

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 650

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
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, rooftop precipitation harvesting, sewage
20 treatment, food production and bio-fuel production, can be
21 tested under conditions involving actual year-round inhabitants
22 on the site, all of whom have signed an acknowledgment that
23 they have read a disclosure statement about the sustainable
24 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) the inherent provision of water needs
17 while minimizing the withdrawals from ground water and surface
18 water systems in accordance with state water law and the rules
19 and policies of the state engineer;

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

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) a water budget detailing the anticipated
10 indoor and outdoor water use for the sustainable development
11 testing site;

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

22 (6) an application fee, set by the planning
23 commission, equal to the estimated costs of evaluating the
24 application, holding the public hearing and administering the
25 permit;

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1 (7) other information as may be required by
2 rules adopted pursuant to Section 9 of the Sustainable
3 Development Testing Site Act or by rule of the planning
4 commission or ordinance of the county; and

5 (8) copies of all required environmental
6 permits approved by the department of environment, including
7 the approval of the wastewater treatment and disposal
8 technology on an experimental basis.

9 B. Upon receipt of a complete application, the
10 planning commission shall:

11 (1) forward a copy of the application to the
12 office of the state engineer, to the department of environment
13 and to other state or local agencies charged with enforcing the
14 affected laws, ordinances and rules identified in the
15 application;

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

19 (3) publish in a newspaper of general
20 circulation in the county, and broadcast on a radio station
21 broadcasting in the county, an announcement of its receipt of
22 the application, a notice of the public hearing and information
23 concerning where an interested person can obtain a copy of the
24 application.

25 C. The department of environment, the office of the

1 state engineer and other state and local agencies receiving
2 copies of the application shall, within sixty days of the
3 receipt:

4 (1) evaluate the application and the proposed
5 sustainable development research to be performed at the
6 proposed sustainable development testing site. In making the
7 evaluation, the agency may communicate with the applicant as
8 necessary to make an accurate evaluation;

9 (2) determine whether:

10 (a) the proposed sustainable development
11 testing site and the sustainable development research proposed
12 to be conducted at the site will damage land, water or air
13 adjacent to the site or will permanently damage the area of the
14 site; and

15 (b) the proposed sustainable development
16 research at the sustainable development testing site is
17 beneficial to sustainable development;

18 (3) in the case of the office of the state
19 engineer, state whether the applicant has consulted with the
20 office and received required permits with regard to water
21 quantity; and

22 (4) submit its findings to the planning
23 commission.

24 Section 5. APPLICATION FOR TESTING SITE PERMIT--PUBLIC
25 HEARING--DECISION.--

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1 A. At the public hearing for a testing site permit
2 application pursuant to Section 4 of the Sustainable
3 Development Testing Site Act, the planning commission shall
4 hear comments from all interested persons, federal, state or
5 local agencies and, if appropriate, responses from the
6 applicant.

7 B. Within two weeks after the hearing, the planning
8 commission shall, in writing, make its decision. The planning
9 commission may issue a testing site permit if:

10 (1) the applicant is in receipt of the
11 required permits with regard to water quantity, as determined
12 by the state engineer;

13 (2) no state or local agency, evaluating the
14 testing site permit application pursuant to Section 4 of the
15 Sustainable Development Testing Site Act, has determined that
16 the sustainable development testing site or sustainable
17 development research proposed to be conducted at the site will
18 damage land, water or air adjacent to the site or will
19 permanently damage the area of the site;

20 (3) no existing county codes, ordinances,
21 rules or permits will be violated by the proposed sustainable
22 development research at the sustainable development testing
23 site;

24 (4) the applicant has complied with rules
25 adopted pursuant to Section 9 of the Sustainable Development

1 Testing Site Act;

2 (5) the proposed sustainable development
3 research at the sustainable development testing site is
4 beneficial to sustainable development;

5 (6) the sustainable development testing site
6 and proposed sustainable development research are otherwise
7 beneficial to the county and to the state; and

8 (7) the applicant has provided a cash bond, an
9 irrevocable letter of credit or any other surety, including
10 insurance, satisfactory to the planning commission, in the
11 amount of one hundred thousand dollars (\$100,000), to secure
12 payment for damage caused by the sustainable development
13 testing site.

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 sustainable development testing 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 otherwise
25 applicable to the permittee and the permittee's sustainable

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1 development research on the sustainable development testing
2 site but from which the permittee's sustainable development
3 research is exempt; and

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

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

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

15 A. the permittee, when conducting sustainable
16 development research that is specified in the testing site
17 permit, shall comply with all applicable laws and rules except
18 those specifically exempted in the permit;

19 B. no other permit or approval of the state or any
20 of its political subdivisions shall be required of the
21 permittee to conduct the sustainable development research that
22 is specified in the testing site permit, except for permits and
23 approvals administered by the department of environment or by
24 the wastewater technical advisory committee;

25 C. nothing in the Sustainable Development Testing

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1 Site Act or the testing site permit shall be deemed to allow
2 the permittee to appropriate or otherwise use underground or
3 surface water without first obtaining a water rights permit or
4 approval from the state engineer. New appropriations of water
5 and water rights transfers shall in no event be exempted from
6 state water law and the rules of the state engineer;

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

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

25 F. the permittee shall allow no person, including

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1 participants, visitors and inhabitants, except for inspectors
2 from the department of environment and other state and county
3 agencies, to enter the sustainable development testing site
4 without signing an acknowledgment that the person has read a
5 disclosure statement about the sustainable development testing
6 site;

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

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

13 (2) the sustainable development testing site
14 has contaminated soil, water or air in excess of allowable
15 state or federal standards;

16 (3) the sustainable development testing site
17 poses a threat to human health, public welfare or the
18 environment; or

19 (4) the sustainable development testing site
20 has not complied with a permit provision, ordinance, rule,
21 regulatory policy or other associated administrative action of
22 the state engineer, the department of environment or a federal
23 agency; and

24 H. a permittee may apply to have a testing site
25 permit amended by submitting a new application pursuant to

1 Section 4 of the Sustainable Development Testing Site Act;
 2 provided that, if the planning commission determines that the
 3 proposed amendment will not substantially alter the sustainable
 4 development research or other activities conducted at the
 5 sustainable development testing site, it may waive the
 6 requirements of that section for notice and public hearing.

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

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

14 B. the permittee may provide the wastewater
 15 treatment and disposal technologies to the wastewater technical
 16 advisory committee for review and, if appropriate, for listing
 17 by the department of environment as approved for use pursuant
 18 to Section 9-7A-15 NMSA 1978.

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

22 A. the subsequent owner obtains a testing site
 23 permit pursuant to the provisions of the Sustainable
 24 Development Testing Site Act; or

25 B. the owner or subsequent owner enters into an

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1 agreement with the planning commission to bring the area within
2 the sustainable development testing site into compliance with
3 all federal and state law and county ordinances that would be
4 applicable to the site in the absence of a testing site permit.

5 Section 9. PROMULGATION OF RULES.--A county or planning
6 commission may define a new category of rules applicable to
7 sustainable development testing sites and promulgate rules for
8 the category. A county or a planning commission may also
9 promulgate rules or permit conditions applicable to a specific
10 sustainable development testing site. The rules shall be
11 designed to facilitate and encourage sustainable development
12 research while maintaining levels of safety and environmental
13 protection equivalent to those required by rules applicable to
14 areas that are not within sustainable development testing
15 sites.

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