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FISCAL IMPACT REPORT



SPONSOR: Martinez DATE TYPED: 01/24/02 HB 157

SHORT TITLE: "Mineral" & "Mining" Definitions SB _____

ANALYST: Trujillo

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY02	FY03			
		(\$16.9)	Recurring	Mining Act Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to Appropriation in The General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From:

Energy, Minerals and Natural Resources Department (EMNRD)
Commissioner of Public Lands (CPL)

SUMMARY

Synopsis of Bill

House Bill 157 amends the definitions of "mining" and "mineral" contained in the New Mexico Mining Act to clarify that operations or portions of operations that are not regulated by the federal Nuclear Regulatory Commission (NRC) are in fact regulated by the Mining Act.

The Mining and Minerals Division (MMD) of EMNRD and most uranium mine operators thought uranium mining was covered by the Act because mining of uranium is not regulated by NRC, although processing activities are, and the exemption in the definitions of "mining" and "mineral" was for activities actually regulated by the NRC. A district court judge disagreed with this interpretation saying if a commodity was regulated by the NRC at anytime it was excluded from the Mining Act. As a result, no uranium mines may be required to reclaim their sites. The amendments in this bill clarify the definitions to restore the original understanding.

HB 157 reinstates the original intent of the exemption: to provide that uranium mines are regulated by either the NRC or the state, but not both.

Significant Issues

EMNRD reports, currently the Mining Act contains an exemption for commodities and activities regulated by the NRC, because the NRC also requires reclamation and environmental protection in their permits. The NRC regulates uranium mills and processing activities, but not uranium mines. MMD, which implements the Mining Act, has not required permitting of uranium mills because they are regulated by the NRC. MMD has interpreted the statute to require permitting of uranium mines because they are not regulated by the NRC. No other state or federal agency requires reclamation of these mines. Uranium mines can exhibit the same environmental concerns as other mines regulated under the Mining Act, and there is no practical or environmental reason why they should not be reclaimed.

PERFORMANCE IMPLICATIONS.

CPL reports the bill helps to streamline leasing for hard rock mining on state trust lands. The State Land Office (SLO) now requires parties who wish to lease state trust land for hard rock mining to obtain a Mining Act permit from EMNRD, in lieu of providing a separate reclamation plan. If a proposed mine is exempt from the Mining Act, both the applicant and the State Land Office will expend considerable effort in preparing, and reviewing, a reclamation plan for the mine. If the Mining Act exemption is clarified, then SLO leasing procedures will also be clarified.

EMNRD reports, if, in the future, uranium mines are dropped from permitting because the bill does not pass, certain performance measure values may change slightly, but these changes will not be significant.

FISCAL IMPLICATIONS

EMNRD reports the passage of this bill will have no immediate fiscal impact, but not passing it will decrease revenues in the future. The Mining Act regulatory program is funded by permitting fees, therefore no general fund appropriation is required. If the bill does not pass and the permitted uranium mines withdraw their permits, their annual fees of \$16,927 per year will not be paid. Also, no fees would be collected from any new uranium mines that are opened in the future.

OTHER SUBSTANTIVE ISSUES

According to EMNRD, United Nuclear Corporation appealed MMD's decision to require permitting on three of their uranium mines. The District Court reversed the Mining Commission's decision to regulate uranium. The Mining Commission and MMD appealed this decision to the New Mexico Court of Appeals. A panel of three judges has been assigned, but a decision has not been rendered. This bill will affect all other current and future uranium mines not in litigation over this

issue.

Also, this bill will not have any immediate effect on the performance of the Mining Act regulation program. If, in the future, uranium mines are dropped from permitting because the bill does not pass, certain performance measure values may change slightly, but these changes will not be significant.

LAT/prr