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HOUSE BILL 722

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Antonio Lujan

AN ACT

RELATING TO NEW MEXICO COMMUNITIES; ENACTING THE NEW MEXICO
HEALTHY COMMUNITIES ACT; REQUIRING NOTICE AND COMMUNITY IMPACT
REPORTS PRIOR TO CERTAIN ACTIONS BY CERTAIN REGULATORY
AGENCIES; PROVIDING CRITERIA FOR MAKING CERTAIN DECISIONS BY
CERTAIN REGULATORY AGENCIES; PROVIDING FOR CITIZEN ENFORCEMENT.

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

Section 1. SHORT TITLE.--This act may be cited as the
"New Mexico Healthy Communities Act".

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) facilities that affect New Mexico
communities' air, water and other resources and that are
regulated by the energy, minerals and natural resources
department, the department of environment or local governments

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1 pursuant to their zoning authority tend to be concentrated in
2 communities that consist predominantly of members of certain
3 ethnic, income-level and racial populations;

4 (2) members of communities in which the
5 regulated facilities are located and concentrated, and
6 communities that are affected significantly by the regulated
7 facilities, do not have a means to prevent the disparate public
8 health, environmental and cultural impacts of the regulated
9 facilities in their communities; and

10 (3) decisions are made about whether to fund
11 or grant permits for the regulated facilities by the energy,
12 minerals and natural resources department, the department of
13 environment or local governments pursuant to their zoning
14 authority without consideration of the public health,
15 environmental and cultural impacts of the regulated facilities
16 on ethnic, income-level and racial populations in the
17 communities that are or will be affected significantly by the
18 regulated facilities.

19 B. The purposes of the New Mexico Healthy
20 Communities Act are to:

21 (1) require that the energy, minerals and
22 natural resources department, the department of environment and
23 local governments, when using their zoning authority, consider
24 the impacts of their decisions on communities affected by those
25 decisions;

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1 (2) prevent decisions of the energy, minerals
2 and natural resources department and the department of
3 environment and zoning decisions of local governments from
4 having disproportionate public health, environmental and
5 cultural impacts on members of ethnic, income-level and racial
6 populations;

7 (3) prevent the concentration in communities
8 of regulated facilities that impact the public health,
9 environment and culture of residents of those communities;

10 (4) provide for enhanced public participation
11 in the decision-making processes of the energy, minerals and
12 natural resources department, the department of environment and
13 local government zoning authorities that affect the public
14 health, environment and culture of communities; and

15 (5) provide affected individuals and
16 communities with a means to address decisions of the energy,
17 minerals and natural resources department and the department of
18 environment and zoning decisions of local governments that
19 violate the terms of the New Mexico Healthy Communities Act.

20 Section 3. DEFINITIONS.--As used in the New Mexico
21 Healthy Communities Act:

22 A. "affected community" means an area of human
23 habitation that:

24 (1) is contiguous to an existing or proposed
25 regulated facility; or

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1 (2) will or may be affected significantly by
2 an existing or proposed regulated facility;

3 B. "chief administrative officer" means the
4 secretary of energy, minerals and natural resources, the
5 secretary of environment or the chief administrative officer of
6 the municipal or county zoning authority;

7 C. "decision concerning a regulated facility"
8 means a determination by a permitting agency related to an
9 existing or proposed regulated facility to:

10 (1) certify compliance with any applicable
11 state or United States statute or rule;

12 (2) issue, renew, amend or deny any permit;

13 (3) issue, renew or amend any permit with
14 terms or conditions;

15 (4) issue, renew, amend or deny any variance
16 or waiver;

17 (5) issue, renew or amend any variance or
18 waiver with terms or conditions; or

19 (6) provide funding for the facility;

20 D. "impact" means a present or future significant
21 effect on the public health, environment or culture of
22 residents of an affected community;

23 E. "permitting agency" means the energy, minerals
24 and natural resources department, the department of environment
25 or any bureau, department, division, subdivision, other entity

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1 or any employee or agent of any of those departments.

2 "Permitting agency" also includes any municipality or county,
3 or an agency, employee, agent or elected official of any
4 municipality or county, when exercising zoning authority;

5 F. "proceeding" means any administrative or other
6 process that could result in a decision concerning a regulated
7 facility; and

8 G. "regulated facility" means an entity or
9 operation, whether privately or publicly owned and operated,
10 that:

11 (1) may be constructed or operated only
12 pursuant to a decision concerning a regulated facility by a
13 permitting agency;

14 (2) is governed by a permit or other
15 authorization issued by a permitting agency; or

16 (3) is or will be funded in whole or in part
17 by funds dispensed, generated or provided by or through a
18 permitting agency.

19 Section 4. COMMUNITY IMPACT REPORT REQUIRED.--If, in the
20 opinion of the chief administrative officer, a decision
21 concerning a regulated facility may have an impact on an
22 affected community, then, prior to making the decision, the
23 permitting agency shall cause a community impact report to be
24 prepared. To the maximum extent possible, the community impact
25 report shall be written in plain language that can be

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1 understood by the residents of an affected community. The
2 community impact report also shall be published both in English
3 and in any other written language most appropriate to each
4 affected community in which the regulated facility is or is
5 proposed to be located. At a minimum, the community impact
6 report shall include the following:

7 A. the demographic makeup of each affected
8 community, including the most recent United States census data
9 showing the ethnic, income-level and racial populations in that
10 community;

11 B. the present and future impacts that the existing
12 or proposed regulated facility will or may have on the public
13 health, environment or culture of each affected community;

14 C. the other known existing and proposed facilities
15 that have or will have an impact on the public health,
16 environment or culture of each affected community; and

17 D. any other known environmental factors that have
18 or will have an impact on the public health, environment or
19 culture of each affected community.

20 Section 5. PUBLIC NOTICE REQUIREMENTS.--For any decision
21 concerning a regulated facility for which a community impact
22 report is required, after the completion of the community
23 impact report but prior to making the decision concerning a
24 regulated facility, the permitting agency shall cause notice of
25 the proceeding to be given to residents of each affected

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1 community. The notice shall be given at the time that the
2 application or other request for the decision is filed, and
3 shall be given in at least the following manner:

4 A. actual written notice of the application and the
5 proceeding shall be given to the owners of record of properties
6 that are adjacent to the property on which the regulated
7 facility is or is proposed to be located;

8 B. notice of the application and the proceeding,
9 including any public hearing or opportunity for a public
10 hearing and the manner in which a hearing may be requested,
11 shall be published in a newspaper of general circulation in
12 each affected community;

13 C. notice of the application and the proceeding,
14 including any public hearing or opportunity for a public
15 hearing and the manner in which a hearing may be requested,
16 shall be sent by first class mail to all persons who have
17 requested notice of applications, hearings, opportunities for
18 hearings or other proceedings concerning the facility or type
19 of facility that is the subject of the application, hearing,
20 opportunity for hearing or other proceeding;

21 D. notice of the application and the proceeding,
22 including any public hearing or opportunity for a public
23 hearing and the manner in which a hearing may be requested,
24 shall be provided as early as possible on the web site of the
25 permitting agency to whom the application is directed;

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1 E. the written and published notice provided for in
2 Subsections A through D of this section shall also be provided
3 to residents of each affected community in at least one other
4 medium, including radio or television, in a manner designed to
5 reach the maximum number of members of each community;

6 F. the written and published notice provided for in
7 Subsections A through D of this section shall:

8 (1) be in English and any other written
9 language most appropriate to the affected communities;

10 (2) include a description of the existing or
11 proposed regulated facility, and of the application or other
12 request for the decision;

13 (3) describe where an interested person may
14 obtain a copy of the community impact report; and

15 (4) include a statement indicating whether a
16 public hearing will be held or the procedure that should be
17 followed to request a public hearing; and

18 G. the notice to be published shall also be
19 published in a place in the newspaper calculated to give
20 members of the public the most effective notice.

21 Section 6. PROHIBITED ACTS.--A permitting agency shall
22 not make any decision concerning a regulated facility if that
23 decision would:

24 A. result in a disproportionate public health,
25 environmental or cultural impact or risk being imposed on the

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1 members of any ethnic, income-level or racial population of an
2 affected community; or

3 B. result in a concentration of regulated
4 facilities in an affected community.

5 Section 7. CITIZEN ENFORCEMENT.--

6 A. A person having an interest that is or may be
7 adversely affected by a violation of the New Mexico Healthy
8 Communities Act or a rule, order or permit issued pursuant to
9 that act may commence a civil action on the person's own behalf
10 against any permitting agency to compel compliance with that
11 act.

12 B. No action shall be commenced pursuant to this
13 section prior to sixty days after the plaintiff has given
14 written notice to the permitting agency alleged to have
15 violated the New Mexico Healthy Communities Act and to the
16 attorney general; provided, however, that when the violation
17 complained of constitutes an immediate threat to the health or
18 safety of the plaintiff or would immediately and irreversibly
19 impair a legal interest of the plaintiff, an action pursuant to
20 this section may be brought immediately after notification to
21 the proper parties.

22 C. Suits brought pursuant to this section against
23 permitting agencies or officials of New Mexico state government
24 shall be brought in the district court for Santa Fe county.

25 Suits brought pursuant to this section against agencies or

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1 officials of municipalities or counties shall be brought in the
2 district court for any county that includes, in whole or in
3 part, an affected community.

4 D. The court, in issuing a final order in an action
5 brought pursuant to this section, may award costs of
6 litigation, including attorney and expert witness fees, to a
7 party whenever the court determines that such an award is
8 appropriate.

9 E. The action and remedies provided for in this
10 section are cumulative and in addition to any other remedies
11 available.

12 Section 8. OTHER REGULATORY REQUIREMENTS.--The provisions
13 of the New Mexico Healthy Communities Act are in addition to
14 all other regulatory requirements for locating and operating a
15 regulated facility. Compliance with other regulatory
16 requirements shall not be deemed to be compliance with any
17 provisions of the New Mexico Healthy Communities Act, and
18 compliance with the New Mexico Healthy Communities Act shall
19 not be deemed to be compliance with any regulatory requirement
20 otherwise provided by law.

21 Section 9. CONTRARY DECISIONS VOID.--Any decision
22 concerning a regulated facility that is made after July 1, 2005
23 and any permit, variance or other authorization resulting from
24 the decision are void if the decision is not made in
25 substantial compliance with the provisions of the New Mexico

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1 Healthy Communities Act.

2 Section 10. RULES.--A permitting agency shall promulgate
3 such rules as are necessary to ensure compliance with the
4 provisions of the New Mexico Healthy Communities Act.

5 Section 11. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2005.

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