

AN ACT

RELATING TO MINING; AMENDING, REPEALING AND ENACTING SECTIONS OF CHAPTER 69 NMSA 1978 TO PROVIDE FOR MINE SAFETY AND ENFORCEMENT OF MINE SAFETY LAWS AND RULES.

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

Section 1. Section 69-1-6 NMSA 1978 (being Laws 1979, Chapter 68, Section 3, as amended) is amended to read:

"69-1-6. STATE MINE INSPECTOR DUTIES--STATUS.--

A. The state mine inspector is assigned to the New Mexico institute of mining and technology.

B. The board of regents of the New Mexico institute of mining and technology and the mining safety board may recommend the names of qualified individuals to the governor for appointment as the state mine inspector.

C. In addition to those duties assigned to the state mine inspector by the board of regents of the New Mexico institute of mining and technology, by the mining safety board and by statute, the state mine inspector shall cooperate with the director of the mining and minerals division of the energy, minerals and natural resources department to assist the director in the performance of the director's duties."

Section 2. Section 69-5-7 NMSA 1978 (being Laws 1933, Chapter 153, Section 14, as amended) is amended to read:

"69-5-7. DUTIES--STATE MINE INSPECTOR--DIRECTOR OF

MINING AND MINERALS.--

A. The state mine inspector shall:

(1) develop and maintain mine safety and health training programs;

(2) upon notification of any explosion or other catastrophic event at a mine in which the lives of mine workers are jeopardized or in which fatalities have occurred, allocate available resources within a twenty-four-hour time period to assist the mine operator in the rescue of persons and the subsequent accident investigation;

(3) upon request from any operator, provide compliance assistance to include on-site audits to any mine or mine operator within the state to aid in the health and safety of mine workers and mine operators;

(4) if a mine is found to be unsafe during an inspection, give written notice that the mine is unsafe to the owner, operator or manager of the mine with an explanation for the notice;

(5) support and maintain a uniform system of mine bell signals and furnish a copy of the signal system to each underground mine operator within the state. Automated hoists shall be exempt from compliance with the bell signal requirements;

(6) implement a program of certifying mine personnel as provided by law; and

(7) make a report to the governor on or before June 1 of each year, which report covers the preceding calendar year and contains a review of the official acts of the inspector.

B. The director of the mining and minerals division of the energy, minerals and natural resources department shall:

(1) cooperate with the state mine inspector to assist the state mine inspector in the performance of the state mine inspector's duties, including providing the state mine inspector with mine registration and other information collected by the department;

(2) provide an annual resources report to the governor that shall include statistics of the number of persons employed in mining, the production and value thereof; and

(3) have right of entry to the mines as may be required to fulfill the director's statutory duties."

Section 3. Section 69-5-9 NMSA 1978 (being Laws 1933, Chapter 153, Section 15) is amended to read:

"69-5-9. INSPECTIONS--RIGHT OF ENTRY--OPERATOR'S REPRESENTATIVE.--The state mine inspector is given authority at all reasonable times to:

A. enter and inspect any mine in the state in such manner as not to impede or obstruct the workings of the mine;

and

B. require that the mine owner, operator or manager at all times furnish means necessary for such entry, inspection, examination and inquiry."

Section 4. Section 69-5-10 NMSA 1978 (being Laws 1933, Chapter 153, Section 16) is amended to read:

"69-5-10. COMPLIANCE ASSISTANCE VISIT RECORD-- OPERATOR'S COPY.--The state mine inspector shall make an entry of record in the state mine inspector's office of each compliance assistance visit and shall furnish the operator a copy thereof."

Section 5. Section 69-5-14 NMSA 1978 (being Laws 1933, Chapter 153, Section 20, as amended) is amended to read:

"69-5-14. ORDERING DANGEROUS CONDITIONS IN MINES REMOVED OR REMOVAL OF WORKERS FROM DANGER ZONES.--When any mine or portion of a mine or machine, device, apparatus or equipment pertaining to a mine, in the judgment of the state mine inspector, is in so dangerous a condition from any cause or creates such a hazard as to jeopardize life or health, the state mine inspector shall at once direct the management or operator of the mine to remove the dangerous condition or safeguard the equipment. Should the state mine inspector find during inspection of the mine a dangerous condition existing in the mine that might cause loss of life or serious personal injury to the employees, the state mine inspector has the

right to require the operator to immediately withdraw all persons from the dangerous places or from the entire mine. In the event the operator fails or refuses to immediately comply with the requirements or instructions of the state mine inspector, the state mine inspector shall issue an order closing all or any portion of the mine to regular operations and notify a representative of the miners and the mine safety and health administration immediately."

Section 6. Section 69-5-17 NMSA 1978 (being Laws 1933, Chapter 153, Section 23, as amended by Laws 2006, Chapter 102, Section 2 and by Laws 2006, Chapter 106, Section 2) is amended to read:

"69-5-17. FATAL AND SERIOUS MINE ACCIDENTS-- ASSISTANCE--INVESTIGATION--NOTIFICATION--CIVIL PENALTY.--

A. The state mine inspector shall proceed immediately upon notification to the site of any mine accident causing the loss of life or requiring activation of a mine rescue team and shall assist in the rescue of persons within the mine. The state mine inspector shall participate in the accident investigation with any other federal, state and local agency and company representatives.

B. Whenever an accident occurs in or about a mine or the machinery connected to a mine, the operator of the mine shall give notice within thirty minutes of ascertaining the occurrence of the accident to the mine accident emergency

operations center at the statewide telephone number established by the state mine inspector stating the particulars of the accident.

C. Nothing in this section shall be construed to relieve the operator of the mine from any reporting or notification requirement under federal law.

D. As used in this section, "accident" means "accident" as provided in 30 C.F.R. 50.2.

E. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of the mine if it is determined that the operator failed to give immediate notice as required in this section. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

F. The penalties imposed by the state mine inspector for violations of this section shall be derived from criteria-based penalty points. A penalty conversion table developed by the state mine inspector shall serve as a guide for determining penalty assessments."

Section 7. A new section of Chapter 69, Article 5 NMSA 1978 is enacted to read:

"ATTORNEY GENERAL.--The attorney general shall appoint a counsel as needed to support the enforcement of the state mine

inspector's office and the duties of the state mine inspector and the bureau of mine safety."

Section 8. Section 69-8-2 NMSA 1978 (being Laws 1961, Chapter 136, Section 2) is amended to read:

"69-8-2. DEFINITIONS.--As used in the Mining Safety Act:

A. "accident", pursuant to 30 C.F.R. 50.2, means:

- (1) a death of an individual at a mine;
- (2) an injury that has a reasonable potential to cause death to an individual at a mine;
- (3) an entrapment of an individual for more than thirty minutes or that has a reasonable potential to cause death;
- (4) an unplanned inundation of a mine by a liquid or gas;
- (5) an unplanned ignition or explosion of gas or dust;
- (6) an unplanned mine fire in an underground mine that is not extinguished within ten minutes of discovery and an unplanned mine fire within a surface mine or surface area of an underground mine that is not extinguished within thirty minutes;
- (7) an unplanned ignition or explosion of a blasting agent or an explosive;
- (8) an unplanned roof fall at or above the

anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;

(9) a coal or rock outburst that causes withdrawal of miners or that disrupts regular mining activity for more than one hour;

(10) an unstable condition at an impoundment, refuse pile or culm bank that requires emergency action in order to prevent failure or that causes individuals to evacuate an area or failure of an impoundment, refuse pile or culm bank;

(11) damage to hoisting equipment in a shaft or slope that endangers an individual or that interferes with use of the equipment for more than thirty minutes; or

(12) an event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs;

B. "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or to a place of employment;

C. "employee" means any person suffered or permitted to work in a mining occupation or pursuit by an employer;

D. "mine", pursuant to 30 C.F.R. 50.2, means:

(1) an area of land from which minerals are

extracted in nonliquid form or, if in liquid form, are extracted with workers underground;

(2) private ways and roads appurtenant to an area described in Paragraph (1) of this subsection; and

(3) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools or other property, including impoundments, retention dams and tailings ponds, on the surface or underground, used in, to be used in or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities;

E. "operator", pursuant to 30 C.F.R. 50.2, means:

(1) any owner, lessee or other person that operates, controls or supervises a coal mine; or

(2) the person, partnership, association or corporation, or subsidiary of a corporation, operating a metal or nonmetal mine and owning the right to do so, including any agent thereof charged with responsibility for the operation of such mine;

F. "person" means an individual, partnership, association, corporation, business trust, receiver, trustee,

legal representative or successor to any of the foregoing;

G. "place of employment" means any place in or about which the employee is suffered or permitted to work;

H. "mining occupations or pursuits" includes mining, smelting and the operation of a mill, ore house or treatment plant in which ore or rock is processed; and

I. "inspector" means the state mine inspector."

Section 9. Section 69-8-3 NMSA 1978 (being Laws 1961, Chapter 136, Section 3, as amended) is amended to read:

"69-8-3. MINING SAFETY BOARD.--

A. There is created a "mining safety board", referred to in Chapter 69, Article 8 NMSA 1978 as the "board", consisting of thirteen members. The members of the board shall represent and balance management and non-management employees at coal, metal-nonmetal and sand and gravel operations throughout New Mexico. The members of the board shall be appointed by the governor for terms of six years or until their successors are appointed and qualified. Vacancies shall be filled by appointment for the unexpired term by the governor in the same manner as the original appointments. Members absent for three or more consecutive meetings shall be considered inactive. The chair of the board shall ask the governor's office to appoint a new member to the board if a current member becomes inactive. The inspector and the secretary of energy, minerals and natural resources shall be

ex-officio members of the board but shall have no vote.

B. Voting members of the board shall receive compensation pursuant to the Per Diem and Mileage Act. The inspector is authorized and directed to provide the board with such clerical, technical, legal and other assistance as shall be necessary to permit the board to perform its duties as provided in the Mining Safety Act."

Section 10. Section 69-8-4 NMSA 1978 (being Laws 1985, Chapter 68, Section 3) is amended to read:

"69-8-4. DUTIES OF THE BOARD--RULEMAKING.--

A. The board shall, after public hearing, adopt rules for the protection of the life and safety of employees and to carry out the intent of the Mining Safety Act. The board may appoint a special committee of employers, employees and experts to assist in the development of proposed rules. The inspector may make recommendations to the board as necessary to carry out the intent of the Mining Safety Act.

B. Notice of the subject, time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule may be obtained shall be:

(1) published at least thirty days prior to the hearing date in a newspaper of general circulation in the state and in the New Mexico register, if published; and

(2) mailed at least thirty days prior to the

hearing date to all persons that have made a written request to the board or the inspector for advance notice of hearings.

C. The board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing. The board may designate a hearing officer to take evidence in the hearing. Any person that provides comments shall be given written notice of the action of the board.

D. All rules and regulations shall be filed in accordance with the State Rules Act."

Section 11. A new section of the Mining Safety Act is enacted to read:

"DUTIES OF THE BOARD--APPEAL OF CERTIFICATION ACTIONS BY INSPECTOR.--

A. A person who is the subject of an action of the inspector pursuant to Subsection D of Section 69-14-4 NMSA 1978 may file a written petition for review before the board within twenty days after service of the notice provided in Subsection E of Section 69-14-4 NMSA 1978. Unless a timely petition for review is made, the decision of the inspector shall be final and not subject to judicial review.

B. If a timely petition for review is made, the board shall consider the petition within ninety days after receipt of the petition. The board shall notify the petitioner and the inspector of the date, time and place of

the review.

C. The board shall review the record compiled before the inspector and shall allow any party to submit arguments. Prior to the date set for review, if a party shows to the satisfaction of the board that there is good reason to allow additional evidence on an issue being challenged, the board shall allow additional evidence to be taken. Based on the review of the evidence and the arguments of the parties, the board shall sustain, modify or reverse the action of the inspector.

D. The board shall notify the parties of the action taken by the board and the reasons for that action. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 12. A new section of the Mining Safety Act is enacted to read:

"STANDARD OF EVALUATION OF VARIANCES--EFFECT OF VARIANCES GRANTED.--

A. A person affected by a rule adopted under the Mining Safety Act may petition the inspector for a variance.

B. A variance of a mandatory safety standard may be granted upon a determination that:

(1) an alternative method of achieving the result of the standard or rule exists that will at all times

guarantee no less than the same measure of protection afforded by the standard or rule; or

(2) application of the standard or rule would diminish the safety of the affected miners.

C. All variances granted pursuant to this section shall have only future effect.

D. The inspector shall fully investigate any proposed variance with the requesting mine operator and the respective representative of miners, or a reasonable number of miners that will be affected by the proposed variance. The proposed variance shall be posted at the mine when submitted to the inspector to ensure that all miners have the opportunity to review and make comments to the inspector. Investigation shall begin within ninety days of receipt of the proposed petition, and the inspector shall make a final determination no longer than one hundred eighty days from the receipt of the proposed petition.

E. A person affected by the final decision of the inspector may appeal to the board within thirty days of the inspector's final decision. The appeal shall be in writing and sent to the board's chair. The board shall review the appeal within ninety days and may hold a hearing. The board shall make a final decision regarding the variance request.

F. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the

district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 13. Section 69-12-7 NMSA 1978 (being Laws 1933, Chapter 153, Section 34) is amended to read:

"69-12-7. ACCIDENTS--WRITTEN REPORT.--A report in writing shall be made to the state mine inspector of each mine accident. The report shall be made within one month of the date of the accident. Submitting a copy of the report required under the Federal Mine Safety and Health Act of 1977 to the inspector shall satisfy the requirements of Chapter 69 NMSA 1978."

Section 14. Section 69-14-1 NMSA 1978 (being Laws 1933, Chapter 153, Section 38, as amended) is amended to read:

"69-14-1. MINE FOREMEN--MINE EXAMINERS--CERTIFICATION BY STATE MINE INSPECTOR.--The state mine inspector shall certify, recertify or discipline persons to act as mine foremen and mine examiners. No mine operator shall employ any person as underground mine foreman, mine examiner or surface mine foreman unless that person has been certified by the state mine inspector for such position."

Section 15. Section 69-14-2 NMSA 1978 (being Laws 1933, Chapter 153, Section 40, as amended) is amended to read:

"69-14-2. METHODS OF CERTIFICATION--CERTIFICATES FROM OTHER STATES--PERMITS--EXAMINATIONS.--The state mine inspector shall certify persons for the positions of mine foreman and

mine examiner and issue certificates accordingly as follows:

A. the state mine inspector may recognize the foreman's or mine examiner's certificate issued by any other state and issue certificates accordingly;

B. the state mine inspector shall hold written examinations, at times and places to be given out at least thirty days in advance, to all persons desiring to secure mine foreman certificates or mine examiner certificates; and

C. the state mine inspector shall require that any applicant for examination to the position of mine foreman or mine examiner shall submit a completed application at least thirty days prior to the examination date and shall meet the experience requirements of this section. Every person desiring to secure a mine foreman's certificate and not already in such position or not holding such certificate from another state shall first serve as a mine examiner for six months and shall have at least four years' coal mine experience to participate in the foreman's examination. A person who holds a certificate for surface mine foreman who wishes to take the underground foreman test must have a minimum of four years' experience in underground mine workings. A person who holds an underground mine foreman certificate and who wishes to participate in the surface mine foreman examination must have at least two years' surface mine experience."

Section 16. Section 69-14-3 NMSA 1978 (being Laws 1933, Chapter 153, Section 41, as amended) is amended to read:

"69-14-3. QUALIFICATIONS FOR CERTAIN POSITIONS.--The mining safety board may, by rule, enact requirements, including requirements for applications, examinations and qualifications, for the certification of any mine personnel required to be qualified by state or federal law."

Section 17. Section 69-14-4 NMSA 1978 (being Laws 1933, Chapter 153, Section 42, as amended) is amended to read:

"69-14-4. CERTIFICATION PERIOD--RECERTIFICATION--DISCIPLINE--APPEAL.--

A. Certification for mine personnel shall be issued for a period of five years. All mine personnel certified by the state mine inspector prior to the effective date of this 2007 act shall have their certification period extended five years. Each certified person has the responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of the change. Failure to provide current information may result in suspension of certification.

B. Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require

the applicant to submit an application and appropriate documentation as required by the state mine inspector at least thirty days prior to the testing date.

C. The state mine inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under Chapter 69 NMSA 1978 upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the state mine inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act of 1977 or the state mine safety laws; or

(5) has been disciplined in another state that certifies mine personnel.

D. If the state mine inspector contemplates taking any of the actions in Subsection C of this section for any of the reasons provided in that subsection, the state mine inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the state mine inspector has sufficient evidence that, if not rebutted or explained, will justify the state mine inspector in taking the contemplated action, that indicates the general

nature of the evidence and that provides the applicant or person at least twenty days to submit written evidence to rebut or explain the allegations.

E. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection C of this section, the state mine inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act."

Section 18. REPEAL.--Sections 69-4-1, 69-4-3 through 69-4-10, 69-5-8, 69-5-11, 69-5-13, 69-5-15, 69-7-2 through 69-7-7, 69-8-5, 69-8-7 through 69-8-10, 69-8-14, 69-12-1, 69-12-2, 69-12-5, 69-12-6, 69-13-1 through 69-13-3, 69-14-5 through 69-14-18, 69-18-14, 69-31-16 and 69-35-18 through 69-35-20 NMSA 1978 (being Laws 1933, Chapter 153, Sections 1 and 3 through 10, Laws 1953, Chapter 82, Section 3, Laws 1933, Chapter 153, Sections 17, 19 and 21, Laws 1889, Chapter 103 Sections 2 through 5, Laws 1887, Chapter 34, Sections 1 and 2, Laws 1961, Chapter 136, Sections 5, 7 through 10 and 14, Laws 1933, Chapter 153, Sections 28, 29, 32, 33, 35 through 37 and 43 through 55, Laws 1882, Chapter 57, Section 9 and Laws 1933, Chapter 153, Sections 101, 245 and 303 through 305, as amended) are repealed.
