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AN ACT

RELATING TO MINING; AMENDING, REPEALING AND ENACTING SECTIONS
OF CHAPTER 69 NMSA 1978 TO PROVIDE FOR MINE SAFETY AND
ENFORCEMENT OF MINE SAFETY LAWS AND RULES.

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

Section 1. Section 69-1-6 NMSA 1978 (being Laws 1979,
Chapter 68, Section 3, as amended) is amended to read:

"69-1-6. STATE MINE INSPECTOR DUTIES--STATUS.--

A. The state mine inspector is assigned to the New
Mexico institute of mining and technology.

B. The board of regents of the New Mexico
institute of mining and technology and the mining safety
board may recommend the names of qualified individuals to the
governor for appointment as the state mine inspector.

C. In addition to those duties assigned to the
state mine inspector by the board of regents of the New
Mexico institute of mining and technology, by the mining
safety board and by statute, the state mine inspector shall
cooperate with the director of the mining and minerals
division of the energy, minerals and natural resources
department to assist the director in the performance of the
director's duties."

Section 2. Section 69-5-7 NMSA 1978 (being Laws 1933,
Chapter 153, Section 14, as amended) is amended to read:

1 "69-5-7. DUTIES--STATE MINE INSPECTOR--DIRECTOR OF
2 MINING AND MINERALS.--

3 A. The state mine inspector shall:

4 (1) develop and maintain mine safety and
5 health training programs;

6 (2) upon notification of any explosion or
7 other catastrophic event at a mine in which the lives of mine
8 workers are jeopardized or in which fatalities have occurred,
9 allocate available resources within a twenty-four-hour time
10 period to assist the mine operator in the rescue of persons
11 and the subsequent accident investigation;

12 (3) upon request from any operator, provide
13 compliance assistance to include on-site audits to any mine
14 or mine operator within the state to aid in the health and
15 safety of mine workers and mine operators;

16 (4) if a mine is found to be unsafe during
17 an inspection, give written notice that the mine is unsafe to
18 the owner, operator or manager of the mine with an
19 explanation for the notice;

20 (5) support and maintain a uniform system of
21 mine bell signals and furnish a copy of the signal system to
22 each underground mine operator within the state. Automated
23 hoists shall be exempt from compliance with the bell signal
24 requirements;

25 (6) implement a program of certifying mine

1 personnel as provided by law; and

2 (7) make a report to the governor on or
3 before June 1 of each year, which report covers the preceding
4 calendar year and contains a review of the official acts of
5 the inspector.

6 B. The director of the mining and minerals
7 division of the energy, minerals and natural resources
8 department shall:

9 (1) cooperate with the state mine inspector
10 to assist the state mine inspector in the performance of the
11 state mine inspector's duties, including providing the state
12 mine inspector with mine registration and other information
13 collected by the department;

14 (2) provide an annual resources report to
15 the governor that shall include statistics of the number of
16 persons employed in mining, the production and value thereof;
17 and

18 (3) have right of entry to the mines as may
19 be required to fulfill the director's statutory duties."

20 Section 3. Section 69-5-9 NMSA 1978 (being Laws 1933,
21 Chapter 153, Section 15) is amended to read:

22 "69-5-9. INSPECTIONS--RIGHT OF ENTRY--OPERATOR'S
23 REPRESENTATIVE.--The state mine inspector is given authority
24 at all reasonable times to:

25 A. enter and inspect any mine in the state in such SB 819
Page 3

1 manner as not to impede or obstruct the workings of the mine;
2 and

3 B. require that the mine owner, operator or
4 manager at all times furnish means necessary for such entry,
5 inspection, examination and inquiry."

6 Section 4. Section 69-5-10 NMSA 1978 (being Laws 1933,
7 Chapter 153, Section 16) is amended to read:

8 "69-5-10. COMPLIANCE ASSISTANCE VISIT RECORD--
9 OPERATOR'S COPY.--The state mine inspector shall make an
10 entry of record in the state mine inspector's office of each
11 compliance assistance visit and shall furnish the operator a
12 copy thereof."

13 Section 5. Section 69-5-14 NMSA 1978 (being Laws 1933,
14 Chapter 153, Section 20, as amended) is amended to read:

15 "69-5-14. ORDERING DANGEROUS CONDITIONS IN MINES
16 REMOVED OR REMOVAL OF WORKERS FROM DANGER ZONES.--When any
17 mine or portion of a mine or machine, device, apparatus or
18 equipment pertaining to a mine, in the judgment of the state
19 mine inspector, is in so dangerous a condition from any cause
20 or creates such a hazard as to jeopardize life or health, the
21 state mine inspector shall at once direct the management or
22 operator of the mine to remove the dangerous condition or
23 safeguard the equipment. Should the state mine inspector
24 find during inspection of the mine a dangerous condition
25 existing in the mine that might cause loss of life or serious

1 personal injury to the employees, the state mine inspector
2 has the right to require the operator to immediately withdraw
3 all persons from the dangerous places or from the entire
4 mine. In the event the operator fails or refuses to
5 immediately comply with the requirements or instructions of
6 the state mine inspector, the state mine inspector shall
7 issue an order closing all or any portion of the mine to
8 regular operations and notify a representative of the miners
9 and the mine safety and health administration immediately."

10 Section 6. Section 69-5-17 NMSA 1978 (being Laws 1933,
11 Chapter 153, Section 23, as amended by Laws 2006, Chapter
12 102, Section 2 and by Laws 2006, Chapter 106, Section 2) is
13 amended to read:

14 "69-5-17. FATAL AND SERIOUS MINE ACCIDENTS--
15 ASSISTANCE--INVESTIGATION--NOTIFICATION--CIVIL PENALTY.--

16 A. The state mine inspector shall proceed
17 immediately upon notification to the site of any mine
18 accident causing the loss of life or requiring activation of
19 a mine rescue team and shall assist in the rescue of persons
20 within the mine. The state mine inspector shall participate
21 in the accident investigation with any other federal, state
22 and local agency and company representatives.

23 B. Whenever an accident occurs in or about a mine
24 or the machinery connected to a mine, the operator of the
25 mine shall give notice within thirty minutes of ascertaining

1 the occurrence of the accident to the mine accident emergency
2 operations center at the statewide telephone number
3 established by the state mine inspector stating the
4 particulars of the accident.

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

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

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

18 F. The penalties imposed by the state mine
19 inspector for violations of this section shall be derived
20 from criteria-based penalty points. A penalty conversion
21 table developed by the state mine inspector shall serve as a
22 guide for determining penalty assessments."

23 Section 7. A new section of Chapter 69, Article 5 NMSA
24 1978 is enacted to read:

25 "ATTORNEY GENERAL.--The attorney general shall appoint a SB 819
Page 6

1 counsel as needed to support the enforcement of the state
2 mine inspector's office and the duties of the state mine
3 inspector and the bureau of mine safety."

4 Section 8. Section 69-8-2 NMSA 1978 (being Laws 1961,
5 Chapter 136, Section 2) is amended to read:

6 "69-8-2. DEFINITIONS.--As used in the Mining Safety
7 Act:

8 A. "accident", pursuant to 30 C.F.R. 50.2, means:

- 9 (1) a death of an individual at a mine;
10 (2) an injury that has a reasonable
11 potential to cause death to an individual at a mine;
12 (3) an entrapment of an individual for more
13 than thirty minutes or that has a reasonable potential to
14 cause death;
15 (4) an unplanned inundation of a mine by a
16 liquid or gas;
17 (5) an unplanned ignition or explosion of
18 gas or dust;
19 (6) an unplanned mine fire in an underground
20 mine that is not extinguished within ten minutes of discovery
21 and an unplanned mine fire within a surface mine or surface
22 area of an underground mine that is not extinguished within
23 thirty minutes;
24 (7) an unplanned ignition or explosion of a
25 blasting agent or an explosive;

1 (8) an unplanned roof fall at or above the
2 anchorage zone in active workings where roof bolts are in use
3 or an unplanned roof or rib fall in active workings that
4 impairs ventilation or impedes passage;

5 (9) a coal or rock outburst that causes
6 withdrawal of miners or that disrupts regular mining activity
7 for more than one hour;

8 (10) an unstable condition at an
9 impoundment, refuse pile or culm bank that requires emergency
10 action in order to prevent failure or that causes individuals
11 to evacuate an area or failure of an impoundment, refuse pile
12 or culm bank;

13 (11) damage to hoisting equipment in a shaft
14 or slope that endangers an individual or that interferes with
15 use of the equipment for more than thirty minutes; or

16 (12) an event at a mine that causes death or
17 bodily injury to an individual not at the mine at the time
18 the event occurs;

19 B. "employer" includes any person acting directly
20 or indirectly in the interest of an employer in relation to
21 an employee or to a place of employment;

22 C. "employee" means any person suffered or
23 permitted to work in a mining occupation or pursuit by an
24 employer;

25 D. "mine", pursuant to 30 C.F.R. 50.2, means:

1 (1) an area of land from which minerals are
2 extracted in nonliquid form or, if in liquid form, are
3 extracted with workers underground;

4 (2) private ways and roads appurtenant to an
5 area described in Paragraph (1) of this subsection; and

6 (3) lands, excavations, underground
7 passageways, shafts, slopes, tunnels and workings,
8 structures, facilities, equipment, machines, tools or other
9 property, including impoundments, retention dams and tailings
10 ponds, on the surface or underground, used in, to be used in
11 or resulting from, the work of extracting such minerals from
12 their natural deposits in nonliquid form, or if in liquid
13 form, with workers underground, or used in, or to be used in,
14 the milling of such minerals, or the work of preparing coal
15 or other minerals, and includes custom coal preparation
16 facilities;

17 E. "operator", pursuant to 30 C.F.R. 50.2, means:

18 (1) any owner, lessee or other person that
19 operates, controls or supervises a coal mine; or

20 (2) the person, partnership, association or
21 corporation, or subsidiary of a corporation, operating a
22 metal or nonmetal mine and owning the right to do so,
23 including any agent thereof charged with responsibility for
24 the operation of such mine;

25 F. "person" means an individual, partnership,

1 association, corporation, business trust, receiver, trustee,
2 legal representative or successor to any of the foregoing;

3 G. "place of employment" means any place in or
4 about which the employee is suffered or permitted to work;

5 H. "mining occupations or pursuits" includes
6 mining, smelting and the operation of a mill, ore house or
7 treatment plant in which ore or rock is processed; and

8 I. "inspector" means the state mine inspector."

9 Section 9. Section 69-8-3 NMSA 1978 (being Laws 1961,
10 Chapter 136, Section 3, as amended) is amended to read:

11 "69-8-3. MINING SAFETY BOARD.--

12 A. There is created a "mining safety board",
13 referred to in Chapter 69, Article 8 NMSA 1978 as the
14 "board", consisting of thirteen members. The members of the
15 board shall represent and balance management and
16 non-management employees at coal, metal-nonmetal and sand and
17 gravel operations throughout New Mexico. The members of the
18 board shall be appointed by the governor for terms of six
19 years or until their successors are appointed and qualified.
20 Vacancies shall be filled by appointment for the unexpired
21 term by the governor in the same manner as the original
22 appointments. Members absent for three or more consecutive
23 meetings shall be considered inactive. The chair of the
24 board shall ask the governor's office to appoint a new member
25 to the board if a current member becomes inactive. The

1 inspector and the secretary of energy, minerals and natural
2 resources shall be ex-officio members of the board but shall
3 have no vote.

4 B. Voting members of the board shall receive
5 compensation pursuant to the Per Diem and Mileage Act. The
6 inspector is authorized and directed to provide the board
7 with such clerical, technical, legal and other assistance as
8 shall be necessary to permit the board to perform its duties
9 as provided in the Mining Safety Act."

10 Section 10. Section 69-8-4 NMSA 1978 (being Laws 1985,
11 Chapter 68, Section 3) is amended to read:

12 "69-8-4. DUTIES OF THE BOARD--RULEMAKING.--

13 A. The board shall, after public hearing, adopt
14 rules for the protection of the life and safety of employees
15 and to carry out the intent of the Mining Safety Act. The
16 board may appoint a special committee of employers, employees
17 and experts to assist in the development of proposed rules.
18 The inspector may make recommendations to the board as
19 necessary to carry out the intent of the Mining Safety Act.

20 B. Notice of the subject, time and place of the
21 hearing, the manner in which interested persons may present
22 their views and the method by which copies of the proposed
23 rule may be obtained shall be:

24 (1) published at least thirty days prior to
25 the hearing date in a newspaper of general circulation in the

1 state and in the New Mexico register, if published; and

2 (2) mailed at least thirty days prior to the
3 hearing date to all persons that have made a written request
4 to the board or the inspector for advance notice of hearings.

5 C. The board shall allow all interested persons
6 reasonable opportunity to submit data, views or arguments
7 orally or in writing. The board may designate a hearing
8 officer to take evidence in the hearing. Any person that
9 provides comments shall be given written notice of the action
10 of the board.

11 D. All rules and regulations shall be filed in
12 accordance with the State Rules Act."

13 Section 11. A new section of the Mining Safety Act is
14 enacted to read:

15 "DUTIES OF THE BOARD--APPEAL OF CERTIFICATION ACTIONS
16 BY INSPECTOR.--

17 A. A person who is the subject of an action of the
18 inspector pursuant to Subsection D of Section 69-14-4 NMSA
19 1978 may file a written petition for review before the board
20 within twenty days after service of the notice provided in
21 Subsection E of Section 69-14-4 NMSA 1978. Unless a timely
22 petition for review is made, the decision of the inspector
23 shall be final and not subject to judicial review.

24 B. If a timely petition for review is made, the
25 board shall consider the petition within ninety days after

1 receipt of the petition. The board shall notify the
2 petitioner and the inspector of the date, time and place of
3 the review.

4 C. The board shall review the record compiled
5 before the inspector and shall allow any party to submit
6 arguments. Prior to the date set for review, if a party
7 shows to the satisfaction of the board that there is good
8 reason to allow additional evidence on an issue being
9 challenged, the board shall allow additional evidence to be
10 taken. Based on the review of the evidence and the arguments
11 of the parties, the board shall sustain, modify or reverse
12 the action of the inspector.

13 D. The board shall notify the parties of the
14 action taken by the board and the reasons for that action. A
15 person who is adversely affected by a decision of the board
16 pursuant to this section may appeal to the district court
17 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

18 Section 12. A new section of the Mining Safety Act is
19 enacted to read:

20 "STANDARD OF EVALUATION OF VARIANCES--EFFECT OF
21 VARIANCES GRANTED.--

22 A. A person affected by a rule adopted under the
23 Mining Safety Act may petition the inspector for a variance.

24 B. A variance of a mandatory safety standard may
25 be granted upon a determination that:

1 (1) an alternative method of achieving the
2 result of the standard or rule exists that will at all times
3 guarantee no less than the same measure of protection
4 afforded by the standard or rule; or

5 (2) application of the standard or rule
6 would diminish the safety of the affected miners.

7 C. All variances granted pursuant to this section
8 shall have only future effect.

9 D. The inspector shall fully investigate any
10 proposed variance with the requesting mine operator and the
11 respective representative of miners, or a reasonable number
12 of miners that will be affected by the proposed variance.
13 The proposed variance shall be posted at the mine when
14 submitted to the inspector to ensure that all miners have the
15 opportunity to review and make comments to the inspector.
16 Investigation shall begin within ninety days of receipt of
17 the proposed petition, and the inspector shall make a final
18 determination no longer than one hundred eighty days from the
19 receipt of the proposed petition.

20 E. A person affected by the final decision of the
21 inspector may appeal to the board within thirty days of the
22 inspector's final decision. The appeal shall be in writing
23 and sent to the board's chair. The board shall review the
24 appeal within ninety days and may hold a hearing. The board
25 shall make a final decision regarding the variance request.

1 F. A person who is adversely affected by a
2 decision of the board pursuant to this section may appeal to
3 the district court pursuant to the provisions of Section 39-
4 3-1.1 NMSA 1978."

5 Section 13. Section 69-12-7 NMSA 1978 (being Laws
6 1933, Chapter 153, Section 34) is amended to read:

7 "69-12-7. ACCIDENTS--WRITTEN REPORT.--A report in
8 writing shall be made to the state mine inspector of each
9 mine accident. The report shall be made within one month of
10 the date of the accident. Submitting a copy of the report
11 required under the Federal Mine Safety and Health Act of 1977
12 to the inspector shall satisfy the requirements of Chapter 69
13 NMSA 1978."

14 Section 14. Section 69-14-1 NMSA 1978 (being Laws
15 1933, Chapter 153, Section 38, as amended) is amended to
16 read:

17 "69-14-1. MINE FOREMEN--MINE EXAMINERS--CERTIFICATION
18 BY STATE MINE INSPECTOR.--The state mine inspector shall
19 certify, recertify or discipline persons to act as mine
20 foremen and mine examiners. No mine operator shall employ
21 any person as underground mine foreman, mine examiner or
22 surface mine foreman unless that person has been certified by
23 the state mine inspector for such position."

24 Section 15. Section 69-14-2 NMSA 1978 (being Laws
25 1933, Chapter 153, Section 40, as amended) is amended to

1 read:

2 "69-14-2. METHODS OF CERTIFICATION--CERTIFICATES FROM
3 OTHER STATES--PERMITS--EXAMINATIONS.--The state mine
4 inspector shall certify persons for the positions of mine
5 foreman and mine examiner and issue certificates accordingly
6 as follows:

7 A. the state mine inspector may recognize the
8 foreman's or mine examiner's certificate issued by any other
9 state and issue certificates accordingly;

10 B. the state mine inspector shall hold written
11 examinations, at times and places to be given out at least
12 thirty days in advance, to all persons desiring to secure
13 mine foreman certificates or mine examiner certificates; and

14 C. the state mine inspector shall require that
15 any applicant for examination to the position of mine foreman
16 or mine examiner shall submit a completed application at
17 least thirty days prior to the examination date and shall
18 meet the experience requirements of this section. Every
19 person desiring to secure a mine foreman's certificate and
20 not already in such position or not holding such certificate
21 from another state shall first serve as a mine examiner for
22 six months and shall have at least four years' coal mine
23 experience to participate in the foreman's examination. A
24 person who holds a certificate for surface mine foreman who
25 wishes to take the underground foreman test must have a

1 minimum of four years' experience in underground mine
2 workings. A person who holds an underground mine foreman
3 certificate and who wishes to participate in the surface mine
4 foreman examination must have at least two years' surface
5 mine experience."

6 Section 16. Section 69-14-3 NMSA 1978 (being Laws
7 1933, Chapter 153, Section 41, as amended) is amended to
8 read:

9 "69-14-3. QUALIFICATIONS FOR CERTAIN POSITIONS.--The
10 mining safety board may, by rule, enact requirements,
11 including requirements for applications, examinations and
12 qualifications, for the certification of any mine personnel
13 required to be qualified by state or federal law."

14 Section 17. Section 69-14-4 NMSA 1978 (being Laws
15 1933, Chapter 153, Section 42, as amended) is amended to
16 read:

17 "69-14-4. CERTIFICATION PERIOD--RECERTIFICATION--
18 DISCIPLINE--APPEAL.--

19 A. Certification for mine personnel shall be
20 issued for a period of five years. All mine personnel
21 certified by the state mine inspector prior to the effective
22 date of this 2007 act shall have their certification period
23 extended five years. Each certified person has the
24 responsibility to notify the state mine inspector of any
25 change in address or change in mine employment within thirty

1 days of the change. Failure to provide current information
2 may result in suspension of certification.

3 B. Certified persons may apply for
4 recertification within twelve months prior to the end of the
5 certification period. Every certification shall
6 automatically expire on the last day of the certification
7 period if the official has not recertified prior to that
8 date. Recertification will require the applicant to submit
9 an application and appropriate documentation as required by
10 the state mine inspector at least thirty days prior to the
11 testing date.

12 C. The state mine inspector may refuse to certify
13 or recertify or may suspend or revoke any certification held
14 or applied for under Chapter 69 NMSA 1978 upon grounds that
15 the applicant or certified person:

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

18 (2) is grossly negligent or incompetent in
19 duties as a certified person;

20 (3) has failed to maintain certification;

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

24 (5) has been disciplined in another state
25 that certifies mine personnel.

1 D. If the state mine inspector contemplates
2 taking any of the actions in Subsection C of this section for
3 any of the reasons provided in that subsection, the state
4 mine inspector shall provide written notice to the applicant
5 or certified person. The notice shall include a statement
6 that the state mine inspector has sufficient evidence that,
7 if not rebutted or explained, will justify the state mine
8 inspector in taking the contemplated action, that indicates
9 the general nature of the evidence and that provides the
10 applicant or person at least twenty days to submit written
11 evidence to rebut or explain the allegations.

12 E. If, after the response period ends, the state
13 mine inspector takes any action of a type specified in
14 Subsection C of this section, the state mine inspector shall
15 serve upon the applicant or certified person a written notice
16 of the action containing a statement that the applicant or
17 certified person may file a petition for review with the
18 mining safety board pursuant to the Mining Safety Act."

19 Section 18. REPEAL.--Sections 69-4-1, 69-4-3 through
20 69-4-10, 69-5-8, 69-5-11, 69-5-13, 69-5-15, 69-7-2 through
21 69-7-7, 69-8-5, 69-8-7 through 69-8-10, 69-8-14, 69-12-1,
22 69-12-2, 69-12-5, 69-12-6, 69-13-1 through 69-13-3, 69-14-5
23 through 69-14-18, 69-18-14, 69-31-16 and 69-35-18 through
24 69-35-20 NMSA 1978 (being Laws 1933, Chapter 153, Sections 1
25 and 3 through 10, Laws 1953, Chapter 82, Section 3, Laws

