

1 HOUSE BILL 206

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Gail Chasey and Mimi Stewart

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10 AN ACT

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

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
18 cited as the "Environmental Review Act".

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

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

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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 permit required by law from a public
16 agency pursuant to any law enforced by the public agency;

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

23 C. "cumulative impact" means the incremental
24 environmental impacts of an individual project combined with
25 the environmental impacts caused by past projects in proximity

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

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

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

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

17 or

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

21 F. "environmental impact statement" means an
22 informational, detailed document setting forth the matters
23 specified in Section 6 of the Environmental Review Act, that,
24 when its preparation is required by the Environmental Review
25 Act, is considered by a public agency prior to the public

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1 agency's approval or disapproval of a project;

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

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

12 I. "project" means an activity or proposed activity
13 that:

14 (1) is directly undertaken by a public agency,
15 including rulemaking by a public agency;

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

20 (3) involves one or more public agencies
21 issuing a lease, permit, license, certificate or other
22 entitlement; or

23 (4) is proposed on state land or land that is
24 subject to state jurisdiction;

25 J. "project property" means the land on which a

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1 project or a proposed project is located or proposed to be
2 located;

3 K. "proximity" means:

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

8 (2) within five miles of a project property if
9 the project property is in a county other than a class A or H
10 class county or in a municipality with a population of less
11 than two thousand five hundred people;

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

15 M. "significant effect on the environment" means a
16 determination made by a public agency that a project is likely
17 to have a significant effect on the environment; and

18 N. "special expertise" means a statutory
19 responsibility, an issue of concern within the mission of an
20 agency or programmatic experience with an issue related to a
21 project.

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

24 A. The public agency with primary responsibility
25 for issuing recommendations or permit or license approvals for

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1 a project shall be considered the lead agency for the purposes
2 of preparing and evaluating environmental impact statements,
3 environmental assessments or findings of no significant impact.

4 B. When more than one public agency has
5 responsibility for issuing recommendations or permit or license
6 approvals for a project, only one agency shall act as the lead
7 agency. The public agencies involved, by agreement, shall
8 determine the lead agency based on:

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

11 (2) each public agency's expertise concerning
12 the project's environmental impacts;

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

16 (4) the sequence of each public agency's
17 involvement.

18 C. Upon request of a lead agency, any other state
19 agency that has jurisdiction by law shall be a cooperating
20 agency. In addition, any other state agency that has special
21 expertise with respect to any environmental issue that should
22 be addressed in the Environmental Review Act process may be a
23 cooperating agency. A public agency may request a lead agency
24 to designate it as a cooperating agency by written agreement.

25 The written agreement shall establish the terms of the

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1 cooperating agency's involvement.

2 D. If a project is proposed to occur within ten
3 miles of the boundary of the land of an Indian nation, tribe or
4 pueblo, the lead agency shall designate the Indian nation,
5 tribe or pueblo as a cooperating agency.

6 E. A lead agency shall:

7 (1) secure appropriate funding for undertaking
8 the Environmental Review Act process from an applicant that is
9 external to the agency;

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

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

16 (4) meet with a cooperating agency at a
17 cooperating agency's request;

18 (5) determine the level of analysis that is
19 required for a project;

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

23 (7) after analysis, make a determination on
24 whether or how to issue a requested permit; and

25 (8) to the extent funds are available, fund

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1 the major activities or analyses that the lead agency requests
2 from cooperating agencies. A potential lead agency shall
3 include funding requirements to carry out the Environmental
4 Review Act in its budget requests.

5 F. A cooperating agency:

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

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

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

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

21 (5) may, in response to a lead agency's
22 request for assistance in preparing an environmental impact
23 statement or reviewing an environmental assessment or
24 environmental impact statement, challenge the degree of
25 involvement requested or decline to participate on the basis

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1 that other program commitments preclude involvement.

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

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

13 B. At minimum, an environmental assessment shall
14 include:

- 15 (1) the location of and a map of the project;
- 16 (2) a description of the project;
- 17 (3) a timeline for completion;
- 18 (4) a description of the type of landscape or
19 ecosystem in the project area;
- 20 (5) the permits required;
- 21 (6) potential mitigation for environmental
22 impacts;
- 23 (7) a description of surface and ground water;
- 24 (8) any hazardous wastes associated with the
25 project;

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1 (9) a description of protected fish and
2 wildlife species in the area;

3 (10) a description of cultural properties in
4 the area;

5 (11) a description of potential public health
6 impacts of the project; and

7 (12) potential cumulative impacts of the
8 project.

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

12 (1) determine that the project is likely to
13 have a significant effect on the environment; or

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

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

22 E. Unless exempt, the following projects are
23 presumed to require an environmental assessment:

24 (1) projects costing or anticipated to cost
25 one million dollars (\$1,000,000) or more;

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

3 (3) projects that a public agency determines
4 may have a significant effect on the environment based on
5 weighing the:

6 (a) size, cost, context and intensity of
7 the project;

8 (b) potential for adverse health, safety
9 or environmental impacts from the project and the possible
10 severity of those impacts;

11 (c) proximity of the proposed project to
12 sensitive places, including historic and cultural properties,
13 wildlife corridors, riparian areas and endangered species
14 habitat; and

15 (d) the likelihood of public controversy
16 over the project.

17 F. Environmental assessments and environmental
18 impact statements shall be reviewed by the department of
19 environment to ensure that environmental and public health
20 impacts are sufficiently considered, and the department of
21 environment may send an analysis back to the lead agency to
22 make changes or additions.

23 SECTION 6. [NEW MATERIAL] ENVIRONMENTAL IMPACT
24 STATEMENT--REQUIREMENTS.--

25 A. An environmental impact statement shall include

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1 a detailed statement setting forth:

2 (1) all significant effects on the environment
3 of the project;

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

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

8 (4) any significant effect of the project on
9 human health;

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

15 (6) 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 (7) 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 properties located within the project area identified
22 by methods such as pedestrian surveys, archival record searches
23 or consultation with Indian nations, tribes or pueblos;

24 (8) the impacts upon the continuing use or
25 existence of or access to archeological, historic or culturally

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1 significant sites or cultural properties, including continuing
2 cultural significance to Indian nations, tribes or pueblos or
3 impacts upon Indian nations, tribes or pueblos in the state to
4 engage in cultural practices;

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

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

11 (a) a no-action alternative;

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

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

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

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

23 B. The lead agency shall make the environmental
24 impact statement publicly available and shall take and respond
25 to comments from the public on the project.

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1 SECTION 7. [NEW MATERIAL] CONFLICTS OF INTEREST.--A
2 person shall not provide contractual services related to the
3 preparation of an environmental assessment or environmental
4 impact statement without certifying under penalty of perjury
5 that the person does not have a current financial interest of
6 any kind in the project, nor any interest which may cause the
7 contractual services to be biased. A contractor may be removed
8 by the lead agency if the agency determines the contract is not
9 being fulfilled or if the contractor is acting in bad faith.

10 SECTION 8. [NEW MATERIAL] EXEMPTIONS.--The following
11 projects are exempt from the provisions of the Environmental
12 Review Act:

- 13 A. law enforcement activities;
- 14 B. emergency activities to protect public health,
15 safety or the environment, including firefighting;
- 16 C. purely ministerial actions, including
17 maintenance of existing facilities or construction of temporary
18 facilities;
- 19 D. nondestructive data collection and scientific
20 study;
- 21 E. post-fire rehabilitation activities not
22 exceeding four thousand acres, including tree planting, fence
23 replacement, habitat restoration, heritage site restoration,
24 repair of roads and trails and the repair of damage to minor
25 facilities, including campgrounds, but not including post-fire

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1 logging;

2 F. property acquisition;

3 G. small-scale restoration activities consistent
4 with the best available science;

5 H. renewals, assignments and conversions of
6 existing permits where substantially no change in use occurs;
7 the new permit assignment will not go to an operator that is
8 underfunded or with less experience; and continuation of the
9 activity will not lead to environmental degradation;

10 I. approval of mineral lease adjustments and
11 transfers, including assignments and subleases;

12 J. approval and issuance of cutting permits for
13 forest products not to exceed three thousand dollars (\$3,000)
14 in value;

15 K. activities involving remediation of hazardous
16 waste sites if undertaken in compliance with applicable laws;

17 L. improvement and maintenance of public roads;

18 M. construction of bicycle and pedestrian lanes and
19 paths adjacent to existing highways and within existing rights
20 of way;

21 N. installation of signs, displays or kiosks;

22 O. issuance of hunting and fishing licenses;

23 P. approval of leases, easements or funds for
24 single family homesites that encompass five acres or less of
25 contiguous land and associated improvements, including

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1 construction of homes, outbuildings, access roads and utility
2 lines; provided that the homesites and associated improvements
3 do not adversely affect tribal cultural resources or cultural
4 properties and are in compliance with applicable federal and
5 tribal laws;

6 Q. installation of underground utilities in
7 previously disturbed areas having stable soils or in an
8 existing utility right of way;

9 R. approval of unitization agreements,
10 communitization agreements, drainage agreements, underground
11 storage agreements, development contracts or geothermal unit or
12 participating area agreements;

13 S. vegetation management activities, including
14 seeding, planting, invasive plant removal, installation of
15 erosion control devices, such as mats, straw or chips, or
16 mechanical treatments, such as crushing, piling, thinning,
17 pruning, cutting, chipping, mulching, mowing or prescribed
18 fire, when the activity is necessary for the management of
19 vegetation on public lands;

20 T. projects analyzed through the National
21 Environmental Policy Act of 1969 and its implementing
22 regulations; provided that state public agencies shall review a
23 federal agency's final action under the National Environmental
24 Policy Act and may require additional information and
25 evaluation of a project before approving any permits, licenses

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1 or authorizations required under state law; or

2 U. projects on lands owned by an Indian nation,
3 tribe or pueblo or held in trust by the United States.

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

6 A. Based on the best available science, a public
7 agency shall:

8 (1) authorize for agency approval the
9 alternative to a project that, to the maximum extent
10 practicable and in compliance with the agency's statutory
11 mission and duties, avoids or minimizes adverse environmental
12 effects; or

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

17 B. A public agency may deny a permit, license or
18 other authorization when an environmental impact statement
19 concludes that the project will cause irreparable harm to the
20 environment.

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

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

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1 At a minimum, notice that an environmental assessment,
2 environmental impact statement or finding of no significant
3 impact is being undertaken or has been finalized shall be:

4 (1) provided by certified mail to:

5 (a) the owners of record, as shown by
6 the most recent property tax schedule, of all properties within
7 proximity of the project property;

8 (b) the governing body of all
9 municipalities and counties in which the project property is
10 located; and

11 (c) the governing body of any county,
12 municipality or Indian nation, tribe or pueblo when the
13 boundary of the territory of the county, municipality or Indian
14 nation, tribe or pueblo is within a ten-mile radius of the
15 project property;

16 (2) published once in the newspaper with the
17 largest circulation in each county in which the project
18 property is located and once in the largest newspaper in the
19 state. The notice shall appear in either the classified or
20 legal advertisements section of the newspaper and in one other
21 place in the newspaper calculated to give the general public
22 the most effective notice and shall be printed in both English
23 and Spanish and posted on the newspaper's website;

24 (3) posted in at least four publicly
25 accessible and conspicuous places, including at the entrance of

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1 the project property and at one local post office;

2 (4) posted electronically on the lead and
3 cooperating agencies' websites; and

4 (5) posted on the sunshine portal.

5 B. A member of the general public may request a
6 copy of an environmental assessment or environmental impact
7 statement from a public agency. Within five business days of
8 receiving the request, a public agency shall either provide the
9 requestor with a copy of the environmental assessment or
10 environmental impact statement or direct the requestor to a
11 publicly available copy.

12 C. At a minimum, the public shall be allowed:

13 (1) fifteen days to review an environmental
14 assessment and submit comments to the lead agency before the
15 agency makes any determination about the environmental
16 assessment; and

17 (2) thirty days to review an environmental
18 impact statement and submit comments to the lead agency before
19 a final decision on the project is made.

20 D. Public comments that are substantive in nature,
21 including those that provide new information, provide
22 alternative scientific information or illustrate concerns not
23 previously considered by the lead agency shall be responded to
24 by the lead agency in either the finding of no significant
25 impact or the final environmental impact statement. A response

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1 by the lead agency shall include an explanation of why the
2 substantive comment did not merit a change in outcome or an
3 explanation of how the outcome was changed due to the
4 substantive comment.

5 E. The requirements of this section represent the
6 minimum public notice and comment requirements. The
7 environmental improvement board may by rule impose additional
8 notice and comment procedures consistent with existing law.

9 SECTION 11. [NEW MATERIAL] ENVIRONMENTAL IMPROVEMENT
10 BOARD--RULEMAKING.--

11 A. By July 1, 2020, the environmental improvement
12 board, in consultation with the department of environment, the
13 energy, minerals and natural resources department, the state
14 land office, the department of game and fish, the department of
15 health, the department of transportation, the historic
16 preservation division of the cultural affairs department and
17 the office of the governor, shall adopt rules to implement the
18 Environmental Review Act.

19 B. The rules shall include:

20 (1) requirements for the preparation of a
21 record of decision for use in appeal proceedings, including, at
22 a minimum, that a public agency's record of decision consists
23 of:

24 (a) the environmental assessment and the
25 associated finding of no significant impact or environmental

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1 impact statement, as applicable;

2 (b) all public comments and agency
3 responses to comments on the environmental assessment and the
4 environmental impact statement; and

5 (c) all documents a public agency used
6 to support its decision, including: 1) agency memoranda; 2)
7 correspondence, including electronic mail and facsimiles,
8 between the lead agency and the applicant and any cooperating
9 agencies; 3) technical reports, papers or articles; and 4)
10 technical findings and legal conclusions;

11 (2) a fee structure to be imposed upon
12 applicants; provided that the fees shall be no more than the
13 actual costs of implementing the Environmental Review Act. The
14 fees paid by applicants are appropriated to the respective
15 agencies to carry out the provisions of the Environmental
16 Review Act;

17 (3) procedures for creating categorical
18 exemptions from the Environmental Review Act, as well as for
19 ending categorical exemptions; provided that the rules shall
20 require a categorical exemption determination to be reasonable,
21 based on the best available science and to not be arbitrary,
22 capricious or an abuse of discretion;

23 (4) procedures for implementing the notice and
24 comment requirements of the Environmental Review Act, including
25 procedures to ensure that documents are easily accessible to

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1 the public, the public is able to submit comments on documents
2 in a variety of ways including via the internet, and that
3 members of the public who submit comments are updated on the
4 project's progress; and

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

7 SECTION 12. [NEW MATERIAL] ENVIRONMENTAL ASSESSMENT--
8 ENVIRONMENTAL IMPACT STATEMENT--TIME LIMITS.--

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

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

12 (2) one year to complete and certify an
13 environmental impact statement and compile a record of
14 decision.

15 B. The time limits specified in this section shall
16 apply only when the public agency is the applicant.

17 C. The environmental improvement board may adopt
18 rules that establish different time limits for preparing
19 environmental assessments, environmental impact statements or
20 findings of no significant impact for different types or
21 classes of projects, but all time limits shall be measured from
22 the date on which an application requesting approval of the
23 project is received and accepted as administratively complete
24 by the public agency. The rules adopted pursuant to this
25 subsection may provide for a reasonable extension of time in

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1 the event that compelling circumstances justify additional time
2 and the project applicant consents to the extension.

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

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

9 (1) the public agency with primary
10 responsibility for preparing an environmental assessment or
11 environmental impact statement under the Environmental Review
12 Act; or

13 (2) a public agency alleged to have failed to
14 perform any nondiscretionary act or duty required by the
15 Environmental Review Act.

16 B. An action shall not be commenced pursuant to
17 Subsection A of this section prior to sixty days after the
18 plaintiff has given written notice to the appropriate public
19 agency, the attorney general and the project applicant of the
20 plaintiff's intent to commence an action; provided that when
21 the violation constitutes an immediate threat to the health or
22 safety of the plaintiff or would immediately and irreparably
23 impair a legal interest of the plaintiff, an action pursuant to
24 this section may be brought immediately after providing written
25 notice to the proper parties. An action against a public

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1 agency for failure to comply with the procedures of the
2 Environmental Review Act shall be brought in the first judicial
3 district court of Santa Fe county.

4 C. Except as otherwise provided in Subsections A
5 and B of this section, a person who is adversely affected by a
6 project subject to the Environmental Review Act and who
7 participated in a permitting action or appeal of a
8 certification before any public agency, including by submitting
9 comments to the agency, may appeal to the court of appeals for
10 further relief.

11 D. Appeals shall be upon the public agency's record
12 of decision and shall be taken to the court of appeals no more
13 than thirty days after the public agency certifies an
14 environmental impact statement, environmental assessment or
15 finding of no significant impact as complete or the public
16 agency's final permitting, funding, certification or licensing
17 decision, whichever is later. The court of appeals:

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

20 (a) arbitrary, capricious or an abuse of
21 discretion;

22 (b) not supported by substantial
23 evidence in the record; or

24 (c) otherwise not in accordance with
25 law; and

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

4 E. A court in issuing a final order in an action
5 brought pursuant to this section, may award costs of
6 litigation, including attorney fees and expert witness fees and
7 other reasonable fees and expenses, to a prevailing plaintiff
8 or appellant other than a public agency, whenever the court
9 determines such an award is appropriate.

10 SECTION 14. [NEW MATERIAL] LIMITATIONS.--Nothing in the
11 Environmental Review Act shall supersede requirements or
12 standards of any other applicable federal or state law.

13 SECTION 15. TEMPORARY PROVISION--PROJECT APPROVAL PRIOR
14 TO ADOPTION OF RULES--LOCAL ENVIRONMENTAL REVIEW.--

15 A. After the effective date of the Environmental
16 Review Act and until the environmental improvement board adopts
17 regulations necessary to carry out the provisions of the
18 Environmental Review Act, county or municipal environmental
19 review laws or ordinances shall apply to projects within a
20 county's or municipality's jurisdiction.

21 B. If a county or municipality does not have
22 environmental review laws or ordinances, an environmental
23 assessment or environmental impact statement shall not be
24 required for a project until the environmental improvement
25 board adopts regulations implementing the Environmental Review

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1 Act.

2 SECTION 16. APPROPRIATIONS.--

3 A. Two hundred fifty thousand dollars (\$250,000) is
4 appropriated from the state lands maintenance fund to the state
5 land office for expenditure in fiscal year 2020 for the state
6 land office to hire and support two full-time-equivalent
7 positions to carry out the office's duties pursuant to the
8 Environmental Review Act. Any unexpended or unencumbered
9 balance remaining at the end of fiscal year 2020 shall revert
10 to the state lands maintenance fund.

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

18 C. Two hundred fifty thousand dollars (\$250,000) is
19 appropriated from the general fund to the energy, minerals and
20 natural resources department for expenditure in fiscal year
21 2020 for the department to hire and support two full-time-
22 equivalent positions to carry out the department's duties
23 pursuant to the Environmental Review Act. Any unexpended or
24 unencumbered balance remaining at the end of fiscal year 2020
25 shall revert to the general fund.

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