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## FISCAL IMPACT REPORT

SPONSOR Stefanics ORIGINAL DATE 02/17/21  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Mining Director & Enviro Considerations SB 334  
ANALYST Gaussoin

### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bills 157 and 239.

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)  
Environment Department (NMED)

### **SUMMARY**

#### Synopsis of Bill

Senate Bill 334 amends the New Mexico Mining Act provisions on new mines, Section 69-36-12 NMSA 1978, to require the director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department to consult with the secretary of the Environment Department and other appropriate agencies to establish that the mining operation will not result in a “hazard to public health, a threat to the state’s water resources or wildlife or an undue risk to property or have a disproportionate effect on the health, environment or economy of a particular socioeconomic group.”

The effective date of the bill is July 1, 2021.

### **FISCAL IMPLICATIONS**

SB334 is unlikely to have any fiscal impact. The Energy, Minerals and Natural Resources Department (EMNRD) and Environment Department (NMED) both report the agencies already consult on environmental issues, and both indicated SB334 would not have a fiscal impact on their

agencies.

## SIGNIFICANT ISSUES

EMNRD and NMED, the two state agencies that would be most affected by this legislation, report existing law already requires regulators to address the issues identified in SB334.

EMNRD points out provisions of the New Mexico Mining Act (Chapter 69, Article 36 of New Mexico statute) and its associated regulations (19.10.1 to 19.10.15 NMAC) are intended to provide the same protections as in SB334. It cites the following sections of existing law:

- The Act establishes a series of requirements for new mining operations including that the operation must “ensure protection of human health and safety, the environment, wildlife and domestic animals”. Section 69-36-7(H)(2).
- The Act, §69-36-7(I)(6) NMSA 1978, (and 19.10.6.602.D(13)(g)(v) NMAC) require a permit application to include a determination of the hydrologic consequences of a new mining operation and reclamation, on both the permit and affected areas, with respect to the hydrologic regime, quantity and quality of surface and ground water systems that may be affected by the proposed operations, including the dissolved and suspended solids under seasonal flow conditions.
- 19.10.6.605.C NMAC - Permit Approval Requirements already require the director to solicit comments from the Environment Department, the Department of Game and Fish, the State Forestry Division, the State Historic Preservation Office, the State Engineer and if the operation is on state or federal land, the appropriate state or federal land management agency in addition to any other agency the director deems appropriate.
- The Act, §69-36-9(G), (19.10.6.605.D NMAC) requires the director to prepare a draft environmental evaluation, before a permit is approved or denied, which shall include an analysis of the reasonably foreseeable impacts of proposed activities on the pre-mining and post-mining environment and the local community, including other past, present and reasonably foreseeable future actions, regardless of the agency or persons that undertake the other action or whether the actions are on private, state, or federal land.
- The Act, §69-36-7(P)(2) (19.10.6.606.A(3) NMAC) requires the Secretary of the Environment Department to provide a written determination that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the permit application.

NMED reports it currently reviews Mining Act permit applications to evaluate if the applicant has demonstrated the activities are expected to comply with all applicable air, water quality, and other environmental standards if carried out as described in the application. It notes, “Before the director of [Mining and Minerals Division] can issue a permit for a new mining operation, the director must obtain an NMED secretary determination that environmental standards will be met.” NMED says it also already considers “undue risk to property” when evaluating new mining permits for the secretary’s environmental determination.

NMED says SB334 would require the mining division to *also* make “a very similar finding after consulting with NMED and other appropriate agencies.”

## **ADMINISTRATIVE IMPLICATIONS**

Although neither agency indicates additional costs associated with SB334, both report SB334 would require additional rulemaking, partly to define terms not defined in the bill. (See “Technical Issues” below.)

NMED says SB334 likely would require the department to modify its “well-established process for reviewing mining permits and making environmental determinations” to also accommodate the requirement that it consult with EMNRD on EMNRD’s separate determination. “NMED is unable to predict the scope of new administrative burdens” associated with agency involvement in two separate but similar reviews for each new mining permit.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB157 would establish a mining act forfeiture fund to be used for mine reclamation. HB239 would create a deputy mine inspector position.

## **TECHNICAL ISSUES**

Both agencies raise concerns about terminology used in SB334. EMNRD notes “disproportionate,” “threat,” and other terms are “vague and broad” and could be subject to inconsistent interpretation and “an undue risk to property” does not appear elsewhere in the Mining Act.

NMED says “hazard to public health” is not define in SB334 but is defined in Water Quality Control Commission (WQCC) regulations on protecting groundwater quality. The phrase “threat to the state’s water resources” in SB334 is not defined but, in the context of the WQCC regulations, the plain meaning of this phrase is included in the scope of hazard to public health, “defined as an exceedance of groundwater quality standards in Subsection A of 20.6.2.3103 NMAC or naturally occurring concentrations of contaminants, whichever is higher.”

## **ALTERNATIVES**

Instead of creating a new review process for new mines, NMED suggests amending Section 69-36-7.P(2) of the Mining Act to include consideration of the factors specified in SB334: “hazard to public health,” “undue risk to property,” and “threat to the state’s water resources.”

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