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AN ACT

RELATING TO MINING; PROVIDING FOR FINANCIAL ASSURANCES;
DECLARING AN EMERGENCY.

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

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

"69-36-1. SHORT TITLE.--Chapter 69, Article 36 NMSA
1978 may be cited as the "New Mexico Mining Act"."

SECTION 2. 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;

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

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

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

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

5 (2) recommend to the director additional
6 baseline data that may be necessary in the review of the
7 proposed mining activity;

8 (3) recommend to the director methodology
9 guidelines to be followed in the collection of all baseline
10 data; and

11 (4) review and comment on the permit
12 application;

13 C. adopt regulations that require and provide for
14 the issuance and renewal of permits for new and existing
15 mining operations and exploration and that establish
16 schedules to bring existing mining operations into compliance
17 with the requirements of the New Mexico Mining Act; provided
18 that the term of a permit for a new mining operation shall
19 not exceed twenty years and the term of renewals of permits
20 for new mining operations shall not exceed ten years;

21 D. adopt regulations that provide for permit
22 modifications. The commission shall establish criteria to
23 determine which permit modifications may have significant
24 environmental impact. Modifications that the director
25 determines will have significant environmental impact shall

1 require public notice and an opportunity for public hearing
2 pursuant to Subsection K of this section. A permit
3 modification to the permit for an existing mining operation
4 shall be obtained for each new discrete processing, leaching,
5 excavation, storage or stockpile unit located within the
6 permit area of an existing mining operation and not
7 identified in the permit of an existing mining operation and
8 for each expansion of such a unit identified in the permit
9 for an existing mining operation that exceeds the design
10 limits specified in the permit. The regulations shall
11 require that permit modifications for such units be approved
12 if the director determines that the unit will:

13 (1) comply with the regulations regarding
14 permit modifications;

15 (2) incorporate the requirements of
16 Paragraphs (1), (2), (4), (5) and (6) of Subsection H of this
17 section; and

18 (3) be sited and constructed in a manner
19 that facilitates, to the maximum extent practicable,
20 contemporaneous reclamation consistent with the closeout
21 plan;

22 E. adopt regulations that require new and existing
23 mining operations to obtain and maintain permits for standby
24 status. A permit for standby status shall be issued for a
25 maximum term of five years; provided that, upon application,

1 the director may renew a permit for standby status for no
2 more than three additional five-year terms. The regulations
3 shall require that, before a permit for standby status is
4 issued or renewed, an owner or operator shall:

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

7 (2) take measures that reduce, to the extent
8 practicable, the formation of acid and other toxic drainage
9 to prevent releases that cause federal or state environmental
10 standards to be exceeded;

11 (3) meet applicable federal and state
12 environmental standards and regulations during the period of
13 standby status;

14 (4) stabilize waste and storage units, leach
15 piles, impoundments and pits during the term of standby
16 status;

17 (5) comply with applicable requirements of
18 the New Mexico Mining Act and the regulations adopted
19 pursuant to that act; and

20 (6) provide an analysis of the economic
21 viability of each unit proposed for standby status;

22 F. establish by regulation closeout plan
23 requirements for existing mining operations that incorporate
24 site-specific characteristics, including consideration of
25 disturbances from previous mining operations, and that take

1 into account the mining method utilized;

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

19 H. establish by regulation permit and reclamation
20 requirements for new mining operations that incorporate
21 site-specific characteristics. These requirements shall, at
22 a minimum:

23 (1) require that new mining operations be
24 designed and operated using the most appropriate technology
25 and the best management practices;

1 (2) ensure protection of human health and
2 safety, the environment, wildlife and domestic animals;

3 (3) include backfilling or partial
4 backfilling only when necessary to achieve reclamation
5 objectives that cannot be accomplished through other
6 mitigation measures;

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

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

18 (6) require that nonpoint source surface
19 releases of acid or other toxic substances shall be contained
20 within the permit area;

21 (7) require that all waste, waste management
22 units, pits, heaps, pads and any other storage piles are
23 designed, sited and constructed in a manner that facilitates,
24 to the maximum extent practicable, contemporaneous
25 reclamation and are consistent with the new mining

1 operation's approved reclamation plan; and

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

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

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

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

21 (3) a description of the type and method of
22 mining and the engineering techniques proposed;

23 (4) the anticipated starting and termination
24 dates of each phase of the new mining operation and the
25 number of acres of land to be affected;

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

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

13 (7) cross-sections or plans of the permit
14 area depicting:

15 (a) the nature and depth of the various
16 formations of overburden;

17 (b) the location of subsurface water,
18 if encountered, and its quality;

19 (c) the nature and location of any ore
20 body to be mined;

21 (d) the location of aquifers and
22 springs;

23 (e) the estimated position and flow of
24 the water table;

25 (f) the proposed location of waste

1 rock, tailings, stockpiles, heaps, pads and topsoil
2 preservation areas; and

3 (g) pre-mining vegetation and wildlife
4 habitat features present at the site;

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

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

11 (10) pre-mining baseline data as required by
12 regulations adopted by the commission;

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

19 K. except for regulations enacted pursuant to
20 Subsection L of this section, adopt regulations that ensure
21 that the public and permitting agencies receive notice of
22 each application for issuance, renewal or revision of a
23 permit for a new or existing mining operation, for standby
24 status, or exploration, a variance or an application for
25 release of financial assurance and any inspection prior to

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

22 (1) provided by certified mail to the owners
23 of record, as shown by the most recent property tax schedule,
24 of all properties within one-half mile of the property on
25 which the mining operation is located or is proposed to be

1 located;

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

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

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

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

20 (6) mailed by certified mail to all persons
21 on a list maintained by the director of individuals and
22 organizations who have requested notice of applications under
23 the New Mexico Mining Act. If the application is determined
24 to be administratively complete by the director, the
25 applicant shall provide to the director timely proof that

1 notice of that determination has been provided by first class
2 mail to everyone who has indicated to the applicant in
3 writing that they desire information regarding the
4 application and to a list maintained by the director of
5 individuals and organizations who have requested notice of
6 applications under the New Mexico Mining Act;

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

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

22 N. establish by regulation a continuing process of
23 review of mining and reclamation practices in New Mexico that
24 provides for periodic review and amendment of regulations and
25 procedures to provide for the protection of the environment

1 and consider the economic effects of the regulations;

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

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

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

21 (2) shall provide to the director a written
22 determination from the secretary of environment stating that
23 the permit applicant has demonstrated that the activities to
24 be permitted or authorized will be expected to achieve
25 compliance with all applicable air and water quality and

1 other environmental standards if carried out as described;

2 Q. require by regulation that the applicant file
3 with the director, prior to the issuance of a permit,
4 financial assurance. The amount of the financial assurance
5 shall be sufficient to assure the completion of the
6 performance requirements of the permit, including closure and
7 reclamation, if the work has to be performed by the director
8 or a third-party contractor and shall include periodic review
9 to account for any inflationary increases and anticipated
10 changes in reclamation or closure costs. The regulations
11 shall specify that financial requirements shall neither
12 duplicate nor be less comprehensive than the federal
13 financial requirements. The form and amount of the financial
14 assurance shall be subject to the approval of the director as
15 part of the permit application; provided that financial
16 assurance does not include any type or variety of
17 self-guarantee or self-insurance;

18 R. require by regulation that the permittee may
19 file an application with the director for the release of all
20 or part of the permittee's financial assurance. The
21 application shall describe the reclamation measures completed
22 and shall contain an estimate of the costs of reclamation
23 measures that have not been completed. Prior to release of
24 any portion of the permittee's financial assurance, the
25 director shall conduct an inspection and evaluation of the

1 reclamation work involved. The director shall notify persons
2 who have requested advance notice of the inspection.

3 Interested members of the public shall be allowed to be
4 present at the inspection of the reclamation work by the
5 director.

6 (1) The director may release in whole or in
7 part the financial assurance if the reclamation covered by
8 the financial assurance has been accomplished as required by
9 the New Mexico Mining Act; provided that the director shall
10 retain financial assurance at least equal to the approved
11 estimated costs of completing reclamation measures that have
12 not been completed; and provided further that for revegetated
13 areas, the director shall retain the amount of financial
14 assurance necessary for a third party to reestablish
15 vegetation for a period of twelve years after the last year
16 of augmented seeding, fertilizing, irrigation or other work,
17 unless a post-mining land use is achieved that is
18 inconsistent with the further need for revegetation. For new
19 mining operations only, no part of the financial assurance
20 necessary for a third party to reestablish vegetation shall
21 be released so long as the lands to which the release would
22 be applicable are contributing suspended solids above
23 background levels to streamflow of intermittent and perennial
24 streams.

25 (2) A person with an interest that is or

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

17 S. establish coordinated procedures that avoid
18 duplication for the inspection, monitoring and sampling of
19 air, soil and water and enforcement of applicable
20 requirements of the New Mexico Mining Act, regulations
21 adopted pursuant to that act and permit conditions for new
22 and existing mining operations and exploration. The
23 regulations shall require, at a minimum:

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

1 (a) at least one inspection per month
2 when the mining operation is conducting significant
3 reclamation activities;

4 (b) at least two inspections per year
5 for active mining operations;

6 (c) at least one inspection per year on
7 inactive sites;

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

11 (e) mining operations having a minimal
12 impact on the environment and exploration operations will be
13 inspected on a schedule to be established by the commission;

14 (2) that inspections shall occur without
15 prior notice to the permittee or the permittee's agents or
16 employees except for necessary on-site meetings with the
17 permittee;

18 (3) when the director determines that a
19 condition or practice exists that violates a requirement of
20 the New Mexico Mining Act, a regulation adopted pursuant to
21 that act or a permit issued under that act, which condition,
22 practice or violation also creates an imminent danger to the
23 health or safety of the public or will cause significant
24 imminent environmental harm, that the director shall
25 immediately order a cessation of the new or existing mining

1 operation or the exploration operation or the portion of that
2 operation relevant to the condition, practice or violation.

3 The cessation order shall remain in effect until the director
4 determines that the condition, practice or violation has been
5 abated or until modified, vacated or terminated by the
6 director or the commission;

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

24 (5) when the director determines that a
25 pattern of violations of the requirements of the New Mexico

1 Mining Act or of the regulations adopted pursuant to that act
2 or the permit required by that act exists or has existed and,
3 if the director also finds that such violations are caused by
4 the unwarranted failure of the owner or operator to comply
5 with the requirements of that act, regulation or permit or
6 that such violations are willfully caused by the owner or
7 operator, that the director shall immediately issue an order
8 to the owner or operator to show cause as to why the permit
9 should not be suspended or revoked;

10 T. provide for the transfer of a permit to a
11 successor operator, providing for release of the first
12 operator from obligations under the permit, including
13 financial assurance, following the approved assumption of
14 such obligations and financial assurance by the successor
15 operator;

16 U. adopt regulations providing that the owner or
17 operator of an existing mining operation or a new mining
18 operation who has completed some reclamation measures prior
19 to the effective date of the regulations adopted pursuant to
20 the New Mexico Mining Act may apply for an inspection of
21 those reclamation measures and a release from further
22 requirements pursuant to that act for the reclaimed areas if,
23 after an inspection, the director determines that the
24 reclamation measures satisfy the requirements of that act and
25 the substantive requirements for reclamation pursuant to the

1 applicable regulatory standards; and

2 V. develop and adopt other regulations necessary
3 and appropriate to carry out the purposes and provisions of
4 the New Mexico Mining Act."

5 SECTION 3. TEMPORARY PROVISION--RULEMAKING.--On or
6 before January 13, 2015, the director of the mining and
7 minerals division of the energy, minerals and natural
8 resources department shall propose amendments to the
9 New Mexico Mining Act rules to address the frequency for the
10 intervals at which permittees under that act can request
11 release of their financial assurances.

12 SECTION 4. EMERGENCY.--It is necessary for the public
13 peace, health and safety that this act take effect
14 immediately. _____

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