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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/10

SPONSOR Garcia, M.J. LAST UPDATED _____ HB _____

SHORT TITLE Mining & Coal Surface Mining Commission SB 231

ANALYST Woods

APPROPRIATION (dollars in thousands)*

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)*

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$1.0)	(\$1.0)	(\$2.0)	Recurring	Federal, General and Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

* Fiscal impact data provided by the Energy, Minerals and Natural Resources Department.

SOURCES OF INFORMATION

LFC Files

Response Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

This legislation seeks to eliminate the Coal Surface Mining Commission ("Coal Commission"), created as part of the Surface Mining Act in NMSA 1978, Section 69-25A-4, and to transfer the duties of the Coal Commission to the Mining Commission, created as part of the New Mexico Mining Act, NMSA 1978, Section 69-36-6.

FISCAL IMPLICATIONS

EMNRD advises that the savings from eliminating the Coal Commission are not substantial. The Commissions have no employees or other ongoing costs; the only costs occur when a

meeting or hearing is held. At this time, both Commissions meet rarely (especially the Coal Commission), and sometimes only once a year. Assuming that at least one separate meeting of the Coal Commission would be covered by one regularly scheduled meeting of the Mining Commission, there is an estimated savings of \$1,000 per year in per diem and mileage for public members and meeting notices.

SIGNIFICANT ISSUES

EMNRD notes that the Surface Mining Act was promulgated to allow the state, rather than the federal government, to assume primary responsibility for regulating coal mining and reclamation in New Mexico as contemplated by the federal Surface Mine Control and Reclamation Act (SMCRA). See NMSA 1978, Section 69-25A-2. Therefore, the activities of the State under the Surface Mining Act must be determined by the federal government to be no less effective than the requirements of SMCRA to maintain primacy. EMNRD further explains:

Section 517(g) of SMCRA requires that “No employee of the State regulatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation.” 30 U.S.C. 1267(g). Violation of this provision triggers criminal penalties under both federal and state law. NMSA 1978, Section 69-25A-32. Federal rules define “employee” under this section to include members of boards and commissions who perform duties under SMCRA. 30 CFR 705.5. The Surface Mining Act addresses the conflict issue under NMSA 1978, Section 69-25A-4.F which states, "No member of the commission who performs a function or duty under the surface Mining Act may have a direct or indirect financial interest in any activity undertaken by the commission." SB 231 repeals this section and therefore the prohibition. The prohibition should therefore be added to the Mining Commission membership section, NMSA 1978, Section 69-36-6, to avoid a conflict with federal law.

PERFORMANCE IMPLICATIONS

None noted by respondents.

ADMINISTRATIVE IMPLICATIONS

EMNRD notes the following:

The Surface Mining Act must remain no less effective than SMCRA. Any proposed changes to the Surface Mining Act must be submitted to and approved by the Department of Interior, Office of Surface Mining (OSM).

Activities currently regulated under the Surface Mining Act are paid for by a combination of federal funds, other state funds and general funds and activities regulated under the New Mexico Mining Act are paid for by state funds. If the Mining Commission is considering subjects related to both Acts during a single Commission meeting, then the agency will need to properly allocate the costs of the Commission meeting among several revenue sources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

EMNRD states, “SB 231 is related to SB 241 and HB 213, both of which seek to combine the Energy, Minerals and Natural Resources Department with the New Mexico Environment Department and also include the combination of the Coal Commission and the Mining Commission.”“

TECHNICAL ISSUES

EMNRD states, “SB 231 should also repeal NMSA 1978, Section 69-25A-36 which pertains to the sunset of the Coal Commission.”

AGO adds, “While Senate Bill 231 provides that the mining commission shall assume the duties of the coal surface mining commission, it does not expressly repeal NMSA 1978, § 69-25A-4 (as amended 1993) of the Surface Coal Mining Act, which creates the coal surface mining commission and vests it with certain duties. To avoid any question of legislative intent, Senate Bill 231 should also include a provision repealing § 69-25A-4.”

OTHER SUBSTANTIVE ISSUES

None noted by respondents.

ALTERNATIVES

None noted by respondents.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

EMNRD suggests the following:

1. On page 10, line 12, delete “is” and insert “and Section 69-25A-36 NMSA 1978 (being Laws 1987, Chapter 333, Section 14, as amended) are”;
2. Add a new section to SB 231 that amends NMSA 1978, Section 69-36-6 by adding:
“H. No member of the commission shall have a direct or indirect financial interest in any underground or surface coal mining operation.”

BW/svb