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HOUSE BILL 203

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO THE ENVIRONMENT; PROVIDING FOR EXPEDITED PROCESSING OF PERMIT APPLICATIONS; AMENDING THE AIR QUALITY CONTROL ACT.

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

Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972, Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By regulation, the environmental improvement board or the local board shall require:

- (1) any person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the department or the local agency prior to such construction or modification; and

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1 (2) any person intending to operate any
2 source for which an operating permit is required by [~~the 1990~~
3 ~~amendments to~~] the federal act, except as otherwise
4 specifically provided by regulation, to obtain an operating
5 permit from the department or the local agency.

6 B. Regulations adopted by the environmental
7 improvement board or the local board shall include at least
8 the following provisions:

9 (1) requirements for the submission of
10 relevant information, including [~~but not limited to~~]
11 information the department or the local agency deems necessary
12 to [~~ensure~~] determine that regulations and standards under the
13 Air Quality Control Act [~~or~~] and the federal act will [~~not~~] be
14 violated;

15 (2) specification of the deadlines for
16 processing permit applications; provided the deadline for a
17 final decision by the department or the local agency on a
18 construction permit application may not exceed:

19 (a) [~~one hundred eighty~~] ninety days
20 after the application is [~~determined to be complete~~]
21 submitted, if the application is not [~~affected by~~] subject to
22 requirements for prevention of significant deterioration; or

23 (b) [~~two hundred forty~~] one hundred
24 eighty days after the application is [~~determined to be~~
25 ~~complete~~] submitted, if the application is [~~affected by~~]

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1 subject to requirements for prevention of significant
2 deterioration;

3 (3) specification of the public notice,
4 comment period and public hearing, if any, required prior to
5 the issuance of a permit; provided the permit regulations
6 adopted:

7 (a) by the environmental improvement
8 board shall include provisions governing notice to nearby
9 states; and

10 (b) by any local board shall include
11 provisions requiring that notice be given to the department of
12 all permit applications by any source that emits, or has a
13 potential emission rate of, one hundred tons per year or more
14 of any regulated air contaminant, including any source of
15 fugitive emissions of each regulated air contaminant, at least
16 sixty days prior to the date on which construction or major
17 modification is to commence;

18 (4) a schedule of construction permit fees
19 sufficient to cover the reasonable costs of:

20 (a) [~~the reasonable costs of~~] reviewing
21 and acting upon any application for such permit; and

22 (b) [~~the reasonable costs of~~]
23 implementing and enforcing the terms and conditions of the
24 permit, excluding any court costs or other costs associated
25 with an enforcement action;

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1 (5) a schedule of emission fees consistent
2 with the provisions of Section 502(b)(3) of [~~the 1990~~
3 ~~amendments to~~] the federal act;

4 (6) specification of the maximum length of
5 time for which a permit shall be valid; provided that for an
6 operating permit such period may not exceed five years; and

7 (7) for an operating permit only:

8 (a) provisions consistent with Sections
9 502(b) and 505(b) of the federal act providing: 1) notice to
10 and review and comment by the United States environmental
11 protection agency; and 2) that if the department or local
12 agency receives notice of objection from the United States
13 environmental protection agency before the operating permit is
14 issued, the department or the local agency shall not issue the
15 permit unless it is revised and issued under Section 505(c) of
16 the federal act;

17 (b) provisions governing renewal of the
18 operating permit; and

19 (c) specification of the conditions
20 under which the operating permit may be terminated, modified
21 or revoked and reissued prior to the expiration of the term of
22 the operating permit.

23 C. The department or the local agency may deny any
24 application for:

25 (1) a construction permit if it appears that

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1 the construction or modification will not meet applicable
2 requirements of the Air Quality Control Act, the federal act
3 or any regulation adopted pursuant to either; or

4 (2) an operating permit if:

5 (a) the source for which the permit is
6 sought will emit a hazardous air pollutant or any air
7 contaminant in excess of a federal standard of performance or
8 a regulation of the environmental improvement board or the
9 local board;

10 (b) it appears that the source for
11 which the permit is sought will cause or contribute to air
12 contaminant levels in excess of any national or state standard
13 or, within the boundaries of a local authority, applicable
14 local ambient air quality standards; or

15 (c) any other provision of the Air
16 Quality Control Act or the federal act will be violated.

17 D. The department or the local agency may specify
18 conditions to any permit granted under this section,
19 including:

20 (1) for a construction permit, a requirement
21 that such source install and operate control technology,
22 determined on a case-by-case basis, sufficient to meet the
23 requirements of the Air Quality Control Act, the federal act
24 and regulations promulgated pursuant to either; and

25 (2) for an operating permit:

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1 (a) imposition of individual emission
2 limits, determined on a case-by-case basis, but only as
3 restrictive as necessary to meet the requirements of the Air
4 Quality Control Act and the federal act or the emission rate
5 specified in the operating permit application, whichever is
6 more stringent;

7 (b) compliance with applicable federal
8 standards of performance;

9 (c) imposition of reasonable
10 restrictions and limitations not relating to emission limits
11 or emission rates; or

12 (d) any combination of the conditions
13 listed ~~[above]~~ in this paragraph.

14 E. This section does not authorize the department
15 or the local agency to require the use of machinery, devices
16 or equipment from a particular manufacturer if the federal
17 standards of performance, state regulations and permit
18 conditions may be met by machinery, devices or equipment
19 otherwise available.

20 F. The issuance of a permit does not relieve any
21 person from the responsibility of complying with the
22 provisions of the Air Quality Control Act and any applicable
23 regulations of the environmental improvement board or the
24 local board. Any conditions placed upon a permit by the
25 department or the local agency shall be enforceable to the

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1 same extent as a regulation of its board.

2 G. Any person who participated in a permitting
3 action before the department or the local agency shall be
4 notified by the department or the local agency of the action
5 taken and the reasons for the action. Notification of the
6 applicant shall be by certified mail.

7 H. Any person who participated in a permitting
8 action before the department or the local agency and who is
9 adversely affected by such permitting action may file a
10 petition for hearing before the environmental improvement
11 board or the local board. The petition shall be made in
12 writing to the environmental improvement board or the local
13 board within thirty days from the date notice is given of the
14 department's or the local agency's action. Unless a timely
15 [~~request~~] petition for hearing is made, the decision of the
16 department or the local agency shall be final.

17 I. If a timely petition for hearing is made, the
18 environmental improvement board or the local board shall hold
19 a hearing within [~~ninety~~] thirty days after receipt of the
20 petition. The environmental improvement board or the local
21 board shall notify the petitioner and the applicant or
22 permittee, if other than the petitioner, by certified mail of
23 the date, time and place of the hearing. If the subject of
24 the petition is a permitting action deemed by the
25 environmental improvement board or the local board to

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1 substantially affect the public interest, the environmental
2 improvement board or the local board shall ensure that the
3 public receives notice of the date, time and place of the
4 hearing. The public in such circumstances shall also be given
5 a reasonable opportunity to submit data, views or arguments
6 orally or in writing and to examine witnesses testifying at
7 the hearing. Any person submitting data, views or arguments
8 orally or in writing shall be subject to examination at the
9 hearing.

10 J. The environmental improvement board or the
11 local board may designate a hearing officer to take evidence
12 in the hearing. All hearings shall be recorded.

13 K. The burden of proof shall be upon the
14 petitioner. Based upon the evidence presented at the hearing,
15 the environmental improvement board or the local board shall
16 sustain, modify or reverse the action of the department or the
17 local agency respectively.

18 L. Notwithstanding any other provision of law and
19 subject to the provisions of [~~Section 74-2-4 NMSA 1978~~] the
20 Air Quality Control Act, a final decision on a permit by the
21 department, the environmental improvement board, the local
22 agency, the local board or the court of appeals that a new
23 source will or will not meet applicable local, state and
24 federal air pollution standards and regulations shall be
25 conclusive and is binding on every other state agency and as

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1 an issue before any other state agency shall be deemed
2 resolved in accordance with that final decision.

3 M Subject to the provisions of [~~Section 74-2-4~~
4 ~~NMSA 1978~~] the Air Quality Control Act, if the local board has
5 adopted a permit regulation pursuant to this section, persons
6 constructing or modifying any new source within the boundaries
7 of the local authority shall obtain a permit from the local
8 agency and not from the department.

9 N. Fees collected pursuant to this section shall
10 be deposited in:

11 (1) the state air quality permit fund created
12 by [~~Section 74-2-15 NMSA 1978~~] the Air Quality Control Act if
13 collected by the department; or

14 (2) a fund created pursuant to [~~Section~~
15 ~~74-2-16 NMSA 1978~~] the Air Quality Control Act if collected by
16 a local agency pursuant to a permit regulation adopted by the
17 local board pursuant to this section.

18 0. The department or the local agency shall refund
19 construction permit fees to the applicant if action on a
20 permit application exceeds:

21 (1) ninety days, if the applicant is not
22 subject to requirements for prevention of significant
23 deterioration; or

24 (2) one hundred eighty days, if the applicant
25 is subject to requirements for prevention of significant

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deterioration. "

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 February 17, 1999

7
8 Mr. Speaker:

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10 Your ENERGY AND NATURAL RESOURCES COMMITTEE, to
11 whom has been referred

12
13 HOUSE BILLS 203 AND 325

14
15 has had them under consideration and reports same with
16 recommendation that they DO NOT PASS, but that

17 HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
18 SUBSTITUTE FOR HOUSE BILLS 203 AND 325

19
20 DO PASS. , and thence referred to the JUDICIARY
21 COMMITTEE.

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

Page 12

Respectfully submitted,

James Roger Madalena, Chairman

Adopted _____

(Chief Clerk)

Not Adopted _____

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Picraux, Roberts

Absent: None

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1 HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
2 HOUSE BILLS 203 AND 325
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**
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9 AN ACT

10 RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL
11 ACT.

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

13 Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972,
14 Chapter 51, Section 4, as amended) is amended to read:

15 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
16 IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

17 A. By regulation, the environmental improvement
18 board or the local board shall require:

19 (1) any person intending to construct or
20 modify any source, except as otherwise specifically provided by
21 regulation, to obtain a construction permit from the department
22 or the local agency prior to such construction or modification;
23 and

24 (2) any person intending to operate any source
25 for which an operating permit is required by the 1990
amendments to the federal act, except as otherwise specifically

. 126874. 3

1 provided by regulation, to obtain an operating permit from the
2 department or the local agency.

3 B. Regulations adopted by the environmental
4 improvement board or the local board shall include at least
5 the following provisions:

6 (1) requirements for the submission of
7 relevant information, including but not limited to information
8 the department or the local agency deems necessary to [~~ensure~~]
9 determine that regulations and standards under the Air Quality
Control Act or the federal act will not be violated;

10 (2) specification of the deadlines for
11 processing permit applications; provided the deadline for a
12 final decision by the department or the local agency on a
13 construction permit application may not exceed:

14 (a) [~~one hundred eighty~~] ninety days
15 after the application is determined to be administratively
16 complete, if the application is not [~~affected by~~] subject to
17 requirements for prevention of significant deterioration,
18 unless the secretary or the director grants an extension not
19 to exceed ninety days for good cause, including the need to
20 have public hearings; or

21 (b) [~~two hundred forty~~] one hundred
22 eighty days after the application is determined to be
23 administratively complete, if the application is [~~affected by~~]
24 subject to requirements for prevention of significant
25 deterioration, unless the secretary or the director grants an
extension not to exceed ninety days for good cause, including
the need to have public hearings;

1 (3) a description of elements required before
2 the department or local agency shall deem an application
3 administratively complete;

4 ~~[(3)]~~ (4) specification of the public notice,
5 comment period and public hearing, if any, required prior to the
6 issuance of a permit; provided the permit regulations adopted:

7 (a) by the environmental improvement board
8 shall include provisions governing notice to nearby states; and

9 (b) by any local board shall include
10 provisions requiring that notice be given to the department of
11 all permit applications by any source that emits, or has a
12 potential emission rate of, one hundred tons per year or more of
13 any regulated air contaminant, including any source of fugitive
14 emissions of each regulated air contaminant, at least sixty days
15 prior to the date on which construction or major modification is
16 to commence;

17 ~~[(4)]~~ (5) a schedule of construction permit
18 fees sufficient to cover the reasonable costs of:

19 (a) ~~[the reasonable costs of]~~ reviewing
20 and acting upon any application for such permit; and

21 (b) ~~[the reasonable costs of]~~ implementing
22 and enforcing the terms and conditions of the permit, excluding
23 any court costs or other costs associated with an enforcement
24 action;

25 ~~[(5)]~~ (6) a schedule of emission fees
consistent with the provisions of Section 502(b)(3) of the 1990
amendments to the federal act;

~~[(6)]~~ (7) specification of the maximum length

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1 of time for which a permit shall be valid; provided that for an
2 operating permit such period may not exceed five years; and

3 [~~(7)~~] (8) for an operating permit only:

4 (a) provisions consistent with Sections
5 502(b) and 505(b) of the federal act providing: 1) notice to and
6 review and comment by the United States environmental protection
7 agency; and 2) that if the department or local agency receives
8 notice of objection from the United States environmental
9 protection agency before the operating permit is issued, the
10 department or the local agency shall not issue the permit unless
it is revised and issued under Section 505(c) of the federal act;

11 (b) provisions governing renewal of the
12 operating permit; and

13 (c) specification of the conditions under
14 which the operating permit may be terminated, modified or revoked
15 and reissued prior to the expiration of the term of the operating
permit.

16 C. The department or the local agency may deny any
17 application for:

18 (1) a construction permit if it appears that
19 the construction or modification will not meet applicable
20 requirements of the Air Quality Control Act, the federal act or
any regulation adopted pursuant to either; or

21 (2) an operating permit if:

22 (a) the source for which the permit is
23 sought will emit a hazardous air pollutant or any air contaminant
24 in excess of a federal standard of performance or a regulation of
25 the environmental improvement board or the local board;

1 (b) it appears that the source for which
2 the permit is sought will cause or contribute to air contaminant
3 levels in excess of any national or state standard or, within the
4 boundaries of a local authority, applicable local ambient air
5 quality standards; or

6 (c) any other provision of the Air Quality
7 Control Act or the federal act will be violated.

8 D. The department or the local agency may specify
9 conditions to any permit granted under this section, including:

10 (1) for a construction permit, a requirement
11 that such source install and operate control technology,
12 determined on a case-by-case basis, sufficient to meet the
13 requirements of the Air Quality Control Act, the federal act and
14 regulations promulgated pursuant to either; and

15 (2) for an operating permit:

16 (a) imposition of individual emission
17 limits, determined on a case-by-case basis, but only as
18 restrictive as necessary to meet the requirements of the Air
19 Quality Control Act and the federal act or the emission rate
20 specified in the operating permit application, whichever is more
21 stringent;

22 (b) compliance with applicable federal
23 standards of performance;

24 (c) imposition of reasonable restrictions
25 and limitations not relating to emission limits or emission
rates; or

(d) any combination of the conditions
listed ~~[above]~~ in this paragraph.

1 E. This section does not authorize the department or
2 the local agency to require the use of machinery, devices or
3 equipment from a particular manufacturer if the federal standards
4 of performance, state regulations and permit conditions may be
5 met by machinery, devices or equipment otherwise available.

6 F. The issuance of a permit does not relieve any
7 person from the responsibility of complying with the provisions
8 of the Air Quality Control Act and any applicable regulations of
9 the environmental improvement board or the local board. Any
10 conditions placed upon a permit by the department or the local
11 agency shall be enforceable to the same extent as a regulation of
12 its board.

13 G. Any person who participated in a permitting action
14 before the department or the local agency shall be notified by
15 the department or the local agency of the action taken and the
16 reasons for the action. Notification of the applicant shall be
17 by certified mail.

18 H. Any person who participated in a permitting action
19 before the department or the local agency and who is adversely
20 affected by such permitting action may file a petition for
21 hearing before the environmental improvement board or the local
22 board. The petition shall be made in writing to the
23 environmental improvement board or the local board within thirty
24 days from the date notice is given of the department's or the
25 local agency's action. Unless a timely ~~[request]~~ petition for
hearing is made, the decision of the department or the local
agency shall be final.

I. If a timely petition for hearing is made, the

1 environmental improvement board or the local board shall hold a
 2 hearing within [~~ninety~~] sixty days after receipt of the petition.
 3 The environmental improvement board or the local board shall
 4 notify the petitioner and the applicant or permittee, if other
 5 than the petitioner, by certified mail of the date, time and
 6 place of the hearing. If the subject of the petition is a
 7 permitting action deemed by the environmental improvement board
 8 or the local board to substantially affect the public interest,
 9 the environmental improvement board or the local board shall
 10 ensure that the public receives notice of the date, time and
 11 place of the hearing. The public in such circumstances shall
 12 also be given a reasonable opportunity to submit data, views or
 13 arguments orally or in writing and to examine witnesses
 14 testifying at the hearing. Any person submitting data, views or
 15 arguments orally or in writing shall be subject to examination at
 16 the hearing.

15 J. The environmental improvement board or the local
 16 board may designate a hearing officer to take evidence in the
 17 hearing. All hearings shall be recorded.

18 K. The burden of proof shall be upon the petitioner.
 19 Based upon the evidence presented at the hearing, the
 20 environmental improvement board or the local board shall sustain,
 21 modify or reverse the action of the department or the local
 22 agency respectively.

23 L. Notwithstanding any other provision of law and
 24 subject to the provisions of Section 74-2-4 NMSA 1978, a final
 25 decision on a permit by the department, the environmental
 improvement board, the local agency, the local board or the court

1 of appeals that a new source will or will not meet applicable
2 local, state and federal air pollution standards and regulations
3 shall be conclusive and is binding on every other state agency
4 and as an issue before any other state agency shall be deemed
5 resolved in accordance with that final decision.

6 M Subject to the provisions of Section 74-2-4 NMSA
7 1978, if the local board has adopted a permit regulation pursuant
8 to this section, persons constructing or modifying any new source
9 within the boundaries of the local authority shall obtain a
10 permit from the local agency and not from the department.

11 N. Fees collected pursuant to this section shall be
12 deposited in:

13 (1) the state air quality permit fund created
14 by Section 74-2-15 NMSA 1978 if collected by the department; or

15 (2) a fund created pursuant to Section 74-2-16
16 NMSA 1978 if collected by a local agency pursuant to a permit
17 regulation adopted by the local board pursuant to this section."

18 Section 2. EFFECTIVE DATE. --The effective date of the
19 provisions of this act is January 1, 2000.

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3

4 February 27, 1999
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7 Mr. Speaker:
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9 Your JUDICIARY COMMITTEE, to whom has been referred

10 HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
11 SUBSTITUTE FOR HOUSE BILLS 203 & 325
12

13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:
15

16 1. On page 3, between lines 6 and 7 insert the following
17 new paragraph to read:

18 "(3) that if the department or local agency
19 fails to take final action on a construction permit
20 application within the deadlines specified in Paragraph (2) of
21 this subsection, the department or local agency shall notify
22 the applicant in writing that an extension of time is required
23 to process the application and specify in detail the grounds
24 for the extension;".
25

2. Renumber the succeeding paragraphs accordingly.

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4
5 3. On page 4, between lines 8 and 9, insert the
6 following new paragraphs and subparagraphs:

7
8 "(8) a method for accelerated permit
9 processing that may be requested at the sole discretion of the
10 applicant at the time the applicant submits a construction
11 permit application and that:

12 (a) allows the department or local agency
13 to contract with qualified outside firms to assist the
14 department or local agency in its accelerated review of the
15 construction permit application provided that the department
16 or local agency can contract with a qualified firm that does
17 not have a conflict of interest; and

18 (b) establishes a process for the
19 department or local agency to account for the expenditure of
20 the accelerated permit processing fees;

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22
23 (9) allows for additional permit application
24 fees, sufficient to cover the reasonable costs of an
25 accelerated permit application review process. Before the

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HENRCS/HB's 203 & 325

Page 23

applicant is notified that the permit application has been determined to be complete, the department or local board shall give the applicant a reasonable estimate of costs of an accelerated permit application review process;".

4. Renumber the succeeding paragraphs accordingly.

Respectfully submitted,

R. David Pederson, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

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1 FORTY-FOURTH LEGISLATURE
2 HENRC/HB 203 & 325 FIRST SESSION, 1999

3 HJC/HENRCS/HB's 203 & 325

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4 The roll call vote was 9 For 0 Against

5 Yes: 9

6 Excused: Garcia, M P., Luna, Vaughn

7 Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HJC/HENRCS/HB' s 203 & 325

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FORTY- FOURTH LEGI SLATURE
FIRST SESSION, 1999

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March 16, 1999

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Mr. Presi dent:

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Your CONSERVATION COMMI TTEE, to whom has been referred

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12

HOUSE ENERGY AND NATURAL RESOURCES COMMI TTEE
SUBSTITUTE FOR HOUSE BILLS 203 AND 325

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has had it under consideration and reports same with
recomm~~endation~~ that it DO PASS.

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Respectfully submit ted,

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Fernando R. Maci as, Chai rman

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FORTY-FOURTH LEGISLATURE
HENRC/HB 203 & 325 FIRST SESSION, 1999

1 HJC/HENRCS/HB' s 203 & 325

Page 26

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 6 For 0 Against

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Yes: 6

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No: None

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Excused: Eisenstadt, Griego, Feldman, Sanchez

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Absent: None

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