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HOUSE BILL 494

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Georgene Louis

AN ACT

RELATING TO COMMUNITY HEALTH; CREATING THE COMMUNITY HEALTH STUDY FUND; REQUIRING THE DEPARTMENT OF HEALTH TO CONDUCT A COMPREHENSIVE HEALTH STUDY OF RESIDENTS OF LOCAL COMMUNITIES AFFECTED BY CONTAMINATION RESULTING FROM URANIUM MINING ACTIVITIES; PROVIDING FOR FINANCIAL PENALTIES; MAKING AN APPROPRIATION.

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

**SECTION 1.** ~~[NEW MATERIAL]~~ COMMUNITY HEALTH STUDY FUND-- APPROPRIATION--HEALTH STUDY.--

A. The "community health study fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, fees, gifts, grants and donations. Income from investment of the fund shall be credited to the fund. The department of health shall administer the fund, and money in

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1 the fund is appropriated to the department to carry out the  
2 purposes of this section. Expenditures from the fund shall be  
3 made on warrants of the secretary of finance and administration  
4 pursuant to vouchers signed by the secretary of health or the  
5 secretary's authorized representative. Any unexpended or  
6 unencumbered balance remaining at the end of a fiscal year  
7 shall not revert to the general fund.

8 B. During the period beginning July 1, 2015 and  
9 extending through June 30, 2018, the secretary of health shall  
10 conduct a comprehensive study, including the opportunity for  
11 public comment, to evaluate the health of persons working or  
12 living in communities associated with current and historical  
13 uranium mining and milling activities in the state, including  
14 federally designated superfund sites related to uranium mining  
15 and milling. The study shall:

16 (1) identify those communities that have  
17 suffered air, land and water contamination from uranium mining  
18 and milling, both historically and currently;

19 (2) compile existing data that quantify the  
20 levels of uranium and related contamination in those  
21 communities;

22 (3) compile existing health data of persons  
23 living in these communities and establish a baseline of the  
24 current health of communities in which proposed uranium mining  
25 activities may be permitted by state and federal agencies;

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1 (4) create a health profile for these  
2 communities that indicates levels or rates of cancer, kidney  
3 disease, birth defects, mental health problems and other  
4 maladies that health experts have associated with uranium  
5 mining and milling activities; and

6 (5) propose to the appropriate state agencies  
7 and commissions conditions on permits that can mitigate the  
8 health consequences of permitted uranium mining and milling, as  
9 well as mitigation efforts directed at alleviating the  
10 continuing consequences of historical uranium mining and  
11 milling activities.

12 C. The secretary of health shall report to the  
13 appropriate interim legislative committee no later than October  
14 1 of each year regarding the total expenditures from the fund  
15 for the previous fiscal year, the purposes for which  
16 expenditures were made, an analysis of the progress of the  
17 study funded, which shall include an estimate of whether the  
18 imposition of fees pursuant to Subsection C of Section 2 of  
19 this act needs to continue beyond June 30, 2018, and proposals,  
20 if any, for legislative action in the subsequent legislative  
21 session."

22 SECTION 2. [NEW MATERIAL] STRICT FINANCIAL LIABILITY ON  
23 URANIUM MINING ACTIVITIES--IMPOSING FEES.--

24 A. The following persons shall be strictly liable  
25 for the cost of the community health study as set forth in

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1 Section 1 of this act:

2 (1) the owner of a uranium mining operation;

3 (2) the operator of a uranium mining  
4 operation;

5 (3) any person having a permit issued pursuant  
6 to the New Mexico Mining Act or Water Quality Act that covers a  
7 uranium mining operation;

8 (4) any person who, at the time of  
9 construction or operation of a uranium mining operation, or  
10 thereafter, owned, operated or had a permit to operate a  
11 uranium mining operation;

12 (5) subject to Paragraph (2) of Subsection B  
13 of this section, any person who owned the real property upon  
14 which a uranium mining operation was conducted at the time of,  
15 or after the conduct of, a uranium mining operation;

16 (6) a successor-in-interest to the uranium  
17 mining operation or the real property upon which it is or was  
18 situate; and

19 (7) a successor-in-interest to any of the  
20 persons identified in Paragraphs (1) through (6) of this  
21 subsection, whether as a result of merger, assets purchase,  
22 stock transfer or any other transfer whatsoever or any series  
23 or combination of such transactions. In order for a  
24 successor-in-interest to be liable pursuant to this section, it  
25 is not necessary that it own, operate or be permitted to

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1 operate a uranium mining operation or the real property upon  
2 which the operation is or was situated.

3 B. A person otherwise liable pursuant to Subsection  
4 A of this section shall not be liable if the person can  
5 establish by a preponderance of the evidence that:

6 (1) the release of contaminants and the  
7 damages resulting therefrom were caused solely by an act of  
8 God; or

9 (2) the person is an owner who:

10 (a) at the time the person acquired the  
11 property, after making reasonable inquiry, did not know and had  
12 no reason to know that the property had been used for a uranium  
13 mining operation;

14 (b) is a governmental entity that  
15 acquired the property by escheat, or through any other  
16 involuntary transfer or acquisition, or through the exercise of  
17 eminent domain authority;

18 (c) acquired the property by inheritance  
19 or devise;

20 (d) is a surface estate owner who did  
21 not participate in the management of the uranium mining  
22 operation; or

23 (e) did not participate in the  
24 management of the uranium mining operation and: 1) whose only  
25 interest in the uranium mining operation is as a royalty

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1 interest holder by virtue of ownership and a duly executed  
2 lease; 2) holds indicia of ownership primarily to protect a  
3 security interest in the facility; or 3) foreclosed such a  
4 security interest after the occurrence of the release.

5 C. Whenever, on the basis of any information, the  
6 director determines that there has been a release, or the  
7 secretary determines that there has been a release, from a  
8 uranium mining operation that has affected or has the potential  
9 to affect water, public health or the environment, the director  
10 or the secretary shall issue an order to any responsible party  
11 requiring that party to pay a fee in the amount of one percent  
12 of the estimated cleanup cost, which fee shall be deposited  
13 into the community health study fund.

14 D. The secretary shall adopt rules establishing an  
15 administrative process for:

- 16 (1) identifying potentially responsible  
17 persons;  
18 (2) determining the fee to be imposed pursuant  
19 to Subsection C of this section; and  
20 (3) enforcing and collecting the fees levied  
21 pursuant to Subsection C of this section.

22 E. No indemnification or similar agreement shall be  
23 effective to transfer, from a responsible party pursuant to  
24 this section to any other person, the liability imposed  
25 pursuant to this section. Nothing in this subsection bars any

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1 agreement to insure, hold harmless or indemnify a party to that  
2 agreement for any liability pursuant to this section.

3 F. Nothing in this section bars or replaces any  
4 cause of action available to any person that existed before the  
5 enactment of this section. The causes of action established  
6 pursuant to this section are in addition to other causes of  
7 action.

8 G. As used in this section:

9 (1) "contaminant" means any substance from a  
10 uranium mining operation that could alter, if discharged or  
11 spilled, the physical, chemical, biological or radiological  
12 qualities of any part of the environment, including water and  
13 soil. "Contaminant" does not mean source, special nuclear or  
14 byproduct material as those terms are defined in the federal  
15 Atomic Energy Act of 1954;

16 (2) "costs" means all costs of removal or  
17 remedial action, including oversight costs, indirect costs,  
18 legal costs and interest, incurred by the operator and the  
19 state of New Mexico because of a release or threatened release  
20 resulting in the incurring of those costs;

21 (3) "director" means the director of the  
22 mining and minerals division of the energy, minerals and  
23 natural resources department;

24 (4) "release" means the introduction or  
25 allowance of the introduction into the environment, including

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1 into water, either directly or indirectly, of one or more  
2 contaminants in a quantity and duration that may, with  
3 reasonable probability, injure human health, animal or plant  
4 life or property or unreasonably interfere with the public  
5 welfare or use of the property for a purpose other than a  
6 uranium mining operation;

7 (5) "responsible party" means any person upon  
8 whom liability is imposed pursuant to Subsection A of this  
9 section;

10 (6) "secretary" means the secretary of  
11 environment; and

12 (7) "uranium mining operation" means a  
13 facility or a location where mining, milling or exploration  
14 activities were conducted during or after 1900 for the purpose  
15 of extracting, processing or exploring for radium, thorium or  
16 uranium ore."

17 **SECTION 3. SEVERABILITY.**--If any part or application of  
18 the provisions of this act is held invalid, the remainder or  
19 its application to other situations or persons shall not be  
20 affected.

21 **SECTION 4. EFFECTIVE DATE.**--The effective date of the  
22 provisions of this act is July 1, 2015.