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SENATE BILL 131

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

David Ulibarri

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE COMPOSITION OF THE
WATER QUALITY CONTROL COMMISSION; REQUIRING A CONTRACT ATTORNEY
TO SERVE AS A HEARING OFFICER WHEN REQUESTED; STRENGTHENING
CONFLICT REQUIREMENTS; ESTABLISHING A FEE.

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

Section 1. Section 74-6-3 NMSA 1978 (being Laws 1967,
Chapter 190, Section 3, as amended) is amended to read:

"74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

A. There is created the "water quality control
commission" consisting of:

(1) the secretary of environment or a member
of the secretary's staff designated by the secretary;

(2) the secretary of health or a member of the
secretary's staff designated by the secretary;

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1 (3) the director of the department of game and
2 fish or a member of the director's staff designated by the
3 director;

4 (4) the state engineer or a member of the
5 state engineer's staff designated by the state engineer;

6 (5) the chair of the oil conservation
7 commission or a member of the chair's staff designated by the
8 chair;

9 (6) the director of the state parks division
10 of the energy, minerals and natural resources department or a
11 member of the director's staff designated by the director;

12 (7) the director of the New Mexico department
13 of agriculture or a member of the director's staff designated
14 by the director;

15 (8) the chair of the soil and water
16 conservation commission or a soil and water conservation
17 district supervisor designated by the chair;

18 (9) the director of the bureau of geology and
19 mineral resources at the New Mexico institute of mining and
20 technology or a member of the director's staff designated by
21 the director;

22 (10) a municipal or county government
23 representative; and

24 (11) four representatives of the public to be
25 appointed by the governor for terms of four years and who shall

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1 be compensated from the budgeted funds of the department of
2 environment in accordance with the provisions of the Per Diem
3 and Mileage Act. [~~At least one member~~] Of the members
4 appointed by the governor, one shall be a member of a New
5 Mexico Indian tribe or pueblo; two members shall be appointed
6 from industries subject to the commission's regulation; and one
7 member shall be appointed from an environmental advocacy
8 organization.

9 B. Except for the two members appointed from
10 industries pursuant to Paragraph (11) of Subsection A of this
11 section, a member of the commission shall not:

12 (1) receive, or shall not have received during
13 the previous two years, a significant portion of the member's
14 income directly or indirectly from permit holders or applicants
15 for a permit; or

16 (2) participate in the consideration of an
17 appeal if the subject of the appeal is an application filed or
18 a permit held by an entity that either employs the member or
19 from which the member received more than ten percent of the
20 member's gross personal income in either of the preceding two
21 years.

22 C. A member of the commission shall not participate
23 in the consideration of an appeal or a public hearing on a
24 compliance order if:

25 (1) the constituent agency that employs that

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1 member is a party to the appeal or issued the compliance order;

2 or

3 (2) the member is appointed to represent
4 industries pursuant to Paragraph (11) of Subsection A of this
5 section and is employed within an industry category that is the
6 subject of the appeal or public hearing on the compliance
7 order.

8 D. A member of the commission shall, upon the
9 acceptance of the member's appointment and prior to the
10 performance of any of the member's duties, file a statement of
11 disclosure with the secretary of state disclosing any amount of
12 money or other valuable consideration, and its source, the
13 value of which is in excess of ten percent of the member's
14 gross personal income in each of the preceding two years, that
15 the member received directly or indirectly from permit holders
16 or applicants for permits required under the Water Quality Act.

17 ~~[A member of the commission shall not participate in the~~
18 ~~consideration of an appeal if the subject of the appeal is an~~
19 ~~application filed or a permit held by an entity that either~~
20 ~~employs the commission member or from which the commission~~
21 ~~member received more than ten percent of the member's gross~~
22 ~~personal income in either of the preceding two years.~~

23 G.] E. The commission shall elect a chair and other
24 necessary officers and shall keep a record of its proceedings.

25 [D.] F. A majority of the commission constitutes a

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1 quorum for the transaction of business, but no action of the
2 commission is valid unless concurred in by [~~six~~] seven or more
3 members present at a meeting.

4 [~~E-~~] G. The commission is the state water pollution
5 control agency for this state for all purposes of the federal
6 act and the wellhead protection and sole source aquifer
7 programs of the federal Safe Drinking Water Act of 1974 and may
8 take all action necessary and appropriate to secure to this
9 state, its political subdivisions or interstate agencies the
10 benefits of that act and those programs.

11 [~~F-~~] H. The commission is administratively
12 attached, as defined in the Executive Reorganization Act, to
13 the department of environment."

14 Section 2. Section 74-6-4 NMSA 1978 (being Laws 1967,
15 Chapter 190, Section 4, as amended) is amended to read:

16 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The
17 commission:

18 A. may accept and supervise the administration of
19 loans and grants from the federal government and from other
20 sources, public or private, which loans and grants shall not be
21 expended for other than the purposes for which provided;

22 B. shall adopt a comprehensive water quality
23 management program and develop a continuing planning process;

24 C. shall not adopt or promulgate a standard or
25 regulation that exceeds a grant of rulemaking authority listed

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1 in the statutory section of the Water Quality Act authorizing
2 the standard or regulation;

3 D. shall adopt water quality standards for surface
4 and ground waters of the state based on credible scientific
5 data and other evidence appropriate under the Water Quality
6 Act. The standards shall include narrative standards and as
7 appropriate, the designated uses of the waters and the water
8 quality criteria necessary to protect such uses. The standards
9 shall at a minimum protect the public health or welfare,
10 enhance the quality of water and serve the purposes of the
11 Water Quality Act. In making standards, the commission shall
12 give weight it deems appropriate to all facts and
13 circumstances, including the use and value of the water for
14 water supplies, propagation of fish and wildlife, recreational
15 purposes and agricultural, industrial and other purposes;

16 E. shall adopt, promulgate and publish regulations
17 to prevent or abate water pollution in the state or in any
18 specific geographic area, aquifer or watershed of the state or
19 in any part thereof, or for any class of waters, and to govern
20 the disposal of septage and sludge and the use of sludge for
21 various beneficial purposes. The regulations governing the
22 disposal of septage and sludge may include the use of tracking
23 and permitting systems or other reasonable means necessary to
24 assure that septage and sludge are designated for disposal in,
25 and arrive at, disposal facilities, other than facilities on

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1 the premises where the septage and sludge is generated, for
2 which a permit or other authorization has been issued pursuant
3 to the federal act or the Water Quality Act. Regulations may
4 specify a standard of performance for new sources that reflects
5 the greatest reduction in the concentration of water
6 contaminants that the commission determines to be achievable
7 through application of the best available demonstrated control
8 technology, processes, operating methods or other alternatives,
9 including where practicable a standard permitting no discharge
10 of pollutants. In making regulations, the commission shall
11 give weight it deems appropriate to all relevant facts and
12 circumstances, including:

13 (1) the character and degree of injury to or
14 interference with health, welfare, environment and property;

15 (2) the public interest, including the social
16 and economic value of the sources of water contaminants;

17 (3) the technical practicability and economic
18 reasonableness of reducing or eliminating water contaminants
19 from the sources involved and previous experience with
20 equipment and methods available to control the water
21 contaminants involved;

22 (4) successive uses, including but not limited
23 to domestic, commercial, industrial, pastoral, agricultural,
24 wildlife and recreational uses;

25 (5) the feasibility of a user or a subsequent

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1 user treating the water before a subsequent use;

2 (6) property rights and accustomed uses; and

3 (7) federal water quality requirements;

4 F. shall assign responsibility for administering
5 its regulations to constituent agencies so as to assure
6 adequate coverage and prevent duplication of effort. To this
7 end, the commission may make such classification of waters and
8 sources of water contaminants as will facilitate the assignment
9 of administrative responsibilities to constituent agencies.

10 The commission shall also hear and decide disputes between
11 constituent agencies as to jurisdiction concerning any matters
12 within the purpose of the Water Quality Act. In assigning
13 responsibilities to constituent agencies, the commission shall
14 give priority to the primary interests of the constituent
15 agencies. The department of environment shall provide
16 technical services, including certification of permits pursuant
17 to the federal act, and shall maintain a repository of the
18 scientific data required by this act;

19 G. may enter into or authorize constituent agencies
20 to enter into agreements with the federal government or other
21 state governments for purposes consistent with the Water
22 Quality Act and receive and allocate to constituent agencies
23 funds made available to the commission;

24 H. may grant an individual variance from any
25 regulation of the commission whenever it is found that

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1 compliance with the regulation will impose an unreasonable
2 burden upon any lawful business, occupation or activity. The
3 commission may only grant a variance conditioned upon a person
4 effecting a particular abatement of water pollution within a
5 reasonable period of time. Any variance shall be granted for
6 the period of time specified by the commission. The commission
7 shall adopt regulations specifying the procedure under which
8 variances may be sought, which regulations shall provide for
9 the holding of a public hearing before any variance may be
10 granted;

11 I. may adopt regulations to require the filing with
12 it or a constituent agency of proposed plans and specifications
13 for the construction and operation of new sewer systems,
14 treatment works or sewerage systems or extensions,
15 modifications of or additions to new or existing sewer systems,
16 treatment works or sewerage systems. Filing with and approval
17 by the federal housing administration of plans for an extension
18 to an existing or construction of a new sewerage system
19 intended to serve a subdivision solely residential in nature
20 shall be deemed compliance with all provisions of this
21 subsection;

22 J. may adopt regulations requiring notice to it or
23 a constituent agency of intent to introduce or allow the
24 introduction of water contaminants into waters of the state;

25 K. shall specify in regulations the measures to be

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1 taken to prevent water pollution and to monitor water quality.
2 The commission may adopt regulations for particular industries.
3 The commission shall adopt regulations for the dairy industry
4 and the copper industry. The commission shall consider, in
5 addition to the factors listed in Subsection E of this section,
6 the best available scientific information. The regulations may
7 include variations in requirements based on site-specific
8 factors, such as depth and distance to ground water and
9 geological and hydrological conditions. The constituent agency
10 shall establish an advisory committee composed of persons with
11 knowledge and expertise particular to the industry category and
12 other interested stakeholders to advise the constituent agency
13 on appropriate regulations to be proposed for adoption by the
14 commission. The regulations shall be developed and adopted in
15 accordance with a schedule approved by the commission. The
16 schedule shall incorporate an opportunity for public input and
17 stakeholder negotiations;

18 L. may adopt regulations establishing pretreatment
19 standards that prohibit or control the introduction into
20 publicly owned sewerage systems of water contaminants that are
21 not susceptible to treatment by the treatment works or that
22 would interfere with the operation of the treatment works;

23 M. shall not require a permit respecting the use of
24 water in irrigated agriculture, except in the case of the
25 employment of a specific practice in connection with such

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1 irrigation that documentation or actual case history has shown
2 to be hazardous to public health or the environment;

3 N. shall not require a permit for applying less
4 than two hundred fifty gallons per day of private residential
5 gray water originating from a residence for the resident's
6 household gardening, composting or landscape irrigation if:

7 (1) a constructed gray water distribution
8 system provides for overflow into the sewer system or on-site
9 wastewater treatment and disposal system;

10 (2) a gray water storage tank is covered to
11 restrict access and to eliminate habitat for mosquitos or other
12 vectors;

13 (3) a gray water system is sited outside of a
14 floodway;

15 (4) gray water is vertically separated at
16 least five feet above the ground water table;

17 (5) gray water pressure piping is clearly
18 identified as a nonpotable water conduit;

19 (6) gray water is used on the site where it is
20 generated and does not run off the property lines;

21 (7) gray water is applied in a manner that
22 minimizes the potential for contact with people or domestic
23 pets;

24 (8) ponding is prohibited, application of gray
25 water is managed to minimize standing water on the surface and

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1 to ensure that the hydraulic capacity of the soil is not
2 exceeded;

3 (9) gray water is not sprayed;

4 (10) gray water is not discharged to a
5 watercourse; and

6 (11) gray water use within municipalities or
7 counties complies with all applicable municipal or county
8 ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;
9 [~~and~~]

10 O. shall coordinate application procedures and
11 funding cycles for loans and grants from the federal
12 government and from other sources, public or private, with
13 the local government division of the department of finance
14 and administration pursuant to the New Mexico Community
15 Assistance Act; and

16 P. shall appoint a contract attorney to serve as a
17 hearing officer in any administrative proceeding where the
18 commission is authorized to appoint a hearing officer if:

19 (1) a party to the administrative proceeding
20 requests the appointment of a contract attorney to serve as the
21 hearing officer;

22 (2) the party requesting the appointment of
23 the contract attorney agrees to pay a filing fee of one hundred
24 dollars (\$100) to the water quality management fund;

25 (3) the party requesting the appointment of

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1 the contract attorney agrees in writing to pay a contract
2 attorney fee set by the commission and such fee shall not
3 exceed the cost of contracting with the contract attorney
4 appointed to serve as the hearing officer;

5 (4) the contract attorney is not regularly
6 employed by a constituent agency; and

7 (5) the commission and party requesting the
8 appointment of the contract attorney stipulate in writing that
9 the contract attorney is fair and impartial and has sufficient
10 knowledge and expertise to preside over the administrative
11 proceeding."

12 Section 3. Section 74-6-9 NMSA 1978 (being Laws 1967,
13 Chapter 190, Section 8, as amended) is amended to read:

14 "74-6-9. POWERS OF CONSTITUENT AGENCIES.--Each
15 constituent agency may:

16 A. receive and expend funds appropriated, donated
17 or allocated to the constituent agency for purposes consistent
18 with the Water Quality Act;

19 B. develop facts and make studies and
20 investigations and require the production of documents
21 necessary to carry out the responsibilities assigned to the
22 constituent agency. The result of any investigation shall be
23 reduced to writing and a copy furnished to the commission and
24 to the owner or occupant of the premises investigated;

25 C. report to the commission and to other

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1 constituent agencies water pollution conditions that are
2 believed to require action where the circumstances are such
3 that the responsibility appears to be outside the
4 responsibility assigned to the agency making the report;

5 D. make every reasonable effort to obtain voluntary
6 cooperation in the prevention or abatement of water pollution;

7 E. upon presentation of proper credentials, enter
8 at reasonable times upon or through any premises in which a
9 water contaminant source is located or in which are located any
10 records required to be maintained by regulations of the federal
11 government or the commission; provided that entry into any
12 private residence without the permission of the owner shall be
13 only by order of the district court for the county in which the
14 residence is located and that, in connection with any entry
15 provided for in this subsection, the constituent agency may:

16 (1) have access to and reproduce for their use
17 any copy of the records;

18 (2) inspect any treatment works, monitoring
19 equipment or methods required to be installed by regulations of
20 the federal government or the commission; and

21 (3) sample any effluents, water contaminant or
22 receiving waters;

23 F. on the same basis as any other person, recommend
24 and propose regulations and standards for promulgation by the
25 commission; and

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