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HOUSE BILL 152

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Roberto "Bobby" J. Gonzales

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 NONINDUSTRIAL 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

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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 sustainable development, including
19 energy, housing, water harvesting, sewage treatment, food
20 production and bio-fuel production, can be tested to the point
21 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

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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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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) two acres or less in size;
7 (2) situated wholly outside the planning and
8 platting jurisdiction of a municipality; and
9 (3) subject to a testing site permit and
10 existing federal laws and regulations; and

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

- 14 (1) the sustainable development research that
15 can be conducted within the site by the permittee; and
16 (2) the state laws, county ordinances and
17 state and county rules from which the permittee and the
18 research are exempt.

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

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

- 25 (1) a detailed description of the sustainable

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1 development research that will be conducted on the sustainable
2 development testing site, including an explanation of the
3 ideas, concepts and inventions that will be tested;

4 (2) a schematic layout of the sustainable
5 development testing site;

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

9 (4) an assessment of the state laws, county
10 ordinances and state and county rules relating to construction
11 or building requirements, occupancy, zoning or subdivisions
12 that are not practicable for the specific sustainable
13 development testing site and that may inhibit the proposed
14 sustainable development research and an explanation of how
15 damage to the surrounding area and permanent damage to the area
16 within the site will be avoided if the permittee and the
17 proposed sustainable development research at the site are
18 exempted from the laws, ordinances and rules;

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

23 (6) other information as may be required by
24 rules adopted pursuant to Section 9 of the Sustainable
25 Development Testing Site Act or by rule of the planning

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1 commission or ordinance of the county.

2 B. Upon receipt of a complete application, the
3 planning commission shall:

4 (1) forward a copy of the application to the
5 office of the state engineer, to the department of environment
6 and to other state or local agencies charged with enforcing the
7 affected laws, ordinances and rules identified in the
8 application;

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

12 (3) publish in a newspaper of general
13 circulation in the county, and broadcast on a radio station
14 broadcasting in the county, an announcement of its receipt of
15 the application, a notice of the public hearing and information
16 concerning where an interested person can obtain a copy of the
17 application.

18 C. The department of environment, the office of the
19 state engineer and other state and local agencies receiving
20 copies of the application shall, within sixty days of the
21 receipt:

22 (1) evaluate the application and the proposed
23 sustainable development research to be performed at the
24 proposed sustainable development testing site. In making the
25 evaluation, the agency may communicate with the applicant as

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1 necessary to make an accurate evaluation;

2 (2) determine whether:

3 (a) the proposed sustainable development
4 testing site and the sustainable development research proposed
5 to be conducted at the site will damage land or air adjacent to
6 the site or will permanently damage the area of the site; and

7 (b) the proposed sustainable development
8 research at the sustainable development testing site is
9 beneficial to sustainable development;

10 (3) in the case of the office of the state
11 engineer, state whether the applicant has consulted with the
12 office and received necessary water rights permits or other
13 approval; and

14 (4) submit its findings to the planning
15 commission.

16 Section 5. APPLICATION FOR TESTING SITE PERMIT--PUBLIC
17 HEARING--DECISION.--

18 A. At the public hearing for a testing site permit
19 application pursuant to Section 4 of the Sustainable
20 Development Testing Site Act, the planning commission shall
21 hear comments from all interested persons, federal, state or
22 local agencies and, if appropriate, responses from the
23 applicant.

24 B. Within two weeks after the hearing, the planning
25 commission shall, in writing, make its decision. The planning

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1 commission shall issue a testing site permit if it determines
2 that:

3 (1) the applicant is in receipt of the
4 necessary water rights permits or approval issued by the state
5 engineer;

6 (2) no state or local agency, evaluating the
7 testing site permit application pursuant to Section 4 of the
8 Sustainable Development Testing Site Act, has determined that
9 the sustainable development testing site or sustainable
10 development research proposed to be conducted at the site will
11 damage land, water or air adjacent to the site or will
12 permanently damage the area of the site;

13 (3) no existing federal laws, regulations or
14 permits or state environmental laws, regulations or permits
15 will be violated by the proposed sustainable development
16 research at the sustainable development testing site;

17 (4) the applicant has complied with rules
18 adopted pursuant to Section 9 of the Sustainable Development
19 Testing Site Act;

20 (5) the proposed sustainable development
21 research at the sustainable development testing site is
22 beneficial to sustainable development; and

23 (6) the sustainable development testing site
24 and proposed sustainable development research are otherwise
25 beneficial to the county and to the state.

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C. A testing site permit shall include:

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

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

(3) the maximum number of individuals that may inhabit the sustainable development testing site;

(4) the specific state laws, county ordinances and state and county rules relating to construction or building requirements, occupancy, zoning or subdivisions otherwise applicable to the permittee and the permittee's sustainable development research on the sustainable development testing site but from which the permittee's sustainable development research is exempt; and

(5) other restrictions on the sustainable development testing site and the permittee's activities as required by rules adopted pursuant to Section 9 of the Sustainable Development Testing Site Act or as determined by the planning commission.

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

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

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1 A. the permittee, when conducting sustainable
2 development research that is specified in the testing site
3 permit, shall comply with all applicable laws and rules except
4 those specifically exempted in the permit;

5 B. no other permit or approval of the state or any
6 of its political subdivisions shall be required of the
7 permittee to conduct the sustainable development research that
8 is specified in the testing site permit, except for permits and
9 approvals administered by the department of environment;

10 C. nothing in the Sustainable Development Testing
11 Site Act or the testing site permit shall be deemed to allow
12 the permittee to appropriate or otherwise use underground or
13 surface water without first obtaining a water rights permit or
14 approval from the state engineer. New appropriations of
15 water and water rights transfers shall in no event
16 be exempted from state water law and the rules of
17 the state engineer;

18 D. employees and agents of the state or the county
19 may, at all reasonable times, enter the sustainable development
20 testing site for the purpose of inspecting the site and
21 activities conducted on the site to ensure that conditions
22 specified in the testing site permit are being met;

23 E. the permittee shall annually, no later than the
24 anniversary date of the testing site permit, submit a report to
25 the planning commission and to the department of environment

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1 describing the sustainable development research conducted
2 during the preceding twelve months and summarizing the results.
3 The report shall also include all required monitoring data for
4 soil, water and air. All information contained in the report
5 and all other information learned from activities pursuant to
6 the testing site permit shall be made available to the public;

7 F. the permittee shall allow no person, including
8 participants, visitors and inhabitants, except for inspectors
9 from the department of environment and other state and county
10 agencies, to enter the sustainable development testing site
11 without signing an acknowledgment that the person has read a
12 disclosure statement about the sustainable development testing
13 site;

14 G. the planning commission may revoke the testing
15 site permit if it finds, after a public hearing, that:

16 (1) the permittee has violated a testing site
17 permit provision, a provision of the Sustainable Development
18 Testing Site Act or a rule adopted pursuant to Section 9 of
19 that act;

20 (2) the sustainable development testing site
21 has contaminated soil, water or air in excess of allowable
22 state or federal standards; or

23 (3) the sustainable development testing site
24 poses a threat to human health, public welfare or the
25 environment; and

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

9 Section 7. EXPIRATION OF TESTING SITE PERMITS.--Upon the
10 expiration of the term of a testing site permit or any renewal
11 thereof:

12 A. all activities within the area of the
13 sustainable development testing site shall comply with all
14 applicable laws, ordinances or rules, including permitting
15 requirements; and

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

21 Section 8. SALE OF LAND WITHIN A SUSTAINABLE DEVELOPMENT
22 TESTING SITE.--Land within a sustainable development testing
23 site shall not be sold in whole or in part unless:

24 A. the subsequent owner obtains a testing site
25 permit pursuant to the provisions of the Sustainable

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1 Development Testing Site Act; or

2 B. the owner or subsequent owner enters into an
3 agreement with the planning commission to bring the area within
4 the sustainable development testing site into compliance with
5 all federal and state law and county ordinances that would be
6 applicable to the site in the absence of a testing site permit.

7 Section 9. PROMULGATION OF RULES.--The regulation and
8 licensing department, in consultation with the department of
9 environment and the office of the state engineer, shall define
10 a new category of rules applicable to sustainable development
11 testing sites and promulgate rules for the category. The rules
12 shall be designed to facilitate and encourage sustainable
13 development research while maintaining levels of safety and
14 environmental protection equivalent to those required by rules
15 applicable to areas that are not within sustainable development
16 testing sites.

17 Section 10. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2006.