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HOUSE BILL 711

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Jose A. Campos II

AN ACT

RELATING TO WATER; PROVIDING THAT WATER QUALITY COMMISSION REGULATIONS AND STANDARDS FOR SURFACE WATER ARE NO MORE STRINGENT THAN REQUIRED BY FEDERAL LAW.

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

Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.--The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

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1 C. shall adopt water quality standards for surface  
2 and ground waters of the state based on credible scientific  
3 data and other evidence appropriate under the Water Quality  
4 Act. The commission shall not adopt or enforce standards for  
5 surface waters that are more stringent than those required by,  
6 or apply to any class or body of water other than those surface  
7 waters covered by, the federal act and federal regulations  
8 pertaining to surface water quality standards. The standards  
9 shall include narrative standards and as appropriate, the  
10 designated uses of the waters and the water quality criteria  
11 necessary to protect such uses. The standards shall at a  
12 minimum protect the public health or welfare, enhance the  
13 quality of water and serve the purposes of the Water Quality  
14 Act. In making standards, the commission shall give weight it  
15 deems appropriate to all facts and circumstances, including the  
16 use and value of the water for water supplies, propagation of  
17 fish and wildlife, recreational purposes and agricultural,  
18 industrial and other purposes;

19 D. shall adopt, promulgate and publish regulations  
20 to prevent or abate water pollution in the state or in any  
21 specific geographic area, aquifer or watershed of the state or  
22 in any part thereof, or for any class of waters, and to govern  
23 the disposal of septage and sludge and the use of sludge for  
24 various beneficial purposes. The commission shall not adopt  
25 or enforce regulations governing surface waters that are more

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1 stringent than those required by, or apply to any class or body  
2 of water other than those surface waters covered by, the  
3 federal act and federal regulations pertaining to surface  
4 waters. The regulations governing the disposal of septage and  
5 sludge may include the use of tracking and permitting systems  
6 or other reasonable means necessary to assure that septage and  
7 sludge are designated for disposal in, and arrive at, disposal  
8 facilities, other than facilities on the premises where the  
9 septage and sludge is generated, for which a permit or other  
10 authorization has been issued pursuant to the federal act or  
11 the Water Quality Act. Regulations shall not specify the  
12 method to be used to prevent or abate water pollution but may  
13 specify a standard of performance for new sources that reflects  
14 the greatest reduction in the concentration of water  
15 contaminants that the commission determines to be achievable  
16 through application of the best available demonstrated control  
17 technology, processes, operating methods or other alternatives,  
18 including where practicable a standard permitting no discharge  
19 of pollutants. In making regulations, the commission shall  
20 give weight it deems appropriate to all relevant facts and  
21 circumstances, including:

22 (1) character and degree of injury to or  
23 interference with health, welfare, environment and property;

24 (2) the public interest, including the social  
25 and economic value of the sources of water contaminants;

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1 (3) technical practicability and economic  
2 reasonableness of reducing or eliminating water contaminants  
3 from the sources involved and previous experience with  
4 equipment and methods available to control the water  
5 contaminants involved;

6 (4) successive uses, including but not limited  
7 to domestic, commercial, industrial, pastoral, agricultural,  
8 wildlife and recreational uses;

9 (5) feasibility of a user or a subsequent user  
10 treating the water before a subsequent use;

11 (6) property rights and accustomed uses; and

12 (7) federal water quality requirements;

13 E. shall assign responsibility for administering  
14 its regulations to constituent agencies so as to assure  
15 adequate coverage and prevent duplication of effort. To this  
16 end, the commission may make such classification of waters and  
17 sources of water contaminants as will facilitate the assignment  
18 of administrative responsibilities to constituent agencies.

19 The commission shall also hear and decide disputes between  
20 constituent agencies as to jurisdiction concerning any matters  
21 within the purpose of the Water Quality Act. In assigning  
22 responsibilities to constituent agencies, the commission shall  
23 give priority to the primary interests of the constituent  
24 agencies. The department of environment shall provide  
25 technical services, including certification of permits pursuant

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1 to the federal act, and shall maintain a repository of the  
2 scientific data required by this act;

3 F. may enter into or authorize constituent agencies  
4 to enter into agreements with the federal government or other  
5 state governments for purposes consistent with the Water  
6 Quality Act and receive and allocate to constituent agencies  
7 funds made available to the commission;

8 G. may grant an individual variance from any  
9 regulation of the commission whenever it is found that  
10 compliance with the regulation will impose an unreasonable  
11 burden upon any lawful business, occupation or activity. The  
12 commission may only grant a variance conditioned upon a person  
13 effecting a particular abatement of water pollution within a  
14 reasonable period of time. Any variance shall be granted for  
15 the period of time specified by the commission. The commission  
16 shall adopt regulations specifying the procedure under which  
17 variances may be sought, which regulations shall provide for  
18 the holding of a public hearing before any variance may be  
19 granted;

20 H. may adopt regulations to require the filing with  
21 it or a constituent agency of proposed plans and specifications  
22 for the construction and operation of new sewer systems,  
23 treatment works or sewerage systems or extensions,  
24 modifications of or additions to new or existing sewer systems,  
25 treatment works or sewerage systems. Filing with and approval

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1 by the federal housing administration of plans for an extension  
2 to an existing or construction of a new sewerage system  
3 intended to serve a subdivision solely residential in nature  
4 shall be deemed compliance with all provisions of this  
5 subsection;

6 I. may adopt regulations requiring notice to it or  
7 a constituent agency of intent to introduce or allow the  
8 introduction of water contaminants into waters of the state;

9 J. may adopt regulations establishing pretreatment  
10 standards that prohibit or control the introduction into  
11 publicly owned sewerage systems of water contaminants that are  
12 not susceptible to treatment by the treatment works or that  
13 would interfere with the operation of the treatment works;

14 K. shall not require a permit respecting the use of  
15 water in irrigated agriculture, except in the case of the  
16 employment of a specific practice in connection with such  
17 irrigation that documentation or actual case history has shown  
18 to be hazardous to public health or the environment;

19 L. shall not require a permit for applying less  
20 than two hundred fifty gallons per day of private residential  
21 gray water originating from a residence for the resident's  
22 household gardening, composting or landscape irrigation if:

23 (1) a constructed gray water distribution  
24 system provides for overflow into the sewer system or on-site  
25 wastewater treatment and disposal system;

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1 (2) a gray water storage tank is covered to  
2 restrict access and to eliminate habitat for mosquitos or other  
3 vectors;

4 (3) a gray water system is sited outside of a  
5 floodway;

6 (4) gray water is vertically separated at  
7 least five feet above the ground water table;

8 (5) gray water pressure piping is clearly  
9 identified as a nonpotable water conduit;

10 (6) gray water is used on the site where it is  
11 generated and does not run off the property lines;

12 (7) gray water is applied in a manner that  
13 minimizes the potential for contact with people or domestic  
14 pets;

15 (8) ponding is prohibited, application of gray  
16 water is managed to minimize standing water on the surface and  
17 to ensure that the hydraulic capacity of the soil is not  
18 exceeded;

19 (9) gray water is not sprayed;

20 (10) gray water is not discharged to a  
21 watercourse; and

22 (11) gray water use within municipalities or  
23 counties complies with all applicable municipal or county  
24 ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;  
25 and

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1 M. shall coordinate application procedures and  
2 funding cycles for loans and grants from the federal  
3 government and from other sources, public or private, with  
4 the local government division of the department of finance  
5 and administration pursuant to the New Mexico Community  
6 Assistance Act."

7 Section 2. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2005.

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