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SENATE BILL 626

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Fernando R. Macias

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT TO PROVIDE DEADLINES FOR PERMIT APPLICATION ACTION; PROVIDING FOR ACCELERATED REVIEW OF APPLICATIONS.

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

Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972, Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By [~~regulation~~] rule, the environmental improvement board or the local board shall require:

(1) any person intending to construct or modify any source, except as otherwise specifically provided by [~~regulation~~] rule, to obtain a construction permit from the department or the local agency prior to such construction or

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1 modification; and

2 (2) any person intending to operate any
3 source for which an operating permit is required by the 1990
4 amendments to the federal act, except as otherwise
5 specifically provided by [~~regulation~~] rule, to obtain an
6 operating permit from the department or the local agency.

7 B. [~~Regulations~~] Rules adopted by the
8 environmental improvement board or the local board shall
9 include at least the following provisions:

10 (1) requirements for the submission of
11 relevant information, including but not limited to information
12 the department or the local agency deems necessary to ensure
13 that [~~regulations~~] rules and standards under the Air Quality
14 Control Act or the federal act will not be violated;

15 (2) specification of the deadlines for
16 processing permit applications; provided:

17 (a) the deadline for a final decision
18 by the department or the local agency on a construction permit
19 application may not exceed: [~~(a)~~] 1) one hundred eighty days
20 after the application is determined to be complete if the
21 application is not affected by requirements for prevention of
22 significant deterioration; or [~~(b)~~] 2) two hundred forty days
23 after the application is determined to be complete if the
24 application is affected by requirements for prevention of
25 significant deterioration; and

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(b) the deadline for a final decision on an operating permit application shall be consistent with the federal act, but shall not exceed one hundred eighty days after a permit application is determined to be complete;

(3) that if the department or local agency fails to take final action on a permit application within the deadlines specified in Paragraph (2) of this subsection, the department or local agency shall notify the applicant in writing that an extension of time is required to process the application and specify in detail the grounds for the extension;

~~[(3)]~~ (4) specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit; provided the permit regulations adopted:

(a) by the environmental improvement board shall include provisions governing notice to nearby states; and

(b) by any local board shall include provisions requiring that notice be given to the department of all permit applications by any source that emits, or has a potential emission rate of, one hundred tons per year or more of any regulated air contaminant, including any source of fugitive emissions of each regulated air contaminant, at least sixty days prior to the date on which construction or major

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1 modification is to commence;

2 [~~(4)~~] (5) a schedule of construction permit
3 fees sufficient to cover:

4 (a) the reasonable costs of reviewing
5 and acting upon any application for such permit; and

6 (b) the reasonable costs of
7 implementing and enforcing the terms and conditions of the
8 permit, excluding any court costs or other costs associated
9 with an enforcement action;

10 [~~(5)~~] (6) a schedule of emission fees
11 consistent with the provisions of Section 502(b)(3) of the
12 1990 amendments to the federal act;

13 (7) a method for accelerated permit
14 processing that may be requested at the sole discretion of the
15 applicant at the time the applicant submits a permit
16 application and that:

17 (a) allows the department or local
18 agency to contract with qualified outside firms to assist the
19 department or local agency in its accelerated review of the
20 permit application; and

21 (b) establishes a process for the
22 department or local agency to account for the expenditure of
23 the accelerated permit processing fees; and

24 (8) a schedule of permit application fees, to
25 be paid when the applicant is notified that the permit

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1 application has been determined to be complete, sufficient to
2 cover the reasonable costs of an accelerated permit
3 application review process;

4 [~~(6)~~] (9) specification of the maximum length
5 of time for which a permit shall be valid; provided that for
6 an operating permit, such period may not exceed five years;
7 and

8 [~~(7)~~] (10) for an operating permit only:

9 (a) provisions consistent with Sections
10 502(b) and 505(b) of the federal act providing: 1) notice to
11 and review and comment by the United States environmental
12 protection agency; and 2) that if the department or local
13 agency receives notice of objection from the United States
14 environmental protection agency before the operating permit is
15 issued, the department or the local agency shall not issue the
16 permit unless it is revised and issued under Section 505(c) of
17 the federal act;

18 (b) provisions governing renewal of the
19 operating permit; and

20 (c) specification of the conditions
21 under which the operating permit may be terminated, modified
22 or revoked and reissued prior to the expiration of the term of
23 the operating permit.

24 C. The department or the local agency may deny any
25 application for:

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1 (1) a construction permit if it appears that
2 the construction or modification will not meet applicable
3 requirements of the Air Quality Control Act, the federal act
4 or any ~~[regulation]~~ rule adopted pursuant to either; or

5 (2) an operating permit if:

6 (a) the source for which the permit is
7 sought will emit a hazardous air pollutant or any air
8 contaminant in excess of a federal standard of performance or
9 a ~~[regulation]~~ rule of the environmental improvement board or
10 the local board;

11 (b) it appears that the source for
12 which the permit is sought will cause or contribute to air
13 contaminant levels in excess of any national or state standard
14 or, within the boundaries of a local authority, applicable
15 local ambient air quality standards; or

16 (c) any other provision of the Air
17 Quality Control Act or the federal act will be violated.

18 D. The department or the local agency may specify
19 conditions to any permit granted under this section,
20 including:

21 (1) for a construction permit, a requirement
22 that such source install and operate control technology,
23 determined on a case-by-case basis, sufficient to meet the
24 requirements of the Air Quality Control Act, the federal act
25 and ~~[regulations]~~ rules promulgated pursuant to either; and

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(2) for an operating permit:

(a) imposition of individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act and the federal act or the emission rate specified in the operating permit application, whichever is more stringent;

(b) compliance with applicable federal standards of performance;

(c) imposition of reasonable restrictions and limitations not relating to emission limits or emission rates; or

(d) any combination of the conditions listed above.

E. This section does not authorize the department or the local agency to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, state ~~[regulations]~~ rules and permit conditions may be met by machinery, devices or equipment otherwise available.

F. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act and any applicable ~~[regulations]~~ rules of the environmental improvement board or the local board. Any conditions placed upon a permit by the

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1 department or the local agency shall be enforceable to the
2 same extent as a [~~regulation~~] rule of its board.

3 G. Any person who participated in a permitting
4 action before the department or the local agency shall be
5 notified by the department or the local agency of the action
6 taken and the reasons for the action. Notification of the
7 applicant shall be by certified mail.

8 H. Any person who participated in a permitting
9 action before the department or the local agency and who is
10 adversely affected by such permitting action may file a
11 petition for hearing before the environmental improvement
12 board or the local board. The petition shall be made in
13 writing to the environmental improvement board or the local
14 board within thirty days from the date notice is given of the
15 department's or the local agency's action. Unless a timely
16 request for hearing is made, the decision of the department or
17 the local agency shall be final.

18 I. If a timely petition for hearing is made, the
19 environmental improvement board or the local board shall hold
20 a hearing within ninety days after receipt of the petition.
21 The environmental improvement board or the local board shall
22 notify the petitioner and the applicant or permittee, if other
23 than the petitioner, by certified mail of the date, time and
24 place of the hearing. If the subject of the petition is a
25 permitting action deemed by the environmental improvement

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1 board or the local board to substantially affect the public
2 interest, the environmental improvement board or the local
3 board shall ensure that the public receives notice of the
4 date, time and place of the hearing. The public in such
5 circumstances shall also be given a reasonable opportunity to
6 submit data, views or arguments orally or in writing and to
7 examine witnesses testifying at the hearing. Any person
8 submitting data, views or arguments orally or in writing shall
9 be subject to examination at the hearing.

10 J. The environmental improvement board or the
11 local board may designate a hearing officer to take evidence
12 in the hearing. All hearings shall be recorded.

13 K. The burden of proof shall be upon the
14 petitioner. Based upon the evidence presented at the hearing,
15 the environmental improvement board or the local board shall
16 sustain, modify or reverse the action of the department or the
17 local agency respectively.

18 L. Notwithstanding any other provision of law and
19 subject to the provisions of Section 74-2-4 NMSA 1978, a final
20 decision on a permit by the department, the environmental
21 improvement board, the local agency, the local board or the
22 court of appeals that a new source will or will not meet
23 applicable local, state and federal air pollution standards
24 and [~~regulations~~] rules shall be conclusive and is binding on
25 every other state agency and as an issue before any other

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1 state agency shall be deemed resolved in accordance with that
2 final decision.

3 M Subject to the provisions of Section 74-2-4
4 NMSA 1978, if the local board has adopted a permit
5 [~~regulation~~] rule pursuant to this section, persons
6 constructing or modifying any new source within the boundaries
7 of the local authority shall obtain a permit from the local
8 agency and not from the department.

9 N. Fees collected pursuant to this section shall
10 be deposited in:

11 (1) the state air quality permit fund created
12 by Section 74-2-15 NMSA 1978 if collected by the department;
13 or

14 (2) a fund created pursuant to Section
15 74-2-16 NMSA 1978 if collected by a local agency pursuant to a
16 permit [~~regulation~~] rule adopted by the local board pursuant
17 to this section. "

1 FORTY- FOURTH LEGISLATURE

2 FIRST SESSION, 1999

SB 626/a

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4
5
6 February 25, 1999

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8 Mr. President:

9
10 Your CONSERVATION COMMITTEE, to whom has been referred

11
12 SENATE BILL 626

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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

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18 1. On page 2, between lines 14 and 15, insert the
19 following new paragraph:

20
21 "(2) a description of the elements required for
22 the department or local agency to deem an application
23 complete;".

24
25 2. Renumber the succeeding paragraphs accordingly.

. 127160. 1

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SCONC/SB 626

Page 12

3. On page 2, lines 16 and 17, strike the colon and the subparagraph designation "(a)".

4. On page 2, line 19, remove the brackets and line through the subparagraph designation "(a)" and strike the item designation "1)".

5. On page 2, line 19, strike "one hundred eighty" and insert in lieu thereof "ninety".

6. On page 2, line 22, after "deterioration" insert "unless the secretary or the director grants an extension not to exceed ninety days for good cause, including the need to have public hearings".

7. On page 2, line 22, remove the brackets and line through the subparagraph designation "(b)" and strike the item designation "2)".

8. On page 3, lines 1 through 4, strike Subparagraph (b) in its entirety.

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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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SCONC/SB 626

Page 13

9. On page 3, line 6, after "a" insert "construction".

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SCONC/SB 626

Page 14

10. On page 3, line 7, strike "(2)" and insert in lieu thereof "(3)".

11. On page 4, line 15, after "a" insert "construction".

12. On page 4, line 20, before "permit" insert "construction".

13. On page 4, line 20, after "application" insert the following "provided that the department or local agency can contract with a qualified firm that does not have a conflict of interest;".

14. On page 4, line 20, strike "and".

15. On page 4, line 24, strike "(8) a schedule of" and insert in lieu thereof "(c) allows for additional".

16. Renumber succeeding paragraphs accordingly.

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SCONC/SB 626

Page 15

17. On page 4, lines 24, 25 and page 5, line 1, strike "to be paid when the applicant is notified that its permit application has been determined to be complete,".

18. On page 5, line 3, after "process;" insert "Before the applicant is notified that the permit application has been determined to be complete, the department or local board shall give the applicant a reasonable estimate of costs of an accelerated permit application review process;".

Respectfully submitted,

Fernando R. Macias, Chairman

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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SCONC/SB 626

Page 16

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Lyons, Payne, Sanchez, Vernon

Absent: None

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

March 1, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 626, as amended

Amendment sponsored by Senator Fernando R. Macias

1. Strike Senate Conservation Committee Amendments 17 and 18.

2. On page 2, line 25, strike "and".

3. On page 4, lines 24, 25 and page 5, line 1, strike ", to be paid when the applicant is notified that the permit application has been determined to be complete,".

4. On page 5, line 3, after "the semi colon;" insert:

128448. 1

FORTY- FOURTH LEGISLATURE
FIRST SESSION

SF1/SB 626, aa

Page 18

"provided that before the applicant is notified that the permit application has been determined to be complete, the department or local board shall give the applicant a reasonable estimate of costs of an accelerated permit application review process;".

Fernando R. Macias

Adopted _____ Not Adopted

(Chief Clerk)

(Chief Clerk)

Date _____

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 March 10, 1999

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8 Mr. Speaker:

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10 Your ENERGY AND NATURAL RESOURCES COMMITTEE, to
11 whom has been referred

12
13 SENATE BILL 626, as amended

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

- 17 1. Strike Senate Floor Amendments 1 and 4.
- 18
- 19 2. On page 5, line 3, after the semicolon; insert
- 20 "provided that before the application is complete, the
- 21 department or local agency shall give the applicant a reasonable
- 22 estimate of costs of an accelerated permit applicant review
- 23 process;".
- 24
- 25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

Page 20

Respectfully submitted,

James Roger Madalena, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: None

Absent: None

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