

LFC Requester:	Jonas Armstrong
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>March 6, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>	Bill No:	<u>HB 625S-305</u>

Sponsor:	<u>HEENSC</u>	Agency Code:	<u>Attorney General's Office</u>
Short Title:	<u>Public Peace, Health, Safety & Welfare</u>	Person Writing	<u>Jennifer Salazar, AAG</u>
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

BILL SUMMARY

Synopsis:

CS/HB 625 amends several sections of the New Mexico Mining Act ("Act"), NMSA 1978, Sections 69-36-1 to -20 (1993, as amended). It would amend the definition mining and mineral by excluding from their definition quarry rock used as aggregate for reclamation as well as for construction. It would limit the renewal of standby permits held by a mining operation to three consecutive five-year terms. It would allow a mining operation in standby status to unilaterally resume mining operations by providing written notice to the Director; provided that the mining operation is in compliance with all permit conditions as of the date of the notice and has in place financial assurance that has been reviewed by the Director of the Mining and Minerals Division within five years immediately prior to the date of the notice. HB 625 also would require the Director, by regulation, to identify the specific conditions that would allow an operator that resumed mining operations following a standby period to reapply for a new period of standby status. It would delete the requirement that an applicant for standby status provide an economic viability analysis for each unit proposed for standby and in its stead would require the applicant to submit "information supporting the future use of" each unit proposed for standby.

CS/HB 625 also would authorize the Director to require a permit holder to update its financial assurance by submitting an application for permit modification or revision that the Director would promptly act upon. It removes the mandate that financial requirements shall neither duplicate nor be less comprehensive than the federal financial requirements, but would allow the Director to coordinate with other state and federal agencies to avoid duplication of financial assurance required by those agencies. HB 625 would allow the Director to enter into agreements with other agencies specifying which agency or agencies shall hold the financial assurances of a permit holder.

Under the temporary provision of CS/HB 625, the Director shall, in conjunction with Energy Minerals & Natural Resources Department, propose amendments to the rules consistent with the Act by December 31, 2015. The Mining Commission shall adopt said proposed rules on or before July 1, 2016.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Allowing a mining operation in standby status to resume mining operations by only providing written notice to the Director may be an attempt to circumvent the role of public participation in permitting matters and would conflict with the requirements of NMSA 1978, 69-36-7(K), including that “no action shall be taken until on any application until an opportunity for a public hearing” is provided. Failure to allow for public participation may run afoul of the New Mexico Supreme Court’s decision in Colonias Development Council v. Rhino Environmental Services, Inc., 2005-NMSC-024, 138 N. M. 133, that surrounding community should have been afforded reasonable opportunity to provide meaningful public input before permit issued.

It is not clear whether and at what time would a mining operator’s decision to resume operations be subject to appeal.

Requiring the Director and the Mining Commission to identify all the conditions under which a mining operation on standby status may resume mining and production may be problematic, leading to unforeseen circumstances that would not be addressed by the regulations.

PERFORMANCE IMPLICATIONS May result in increase to the civil caseload of the AGO if a mining operator’s decision to resume operations is appealed to the Mining Commission.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

The use of the language “consecutive” on page 7, line 11, is unclear.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. Mine operators wishing to resume production are required to submit an application to the Director before returning to active status.

AMENDMENTS

N/A