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FISCAL IMPACT REPORT

SPONSOR McQueen ORIGINAL DATE 01/21/19
LAST UPDATED 02/15/19 HB 255/aHJC
SHORT TITLE Mining Permit Corporate Guarantees SB _____
ANALYST Hanika-Ortiz/Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Energy, Minerals and Natural Resources Department (EMNRD)

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment to House Bill 255 delays the bill's preclusion of corporate guarantees of affiliates until July 1, 2021, and provides for annual decreases in the percentage of the requisite financial assurance that an affiliate may provide before July 1, 2021.

Synopsis of Original Bill

House Bill 255 (HB 255) amends Section 69-36-7 of the Mining Act, related to duties of the mining omission, to clarify corporate guarantees of an affiliated corporation or other affiliated persons are not acceptable forms of financial assurance when applying for a mining permit.

FISCAL IMPLICATIONS

“Financial assurance” is money held by and payable to the State if a mining company defaults so that reclamation of the mine can be completed according to an approved mine closeout plan.

Under the bill, a parent company could not provide a guarantee for a subsidiary to cover the financial assurance requirements.

EMNRD and NMED reported an increase in workload for the agencies, particularly as it relates to reviewing existing guarantees and any required replacements for those guarantees.

SIGNIFICANT ISSUES

Under current law, financial assurance must be sufficient to cover closure and reclamation if the work has to be performed by the State, neither duplicate or be less comprehensive than federal financial requirements, and not include any type or variety of self-guarantee or self-insurance.

EMNRD noted the mining commission currently allows the use of “third party guarantees” (TPG) which can be an affiliated entity so long as guarantor and permittee are not instrumentalities of the other. Guarantors must meet stringent financial soundness tests and the TPGs currently employed under the Mining Act are from entities that could be considered affiliates of the permittees.

If enacted, HB 255 would require companies to immediately replace their TPGs with other financial assurance mechanisms allowed under the Mining Act including surety bonds, letters of credit, collateral bonds, cash accounts such as certificates of deposits, trust accounts, or insurance.

EMNRD further noted its Mining and Minerals Division (MMD) currently holds five (5) TPGs issued by three companies for a total amount of \$307.8 million in TPGs:

Permit No.	Mine Status	County	Mine Name	Guarantor	Amount
BE001RE	Active	Bernalillo	Tijeras Mine	Grupos Cementos de Chihuahua	\$2,812,500
GR002RE	Active	Grant	Continental Mine	Freeport Minerals Corp.	\$8,146,372
GR009RE	Active	Grant	Chino Mine	Freeport Minerals Corp.	\$45,336,545
GR010RE	Active	Grant	Tyrone Mine	Freeport Minerals Corp.	\$50,804,400
TA001RE	Closed	Taos	Questa Mine and Mill	Chevron Corporation	\$200,754,376
TOTAL					\$307,854,193

In total, MMD holds approximately \$660 million in financial assurances, according to EMNRD; the five TPGs in the table above represent approximately 46 percent of the total financial assurance held by MMD. If enacted, three corporations would be required to replace their TPGs: Grupos Cementos de Chihuahua, Freeport Minerals Corporation and Chevron Corporation.

NMED reports pursuant to the Water Quality Act and Water Quality Control Commission regulations, the department requires financial assurance related to closure, ground and surface water pollution abatement, and long-term water treatment at hard rock mine sites. Many hard rock mines are also subject to regulation pursuant to the Mining Act, as enforced by the MMD. Coordination between NMED and MMD regarding financial assurance at hard rock mine sites is subject to a Joint Powers Agreement (JPA) to avoid duplication and assist in coordination. The JPA also establishes a mechanism for permittees to provide joint financial assurance sufficient to meet both the Water Quality Act and Mining Act. As a result, NMED holds joint financial assurance with MMD for hard rock mine sites regulated pursuant to both the Water Quality Act and the Mining Act. There are currently no financial assurance regulations in place under the Water Quality Control Commission Regulations, therefore the joint financial assurance held by

NMED is subject to the requirements of the Mining Act.

ADMINISTRATIVE IMPLICATIONS

If HB 255 is enacted, MMD would review third-party guarantors to determine whether they meet the new requirements and if not require an alternate form of financial assurance. Permittees would be required to replace financial assurance within 90 days or commence reclamation of the mine.

NMED noted the Mining Act requires EMNRD to confer with NMED in developing proposed regulations and obtain the concurrence for regulations that have an impact on its programs.

ALTERNATIVES

EMNRD believes an alternative might be to “grandfather” current mining operations which use TPGs from affiliated entities. EMNRD in addition to NMED also said that another alternative might be to limit TPGs to no more than 75 percent of financial assurance.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMED further noted continued use of a third-party guarantee as a component of financial assurance puts the state at greater financial risk than with other forms of financial assurance.

AHO/sb/al