

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 206

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

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE ENVIRONMENTAL REVIEW
ACT; PROVIDING RULEMAKING AUTHORITY TO THE ENVIRONMENTAL
IMPROVEMENT BOARD; ENUMERATING THE POWERS AND DUTIES OF LEAD
AND COOPERATING AGENCIES; MAKING APPROPRIATIONS.

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 "Environmental Review Act".

SECTION 2. ~~[NEW MATERIAL]~~ PURPOSE.--Pursuant to Article
20, Section 21 of the constitution of New Mexico, declaring a
healthful environment to be of fundamental importance to the
public interest, health, safety and general welfare of New
Mexicans, it is the purpose of the Environmental Review Act to:

A. provide the people of New Mexico with a high-
quality environment now and in the future, which includes

1 healthy wildlife populations and clean air, water and land;

2 B. require government agencies at all levels to
3 consider qualitative, technical and economic factors of a
4 project that may impact public health, ecosystems and the
5 environment; long-term as well as short-term benefits and costs
6 of proposed projects; the cumulative impacts of proposed
7 projects; and reasonable alternatives to proposed actions
8 affecting the environment, communities or public health; and

9 C. promote and encourage diverse public interest
10 and participation in the project permitting process.

11 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
12 Environmental Review Act:

13 A. "applicant" means a person applying for:

14 (1) funding from the state for a project; or
15 (2) a lease, permit, license, certificate or
16 other entitlement required by law from a public agency pursuant
17 to any law enforced by the public agency;

18 B. "cooperating agency" means a public agency other
19 than a lead agency that has jurisdiction by law or special
20 expertise with respect to an environmental impact or an Indian
21 nation, tribe or pueblo if the project is proposed to occur
22 within fifteen miles of the boundary of the Indian nation,
23 tribe or pueblo;

24 C. "cumulative impact" means the incremental
25 environmental impacts of an individual project combined with

1 the environmental impacts caused by past projects in proximity
2 to the project property, including environmental impacts caused
3 by other current projects and environmental impacts caused by
4 reasonably foreseeable future projects;

5 D. "environment" means the physical conditions that
6 may be affected by a project, including land, air, water,
7 minerals, flora, fauna, noise levels or objects of historic or
8 aesthetic significance, including historic properties listed on
9 the national register of historic places of the national park
10 service or cultural properties defined by the Cultural
11 Properties Act, traditional cultural properties or areas of
12 cultural significance;

13 E. "environmental assessment" means an
14 informational document prepared by a public agency, or that a
15 public agency causes to be prepared, that has as its purpose
16 to:

17 (1) issue a finding of no significant impact;

18 or

19 (2) determine that further evaluation of a
20 project is necessary through preparation of an environmental
21 impact statement;

22 F. "environmental impact statement" means an
23 informational, detailed document prepared by a public agency,
24 or that a public agency causes to be prepared, setting forth
25 the matters specified in Section 6 of the Environmental Review

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1 Act, that, when its preparation is required by the
2 Environmental Review Act, is considered by a public agency
3 prior to the public agency's approval or disapproval of a
4 project;

5 G. "finding of no significant impact" means a
6 written statement, following an environmental assessment,
7 briefly describing the reasons that a project is not likely to
8 have a significant effect on the environment and therefore does
9 not require the preparation of an environmental impact
10 statement;

11 H. "lead agency" means the public agency primarily
12 responsible for the preparation and evaluation of environmental
13 impact statements, environmental assessments or findings of no
14 significant impact;

15 I. "project" means an activity or proposed activity
16 that:

17 (1) is directly undertaken by a public agency,
18 including rulemaking by a public agency;

19 (2) is undertaken by a person that is
20 supported, in whole or in part, through contracts, grants,
21 subsidies, loans or other forms of assistance by one or more
22 public agencies;

23 (3) involves one or more public agencies
24 issuing a lease, permit, license, certificate or other
25 entitlement; or

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1 (4) is proposed on state land or land that is
2 subject to state jurisdiction;

3 J. "project property" means the land on which a
4 project or a proposed project is located or proposed to be
5 located;

6 K. "proximity" means:

7 (1) within one-fourth mile of a project
8 property if the project property is in a class A or H class
9 county or in a municipality with a population of more than two
10 thousand five hundred people; or

11 (2) within two and one-half miles of a project
12 property if the project property is in a county other than a
13 class A or H class county or in a municipality with a
14 population of less than two thousand five hundred people;

15 L. "public agency" means a state agency, board or
16 commission, a post-secondary educational institution or a
17 regional, county, municipal or local governmental entity;

18 M. "significant effect on the environment" means a
19 determination made by a public agency that a project is likely
20 to have a significant effect on the environment; and

21 N. "special expertise" means a statutory
22 responsibility, an issue of concern within the mission of an
23 agency, programmatic experience with an issue related to a
24 project or expertise that is not readily available from other
25 sources.

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1 SECTION 4. [NEW MATERIAL] DETERMINATION OF LEAD AGENCY--
2 COOPERATING AGENCIES--POWERS AND DUTIES.--

3 A. The public agency with primary responsibility
4 for issuing a lease, permit, license, certificate or other
5 entitlement required by law for a project shall be considered
6 the lead agency for the purposes of preparing and evaluating
7 environmental impact statements, environmental assessments or
8 findings of no significant impact.

9 B. When more than one public agency has
10 responsibility for issuing recommendations or permit or license
11 approvals for a project, only one agency shall act as the lead
12 agency. The public agencies involved, by agreement, shall
13 determine the lead agency based on:

14 (1) the magnitude of each public agency's
15 involvement in the project approval process;

16 (2) each public agency's expertise concerning
17 the project's environmental impacts;

18 (3) the duration of each public agency's
19 involvement in the project's approval process, with longer
20 involvement favoring designation of lead agency status; and

21 (4) the sequence of each public agency's
22 involvement.

23 C. A lead agency may request data and information
24 from other state agencies and nongovernmental entities as
25 needed.

1 D. If a project is proposed to occur within fifteen
2 miles of the boundary of the land of an Indian nation, tribe or
3 pueblo, the lead agency shall request the Indian nation, tribe
4 or pueblo to become a cooperating agency.

5 E. A lead agency shall:

6 (1) secure appropriate funding for undertaking
7 the Environmental Review Act process from an applicant;

8 (2) request the participation of each
9 cooperating agency in the Environmental Review Act process at
10 the earliest possible time;

11 (3) use existing environmental analyses and
12 proposals of cooperating agencies to the maximum extent
13 possible consistent with its responsibility as lead agency;

14 (4) meet with a cooperating agency at a
15 cooperating agency's request;

16 (5) determine the level of analysis that is
17 required for a project;

18 (6) ensure that the analysis is conducted and
19 evaluate the analysis based on the agency's expertise,
20 experience and the best available science;

21 (7) after analysis, make a determination on
22 whether or how to issue a requested permit or rule; and

23 (8) to the extent funds are available, fund
24 the major activities or analyses that the lead agency requests
25 from cooperating agencies. A potential lead agency shall

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1 include funding requirements to carry out the Environmental
2 Review Act in its budget requests.

3 F. A cooperating agency:

4 (1) shall participate in the Environmental
5 Review Act process at the earliest possible time, in accordance
6 with a cooperating agency's agreement with a lead agency;

7 (2) shall, if capable and at the lead agency's
8 request, assume responsibility for developing necessary
9 information and preparing environmental analyses, including
10 portions of the environmental assessment or environmental
11 impact statement, for which the cooperating agency has special
12 expertise;

13 (3) shall, at the lead agency's request,
14 provide staff support to enhance the lead agency's
15 interdisciplinary capability;

16 (4) shall use its own funds to participate in
17 the Environmental Review Act process, unless funding is
18 provided by the applicant or the lead agency; and

19 (5) may, in response to a lead agency's
20 request for assistance in preparing an environmental impact
21 statement or reviewing an environmental assessment or
22 environmental impact statement, negotiate the degree of
23 involvement requested or decline to participate on the basis
24 that other program commitments preclude involvement.

25 G. Lead and cooperating agencies shall comply with

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1 the Cultural Properties Act regarding the confidentiality of
2 historic, cultural and archaeological sites in carrying out
3 their duties pursuant to the Environmental Review Act.

4 SECTION 5. [NEW MATERIAL] ASSESSMENT OF ENVIRONMENTAL
5 IMPACTS--SIGNIFICANT EFFECTS--FINDINGS OF NO SIGNIFICANT
6 IMPACT.--

7 A. A public agency shall evaluate a project under
8 its authority or within its scope of duties and determine if
9 the project may have a significant effect on the environment.
10 If a public agency determines that a project may have a
11 significant effect on the environment, the public agency shall
12 perform an environmental assessment of the project. The
13 environmental assessment shall be used as a source of
14 information to guide permitting decisions or other approvals or
15 agency decisions on the project.

16 B. At minimum, an environmental assessment shall
17 include:

- 18 (1) the location of and a map of the project;
19 (2) a description of the project;
20 (3) a time line for completion of the project;
21 (4) a description of the type of landscape or
22 ecosystem in the project area;
23 (5) potential mitigation for environmental
24 impacts, including closure and reclamation plans;
25 (6) a description of surface and ground water;

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1 (7) any hazardous wastes associated with the
2 project;

3 (8) a description of protected fish, plant and
4 wildlife species in the area;

5 (9) an inventory of cultural property surveys
6 and reviews completed in the area;

7 (10) a description of potential public health
8 impacts of the project; and

9 (11) potential cumulative impacts of the
10 project.

11 C. On the basis of substantial evidence in the
12 whole record of an environmental assessment, a lead agency
13 shall either:

14 (1) determine that the project is likely to
15 have a significant effect on the environment and an
16 environmental impact statement is necessary; or

17 (2) issue a finding of no significant impact.

18 D. Unless a project is exempt pursuant to Section 8
19 of the Environmental Review Act, a public agency shall not
20 approve a project that may have a significant effect on the
21 environment without performing an environmental assessment. If
22 a public agency determines that a project is likely to have a
23 significant effect on the environment, an environmental impact
24 statement is required before a project may be approved.

25 E. Unless exempt, the following projects are

1 presumed to require an environmental assessment:

2 (1) projects costing or anticipated to cost
3 two million dollars (\$2,000,000) or more;

4 (2) lease sales of state land for energy
5 development or mining; and

6 (3) projects that a public agency determines
7 may have a significant effect on the environment based on
8 weighing the:

9 (a) size, cost, context and intensity of
10 the project;

11 (b) potential for adverse health, safety
12 or environmental impacts from the project and the possible
13 severity of those impacts;

14 (c) proximity of the proposed project to
15 sensitive places, including historic and cultural properties,
16 areas of cultural significance, wildlife corridors, riparian
17 areas and endangered species habitat; and

18 (d) the likelihood of public controversy
19 over the project.

20 SECTION 6. [NEW MATERIAL] ENVIRONMENTAL IMPACT

21 STATEMENT--REQUIREMENTS.--

22 A. An environmental impact statement shall include
23 a detailed statement setting forth:

24 (1) all significant effects on the environment
25 of the project;

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underscored material = new
[bracketed material] = delete

1 (2) any significant effect on the environment
2 that cannot be avoided if the project is implemented;

3 (3) any significant effect on the environment
4 that would be irreversible if the project is implemented;

5 (4) any significant effect of the project on
6 human health;

7 (5) the cumulative environmental impact of the
8 project, taking into consideration the environmental, public
9 health, safety, economic and environmental justice impacts of
10 past, current and future activities undertaken in proximity to
11 the project;

12 (6) an analysis of the socioeconomic
13 implications of the project, including long- and short-term
14 economic costs and benefits;

15 (7) avoidance and mitigation measures proposed
16 to minimize significant effects on the environment and a
17 description of how those measures would be implemented;

18 (8) the impacts of the project on cultural and
19 historic resources of the state or Indian nations, tribes or
20 pueblos located within the state, including the impacts on
21 cultural and historic properties and areas of cultural
22 significance located within the project area identified by
23 methods such as pedestrian surveys, archival record searches or
24 consultation with Indian nations, tribes or pueblos;

25 (9) the impacts upon the continuing use or

1 existence of or access to archaeological, historic or
2 culturally significant sites or cultural properties, including
3 continuing cultural significance to Indian nations, tribes or
4 pueblos or impacts upon the ability of Indian nations, tribes
5 or pueblos in the state to engage in cultural practices;

6 (10) the impacts upon the continuing
7 availability and use of forest and agricultural resources,
8 including subsistence agriculture and other subsistence
9 practices;

10 (11) alternatives to the proposed project,
11 including:

12 (a) a no-action alternative;

13 (b) a description of significant effects
14 to the environment that would result from each alternative; and

15 (c) the preferred alternative and
16 proposed course of action;

17 (12) a brief statement indicating the reasons
18 for determining that certain effects of a project on the
19 environment are not significant and consequently have not been
20 discussed in detail in the statement; and

21 (13) all public comments and agency responses
22 to substantive public comments received during the public
23 comment period.

24 B. Environmental impact statements shall be
25 reviewed by the department of environment to ensure that

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1 environmental and public health impacts are sufficiently
2 considered, and the department of environment may send an
3 analysis back to the lead agency to make changes or additions
4 within sixty days of receiving the environmental impact
5 statement.

6 C. A project costing or anticipated to cost one
7 hundred million dollars (\$100,000,000) or more is presumed to
8 require the preparation of an environmental impact statement.

9 D. The lead agency shall make the environmental
10 impact statement publicly available and shall take and respond
11 to comments from the public on the project.

12 SECTION 7. [NEW MATERIAL] CONFLICTS OF INTEREST.--A
13 person shall not provide contractual services related to the
14 preparation of an environmental assessment or environmental
15 impact statement without certifying under penalty of perjury
16 that the person does not have a current financial interest of
17 any kind in the project, nor any interest which may cause the
18 contractual services to be biased. A contractor may be removed
19 by the lead agency if the agency determines the contract is not
20 being fulfilled or if the contractor is acting in bad faith.

21 SECTION 8. [NEW MATERIAL] EXEMPTIONS.--The following
22 projects are exempt from the provisions of the Environmental
23 Review Act:

- 24 A. law enforcement activities;
- 25 B. emergency activities to protect public health,

1 safety or the environment, including firefighting and flood
2 management;

3 C. purely ministerial actions, including
4 maintenance of existing facilities or construction of temporary
5 facilities;

6 D. nondestructive data collection and scientific
7 study;

8 E. post-fire rehabilitation activities not
9 exceeding four thousand acres, including tree planting, fence
10 replacement, habitat restoration, heritage site restoration,
11 repair of roads and trails and the repair of damage to minor
12 facilities, including campgrounds, but not including post-fire
13 logging;

14 F. property acquisition;

15 G. small-scale restoration activities consistent
16 with the best available science;

17 H. renewals and assignments of existing permits,
18 leases and easements that are in good standing and where
19 substantially no change in use occurs and continuation of the
20 activity will not lead to significant environmental
21 degradation;

22 I. approval of mineral lease adjustments and
23 transfers, including assignments and subleases;

24 J. approval and issuance of cutting permits for
25 forest products associated with small-scale restoration

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1 activities or vegetation management activities, Christmas tree
2 permits or small wood gathering;

3 K. improvement and maintenance of public roads;

4 L. construction of bicycle and pedestrian lanes and
5 paths adjacent to existing highways and within existing rights
6 of way;

7 M. installation of signs, displays or kiosks;

8 N. issuance of hunting and fishing licenses;

9 O. approval of leases, easements, funds or permits
10 for residential home building;

11 P. installation of underground utilities in
12 previously disturbed areas having stable soils or in an
13 existing utility right of way;

14 Q. approval of unitization agreements,
15 communitization agreements, drainage agreements, development
16 contracts or geothermal unit or participating area agreements
17 when the agreement or contract contains provisions to address
18 inadvertent discovery of human remains or associated or
19 unassociated funerary objects;

20 R. vegetation management activities, including
21 seeding, planting, invasive plant removal, installation of
22 erosion control devices, such as mats, straw or chips, or
23 mechanical treatments, such as crushing, piling, thinning,
24 pruning, cutting, chipping, mulching, mowing or prescribed
25 fire, when the activity is necessary for the management of

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1 vegetation;

2 S. projects analyzed through the National
3 Environmental Policy Act of 1969 and its implementing
4 regulations;

5 T. projects on lands owned by an Indian nation,
6 tribe or pueblo or held in trust by the United States; or

7 U. recreational access permits.

8 SECTION 9. [NEW MATERIAL] BEST AVAILABLE SCIENCE--CHOICE
9 OF ALTERNATIVE--MITIGATION.--

10 A. Based on the best available science, a public
11 agency shall:

12 (1) select for agency approval the alternative
13 to a project that, to the maximum extent practicable and in
14 compliance with the agency's statutory mission and duties,
15 avoids or minimizes adverse environmental effects; or

16 (2) incorporate appropriate avoidance or
17 mitigation of impacts into the conditions of the permit,
18 license or other authorization for the project issued pursuant
19 to law.

20 B. A public agency may deny a lease, permit,
21 license, certificate or other entitlement or authorization when
22 an environmental impact statement concludes that the project
23 will cause irreparable harm to the environment.

24 C. Nothing in this section shall alter, change,
25 restrict or diminish the rights, powers or duties of the

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1 commissioner of public lands in the administration, management,
2 care or control of state trust lands as provided for by the
3 Enabling Act for New Mexico or other applicable statutes.

4 SECTION 10. [NEW MATERIAL] NOTICE--PUBLIC COMMENT.--

5 A. If a public agency determines that an
6 environmental assessment or an environmental impact statement
7 is required for a project, reasonable efforts shall be made to
8 reach the parties most likely to be interested in the project.

9 B. At a minimum, notice that environmental
10 assessment is being undertaken or has been finalized, as well
11 as the final document, shall be posted electronically on the
12 lead and cooperating agencies' websites.

13 C. At a minimum, notice that an environmental
14 impact statement is being undertaken or has been finalized, as
15 well as the final document, shall be:

16 (1) provided by certified mail to:

17 (a) the governing body of all
18 municipalities and counties in which the project property is
19 located; and

20 (b) the governing body of any county,
21 municipality or Indian nation, tribe or pueblo when the
22 boundary of the territory of the county, municipality or Indian
23 nation, tribe or pueblo is within a fifteen-mile radius of the
24 project property;

25 (2) published once in the newspaper with the

1 largest circulation in each county in which the project
2 property is located and once in the largest newspaper in the
3 state. The notice shall appear in a section of the newspaper
4 that will give the public effective notice of the proposed
5 project and shall be printed in both English and Spanish and
6 posted on the newspaper's website, if one exists;

7 (3) posted in at least four publicly
8 accessible and conspicuous places and at one local post office;

9 (4) posted electronically on the lead and
10 cooperating agencies' websites; and

11 (5) posted on the sunshine portal.

12 D. A member of the general public may request a
13 copy of a final environmental assessment or environmental
14 impact statement from a public agency. Within five business
15 days of receiving the request, a public agency shall either
16 provide the requestor with a copy of the final environmental
17 assessment or environmental impact statement or direct the
18 requestor to a publicly available copy.

19 E. At a minimum, the public shall be allowed thirty
20 days to review an environmental impact statement and submit
21 comments to the lead agency before a final decision on the
22 project is made.

23 F. Public comments that are substantive in nature,
24 including those that provide new information, provide
25 alternative scientific information or illustrate concerns not

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1 previously considered by the lead agency shall be responded to
2 by the lead agency in the final environmental impact statement.
3 A response by the lead agency shall include an explanation of
4 why the substantive comment did not merit a change in outcome
5 or an explanation of how the outcome was changed due to the
6 substantive comment. When an agency receives multiple comments
7 raising a substantially similar concern, the agency may elect
8 to respond once to the issue raised, rather than repeating the
9 same response multiple times.

10 G. The requirements of this section represent the
11 minimum public notice and comment requirements. The
12 environmental improvement board may by rule impose additional
13 notice and comment procedures consistent with existing law.

14 SECTION 11. [NEW MATERIAL] ENVIRONMENTAL IMPROVEMENT
15 BOARD--RULEMAKING.--

16 A. By December 31, 2019, the environmental
17 improvement board, in consultation with the department of
18 environment, the energy, minerals and natural resources
19 department, the state land office, the department of game and
20 fish, the department of health, the department of
21 transportation, the historic preservation division of the
22 cultural affairs department and the office of the governor,
23 shall adopt rules to implement the Environmental Review Act
24 that is to become effective January 1, 2020.

25 B. The rules shall include:

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1 (1) requirements for the preparation of a
2 record of decision for use in appeal proceedings, including, at
3 a minimum, that a public agency's record of decision consists
4 of:

5 (a) the environmental assessment and the
6 associated finding of no significant impact or environmental
7 impact statement, as applicable;

8 (b) all public comments and agency
9 responses to comments on the environmental impact statement;
10 and

11 (c) all documents a public agency used
12 to support its decision, including: 1) agency memoranda; 2)
13 correspondence, including electronic mail and facsimiles,
14 between the lead agency and the applicant and any cooperating
15 agencies; 3) technical reports, papers or articles; and 4)
16 technical findings and legal conclusions; provided that
17 information provided to an agency concerning the location of
18 archaeological resources, a cultural property or an area of
19 cultural significance to an Indian nation, tribe or pueblo, the
20 preservation of which is in the interest of the state of New
21 Mexico or the Indian nation, tribe or pueblo, shall remain
22 confidential and may only be disclosed to the public with the
23 written consent of the Indian nation, tribe or pueblo;

24 (2) a fee structure to be imposed upon
25 applicants; provided that the fees shall be no more than the

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1 actual costs of implementing the Environmental Review Act. The
2 fees paid by applicants are appropriated to the respective
3 agencies to carry out the provisions of the Environmental
4 Review Act;

5 (3) procedures for creating categorical
6 exemptions from the Environmental Review Act, as well as for
7 ending categorical exemptions; provided that the rules shall
8 require a categorical exemption determination to be reasonable,
9 based on the best available science and to not be arbitrary,
10 capricious or an abuse of discretion;

11 (4) procedures for implementing the notice and
12 comment requirements of the Environmental Review Act, including
13 procedures to ensure that documents are easily accessible to
14 the public, the public is able to submit comments on documents
15 in a variety of ways including via the internet, and that
16 members of the public who submit comments are updated on the
17 project's progress; and

18 (5) time limits in which public agencies shall
19 comply with the provisions of the Environmental Review Act.

20 SECTION 12. [NEW MATERIAL] ENVIRONMENTAL ASSESSMENT--
21 ENVIRONMENTAL IMPACT STATEMENT--TIME LIMITS.--

22 A. A public agency shall take no more than:

23 (1) six months to complete an environmental
24 assessment and adopt a finding of no significant impact; and

25 (2) one year to complete and certify an

1 environmental impact statement and compile a record of
2 decision.

3 B. The environmental improvement board may adopt
4 rules that establish different time limits or establish
5 procedures for requesting an extension of time for preparing
6 environmental assessments, environmental impact statements or
7 findings of no significant impact for different types or
8 classes of projects, but all time limits shall be measured from
9 the date on which an application requesting approval of the
10 project is received and accepted as administratively complete
11 by the public agency. The rules adopted pursuant to this
12 subsection may provide for a reasonable extension of time in
13 the event that compelling circumstances justify additional time
14 and the project applicant consents to the extension.

15 SECTION 13. [NEW MATERIAL] ENFORCEMENT--COMMENCEMENT OF
16 ACTION OR PROCEEDING--JUDICIAL REVIEW.--

17 A. A person having an interest that is or may be
18 adversely affected by a project may commence a civil action on
19 that person's own behalf to compel compliance with the
20 Environmental Review Act. An action may be brought against:

21 (1) the public agency with primary
22 responsibility for preparing an environmental assessment or
23 environmental impact statement under the Environmental Review
24 Act; or

25 (2) a public agency alleged to have failed to

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1 perform any nondiscretionary act or duty required by the
2 Environmental Review Act.

3 B. An action to compel compliance with the
4 Environmental Review Act pursuant to Subsection A of this
5 section shall not be commenced prior to sixty days after the
6 plaintiff has given written notice to the appropriate public
7 agency, the attorney general and the project applicant of the
8 plaintiff's intent to commence an action; provided that when
9 the violation constitutes an immediate threat to the health or
10 safety of the plaintiff or would immediately and irreparably
11 impair a legal interest of the plaintiff, an action pursuant to
12 this section may be brought immediately after providing written
13 notice to the proper parties. An action against a public
14 agency for failure to comply with the procedures of the
15 Environmental Review Act shall be brought in the first judicial
16 district court of Santa Fe county.

17 C. A person who is adversely affected by a project
18 that is subject to review under the Environmental Review Act
19 may appeal an agency's final decision on a project to the court
20 of appeals.

21 D. Appeals pursuant to Subsection C of this section
22 shall be upon the public agency's record of decision and shall
23 be taken to the court of appeals no more than thirty days after
24 the public agency finalizes an environmental impact statement,
25 environmental assessment or finding of no significant impact as

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1 complete or the public agency's final permitting, funding,
2 leasing, certification or licensing decision, whichever is
3 later. The court of appeals:

4 (1) shall set aside the public agency's action
5 if it is found to be:

6 (a) arbitrary, capricious or an abuse of
7 discretion;

8 (b) not supported by substantial
9 evidence in the record; or

10 (c) otherwise not in accordance with
11 law; and

12 (2) after a hearing and a showing of good
13 cause, may grant a stay of the action being appealed pending
14 the outcome of the appeal.

15 E. A court in issuing a final order in an action
16 brought pursuant to this section, may award costs of
17 litigation, including attorney fees and expert witness fees and
18 other reasonable fees and expenses, to a prevailing plaintiff
19 or appellant other than a public agency, whenever the court
20 determines such an award is appropriate.

21 **SECTION 14.** [NEW MATERIAL] LIMITATIONS.--Nothing in the
22 Environmental Review Act shall supersede requirements or
23 standards of any other applicable federal or state law.

24 **SECTION 15.** APPROPRIATIONS.--

25 A. Five hundred thousand dollars (\$500,000) is

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1 appropriated from the state lands maintenance fund to the state
2 land office for expenditure in fiscal year 2020 for the state
3 land office to hire and support two full-time-equivalent
4 positions to carry out the office's duties pursuant to the
5 Environmental Review Act. Any unexpended or unencumbered
6 balance remaining at the end of fiscal year 2020 shall revert
7 to the state lands maintenance fund.

8 B. Two hundred fifty thousand dollars (\$250,000) is
9 appropriated from the general fund to the department of
10 environment for expenditure in fiscal year 2020 to hire and
11 support two full-time-equivalent positions to carry out the
12 department's duties pursuant to the Environmental Review Act.
13 Any unexpended or unencumbered balance remaining at the end of
14 fiscal year 2020 shall revert to the general fund.

15 C. Five hundred thousand dollars (\$500,000) is
16 appropriated from the general fund to the energy, minerals and
17 natural resources department for expenditure in fiscal year
18 2020 for the department to hire and support two full-time-
19 equivalent positions to carry out the department's duties
20 pursuant to the Environmental Review Act. Any unexpended or
21 unencumbered balance remaining at the end of fiscal year 2020
22 shall revert to the general fund.

23 D. Two hundred fifty thousand dollars (\$250,000) is
24 appropriated from the general fund to the office of the state
25 engineer for expenditure in fiscal year 2020 for the office to

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1 hire and support two full-time-equivalent positions to carry
2 out the office's duties pursuant to the Environmental Review
3 Act. Any unexpended or unencumbered balance remaining at the
4 end of fiscal year 2020 shall revert to the general fund.

5 SECTION 16. EFFECTIVE DATE.--

6 A. The effective date of the provisions of Sections
7 11 and 15 of this act is July 1, 2019.

8 B. The effective date of the provisions of Sections
9 1 through 10 and 12 through 14 of this act is January 1, 2020.

underscoring material = new
~~bracketed material~~ = delete