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FISCAL IMPACT REPORT

SPONSOR Smith ORIGINAL DATE _____
LAST UPDATED 02/12/15 HB 190

SHORT TITLE Sand, Gravel and Quarries in Mining Act SB _____

ANALYST Sanogo

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$141.0	\$141.0	\$282.0	Recurring	EMNRD Op. Budget

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Energy, Minerals and Natural Resources (EMNRD)

Economic Development Department (EDD)

SUMMARY

The Mining Act (Section 39 Article 36 NMSA 1978) requires that mining operations submit reclamation plans that would restore the mining site environment after operations cease. The current statute excludes sand, gravel, and aggregate (SGA) mining operations.

HB 190 proposes to amend the Mining Act to extend mining regulations to SGA operations. The bill also proposes to exclude small-scale mining operations from the Mining Act, unless the extraction or exploration process involves chemical means.

FISCAL IMPLICATIONS

There will be a recurring \$141 thousand impact to the Energy, Minerals and Natural Resources Department (EMNRD) operating budget, reflecting an increase in staff.

EMNRD finds that an additional 2 FTE would be necessary to administer and process the new mining applications stemming from HB 190. There are more than 188 SGA operations in the state, which would need to be researched, field-verified, and incorporated into the mine permit program. The cost to inspect and enforce regulations at the new mining sites would also, in EMNRD's assessment, exceed the revenues from application and annual fees.

SIGNIFICANT ISSUES

EMNRD highlighted several significant issues that accompany HB 190. As an unintended consequence, the bill could increase environmental damage through its provision to exclude small-scale operations from the Mining Act.

EMNRD reports that a mining operator conducting exploration through drilling would normally apply for a permit through the agency's mining and minerals division (MMD). However, under HB 190, mine operators would be encouraged to circumvent the permit application process by conducting their exploration through open-cut excavation that is under five acres. These open-cuts create more land disturbance than drilling exploration.

Furthermore, EMNRD indicates that a small-scale operation of "less than five contiguous, unreclaimed acres" is weakly defined. For example, by mining on one end and reclaiming on the other end (such that the disturbed area is always kept under five acres), an operator can circumvent the provisions of the Mining Act without limit. The same can be achieved by mining up to five acres and moving on to disturb another non-contiguous five acres without reclaiming the original five acre disturbance.

More circumventions exist. EMNRD also argues that:

Many exploration sites in the minimal impact category do not disturb acreage contiguously, spreading roads and drill pads over a large area. The vagueness of "five contiguous, unreclaimed acres" allows an operator of a large exploration project to argue that it is not subject to the [Mining] Act at all.

EMNRD notes, lastly, that "chemical means" is not defined.

The NM Department of Transportation (DOT) often uses sand, gravel, and rock aggregates for construction and road paving purposes. Reclassifying the sources of these SGA materials as mining operations could have an adverse impact on DOT construction projects, depending on the speed of the EMNRD mining permit process.

The Economic Development Department (EDD) stated that HB 190 would support smaller mining operators. However, from a regulatory perspective

The priority of regulations in other states remains focused on higher environmental and health impact mining operations such as coal or copper mining operations and not sand and gravel operations.

RELATIONSHIP

HB 190 is related to HB 188, which proposes to increase the penalties associated with the violation of county mining ordinances on SGA materials.