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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/10

SPONSOR Heaton LAST UPDATED _____ HB 80

SHORT TITLE Mining Emergency Notice Appeals SB _____

ANALYST Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	\$0.0	Recurring	General Fund

(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			(\$50.0)	(\$50.0)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Impact below

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Institute of Mining and Technology (NMIMT)

SUMMARY

Synopsis of Bill

House Bill 80, introduced on behalf of the Radioactive and Hazardous Materials Committee with a Governor's message, would amend 69-5-17 NMSA 1978 to add a multi step review and appeal process available to a mine operator who receives a notice of violation that includes a penalty assessment for failure to immediately notify the mine accident operations center whenever an accident occurs in or about a mine or the machinery connected to a mine.

House Bill 80 would further amend 69-14-4 NMSA 1978 to replace recertification testing with rules for recertification adopted by the Mining Safety Board.

FISCAL IMPLICATIONS

House Bill 80 contains no appropriation. According to the State Mine Inspector (SMI) at NMIMT, if the Mining Act is left as is, there will be an additional cost to the Bureau of Mine Safety beginning in 2012 that is estimated to be \$50,000 in recurring yearly expense for 5 year recertification testing. HB 682, passed in 2007, required that coal mine officials (surface foreman, underground examiners and underground foreman) be recertified every 5 years through testing for recertification. There was no appropriation made for this additional requirement when the legislation was passed in 2007 or since. HB 80 would modify testing requirements and would eliminate the majority of the upcoming recurring expense.

SIGNIFICANT ISSUES

The SMI states with respect to recertification testing:

Changing the requirement for recertification in the draft legislation is recommended for the following reasons:

- Safety at coal mines would not be compromised
- There are approximately 1000 certified coal mine officials in NM
- Retesting on some type of basis for a recertification every 5 years is estimated to cost over \$50,000 a year
- The SMI has received no increased funding to implement testing
- Other methods of training for recertification would be more cost effective and would be the responsibility of the individuals and the operators to provide the training and submit verification. The SMI would still have authority to approve a plan and monitor the implementation
- Both union members at the coal mining operations and mining operators support other types of training versus testing
- New Mexico will still be a leader in mine safety regulation. We are one of two states who currently require recertification
- The Mining Safety Board has passed a resolution supporting the draft legislation

With respect to the appeal process, the SMI notes:

Current statute delegates all authority regarding penalty for failure to provide emergency notification with the State Mine Inspector (SMI). Current NMAC Rules allow an appeal of the original penalty to the SMI who then provides final decision. The next option for an operator is district court.

The proposed change would allow an appeal of the SMI decision to the Mining Safety Board (MSB). The MSB is the review board for the SMI and the rule-making body in New Mexico for mine safety regulation. The MSB is balanced between non-management and management members of the NM mining community. An appeal of the SMI decision to the MSB would bring the process in line with processes already in place with other State agencies, that allow appeal of agency decisions to their oversight board (NMED to WQCC, MMD to Coal or Mining Commission).