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SENATE BILL 95

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Phil A. Griego

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO MINING; AMENDING A SECTION OF THE NEW MEXICO MINING ACT TO PROVIDE FOR FINANCIAL ASSURANCES; DECLARING AN EMERGENCY.

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

SECTION 1. Section 69-36-1 NMSA 1978 (being Laws 1993, Chapter 315, Section 1) is amended to read:

"69-36-1. SHORT TITLE.--~~[This act]~~ Chapter 69, Article 36 NMSA 1978 may be cited as the "New Mexico Mining Act"."

SECTION 2. Section 69-36-7 NMSA 1978 (being Laws 1993, Chapter 315, Section 7, as amended) is amended to read:

"69-36-7. COMMISSION--DUTIES.--The commission shall:

A. before June 18, 1994, adopt and file reasonable regulations consistent with the purposes and intent of the New Mexico Mining Act necessary to implement the provisions of the

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1 New Mexico Mining Act, including regulations that:

2 (1) consider the economic and environmental
3 effects of their implementation;

4 (2) require permitting of all new and existing
5 mining operations and exploration; and

6 (3) require annual reporting of production
7 information to the commission, which shall be kept confidential
8 if otherwise required by law;

9 B. adopt regulations for new mining operations that
10 allow the director to select a qualified expert who may:

11 (1) review and comment to the director on the
12 adequacy of baseline data gathered prior to submission of the
13 permit application for use in the permit application process;

14 (2) recommend to the director additional
15 baseline data that may be necessary in the review of the
16 proposed mining activity;

17 (3) recommend to the director methodology
18 guidelines to be followed in the collection of all baseline
19 data; and

20 (4) review and comment on the permit
21 application;

22 C. adopt regulations that require and provide for
23 the issuance and renewal of permits for new and existing mining
24 operations and exploration and that establish schedules to
25 bring existing mining operations into compliance with the

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1 requirements of the New Mexico Mining Act; provided that the
2 term of a permit for a new mining operation shall not exceed
3 twenty years and the term of renewals of permits for new mining
4 operations shall not exceed ten years;

5 D. adopt regulations that provide for permit
6 modifications. The commission shall establish criteria to
7 determine which permit modifications may have significant
8 environmental impact. Modifications that the director
9 determines will have significant environmental impact shall
10 require public notice and an opportunity for public hearing
11 pursuant to Subsection K of this section. A permit
12 modification to the permit for an existing mining operation
13 shall be obtained for each new discrete processing, leaching,
14 excavation, storage or stockpile unit located within the permit
15 area of an existing mining operation and not identified in the
16 permit of an existing mining operation and for each expansion
17 of such a unit identified in the permit for an existing mining
18 operation that exceeds the design limits specified in the
19 permit. The regulations shall require that permit
20 modifications for such units be approved if the director
21 determines that the unit will:

22 (1) comply with the regulations regarding
23 permit modifications;

24 (2) incorporate the requirements of Paragraphs
25 (1), (2), (4), (5) and (6) of Subsection H of this section; and

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1 (3) be sited and constructed in a manner that
2 facilitates, to the maximum extent practicable, contemporaneous
3 reclamation consistent with the closeout plan;

4 E. adopt regulations that require new and existing
5 mining operations to obtain and maintain permits for standby
6 status. A permit for standby status shall be issued for a
7 maximum term of five years; provided that, upon application,
8 the director may renew a permit for standby status for no more
9 than three additional five-year terms. The regulations shall
10 require that, before a permit for standby status is issued or
11 renewed, an owner or operator shall:

12 (1) identify the projected term of standby
13 status for each unit of the new or existing mining operation;

14 (2) take measures that reduce, to the extent
15 practicable, the formation of acid and other toxic drainage to
16 prevent releases that cause federal or state environmental
17 standards to be exceeded;

18 (3) meet applicable federal and state
19 environmental standards and regulations during the period of
20 standby status;

21 (4) stabilize waste and storage units, leach
22 piles, impoundments and pits during the term of standby status;

23 (5) comply with applicable requirements of the
24 New Mexico Mining Act and the regulations adopted pursuant to
25 that act; and

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1 (6) provide an analysis of the economic
2 viability of each unit proposed for standby status;

3 F. establish by regulation closeout plan
4 requirements for existing mining operations that incorporate
5 site-specific characteristics, including consideration of
6 disturbances from previous mining operations, and that take
7 into account the mining method utilized;

8 G. establish by regulation a procedure for the
9 issuance of a permit for an existing mining operation and for
10 modifications of that permit to incorporate approved closeout
11 plans or portions of closeout plans and financial assurance
12 requirements for performance of the closeout plans. The permit
13 shall describe the permit area of the existing mining operation
14 and the design limits of units of the existing mining operation
15 based upon the site assessment submitted by the operator. The
16 permit shall contain a schedule for completion of a closeout
17 plan. The permit shall thereafter be modified to incorporate
18 the approved closeout plan or portions of the closeout plan
19 once financial assurance has been provided for completion of
20 the closeout plan or the approved portions of the closeout
21 plan. The permit may be modified for new mining units,
22 expansions beyond the design limits of a unit at an existing
23 mining operation or standby status;

24 H. establish by regulation permit and reclamation
25 requirements for new mining operations that incorporate site-

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1 specific characteristics. These requirements shall, at a
2 minimum:

3 (1) require that new mining operations be
4 designed and operated using the most appropriate technology and
5 the best management practices;

6 (2) ~~assure~~ ensure protection of human health
7 and safety, the environment, wildlife and domestic animals;

8 (3) include backfilling or partial backfilling
9 only when necessary to achieve reclamation objectives that
10 cannot be accomplished through other mitigation measures;

11 (4) require approval by the director that the
12 permit area will achieve a self-sustaining ecosystem
13 appropriate for the life zone of the surrounding areas
14 following closure unless conflicting with the approved post-
15 mining land use;

16 (5) require that new mining operations be
17 designed in a manner that incorporates measures to reduce, to
18 the extent practicable, the formation of acid and other toxic
19 drainage that may otherwise occur following closure to prevent
20 releases that cause federal or state standards to be exceeded;

21 (6) require that nonpoint source surface
22 releases of acid or other toxic substances shall be contained
23 within the permit area;

24 (7) require that all waste, waste management
25 units, pits, heaps, pads and any other storage piles are

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1 designed, sited and constructed in a manner that facilitates,
2 to the maximum extent practicable, contemporaneous reclamation
3 and are consistent with the new mining operation's approved
4 reclamation plan; and

5 (8) where sufficient topsoil is present, take
6 measures to preserve it from erosion or contamination and
7 [~~assure~~] ensure that it is in a usable condition for sustaining
8 vegetation when needed;

9 I. adopt regulations that establish a permit
10 application process for new mining operations that includes:

11 (1) disclosure of ownership and controlling
12 interests in the new mining operation or submission of the
13 applicant's most recent form 10K required by the federal
14 securities exchange commission;

15 (2) a statement of all mining operations
16 within the United States owned, operated or directly controlled
17 by the applicant, owner or operator and by persons or entities
18 that directly control the applicant and the names and the
19 addresses of regulatory agencies with jurisdiction over the
20 environmental aspects of those operations and that could
21 provide a compliance history for those operations [~~and~~] over
22 the preceding ten years. The operator shall assist the
23 applicant in obtaining compliance history information;

24 (3) a description of the type and method of
25 mining and the engineering techniques proposed;

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1 (4) the anticipated starting and termination
2 dates of each phase of the new mining operation and the number
3 of acres of land to be affected;

4 (5) the names of all affected watersheds, the
5 location of any perennial, ephemeral or intermittent surface
6 stream or tributary into which surface or pit drainage will be
7 discharged or may possibly be expected to reach and the
8 location of any spring within the permit area and the affected
9 area;

10 (6) a determination of the probable hydrologic
11 consequences of the new mining operation and reclamation, both
12 on and off the permit area, with respect to the hydrologic
13 regime, quantity and quality of surface and ground water
14 systems, including the dissolved and suspended solids under
15 seasonal flow conditions;

16 (7) cross-sections or plans of the permit area
17 depicting:

18 (a) the nature and depth of the various
19 formations of overburden;

20 (b) the location of subsurface water, if
21 encountered, and its quality;

22 (c) the nature and location of any ore
23 body to be mined;

24 (d) the location of aquifers and
25 springs;

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1 (e) the estimated position and flow of
2 the water table;

3 (f) the proposed location of waste rock,
4 tailings, stockpiles, heaps, pads and topsoil preservation
5 areas; and

6 (g) pre-mining vegetation and wildlife
7 habitat features present at the site;

8 (8) the potential for geochemical alteration
9 of overburden, the ore body and other materials present within
10 the permit area;

11 (9) a reclamation plan that includes a
12 detailed description of the proposed post-mining land use and
13 how that use is to be achieved; and

14 (10) pre-mining baseline data as required by
15 regulations adopted by the commission;

16 J. adopt regulations to coordinate the roles of
17 permitting agencies involved in regulating activities related
18 to new and existing mining operations and exploration,
19 including regulatory requirements, to avoid duplicative and
20 conflicting administration of the permitting process and other
21 requirements;

22 K. except for regulations enacted pursuant to
23 Subsection L of this section, adopt regulations that ensure
24 that the public and permitting agencies receive notice of each
25 application for issuance, renewal or revision of a permit for a

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1 new or existing mining operation, for standby status, or
2 exploration, a variance or an application for release of
3 financial assurance and any inspection prior to the release of
4 financial assurance, including a provision that no action shall
5 be taken on any application until an opportunity for a public
6 hearing, held in the locality of the operation, is provided and
7 that all interested persons shall be given a reasonable chance
8 to submit data, views or arguments orally or in writing and to
9 examine witnesses testifying at the hearing. An additional
10 opportunity for a public hearing may be provided if the
11 applicant makes substantial changes in the proposed action, if
12 there are significant new circumstances or information bearing
13 on the proposed action or if the applicant proposes to
14 substantially increase the scale or substantially change the
15 nature of the proposed action and there is public interest and
16 a request for a public hearing. These regulations shall
17 require at a minimum that the applicant for issuance, renewal
18 or revisions of a permit or a variance or an application for
19 release of financial assurance and any inspection prior to
20 release of financial assurance shall provide to the director at
21 the time of filing the application with the director proof that
22 notice of the application and of the procedure for requesting a
23 public hearing has been:

24 (1) provided by certified mail to the owners
25 of record, as shown by the most recent property tax schedule,

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1 of all properties within one-half mile of the property on which
2 the mining operation is located or is proposed to be located;

3 (2) provided by certified mail to all
4 municipalities and counties within a ten-mile radius of the
5 property on which the mining operation is or will be located;

6 (3) published once in a newspaper of general
7 circulation in each county in which the property on which the
8 mining operation is or will be located; provided that this
9 notice shall appear in either the classified or legal
10 advertisements section of the newspaper and at one other place
11 in the newspaper calculated to give the general public the most
12 effective notice and, when appropriate, shall be printed in
13 both English and Spanish;

14 (4) posted in at least four publicly
15 accessible and conspicuous places, including the entrance to
16 the new or existing mining operation if that entrance is
17 publicly accessible and conspicuous;

18 (5) mailed to all persons who have made a
19 written request to the director for notice of this application;
20 and

21 (6) mailed by certified mail to all persons on
22 a list maintained by the director of individuals and
23 organizations who have requested notice of applications under
24 [~~this~~] the New Mexico Mining Act. If the application is
25 determined to be administratively complete by the director, the

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1 applicant shall provide to the director timely proof that
2 notice of that determination has been provided by first class
3 mail to everyone who has indicated to the applicant in writing
4 that they desire information regarding the application and to a
5 list maintained by the director of individuals and
6 organizations who have requested notice of applications under
7 this act;

8 L. adopt regulations to provide for permits,
9 without notice and hearing, to address mining operations that
10 have minimal impact on the environment; provided that such
11 permits shall require general plans and shall otherwise reduce
12 the permitting requirements of the New Mexico Mining Act;

13 M. establish by regulation a schedule of annual
14 administrative and permit fees, which shall equal and not
15 exceed the estimated costs of administration, implementation,
16 enforcement, investigation and permitting pursuant to the
17 provisions of the New Mexico Mining Act. The size of the
18 operation, anticipated inspection frequency and other factors
19 deemed relevant by the commission shall be considered in the
20 determination of the fees. The fees established pursuant to
21 this subsection shall be deposited in the mining act fund;

22 N. establish by regulation a continuing process of
23 review of mining and reclamation practices in New Mexico that
24 provides for periodic review and amendment of regulations and
25 procedures to provide for the protection of the environment and

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1 consider the economic effects of the regulations;

2 O. adopt regulations governing the provision of
3 variances issued by the director, stating the procedures for
4 seeking a variance, including provisions for public notice and
5 an opportunity for a hearing in the locality where the variance
6 will be operative, the limitations on provision of variances,
7 requiring the petitioner to present sufficient evidence to
8 prove that failure to grant a variance will impose an undue
9 economic burden and that granting the variance will not result
10 in a significant threat to human health, safety or the
11 environment;

12 P. provide by regulation that, prior to the
13 issuance of any permit for a new mining operation pursuant to
14 the provisions of the New Mexico Mining Act, the permit
15 applicant or operator:

16 (1) shall provide evidence to the director
17 that other applicable state and federal permits required to be
18 obtained by the new or existing mining operation either have
19 been or will be issued before the activities subject to those
20 permits begin; and

21 (2) shall provide to the director a written
22 determination from the secretary of environment stating that
23 the permit applicant has demonstrated that the activities to be
24 permitted or authorized will be expected to achieve compliance
25 with all applicable air and water quality and other

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1 environmental standards if carried out as described;

2 Q. require by regulation that the applicant file
3 with the director, prior to the issuance of a permit, financial
4 assurance. The amount of the financial assurance shall be
5 sufficient to assure the completion of the performance
6 requirements of the permit, including closure and reclamation,
7 if the work [~~had~~] has to be performed by the director or a
8 third-party contractor and shall include periodic review to
9 account for any inflationary increases and anticipated changes
10 in reclamation or closure costs. The regulations shall specify
11 that financial requirements shall neither duplicate nor be less
12 comprehensive than the federal financial requirements. The
13 form and amount of the financial assurance shall be subject to
14 the approval of the director as part of the permit application;
15 provided that financial assurance does not include any type or
16 variety of self-guarantee or self-insurance;

17 R. require by regulation that the permittee may
18 file an application with the director for the release of all or
19 part of the permittee's financial assurance. [~~The permittee~~
20 ~~shall not file an application for release of financial~~
21 ~~assurance more than once per year for each mining operation.~~]
22 The application shall describe the reclamation measures
23 completed and shall contain an estimate of the costs of
24 reclamation measures that have not been completed. Prior to
25 release of any portion of the permittee's financial assurance,

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1 the director shall conduct an inspection and evaluation of the
2 reclamation work involved. The director shall notify persons
3 who have requested advance notice of the inspection.

4 Interested members of the public shall be allowed to be present
5 at the inspection of the reclamation work by the director.

6 (1) The director may release in whole or in
7 part the financial assurance if the reclamation covered by the
8 financial assurance has been accomplished as required by the
9 New Mexico Mining Act; provided that the director shall retain
10 financial assurance at least equal to the approved estimated
11 costs of completing reclamation measures that have not been
12 completed; and provided further that for revegetated areas, the
13 director shall retain the amount of financial assurance
14 necessary for a third party to reestablish vegetation for a
15 period of twelve years after the last year of augmented
16 seeding, fertilizing, irrigation or other work, unless a post-
17 mining land use is achieved that is inconsistent with the
18 further need for revegetation. For new mining operations only,
19 no part of the financial assurance necessary for a third party
20 to reestablish vegetation shall be released so long as the
21 lands to which the release would be applicable are contributing
22 suspended solids above background levels to streamflow of
23 intermittent and perennial streams.

24 (2) A person with an interest that is or will
25 be adversely affected by release of the financial assurance may

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1 file, with the director within thirty days of the date of the
2 inspection, written objections to the proposed release from
3 financial assurance. If written objections are filed and a
4 hearing is requested, the director shall inform all the
5 interested parties of the time and place of the hearing at
6 least thirty days in advance of the public hearing, and hold a
7 public hearing in the locality of the new or existing mining
8 operation or exploration operation proposed for release from
9 financial assurance. The date, time and location of the public
10 hearing shall be advertised by the director in a newspaper of
11 general circulation in the locality for two consecutive weeks,
12 and all persons who have submitted a written request in advance
13 to the director to receive notices of hearings shall be
14 provided notice at least thirty days prior to the hearing;

15 S. establish coordinated procedures that avoid
16 duplication for the inspection, monitoring and sampling of air,
17 soil and water and enforcement of applicable requirements of
18 the New Mexico Mining Act, regulations adopted pursuant to that
19 act and permit conditions for new and existing mining
20 operations and exploration. The regulations shall require, at
21 a minimum:

22 (1) inspections by the director occurring on
23 an irregular basis according to the following schedule:

24 (a) at least one inspection per month
25 when the mining operation is conducting significant reclamation

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1 activities;

2 (b) at least two inspections per year
3 for active mining operations;

4 (c) at least one inspection per year on
5 inactive sites;

6 (d) at least one inspection per year
7 following completion of all significant reclamation activities,
8 but prior to release of financial assurance; and

9 (e) mining operations having a minimal
10 impact on the environment and exploration operations will be
11 inspected on a schedule to be established by the commission;

12 (2) inspections shall occur without prior
13 notice to the permittee or [~~his~~] the permittee's agents or
14 employees except for necessary on-site meetings with the
15 permittee;

16 (3) when the director determines that a
17 condition or practice exists that violates a requirement of the
18 New Mexico Mining Act, a regulation adopted pursuant to that
19 act or a permit issued under that act, which condition,
20 practice or violation also creates an imminent danger to the
21 health or safety of the public or will cause significant
22 imminent environmental harm, the director shall immediately
23 order a cessation of the new or existing mining operation or
24 the exploration operation or the portion of that operation
25 relevant to the condition, practice or violation. The

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1 cessation order shall remain in effect until the director
2 determines that the condition, practice or violation has been
3 abated or until modified, vacated or terminated by the director
4 or the commission;

5 (4) when the director determines that an owner
6 or operator is in violation of a requirement of the New Mexico
7 Mining Act, a regulation adopted pursuant to that act or a
8 permit issued pursuant to that act but the violation does not
9 create an imminent danger to the health or safety of the public
10 or will not cause significant imminent environmental harm, the
11 director shall issue a notice to the owner or operator fixing a
12 reasonable time, not to exceed sixty days, for the abatement of
13 the violation. If, upon expiration of the period of time as
14 originally fixed or subsequently extended for good cause shown,
15 the director finds that the violation has not been abated, ~~[he]~~
16 the director shall immediately order a cessation of new or
17 existing mining operations or exploration operations or the
18 portion thereof relevant to the violation. The cessation order
19 shall remain in effect until the director determines that the
20 violation has been abated; and

21 (5) when the director determines that a
22 pattern of violations of the requirements of the New Mexico
23 Mining Act or of the regulations adopted pursuant to that act
24 or the permit required by that act exists or has existed and,
25 if the director also finds that such violations are caused by

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1 the unwarranted failure of the owner or operator to comply with
2 the requirements of that act, regulation or permit or that such
3 violations are willfully caused by the owner or operator, the
4 director shall immediately issue an order to the owner or
5 operator to show cause as to why the permit should not be
6 suspended or revoked;

7 T. provide for the transfer of a permit to a
8 successor operator, providing for release of the first operator
9 from obligations under the permit, including financial
10 assurance, following the approved assumption of such
11 obligations and financial assurance by the successor operator;

12 U. adopt regulations providing that the owner or
13 operator of an existing mining operation or a new mining
14 operation who has completed some reclamation measures prior to
15 the effective date of the regulations adopted pursuant to the
16 New Mexico Mining Act may apply for an inspection of those
17 reclamation measures and a release from further requirements
18 pursuant to that act for the reclaimed areas if, after an
19 inspection, the director determines that the reclamation
20 measures satisfy the requirements of that act and the
21 substantive requirements for reclamation pursuant to the
22 applicable regulatory standards; and

23 V. develop and adopt other regulations necessary
24 and appropriate to carry out the purposes and provisions of the
25 New Mexico Mining Act. Pursuant to the financial assurance

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1 provision found in Subsection R of this section, the director
2 shall propose a new set of regulations consistent with that
3 subsection for the commission's consideration on or before
4 January 13, 2015."

5 SECTION 3. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.