community health  
5 awareness and mitigation options; and

6 (5) an application fee and procedure for  
7 conducting health impact assessments.

8 C. The secretary shall adopt and promulgate rules  
9 that establish procedures that ensure that the public, affected  
10 governmental agencies and any other person whose health may be  
11 affected by a project shall receive notice of each application  
12 for issuance, renewal or modification of a certificate. Public  
13 notice shall include:

14 (1) for issuance or modification of a  
15 certificate of health impact:

16 (a) notice by mail to adjacent and  
17 nearby landowners; local, state and federal governments; land  
18 grant organizations; ditch associations; and Indian nations,  
19 tribes and pueblos;

20 (b) posting notice at a place  
21 conspicuous to the public and near the discharge or proposed  
22 project site; and

23 (c) a display advertisement in English  
24 and Spanish in a newspaper of general circulation in the  
25 location of the discharge or proposed project; provided,

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1 however, that the advertisement shall not be displayed solely  
2 in the classified or legal advertisement sections; and

3 (2) for issuance of renewals of certificate of  
4 health impact:

5 (a) notice by mail to the interested  
6 public, municipalities, counties, land grant organizations,  
7 ditch associations and Indian nations, tribes and pueblos; and

8 (b) a display advertisement in English  
9 and Spanish in a newspaper of general circulation in the  
10 location of the discharge; provided, however, that the  
11 advertisement shall not be displayed solely in the classified  
12 or legal advertisement sections.

13 D. The secretary shall not make a ruling on any  
14 application for a certificate of health impact without  
15 opportunity for a public hearing at which all interested  
16 persons shall be given a reasonable chance to submit evidence,  
17 data, views or arguments, orally or in writing, and to examine  
18 witnesses testifying at the hearing. The hearing shall be  
19 recorded. Any person submitting evidence, data, views or  
20 arguments shall be subject to examination at the hearing.

21 E. Certificates of health impact shall be issued  
22 for fixed terms not to exceed five years. For new projects,  
23 the term of the certificate of health impact shall commence on  
24 the date the project begins.

25 F. A person that is adversely affected by a project

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1 that has received a certificate of health impact may file a  
2 petition for review before the department in accordance with  
3 the Administrative Procedures Act. The petition shall:

4 (1) be made in writing to the department  
5 within thirty days from the date notice is given of the  
6 department's action;

7 (2) include a statement of the issues to be  
8 raised and the relief sought; and

9 (3) be provided to all other persons  
10 submitting evidence, data, views or arguments in the proceeding  
11 before the department.

12 SECTION 4. [NEW MATERIAL] HEALTH IMPACT ASSESSMENT  
13 PROGRAM ADVISORY COMMITTEE--CREATION--DUTIES--APPOINTMENT--  
14 COMPENSATION.--

15 A. The secretary shall create a five-member health  
16 impact assessment program advisory committee. The health  
17 impact assessment program advisory committee shall review  
18 applications for certificates of health impact and shall  
19 provide opinions to the secretary as to whether a project  
20 conforms to the health impact standards established pursuant to  
21 department rules.

22 B. The secretary shall appoint five members to the  
23 committee who shall have specialized knowledge of health impact  
24 assessment and environmental impact analysis.

25 C. Members of the health impact assessment program

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1 advisory committee shall be subject to applicable provisions of  
2 the Governmental Conduct Act and shall not have any direct or  
3 indirect affiliation with an industry subject to regulation  
4 pursuant to the Environmental Improvement Act.

5 D. Members of the committee shall receive per diem  
6 and mileage as provided for nonsalaried public officers in the  
7 Per Diem and Mileage Act and shall receive no other  
8 compensation, perquisite or allowance.

9 SECTION 5. [NEW MATERIAL] CERTIFICATE OF HEALTH IMPACT  
10 REQUIRED--EXCEPTIONS.--

11 A. Except as provided in Subsection E of this  
12 section, and in addition to other environmental assessments  
13 required by state and federal law, a person shall not begin  
14 construction or development of a project that requires an  
15 environmental assessment or an environmental impact statement  
16 for effects on air, water and soil quality pursuant to another  
17 state or federal law unless the person receives a certificate  
18 of health impact or a waiver pursuant to the provisions of the  
19 Health Impact Assessment Act.

20 B. A person who seeks to begin construction or  
21 development of a project that requires an environmental  
22 assessment or an environmental impact statement shall apply to  
23 the department for a certificate of health impact authorizing  
24 the project.

25 C. Within ninety days of receiving an application

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1 pursuant to Subsection B of this section, the department shall  
2 issue a health impact assessment relating to the area within a  
3 one-mile radius of a proposed project. A health impact  
4 assessment shall describe the projected outcome of the project  
5 in terms of the effect on county health outcome indicators  
6 listed in the county health index for that county created  
7 pursuant to Subsection E of Section 24-14A-3 NMSA 1978.

8 D. The department shall not issue a certificate of  
9 health impact to a project unless the health impact assessment  
10 conforms to the health impact standards established pursuant to  
11 department rules.

12 E. This section does not apply to a project that is  
13 identified by the secretary as a project that is:

14 (1) in response to an emergency declared by  
15 the governor;

16 (2) a remediation project; or

17 (3) for the treatment or disposal of  
18 wastewater or sewage sludge.

19 SECTION 6. [NEW MATERIAL] DENIAL, MODIFICATION OR  
20 TERMINATION OF CERTIFICATE OF HEALTH IMPACT--CONDITIONAL  
21 CERTIFICATION--APPEALS.--

22 A. The department shall deny any application for  
23 certification of health impact if:

24 (1) the project at issue in the application  
25 would not meet the health impact standards established pursuant

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1 to department rules;

2 (2) the applicant has failed to supply the  
3 information required by department rules in making an  
4 application; or

5 (3) the applicant has, within the ten years  
6 immediately preceding the date of submission of the application  
7 for certificate of health impact:

8 (a) knowingly misrepresented a material  
9 fact in an application for a certificate of health impact;

10 (b) refused or failed to disclose any  
11 information required pursuant to department rules;

12 (c) been convicted of a felony or other  
13 crime involving moral turpitude;

14 (d) been convicted of a felony in any  
15 court for any crime defined by state or federal law as being a  
16 restraint of trade, price-fixing, bribery or fraud;

17 (e) exhibited a history of willful  
18 disregard for environmental laws of any state or the United  
19 States; or

20 (f) had an environmental permit revoked  
21 or permanently suspended for cause under any environmental laws  
22 of any state or the United States.

23 B. The department may terminate a certificate of  
24 health impact prior to its date of expiration for any of the  
25 following causes:

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1 (1) violation of any condition of the  
2 certificate of health impact;

3 (2) obtaining the certificate of health impact  
4 by misrepresentation or failure to disclose fully all relevant  
5 facts in the project application;

6 (3) violation of any applicable department  
7 rules; or

8 (4) a change in any condition that may have an  
9 impact in any indicators of the county health index for the  
10 county in which the project is located.

11 C. The secretary may adopt and promulgate rules to  
12 impose reasonable conditions upon projects and issue  
13 conditional certificates of health impact to monitor the  
14 projects' conformance to the health impact standards  
15 established pursuant to department rules. A conditional  
16 certificate of health impact shall indicate the conditions to  
17 which a project must conform.

18 D. The secretary may modify a certificate of health  
19 impact in order to ensure that a project conforms to the health  
20 impact standards established pursuant to department rules.

21 E. If the department denies, modifies or terminates  
22 a certificate of health impact or grants a certificate of  
23 health impact subject to condition, the department shall notify  
24 the applicant by certified mail of the action taken and the  
25 reasons for the action.

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1 F. A person whose certificate of health impact has  
2 been denied, issued on a conditional basis, modified or  
3 terminated may appeal the department's ruling by filing a  
4 request in accordance with department rules for an adjudicatory  
5 hearing pursuant to the Administrative Procedures Act.

6 SECTION 7. Section 24-14A-3 NMSA 1978 (being Laws 1989,  
7 Chapter 29, Section 3, as amended) is amended to read:

8 "24-14A-3. HEALTH INFORMATION SYSTEM--CREATION--DUTIES OF  
9 DEPARTMENT--COUNTY HEALTH INDEXES.--

10 A. The "health information system" is created for  
11 the purpose of assisting the department, legislature and other  
12 agencies and organizations in the state's efforts in  
13 collecting, analyzing and disseminating health information to  
14 assist:

15 (1) in the performance of health planning and  
16 policymaking functions, including identifying personnel,  
17 facility, education and other resource needs and allocating  
18 financial, personnel and other resources where appropriate;

19 (2) consumers in making informed decisions  
20 regarding health care; and

21 (3) in administering, monitoring and  
22 evaluating a statewide health plan.

23 B. In carrying out its powers and duties pursuant  
24 to the Health Information System Act, the department shall not  
25 duplicate databases that exist in the public sector or

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1 databases in the private sector to which it has electronic  
2 access. Every governmental entity shall provide the department  
3 with access to its health-related data as needed by the  
4 department. The department shall collect data from data  
5 sources in the most cost-effective and efficient manner.

6 C. The department shall establish, operate and  
7 maintain the health information system.

8 D. In establishing, operating and maintaining the  
9 health information system, the department shall:

10 (1) obtain information on the following health  
11 factors:

12 (a) mortality and natality, including  
13 accidental causes of death;

14 (b) morbidity;

15 (c) health behavior;

16 (d) disability;

17 (e) health system costs, availability,  
18 utilization and revenues;

19 (f) environmental factors;

20 (g) health personnel;

21 (h) demographic factors;

22 (i) social, cultural and economic  
23 conditions affecting health, including language preference;

24 (j) family status;

25 (k) medical and practice outcomes as

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1 measured by nationally accepted standards and quality of care;  
2 and

3 (1) participation in clinical research  
4 trials;

5 (2) give the highest priority in data  
6 gathering to information needed to implement and monitor  
7 progress toward achievement of the state health policy,  
8 including determining where additional health resources such as  
9 personnel, programs and facilities are most needed, what those  
10 additional resources should be and how existing resources  
11 should be reallocated;

12 (3) standardize collection and specific  
13 methods of measurement across databases and use scientific  
14 sampling or complete enumeration for collecting and reporting  
15 health information;

16 (4) take adequate measures to provide health  
17 information system security for all health data acquired under  
18 the Health Information System Act and protect individual  
19 patient and provider confidentiality. The right to privacy for  
20 the individual shall be a major consideration in the collection  
21 and analysis of health data and shall be protected in the  
22 reporting of results;

23 (5) adopt and promulgate rules necessary to  
24 establish and administer the provisions of the Health  
25 Information System Act, including an appeals process for data

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1 sources and procedures to protect data source proprietary  
2 information from public disclosure;

3 (6) establish definitions, formats and other  
4 common information standards for core health data elements of  
5 the health information system in order to provide an integrated  
6 financial, statistical and clinical health information system,  
7 including a geographic information system, that allows data  
8 sharing and linking across databases maintained by data sources  
9 and federal, state and local public agencies;

10 (7) develop and maintain health and health-  
11 related data inventories and technical documentation on data  
12 holdings in the public and private sectors;

13 (8) collect, analyze and make available health  
14 data to support preventive health care practices and to  
15 facilitate the establishment of appropriate benchmark data to  
16 measure performance improvements over time;

17 (9) establish and maintain a systematic  
18 approach to the collection and storage of health data for  
19 longitudinal, demographic and policy impact studies;

20 (10) use expert system-based protocols to  
21 identify individual and population health risk profiles and to  
22 assist in the delivery of primary and preventive health care  
23 services;

24 (11) collect health data sufficient for  
25 consumers to be able to evaluate health care services, plans,

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1 providers and payers and to make informed decisions regarding  
2 quality, cost and outcome of care across the spectrum of health  
3 care services, providers and payers;

4 (12) collect comprehensive information on  
5 major capital expenditures for facilities, equipment by type  
6 and by data source and significant facility capacity  
7 reductions; provided that for the purposes of this paragraph  
8 and Section 24-14A-5 NMSA 1978, "major capital expenditure"  
9 means purchases of at least one million dollars (\$1,000,000)  
10 for construction or renovation of facilities and at least five  
11 hundred thousand dollars (\$500,000) for purchase or lease of  
12 equipment, and "significant facility capacity reductions" means  
13 those reductions in facility capacities as defined by the  
14 department;

15 (13) serve as a health information  
16 clearinghouse, including facilitating private and public  
17 collaborative, coordinated data collection and sharing and  
18 access to appropriate data and information, maintaining patient  
19 and client confidentiality in accordance with state and federal  
20 requirements;

21 (14) collect data in the most cost-efficient  
22 and effective method feasible and adopt rules that place a  
23 limit on the maximum amount of unreimbursed costs that a data  
24 source can incur in any year for the purposes of complying with  
25 the data requirements of the Health Information System Act; and

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1                   (15) identify disparities in health care  
2 access and quality by aggregating the information collected  
3 pursuant to Paragraph (1) of this subsection by population  
4 subgroups to include race, ethnicity, gender and age.

5                   E. The department shall develop and publish a  
6 county health index for each county. The index shall be a  
7 cumulative evaluation of the health of the county using county  
8 health outcome indicators that are based on county rates of  
9 disease and premature death and that ranks communities  
10 according to the average outcomes for the entire state. The  
11 department shall update the index every five years. The index  
12 shall take into consideration the following factors:

13                   (1) primary indicators of the vulnerability of  
14 the county to health effects from sources of air, water or soil  
15 contamination that include:

16                                   (a) total age-adjusted mortality;

17                                   (b) total age-adjusted emergency room  
18 visits;

19                                   (c) the prevalence of elevated blood  
20 lead levels in children thirteen years of age or younger;

21                                   (d) the number of hospital admissions  
22 related to asthma;

23                                   (e) the prevalence of asthma in children  
24 who are fourteen years of age or younger; and

25                                   (f) the infant mortality rate;

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1                   (2) secondary indicators of the vulnerability  
2 of the county to health effects from sources of air, water or  
3 soil contamination that include:

4                   (a) the morbidity rate related to  
5 age-adjusted noncongenital cardiovascular disease and stroke;

6                   (b) the total number of age-adjusted  
7 heart attack hospitalizations;

8                   (c) the total number of age-adjusted  
9 stroke and stroke-related hospitalizations; and

10                   (d) the total number of bronchitis and  
11 bronchitis-related hospitalizations of children who are  
12 fourteen years of age or younger and of adults who are sixty-  
13 five years of age and older; and

14                   (3) other health indicators in the county that  
15 include:

16                   (a) other health outcome indicators  
17 determined by the secretary to be relevant to a county's  
18 vulnerability to pollutants; and

19                   (b) environmental indicators, including  
20 air and water quality data."