

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 152

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

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
SPECIFIED COUNTY CODES, ORDINANCES, RULES AND PERMITS ARE NOT
APPLICABLE TO CERTAIN RESEARCH ACTIVITIES WITHIN AN APPROVED
AREA.

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. DEFINITIONS.--As used in the Sustainable
Development Testing Site Act:

A. "permittee" means a person who holds a testing

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1 site permit;

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

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

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

14 (2) the inherent provision of water needs
15 while minimizing the withdrawals from ground water and surface
16 water systems in accordance with state water law and the rules
17 and policies of the state engineer;

18 (3) the inherent provision of sewage treatment
19 needs with zero discharge;

20 (4) the reuse of materials discarded by modern
21 society; and

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

23 D. "sustainable development research" means
24 activities conducted at a sustainable development testing site
25 that test ideas, concepts or inventions designed to lead

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1 ultimately to sustainable development;

2 E. "sustainable development testing site" means an
3 area that is:

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

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

- 12 (1) the sustainable development research that
13 can be conducted within the site by the permittee; and
- 14 (2) the county codes, ordinances, rules or
15 permits that are not applicable to the permittee and the
16 research.

17 Section 3. APPLICATION FOR TESTING SITE PERMIT--
18 EVALUATION--NOTICE OF PUBLIC HEARING.--

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

- 23 (1) a detailed description of the sustainable
24 development research that will be conducted on the sustainable
25 development testing site, including an explanation of the

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1 ideas, concepts and inventions that will be tested;

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

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

7 (4) a water budget detailing the anticipated
8 indoor and outdoor water use for the sustainable development
9 testing site;

10 (5) an assessment of the county codes,
11 ordinances, rules or permits relating to construction or
12 building requirements, occupancy, zoning or subdivisions that
13 are not practicable for the specific sustainable development
14 testing site and that may inhibit the proposed sustainable
15 development research and an explanation of how the sustainable
16 development testing site will not be damaged if the proposed
17 sustainable development research at the site is allowed;

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

22 (7) other information as may be required by
23 rules adopted pursuant to Section 9 of the Sustainable
24 Development Testing Site Act or by rule of the planning
25 commission or ordinance of the county; and

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1 (8) copies of all required state permits,
2 including the approval of the wastewater treatment and disposal
3 technology on an experimental basis.

4 B. Upon receipt of a complete application, the
5 planning commission shall:

6 (1) forward a copy of the application to the
7 office of the state engineer and to the department of
8 environment;

9 (2) set a date for a public hearing on the
10 application; and

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

16 C. The department of environment and the office of
17 the state engineer shall, prior to the hearing, evaluate the
18 application and the proposed sustainable development research
19 to be performed at the proposed sustainable development testing
20 site and submit comments to the planning commission.

21 Section 4. APPLICATION FOR TESTING SITE PERMIT--PUBLIC
22 HEARING--DECISION.--

23 A. At the public hearing for a testing site permit
24 application pursuant to Section 3 of the Sustainable
25 Development Testing Site Act, the planning commission shall

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1 hear comments from all interested persons, federal, state or
2 local agencies and, if appropriate, responses from the
3 applicant.

4 B. Following the hearing, the planning commission
5 shall, in writing, make its decision. The planning commission
6 may issue a testing site permit if:

7 (1) the state engineer and the department of
8 environment have determined that the sustainable development
9 testing site or sustainable development research proposed to be
10 conducted at the site will not damage land, water or air
11 adjacent to the site or will not permanently damage the area of
12 the site;

13 (2) no existing county codes, ordinances,
14 rules or permits, other than those identified in the permit,
15 will be violated by the proposed sustainable development
16 research at the sustainable development testing site;

17 (3) the applicant has complied with rules
18 adopted pursuant to Section 8 of the Sustainable Development
19 Testing Site Act;

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

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

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1 (6) the applicant has provided a cash bond, an
2 irrevocable letter of credit or any other surety, including
3 insurance, satisfactory to the planning commission, in the
4 amount of one hundred thousand dollars (\$100,000), to secure
5 payment for damage caused by the sustainable development
6 testing site.

7 C. A testing site permit shall include:

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

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

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

15 (4) the specific county codes, ordinances,
16 rules and permits relating to construction or building
17 requirements, occupancy, zoning or subdivisions otherwise
18 applicable to the permittee and the permittee's sustainable
19 development research on the sustainable development testing
20 site but which do not apply to the permittee and research
21 conducted pursuant to the permit; and

22 (5) other restrictions on the sustainable
23 development testing site and the permittee's activities as
24 required by rules adopted pursuant to Section 8 of the
25 Sustainable Development Testing Site Act or as determined by

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1 the planning commission.

2 D. The permit shall be filed and recorded in the
3 records of the county clerk for the county in which the
4 sustainable development testing site is located in the same
5 manner as deeds of real estate are filed and recorded.

6 E. A testing site permit shall be issued for a term
7 specified by the planning commission, not to exceed five years,
8 subject to renewal for a second five-year period with no
9 renewal after the second five-year period.

10 Section 5. TESTING SITE PERMIT--EFFECT.--As long as a
11 testing site permit is in effect:

12 A. the permittee, when conducting sustainable
13 development research that is specified in the testing site
14 permit, shall comply with all applicable laws and rules except
15 those county codes, ordinances, rules or permits specified in
16 the permit as inapplicable to the permittee and the research;

17 B. nothing in the Sustainable Development Testing
18 Site Act or the testing site permit shall be deemed to allow
19 the permittee to appropriate or otherwise use underground or
20 surface water without first obtaining a water rights permit or
21 approval from the state engineer. New appropriations of water
22 and water rights transfers shall in no event be exempted from
23 state water law and the rules of the state engineer;

24 C. employees and agents of the state or the county
25 may, at all reasonable times, enter the sustainable development

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1 testing site for the purpose of inspecting the site and
2 activities conducted on the site to ensure that conditions
3 specified in the testing site permit are being met;

4 D. the permittee shall annually, no later than the
5 anniversary date of the testing site permit, submit a report to
6 the planning commission, the department of environment, the
7 state engineer, the energy, minerals and natural resources
8 department and the construction industries division of the
9 regulation and licensing department describing the sustainable
10 development research conducted during the preceding twelve
11 months and summarizing the results. The report shall also
12 include all required monitoring data for soil, water, including
13 water quality and quantity, and air. All information contained
14 in the report and all other information learned from activities
15 pursuant to the testing site permit shall be made available to
16 the public;

17 E. the planning commission may revoke the testing
18 site permit if it finds, after a public hearing, that:

19 (1) the permittee has violated a testing site
20 permit provision, a provision of the Sustainable Development
21 Testing Site Act or a rule adopted pursuant to Section 8 of
22 that act; or

23 (2) the sustainable development testing site
24 has not complied with a permit provision, ordinance, rule,
25 regulatory policy or other associated administrative action of

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1 the state engineer, the department of environment or another
2 state or federal agency; and

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

11 Section 6. EXPIRATION OF TESTING SITE PERMITS.--Upon the
12 expiration of the term of a testing site permit or any renewal
13 thereof:

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

18 B. the permittee may provide the wastewater
19 treatment and disposal technologies to the wastewater technical
20 advisory committee for review and, if appropriate, for listing
21 by the department of environment as approved for use.

22 Section 7. SALE OF LAND WITHIN A SUSTAINABLE DEVELOPMENT
23 TESTING SITE.--Land within a sustainable development testing
24 site shall not be sold in whole or in part unless:

25 A. the subsequent owner obtains a testing site

1 permit pursuant to the provisions of the Sustainable
2 Development Testing Site Act; or

3 B. the owner or subsequent owner enters into an
4 agreement with the planning commission to bring the land and
5 improvements within the sustainable development testing site
6 into compliance with all county codes, ordinances, rules or
7 permits that would be applicable to the site in the absence of
8 a testing site permit.

9 Section 8. PROMULGATION OF RULES.--A county or planning
10 commission may define a new category of rules applicable to
11 sustainable development testing sites and promulgate rules for
12 the category. A county or a planning commission may also
13 promulgate rules or permit conditions applicable to a specific
14 sustainable development testing site.

15 Section 9. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2006.