

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 417

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

AN ACT

RELATING TO THE CONSERVATION OF NATURAL RESOURCES; ENACTING THE
SUSTAINABLE DEVELOPMENT TESTING SITE ACT; PROVIDING FOR THE
APPROVAL OF AREAS TO BE USED FOR NON-INDUSTRIAL RESEARCH AND
TESTING DESIGNED TO REDUCE THE CONSUMPTION OF AND DEPENDENCE ON
NATURAL RESOURCES BY RESIDENTIAL DEVELOPMENT; PROVIDING THAT
CERTAIN RESEARCH ACTIVITIES WITHIN AN APPROVED AREA ARE EXEMPT
FROM SPECIFIED LAWS, ORDINANCES AND RULES.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Sustainable Development Testing Site Act".

Section 2. FINDINGS AND PURPOSE. --

A. The legislature finds that:

(1) the increase in populations and the
corresponding decrease in natural resources have created a

1 critical need for more sustainable and environmentally
2 appropriate means of supporting human habitat;

3 (2) existing laws, ordinances and rules
4 protect the public and the environment by regulating
5 conventional residential construction and development but they
6 do not encourage alternative sustainable methods of residential
7 construction and development; and

8 (3) without relaxing existing regulation of
9 conventional residential development and while ensuring that
10 permanent environmental damage will be avoided, a procedure can
11 be established whereby certain areas can be permitted as test
12 sites to allow specifically designated research into new
13 sustainable technologies.

14 B. The purpose of the Sustainable Development
15 Testing Site Act is to allow counties, after review by
16 appropriate state agencies, to permit specific rural areas as
17 "sustainable development testing sites" in which concepts and
18 inventions related to residential sustainable development,
19 including energy, housing, water harvesting, sewage treatment,
20 food production and bio-fuel production, can be tested to the
21 point of failure under conditions involving actual year-round
22 inhabitants on the site, all of whom have signed an
23 acknowledgment that they have read a disclosure statement about
24 the sustainable development testing site.

25 Section 3. DEFINITIONS.--As used in the Sustainable

1 Development Testing Site Act:

2 A. "permittee" means a person who holds a testing
3 site permit;

4 B. "planning commission" means a county planning
5 commission appointed pursuant to Section 4-57-1 NMSA 1978;
6 provided that, if no county planning commission has been
7 appointed pursuant to that section, "planning commission" means
8 the board of county commissioners;

9 C. "sustainable development" means a live-in
10 environment composed of structures and systems that inherently
11 produce utilities and life-support systems free of existing
12 conventional grids and disposal systems. "Sustainable
13 development" includes:

14 (1) the inherent provision of on-site energy
15 needs via renewable resources;

16 (2) in accordance with state water law and the
17 rules of the state engineer, the inherent provision of water
18 needs without tapping into aquifers or manipulating surface
19 water runoff;

20 (3) the inherent provision of sewage treatment
21 needs with zero discharge;

22 (4) the reuse of materials discarded by modern
23 society; and

24 (5) the development of organic foods and fuel;

25 D. "sustainable development research" means

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underscored material = new
[bracketed material] = delete

1 activities conducted at a sustainable development testing site
2 that test ideas, concepts or inventions designed to lead
3 ultimately to sustainable development;

4 E. "sustainable development testing site" means an
5 area that is:

6 (1) greater than five acres but less than two
7 hundred acres;

8 (2) situated wholly outside the planning and
9 platting jurisdiction of a municipality; and

10 (3) subject to a testing site permit and
11 existing federal laws and regulations; and

12 F. "testing site permit" means a permit, issued by
13 a planning commission, that designates an area as a sustainable
14 development testing site and specifies:

15 (1) the sustainable development research that
16 can be conducted within the site by the permittee; and

17 (2) the state laws, county ordinances and
18 state and county rules from which the permittee and the
19 research are exempt.

20 Section 4. APPLICATION FOR TESTING SITE PERMIT--
21 EVALUATION--NOTICE OF PUBLIC HEARING. --

22 A. A person desiring a testing site permit shall
23 submit an application to the planning commission for the county
24 in which the proposed sustainable development testing site is
25 located. The application shall include:

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1 (1) a detailed description of the sustainable
2 development research that will be conducted on the site,
3 including an explanation of the ideas, concepts and inventions
4 that will be tested;

5 (2) a schematic layout of the site;

6 (3) the number of inhabitants and employees
7 that are expected to occupy the site;

8 (4) an assessment of the state laws, county
9 ordinances and state and county rules relating to construction
10 or building requirements, occupancy, zoning or subdivisions
11 that may inhibit the proposed sustainable development research
12 and an explanation of how damage to the surrounding area and
13 permanent damage to the area within the site will be avoided if
14 the permittee and the proposed sustainable development research
15 at the site are exempted from the laws, ordinances and rules;

16 (5) an application fee, set by the planning
17 commission, equal to the estimated costs of evaluating the
18 application, holding the public hearing and administering the
19 permit; and

20 (6) such other information as may be required
21 by rule of the planning commission or ordinance of the county.

22 B. Upon receipt of a complete application, the
23 planning commission shall:

24 (1) forward a copy of the application to the
25 office of the state engineer, to the department of environment

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1 and to other state or local agencies charged with enforcing the
2 affected laws, ordinances and rules identified in the
3 application;

4 (2) set a date, not less than ninety days nor
5 more than one hundred twenty days after receipt of the
6 application, for a public hearing on the application; and

7 (3) publish in a newspaper of general
8 circulation in the county, and broadcast on a radio station
9 broadcasting in the county, an announcement of its receipt of
10 the application, notice of the hearing and information
11 concerning where an interested person can obtain a copy of the
12 application.

13 C. The department of environment, the office of the
14 state engineer and each other state and local agency shall,
15 within sixty days after receiving a copy of the application:

16 (1) evaluate the application and the proposed
17 sustainable development research to be performed at the
18 proposed sustainable development testing site. In making the
19 evaluation, the agency may communicate with the applicant as
20 necessary to make an accurate evaluation;

21 (2) determine whether:

22 (a) the applicant has consulted with the
23 office of the state engineer and has received necessary water
24 right permits or other approval;

25 (b) the proposed sustainable development

1 testing site and the sustainable development research proposed
2 to be conducted at the site will damage land or air adjacent to
3 the site or will permanently damage the area of the site; and

4 (c) the proposed sustainable development
5 research at the site is beneficial to sustainable development;
6 and

7 (3) submit its findings to the planning
8 commission.

9 Section 5. APPLICATION FOR TESTING SITE PERMIT--PUBLIC
10 HEARING--DECISION.--

11 A. At the public hearing for a sustainable
12 development testing site application pursuant to Section 4 of
13 the Sustainable Development Testing Site Act, the planning
14 commission shall hear comments from all interested persons,
15 federal, state or local agencies and, if appropriate, responses
16 from the applicant.

17 B. Within two weeks after the hearing, the planning
18 commission shall, in writing, make its decision. The planning
19 commission shall issue a testing site permit if it determines
20 that the applicant is in receipt of the appropriate permit or
21 approval issued by the state engineer and that:

22 (1) no state or local agency, evaluating the
23 sustainable development testing site application pursuant to
24 Section 4 of the Sustainable Development Testing Site Act, has
25 determined that the site or sustainable development research

1 proposed to be conducted at the site will damage land, water or
2 air adjacent to the site or will permanently damage the area of
3 the site;

4 (2) no existing federal laws, regulations or
5 permits or state environmental laws, regulations or permits
6 will be violated by the proposed sustainable development
7 research at the site;

8 (3) the proposed sustainable development
9 research at the site is beneficial to sustainable development;
10 and

11 (4) the site and proposed sustainable
12 development research are otherwise beneficial to the county and
13 to the state.

14 C. A testing site permit shall include:

15 (1) the specific sustainable development
16 research that may be conducted at the sustainable development
17 testing site;

18 (2) the maximum number of structures that may
19 be constructed;

20 (3) the maximum number of individuals that may
21 inhabit the site;

22 (4) the specific state laws, county ordinances
23 and state and county rules relating to construction or building
24 requirements, occupancy, zoning or subdivisions from which the
25 permittee and the permittee's sustainable development research

1 on the site are exempt; and

2 (5) such other restrictions on the site and
3 the permittee's activities as determined by the planning
4 commission.

5 D. A testing site permit shall be issued for a term
6 specified by the planning commission, not to exceed five years,
7 subject to renewal for another five-year period.

8 Section 6. TESTING SITE PERMIT--EFFECT.--As long as a
9 testing site permit is in effect:

10 A. the permittee, when conducting sustainable
11 development research that is specified in the permit, is exempt
12 from the state laws, county ordinances and state and county
13 rules relating to construction or building requirements,
14 occupancy, zoning or subdivisions that are identified in the
15 permit;

16 B. no other permit or approval of the state or any
17 of its political subdivisions shall be required of the
18 permittee to conduct the sustainable development research that
19 is specified in the permit, except for permits and approvals
20 administered by the department of environment;

21 C. nothing in the Sustainable Development Testing
22 Site Act or the permit shall be deemed to allow the permittee
23 to appropriate or otherwise use underground or surface water
24 without first obtaining a permit from the state engineer. New
25 appropriations of water and water rights transfers shall in no

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1 event be exempted from state water law and the rules of the
2 state engineer;

3 D. employees and agents of the state or the county
4 may, at all reasonable times, enter the sustainable development
5 testing site for the purpose of inspecting the site and
6 activities conducted on the site to ensure that conditions
7 specified in the permit are being met;

8 E. the permittee shall annually, no later than the
9 anniversary date of the permit, submit a report to the planning
10 commission and to the department of environment describing the
11 sustainable development research conducted during the preceding
12 twelve months and summarizing the results. The report shall
13 also include all required monitoring data for soil, water and
14 air. All information contained in the report and all other
15 information learned from activities pursuant to the permit
16 shall be made available to the public;

17 F. the permittee shall allow no person, including
18 participants, visitors and inhabitants, except for inspectors
19 from the department of environment and other state agencies, to
20 enter the sustainable development testing site without signing
21 an acknowledgment that the person has read a disclosure
22 statement about the sustainable development testing site;

23 G. the planning commission may revoke the permit if
24 it finds, after a public hearing, that the permittee has
25 violated a permit provision or a provision of the Sustainable

1 Development Testing Site Act, that the testing site has
 2 contaminated soil, water or air in excess of allowable state or
 3 federal standards or that the testing site poses a threat to
 4 human health, public welfare or the environment; and

5 H. a permittee may apply to have a permit amended
 6 by submitting a new application pursuant to Section 4 of the
 7 Sustainable Development Testing Site Act; provided that, if the
 8 planning commission determines that the proposed amendment will
 9 not substantially alter the sustainable development research or
 10 other activities conducted at the sustainable development
 11 testing site, it may waive the requirements of that section for
 12 notice and public hearing.

13 Section 7. EXPIRATION OF TESTING SITE PERMITS. -- Upon the
 14 expiration of the term of a testing site permit or any renewal
 15 thereof:

16 A. all activities within the area of the
 17 sustainable development testing site shall comply with all
 18 applicable laws, ordinances or rules, including permitting
 19 requirements; and

20 B. wastewater treatment and disposal technologies
 21 shall be reviewed by the wastewater technical advisory
 22 committee and, if appropriate, listed by the department of
 23 environment as approved for use pursuant to Section 9-7A-15
 24 NMSA 1978.

25 Section 8. SALE OF LAND WITHIN A SUSTAINABLE DEVELOPMENT

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1 TESTING SITE. -- Land within a sustainable development testing
2 site shall not be sold in whole or in part unless:

3 A. the subsequent owner obtains a testing site
4 permit pursuant to the provisions of the Sustainable
5 Development Testing Site Act; or

6 B. if the subsequent owner does not obtain a
7 testing site permit:

8 (1) the permittee complies with the New Mexico
9 Subdivision Act; and

10 (2) the subsequent owner and the parcel sold
11 are subject to all federal, state and local laws.

12 Section 9. EFFECTIVE DATE. -- The effective date of the
13 provisions of this act is July 1, 2005.