F I S C A L I M P A C T R E P O R T

SPONSOR: Altamirano DATE TYPED: 02/04/02 HB

SHORT TITLE: Amend NM Mining Act SB 386

ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	**FY03**	**FY02**	**FY03**		
	$10.0			Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in The General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received
Energy, Minerals and Natural Resources Department (EMNRD)
Environment Department (ED)

SUMMARY

Synopsis of Bill

Senate Bill 386 appropriates $10.0 from the general fund to EMNRD to provide for financial review of guarantees or insurance proposed to satisfy the financial assurance requirements of the New Mexico Mining Act.

The Mining Act currently prohibits permit holders from providing a self-guarantee to meet a permittee's financial assurance requirements under the Act. This bill would amend 69-36-7Q of the Mining Act to enable a guarantee provided by a third person who holds an interest in the permittee (such as stock), to not be considered a form of self-guarantee. The third party guarantor must also meet financial soundness tests adopted by the Mining Commission (Commission) through regulations.

Significant Issues

EMNRD reports 69-36-7Q of the Mining Act states the Commission must adopt regulations that require financial assurance be posted with the Director of EMNRD prior to issuance of a permit. Financial assurance provides funds for a reclamation of the mine site in accordance with the permit if the permittee does not perform the reclamation. Section 7.Q. prohibits any type or variety of self-guarantee or self-insurance. The Commission adopted regulations in 1994 approving various forms of financial assurance, including third party guarantees. The regulations outline various financial soundness tests a third party guarantor must meet. The regulations do not address the relationship between the permittee and a guarantor providing a third party guarantee.

The Director has approved third party guarantees provided by three companies. In some cases the guarantor is a parent company. In all cases the guarantor met the financial soundness tests in the regulations and further demonstrated an acceptable degree of separation from the permittee to qualify as a third party guarantor. In all cases the guarantor owned stock or another form of interest in the permittee. Thus, all decisions to date regarding third party guarantors are in accordance with the provisions of this bill.

FISCAL IMPLICATIONS

The appropriation of $10.0 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund.

TECHNICAL ISSUES

EMNRD reports this bill modifies a section of the Mining Act that requires the Commission to "require by regulation that…" It is not known whether the intention is for this bill to require the Commission to adopt additional regulations to address this provision.

OTHER SUBSTANTIVE ISSUES

According to ED, the purpose of financial assurance is to ensure sufficient funds for closure of a facility in the event the facility operations shut down or are suspended due to market conditions, or other devastating circumstances (e.g., bankruptcy). Financial assurance is intended to provide closure funding regardless of the financial standing of the responsible party. Types of financial assurance instruments include surety bonds, irrevocable letters of credit, trust funds, certificates of deposit, cash, insurance, corporate guarantees, etc.

Third party guarantees are a type of corporate guarantee. Third parties can include companies engaged in activities that are substantially similar to the regulated entity or companies that are engaged in a different type of business than the regulated entity.

In a June 21, 2000 review of various financial assurance mechanisms prepared by the United States Office of Surface Mining (*Final Report on the Feasibility of Using Various Mechanisms to Demonstrate Financial Assurance for the Long-Term Treatment of Acid Mine Drainage*), Corporate Guarantees were deemed to <u>not</u> have the following attributes:

< Is reliable to ensure the availability of funds.
< Provides incentives to operators to maintain compliance.
< Requires low levels of monitoring to ensure compliance.

Corporate guarantees were deemed to have the following attributes:
< Is readily available to the regulated community.
< Is inexpensive to use.

Third party guarantees are often a less expensive financial assurance alternative than surety bonds and other financial assurance instruments in that there is no annual premium or the premium is low. Therefore, third party guarantees are favored by industry. However, if the guarantor is engaged in substantially the same industry as the regulated entity, the guarantee does little or nothing to ensure funds in the event of a market downturn or other devastating impact to the industry.

ED suggests as an alternative, to require the financial soundness tests adopted by the Mining and Minerals Division to include a demonstration that third party guarantor is engaged in a substantially different industry than the regulated entity, or is substantially diversified so that it can sustain a market downturn affecting the regulated entity.

LAT/ar