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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/10

SPONSOR King LAST UPDATED _____ HB 177/aHENRC

SHORT TITLE Abandoned Mine Reclamation Act Jurisdiction SB _____

ANALYST Escudero

APPROPRIATION (dollars in thousands)*

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

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

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee amendment removes references to include land or water that was mined for coal or that was affected by that mining, waste banks, coal processing or other coal mining processes and abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there is no continuing reclamation responsibility under state or federal laws.

Synopsis of Original Bill

This legislation seeks to amend the Abandoned Mine Reclamation Act , NMSA 1978, Sections 69-25B-1 to – 12 (“Act”) to bring the Act into conformance with changes to the federal Surface Mine Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., as amended, (“SMCRA”). Specifically, the legislation amends:

-the definition of “eligible lands and water”, NMSA 1978, Section 69-25B-3.B, is amended to include all land and water that is eligible for expenditures under SMCRA. Other changes to the definition were required by the federal Office of Surface Mining. See 30 CFR 931.26(b).

-the expenditure priority sections, NMSA 1978, Section 69-25B-6.A and -6.C, was rewritten to reference the priorities and objectives of SMCRA, rather than attempting to spell out the priorities. The priority section of SMCRA Title IV, 30 U.S.C. 1233(B), was significantly revised in the 2006 amendments to SMCRA and OSM had also required this section be changed based on earlier amendments to SMCRA. 30 CFR 931.26(c), (d) and (e).

-the requirement to expend funds within 3 years, NMSA 1978, Section 69-25B-D, is deleted. The 2006 amendments to SMCRA created different expenditure deadlines (some 3 years, some 5 years) for different grant years. The State is bound by the terms of the federal grants, so it is unnecessary to include the deadlines in state law.

-the lien section, NMSA 1978, Section 69-25B-8, is amended to delete the phrase “who owned the surface prior to May 2, 1977”. This phrase was deleted from the SMCRA lien statute, 30 U.S.C. 1238, in the 2006 amendments. It significantly expands the exemption from potential lien liability for landowners.

This legislation carries Executive Message 63.

FISCAL IMPLICATIONS

EMNRD notes that having a state law that is consistent with the federal governing law (SMCRA) is necessary for the State to continue to receive grants for abandoned mine reclamation. The State currently receives an annual grant between \$4 and \$5 million. This money is usually primarily to safeguard and reclaim abandoned coal mines that pose a threat to public health and safety or the environment. Some grant funds are also used at abandoned non-coal mines that must be safeguarded. The Abandoned Mine Land program at EMNRD is supported by 100 percent federal funds which come from the Department of the Interior.

SIGNIFICANT ISSUES

EMNRD identifies the following considerations:

The purpose of the New Mexico Abandoned Mine Reclamation Act, NMSA 1978, Sections 69-25B-1 to – 12 (“Act”), is to allow New Mexico to develop a state program under Title 4 of SMCRA that will enable the State to receive federal grant funds for the safeguarding and reclamation of abandoned mines that pose a threat to public health, safety and the environment. Since the Act’s passage in 1980, New Mexico has been receiving an annual grant between \$1.5 and \$5 million for abandoned mine projects. New Mexico has an estimated 15,000 mine openings that may pose a threat to the public. The New Mexico AML Program has safeguarded over 4,000 mine openings and reclaimed numerous acres of mine disturbances; this Program has been almost exclusively funded by SMCRA Title 4 grant funds.

To receive SMCRA Title 4 AML grant funds, the State must have a program approved by the Secretary of the Interior that includes the legal authority to perform the work. 30 U.S.C. 1235(b), (e). The Secretary has the authority to withdraw his approval if a program is no longer in compliance with federal requirements. 30 U.S.C. 1235(d).

HB 177 is intended to bring the Act into compliance with two sets of changes to federal law. First, OSM previously rejected changes to the Act and required changes to NMSA 1978, Section 69-25B-3 and -6. These requirements were codified in the Code of Federal Regulations, 30 CFR 931.26. Second, Title 4 of SMCRA was significantly revised in the 2006 amendments to SMCRA.

Rather than try to incorporate the many changes to SMCRA into the Act, HB 177 adds references to the definitions and priorities in SMCRA and deletes the unnecessary lists of priorities previously embodied in the Act.

PERFORMANCE IMPLICATIONS

EMNRD indicates that the department has performance goals related to the assessment of abandoned uranium mines and SMCRA funds have been used to achieve these goals. Loss of SMCRA funds would hurt EMNRD's ability to achieve these goals.

ADMINISTRATIVE IMPLICATIONS

None noted by respondent.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted by respondent.

TECHNICAL ISSUES

None noted by respondent.

OTHER SUBSTANTIVE ISSUES

EMNRD states, "New Mexico is currently in a dispute with the Department of the Interior over the interpretation of the 2006 amendments to SMCRA. This dispute involves whether certain grant funds can be used for non-coal mine reclamation. Interior has issued rules preventing such use. Senator Bingaman has introduced a bill to change SMCRA. None of the changes in HB 177 is connected to this dispute."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

EMNRD advises that the, "...State may ultimately be in danger of losing its approved SMCRA Title 4 program and therefore losing federal grants for abandoned mine reclamation under SMCRA."

AMENDMENTS

None noted by respondent.

PME/svb