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FISCAL IMPACT REPORT

SPONSOR: Madalena DATE TYPED: 2/20/03 HB 720
 SHORT TITLE: Surface Mining Administrative Costs and Fees SB _____
 ANALYST: Maloy

APPROPRIATION

Appropriation		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		NFI		

SOURCES OF INFORMATION

Responses Received From
 State Land Office
 Energy, Minerals and Natural Resources Department
 Environment Department

SUMMARY

Synopsis

House Bill 720 amends the New Mexico Surface Mining Act by removing the exemption for state officials from the attorney fee provision. The current law, which regulates coal mining in New Mexico, allows a party to request that an administrative tribunal or a court reimburse the party for its costs and attorney fees in an action under the Act. However, under the current law, the Mining and Minerals Division Director and the Coal Surface Mining Commission are specifically exempted from any possible assessment of costs and fees. HB 720 would remove that exemption.

Significant Issues:

1. Primacy. The Surface Mining Act is intended to establish a state coal mining reclamation program that will have primary responsibility for implementing the federal coal mining reclamation act (“SMCRA”). Currently, the state has primacy over coal mining regulation. To maintain primacy, the state law must be no less stringent than SMCRA. This exemption is not found in SMCRA. The federal Office of Surface Mining has formally requested that the state remove the exemption so that state law is not less stringent than the federal law. By removing this ex

emption, the state coal mining regulatory program will be as stringent as the federal law, and the state will avoid a possible challenge to the primacy of the program.

2. Fairness. By removing the exemption, the state is placed on the same footing as other parties in any appeal of an agency action.
3. Potential Fiscal Impacts. The amendment leaves open the possibility that the state could be required to pay the attorney fees and costs of a party that successfully appeals a permit decision by the state. Appeals of agency actions under the Surface Mining Act are rare; however, several actions are currently under appeal. Since the state's coal regulatory program is funded largely through grants from the federal Office of Surface Mining, the state would request that OSM reimburse the state for any assessed costs. OSM has indicated that such reimbursement is likely though not guaranteed.

SJM/njw