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SENATE BILL 48

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO PUBLIC HEALTH; ESTABLISHING A HEALTH IMPACT ASSESSMENT PROGRAM IN THE DEPARTMENT OF ENVIRONMENT; REQUIRING THAT CERTAIN CONSTRUCTION OR DEVELOPMENT PROJECTS OBTAIN A CERTIFICATE OF HEALTH IMPACT; PROVIDING FOR THE ESTABLISHMENT OF A HEALTH IMPACT ADVISORY COMMITTEE; PROVIDING FOR RULEMAKING; PROVIDING FOR APPEALS; AMENDING A SECTION OF THE HEALTH INFORMATION SYSTEM ACT TO REQUIRE THE DEPARTMENT OF HEALTH TO USE ITS HEALTH INFORMATION SYSTEM TO ISSUE COMMUNITY HEALTH INDEXES FOR NEW MEXICO COUNTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Health Impact Assessment Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the .194503.2

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1 Health Impact Assessment Act:

2 A. "applicant" means an applicant for a certificate
3 of health impact or for a renewal of an existing certificate of
4 health impact;

5 B. "department" means the department of
6 environment; and

7 C. "secretary" means the secretary of environment.

8 SECTION 3. [NEW MATERIAL] HEALTH IMPACT ASSESSMENT

9 PROGRAM--ESTABLISHMENT--ADVISORY COMMITTEE--RULEMAKING.--

10 A. The secretary shall establish a health impact
11 assessment program in the department to promote healthy
12 communities, eliminate health disparities among communities and
13 protect the human environment. The health impact assessment
14 program shall develop a health impact assessment and a program
15 for issuing certificates of health impact for use statewide
16 pursuant to the provisions of Section 5 of the Health Impact
17 Assessment Act.

18 B. The secretary shall adopt and promulgate rules
19 to establish:

20 (1) procedures for requesting, applying for,
21 reviewing, taking public comment on and appealing the
22 department's ruling on issuance of a certificate of health
23 impact;

24 (2) acceptable health impact standards for
25 purposes of issuing or denying a certificate of health impact;

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1 (3) the use of county health indexes in the
2 health impact assessment procedure;

3 (4) a procedure for enhanced public
4 notification of and involvement in developing community health
5 awareness and mitigation options; and

6 (5) an application fee and procedure for
7 conducting health impact assessments.

8 C. The secretary shall adopt and promulgate rules
9 that establish procedures that ensure that the public, affected
10 governmental agencies and any other person whose health may be
11 affected by a project shall receive notice of each application
12 for issuance, renewal or modification of a certificate. Public
13 notice shall include:

14 (1) for issuance or modification of a
15 certificate of health impact:

16 (a) notice by mail to adjacent and
17 nearby landowners; local, state and federal governments; land
18 grant organizations; ditch associations; and Indian nations,
19 tribes and pueblos;

20 (b) posting notice at a place
21 conspicuous to the public and near the discharge or proposed
22 project site; and

23 (c) a display advertisement in English
24 and Spanish in a newspaper of general circulation in the
25 location of the discharge or proposed project; provided,

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1 however, that the advertisement shall not be displayed solely
2 in the classified or legal advertisement sections; and

3 (2) for issuance of renewals of certificate of
4 health impact:

5 (a) notice by mail to the interested
6 public, municipalities, counties, land grant organizations,
7 ditch associations and Indian nations, tribes and pueblos; and

8 (b) a display advertisement in English
9 and Spanish in a newspaper of general circulation in the
10 location of the discharge; provided, however, that the
11 advertisement shall not be displayed solely in the classified
12 or legal advertisement sections.

13 D. The secretary shall not make a ruling on any
14 application for a certificate of health impact without
15 opportunity for a public hearing at which all interested
16 persons shall be given a reasonable chance to submit evidence,
17 data, views or arguments, orally or in writing, and to examine
18 witnesses testifying at the hearing. The hearing shall be
19 recorded. Any person submitting evidence, data, views or
20 arguments shall be subject to examination at the hearing.

21 E. Certificates of health impact shall be issued
22 for fixed terms not to exceed five years. For new projects,
23 the term of the certificate of health impact shall commence on
24 the date the project begins.

25 F. A person that is adversely affected by a project

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1 that has received a certificate of health impact may file a
2 petition for review before the department in accordance with
3 the Administrative Procedures Act. The petition shall:

4 (1) be made in writing to the department
5 within thirty days from the date notice is given of the
6 department's action;

7 (2) include a statement of the issues to be
8 raised and the relief sought; and

9 (3) be provided to all other persons
10 submitting evidence, data, views or arguments in the proceeding
11 before the department.

12 SECTION 4. [NEW MATERIAL] HEALTH IMPACT ASSESSMENT
13 PROGRAM ADVISORY COMMITTEE--CREATION--DUTIES--APPOINTMENT--
14 COMPENSATION.--

15 A. The secretary shall create a five-member health
16 impact assessment program advisory committee. The health
17 impact assessment program advisory committee shall review
18 applications for certificates of health impact and shall
19 provide opinions to the secretary as to whether a project
20 conforms to the health impact standards established pursuant to
21 department rules.

22 B. The secretary shall appoint five members to the
23 committee who shall have specialized knowledge of health impact
24 assessment and environmental impact analysis.

25 C. Members of the health impact assessment program

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1 advisory committee shall be subject to applicable provisions of
2 the Governmental Conduct Act and shall not have any direct or
3 indirect affiliation with an industry subject to regulation
4 pursuant to the Environmental Improvement Act.

5 D. Members of the committee shall receive per diem
6 and mileage as provided for nonsalaried public officers in the
7 Per Diem and Mileage Act and shall receive no other
8 compensation, perquisite or allowance.

9 SECTION 5. [NEW MATERIAL] CERTIFICATE OF HEALTH IMPACT
10 REQUIRED--EXCEPTIONS.--

11 A. Except as provided in Subsection E of this
12 section, and in addition to other environmental assessments
13 required by state and federal law, a person shall not begin
14 construction or development of a project that requires an
15 environmental assessment or an environmental impact statement
16 for effects on air, water and soil quality pursuant to another
17 state or federal law unless the person receives a certificate
18 of health impact or a waiver pursuant to the provisions of the
19 Health Impact Assessment Act.

20 B. A person who seeks to begin construction or
21 development of a project that requires an environmental
22 assessment or an environmental impact statement shall apply to
23 the department for a certificate of health impact authorizing
24 the project.

25 C. Within ninety days of receiving an application

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1 pursuant to Subsection B of this section, the department shall
2 issue a health impact assessment relating to the area within a
3 one-mile radius of a proposed project. A health impact
4 assessment shall describe the projected outcome of the project
5 in terms of the effect on county health outcome indicators
6 listed in the county health index for that county created
7 pursuant to Subsection E of Section 24-14A-3 NMSA 1978.

8 D. The department shall not issue a certificate of
9 health impact to a project unless the health impact assessment
10 conforms to the health impact standards established pursuant to
11 department rules.

12 E. This section does not apply to a project that is
13 identified by the secretary as a project that is:

14 (1) in response to an emergency declared by
15 the governor;

16 (2) a remediation project; or

17 (3) for the treatment or disposal of
18 wastewater or sewage sludge.

19 SECTION 6. [NEW MATERIAL] DENIAL, MODIFICATION OR
20 TERMINATION OF CERTIFICATE OF HEALTH IMPACT--CONDITIONAL
21 CERTIFICATION--APPEALS.--

22 A. The department shall deny any application for
23 certification of health impact if:

24 (1) the project at issue in the application
25 would not meet the health impact standards established pursuant

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1 to department rules;

2 (2) the applicant has failed to supply the
3 information required by department rules in making an
4 application; or

5 (3) the applicant has, within the ten years
6 immediately preceding the date of submission of the application
7 for certificate of health impact:

8 (a) knowingly misrepresented a material
9 fact in an application for a certificate of health impact;

10 (b) refused or failed to disclose any
11 information required pursuant to department rules;

12 (c) been convicted of a felony or other
13 crime involving moral turpitude;

14 (d) been convicted of a felony in any
15 court for any crime defined by state or federal law as being a
16 restraint of trade, price-fixing, bribery or fraud;

17 (e) exhibited a history of willful
18 disregard for environmental laws of any state or the United
19 States; or

20 (f) had an environmental permit revoked
21 or permanently suspended for cause under any environmental laws
22 of any state or the United States.

23 B. The department may terminate a certificate of
24 health impact prior to its date of expiration for any of the
25 following causes:

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1 (1) violation of any condition of the
2 certificate of health impact;

3 (2) obtaining the certificate of health impact
4 by misrepresentation or failure to disclose fully all relevant
5 facts in the project application;

6 (3) violation of any applicable department
7 rules; or

8 (4) a change in any condition that may have an
9 impact in any indicators of the county health index for the
10 county in which the project is located.

11 C. The secretary may adopt and promulgate rules to
12 impose reasonable conditions upon projects and issue
13 conditional certificates of health impact to monitor the
14 projects' conformance to the health impact standards
15 established pursuant to department rules. A conditional
16 certificate of health impact shall indicate the conditions to
17 which a project must conform.

18 D. The secretary may modify a certificate of health
19 impact in order to ensure that a project conforms to the health
20 impact standards established pursuant to department rules.

21 E. If the department denies, modifies or terminates
22 a certificate of health impact or grants a certificate of
23 health impact subject to condition, the department shall notify
24 the applicant by certified mail of the action taken and the
25 reasons for the action.

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1 F. A person whose certificate of health impact has
2 been denied, issued on a conditional basis, modified or
3 terminated may appeal the department's ruling by filing a
4 request in accordance with department rules for an adjudicatory
5 hearing pursuant to the Administrative Procedures Act.

6 SECTION 7. Section 24-14A-3 NMSA 1978 (being Laws 1989,
7 Chapter 29, Section 3, as amended) is amended to read:

8 "24-14A-3. HEALTH INFORMATION SYSTEM--CREATION--DUTIES OF
9 DEPARTMENT--COUNTY HEALTH INDEXES.--

10 A. The "health information system" is created for
11 the purpose of assisting the department, legislature and other
12 agencies and organizations in the state's efforts in
13 collecting, analyzing and disseminating health information to
14 assist:

15 (1) in the performance of health planning and
16 policymaking functions, including identifying personnel,
17 facility, education and other resource needs and allocating
18 financial, personnel and other resources where appropriate;

19 (2) consumers in making informed decisions
20 regarding health care; and

21 (3) in administering, monitoring and
22 evaluating a statewide health plan.

23 B. In carrying out its powers and duties pursuant
24 to the Health Information System Act, the department shall not
25 duplicate databases that exist in the public sector or

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1 databases in the private sector to which it has electronic
2 access. Every governmental entity shall provide the department
3 with access to its health-related data as needed by the
4 department. The department shall collect data from data
5 sources in the most cost-effective and efficient manner.

6 C. The department shall establish, operate and
7 maintain the health information system.

8 D. In establishing, operating and maintaining the
9 health information system, the department shall:

10 (1) obtain information on the following health
11 factors:

12 (a) mortality and natality, including
13 accidental causes of death;

14 (b) morbidity;

15 (c) health behavior;

16 (d) disability;

17 (e) health system costs, availability,
18 utilization and revenues;

19 (f) environmental factors;

20 (g) health personnel;

21 (h) demographic factors;

22 (i) social, cultural and economic
23 conditions affecting health, including language preference;

24 (j) family status;

25 (k) medical and practice outcomes as

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1 measured by nationally accepted standards and quality of care;
2 and

3 (1) participation in clinical research
4 trials;

5 (2) give the highest priority in data
6 gathering to information needed to implement and monitor
7 progress toward achievement of the state health policy,
8 including determining where additional health resources such as
9 personnel, programs and facilities are most needed, what those
10 additional resources should be and how existing resources
11 should be reallocated;

12 (3) standardize collection and specific
13 methods of measurement across databases and use scientific
14 sampling or complete enumeration for collecting and reporting
15 health information;

16 (4) take adequate measures to provide health
17 information system security for all health data acquired under
18 the Health Information System Act and protect individual
19 patient and provider confidentiality. The right to privacy for
20 the individual shall be a major consideration in the collection
21 and analysis of health data and shall be protected in the
22 reporting of results;

23 (5) adopt and promulgate rules necessary to
24 establish and administer the provisions of the Health
25 Information System Act, including an appeals process for data

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1 sources and procedures to protect data source proprietary
2 information from public disclosure;

3 (6) establish definitions, formats and other
4 common information standards for core health data elements of
5 the health information system in order to provide an integrated
6 financial, statistical and clinical health information system,
7 including a geographic information system, that allows data
8 sharing and linking across databases maintained by data sources
9 and federal, state and local public agencies;

10 (7) develop and maintain health and health-
11 related data inventories and technical documentation on data
12 holdings in the public and private sectors;

13 (8) collect, analyze and make available health
14 data to support preventive health care practices and to
15 facilitate the establishment of appropriate benchmark data to
16 measure performance improvements over time;

17 (9) establish and maintain a systematic
18 approach to the collection and storage of health data for
19 longitudinal, demographic and policy impact studies;

20 (10) use expert system-based protocols to
21 identify individual and population health risk profiles and to
22 assist in the delivery of primary and preventive health care
23 services;

24 (11) collect health data sufficient for
25 consumers to be able to evaluate health care services, plans,

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1 providers and payers and to make informed decisions regarding
2 quality, cost and outcome of care across the spectrum of health
3 care services, providers and payers;

4 (12) collect comprehensive information on
5 major capital expenditures for facilities, equipment by type
6 and by data source and significant facility capacity
7 reductions; provided that for the purposes of this paragraph
8 and Section 24-14A-5 NMSA 1978, "major capital expenditure"
9 means purchases of at least one million dollars (\$1,000,000)
10 for construction or renovation of facilities and at least five
11 hundred thousand dollars (\$500,000) for purchase or lease of
12 equipment, and "significant facility capacity reductions" means
13 those reductions in facility capacities as defined by the
14 department;

15 (13) serve as a health information
16 clearinghouse, including facilitating private and public
17 collaborative, coordinated data collection and sharing and
18 access to appropriate data and information, maintaining patient
19 and client confidentiality in accordance with state and federal
20 requirements;

21 (14) collect data in the most cost-efficient
22 and effective method feasible and adopt rules that place a
23 limit on the maximum amount of unreimbursed costs that a data
24 source can incur in any year for the purposes of complying with
25 the data requirements of the Health Information System Act; and

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1 (15) identify disparities in health care
2 access and quality by aggregating the information collected
3 pursuant to Paragraph (1) of this subsection by population
4 subgroups to include race, ethnicity, gender and age.

5 E. The department shall develop and publish a
6 county health index for each county. The index shall be a
7 cumulative evaluation of the health of the county using county
8 health outcome indicators that are based on county rates of
9 disease and premature death and that ranks communities
10 according to the average outcomes for the entire state. The
11 department shall update the index every five years. The index
12 shall take into consideration the following factors:

13 (1) primary indicators of the vulnerability of
14 the county to health effects from sources of air, water or soil
15 contamination that include:

16 (a) total age-adjusted mortality;

17 (b) total age-adjusted emergency room
18 visits;

19 (c) the prevalence of elevated blood
20 lead levels in children thirteen years of age or younger;

21 (d) the number of hospital admissions
22 related to asthma;

23 (e) the prevalence of asthma in children
24 who are fourteen years of age or younger; and

25 (f) the infant mortality rate;

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1 (2) secondary indicators of the vulnerability
2 of the county to health effects from sources of air, water or
3 soil contamination that include:

4 (a) the morbidity rate related to
5 age-adjusted noncongenital cardiovascular disease and stroke;

6 (b) the total number of age-adjusted
7 heart attack hospitalizations;

8 (c) the total number of age-adjusted
9 stroke and stroke-related hospitalizations; and

10 (d) the total number of bronchitis and
11 bronchitis-related hospitalizations of children who are
12 fourteen years of age or younger and of adults who are sixty-
13 five years of age and older; and

14 (3) other health indicators in the county that
15 include:

16 (a) other health outcome indicators
17 determined by the secretary to be relevant to a county's
18 vulnerability to pollutants; and

19 (b) environmental indicators, including
20 air and water quality data."