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HOUSE BILL 80

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

John A. Heaton

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO MINING; PROVIDING FOR AN APPEAL PROCESS FOR
PENALTIES FOR FAILURE TO GIVE EMERGENCY NOTICE; PROVIDING FOR A
CORRECTION IN A SECTION OF THE MINING SAFETY ACT; CHANGING
REQUIREMENTS FOR RECERTIFICATION OF MINE PERSONNEL.

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

Section 1. Section 69-5-17 NMSA 1978 (being Laws 1933,
Chapter 153, Section 23, as amended by Laws 2007, Chapter 301,
Section 6 and by Laws 2007, Chapter 302, Section 6) is amended
to read:

"69-5-17. FATAL AND SERIOUS MINE ACCIDENTS--
ASSISTANCE--INVESTIGATION--NOTIFICATION--CIVIL PENALTY.--

A. The state mine inspector shall proceed
immediately upon notification to the site of any mine accident
causing the loss of life or requiring activation of a mine

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1 rescue team and shall assist in the rescue of persons within
2 the mine. The state mine inspector shall participate in the
3 accident investigation with any other federal, state and local
4 agency and company representatives.

5 B. Whenever an accident occurs in or about a mine
6 or the machinery connected to a mine, the operator of the mine
7 shall give notice within thirty minutes of ascertaining the
8 occurrence of the accident to the mine accident emergency
9 operations center at the statewide telephone number established
10 by the state mine inspector stating the particulars of the
11 accident.

12 C. Nothing in this section shall be construed to
13 relieve the operator of the mine from any reporting or
14 notification requirement under federal law.

15 D. As used in this section, "accident" means
16 "accident" as provided in 30 C.F.R. 50.2.

17 E. The state mine inspector shall impose a civil
18 penalty of up to one hundred thousand dollars (\$100,000) on the
19 operator of the mine if it is determined that the operator
20 failed to give immediate notice as required in this section.
21 The inspector may waive imposition of the civil penalty at any
22 time if the inspector finds that the failure to give immediate
23 notice was caused by circumstances outside the control of the
24 operator.

25 F. The penalties imposed by the state mine

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1 inspector for violations of this section shall be derived from
2 criteria-based penalty points. A penalty conversion table
3 developed by the state mine inspector shall serve as a guide
4 for determining penalty assessments.

5 G. A person who receives a notice of violation that
6 includes a penalty assessment under this section may, within
7 twenty days after receipt of the notice, submit a written
8 petition to the state mine inspector to review the notice.
9 Within sixty days after receipt of the petition, the state mine
10 inspector shall issue a final order upholding, amending or
11 rescinding the notice. Within twenty days after the date of
12 notice of the final order by the state mine inspector, a person
13 who is the subject of the notice may file a written appeal of
14 the order with the mining safety board. The mining safety
15 board shall adopt rules to govern the appeal process."

16 Section 2. Section 69-8-5.1 NMSA 1978 (being Laws 1986,
17 Chapter 54, Section 1, as amended) is amended to read:

18 "69-8-5.1. TRAINING FEES.--The [~~state mine~~] inspector is
19 authorized to charge fees to mining companies for mine safety
20 training given to their personnel. The amount of the training
21 fees shall be arrived at by the [~~state mine~~] inspector after
22 consultation with the [~~mining safety advisory~~] board. Fees
23 collected shall be deposited in the state mine inspector fund
24 to assist in the funding of the [~~state mine~~] inspector."

25 Section 3. Section 69-14-4 NMSA 1978 (being Laws 1933,

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1 Chapter 153, Section 42, as amended by Laws 2007, Chapter 301,
2 Section 17 and by Laws 2007, Chapter 302, Section 17) is
3 amended to read:

4 "69-14-4. CERTIFICATION PERIOD--RECERTIFICATION--
5 DISCIPLINE--APPEAL.--

6 A. Certification for mine personnel shall be issued
7 for a period of five years. All mine personnel certified by
8 the state mine inspector prior to [~~the effective date of this~~
9 ~~2007 act~~] June 15, 2007 shall have their certification period
10 extended five years. Each certified person has the
11 responsibility to notify the state mine inspector of any change
12 in address or change in mine employment within thirty days of
13 the change. Failure to provide current information may result
14 in suspension of certification.

15 B. Certified persons may apply for recertification
16 within twelve months prior to the end of the certification
17 period. Every certification shall automatically expire on the
18 last day of the certification period if the official has not
19 recertified prior to that date. Recertification will require
20 the applicant to submit an application and appropriate
21 documentation as required by the state mine inspector [~~at least~~
22 ~~thirty days prior to the testing date~~]. The mining safety
23 board shall adopt rules for requirements for recertification.

24 C. The state mine inspector may refuse to certify
25 or recertify or may suspend or revoke any certification held or

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1 applied for under Chapter 69 NMSA 1978 upon grounds that the
2 applicant or certified person:

3 (1) gave false or forged evidence to the state
4 mine inspector to obtain certification;

5 (2) is grossly negligent or incompetent in
6 duties as a certified person;

7 (3) has failed to maintain certification;

8 (4) has violated or aided or abetted any
9 person in a violation of the Federal Mine Safety and Health Act
10 of 1977 or the state mine safety laws; or

11 (5) has been disciplined in another state that
12 certifies mine personnel.

13 D. If the state mine inspector contemplates taking
14 any of the actions in Subsection C of this section for any of
15 the reasons provided in that subsection, the state mine
16 inspector shall provide written notice to the applicant or
17 certified person. The notice shall include a statement that
18 the state mine inspector has sufficient evidence that, if not
19 rebutted or explained, will justify the state mine inspector in
20 taking the contemplated action, that indicates the general
21 nature of the evidence and that provides the applicant or
22 person at least twenty days to submit written evidence to rebut
23 or explain the allegations.

24 E. If, after the response period ends, the state
25 mine inspector takes any action of a type specified in

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1 Subsection C of this section, the state mine inspector shall
2 serve upon the applicant or certified person a written notice
3 of the action containing a statement that the applicant or
4 certified person may file a petition for review with the mining
5 safety board pursuant to the Mining Safety Act."

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