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FISCAL IMPACT REPORT

ORIGINAL DATE 3/5/15

SPONSOR HEENC LAST UPDATED _____ HB 625/HEENC

SHORT TITLE Public Peace, Health, Safety & Welfare SB _____

ANALYST Armstrong

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal			Nonrecurring	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)

Energy, Minerals and Natural Resources Department

SUMMARY

Synopsis of Bill

The House Energy, Environment and Natural Resources Committee Substitute for House Bill 625 amends the New Mexico Mining Act (“Act”), Sections 69-36-1 to -20 NMSA 1978, allowing a mining operation in standby status to resume mining operations by providing written notice to the director of EMNRD’s Mining and Minerals Division (MMD). The bill also requires that the director, by regulation, identify the specific conditions that would allow a mining operation that was in standby status and has resumed mining operations may reapply for a new period of standby status.

HB 625 codifies current practice and regulations by providing that the MMD director shall review a permit holder’s financial assurance for modification or revision and may enter into agreements with other agencies that hold the financial assurances of a permit holder.

Moreover, the bill deletes the statutory requirement that financial assurance not duplicate or be less comprehensive than federal requirements. Instead, HB 625 requires that the regulations require MMD to coordinate with state and federal agencies to avoid duplication and to enter into agreements with those agencies to determine which agency will hold financial assurance.

Under the temporary provision of HB 625, the director shall, in conjunction with EMNRD, propose amendments to the rules consistent with the Act by December 31, 2015. The Mining Commission shall adopt rules on or before July 1, 2016.

Finally, the bill exempts quarry rock used as aggregate in reclamation to the commodities and processes exempted under the definitions of “mineral” and “mining.” Finally, the bill allows EMNRD to issue new mining permits so long as the operation is designed to meet applicable environmental requirements and removes language qualifying that the design meet such requirements “without perpetual care.”

FISCAL IMPLICATIONS

This bill will have minimal fiscal impact on EMNRD as the agency will need to propose rule changes to the Mining Commission. The Commission, which is administratively attached to EMNRD, will need to conduct public hearings on the proposals.

SIGNIFICANT ISSUES

Currently, a public hearing is required prior to a mining operation in standby status being allowed to modify or revise its permit and resume mining operations under Section 69-36-7(K). Amending the Mining Act to require that regulations allow resumption of operations through written notice to MMD would potentially remove existing public notification and hearing requirements for such actions. Additionally, requiring that regulations identify the conditions under which a mining operation in standby status may resume mining and production may not be feasible due to the potential for unforeseen circumstances not addressed by the regulations.

After receiving an initial permit for standby status, for a maximum of five years, mining operations are currently limited to renewing the permit for no more than three additional five-year terms. Under this bill, a mining operation may renew a permit for standby status for no more than three additional *consecutive* five-year terms. This clarifies existing statute which could be interpreted as prohibiting an operation that was in standby and then began operating again from reentering standby status if it has exhausted the maximum number of standby permit renewals. However, “resumption of mining” and “production in commercial quantities” are vague terms, and must be carefully defined in order to avoid multiple, lengthy standby periods, with neither reclamation nor productive mining.

Providing for going off standby by giving notice allows an operator to resume mining after a period of inactivity without further losing the time associated with the currently required modification or revision of the permit. However, this bill requires only the updating of financial assurance before going off standby by notice. The bill does not require the updating of other permit conditions, particularly the closeout plan. Changes in reclamation techniques, as well as environmental changes and intervening natural events, may call for an update in permit conditions and the closeout plan for mines that have been on standby for long periods of time. It would be impractical and an environmentally unsound practice to allow reactivation of a mine under the terms and conditions of an aged permit, without modification or revision.

Duplication of financial assurance with federal agencies is currently prohibited by the Act. Accordingly, regulations require MMD to coordinate procedures with regard to financial assurance with. However, according to agency analysis, this bill’s authorization of the director

to enter into agreements with federal and state agencies to determine which agency will hold financial assurance creates uncertainty as to MMD's authority and right to hold financial assurance. Financial assurance is the cornerstone of the Mining Act. MMD's financial assurance regulations are more detailed and complete than financial assurance regulations of other state and federal agencies, as are the MMD reclamation requirements that the financial assurance secures. Requiring the director to negotiate with other agencies with regard to which agency holds financial assurance will undermine Mining Act administration and enforcement. It also is worth noting that the bill eliminates the statutory mandate that New Mexico financial requirements not be less comprehensive than federal financial requirement.

The requirement that an update of financial assurance be processed "promptly" is vague. Given the complexity of determining the appropriate amount and form of financial assurance, including in the statute a vague term like "promptly" will almost inevitably invite discord over whether an application is being processed in accordance with the law.

The bill also provides that a waiver of the self-sustaining ecosystem requirement, which under certain circumstances may be granted for a pit or waste unit of an existing mine, also may be granted for an expansion of the pit or waste unit for which a waiver has previously been granted.

Currently, the Act and attendant regulations require that all disturbance in connection with mining within the permit area be reclaimed, including all areas from which borrow dirt or rock are taken for reclamation purposes. If borrow dirt or quarry rock that is used for reclamation is excluded from the definitions of "mineral" and "mining," areas within and outside the permit boundary that are disturbed for the purpose of supplying borrow dirt or quarry rock for reclamation will be allowed to go un-reclaimed. These areas often consist of large disturbances within the permit area. The foot print of these disturbances can sometimes be as large as the disturbance caused by the original mining. If not reclaimed, a significant amount of acreage would go un-reclaimed. Further, the changes within this bill could leave open the interpretation that "overburden," which may include rock materials that are used for reclamation, falls within the exclusion, thereby allowing even some excavated areas to go un-reclaimed.

ALTERNATIVES

Agency analysis offered the following amendments:

1. Delete Section 1.
2. On page 7, lines 11 through 24, delete the inserted language after "terms.," and insert in lieu thereof: "If (i) all permit conditions are met at the time that a permittee goes off standby and (ii) the financial assurance and closeout plan for the mine have been updated and approved within the five (5) years prior to the permittee going off standby, a permittee may go off standby by providing written notice to the Director. The date upon which the permittee goes off standby shall be the date upon which the Director receives such notice."
3. On page 18, lines 7 through 16, remove all changes to the existing language.