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HOUSE BILL 1095

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO MINING; AMENDING SECTIONS OF THE NEW MEXICO MINING ACT TO CHANGE THE MEMBERSHIP OF THE MINING COMMISSION, TO AMEND THE NUMBER OF REQUIRED INSPECTIONS, TO ALLOW FOR A CHANGE OF VENUE FOR CITIZEN SUITS AND TO INCREASE PUBLIC NOTICE AND OPPORTUNITY FOR HEARINGS REGARDING PERMITS.

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

Section 1. Section 69-36-6 NMSA 1978 (being Laws 1993, Chapter 315, Section 6) is amended to read:

"69-36-6. MINING COMMISSION--CREATED--MEMBERS.--

A. The "mining commission" is created. The commission shall consist of seven voting members, including:

(1) the director of the bureau of mines and mineral resources of the New Mexico institute of mining and technology or ~~[an academic from a mining-related field to be~~

1 ~~appointed for a four-year term by the governor with the advice~~
2 ~~and consent of the senate]~~ his designee;

3 (2) the secretary of environment or his
4 designee;

5 (3) the state engineer or his designee;

6 (4) the commissioner of public lands or his
7 designee;

8 (5) the director of the department of game and
9 fish or his designee; and

10 (6) two members of the public and an alternate
11 for each, all to be appointed by the governor with the advice
12 and consent of the senate. The public members shall be chosen
13 to represent and to balance environmental and mining interests
14 while minimizing conflicts of interest. No more than one of the
15 public members and one of the alternates appointed may belong to
16 the same political party. When the initial appointments are
17 made, one of the public members and his alternate will be
18 designated to serve for two-year terms, after which all public
19 members shall serve for four years. An alternate member may
20 vote only in the absence of the public member for whom he is the
21 alternate.

22 B. The chairman of the soil and water conservation
23 commission and the director of the agricultural experiment
24 station of New Mexico state university or their designees shall
25 be nonvoting ~~[ex-officio]~~ members ~~[to]~~ of the commission.

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1 C. The commission shall elect a chairman and other
2 necessary officers and keep records of its proceedings.

3 D. The commission shall convene upon the call of the
4 chairman or a majority of its members.

5 E. A majority of the voting members of the
6 commission shall be a quorum for the transaction of business.
7 However, no action of the commission shall be valid unless
8 concurred upon by at least four of the members present.

9 F. No member of the commission, with the exception
10 of one of the public members and his alternate, shall receive,
11 or shall have received during the previous two years, more than
12 ten percent of his income directly or indirectly from permit
13 holders or applicants for permits. Each member of the
14 commission shall, upon acceptance of his appointment and prior
15 to the performance of any of his duties, file a statement of
16 disclosure with the secretary of state stating:

17 (1) the amount of money or other valuable
18 consideration received, whether provided directly or indirectly,
19 from persons subject to or who appear before the commission;

20 (2) the identity of the source of money or
21 other valuable consideration; and

22 (3) whether the money or other valuable
23 consideration was in excess of ten percent of his gross personal
24 income in either of the preceding two years.

25 G. No commissioner with any financial interest

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1 affected or potentially affected by a permit action may
2 participate in proceedings related to that permit action. "

3 Section 2. Section 69-36-7 NMSA 1978 (being Laws 1993,
4 Chapter 315, Section 7) is amended to read:

5 "69-36-7. COMMISSION--DUTIES.--The commission shall:

6 A. [~~within one year of the effective date of the New~~
7 ~~Mexico Mining Act]~~ before June 18, 1994, adopt and file
8 reasonable regulations [~~consistent with the purposes and intent~~
9 ~~of the New Mexico Mining Act]~~ necessary to implement [that] the
10 provisions of the New Mexico Mining Act, including regulations
11 that:

12 (1) consider the economic and environmental
13 effects of their implementation;

14 (2) require permitting of all new and existing
15 mining operations and exploration; and

16 (3) require annual reporting of production
17 information to the commission, which shall be kept confidential
18 if otherwise required by law;

19 B. adopt regulations for new mining operations that
20 allow the director to select a qualified expert who may:

21 (1) review and comment to the director on the
22 adequacy of baseline data gathered prior to submission of the
23 permit application for use in the permit application process;

24 (2) recommend to the director additional
25 baseline data that may be necessary in the review of the

1 proposed mining activity;

2 (3) recommend to the director methodology
3 guidelines to be followed in the collection of all baseline
4 data; and

5 (4) review and comment on the permit
6 application;

7 C. adopt regulations that require and provide for
8 the issuance and renewal of permits for new and existing mining
9 operations and exploration and that establish schedules to bring
10 existing mining operations into compliance with the requirements
11 of the New Mexico Mining Act; provided the term of a permit for
12 a new mining operation shall not exceed twenty years and the
13 term of renewals of permits for new mining operations shall not
14 exceed ten years;

15 D. adopt regulations that provide for permit
16 modifications. The commission shall establish criteria to
17 determine which permit modifications may have significant
18 environmental impact. Modifications that the director
19 determines will have significant environmental impact shall
20 require public notice and an opportunity for public hearing
21 pursuant to Subsection K of this section. A permit modification
22 to the permit for an existing mining operation shall be obtained
23 for each new discrete processing, leaching, excavation, storage
24 or stockpile unit located within the permit area of an existing
25 mining operation and not identified in the permit of an existing

1 mining operation and for each expansion of such a unit
2 identified in the permit for an existing mining operation that
3 exceeds the design limits specified in the permit. The
4 regulations shall require that permit modifications for such
5 units be approved if the director determines that the unit will:

6 (1) comply with the regulations regarding
7 permit modifications;

8 (2) incorporate the requirements of Paragraphs
9 (1), (2), (4), (5) and (6) of Subsection H of this section; and

10 (3) be sited and constructed in a manner that
11 facilitates, to the maximum extent practicable, contemporaneous
12 reclamation consistent with the closeout plan;

13 E. adopt regulations that require new and existing
14 mining operations to obtain and maintain permits for standby
15 status. A permit for standby status shall be issued for a
16 maximum term of five years; provided that upon application the
17 director may renew a permit for standby status for no more than
18 three additional five-year terms. The regulations shall require
19 that before a permit for standby status is issued or renewed an
20 owner or operator shall:

21 (1) identify the projected term of standby
22 status for each unit of the new or existing mining operation;

23 (2) take measures that reduce, to the extent
24 practicable, the formation of acid and other toxic drainage to
25 prevent releases that cause federal or state environmental

1 standards to be exceeded;

2 (3) meet applicable federal and state
3 environmental standards and regulations during the period of
4 standby status;

5 (4) stabilize waste and storage units, leach
6 piles, impoundments and pits during the term of standby status;

7 (5) comply with applicable requirements of the
8 New Mexico Mining Act and the regulations adopted pursuant to
9 that act; and

10 (6) provide an analysis of the economic
11 viability of each unit proposed for standby status;

12 F. establish by regulation closeout plan
13 requirements for existing mining operations that incorporate
14 site-specific characteristics, including consideration of
15 disturbances from previous mining operations, and that take into
16 account the mining method utilized;

17 G. establish by regulation a procedure for the
18 issuance of a permit for an existing mining operation and for
19 modifications of that permit to incorporate approved closeout
20 plans or portions of closeout plans and financial assurance
21 requirements for performance of the closeout plans. The permit
22 shall describe the permit area of the existing mining operation
23 and the design limits of units of the existing mining operation
24 based upon the site assessment submitted by the operator. The
25 permit shall contain a schedule for completion of a closeout

1 plan. The permit shall thereafter be modified to incorporate
2 the approved closeout plan or portions of the closeout plan once
3 financial assurance has been provided for completion of the
4 closeout plan or the approved portions of the closeout plan.
5 The permit may be modified for new mining units, expansions
6 beyond the design limits of a unit at an existing mining
7 operation or standby status;

8 H. establish by regulation permit and reclamation
9 requirements for new mining operations that incorporate site-
10 specific characteristics. These requirements shall, at a
11 minimum:

12 (1) require that new mining operations be
13 designed and operated using the most appropriate technology and
14 the best management practices;

15 (2) assure protection of human health and
16 safety, the environment, wildlife and domestic animals;

17 (3) include backfilling or partial backfilling
18 only when necessary to achieve reclamation objectives that
19 cannot be accomplished through other mitigation measures;

20 (4) require approval by the director that the
21 permit area will achieve a self-sustaining ecosystem appropriate
22 for the life zone of the surrounding areas following closure
23 unless conflicting with the approved post-mining land use;

24 (5) require that new mining operations be
25 designed in a manner that incorporates measures to reduce, to

1 the extent practicable, the formation of acid and other toxic
2 drainage that may otherwise occur following closure to prevent
3 releases that cause federal or state standards to be exceeded;

4 (6) require that nonpoint source surface
5 releases of acid or other toxic substances shall be contained
6 within the permit area;

7 (7) require that all waste, waste management
8 units, pits, heaps, pads and any other storage piles are
9 designed, sited and constructed in a manner that facilitates, to
10 the maximum extent practicable, contemporaneous reclamation and
11 are consistent with the new mining operation's approved
12 reclamation plan; and

13 (8) where sufficient topsoil is present, take
14 measures to preserve it from erosion or contamination and assure
15 that it is in a usable condition for sustaining vegetation when
16 needed;

17 I. adopt regulations that establish a permit
18 application process for new mining operations that includes:

19 (1) disclosure of ownership and controlling
20 interests in the new mining operation or submission of the
21 applicant's most recent form 10K required by the federal
22 securities and exchange commission;

23 (2) a statement of all mining operations within
24 the United States owned, operated or directly controlled by the
25 applicant, owner or operator and by persons or entities that

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1 directly control the applicant and the names and the addresses
2 of regulatory agencies with jurisdiction over the environmental
3 aspects of those operations and that could provide a compliance
4 history for those operations and over the preceding ten years.

5 The operator shall assist the applicant in obtaining compliance
6 history information;

7 (3) a description of the type and method of
8 mining and the engineering techniques proposed;

9 (4) the anticipated starting and termination
10 dates of each phase of the new mining operation and the number
11 of acres of land to be affected;

12 (5) the names of all affected watersheds, the
13 location of any perennial, ephemeral or intermittent surface
14 stream or tributary into which surface or pit drainage will be
15 discharged or may possibly be expected to reach and the location
16 of any spring within the permit area and the affected area;

17 (6) a determination of the probable hydrologic
18 consequences of the new mining operation and reclamation, both
19 on and off the permit area, with respect to the hydrologic
20 regime, quantity and quality of surface and ground water
21 systems, including the dissolved and suspended solids under
22 seasonal flow conditions;

23 (7) cross-sections or plans of the permit area
24 depicting:

25 (a) the nature and depth of the various

1 formations of overburden;

2 (b) the location of subsurface water, if
3 encountered, and its quality;

4 (c) the nature and location of any ore
5 body to be mined;

6 (d) the location of aquifers and springs;

7 (e) the estimated position and flow of
8 the water table;

9 (f) the proposed location of waste rock,
10 tailings, stockpiles, heaps, pads and topsoil preservation
11 areas; and

12 (g) premining vegetation and wildlife
13 habitat features present at the site;

14 (8) the potential for geochemical alteration of
15 overburden, the ore body and other materials present within the
16 permit area;

17 (9) a reclamation plan that includes a detailed
18 description of the proposed post-mining land use and how that
19 use is to be achieved; and

20 (10) premining baseline data as required by
21 regulations adopted by the commission;

22 J. adopt regulations to coordinate the roles of
23 permitting agencies involved in regulating activities related to
24 new and existing mining operations and exploration, including
25 regulatory requirements, to avoid duplicative and conflicting

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1 administration of the permitting process and other requirements;

2 K. except for regulations enacted pursuant to
3 Subsection L of this section, adopt regulations that:

4 (1) ensure that the public and permitting
5 agencies receive notice of each application for:

6 (a) issuance, renewal or revision of a
7 permit for a new or existing mining operation;

8 (b) ~~[for]~~ standby status, or exploration;

9 or

10 (c) a variance or an application for
11 release of financial assurance and any inspection prior to the
12 release of financial assurance;

13 (2) ~~[including a provision]~~ include provisions
14 that no action shall be taken on any application until an
15 opportunity for a public hearing, held in the locality of the
16 operation, is provided and that all interested persons shall be
17 given a reasonable chance to submit data, views or arguments
18 orally or in writing and to examine witnesses testifying at the
19 hearing;

20 (3) provide for a public hearing if there is
21 significant public interest in and a request for a public
22 hearing and if:

23 (a) the applicant makes substantial
24 changes in the proposed action;

25 (b) new circumstances or information

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1 develops bearing on the proposed action; or

2 (c) the applicant proposes to
3 substantially change the scale or the nature of the proposed
4 action; and

5 (4) [~~These regulations shall~~] require [~~at a~~
6 ~~minimum that~~] the applicant for issuance, renewal or revisions
7 of a permit or a variance or an application for release of
8 financial assurance and any inspection prior to release of
9 financial assurance shall provide to the director with the
10 application proof that notice of the application and public
11 hearing procedure has been:

12 [~~(1)~~] (a) provided by certified mail to
13 the owners of record [~~as shown by the most recent property tax~~
14 ~~schedule~~] of all properties within one-half mile of the property
15 on which the mining operation is located or is proposed to be
16 located;

17 [~~(2)~~] (b) provided by certified mail to
18 all municipalities and counties within a ten-mile radius of the
19 property on which the mining operation is or will be located;

20 [~~(3)~~] (c) published once in a newspaper
21 of general circulation in each county in which the property on
22 which the mining operation is or will be located [~~provided that~~
23 ~~this~~] and the notice shall appear in either the classified or
24 legal advertisements section of the newspaper and at one other
25 place in the newspaper [~~calculated~~] to give the general public

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1 the most effective notice and, when appropriate, ~~shall be~~
2 ~~printed~~ in both English and Spanish;

3 [(4)] (d) posted in at least four
4 publicly accessible and conspicuous places, including the
5 entrance to the new or existing mining operation ~~if that~~
6 ~~entrance is publicly accessible and conspicuous~~; and

7 [(5)] (e) mailed by certified mail to all
8 persons who have made a written request to the director ~~for~~ a
9 notice of the application and notification if the application is
10 complete;

11 L. adopt regulations to provide for permits, without
12 notice and hearing, to address mining operations that have
13 minimal impact on the environment; provided that such permits
14 shall require general plans and shall otherwise reduce the
15 permitting requirements of the New Mexico Mining Act;

16 M. establish by regulation a schedule of annual
17 administrative and permit fees, which shall equal and not exceed
18 the estimated costs of administration, implementation,
19 enforcement, investigation and permitting pursuant to the
20 provisions of the New Mexico Mining Act. The size of the
21 operation, anticipated inspection frequency and other factors
22 deemed relevant by the commission shall be considered in the
23 determination of the fees. The fees established pursuant to
24 this subsection shall be deposited in the mining act fund;

25 N. establish by regulation a continuing process of

1 review of mining and reclamation practices in New Mexico that
2 provides for periodic review and amendment of regulations and
3 procedures to provide for the protection of the environment and
4 consider the economic effects of the regulations;

5 0. adopt regulations governing the provision of
6 variances issued by the director, stating the procedures for
7 seeking a variance, including provisions for public notice and
8 an opportunity for a hearing in the locality where the variance
9 will be operative, the limitations on provision of variances,
10 requiring the petitioner to present sufficient evidence to prove
11 that failure to grant a variance will impose an undue economic
12 burden and that granting the variance will not result in a
13 significant threat to human health, safety or the environment;

14 P. provide by regulation that, prior to the issuance
15 of any permit for a new mining operation pursuant to the
16 provisions of the New Mexico Mining Act, the permit applicant or
17 operator:

18 (1) shall provide evidence to the director that
19 other applicable state and federal permits required to be
20 obtained by the new or existing mining operation either have
21 been or will be issued before the activities subject to those
22 permits begin; and

23 (2) shall provide to the director a written
24 determination from the secretary of environment stating that the
25 permit applicant has demonstrated that the activities to be

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1 permitted or authorized will be expected to achieve compliance
2 with all applicable air, water quality and other environmental
3 standards if carried out as described;

4 Q. require by regulation that the applicant file
5 with the director, prior to the issuance of a permit, financial
6 assurance. The amount of the financial assurance shall be
7 sufficient to assure the completion of the performance
8 requirements of the permit, including closure and reclamation,
9 if the work had to be performed by the director or a third party
10 contractor and shall include periodic review to account for any
11 inflationary increases and anticipated changes in reclamation or
12 closure costs. The regulations shall specify that financial
13 requirements shall neither duplicate nor be less comprehensive
14 than the federal financial requirements. The form and amount of
15 the financial assurance shall be subject to the approval of the
16 director as part of the permit application; provided, financial
17 assurance does not include any type or variety of self-guarantee
18 or self-insurance;

19 R. require by regulation that the permittee may file
20 an application with the director for the release of all or part
21 of the permittee's financial assurance. The permittee shall not
22 file an application for release of financial assurance more than
23 once per year for each mining operation. The application shall
24 describe the reclamation measures completed and shall contain an
25 estimate of the costs of reclamation measures that have not been

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1 completed. Prior to release of any portion of the permittee's
2 financial assurance, the director shall conduct an inspection
3 and evaluation of the reclamation work involved. The director
4 shall notify persons who have requested advance notice of the
5 inspection. Interested members of the public shall be allowed
6 to be present at the inspection of the reclamation work by the
7 director.

8 (1) The director may release in whole or in
9 part the financial assurance if the reclamation covered by the
10 financial assurance has been accomplished as required by the New
11 Mexico Mining Act; provided that the director shall retain
12 financial assurance at least equal to the approved estimated
13 costs of completing reclamation measures that have not been
14 completed; and provided further that for revegetated areas, the
15 director shall retain the amount of financial assurance
16 necessary for a third party to reestablish vegetation for a
17 period of twelve years after the last year of augmented seeding,
18 fertilizing, irrigation or other work, unless a post-mining land
19 use is achieved that is inconsistent with the further need for
20 revegetation. For new mining operations only, no part of the
21 financial assurance necessary for a third party to reestablish
22 vegetation shall be released so long as the lands to which the
23 release would be applicable are contributing suspended solids
24 above background levels to streamflow of intermittent and
25 perennial streams.

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1 (2) A person with an interest that is or will
2 be adversely affected by release of the financial assurance may
3 file, with the director within thirty days of the date of the
4 inspection, written objections to the proposed release from
5 financial assurance. If written objections are filed and a
6 hearing is requested, the director shall inform all the
7 interested parties of the time and place of the hearing at least
8 thirty days in advance of the public hearing, and hold a public
9 hearing in the locality of the new or existing mining operation
10 or exploration operation proposed for release from financial
11 assurance. The date, time and location of the public hearing
12 shall be advertised by the director in a newspaper of general
13 circulation in the locality for two consecutive weeks, and all
14 persons who have submitted a written request in advance to the
15 director to receive notices of hearings shall be provided notice
16 at least thirty days prior to the hearing;

17 S. establish coordinated procedures that avoid
18 duplication for the inspection, monitoring and sampling of air,
19 soil and water and enforcement of applicable requirements of the
20 New Mexico Mining Act, regulations adopted pursuant to that act
21 and permit conditions for new and existing mining operations and
22 exploration. The regulations shall require, at a minimum:

23 (1) inspections by the director occurring on an
24 irregular basis [~~averaging not less than one inspection per~~
25 ~~month when the mining operation is conducting significant~~

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1 ~~reclamation activities and one on-site inspection per calendar~~
2 ~~quarter at all other times and on a schedule to be established~~
3 ~~by the commission for mining operations having a minimal impact~~
4 ~~on the environment and exploration operations covered by each~~
5 ~~permit]~~ according to the following schedule:

6 (a) at least one inspection per quarter
7 when the mining operation is conducting significant reclamation
8 activities;

9 (b) at least two inspections per year for
10 active mining operations;

11 (c) at least one inspection per year on
12 inactive sites;

13 (d) at least one inspection per year
14 following completion of all significant reclamation activities,
15 but prior to release of financial assurance; and

16 (e) on a schedule to be established by
17 the commission for mining or exploration operations having a
18 minimal impact on the environment;

19 (2) inspections shall occur without prior
20 notice to the permittee or his agents or employees except for
21 necessary on-site meetings with the permittee;

22 (3) when the director determines that a
23 condition or practice exists that violates a requirement of the
24 New Mexico Mining Act, a regulation adopted pursuant to that act
25 or a permit issued under that act, which condition, practice or

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1 violation also creates an imminent danger to the health or
2 safety of the public or will cause significant imminent
3 environmental harm, the director shall immediately order a
4 cessation of the new or existing mining operation or the
5 exploration operation or the portion of that operation relevant
6 to the condition, practice or violation. The cessation order
7 shall remain in effect until the director determines that the
8 condition, practice or violation has been abated or until
9 modified, vacated or terminated by the director or the
10 commission;

11 (4) when the director determines that an owner
12 or operator is in violation of a requirement of the New Mexico
13 Mining Act, a regulation adopted pursuant to that act or a
14 permit issued pursuant to that act but the violation does not
15 create an imminent danger to the health or safety of the public
16 or will not cause significant imminent environmental harm, the
17 director shall issue a notice to the owner or operator fixing a
18 reasonable time, not to exceed sixty days, for the abatement of
19 the violation. If, upon expiration of the period of time as
20 originally fixed or subsequently extended for good cause shown,
21 the director finds that the violation has not been abated, he
22 shall immediately order a cessation of new or existing mining
23 operations or exploration operations or the portion thereof
24 relevant to the violation. The cessation order shall remain in
25 effect until the director determines that the violation has been

1 abated; and

2 (5) when the director determines that a pattern
3 of violations of the requirements of the New Mexico Mining Act
4 or of the regulations adopted pursuant to that act or the permit
5 required by that act exists or has existed and, if the director
6 also finds that such violations are caused by the unwarranted
7 failure of the owner or operator to comply with the requirements
8 of that act, regulation or permit or that such violations are
9 willfully caused by the owner or operator, the director shall
10 immediately issue an order to the owner or operator to show
11 cause as to why the permit should not be suspended or revoked;

12 T. provide for the transfer of a permit to a
13 successor operator, providing for release of the first operator
14 from obligations under the permit, including financial
15 assurance, following the approved assumption of such obligations
16 and financial assurance by the successor operator;

17 U. adopt regulations providing that the owner or
18 operator of an existing mining operation or a new mining
19 operation who has completed some reclamation measures prior to
20 the effective date of the regulations adopted pursuant to the
21 New Mexico Mining Act may apply for an inspection of those
22 reclamation measures and a release from further requirements
23 pursuant to that act for the reclaimed areas if, after an
24 inspection, the director determines that the reclamation
25 measures satisfy the requirements of that act and the

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1 substantive requirements for reclamation pursuant to the
2 applicable regulatory standards; and

3 V. develop and adopt other regulations necessary and
4 appropriate to carry out the purposes and provisions of the New
5 Mexico Mining Act. "

6 Section 3. Section 69-36-14 NMSA 1978 (being Laws 1993,
7 Chapter 315, Section 14) is amended to read:

8 "69-36-14. CITIZENS SUITS. --

9 A. A person having an interest that is or may be
10 adversely affected may commence a civil action on his own behalf
11 to compel compliance with the New Mexico Mining Act. Such
12 action may be brought against:

13 (1) the department of environment, the energy,
14 minerals and natural resources department or the commission
15 alleging a violation of the New Mexico Mining Act or of a rule,
16 regulation, order or permit issued pursuant to that act;

17 (2) a person who is alleged to be in violation
18 of a rule, regulation, order or permit issued pursuant to the
19 New Mexico Mining Act; or

20 (3) the department of environment, the energy,
21 minerals and natural resources department or the commission
22 alleging a failure to perform any nondiscretionary act or duty
23 [~~under~~] required by the New Mexico Mining Act; provided,
24 however, that no action pursuant to this section shall be
25 commenced if the department of environment, the energy, minerals

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1 and natural resources department or the commission has commenced
2 and is diligently prosecuting a civil action in a court of this
3 state or an administrative enforcement proceeding to require
4 compliance with that act. In an administrative or court action
5 commenced by the department of environment, the energy, minerals
6 and natural resources department or the commission, a person
7 whose interest may be adversely affected and who has provided
8 notice pursuant to Subsection B of this section prior to the
9 initiation of the action may intervene as a matter of right.

10 B. No action shall be commenced pursuant to this
11 section prior to sixty days after the plaintiff has given
12 written notice to the department of environment, the energy,
13 minerals and natural resources department, the commission, the
14 attorney general and the alleged violator of the New Mexico
15 Mining Act; provided, however, when the violation or order
16 complained of constitutes an immediate threat to the health or
17 safety of the plaintiff or would immediately and irreversibly
18 impair a legal interest of the plaintiff, an action pursuant to
19 this section may be brought immediately after notification of
20 the proper parties.

21 C. ~~[An action brought pursuant to this section~~
22 ~~alleging a violation of the New Mexico Mining Act or the~~
23 ~~regulations adopted pursuant to that act other than suits~~
24 ~~against the department of environment, the energy, minerals and~~
25 ~~natural resources department or the commission shall be brought~~

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1 ~~in the judicial district in which the mining operation~~
2 ~~complained of is located. Suits against the department of~~
3 ~~environment, the energy, minerals and natural resources~~
4 ~~department or the commission shall be brought in the district~~
5 ~~court of Santa Fe] Suits against the department of environment,~~
6 ~~the energy, minerals and natural resources department or the~~
7 ~~commission shall be brought in the district court of Santa Fe~~
8 ~~county. Suits only against one or more owners or operators of~~
9 ~~one or more mining operations shall be brought in the district~~
10 ~~court where one of the mining operations is located. If an~~
11 ~~action is brought against the department of environment, the~~
12 ~~energy, minerals and natural resources department or the~~
13 ~~commission and the owner or operator of a mining operation, such~~
14 ~~owner or operator may apply for a change of venue to the~~
15 ~~judicial district in which the mining operation is located. If~~
16 ~~not already a party, an owner or operator may intervene, upon a~~
17 ~~showing that the action relates primarily to a dispute regarding~~
18 ~~the single mining operation and apply for such a change of~~
19 ~~venue. The district court shall grant a change of venue upon a~~
20 ~~showing that the action relates primarily to a dispute regarding~~
21 ~~the subject single mining operation and a showing that a forum~~
22 ~~non conveniens analysis suggests that the location of the mining~~
23 ~~operation is a superior venue.~~

24 D. In an action brought pursuant to this section,
25 the department of environment, the energy, minerals and natural

1 resources department or the commission, if not a party, may
2 intervene.

3 E. The court, in issuing a final order in an action
4 brought pursuant to this section, may award costs of litigation,
5 including [~~attorneys'~~] attorney and expert witness fees, to a
6 party whenever the court determines such award is appropriate.
7 The court may, if a temporary injunction or preliminary
8 injunction is sought, require the filing of a bond or equivalent
9 security in accordance with the rules of civil procedure. "

State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 5, 1997

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7 **Mr. Speaker:**

8
9 **Your ENERGY AND NATURAL RESOURCES COMMITTEE, to**
10 **whom has been referred**

11
12 **HOUSE BILL 1095**

13 **has had it under consideration and reports same with**
14 **recommendation that it DO NOT PASS, but that**

15
16 **HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**
17 **SUBSTITUTE FOR HOUSE BILL 1095**

18
19 **DO PASS, and thence referred to the CONSUMER AND PUBLIC**
20 **AFFAIRS COMMITTEE.**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HEHRC\HB1095

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Respectfully submitted,

James Roger Madalena, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 1 Against

Yes: 7

No: Stewart

Excused: Chavez, Garcia, M P., Getty, Knowles

Absent: None

HEHRC\HB1095

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1095

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO MINING; AMENDING SECTIONS OF THE NEW MEXICO MINING
ACT TO CHANGE THE MEMBERSHIP OF THE MINING COMMISSION, TO AMEND
THE NUMBER OF REQUIRED INSPECTIONS, TO ALLOW FOR A CHANGE OF
VENUE FOR CITIZEN SUITS AND TO INCREASE PUBLIC NOTICE AND
OPPORTUNITY FOR HEARINGS REGARDING PERMITS.

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

Section 1. Section 69-36-6 NMSA 1978 (being Laws 1993,
Chapter 315, Section 6) is amended to read:

"69-36-6. MINING COMMISSION--CREATED--MEMBERS.--

A. The "mining commission" is created. The
commission shall consist of seven voting members, including:

(1) the director of the bureau of mines and
mineral resources of the New Mexico institute of mining and
technology or ~~[an academic from a mining-related field to be
appointed for a four-year term by the governor with the advice
and consent of the senate]~~ his designee;

(2) the secretary of environment or his
designee;

(3) the state engineer or his designee;

1 (4) the commissioner of public lands or his
2 designee;

3 (5) the director of the department of game and
4 fish or his designee; and

5 (6) two members of the public and an alternate
6 for each, all to be appointed by the governor with the advice
7 and consent of the senate. The public members shall be chosen
8 to represent and to balance environmental and mining interests
9 while minimizing conflicts of interest. No more than one of the
10 public members and one of the alternates appointed may belong to
11 the same political party. When the initial appointments are
12 made, one of the public members and his alternate will be
13 designated to serve for two-year terms, after which all public
14 members shall serve for four years. An alternate member may
15 vote only in the absence of the public member for whom he is the
16 alternate.

17 B. The chairman of the soil and water conservation
18 commission and the director of the agricultural experiment
19 station of New Mexico state university or their designees shall
20 be nonvoting [~~ex-officio~~] members [~~to~~] of the commission.

21 C. The commission shall elect a chairman and other
22 necessary officers and keep records of its proceedings.

23 D. The commission shall convene upon the call of the
24 chairman or a majority of its members.

25 E. A majority of the voting members of the

1 commission shall be a quorum for the transaction of business.

2 However, no action of the commission shall be valid unless

3 concurred upon by at least four of the members present.

4 F. No member of the commission, with the exception of
5 one of the public members and his alternate, shall receive, or
6 shall have received during the previous two years, more than ten
7 percent of his income directly or indirectly from permit holders or
8 applicants for permits. Each member of the commission shall, upon
9 acceptance of his appointment and prior to the performance of any
10 of his duties, file a statement of disclosure with the secretary of
11 state stating:

12 (1) the amount of money or other valuable
13 consideration received, whether provided directly or indirectly,
14 from persons subject to or who appear before the commission;

15 (2) the identity of the source of money or other
16 valuable consideration; and

17 (3) whether the money or other valuable
18 consideration was in excess of ten percent of his gross personal
19 income in either of the preceding two years.

20 G. No commissioner with any financial interest affected
21 or potentially affected by a permit action may participate in
22 proceedings related to that permit action. "

23 Section 2. Section 69-36-7 NMSA 1978 (being Laws 1993,
24 Chapter 315, Section 7) is amended to read:

25 "69-36-7. COMMISSION--DUTIES.--The commission shall:

1 A. ~~[within one year of the effective date of the New~~
2 ~~Mexico Mining Act]~~ before June 18, 1994, adopt and file reasonable
3 regulations consistent with the purposes and intent of the New
4 Mexico Mining Act necessary to implement ~~[that]~~ the provisions of
5 the New Mexico Mining Act, including regulations that:

6 (1) consider the economic and environmental
7 effects of their implementation;

8 (2) require permitting of all new and existing
9 mining operations and exploration; and

10 (3) require annual reporting of production
11 information to the commission, which shall be kept confidential if
12 otherwise required by law;

13 B. adopt regulations for new mining operations that
14 allow the director to select a qualified expert who may:

15 (1) review and comment to the director on the
16 adequacy of baseline data gathered prior to submission of the
17 permit application for use in the permit application process;

18 (2) recommend to the director additional baseline
19 data that may be necessary in the review of the proposed mining
20 activity;

21 (3) recommend to the director methodology
22 guidelines to be followed in the collection of all baseline data;
23 and

24 (4) review and comment on the permit application;

25 C. adopt regulations that require and provide for the

1 issuance and renewal of permits for new and existing mining
2 operations and exploration and that establish schedules to bring
3 existing mining operations into compliance with the requirements of
4 the New Mexico Mining Act; provided the term of a permit for a new
5 mining operation shall not exceed twenty years and the term of
6 renewals of permits for new mining operations shall not exceed ten
7 years;

8 D. adopt regulations that provide for permit
9 modifications. The commission shall establish criteria to
10 determine which permit modifications may have significant
11 environmental impact. Modifications that the director determines
12 will have significant environmental impact shall require public
13 notice and an opportunity for public hearing pursuant to Subsection
14 K of this section. A permit modification to the permit for an
15 existing mining operation shall be obtained for each new discrete
16 processing, leaching, excavation, storage or stockpile unit located
17 within the permit area of an existing mining operation and not
18 identified in the permit of an existing mining operation and for
19 each expansion of such a unit identified in the permit for an
20 existing mining operation that exceeds the design limits specified
21 in the permit. The regulations shall require that permit
22 modifications for such units be approved if the director determines
23 that the unit will:

24 (1) comply with the regulations regarding permit
25 modifications;

1 (2) incorporate the requirements of Paragraphs
2 (1), (2), (4), (5) and (6) of Subsection H of this section; and

3 (3) be sited and constructed in a manner that
4 facilitates, to the maximum extent practicable, contemporaneous
5 reclamation consistent with the closeout plan;

6 E. adopt regulations that require new and existing
7 mining operations to obtain and maintain permits for standby
8 status. A permit for standby status shall be issued for a maximum
9 term of five years; provided that upon application the director may
10 renew a permit for standby status for no more than three additional
11 five-year terms. The regulations shall require that before a
12 permit for standby status is issued or renewed an owner or operator
13 shall:

14 (1) identify the projected term of standby status
15 for each unit of the new or existing mining operation;

16 (2) take measures that reduce, to the extent
17 practicable, the formation of acid and other toxic drainage to
18 prevent releases that cause federal or state environmental
19 standards to be exceeded;

20 (3) meet applicable federal and state
21 environmental standards and regulations during the period of
22 standby status;

23 (4) stabilize waste and storage units, leach
24 piles, impoundments and pits during the term of standby status;

25 (5) comply with applicable requirements of the

1 New Mexico Mining Act and the regulations adopted pursuant to that
2 act; and

3 (6) provide an analysis of the economic viability
4 of each unit proposed for standby status;

5 F. establish by regulation closeout plan requirements
6 for existing mining operations that incorporate site-specific
7 characteristics, including consideration of disturbances from
8 previous mining operations, and that take into account the mining
9 method utilized;

10 G. establish by regulation a procedure for the issuance
11 of a permit for an existing mining operation and for modifications
12 of that permit to incorporate approved closeout plans or portions
13 of closeout plans and financial assurance requirements for
14 performance of the closeout plans. The permit shall describe the
15 permit area of the existing mining operation and the design limits
16 of units of the existing mining operation based upon the site
17 assessment submitted by the operator. The permit shall contain a
18 schedule for completion of a closeout plan. The permit shall
19 thereafter be modified to incorporate the approved closeout plan or
20 portions of the closeout plan once financial assurance has been
21 provided for completion of the closeout plan or the approved
22 portions of the closeout plan. The permit may be modified for new
23 mining units, expansions beyond the design limits of a unit at an
24 existing mining operation or standby status;

25 H. establish by regulation permit and reclamation

1 requirements for new mining operations that incorporate site-
2 specific characteristics. These requirements shall, at a minimum:

3 (1) require that new mining operations be
4 designed and operated using the most appropriate technology and the
5 best management practices;

6 (2) assure protection of human health and safety,
7 the environment, wildlife and domestic animals;

8 (3) include backfilling or partial backfilling
9 only when necessary to achieve reclamation objectives that cannot
10 be accomplished through other mitigation measures;

11 (4) require approval by the director that the
12 permit area will achieve a self-sustaining ecosystem appropriate
13 for the life zone of the surrounding areas following closure unless
14 conflicting with the approved post-mining land use;

15 (5) require that new mining operations be
16 designed in a manner that incorporates measures to reduce, to the
17 extent practicable, the formation of acid and other toxic drainage
18 that may otherwise occur following closure to prevent releases that
19 cause federal or state standards to be exceeded;

20 (6) require that nonpoint source surface releases
21 of acid or other toxic substances shall be contained within the
22 permit area;

23 (7) require that all waste, waste management
24 units, pits, heaps, pads and any other storage piles are designed,
25 sited and constructed in a manner that facilitates, to the maximum

1 extent practicable, contemporaneous reclamation and are consistent
2 with the new mining operation's approved reclamation plan; and

3 (8) where sufficient topsoil is present, take
4 measures to preserve it from erosion or contamination and assure
5 that it is in a usable condition for sustaining vegetation when
6 needed;

7 I. adopt regulations that establish a permit
8 application process for new mining operations that includes:

9 (1) disclosure of ownership and controlling
10 interests in the new mining operation or submission of the
11 applicant's most recent form 10K required by the federal securities
12 exchange commission;

13 (2) a statement of all mining operations within
14 the United States owned, operated or directly controlled by the
15 applicant, owner or operator and by persons or entities that
16 directly control the applicant and the names and the addresses of
17 regulatory agencies with jurisdiction over the environmental
18 aspects of those operations and that could provide a compliance
19 history for those operations and over the preceding ten years. The
20 operator shall assist the applicant in obtaining compliance history
21 information;

22 (3) a description of the type and method of
23 mining and the engineering techniques proposed;

24 (4) the anticipated starting and termination
25 dates of each phase of the new mining operation and the number of

1 acres of land to be affected;

2 (5) the names of all affected watersheds, the
3 location of any perennial, ephemeral or intermittent surface stream
4 or tributary into which surface or pit drainage will be discharged
5 or may possibly be expected to reach and the location of any spring
6 within the permit area and the affected area;

7 (6) a determination of the probable hydrologic
8 consequences of the new mining operation and reclamation, both on
9 and off the permit area, with respect to the hydrologic regime,
10 quantity and quality of surface and ground water systems, including
11 the dissolved and suspended solids under seasonal flow conditions;

12 (7) cross-sections or plans of the permit area
13 depicting:

14 (a) the nature and depth of the various
15 formations of overburden;

16 (b) the location of subsurface water, if
17 encountered, and its quality;

18 (c) the nature and location of any ore body
19 to be mined;

20 (d) the location of aquifers and springs;

21 (e) the estimated position and flow of the
22 water table;

23 (f) the proposed location of waste rock,
24 tailings, stockpiles, heaps, pads and topsoil preservation areas;
25 and

1 (g) premining vegetation and wildlife
2 habitat features present at the site;

3 (8) the potential for geochemical alteration of
4 overburden, the ore body and other materials present within the
5 permit area;

6 (9) a reclamation plan that includes a detailed
7 description of the proposed post-mining land use and how that use
8 is to be achieved; and

9 (10) premining baseline data as required by
10 regulations adopted by the commission;

11 J. adopt regulations to coordinate the roles of
12 permitting agencies involved in regulating activities related to
13 new and existing mining operations and exploration, including
14 regulatory requirements, to avoid duplicative and conflicting
15 administration of the permitting process and other requirements;

16 K. except for regulations enacted pursuant to
17 Subsection L of this section, adopt regulations that ensure that
18 the public and permitting agencies receive notice of each
19 application for issuance, renewal or revision of a permit for a new
20 or existing mining operation, for standby status, or exploration, a
21 variance or an application for release of financial assurance and
22 any inspection prior to the release of financial assurance,
23 including a provision that no action shall be taken on any
24 application until an opportunity for a public hearing, held in the
25 locality of the operation, is provided and that all interested

1 persons shall be given a reasonable chance to submit data, views or
 2 arguments orally or in writing and to examine witnesses testifying
 3 at the hearing. An additional opportunity for a public hearing may
 4 be provided if the applicant makes substantial changes in the
 5 proposed action, if there are significant new circumstances or
 6 information bearing on the proposed action or if the applicant
 7 proposes to substantially increase the scale or substantially
 8 change the nature of the proposed action and there is public
 9 interest and a request for a public hearing. These regulations
 10 shall require at a minimum that the applicant for issuance, renewal
 11 or revisions of a permit or a variance or an application for
 12 release of financial assurance and any inspection prior to release
 13 of financial assurance shall provide to the director at the time of
 14 filing the application with the director proof that notice of the
 15 application and of the procedure for requesting a public hearing
 16 has been:

17 (1) provided by certified mail to the owners of
 18 record, as shown by the most recent property tax schedule, of all
 19 properties within one-half mile of the property on which the mining
 20 operation is located or is proposed to be located;

21 (2) provided by certified mail to all
 22 municipalities and counties within a ten-mile radius of the
 23 property on which the mining operation is or will be located;

24 (3) published once in a newspaper of general
 25 circulation in each county in which the property on which the

1 mining operation is or will be located; provided that this notice
2 shall appear in either the classified or legal advertisements
3 section of the newspaper and at one other place in the newspaper
4 calculated to give the general public the most effective notice
5 and, when appropriate, shall be printed in both English and
6 Spanish;

7 (4) posted in at least four publicly accessible
8 and conspicuous places, including the entrance to the new or
9 existing mining operation if that entrance is publicly accessible
10 and conspicuous; [~~and~~]

11 (5) mailed to all persons who have made a written
12 request to the director for notice of this application; and

13 (6) mailed by certified mail to all persons on a
14 list maintained by the director of individuals and organizations
15 who have requested notice of applications under this act. If the
16 application is determined to be administratively complete by the
17 director, the applicant shall provide to the director timely proof
18 that notice of that determination has been provided by first class
19 mail to everyone who has indicated to the applicant in writing that
20 they desire information regarding the application and to a list
21 maintained by the director of individuals and organizations who
22 have requested notice of applications under this act;

23 L. adopt regulations to provide for permits, without
24 notice and hearing, to address mining operations that have minimal
25 impact on the environment; provided that such permits shall require

1 general plans and shall otherwise reduce the permitting
2 requirements of the New Mexico Mining Act;

3 M. establish by regulation a schedule of annual
4 administrative and permit fees, which shall equal and not exceed
5 the estimated costs of administration, implementation, enforcement,
6 investigation and permitting pursuant to the provisions of the New
7 Mexico Mining Act. The size of the operation, anticipated
8 inspection frequency and other factors deemed relevant by the
9 commission shall be considered in the determination of the fees.
10 The fees established pursuant to this subsection shall be deposited
11 in the mining act fund;

12 N. establish by regulation a continuing process of
13 review of mining and reclamation practices in New Mexico that
14 provides for periodic review and amendment of regulations and
15 procedures to provide for the protection of the environment and
16 consider the economic effects of the regulations;

17 O. adopt regulations governing the provision of
18 variances issued by the director, stating the procedures for
19 seeking a variance, including provisions for public notice and an
20 opportunity for a hearing in the locality where the variance will
21 be operative, the limitations on provision of variances, requiring
22 the petitioner to present sufficient evidence to prove that failure
23 to grant a variance will impose an undue economic burden and that
24 granting the variance will not result in a significant threat to
25 human health, safety or the environment;

1 P. provide by regulation that, prior to the issuance of
2 any permit for a new mining operation pursuant to the provisions of
3 the New Mexico Mining Act, the permit applicant or operator:

4 (1) shall provide evidence to the director that
5 other applicable state and federal permits required to be obtained
6 by the new or existing mining operation either have been or will be
7 issued before the activities subject to those permits begin; and

8 (2) shall provide to the director a written
9 determination from the secretary of environment stating that the
10 permit applicant has demonstrated that the activities to be
11 permitted or authorized will be expected to achieve compliance with
12 all applicable air, water quality and other environmental standards
13 if carried out as described;

14 Q. require by regulation that the applicant file with
15 the director, prior to the issuance of a permit, financial
16 assurance. The amount of the financial assurance shall be
17 sufficient to assure the completion of the performance requirements
18 of the permit, including closure and reclamation, if the work had
19 to be performed by the director or a third party contractor and
20 shall include periodic review to account for any inflationary
21 increases and anticipated changes in reclamation or closure costs.
22 The regulations shall specify that financial requirements shall
23 neither duplicate nor be less comprehensive than the federal
24 financial requirements. The form and amount of the financial
25 assurance shall be subject to the approval of the director as part

1 of the permit application; provided, financial assurance does not
2 include any type or variety of self-guarantee or self-insurance;

3 R. require by regulation that the permittee may file an
4 application with the director for the release of all or part of the
5 permittee's financial assurance. The permittee shall not file an
6 application for release of financial assurance more than once per
7 year for each mining operation. The application shall describe the
8 reclamation measures completed and shall contain an estimate of the
9 costs of reclamation measures that have not been completed. Prior
10 to release of any portion of the permittee's financial assurance,
11 the director shall conduct an inspection and evaluation of the
12 reclamation work involved. The director shall notify persons who
13 have requested advance notice of the inspection. Interested
14 members of the public shall be allowed to be present at the
15 inspection of the reclamation work by the director.

16 (1) The director may release in whole or in part
17 the financial assurance if the reclamation covered by the financial
18 assurance has been accomplished as required by the New Mexico
19 Mining Act; provided that the director shall retain financial
20 assurance at least equal to the approved estimated costs of
21 completing reclamation measures that have not been completed; and
22 provided further that for revegetated areas, the director shall
23 retain the amount of financial assurance necessary for a third
24 party to reestablish vegetation for a period of twelve years after
25 the last year of augmented seeding, fertilizing, irrigation or

1 other work, unless a post-mining land use is achieved that is
2 inconsistent with the further need for revegetation. For new
3 mining operations only, no part of the financial assurance
4 necessary for a third party to reestablish vegetation shall be
5 released so long as the lands to which the release would be
6 applicable are contributing suspended solids above background
7 levels to streamflow of intermittent and perennial streams.

8 (2) A person with an interest that is or will be
9 adversely affected by release of the financial assurance may file,
10 with the director within thirty days of the date of the inspection,
11 written objections to the proposed release from financial
12 assurance. If written objections are filed and a hearing is
13 requested, the director shall inform all the interested parties of
14 the time and place of the hearing at least thirty days in advance
15 of the public hearing, and hold a public hearing in the locality of
16 the new or existing mining operation or exploration operation
17 proposed for release from financial assurance. The date, time and
18 location of the public hearing shall be advertised by the director
19 in a newspaper of general circulation in the locality for two
20 consecutive weeks, and all persons who have submitted a written
21 request in advance to the director to receive notices of hearings
22 shall be provided notice at least thirty days prior to the hearing;

23 S. establish coordinated procedures that avoid
24 duplication for the inspection, monitoring and sampling of air,
25 soil and water and enforcement of applicable requirements of the

1 New Mexico Mining Act, regulations adopted pursuant to that act and
 2 permit conditions for new and existing mining operations and
 3 exploration. The regulations shall require, at a minimum:

4 (1) inspections by the director occurring on an
 5 irregular basis [~~averaging not less than one inspection per month~~
 6 ~~when the mining operation is conducting significant reclamation~~
 7 ~~activities and one on-site inspection per calendar quarter at all~~
 8 ~~other times and on a schedule to be established by the commission~~
 9 ~~for mining operations having a minimal impact on the environment~~
 10 ~~and exploration operations covered by each permit] according to the
 11 following schedule:~~

12 (a) at least one inspection per month when
 13 the mining operation is conducting significant reclamation
 14 activities;

15 (b) at least two inspections per year for
 16 active mining operations;

17 (c) at least one inspection per year on
 18 inactive sites;

19 (d) at least one inspection per year
 20 following completion of all significant reclamation activities, but
 21 prior to release of financial assurance; and

22 (e) mining operations having a minimal
 23 impact on the environment and exploration operations will be
 24 inspected on a schedule to be established by the commission

25 (2) inspections shall occur without prior notice

1 to the permittee or his agents or employees except for necessary
2 on-site meetings with the permittee;

3 (3) when the director determines that a condition
4 or practice exists that violates a requirement of the New Mexico
5 Mining Act, a regulation adopted pursuant to that act or a permit
6 issued under that act, which condition, practice or violation also
7 creates an imminent danger to the health or safety of the public or
8 will cause significant imminent environmental harm, the director
9 shall immediately order a cessation of the new or existing mining
10 operation or the exploration operation or the portion of that
11 operation relevant to the condition, practice or violation. The
12 cessation order shall remain in effect until the director
13 determines that the condition, practice or violation has been
14 abated or until modified, vacated or terminated by the director or
15 the commission;

16 (4) when the director determines that an owner or
17 operator is in violation of a requirement of the New Mexico Mining
18 Act, a regulation adopted pursuant to that act or a permit issued
19 pursuant to that act but the violation does not create an imminent
20 danger to the health or safety of the public or will not cause
21 significant imminent environmental harm, the director shall issue a
22 notice to the owner or operator fixing a reasonable time, not to
23 exceed sixty days, for the abatement of the violation. If, upon
24 expiration of the period of time as originally fixed or
25 subsequently extended for good cause shown, the director finds that

1 the violation has not been abated, he shall immediately order a
2 cessation of new or existing mining operations or exploration
3 operations or the portion thereof relevant to the violation. The
4 cessation order shall remain in effect until the director
5 determines that the violation has been abated; and

6 (5) when the director determines that a pattern
7 of violations of the requirements of the New Mexico Mining Act or
8 of the regulations adopted pursuant to that act or the permit
9 required by that act exists or has existed and, if the director
10 also finds that such violations are caused by the unwarranted
11 failure of the owner or operator to comply with the requirements of
12 that act, regulation or permit or that such violations are
13 willfully caused by the owner or operator, the director shall
14 immediately issue an order to the owner or operator to show cause
15 as to why the permit should not be suspended or revoked;

16 T. provide for the transfer of a permit to a successor
17 operator, providing for release of the first operator from
18 obligations under the permit, including financial assurance,
19 following the approved assumption of such obligations and financial
20 assurance by the successor operator;

21 U. adopt regulations providing that the owner or
22 operator of an existing mining operation or a new mining operation
23 who has completed some reclamation measures prior to the effective
24 date of the regulations adopted pursuant to the New Mexico Mining
25 Act may apply for an inspection of those reclamation measures and a

1 release from further requirements pursuant to that act for the
2 reclaimed areas if, after an inspection, the director determines
3 that the reclamation measures satisfy the requirements of that act
4 and the substantive requirements for reclamation pursuant to the
5 applicable regulatory standards; and

6 V. develop and adopt other regulations necessary and
7 appropriate to carry out the purposes and provisions of the New
8 Mexico Mining Act. "

9 Section 3. Section 69-36-14 NMSA 1978 (being Laws 1993,
10 Chapter 315, Section 14) is amended to read:

11 "69-36-14. CITIZENS SUITS. --

12 A. A person having an interest that is or may be
13 adversely affected may commence a civil action on his own behalf to
14 compel compliance with the New Mexico Mining Act. Such action may
15 be brought against:

16 (1) the department of environment, the energy,
17 minerals and natural resources department or the commission
18 alleging a violation of the New Mexico Mining Act or of a rule,
19 regulation, order or permit issued pursuant to that act;

20 (2) a person who is alleged to be in violation of
21 a rule, regulation, order or permit issued pursuant to the New
22 Mexico Mining Act; or

23 (3) the department of environment, the energy,
24 minerals and natural resources department or the commission
25 alleging a failure to perform any nondiscretionary act or duty

1 ~~[under]~~ required by the New Mexico Mining Act; provided, however,
 2 that no action pursuant to this section shall be commenced if the
 3 department of environment, the energy, minerals and natural
 4 resources department or the commission has commenced and is
 5 diligently prosecuting a civil action in a court of this state or
 6 an administrative enforcement proceeding to require compliance with
 7 that act. In an administrative or court action commenced by the
 8 department of environment, the energy, minerals and natural
 9 resources department or the commission, a person whose interest may
 10 be adversely affected and who has provided notice pursuant to
 11 Subsection B of this section prior to the initiation of the action
 12 may intervene as a matter of right.

13 B. No action shall be commenced pursuant to this
 14 section prior to sixty days after the plaintiff has given written
 15 notice to the department of environment, the energy, minerals and
 16 natural resources department, the commission, the attorney general
 17 and the alleged violator of the New Mexico Mining Act; provided,
 18 however, when the violation or order complained of constitutes an
 19 immediate threat to the health or safety of the plaintiff or would
 20 immediately and irreversibly impair a legal interest of the
 21 plaintiff, an action pursuant to this section may be brought
 22 immediately after notification of the proper parties.

23 ~~[C. An action brought pursuant to this section alleging~~
 24 ~~a violation of the New Mexico Mining Act or the regulations adopted~~
 25 ~~pursuant to that act other than suits against the department of~~

1 ~~environment, the energy, minerals and natural resources department~~
2 ~~or the commission shall be brought in the judicial district in~~
3 ~~which the mining operation complained of is located. Suits against~~
4 ~~the department of environment, the energy, minerals and natural~~
5 ~~resources department or the commission shall be brought in the~~
6 ~~district court of Santa Fe.]~~

7 C. Except as otherwise provided herein, suits against
8 the department of environment, the energy, minerals and natural
9 resources department or the commission shall be brought in the
10 district court of Santa Fe county. Suits only against one or more
11 owners or operators of one or more mining operations shall be
12 brought in the district court where one of the mining operations is
13 located. If an action is brought against the department of
14 environment, the energy, minerals and natural resources department
15 or the commission and the owner or operator of a mining operation,
16 such owner or operator may apply for a change of venue to the
17 judicial district in which the mining operation is located. If not
18 already a party, an owner or operator may intervene, upon a showing
19 that the action relates primarily to a dispute regarding the single
20 mining operation and apply for such a change of venue. The
21 district court shall grant a change of venue upon a showing that
22 the action relates primarily to a dispute regarding the subject
23 single mining operation and a showing that a forum non conveniens
24 analysis suggests that the location of the mining operation is a
25 superior venue.

HENRC/HB 1095

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 17, 1997

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
SUBSTITUTE FOR HOUSE BILL 1095

has had it under consideration and reports same with recommendation
that it DO PASS.

Respectfully submitted,

Michael S. Sanchez, Chairman

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Eisenstadt, Griego, Kysar, Macias

Absent: None

H1095C01

Underscored material = new
[bracketed material] = delete