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SENATE BILL 386

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO MINING; AMENDING THE NEW MEXICO MINING ACT TO
ALLOW, IN CERTAIN CIRCUMSTANCES, REQUIREMENTS FOR FINANCIAL
ASSURANCE TO BE SATISFIED BY THIRD PARTY GUARANTEES; MAKING AN
APPROPRIATION.

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

**Section 1. Section 69-36-7 NMSA 1978 (being Laws 1993,
Chapter 315, Section 7, as amended) is amended to read:**

"69-36-7. COMMISSION--DUTIES.--The commission shall:

**A. before June 18, 1994, adopt and file reasonable
regulations consistent with the purposes and intent of the New
Mexico Mining Act necessary to implement the provisions of the
New Mexico Mining Act, including regulations that:**

**(1) consider the economic and environmental
effects of their implementation;**

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1 (2) require permitting of all new and
2 existing mining operations and exploration; and

3 (3) require annual reporting of production
4 information to the commission, which shall be kept
5 confidential if otherwise required by law;

6 B. adopt regulations for new mining operations
7 that allow the director to select a qualified expert who may:

8 (1) review and comment to the director on the
9 adequacy of baseline data gathered prior to submission of the
10 permit application for use in the permit application process;

11 (2) recommend to the director additional
12 baseline data that may be necessary in the review of the
13 proposed mining activity;

14 (3) recommend to the director methodology
15 guidelines to be followed in the collection of all baseline
16 data; and

17 (4) review and comment on the permit
18 application;

19 C. adopt regulations that require and provide for
20 the issuance and renewal of permits for new and existing
21 mining operations and exploration and that establish schedules
22 to bring existing mining operations into compliance with the
23 requirements of the New Mexico Mining Act; provided the term
24 of a permit for a new mining operation shall not exceed twenty
25 years and the term of renewals of permits for new mining

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1 operations shall not exceed ten years;

2 D. adopt regulations that provide for permit
3 modifications. The commission shall establish criteria to
4 determine which permit modifications may have significant
5 environmental impact. Modifications that the director
6 determines will have significant environmental impact shall
7 require public notice and an opportunity for public hearing
8 pursuant to Subsection K of this section. A permit
9 modification to the permit for an existing mining operation
10 shall be obtained for each new discrete processing, leaching,
11 excavation, storage or stockpile unit located within the
12 permit area of an existing mining operation and not identified
13 in the permit of an existing mining operation and for each
14 expansion of such a unit identified in the permit for an
15 existing mining operation that exceeds the design limits
16 specified in the permit. The regulations shall require that
17 permit modifications for such units be approved if the
18 director determines that the unit will:

19 (1) comply with the regulations regarding
20 permit modifications;

21 (2) incorporate the requirements of
22 Paragraphs (1), (2), (4), (5) and (6) of Subsection H of this
23 section; and

24 (3) be sited and constructed in a manner that
25 facilitates, to the maximum extent practicable,

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1 contemporaneous reclamation consistent with the closeout plan;

2 E. adopt regulations that require new and existing
3 mining operations to obtain and maintain permits for standby
4 status. A permit for standby status shall be issued for a
5 maximum term of five years; provided that upon application the
6 director may renew a permit for standby status for no more
7 than three additional five-year terms. The regulations shall
8 require that before a permit for standby status is issued or
9 renewed an owner or operator shall:

10 (1) identify the projected term of standby
11 status for each unit of the new or existing mining operation;

12 (2) take measures that reduce, to the extent
13 practicable, the formation of acid and other toxic drainage to
14 prevent releases that cause federal or state environmental
15 standards to be exceeded;

16 (3) meet applicable federal and state
17 environmental standards and regulations during the period of
18 standby status;

19 (4) stabilize waste and storage units, leach
20 piles, impoundments and pits during the term of standby
21 status;

22 (5) comply with applicable requirements of
23 the New Mexico Mining Act and the regulations adopted pursuant
24 to that act; and

25 (6) provide an analysis of the economic

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1 viability of each unit proposed for standby status;

2 F. establish by regulation closeout plan
3 requirements for existing mining operations that incorporate
4 site-specific characteristics, including consideration of
5 disturbances from previous mining operations, and that take
6 into account the mining method utilized;

7 G. establish by regulation a procedure for the
8 issuance of a permit for an existing mining operation and for
9 modifications of that permit to incorporate approved closeout
10 plans or portions of closeout plans and financial assurance
11 requirements for performance of the closeout plans. The
12 permit shall describe the permit area of the existing mining
13 operation and the design limits of units of the existing
14 mining operation based upon the site assessment submitted by
15 the operator. The permit shall contain a schedule for
16 completion of a closeout plan. The permit shall thereafter be
17 modified to incorporate the approved closeout plan or portions
18 of the closeout plan once financial assurance has been
19 provided for completion of the closeout plan or the approved
20 portions of the closeout plan. The permit may be modified for
21 new mining units, expansions beyond the design limits of a
22 unit at an existing mining operation or standby status;

23 H. establish by regulation permit and reclamation
24 requirements for new mining operations that incorporate site-
25 specific characteristics. These requirements shall, at a

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1 **mi ni mum:**

2 (1) require that new mining operations be
3 designed and operated using the most appropriate technology
4 and the best management practices;

5 (2) assure protection of human health and
6 safety, the environment, wildlife and domestic animals;

7 (3) include backfilling or partial
8 backfilling only when necessary to achieve reclamation
9 objectives that cannot be accomplished through other
10 mitigation measures;

11 (4) require approval by the director that the
12 permit area will achieve a self-sustaining ecosystem
13 appropriate for the life zone of the surrounding areas
14 following closure unless conflicting with the approved post-
15 mining land use;

16 (5) require that new mining operations be
17 designed in a manner that incorporates measures to reduce, to
18 the extent practicable, the formation of acid and other toxic
19 drainage that may otherwise occur following closure to prevent
20 releases that cause federal or state standards to be exceeded;

21 (6) require that nonpoint source surface
22 releases of acid or other toxic substances shall be contained
23 within the permit area;

24 (7) require that all waste, waste management
25 units, pits, heaps, pads and any other storage piles are

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1 designed, sited and constructed in a manner that facilitates,
2 to the maximum extent practicable, contemporaneous reclamation
3 and are consistent with the new mining operation's approved
4 reclamation plan; and

5 (8) where sufficient topsoil is present, take
6 measures to preserve it from erosion or contamination and
7 assure that it is in a usable condition for sustaining
8 vegetation when needed;

9 I. adopt regulations that establish a permit
10 application process for new mining operations that includes:

11 (1) disclosure of ownership and controlling
12 interests in the new mining operation or submission of the
13 applicant's most recent form 10K required by the federal
14 securities exchange commission;

15 (2) a statement of all mining operations
16 within the United States owned, operated or directly
17 controlled by the applicant, owner or operator and by persons
18 or entities that directly control the applicant and the names
19 and the addresses of regulatory agencies with jurisdiction
20 over the environmental aspects of those operations and that
21 could provide a compliance history for those operations [and]
22 over the preceding ten years. The operator shall assist the
23 applicant in obtaining compliance history information;

24 (3) a description of the type and method of
25 mining and the engineering techniques proposed;

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1 (4) the anticipated starting and termination
2 dates of each phase of the new mining operation and the number
3 of acres of land to be affected;

4 (5) the names of all affected watersheds, the
5 location of any perennial, ephemeral or intermittent surface
6 stream or tributary into which surface or pit drainage will be
7 discharged or may possibly be expected to reach and the
8 location of any spring within the permit area and the affected
9 area;

10 (6) a determination of the probable
11 hydrologic consequences of the new mining operation and
12 reclamation, both on and off the permit area, with respect to
13 the hydrologic regime, quantity and quality of surface and
14 ground water systems, including the dissolved and suspended
15 solids under seasonal flow conditions;

16 (7) cross-sections or plans of the permit
17 area depicting:

18 (a) the nature and depth of the various
19 formations of overburden;

20 (b) the location of subsurface water,
21 if encountered, and its quality;

22 (c) the nature and location of any ore
23 body to be mined;

24 (d) the location of aquifers and
25 springs;

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1 (e) the estimated position and flow of
2 the water table;

3 (f) the proposed location of waste
4 rock, tailings, stockpiles, heaps, pads and topsoil
5 preservation areas; and

6 (g) premining vegetation and wildlife
7 habitat features present at the site;

8 (8) the potential for geochemical alteration
9 of overburden, the ore body and other materials present within
10 the permit area;

11 (9) a reclamation plan that includes a
12 detailed description of the proposed post-mining land use and
13 how that use is to be achieved; and

14 (10) premining baseline data as required by
15 regulations adopted by the commission;

16 J. adopt regulations to coordinate the roles of
17 permitting agencies involved in regulating activities related
18 to new and existing mining operations and exploration,
19 including regulatory requirements, to avoid duplicative and
20 conflicting administration of the permitting process and other
21 requirements;

22 K. except for regulations enacted pursuant to
23 Subsection L of this section, adopt regulations that ensure
24 that the public and permitting agencies receive notice of each
25 application for issuance, renewal or revision of a permit for

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1 a new or existing mining operation, for standby status, or
2 exploration, a variance or an application for release of
3 financial assurance and any inspection prior to the release of
4 financial assurance, including a provision that no action
5 shall be taken on any application until an opportunity for a
6 public hearing, held in the locality of the operation, is
7 provided and that all interested persons shall be given a
8 reasonable chance to submit data, views or arguments orally or
9 in writing and to examine witnesses testifying at the hearing.
10 An additional opportunity for a public hearing may be provided
11 if the applicant makes substantial changes in the proposed
12 action, if there are significant new circumstances or
13 information bearing on the proposed action or if the applicant
14 proposes to substantially increase the scale or substantially
15 change the nature of the proposed action and there is public
16 interest and a request for a public hearing. These
17 regulations shall require at a minimum that the applicant for
18 issuance, renewal or revisions of a permit or a variance or an
19 application for release of financial assurance and any
20 inspection prior to release of financial assurance shall
21 provide to the director at the time of filing the application
22 with the director proof that notice of the application and of
23 the procedure for requesting a public hearing has been:

24 (1) provided by certified mail to the owners
25 of record, as shown by the most recent property tax schedule,

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1 of all properties within one-half mile of the property on
2 which the mining operation is located or is proposed to be
3 located;

4 (2) provided by certified mail to all
5 municipalities and counties within a ten-mile radius of the
6 property on which the mining operation is or will be located;

7 (3) published once in a newspaper of general
8 circulation in each county in which the property on which the
9 mining operation is or will be located; provided that this
10 notice shall appear in either the classified or legal
11 advertisements section of the newspaper and at one other place
12 in the newspaper calculated to give the general public the
13 most effective notice and, when appropriate, shall be printed
14 in both English and Spanish;

15 (4) posted in at least four publicly
16 accessible and conspicuous places, including the entrance to
17 the new or existing mining operation if that entrance is
18 publicly accessible and conspicuous;

19 (5) mailed to all persons who have made a
20 written request to the director for notice of this
21 application; and

22 (6) mailed by certified mail to all persons
23 on a list maintained by the director of individuals and
24 organizations who have requested notice of applications under
25 [this] the New Mexico Mining Act.

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1 If the application is determined to be administratively
2 complete by the director, the applicant shall provide to the
3 director timely proof that notice of that determination has
4 been provided by first class mail to everyone who has
5 indicated to the applicant in writing that they desire
6 information regarding the application and to a list maintained
7 by the director of individuals and organizations who have
8 requested notice of applications under this act;

9 L. adopt regulations to provide for permits,
10 without notice and hearing, to address mining operations that
11 have minimal impact on the environment; provided that such
12 permits shall require general plans and shall otherwise reduce
13 the permitting requirements of the New Mexico Mining Act;

14 M. establish by regulation a schedule of annual
15 administrative and permit fees, which shall equal and not
16 exceed the estimated costs of administration, implementation,
17 enforcement, investigation and permitting pursuant to the
18 provisions of the New Mexico Mining Act. The size of the
19 operation, anticipated inspection frequency and other factors
20 deemed relevant by the commission shall be considered in the
21 determination of the fees. The fees established pursuant to
22 this subsection shall be deposited in the mining act fund;

23 N. establish by regulation a continuing process of
24 review of mining and reclamation practices in New Mexico that
25 provides for periodic review and amendment of regulations and

1 procedures to provide for the protection of the environment
2 and consider the economic effects of the regulations;

3 0. adopt regulations governing the provision of
4 variances issued by the director, stating the procedures for
5 seeking a variance, including provisions for public notice and
6 an opportunity for a hearing in the locality where the
7 variance will be operative, the limitations on provision of
8 variances, requiring the petitioner to present sufficient
9 evidence to prove that failure to grant a variance will impose
10 an undue economic burden and that granting the variance will
11 not result in a significant threat to human health, safety or
12 the environment;

13 P. provide by regulation that, prior to the
14 issuance of any permit for a new mining operation pursuant to
15 the provisions of the New Mexico Mining Act, the permit
16 applicant or operator:

17 (1) shall provide evidence to the director
18 that other applicable state and federal permits required to be
19 obtained by the new or existing mining operation either have
20 been or will be issued before the activities subject to those
21 permits begin; and

22 (2) shall provide to the director a written
23 determination from the secretary of environment stating that
24 the permit applicant has demonstrated that the activities to
25 be permitted or authorized will be expected to achieve

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1 compliance with all applicable air and water quality and other
2 environmental standards if carried out as described;

3 Q. require by regulation that the applicant file
4 with the director, prior to the issuance of a permit,
5 financial assurance. The amount of the financial assurance
6 shall be sufficient to assure the completion of the
7 performance requirements of the permit, including closure and
8 reclamation, if the work had to be performed by the director
9 or a third party contractor and shall include periodic review
10 to account for any inflationary increases and anticipated
11 changes in reclamation or closure costs. The regulations
12 shall specify that financial requirements shall neither
13 duplicate nor be less comprehensive than the federal financial
14 requirements. The form and amount of the financial assurance
15 shall be subject to the approval of the director as part of
16 the permit application; provided, financial assurance does not
17 include any type or variety of self-guarantee or self-
18 insurance, but the director may accept financial assurance in
19 the form of a guarantee issued by a third party, who is not
20 the permittee but may be a person who owns stock or another
21 form of interest in the permittee, if the third party
22 guarantor meets financial soundness tests adopted by the
23 commi ssi on;

24 R. require by regulation that the permittee may
25 file an application with the director for the release of all

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1 or part of the permittee's financial assurance. The permittee
2 shall not file an application for release of financial
3 assurance more than once per year for each mining operation.
4 The application shall describe the reclamation measures
5 completed and shall contain an estimate of the costs of
6 reclamation measures that have not been completed. Prior to
7 release of any portion of the permittee's financial assurance,
8 the director shall conduct an inspection and evaluation of the
9 reclamation work involved. The director shall notify persons
10 who have requested advance notice of the inspection.
11 Interested members of the public shall be allowed to be
12 present at the inspection of the reclamation work by the
13 director.

14 (1) The director may release in whole or in
15 part the financial assurance if the reclamation covered by the
16 financial assurance has been accomplished as required by the
17 New Mexico Mining Act; provided that the director shall retain
18 financial assurance at least equal to the approved estimated
19 costs of completing reclamation measures that have not been
20 completed; and provided further that for revegetated areas,
21 the director shall retain the amount of financial assurance
22 necessary for a third party to reestablish vegetation for a
23 period of twelve years after the last year of augmented
24 seeding, fertilizing, irrigation or other work, unless a post-
25 mining land use is achieved that is inconsistent with the

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1 further need for revegetation. For new mining operations
2 only, no part of the financial assurance necessary for a third
3 party to reestablish vegetation shall be released so long as
4 the lands to which the release would be applicable are
5 contributing suspended solids above background levels to
6 streamflow of intermittent and perennial streams.

7 (2) A person with an interest that is or will
8 be adversely affected by release of the financial assurance
9 may file, with the director within thirty days of the date of
10 the inspection, written objections to the proposed release
11 from financial assurance. If written objections are filed and
12 a hearing is requested, the director shall inform all the
13 interested parties of the time and place of the hearing at
14 least thirty days in advance of the public hearing, and hold a
15 public hearing in the locality of the new or existing mining
16 operation or exploration operation proposed for release from
17 financial assurance. The date, time and location of the
18 public hearing shall be advertised by the director in a
19 newspaper of general circulation in the locality for two
20 consecutive weeks, and all persons who have submitted a
21 written request in advance to the director to receive notices
22 of hearings shall be provided notice at least thirty days
23 prior to the hearing;

24 S. establish coordinated procedures that avoid
25 duplication for the inspection, monitoring and sampling of

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1 air, soil and water and enforcement of applicable requirements
2 of the New Mexico Mining Act, regulations adopted pursuant to
3 that act and permit conditions for new and existing mining
4 operations and exploration. The regulations shall require, at
5 a minimum:

6 (1) inspections by the director occurring on
7 an irregular basis according to the following schedule:

8 (a) at least one inspection per month
9 when the mining operation is conducting significant
10 reclamation activities;

11 (b) at least two inspections per year
12 for active mining operations;

13 (c) at least one inspection per year on
14 inactive sites;

15 (d) at least one inspection per year
16 following completion of all significant reclamation
17 activities, but prior to release of financial assurance; and

18 (e) mining operations having a minimal
19 impact on the environment and exploration operations will be
20 inspected on a schedule to be established by the commission;

21 (2) inspections shall occur without prior
22 notice to the permittee or his agents or employees except for
23 necessary on-site meetings with the permittee;

24 (3) when the director determines that a
25 condition or practice exists that violates a requirement of

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1 the New Mexico Mining Act, a regulation adopted pursuant to
2 that act or a permit issued under that act, which condition,
3 practice or violation also creates an imminent danger to the
4 health or safety of the public or will cause significant
5 imminent environmental harm, the director shall immediately
6 order a cessation of the new or existing mining operation or
7 the exploration operation or the portion of that operation
8 relevant to the condition, practice or violation. The
9 cessation order shall remain in effect until the director
10 determines that the condition, practice or violation has been
11 abated or until modified, vacated or terminated by the
12 director or the commission;

13 (4) when the director determines that an
14 owner or operator is in violation of a requirement of the New
15 Mexico Mining Act, a regulation adopted pursuant to that act
16 or a permit issued pursuant to that act but the violation does
17 not create an imminent danger to the health or safety of the
18 public or will not cause significant imminent environmental
19 harm, the director shall issue a notice to the owner or
20 operator fixing a reasonable time, not to exceed sixty days,
21 for the abatement of the violation. If, upon expiration of
22 the period of time as originally fixed or subsequently
23 extended for good cause shown, the director finds that the
24 violation has not been abated, he shall immediately order a
25 cessation of new or existing mining operations or exploration

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1 operations or the portion thereof relevant to the violation.
2 The cessation order shall remain in effect until the director
3 determines that the violation has been abated; and

4 (5) when the director determines that a
5 pattern of violations of the requirements of the New Mexico
6 Mining Act or of the regulations adopted pursuant to that act
7 or the permit required by that act exists or has existed and,
8 if the director also finds that such violations are caused by
9 the unwarranted failure of the owner or operator to comply
10 with the requirements of that act, regulation or permit or
11 that such violations are willfully caused by the owner or
12 operator, the director shall immediately issue an order to the
13 owner or operator to show cause as to why the permit should
14 not be suspended or revoked;

15 T. provide for the transfer of a permit to a
16 successor operator, providing for release of the first
17 operator from obligations under the permit, including
18 financial assurance, following the approved assumption of such
19 obligations and financial assurance by the successor operator;

20 U. adopt regulations providing that the owner or
21 operator of an existing mining operation or a new mining
22 operation who has completed some reclamation measures prior to
23 the effective date of the regulations adopted pursuant to the
24 New Mexico Mining Act may apply for an inspection of those
25 reclamation measures and a release from further requirements

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1 pursuant to that act for the reclaimed areas if, after an
2 inspection, the director determines that the reclamation
3 measures satisfy the requirements of that act and the
4 substantive requirements for reclamation pursuant to the
5 applicable regulatory standards; and

6 V. develop and adopt other regulations necessary
7 and appropriate to carry out the purposes and provisions of
8 the New Mexico Mining Act. "

9 Section 2. APPROPRIATION. --Ten thousand dollars
10 (\$10,000) is appropriated from the general fund to the mining
11 and minerals division of the energy, minerals and natural
12 resources department for expenditure in fiscal year 2003 to
13 provide for financial review of guarantees or insurance
14 proposed to satisfy the financial assurance requirements of
15 the New Mexico Mining Act. Any unexpended or unencumbered
16 balance remaining at the end of fiscal year 2003 shall revert
17 to the general fund.