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FISCAL IMPACT REPORT

SPONSOR Wallace DATE TYPED 2/7/05 HB 311

SHORT TITLE Surface Mining Act Appeal Provisions SB _____

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB-306

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Mineral and Natural Resources Department (EMNRD)

SUMMARY FOR THE LEGISLATIVE FINANCE COMMITTEE

Synopsis of Bill

House Bill 311 provides two amendments to the Surface Mining Act.

1. HB311 eliminates one level of appeal of a permitting action taken by the Mining and Minerals Division (MMD). Currently, a permit decision would have 3 administrative hearings before it could be appealed to district court. HB311 eliminates the third hearing, which is the record review appeal hearing before the Coal Surface Mining Commission, thereby allowing a person to appeal the MMD director decision directly to the district court.
2. HB311 also deletes the exemption for state agencies from the attorneys' fees provision. A party is allowed to seek reimbursement for its legal costs and attorney fees in an action under the Act. However, the Mining and Minerals Division Director and the Coal Surface Mining Commission are currently exempted from any assessment of costs or fees. HB311 eliminates the exemption. The federal Office of Surface Mining has requested that the Coal Act eliminate this exemption since there is no such exemption in the federal

law. The New Mexico Coal Act must remain no less stringent than the federal law.

Significant Issues:

The Energy, Minerals and Natural Resources Department explains the removal of one level of administrative hearings will streamline the appeal process but still maintain opportunities for all permitting issues to be heard. All permitting actions will be subject to public notice and an opportunity for a public hearing. After the public comment period, the agency will make a permit decision. That decision can be appealed to the Director of the Mining and Minerals Division who will hold a *de novo* public hearing where the public and the permittee can present evidence and testimony on the issues. Under HB 311, the appeal of the Director's decision to the Coal Surface Mining Commission, which would conduct a review of the record from the Director's hearing, will be eliminated. HB 311 provides that the Director's decision can be appealed directly to the district court.

EMNRD notes there appears no other law in New Mexico that requires three levels of administrative hearings before an appeal can go to district court. The current process has resulted in a very long and costly appeal process that can frustrate both the public and the mine operators. MMD consulted with the coal mining industry, the Coal Surface Mining Commission and environmental interests in the drafting of these proposed changes.

Eliminating the exemption for state agencies from the attorneys' fee provision in the Surface Mining Act is necessary for the State to maintain its authority over coal mines. To regulate coal mines in New Mexico, the State must maintain a coal regulatory law that is consistent with the requirements of the federal Surface Mining Control and Reclamation Act (SMCRA) and approved by the U.S. Department of the Interior. The U.S. Department of the Interior has notified the State that the exemption from the attorney fee provision, Section 69-25A-29 NMSA 1978, are not consistent with federal law and must be removed. If this provision in the Coal Act is not changed, the U.S. Department of the Interior could withdraw its approval of New Mexico's program and instead enforce the federal law in New Mexico.

PERFORMANCE IMPLICATIONS

FISCAL IMPLICATIONS

There are no predictable fiscal implications from the passage of this Act. While eliminating one level of administrative appeal could save money, appeals under the Surface Mining Act are rare and unpredictable. On the other hand, allowing the state to be liable for attorneys' fees creates a potential liability. But again, the attorneys' fees provision has only been invoked once in the 25 years of the Act and the Court denied the request in that case.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 311 relates to HB 306 which also amends the Surface Mining Act by amending the sunset provisions for the Act and the Coal Surface Mining Commission. These bills do not conflict or overlap.