Energy, Minerals and Natural Resources Department

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HOUSE BILL 157: MINING ACT FORFEITURE FUND

HB 157, the Mining Act Forfeiture Fund, is supported by EMNRD and sponsored by Representative Nathan Small and Senator Siah Correa Hemphill. The Mining Act Forfeiture Fund bill grants explicit authority to the Energy, Minerals and Natural Resources Department to establish a fund to be used to accept and manage financial assurance forfeited by a mine operator.

WHY DOES NEW MEXICO NEED A MINING ACT FORFEITURE FUND?

To receive a mining permit, a mine operator must provide financial assurance to cover the state's reclamation costs if the operator happens to default. In some cases, the amount of financial assurance is calculated using Net Present Value (NPV) - the amount of funds which, if invested, would grow over time to cover reclamation costs for the full amount of time reclamation takes to complete.

Existing language in the Mining Act has led to two problems.

First, it does not explicitly authorize the state to establish a fund that could accept forfeited financial assurance if there is ever a forfeiture. Without this authority, it is unclear if the Mining and Minerals Division of EMNRD could hold and manage the funds for reclamation - and reclamation could be delayed, causing environmental damage.

Second, the Mining Act currently requires financial assurance to be deposited in the State Treasury. Money in the Treasury can't be invested at rates of return sufficient to earn interest, which means that the amount calculated by Net Present Value as sufficient if invested won't generate enough to cover costs to pay for all required reclamation. Without the ability to invest, if a mine operator goes into default the state might not have enough money to finish the necessary reclamation work.

This bill fixes both problems. Passing it will allow any forfeited funds to be deposited in an interest- bearing account and prudently invested by the State Investment Council, in order to ensure sufficient funds are available throughout the entire period of reclamation work. The bill also protects the funds from being used for any purpose other than reclamation of the mine that forfeited the funds.

This bill costs state government nothing to implement - and it costs the mining industry nothing to implement. It ensures financial solvency for the state and financial safety for industry during mine reclamation going forward.