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HOUSE BILL 40

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Jim R. Trujillo and David Ulibarri

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO MINING; AMENDING SECTIONS OF THE ABANDONED MINE RECLAMATION ACT TO CLARIFY JURISDICTION OF THAT ACT.

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

SECTION 1. Section 69-25B-3 NMSA 1978 (being Laws 1980, Chapter 87, Section 3, as amended) is amended to read:

"69-25B-3. DEFINITIONS.--As used in the Abandoned Mine Reclamation Act:

A. "director" means the director of the mining and minerals division of the energy, minerals and natural resources department;

B. "eligible lands and water" means [~~land or water that was mined or that was affected by mining, wastebanks, processing or other mining processes and abandoned or left in an inadequate reclamation status and for which there is no~~

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1 ~~continuing reclamation responsibility under state or federal~~
2 ~~laws]~~ all lands and water eligible for expenditures pursuant to
3 the federal Surface Mining Control and Reclamation Act of 1977,
4 as amended;

5 C. "emergency" means a sudden danger or impairment
6 that presents a high probability of substantial physical harm
7 to health, safety or general welfare of people before the
8 danger can be abated under normal program procedures; and

9 D. "fund" means the abandoned mine reclamation
10 fund."

11 SECTION 2. Section 69-25B-6 NMSA 1978 (being Laws 1980,
12 Chapter 87, Section 6, as amended) is amended to read:

13 "69-25B-6. OBJECTIVES OF THE FUND--DUTIES OF THE
14 DIRECTOR.--

15 A. Pursuant to the state reclamation plan,
16 expenditures from the fund shall be used by the director on
17 eligible lands and water and shall reflect the [following]
18 priorities and objectives in the [~~order stated:~~

19 ~~(1) the protection of public health, safety,~~
20 ~~general welfare and property from extreme danger of adverse~~
21 ~~effects of mining practices;~~

22 ~~(2) the protection of public health, safety~~
23 ~~and general welfare from adverse effects of mining practices;~~

24 ~~(3) the restoration of land and water~~
25 ~~resources and the environment previously degraded by adverse~~

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1 ~~effects of mining practices, including measures for the~~
2 ~~conservation and development of soil, water (excluding~~
3 ~~channelization), woodland, fish and wildlife, recreation~~
4 ~~resources and agricultural productivity;~~

5 ~~(4) research and demonstration projects~~
6 ~~relating to the development of surface mining reclamation and~~
7 ~~water quality control program methods and techniques;~~

8 ~~(5) the protection, repair, replacement,~~
9 ~~construction or enhancement of public facilities such as~~
10 ~~utilities, roads and recreation and conservation facilities~~
11 ~~adversely affected by mining practices; and~~

12 ~~(6) the development of publicly owned land~~
13 ~~adversely affected by mining practices, including land acquired~~
14 ~~as provided in the Abandoned Mine Reclamation Act for~~
15 ~~recreation and historic purposes, conservation and reclamation~~
16 ~~purposes and open space benefits] federal Surface Mining~~
17 Control and Reclamation Act of 1977, as amended.

18 B. The legislature declares that voids and open and
19 abandoned tunnels, shafts and entryways resulting from any
20 previous mining operation constitute a hazard to the public
21 health or safety and that surface impacts of any underground or
22 surface mining operations may degrade the environment.

23 Notwithstanding the provisions of Subsection A of this section,
24 the director, with the prior approval of the governor and the
25 United States secretary of the interior, may use expenditures

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1 from the fund to fill the voids, seal the abandoned tunnels,
2 shafts and entryways and reclaim surface impacts of underground
3 or surface mines ~~[which]~~ that could endanger life and property,
4 constitute a hazard to the public health and safety or degrade
5 the environment. In those instances where mine waste piles are
6 being reworked for conservation purposes, expenditures from the
7 fund may be used to pay the incremental costs of disposing of
8 the wastes from those operations by filling voids and sealing
9 tunnels if the disposal of these wastes meets the purposes of
10 this subsection.

11 ~~[G. In addition to the expenditures authorized in~~
12 ~~Subsections A and B of this section, money in the fund may be~~
13 ~~expended for the purpose of constructing specific public~~
14 ~~facilities in communities impacted by mining development if:~~

15 ~~(1) the objectives of the fund, as set forth~~
16 ~~in Subsections A and B of this section, have been achieved; and~~

17 ~~(2) both the governor and the United States~~
18 ~~secretary of the interior approve of the use of the fund for~~
19 ~~the construction.~~

20 ~~D. All money in the fund shall be expended within~~
21 ~~three years after its allocation to New Mexico by the United~~
22 ~~States secretary of the interior.]"~~

23 SECTION 3. Section 69-25B-8 NMSA 1978 (being Laws 1980,
24 Chapter 87, Section 8, as amended) is amended to read:

25 "69-25B-8. LIENS.--

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1 A. Within six months after the completion of
2 projects to restore, reclaim, abate, control or prevent adverse
3 effects of past mining practices on privately owned land, the
4 director shall itemize the money so expended and may file a
5 statement thereof in the office of the county clerk of the
6 county in which the land lies, together with a notarized
7 appraisal by an independent appraiser of the value of the land
8 before the restoration, reclamation, abatement, control or
9 prevention of adverse effects of past mining practices if the
10 money so expended results in a significant increase in property
11 value. The statement shall constitute a lien upon the land.
12 The lien shall not exceed the amount determined by the
13 appraisal to be the increase in the market value of the land as
14 a result of the restoration, reclamation, abatement, control or
15 prevention of the adverse effects of past mining practices. No
16 lien shall be filed against the property of any person in
17 accordance with this subsection ~~[who owned the surface prior to~~
18 ~~May 2, 1977 and]~~ who neither consented to nor participated in
19 nor exercised control over the mining operation that
20 necessitated the reclamation performed pursuant to the
21 provisions of the Abandoned Mine Reclamation Act.

22 B. The landowner may proceed to petition the
23 district court for the county in which the land lies within
24 sixty days of the filing of the lien to determine the increase
25 in the market value of the land as a result of the restoration,

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1 reclamation, abatement, control or prevention of the adverse
2 effects of past mining practices. The amount found by the
3 court to be the increase in value of the premises shall
4 constitute the amount of the lien and be recorded with the
5 statement provided for in this section. Any party aggrieved by
6 the decision of the district court may appeal to the supreme
7 court.

8 C. The lien provided in this section shall be
9 entered in the office of the county clerk of the county in
10 which the land lies. The statement shall constitute a lien
11 upon the land as of the date of the expenditure of the money
12 and have priority as a lien second only to the lien of ad
13 valorem taxes imposed upon the land."