



- Provides that unless a timely petition is made, the decision of the department or the local agency shall be final and not subject to judicial review;
- Requires the petition to 1) be in writing to the environmental improvement board or the local board within 30 days from the date notice is given of the department's or the local agency's action; 2) include a statement of the issues to be raised and the relief sought; and 3) be served on all other persons submitting evidence, data, views or arguments in the proceeding before the department or the local agency;

*With regard to reviews by the environmental improvement board*

- Requires the board to review the record compiled before the department including transcripts of any public hearing held on the application or draft permit and allows any party to submit arguments;
- Allows the board to designate a hearing officer to review the record and the arguments of the parties and recommend a decision to the board;
- Requires the board to consider and weigh only the evidence contained in the record in addition to the recommended decision if any and not be bound by the factual findings or legal conclusions of the department;
- Requires the board to keep a record of the review;
- Requires the board to sustain, modify, or reverse the action of the department based on the review of the evidence, arguments of the parties, and recommendations of the hearing officer if any;
- Requires the board to order that additional evidence, data, views or arguments be taken by the department if prior to the date set for review, the environmental improvement board determines that proposed additional evidence, data, views or arguments are relevant and there was good reason for the failure to present the evidence, data, views or arguments in the proceeding before the constituent agency;
- Allows the board to revise the decision based on the additional evidence;

*With regard to reviews by the local board*

- Requires the local board to hold a hearing on the petition;
- The local board may designate a hearing officer and recommend a decision to the board;
- All interested persons are required to be given a reasonable opportunity to submit evidence, data, views and arguments orally or in writing, and to examine witnesses testifying at the hearing;
- Any person submitting evidence, data, views or arguments is subject to examination at the hearing;

- Requires the environmental improvement board or the local board to notify the petitioner and all other participants in the review of the action taken and the reasons for the action;
- Provides for appeal of an administrative action to the district court instead of the court of appeals for actions other than the adoption of a regulation;
- States that a person adversely affected by a regulation may appeal the regulation with the court of appeals.

### Significant Issues

Under current state regulations, most permitting actions of NMED under the Air Quality Control Act may be subject to a full evidentiary hearing before NMED. NMED final permitting actions can be appealed to the Environmental Improvement Board. Presently, even if there was a full evidentiary hearing on a permit before NMED, an appeal of the NMED permitting action takes the form of a *de novo* evidentiary hearing before the EIB. This can result in two full evidentiary hearings on the same permit. The committee substitute amends Section 74-2-7 of the AQCA to provide that an appeal of an NMED permitting action will be conducted as a record review by the EIB, instead of conducted as a *de novo* evidentiary hearing. The EIB will perform a review of the record created before NMED instead of conducting an entirely new hearing on the same permit.

### **FISCAL IMPLICATIONS**

The committee substitute for House Bill 655 does not contain an appropriation. Enactment of HB 655 could have a positive administrative and fiscal impact on NMED, who currently is required to provide technical and legal staff for duplicative hearings.

### **ADMINISTRATIVE IMPLICATIONS**

The committee substitute for HB 655 proposes a streamlined hearing process that would free additional staff resources to focus on core NMED statutory responsibilities, *i.e.*, permit issuance and oversight.

### **TECHNICAL ISSUES**

The Office of the Attorney General reports the following technical issue:

HB 655 provides for appeal of an administrative action to the district court for actions other than the adoption of a regulation. However, HB 655's Section 1, subsection H, pages 8-9, states that unless a person adversely affected by a permitting action files a petition for review by the environmental improvement board or a local board, the board's action is not subject to judicial review. Although HB 655's Section 2, subsection A, page 12 states that an appeal of an administrative action may be taken to the district court pursuant to NMSA 1978, Section 39-3-1.1, consider clarifying that Section 39-3-1.1 provides for judicial review of *final* agency decisions.