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HOUSE BILL 351

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Don Tripp

AN ACT

RELATING TO STATE AGENCIES; RENAMING THE BUREAU OF MINES AND
MINERAL RESOURCES; UPDATING AND CLARIFYING THE BUREAU'S
MISSION.

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

Section 1. Section 19-13-6 NMSA 1978 (being Laws 1967,
Chapter 158, Section 6) is amended to read:

"19-13-6. KNOWN GEOTHERMAL RESOURCES FIELDS. --

A. The commissioner shall, after consultation with
the director of the bureau of ~~[mi-nes]~~ geology and mineral
resources, make a classification of geothermal areas ~~[which]~~
that he has determined may be capable of producing geothermal
resources in commercial quantities. These geothermal areas
shall be classified as "known geothermal resources fields".

B. If any lands to be leased are within a known

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1 geothermal resources field, the lands shall be leased to the
2 highest responsible qualified bidder under ~~[regulations]~~ rules
3 prescribed by the commissioner. The ~~[regulations]~~ rules
4 prescribed by the commissioner shall include notice to the
5 public of the terms and conditions of the sale and procedures
6 of conducting the sale, including the receipt of written bids
7 on a competitive basis and the issuing of the lease."

8 Section 2. Section 22-8-34 NMSA 1978 (being Laws 1967,
9 Chapter 16, Section 90, as amended by Laws 1999, Chapter 43,
10 Section 1 and also by Laws 1999, Chapter 253, Section 1) is
11 amended to read:

12 "22-8-34. FEDERAL MINERAL LEASING FUNDS. --

13 A. Except for an annual appropriation to the
14 instructional material fund and to the bureau of ~~[mines]~~
15 geology and mineral resources of the New Mexico institute of
16 mining and technology, and except as provided in Subsection B
17 of this section, all other money received by the state
18 pursuant to the provisions of the federal Mineral Lands
19 Leasing Act, 30 USCA 181, et seq., shall be distributed to the
20 public school fund.

21 B. All money received by the state as its share of
22 a prepayment of royalties pursuant to 30 U.S.C. 1726(b) shall
23 be distributed as follows:

24 (1) a portion of the receipts, estimated by
25 the taxation and revenue department to be equal to the amount

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1 that the state would have received as its share of royalties
2 in the same fiscal year if the prepayment had not been made,
3 shall be distributed to the public school fund; and

4 (2) the remainder shall be distributed to the
5 common school permanent fund. "

6 Section 3. Section 69-1-1 NMSA 1978 (being Laws 1927,
7 Chapter 115, Section 1, as amended) is amended to read:

8 "69-1-1. BUREAU OF ~~[MINES]~~ GEOLOGY AND MINERAL
9 RESOURCES - - CREATION - - DIRECTOR. - -

10 A. There is established a "bureau of ~~[mines]~~
11 geology and mineral resources" of the state ~~[which]~~ that is a
12 ~~[department]~~ division of the New Mexico institute of mining
13 and technology and under the direction of its board of
14 regents. The board shall appoint, as a director, a suitable
15 person to be known as the director of the bureau of ~~[mines]~~
16 geology and mineral resources and, upon his nomination, such
17 assistants and employees as the board deems necessary. The
18 board may also determine the compensation of all persons
19 employed by the bureau of ~~[mines]~~ geology and mineral
20 resources, including the director, and may remove them ~~[at~~
21 ~~will]~~ in accordance with established personnel procedures.

22 B. The director of the bureau of ~~[mines]~~ geology
23 and mineral resources shall be known as the state geologist. "

24 Section 4. Section 69-1-2 NMSA 1978 (being Laws 1927,
25 Chapter 115, Section 2, as amended) is amended to read:

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1 "69-1-2. PURPOSES AND FUNCTIONS. --The objects and duties
2 of the bureau of ~~[mines]~~ geology and mineral resources are as
3 follows:

4 A. to collect, ~~[to]~~ compile and ~~[to]~~ publish
5 ~~[statistics]~~ information relative to New Mexico, geology,
6 mining, milling, metallurgy and oil and natural gas and the
7 refining thereof;

8 B. to collect typical geological and mineral
9 specimens and samples of products; to collect photographs,
10 models and drawings ~~[of appliances used in]~~ related to mines,
11 mills, smelters, oil wells, natural gas wells and the
12 refineries of oil and natural gas in New Mexico;

13 C. to collect a library and bibliography of
14 literature pertaining to the progress of geology,
15 hydrogeology, mining, milling, smelting and ~~[the production~~
16 ~~of]~~ oil and natural gas production and refining ~~[the same]~~ in
17 New Mexico;

18 D. to map and study the geological formations of
19 the state with special reference to their economic mineral
20 resources, both metallic and nonmetallic, and to their
21 location and physical and chemical characteristics pertinent
22 to ground water resources;

23 E. to examine the topography and physical features
24 of the state with reference to their practical bearing upon
25 the ~~[occupation of the people]~~ citizens of New Mexico, as well

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1 as potential risks to them, including geologic hazards such as
2 landslides, soil instabilities, earthquakes and volcanic
3 eruptions;

4 F. to study the mining, milling, smelting
5 operations and oil and natural gas production and the refining
6 of the same carried on in the state with special reference to
7 their improvement;

8 G. to prepare and publish bulletins and reports
9 with the necessary illustrations and maps, which shall embrace
10 both a general and detailed description of the natural
11 resources and geology, mines, mineral deposits, both metallic
12 and nonmetallic, ground water resources, oil wells, natural
13 gas wells, [~~reduction plants~~] smelters, mills, oil refineries
14 and natural gas refineries;

15 H. to make qualitative and quantitative
16 examinations of rocks and mineral samples and specimens;

17 I. to assist in the education of miners, [~~and~~
18 ~~prospectors~~] industries and the general public through
19 lectures, [~~and~~] publications and other means of information
20 dissemination;

21 J. to consider such other [~~kindred~~] scientific and
22 economic problems and questions as in the judgment of the
23 board of regents of New Mexico institute of mining and
24 technology shall be deemed of value to the people of the
25 state;

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1 K. to communicate special information on New
2 Mexico geology, ground water hydrology, mining, both metallic
3 and nonmetallic, oil and natural gas and to serve as a bureau
4 of exchange and information on the mineral, oil and natural
5 gas and ground water resources of New Mexico;

6 L. to cooperate with [~~the university of~~] other
7 universities in New Mexico, [~~with~~] the state mine inspector,
8 the state engineer and [~~with~~] other departments of state
9 government as may be mutually beneficial and to cooperate with
10 the United States geological survey and with [~~the United~~
11 ~~States bureau of mines~~] other federal agencies in accordance
12 with the regulations of those institutions;

13 M. to coordinate with the mining and minerals
14 division and the secretary of energy, minerals and natural
15 resources in the formulation of overall policy in the area of
16 mining and minerals; [~~and~~]

17 N. to assist the secretary of energy, minerals and
18 natural resources with those projects [~~which~~] that come within
19 the expertise and jurisdiction of the bureau of geology and
20 mineral resources; and

21 O. to assist the state engineer in refining
22 understanding of the stratigraphy, structure and aquifer
23 characteristics of geological formations in ground water
24 basins. "

25 Section 5. Section 69-2-1 NMSA 1978 (being Laws 1927,

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1 Chapter 115, Section 3, as amended) is amended to read:

2 "69-2-1. ANNUAL REPORTS OF PROGRESS AND CONDITION. --

3 A. The board of regents of the New Mexico
4 institute of mining and technology shall prepare an annual
5 report showing the progress and condition of the bureau of
6 [~~mines~~] geology and mineral resources, together with such
7 other information as it deems necessary or useful or as the
8 board may require.

9 B. The board of regents of the New Mexico
10 institute of mining and technology shall provide the secretary
11 of energy, minerals and natural resources with a copy of the
12 annual report. "

13 Section 6. Section 69-2-3 NMSA 1978 (being Laws 1927,
14 Chapter 115, Section 4, as amended) is amended to read:

15 "69-2-3. BUREAU REPORTS--PRINTING AND SALE. --The regular
16 and special reports of the bureau of [~~mines~~] geology and
17 mineral resources shall be printed as the board of regents of
18 the New Mexico institute of mining and technology may direct,
19 and the reports may be distributed or sold by the board as the
20 interests of the state or science may demand. The [~~monies~~]
21 money now in the possession of the bureau [~~which have~~] that
22 has been obtained and [~~those which are~~] that is hereafter
23 obtained from the sale of [~~said~~] the reports shall be used in
24 such manner as the board [~~of regents of the New Mexico School~~
25 ~~of Mines~~] may direct. "

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1 Section 7. Section 69-2-6 NMSA 1978 (being Laws 1947,
2 Chapter 218, Section 1) is amended to read:

3 "69-2-6. APPROPRIATION--COOPERATIVE SURVEY. -- [~~That~~]
4 There is [~~hereby~~] appropriated for the [~~New Mexico~~] bureau of
5 [~~mines~~] geology and mineral resources twenty thousand dollars
6 [~~(\$20,000.00)~~] (\$20,000) annually of the [~~monies~~] money
7 received by the state from the mineral leasing land act fund
8 [~~created by Section 35 of the Act of Congress approved~~
9 ~~February 25th, 1920, being Public Act No. 146, 66th Congress~~],
10 pursuant to Title 30 U. S. C., Section 191. The [~~monies~~] money
11 appropriated hereunder shall be used to pay the expenses
12 incurred in matching federal funds in connection with a
13 cooperative geologic and ground water survey of the state."

14 Section 8. Section 69-2-7 NMSA 1978 (being Laws 1967,
15 Chapter 143, Section 1) is amended to read:

16 "69-2-7. GEOHERMAL ENERGY SOURCE--REPORTS. --

17 A. Any person drilling a hole on state lands to a
18 depth of ten feet or more who encounters or whose drill cuts
19 into a geothermal energy source of one hundred degrees
20 centigrade or more shall, within ninety days from the date of
21 the penetration, report in writing to the director the depth,
22 location and nature of the geothermal energy source.

23 B. As used in this section:

24 (1) "geothermal energy" means the natural
25 heat of the earth or the energy, in whatever form, below the

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1 surface of the earth present in, resulting from or created by
2 or ~~[which]~~ that may be extracted from, this natural heat;

3 (2) "state lands" includes all land owned by
4 the state, all land owned by school districts, beds of
5 navigable rivers and lakes, submerged lands and lands in which
6 mineral rights or geothermal resources have been reserved to
7 the state; and

8 (3) "director" means the director of the
9 bureau of ~~[mines]~~ geology and mineral resources. "

10 Section 9. Section 69-3-6 NMSA 1978 (being Laws 1957,
11 Chapter 108, Section 1, as amended) is amended to read:

12 "69-3-6. PENETRATION OF WATER STRATUM BY MINE DISCOVERY
13 OR DRILL HOLE--PLUGGING--~~[REPORT TO STATE ENGINEER AND TO~~
14 ~~DIRECTOR OF THE STATE BUREAU OF MINES AND MINERAL RESOURCES]~~
15 REPORTS--EXCEPTIONS.--Any person drilling a mine lode
16 discovery or mine drill hole to a depth of ten feet or more
17 who ~~[shall encounter]~~ encounters or whose drill ~~[shall cut]~~
18 cuts into a water body or water-bearing stratum shall:

19 A. plug at a horizon and in the manner provided by
20 the rules ~~[and regulations]~~ of the state engineer; and

21 B. within ninety days from the date of the
22 discovery, report in writing the depth, location and manner of
23 plugging the water body or water-bearing stratum to the state
24 engineer at the state capitol and to the director of the
25 ~~[state]~~ bureau of ~~[mines]~~ geology and mineral resources at

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1 Socorro, New Mexico. "

2 Section 10. Section 69-8-3 NMSA 1978 (being Laws 1961,
3 Chapter 136, Section 3, as amended) is amended to read:

4 "69-8-3. MINING SAFETY ADVISORY BOARD. --

5 A. There is created a "mining safety advisory
6 board", referred to in Chapter 69, Article 8 NMSA 1978 as the
7 "board", consisting of thirteen members, of whom six shall
8 represent industry, six shall be nonsupervisory production or
9 maintenance employees and one, who shall serve as chairman and
10 vote on all motions, shall represent the public and shall be
11 the director of the bureau of ~~[mines]~~ geology and mineral
12 resources. Two members of the board shall be appointed from
13 each of the following industries: coal, copper, molybdenum,
14 potash, sand and gravel and uranium. The members of the board
15 shall be appointed by the governor for terms of six years or
16 until their successors are appointed and qualified. Vacancies
17 shall be filled by appointment for the unexpired term by the
18 governor in the same manner as the original appointments. The
19 inspector and the secretary of energy, minerals and natural
20 resources shall be ex-officio members of the board but shall
21 have no vote and receive no additional compensation for duties
22 performed in connection with the board.

23 B. Members of the board and committees appointed
24 by the board shall receive no salary but shall receive
25 compensation in accordance with the provisions of the Per Diem

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1 and Mileage Act. The inspector is authorized and directed to
2 provide the board with such clerical, technical, legal and
3 other assistance as shall be necessary to permit the board to
4 perform its duties as provided in the Mining Safety Act.

5 C. The board shall hold two regular meetings each
6 year in the second and fourth quarters of the calendar year,
7 at places within this state to be determined by the board.
8 Special meetings may be called at any time by the governor,
9 the chairman or the inspector or by any three board members.
10 Complete minutes and records of all board meetings,
11 proceedings and actions shall be kept and preserved. "

12 Section 11. Section 69-25A-4 NMSA 1978 (being Laws 1979,
13 Chapter 291, Section 4, as amended) is amended to read:

14 "69-25A-4. COAL SURFACE MINING COMMISSION-- DUTIES. --

15 A. The "coal surface mining commission" is created.
16 The commission shall consist of:

17 (1) the director of the bureau of [~~mines~~]
18 geology and mineral resources of the New Mexico institute of
19 mining and technology or his designee;

20 (2) the director of the department of game and
21 fish or his designee;

22 (3) the secretary of environment or his
23 designee;

24 (4) the chairman of the soil and water
25 conservation commission or his designee;

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1 (5) the director of the agricultural experiment
2 station of New Mexico state university or his designee;

3 (6) the state engineer or his designee;

4 (7) the commissioner of public lands or his
5 designee; and

6 (8) two public members who shall be appointed by
7 the governor with the advice and consent of the senate. The
8 public members shall have, by education, training or
9 experience, expertise related to mining or mine reclamation.

10 B. The commission shall elect a chairman and other
11 necessary officers and keep records of its proceedings.

12 C. The commission shall convene upon the call of the
13 chairman or a majority of its members.

14 D. A majority of the commission is a quorum for the
15 transaction of business. However, no action of the commission
16 is valid unless concurred in by at least three of the members
17 present.

18 E. The commission shall perform those duties as
19 specified in the Surface Mining Act relating to the
20 promulgation of regulations and as specified in Section
21 69-25A-29 NMSA 1978 relating to appeals from the decisions of
22 the director.

23 F. No member of the commission who performs a
24 function or duty under the Surface Mining Act may have a
25 direct or indirect financial interest in any activity

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1 undertaken by the commission.

2 G. The public members shall receive per diem and
3 mileage pursuant to the Per Diem and Mileage Act. "

4 Section 12. Section 69-36-6 NMSA 1978 (being Laws 1993,
5 Chapter 315, Section 6, as amended) is amended to read:

6 "69-36-6. MINING COMMISSION--CREATED--MEMBERS.--

7 A. The "mining commission" is created. The
8 commission shall consist of seven voting members, including:

9 (1) the director of the bureau of [~~mines~~]
10 geology and mineral resources of the New Mexico institute of
11 mining and technology or his designee;

12 (2) the secretary of environment or his
13 designee;

14 (3) the state engineer or his designee;

15 (4) the commissioner of public lands or his
16 designee;

17 (5) the director of the department of game and
18 fish or his designee; and

19 (6) two members of the public and an alternate
20 for each, all to be appointed by the governor with the advice
21 and consent of the senate. The public members shall be chosen
22 to represent and to balance environmental and mining interests
23 while minimizing conflicts of interest. No more than one of
24 the public members and one of the alternates appointed may
25 belong to the same political party. When the initial

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1 appointments are made, one of the public members and his
2 alternate will be designated to serve for two-year terms,
3 after which all public members shall serve for four years. An
4 alternate member may vote only in the absence of the public
5 member for whom he is the alternate.

6 B. The chairman of the soil and water conservation
7 commission and the director of the agricultural experiment
8 station of New Mexico state university or their designees
9 shall be nonvoting members of the commission.

10 C. The commission shall elect a chairman and other
11 necessary officers and keep records of its proceedings.

12 D. The commission shall convene upon the call of the
13 chairman or a majority of its members.

14 E. A majority of the voting members of the
15 commission shall be a quorum for the transaction of business.
16 However, no action of the commission shall be valid unless
17 concurred upon by at least four of the members present.

18 F. No member of the commission, with the exception
19 of one of the public members and his alternate, shall receive,
20 or shall have received during the previous two years, more
21 than ten percent of his income directly or indirectly from
22 permit holders or applicants for permits. Each member of the
23 commission shall, upon acceptance of his appointment and prior
24 to the performance of any of his duties, file a statement of
25 disclosure with the secretary of state stating:

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1 (1) the amount of money or other valuable
2 consideration received, whether provided directly or
3 indirectly, from persons subject to or who appear before the
4 commission;

5 (2) the identity of the source of money or other
6 valuable consideration; and

7 (3) whether the money or other valuable
8 consideration was in excess of ten percent of his gross
9 personal income in either of the preceding two years.

10 G. No commissioner with any financial interest
11 affected or potentially affected by a permit action may
12 participate in proceedings related to that permit action. "

13 Section 13. Section 74-6-2 NMSA 1978 (being Laws 1967,
14 Chapter 190, Section 2, as amended) is amended to read:

15 "74-6-2. DEFINITIONS. --As used in the Water Quality Act:

16 A. "water contaminant" means any substance that
17 could alter, if discharged or spilled, the physical, chemical,
18 biological or radiological qualities of water. "Water
19 contaminant" does not mean source, special nuclear or by-
20 product material as defined by the Atomic Energy Act of 1954;

21 B. "water pollution" means introducing or permitting
22 the introduction into water, either directly or indirectly, of
23 one or more water contaminants in such quantity and of such
24 duration as may with reasonable probability injure human
25 health, animal or plant life or property, or to unreasonably

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1 interfere with the public welfare or the use of property;

2 C. "wastes" means sewage, industrial wastes or any
3 other liquid, gaseous or solid substance [~~which~~] that may
4 pollute any waters of the state;

5 D. "sewer system" means pipelines, conduits, pumping
6 stations, force mains or any other structures, devices,
7 appurtenances or facilities used for collecting or conducting
8 wastes to an ultimate point for treatment or disposal;

9 E. "treatment works" means any plant or other works
10 used for the purpose of treating, stabilizing or holding
11 wastes;

12 F. "sewerage system" means a system for disposing of
13 wastes, either by surface or underground methods, and includes
14 sewer systems, treatment works, disposal wells and other
15 systems;

16 G. "water" means all water, including water situated
17 wholly or partly within or bordering upon the state, whether
18 surface or subsurface, public or private, except private
19 waters that do not combine with other surface or subsurface
20 water;

21 H. "person" means an individual or any other entity,
22 including partnerships, [~~corporation~~] corporations,
23 associations, responsible business or association agents or
24 officers, the state or a political subdivision of the state or
25 any agency, department or instrumentality of the United States

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1 and any of its officers, agents or employees;

2 I. "commission" means the water quality control
3 commission;

4 J. "constituent agency" means, as the context may
5 require, any or all of the following agencies of the state:

6 (1) the department of environment;

7 (2) the state engineer and the interstate stream
8 commission;

9 (3) the department of game and fish;

10 (4) the oil conservation commission;

11 (5) the state [~~park and recreation~~] parks
12 division of the energy, minerals and natural resources
13 department;

14 (6) the New Mexico department of agriculture;

15 (7) the soil and water conservation commission;

16 and

17 (8) the bureau of [~~mines~~] geology and mineral
18 resources at the New Mexico institute of mining and
19 technology;

20 K. "new source" means:

21 (1) any source, the construction of which is
22 commenced after the publication of proposed regulations
23 prescribing a standard of performance applicable to the
24 source; or

25 (2) any existing source when modified to treat

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1 substantial additional volumes or when there is a substantial
2 change in the character of water contaminants treated;

3 L. "source" means a building, structure, facility or
4 installation from which there is or may be a discharge of
5 water contaminants directly or indirectly into water;

6 M "septage" means the residual wastes and water
7 periodically pumped from a liquid waste treatment unit or from
8 a holding tank for maintenance or disposal purposes;

9 N. "sludge" means solid, semi-solid or liquid waste
10 generated from a municipal, commercial or industrial
11 wastewater treatment plant, water supply treatment plant or
12 air pollution control facility that is associated with the
13 treatment of these wastes. "Sludge" does not mean treated
14 effluent from a wastewater treatment plant;

15 O. "substantial adverse environmental impact" means
16 that an act or omission of the violator causes harm or damage:

17 (1) to human beings; or

18 (2) that amounts to more than ten thousand
19 dollars (\$10,000) damage or mitigation costs to flora,
20 including agriculture crops; fish or other aquatic life;
21 waterfowl or other birds; livestock or wildlife or damage to
22 their habitats; [or] ground water or surface water; or [to]
23 the lands of the state;

24 P. "federal act" means the Federal Water Pollution
25 Control Act, its subsequent amendment and successor

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1 provisions; and

2 Q. "standards of performance" means any standard,
3 effluent limitation or effluent standard adopted pursuant to
4 the federal act or the Water Quality Act. "

5 Section 14. Section 74-6-3 NMSA 1978 (being Laws 1967,
6 Chapter 190, Section 3, as amended) is amended to read:

7 "74-6-3. WATER QUALITY CONTROL COMMISSION CREATED. --

8 A. There is created the "water quality control
9 commission" consisting of:

10 (1) the secretary of environment or a member of
11 his staff designated by him;

12 (2) the director of the department of game and
13 fish or a member of his staff designated by him;

14 (3) the state engineer or a member of his staff
15 designated by him;

16 (4) the chairman of the oil conservation
17 commission or a member of his staff designated by him;

18 (5) the director of the state [~~park and~~
19 ~~recreation~~] parks division of the energy, minerals and natural
20 resources department or a member of his staff designated by
21 him;

22 (6) the director of the New Mexico department of
23 agriculture or a member of his staff designated by him;

24 (7) the chairman of the soil and water
25 conservation commission or a soil and water conservation

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1 district supervisor designated by him;

2 (8) the director of the bureau of [~~mines~~
3 geology and mineral resources at the New Mexico institute of
4 mining and technology or a member of his staff designated by
5 him; and

6 (9) three representatives of the public to be
7 appointed by the governor for terms of four years and who
8 shall be compensated from the budgeted funds of the department
9 of environment in accordance with the provisions of the Per
10 Diem and Mileage Act.

11 B. No member of the commission shall receive, or
12 shall have received during the previous two years, a
13 significant portion of his income directly or indirectly from
14 permit holders or applicants for a permit and shall, upon the
15 acceptance of his appointment and prior to the performance of
16 any of his duties, file a statement of disclosure with the
17 secretary of state disclosing any amount of money or other
18 valuable consideration, and its source, the value of which is
19 in excess of ten percent of his gross personal income in each
20 of the preceding two years, that he received directly or
21 indirectly from permit holders or applicants for permits
22 required under the Water Quality Act.

23 C. The commission shall elect a chairman and other
24 necessary officers and shall keep a record of its proceedings.

25 D. A majority of the commission constitutes a quorum

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1 for the transaction of business, but no action of the
2 commission is valid unless concurred in by six or more members
3 present at a meeting.

4 E. The commission is the state water pollution
5 control agency for this state for all purposes of the federal
6 act and the wellhead protection and sole source aquifer
7 programs of the federal Safe Drinking Water Act and may take
8 all action necessary and appropriate to secure to this state,
9 its political subdivisions or interstate agencies the benefits
10 of that act and those programs.

11 F. The commission is administratively attached, as
12 defined in the Executive Reorganization Act, to the department
13 of environment. "