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FISCAL IMPACT REPORT

SPONSOR Small ORIGINAL DATE 02/01/21
LAST UPDATED _____ HB 157
SHORT TITLE Mining Act Forfeiture Act SB _____
ANALYST Gaussoin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 157 amends the New Mexico Mining Act, NMSA 1978, Section 69-36-19, to establish a “mining act forfeiture fund” that would receive funds from the forfeiture of financial assurance, a commitment of resources made by a mining company at the start of a project. The funds would be appropriated to EMNRD but could be used only to complete the reclamation plan or closeout plan to which the financial assurance had been dedicated. If the duration of the reclamation is to exceed five years, to be determined by the director of the Mining and Minerals Division (MMD) of EMNRD, the funds will be maintained in a separate subaccount and may be invested by the State Investment Council with the advice of an independent investment advisor hired by EMNRD. Interest earned would remain in the fund and would be credited to the specific reclamation or closeout plan. Any money remaining after the completion of a reclamation project would be returned to the appropriate person as provided in the Mining Act rules.

The effective date of the bill is July 1, 2021.

FISCAL IMPLICATIONS

This bill creates a new fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because earmarking reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

While the intent of financial assurance is to ensure remediation of any damage left by mining activity, EMNRD argues existing law does not provide for a specific fund to accept and manage forfeited financial assurance if a mine operator is unable or unwilling to complete the reclamation required by a mining permit, and it is unclear if the Mining and Minerals Divisions has the authority to hold and manage the funds for remediation.

Earmarked funds are discouraged by LFC policy; however, EMNRD contends HB157 would both protect a source of funds intended for remediation and ensure other public funds were not used for remediation of a mine if the mine owner fails to fulfill its responsibility.

EMNRD also indicates a dedicated fund could expedite remediation.

PERFORMANCE IMPLICATIONS

EMNRD does not have a performance measure that directly measures successful remediation, although it might need one. HB157 is unlikely to impact performance on the measure “percent of permitted mines with approved reclamation plans and adequate financial assurance posted to cover the cost of reclamation.”

HG/rl