

1 HOUSE BILL 255

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Matthew McQueen

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10 AN ACT

11 RELATED TO MINING; PROHIBITING CERTAIN CORPORATE GUARANTEES
12 THAT ASSURE THE PERFORMANCE REQUIREMENTS OF A MINING PERMIT.

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

15 SECTION 1. Section 69-36-7 NMSA 1978 (being Laws 1993,
16 Chapter 315, Section 7, as amended) is amended to read:

17 "69-36-7. COMMISSION--DUTIES.--The commission shall:

18 A. before June 18, 1994, adopt and file reasonable
19 regulations consistent with the purposes and intent of the New
20 Mexico Mining Act necessary to implement the provisions of the
21 New Mexico Mining Act, including regulations that:

22 (1) consider the economic and environmental
23 effects of their implementation;

24 (2) require permitting of all new and existing
25 mining operations and exploration; and

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

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

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

9 (2) recommend to the director additional
10 baseline data that may be necessary in the review of the
11 proposed mining activity;

12 (3) recommend to the director methodology
13 guidelines to be followed in the collection of all baseline
14 data; and

15 (4) review and comment on the permit
16 application;

17 C. adopt regulations that require and provide for
18 the issuance and renewal of permits for new and existing mining
19 operations and exploration and that establish schedules to
20 bring existing mining operations into compliance with the
21 requirements of the New Mexico Mining Act; provided that the
22 term of a permit for a new mining operation shall not exceed
23 twenty years and the term of renewals of permits for new mining
24 operations shall not exceed ten years;

25 D. adopt regulations that provide for permit

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

17 (1) comply with the regulations regarding
18 permit modifications;

19 (2) incorporate the requirements of Paragraphs
20 (1), (2), (4), (5) and (6) of Subsection H of this section; and

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

24 E. adopt regulations that require new and existing
25 mining operations to obtain and maintain permits for standby

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1 status. A permit for standby status shall be issued for a
2 maximum term of five years; provided that, upon application,
3 the director may renew a permit for standby status for no more
4 than three additional five-year terms. The regulations shall
5 require that, before a permit for standby status is issued or
6 renewed, an owner or operator shall:

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

9 (2) take measures that reduce, to the extent
10 practicable, the formation of acid and other toxic drainage to
11 prevent releases that cause federal or state environmental
12 standards to be exceeded;

13 (3) meet applicable federal and state
14 environmental standards and regulations during the period of
15 standby status;

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

18 (5) comply with applicable requirements of the
19 New Mexico Mining Act and the regulations adopted pursuant to
20 that act; and

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

23 F. establish by regulation closeout plan
24 requirements for existing mining operations that incorporate
25 site-specific characteristics, including consideration of

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1 disturbances from previous mining operations, and that take
2 into account the mining method utilized;

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

19 H. establish by regulation permit and reclamation
20 requirements for new mining operations that incorporate
21 site-specific characteristics. These requirements shall, at a
22 minimum:

23 (1) require that new mining operations be
24 designed and operated using the most appropriate technology and
25 the best management practices;

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1 (2) ensure protection of human health and
2 safety, the environment, wildlife and domestic animals;

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

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

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

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

19 (7) require that all waste, waste management
20 units, pits, heaps, pads and any other storage piles are
21 designed, sited and constructed in a manner that facilitates,
22 to the maximum extent practicable, contemporaneous reclamation
23 and are consistent with the new mining operation's approved
24 reclamation plan; and

25 (8) where sufficient topsoil is present, take

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1 measures to preserve it from erosion or contamination and
2 ensure that it is in a usable condition for sustaining
3 vegetation when needed;

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

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

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

19 (3) a description of the type and method of
20 mining and the engineering techniques proposed;

21 (4) the anticipated starting and termination
22 dates of each phase of the new mining operation and the number
23 of acres of land to be affected;

24 (5) the names of all affected watersheds, the
25 location of any perennial, ephemeral or intermittent surface

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1 stream or tributary into which surface or pit drainage will be
2 discharged or may possibly be expected to reach and the
3 location of any spring within the permit area and the affected
4 area;

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

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

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

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

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

19 (d) the location of aquifers and
20 springs;

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

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

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1 (g) pre-mining vegetation and wildlife
2 habitat features present at the site;

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

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

9 (10) pre-mining 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
13 to new and existing mining operations and exploration,
14 including regulatory requirements, to avoid duplicative and
15 conflicting administration of the permitting process and other
16 requirements;

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

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

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

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

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1 (3) published once in a newspaper of general
2 circulation in each county in which the property on which the
3 mining operation is or will be located; provided that this
4 notice shall appear in either the classified or legal
5 advertisements section of the newspaper and at one other place
6 in the newspaper calculated to give the general public the most
7 effective notice and, when appropriate, shall be printed in
8 both English and Spanish;

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

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

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

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1 requested notice of applications under the New Mexico Mining
2 Act;

3 L. adopt regulations to provide for permits,
4 without notice and hearing, to address mining operations that
5 have minimal impact on the environment; provided that such
6 permits shall require general plans and shall otherwise reduce
7 the permitting requirements of the New Mexico Mining Act;

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

17 N. establish by regulation a continuing process of
18 review of mining and reclamation practices in New Mexico that
19 provides for periodic review and amendment of regulations and
20 procedures to provide for the protection of the environment and
21 consider the economic effects of the regulations;

22 O. adopt regulations governing the provision of
23 variances issued by the director, stating the procedures for
24 seeking a variance, including provisions for public notice and
25 an opportunity for a hearing in the locality where the variance

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1 will be operative, the limitations on provision of variances,
2 requiring the petitioner to present sufficient evidence to
3 prove that failure to grant a variance will impose an undue
4 economic burden and that granting the variance will not result
5 in a significant threat to human health, safety or the
6 environment;

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

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

16 (2) shall provide to the director a written
17 determination from the secretary of environment stating that
18 the permit applicant has demonstrated that the activities to be
19 permitted or authorized will be expected to achieve compliance
20 with all applicable air and water quality and other
21 environmental standards if carried out as described;

22 Q. require by regulation that the applicant file
23 with the director, prior to the issuance of a permit, financial
24 assurance. The amount of the financial assurance shall be
25 sufficient to assure the completion of the performance

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1 requirements of the permit, including closure and reclamation,
2 if the work has to be performed by the director or a third-
3 party contractor and shall include periodic review to account
4 for any inflationary increases and anticipated changes in
5 reclamation or closure costs. The regulations shall specify
6 that financial requirements shall neither duplicate nor be less
7 comprehensive than the federal financial requirements. The
8 form and amount of the financial assurance shall be subject to
9 the approval of the director as part of the permit application;
10 provided that financial assurance does not include any type or
11 variety of self-guarantee [~~or~~], self-insurance or guarantee of
12 an affiliated corporation or other affiliated person;

13 R. require by regulation that the permittee may
14 file an application with the director for the release of all or
15 part of the permittee's financial assurance. The application
16 shall describe the reclamation measures completed and shall
17 contain an estimate of the costs of reclamation measures that
18 have not been completed. Prior to release of any portion of
19 the permittee's financial assurance, the director shall conduct
20 an inspection and evaluation of the reclamation work involved.
21 The director shall notify persons who have requested advance
22 notice of the inspection. Interested members of the public
23 shall be allowed to be present at the inspection of the
24 reclamation work by the director.

25 (1) The director may release in whole or in

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

18 (2) A person with an interest that is or will
19 be adversely affected by release of the financial assurance may
20 file, with the director within thirty days of the date of the
21 inspection, written objections to the proposed release from
22 financial assurance. If written objections are filed and a
23 hearing is requested, the director shall inform all the
24 interested parties of the time and place of the hearing at
25 least thirty days in advance of the public hearing, and hold a

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1 public hearing in the locality of the new or existing mining
2 operation or exploration operation proposed for release from
3 financial assurance. The date, time and location of the public
4 hearing shall be advertised by the director in a newspaper of
5 general circulation in the locality for two consecutive weeks,
6 and all persons who have submitted a written request in advance
7 to the director to receive notices of hearings shall be
8 provided notice at least thirty days prior to the hearing;

9 S. establish coordinated procedures that avoid
10 duplication for the inspection, monitoring and sampling of air,
11 soil and water and enforcement of applicable requirements of
12 the New Mexico Mining Act, regulations adopted pursuant to that
13 act and permit conditions for new and existing mining
14 operations and exploration. The regulations shall require, at
15 a minimum:

16 (1) inspections by the director occurring on
17 an irregular basis according to the following schedule:

18 (a) at least one inspection per month
19 when the mining operation is conducting significant reclamation
20 activities;

21 (b) at least two inspections per year
22 for active mining operations;

23 (c) at least one inspection per year on
24 inactive sites;

25 (d) at least one inspection per year

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1 following completion of all significant reclamation activities,
2 but prior to release of financial assurance; and

3 (e) mining operations having a minimal
4 impact on the environment and exploration operations will be
5 inspected on a schedule to be established by the commission;

6 (2) that inspections shall occur without prior
7 notice to the permittee or the permittee's agents or employees
8 except for necessary on-site meetings with the permittee;

9 (3) when the director determines that a
10 condition or practice exists that violates a requirement of the
11 New Mexico Mining Act, a regulation adopted pursuant to that
12 act or a permit issued under that act, which condition,
13 practice or violation also creates an imminent danger to the
14 health or safety of the public or will cause significant
15 imminent environmental harm, that the director shall
16 immediately order a cessation of the new or existing mining
17 operation or the exploration operation or the portion of that
18 operation relevant to the condition, practice or violation.

19 The cessation order shall remain in effect until the director
20 determines that the condition, practice or violation has been
21 abated or until modified, vacated or terminated by the director
22 or the commission;

23 (4) when the director determines that an owner
24 or operator is in violation of a requirement of the New Mexico
25 Mining Act, a regulation adopted pursuant to that act or a

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1 permit issued pursuant to that act but the violation does not
2 create an imminent danger to the health or safety of the public
3 or will not cause significant imminent environmental harm, that
4 the director shall issue a notice to the owner or operator
5 fixing a reasonable time, not to exceed sixty days, for the
6 abatement of the violation. If, upon expiration of the period
7 of time as originally fixed or subsequently extended for good
8 cause shown, the director finds that the violation has not been
9 abated, the director shall immediately order a cessation of new
10 or existing mining operations or exploration operations or the
11 portion thereof relevant to the violation. The cessation order
12 shall remain in effect until the director determines that the
13 violation has been abated; and

14 (5) when the director determines that a
15 pattern of violations of the requirements of the New Mexico
16 Mining Act or of the regulations adopted pursuant to that act
17 or the permit required by that act exists or has existed and,
18 if the director also finds that such violations are caused by
19 the unwarranted failure of the owner or operator to comply with
20 the requirements of that act, regulation or permit or that such
21 violations are willfully caused by the owner or operator, that
22 the director shall immediately issue an order to the owner or
23 operator to show cause as to why the permit should not be
24 suspended or revoked;

25 T. provide for the transfer of a permit to a

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1 successor operator, providing for release of the first operator
2 from obligations under the permit, including financial
3 assurance, following the approved assumption of such
4 obligations and financial assurance by the successor operator;

5 U. adopt regulations providing that the owner or
6 operator of an existing mining operation or a new mining
7 operation who has completed some reclamation measures prior to
8 the effective date of the regulations adopted pursuant to the
9 New Mexico Mining Act may apply for an inspection of those
10 reclamation measures and a release from further requirements
11 pursuant to that act for the reclaimed areas if, after an
12 inspection, the director determines that the reclamation
13 measures satisfy the requirements of that act and the
14 substantive requirements for reclamation pursuant to the
15 applicable regulatory standards; and

16 V. develop and adopt other regulations necessary
17 and appropriate to carry out the purposes and provisions of the
18 New Mexico Mining Act."

19 SECTION 2. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2019.