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HOUSE BILL 312

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Nathan P. Small

AN ACT

RELATING TO ENVIRONMENTAL IMPROVEMENT; CREATING THE ENVIRONMENTAL HEALTH FUND; PROVIDING THAT THE ENVIRONMENTAL HEALTH FUND MAY BE USED FOR REGULATION OF LIQUID WASTE, WATER RECREATION FACILITIES, FOOD SERVICE SANITATION AND HEMP; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of the Environmental Improvement Act is enacted to read:

"NEW MATERIAL ENVIRONMENTAL HEALTH FUND--CREATED.--

A. The "environmental health fund" is created in the state treasury. The fund consists of fees collected from the regulation of on-site liquid waste systems and water recreation facilities pursuant to the Environmental Improvement Act, food establishments pursuant to the Food Service

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1 Sanitation Act and hemp pursuant to the Hemp Manufacturing Act.  
2 Money in the fund is subject to appropriation by the  
3 legislature to the department for the administration of  
4 regulations pertaining to liquid waste, water recreation  
5 facilities, food service sanitation and hemp. Disbursements  
6 from the fund shall be by warrant drawn by the secretary of  
7 finance and administration pursuant to vouchers signed by the  
8 secretary of environment or the secretary of environment's  
9 designee. Any unexpended or unencumbered balance in the  
10 environmental health fund remaining at the end of any fiscal  
11 year shall not revert to the general fund.

12 B. Up to two hundred thousand dollars (\$200,000)  
13 from unexpended and unencumbered money in the environmental  
14 health fund may be transferred to the liquid waste disposal  
15 system assistance fund on an annual basis."

16 SECTION 2. Section 25-1-5 NMSA 1978 (being Laws 1977,  
17 Chapter 309, Section 5, as amended) is amended to read:

18 "25-1-5. OPTIONAL POWERS.--

19 A. The board may establish a system of grading food  
20 service establishments for the purpose of certifying compliance  
21 with the Food Service Sanitation Act and regulations requiring  
22 food service establishments to display in a designated manner a  
23 grade as notice of compliance to the public. Such regulations  
24 shall include provisions for the revocation and reinstatement  
25 of the permit that are consistent with due process of law.

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1           B. The board shall establish a schedule of fees for  
2 the issuance and renewal of permits issued by the division  
3 under the Food Service Sanitation Act. The board shall set the  
4 schedule of fees so that no fee established by such schedule  
5 shall be less than one hundred dollars (\$100) or more than two  
6 hundred dollars (\$200) annually for a food service  
7 establishment with not more than a twenty-five-dollar (\$25.00)  
8 incremental increase per fiscal year. The board shall  
9 establish a separate schedule of fees not to exceed twenty-five  
10 dollars (\$25.00) per single event or celebration per temporary  
11 food service establishment. Fees shall be waived for all  
12 temporary non-potentially hazardous food service operations,  
13 for any temporary food service establishment operating no more  
14 than two calendar days in any calendar month and for any food  
15 service establishment that provides food to the general public  
16 at no charge. Fees collected for the issuance and renewal of  
17 permits pursuant to the Food Service Sanitation Act shall be  
18 deposited in the [~~food service sanitation~~] environmental health  
19 fund."

20           **SECTION 3.** Section 74-1-8 NMSA 1978 (being Laws 1971,  
21 Chapter 277, Section 11, as amended by Laws 2000, Chapter 86,  
22 Section 2 and also by Laws 2000, Chapter 96, Section 2) is  
23 amended to read:

24           "74-1-8. BOARD--DUTIES.--

25           A. The board is responsible for environmental

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1 management and consumer protection. In that respect, the board  
2 shall promulgate rules and standards in the following areas:

3 (1) food protection;

4 (2) water supply, including a capacity  
5 development program to assist water systems in acquiring and  
6 maintaining technical, managerial and financial capacity in  
7 accordance with Section 1420 of the federal Safe Drinking Water  
8 Act of 1974 and rules authorizing imposition of administrative  
9 penalties for enforcement;

10 (3) liquid waste, including exclusive  
11 authority to establish on-site liquid waste system fees that  
12 are no more than the average charged by the contiguous states  
13 to New Mexico for similar permits and services and to implement  
14 and administer an inspection and permitting program for on-site  
15 liquid waste systems;

16 (4) air quality management as provided in the  
17 Air Quality Control Act;

18 (5) radiation control and establishment of  
19 license and registration and other related fees not to exceed  
20 fees charged by the United States nuclear regulatory commission  
21 for similar licenses as provided in the Radiation Protection  
22 Act;

23 (6) noise control;

24 (7) nuisance abatement;

25 (8) vector control;

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1 (9) occupational health and safety as provided  
2 in the Occupational Health and Safety Act;

3 (10) sanitation of public swimming pools and  
4 public baths;

5 (11) plumbing, drainage, ventilation and  
6 sanitation of public buildings in the interest of public  
7 health;

8 (12) medical radiation, health and safety  
9 certification and standards for radiologic technologists as  
10 provided in the Medical Imaging and Radiation Therapy Health  
11 and Safety Act;

12 (13) hazardous wastes and underground storage  
13 tanks as provided in the Hazardous Waste Act; and

14 (14) solid waste as provided in the Solid  
15 Waste Act.

16 B. Nothing in Subsection A of this section imposes  
17 requirements for the approval of subdivision plats in addition  
18 to those required elsewhere by law. Nothing in Subsection A of  
19 this section preempts the authority of any political  
20 subdivision to approve subdivision plats.

21 C. Administrative penalties collected pursuant to  
22 Paragraph (2) of Subsection A of this section shall be  
23 deposited in the water conservation fund.

24 D. On-site liquid waste system fees shall be  
25 deposited in the [~~liquid waste~~] environmental health fund.

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1           ~~[D-]~~ E. Radiation license and registration and  
2 other related fees shall be deposited in the radiation  
3 protection fund."

4           **SECTION 4.** Section 74-1-15.1 NMSA 1978 (being Laws 2009,  
5 Chapter 203, Section 1) is amended to read:

6           "74-1-15.1. LIQUID WASTE DISPOSAL SYSTEM ASSISTANCE  
7 FUND--CREATED--PURPOSE.--

8           A. The "liquid waste disposal system assistance  
9 fund" is created in the state treasury. The department shall  
10 administer the fund. The fund may be composed of  
11 appropriations and transfers of money earned from investment of  
12 the fund and otherwise accruing to the fund and transfers of  
13 money from the ~~[liquid waste]~~ environmental health fund not to  
14 exceed two hundred thousand dollars (\$200,000) from the  
15 unexpended balance in the fund. Balances remaining in the fund  
16 at the end of a fiscal year shall remain to the credit of the  
17 fund. Disbursements from the fund shall be drawn on warrant of  
18 the secretary of finance and administration pursuant to  
19 vouchers signed by the secretary of environment or the  
20 secretary's authorized representative. Money in the fund is  
21 appropriated to the department for the sole purpose of  
22 assisting indigent individuals or households that qualify for  
23 funding to accomplish one of the following purposes where there  
24 is a real or potential negative impact to public health or  
25 water quality from on-site liquid waste disposal system

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1 effluent:

2 (1) to pay for a liquid waste disposal system  
3 to replace a cesspool or other failed or improper on-site  
4 liquid waste disposal system;

5 (2) to purchase, install or maintain an  
6 advanced treatment system as required by the Environmental  
7 Improvement Act or regulations issued pursuant to that act;

8 (3) to pay for the decommissioning and removal  
9 of a cesspool or other failed or improper on-site liquid waste  
10 disposal system; or

11 (4) to pay for all or a portion of the  
12 connection fees in order to connect an individual or household  
13 to a centralized wastewater collection and treatment system.

14 B. Construction activities sponsored by the fund  
15 shall be performed by licensed contractors selected through  
16 competitive bid by the department and shall be managed by the  
17 department.

18 C. No more than five percent of the fund shall be  
19 used by the department on an annual basis to pay for the  
20 department costs associated with management and implementation  
21 of fund activities.

22 D. As used in this section:

23 (1) "advanced treatment system" means an  
24 on-site liquid wastewater treatment system that removes a  
25 greater amount of contaminants than is accomplished by a

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1 primary treatment system;

2 (2) "connection fee" means the fee paid  
3 directly to a public water or wastewater system or other  
4 wastewater management organization and does not include other  
5 fees, such as legal fees, related to connecting an individual  
6 or household to a centralized wastewater collection and  
7 treatment system; and

8 (3) "indigent individuals or households" means  
9 individuals or households whose annual incomes do not exceed  
10 the federal poverty guidelines."

11 SECTION 5. Section 74-1-16 NMSA 1978 (being Laws 2003,  
12 Chapter 335, Section 1) is amended to read:

13 "74-1-16. WATER RECREATION FACILITIES [~~FUND--CREATED~~]  
14 FEE IMPOSITION [~~PURPOSE~~].--

15 [~~A. The "water recreation facilities fund" is~~  
16 ~~created in the state treasury to be used to administer and~~  
17 ~~enforce rules pertaining to public swimming pools, public spas~~  
18 ~~and other public water recreation facilities. All fees~~  
19 ~~collected pursuant to Subsection B of this section shall be~~  
20 ~~deposited in the fund. Money in the fund shall not be~~  
21 ~~transferred to any other fund. Disbursements from the fund~~  
22 ~~shall be drawn on warrant of the secretary of finance and~~  
23 ~~administration upon vouchers signed by the secretary of~~  
24 ~~environment or his authorized representative.~~

25 B.] The [~~environmental improvement~~] board may assess

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1 an annual fee not to exceed one hundred fifty dollars (\$150) on  
2 the owner or operator of a public swimming pool, public spa or  
3 other public water recreation facility to defray the cost of  
4 administering and enforcing rules adopted in accordance with  
5 the Environmental Improvement Act pertaining to public water  
6 recreation facilities. The fee shall be based on the size of  
7 the public water recreation facility. Fees collected pursuant  
8 to this section shall be deposited in the environmental health  
9 fund."

10 SECTION 6. Section 76-24-8 NMSA 1978 (being Laws 2019,  
11 Chapter 116, Section 6) is amended to read:

12 "76-24-8. HEMP MANUFACTURERS--PERMITS--RULES--  
13 REQUIREMENTS.--

14 A. The department of environment shall issue  
15 permits pursuant to rules issued under Subsection C of this  
16 section to extract, process or engage in other manufacturing  
17 activities regarding hemp, including manufacturing intermediate  
18 hemp-derived products and hemp finished products.

19 B. A person shall not extract, process or engage in  
20 other manufacturing activities regarding hemp, including  
21 manufacturing intermediate hemp-derived products and hemp  
22 finished products without a permit issued by the department of  
23 environment or a license issued pursuant to Subsection C of  
24 Section [~~8 of the Hemp Manufacturing Act~~] 76-24-10 NMSA 1978.

25 C. The department of environment shall adopt rules  
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1 that include:

2 (1) procedures for the issuance, denial,  
3 renewal, suspension and revocation of a permit issued by the  
4 department of environment to manufacture hemp products,  
5 including permit terms and procedures for appeal of a denial,  
6 suspension or revocation that include notice and opportunity  
7 for a hearing;

8 (2) qualifications for permitting that include  
9 health, sanitation, safety and security;

10 (3) proficiency standards and requirements for  
11 storage, recordkeeping and inspections;

12 (4) requiring, and providing a process for,  
13 the use or disposal of hemp-derived material containing THC  
14 levels of more than three-tenths percent; and

15 (5) fees not to exceed the lesser of one  
16 thousand dollars (\$1,000) or the cost of administration of a  
17 permit issued pursuant to this section.

18 D. A hemp manufacturer that produces intermediate  
19 hemp-derived products or hemp finished products intended for  
20 human consumption by eating or drinking are subject to the  
21 provisions of the Food Service Sanitation Act and the New  
22 Mexico Food Act.

23 E. Hemp finished products produced by a hemp  
24 manufacturer holding a permit issued pursuant to this section  
25 shall not be deemed adulterated as that term is used in the

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1 Food Service Sanitation Act and the New Mexico Food Act.

2 F. Fees collected pursuant to this section shall be  
3 deposited in the [~~food service sanitation~~] environmental health  
4 fund.

5 G. A permit issued pursuant to this section does  
6 not relieve the holder of the permit of the responsibility to  
7 obtain other licenses or permits as required by law."

8 SECTION 7. TEMPORARY PROVISION.--On the effective date of  
9 this act, unexpended and unencumbered balances in the food  
10 service sanitation fund, the liquid waste fund and the water  
11 recreation facilities fund shall be transferred to the  
12 environmental health fund.

13 SECTION 8. REPEAL.--Sections 25-1-5.1 and 74-1-15 NMSA  
14 1978 (being Laws 1993, Chapter 100, Section 5 and Laws 2000,  
15 Chapter 96, Section 3, as amended) are repealed.