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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/09

SPONSOR Lundstrom LAST UPDATED 1/28/09 HB 84

SHORT TITLE Uranium Legacy Cleanup Act SB _____

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.1		Recurring	General Fund
	*See narrative			

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 NM Environment Department (NMED)
 Taxation and Revenue Department (TRD)
 Energy Minerals and Natural Resources (EMNRD)
 Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

House Bill 84 creates the Uranium Legacy Cleanup Act which enacts a surtax on uranium extraction of 2 percent of the taxable value and distributes the proceeds and half of the amount collected under the resource excise tax for uranium extraction to a new fund. HB84 appropriates from the new fund, the Uranium Legacy Cleanup Fund, to the Energy Minerals and Natural Resources Department (EMNRD) to fund qualified projects directed at the reduction or elimination of actual or potential exposure of persons to contamination from mining activities prior to July 1, 2009.

HB 84 directs EMNRD to promulgate rules based on 11 priorities:

1. protection of public health, safety and welfare
2. protection of environment from contamination
3. ability to leverage additional funds from other sources
4. adequacy of funding
5. size of the area to be addressed
6. number of people affected
7. level of radiation exposure
8. potential for contamination to grow
9. lack of potential responsible parties obligated under federal state or tribal law
10. use of site following cleanup
11. legal authority to conduct cleanup

Each October 1, the secretary of EMNRD is required to report to the appropriate interim committee on the total expenditures, projects funded with purpose and status report and any recommendations for additional legislative action.

HB 84 is effective January 1, 2010, and does not sunset.

FISCAL IMPLICATIONS

Currently, there is no active uranium extraction industry in New Mexico but there has been renewed interest in the last several years, particularly as the price of uranium soared to \$138 per pound in June 2007. It has since dropped dramatically along with all commodity prices and the latest price was approximately \$50 per pound. The table below shows the possible revenue generated at different prices.

Possible Revenue Scenarios

5 million pounds per year
(U3O8)

Price	Uranium Legacy Surtax	Resource Excise Tax	Distribution to Uranium Legacy Cleanup Fund
\$25	\$2,500,000	937,500	\$2,968,750
\$50	\$5,000,000	1,875,000	\$5,937,500
\$75	\$7,500,000	2,812,500	\$8,906,250
\$100	\$10,000,000	3,750,000	\$11,875,000

Total Reserves: 300 million pounds

Price	Uranium Legacy Surtax	Resource Excise Tax	Distribution to Uranium Legacy Cleanup Fund
\$25	\$ 150,000,000	\$ 56,250,000	\$ 178,125,000
\$50	\$ 300,000,000	\$ 112,500,000	\$ 356,250,000
\$75	\$ 450,000,000	\$ 168,750,000	\$ 534,375,000
\$100	\$ 600,000,000	\$ 225,000,000	\$ 712,500,000

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

HB 84 is an Indian Affairs Committee sponsored bill and was the subject of interim hearings during 2008.

DOH reports that the unremediated radioactive and hazardous waste piles from past uranium exploration, mining, and milling activities continue to present a threat to the health and well-being of residents of northwestern New Mexico through multiple exposure sources and pathways, including contaminated water, air and agriculture. DOH believes that HB84 provides a mechanism for evaluating and cleaning up sites that are or may impact communities exposed to elevated levels of uranium and other metals.

According to DOH, HB84 would address health disparity issues as well since most of the affected communities are primarily populated by Native Americans, Hispanics and low- and moderate income people.

EMNRD:

There is a need to fund the cleanup of abandoned uranium mine sites in New Mexico. During the uranium “boom” from the 1950s to the early 1980s, New Mexico was the largest producer of uranium in the world. However, at the time, there were few if any regulatory controls that required uranium mines and mills to be reclaimed. EMNRD (the Mining and Minerals Division) has begun to inventory and assess abandoned uranium mines and the extent of the potential hazards that they pose to the public thus far. EMNRD has identified approximately 260 mines where uranium production occurred. Of these mines, more than half have no records of any reclamation having been conducted. In addition, EMNRD estimates another 400 to 500 sites with uranium mining activity where there is no record of production. Most of the mines occurred in the area of the “Grants uranium belt” north of I-40, between Gallup and Grants. EMNRD has just begun to conduct fieldwork to assess the amount of work necessary to reclaim the inventoried sites.

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

According to NMED, “threats to public health from past uranium mining and milling and the need to protect public health through the abatement of existing sources of soil and water pollution is a significant issue facing New Mexico. This is becoming an increasingly significant concern as the price of uranium has greatly increased in recent years and mining companies are interested in starting new uranium mining operations that have the potential for future public health impacts. Past environmental impacts and threats to public health and water quality from uranium mining and milling operations, especially from abandoned sites, need to be determined and cleaned up in order to ensure that those areas are viable for future use for all New Mexicans.”

Both EMNRD and NMED have reported that the cost of cleaning up legacy sites would be borne by future mining companies and that more could be done to look for viable companies that bear some of the responsibility for past contamination.

Indian Affairs Department:

Proponents for renewing uranium mining/milling operations in New Mexico site the need for local economic growth, improved regulatory and operational procedures for mining/milling to oversee future mining operations, lower operational costs associated with *in situ* leaching mining/milling, and a resurgence in the global price of uranium since the drop off in price curtailed New Mexico mining operations beginning in the 1980’s.¹ In contrast, those who oppose a continuation of uranium mining/milling in New Mexico cite the legacy of Abandoned Uranium Mines (“AUM”), especially within the borders of the Navajo Nation, where over 500 AUMs have been identified by the U.S. Environmental Protection Agency (“EPA”). EPA’s on-going evaluation has identified 80 AUMs in the New Mexico portion of the Navajo Nation, and specifically names the Northeast Church Rock Mine Site near Gallup, NM as the highest priority on the EPA’s AUM inventory list.²

PERFORMANCE IMPLICATIONS

NMED:

There currently is no uranium mining occurring in New Mexico. At the earliest, the uranium industry is approximately 5 years away from conducting any uranium mining activities. Therefore, there will not be any revenue generated for some time and current ongoing uranium contamination issues will not be addressed with HB 84.

The surtax of two percent on the taxable value of uranium severed or processed does not provide for a stable source of funding. The price of uranium has fluctuated greatly over time so it is difficult to estimate the revenue that would be generated under HB 84. More stable funding would be provided by basing the funding mechanism on a flat price per pound of uranium produced. The cost of cleanup for these types of sites is in the multiple millions of dollars so significant stable funding would be required to conduct these

¹ See *Testimony of David Ulibarri, County Manager of Cibola County, New Mexico and State Senator of New Mexico Senate District 30*, before the United States Senate Committee on Energy and Natural Resources, March 12, 2008.

² *House and Environmental Impacts of Uranium Contamination: Five Year Plan September 2008 Status Report*, as requested by the House Committee on Oversight and Government Reform (Joint Bureau of Indian Affairs, Department of Energy, Nuclear Regulatory Commission, Environmental Protection Agency, and Indian Health Service report).

activities. NMED estimates that a \$2.00/pound surtax on the uranium severed or processed would generate a maximum of approximately \$20 million per year over the industry projected 30 year life of uranium mining that could occur in New Mexico. This level of funding would be necessary to attempt to address these types of issues.

ADMINISTRATIVE IMPLICATIONS

NMED:

Under the Water Quality Act and Water Quality Control Commission (WQCC) regulations, NMED is one of the regulatory agencies responsible for assessing and overseeing the cleanup of all sites in New Mexico potentially contaminated by uranium mining. HB 84 would require that NMED review all abandoned uranium site cleanup plans and work products for approval and consistency with existing applicable statutes, rules, and regulations for cleanup of uranium contamination, and to ensure protection of public health, water quality, and the environment. The task would require significant funding and staff resources. At least one additional full time employee would be needed to manage that effort.

TECHNICAL ISSUES

Uranium is not defined in HB84 nor in the other sections of the Resource Excise Tax Act and it should be consistent with the definition used in the severance tax act.

TRD notes that the bill exempts the producer from the surtax if it is paid by the processor and that mining and processing have separate and distinct environmental and social costs.

NMED has expressed concern regarding the ability of the state to monitor cleanup that uses state funds on Native American land.

EMNRD has pointed out that the legacy cleanup fund that is created includes the distribution from the surtax but not from the Resource Excise Tax, although the phrase “money... that otherwise accrues to the fund” may satisfy this. EMNRD also suggests that the reference to “Resource Excise Tax Act” in Section 8 is insufficient and that statutory citations should be included.

NF/svb