

**Bill Title:** Environmental Review Act **Bill Sponsor:** Representative Gail Chasey

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**Summary:**

The Environmental Review Act will improve the health of New Mexicans and protect New Mexico's land, air, water, plants, animals, and historical and cultural sites by requiring that agencies consider and mitigate potential adverse impacts before permitting projects.

**Background:**

The State of New Mexico does not have uniform requirements for state agencies to notify the public of proposed projects, nor are there any requirements for environmental analysis before permitting significant projects. Eighteen other states and the federal government have these requirements.

These requirements are critical for transparency and open government, but even more importantly, they allow agencies to make informed permitting decisions. Without prior consideration of potential impacts to human health, water, air, animals and plants, historic and cultural sites, neighboring tribes, and nearby communities, agencies often permit actions which have negative impacts, many of which could be avoided if the time was taken to analyze, listen to the public, and consider potential mitigation for those impacts.

**Impact:**

The bill will impact individuals, communities, and New Mexico's flora and fauna, by ensuring that agencies consider potential adverse impacts before permitting major projects; that they are responsive to public input about their projects; and that they consider alternatives to their proposals which may accomplish the same ends with fewer negative outcomes.

This policy would apply to all State agencies in NM.

**About the bill:**

*For larger projects permitted by state agencies, the bill creates the following requirements:*

1. Notification of a permit application to interested parties by a variety of means including: mail to individuals in close proximity to the proposed project; publication in newspapers; and online posting of notification at the project site.
2. Brief environmental analysis to determine whether deeper analysis is necessary potential mitigation.
3. Deeper environmental analysis and consideration of alternative ways to accomplish the project, when indicated by brief environmental analysis.
4. Consultation with nearby tribes and interested parties.
5. The ability for injured parties to appeal the agency's decision.

**FAQ's:**

1. Won't this cost too much money?
  - a. No. There is a small appropriation in the bill to hire several FTE's in the agencies we believe will be most impacted by the bill (NM Environment Department, State Land

Office, State Engineers Office, and the Energy Minerals and Natural Resources Department). These funds should cover administrative costs of implementing the bill and conducting most of the shorter analyses in-house.

Most of the cost will be paid by project proponents. When entities seek a state permit for a significant project and the law is triggered, that entity will be responsible for the cost of the required analysis. Hiring an external contractor to do the analysis would also be acceptable.

2. Won't this delay projects?
  - a. A brief delay is a small price to pay for better-informed decisions and avoiding disasters like the Carlsbad Brine Well.
  - b. There are limits in the bill to ensure decisions still occur in a timely manner.
  - c. The bill is less extensive than what is already required on federal land, so companies operating on federal land too will be familiar and comfortable with the process.
3. Won't this result in endless litigation?
  - a. Federal statistics indicate that only about 1% of National Environmental Policy Act (NEPA) decisions are litigated.
4. Doesn't this already happen through the National Environmental Policy Act?
  - a. NEPA only applies to federal projects or projects on federal lands. It does not apply to state projects or projects on state land.
  - b. Any project undergoing a NEPA analysis is explicitly exempt from ERA.
5. What are some examples of where a law like this could make a difference?
  - a. Had this process been in place many years ago, the state might have known not to place a brine well in Carlsbad over unstable geology, and New Mexico would not be faced with a dangerous sinkhole and a \$50M price tag.
  - b. Communities in Albuquerque's South Valley have experienced significant public health impacts from being subjected to layered industrial projects. This bill would allow those communities to have a voice in the permitting process and would require the state to consider the cumulative impacts of many industrial projects being permitted in the same area.
  - c. Currently, when projects like open pit mines are permitted in New Mexico, agencies are not required to consider the impacts to ground or surface water, or the potential impacts to endangered species, agriculture, and communities downstream.