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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/08

SPONSOR Martinez LAST UPDATED HB

SHORT TITLE Uranium Legacy Cleanup Act SB 273

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	Unknown	Unknown	Recurring	Uranium Legacy Cleanup Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	Recurring or Non-Rec	Fund Affected
ED	\$125.0*	\$125.0*	Recurring	Uranium Legacy Cleanup Fund
EMNRD	\$125.0*	\$125.0*	Recurring	Uranium Legacy Cleanup Fund

(Parenthesis () Indicate Expenditure Decreases)

*one FTE with benefits, estimate

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy Minerals and Natural Resources Department (EMNRD)

Environment Department (ED)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 273 creates a new Uranium Legacy Act, an associated Uranium Legacy Cleanup Board and a Uranium Legacy Cleanup Fund, all for the purpose of providing funding to clean up sites contaminated by past historical uranium mining and milling activities.

The new Uranium Legacy Cleanup Board will be administratively attached to EMNRD, which will provide staff for the Uranium Legacy Cleanup Board. The Uranium Legacy Cleanup Board will be comprised of seven voting and five nonvoting members. The seven voting members include three ex-officio members, who are the secretaries or their designees, of the EMNRD, DOH and ED and four other voting members comprised of a member of the Pueblo of Acoma or Pueblo of Laguna, a member of the Navajo Nation, a resident of New Mexico with education and experience in the primary health care or public health, and a resident of New Mexico with education and experience in uranium mining and milling activities. The five nonvoting members will be comprised of representatives of the U.S. Environmental Protection Agency (EPA) Region 6, EPA Region 9, Albuquerque Indian Health Service, Navajo Indian Health Service, and the Navajo Nation Environmental Protection Agency.

The Uranium Legacy Cleanup Board will meet at least twice a year and will be tasked with adopting rules governing the terms, conditions and priorities for funding uranium mining and milling cleanup activities that occurred prior to July 1, 2008; providing financial assistance from the Uranium Legacy Cleanup Fund to applicants for uranium cleanup projects on terms and conditions established by the board; and authorizing funding for planning, designing, constructing, inspecting and operating uranium site cleanups, as well as completing environmental assessments, archaeological clearances, land acquisitions, and payment of legal costs. Financial assistance provided will have the principal objective of eliminating or reducing threats to public health through exposure to contamination. That funding could be provided to state, federal and tribal governments, as well as, other public and private entities.

FISCAL IMPLICATIONS

The cleanup of legacy sites will be paid for by the imposition of a new uranium legacy cleanup surtax on the production of future uranium resources at an amount equal to either a rate of two percent on the taxable value of uranium severed or processed, or one dollar per pound of the content of U308 contained in the severed and saved or processed uranium, whichever is greater.

The surtaxes received from this legislation will be placed in a non reverting Uranium Legacy Cleanup Fund to be administered by EMNRD under procedures and rules established by EMNRD for qualified projects approved by the board.

Under the Water Quality Act and WQCC regulations, ED is one of the regulatory agencies responsible for assessing and overseeing the cleanup of all sites in New Mexico potentially contaminated by uranium mining. SB 273 will require that ED 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 will require significant funding and staff resources. At least one additional full time employee will be needed to manage this effort. The appropriations of funds that will allow ED to implement the tasks required related to SB 273 are not included. Those tasks will be new duties for ED, which does not have existing resources to accomplish those requirements unless additional funding is provided.

EMNRD has identified approximately 260 mines where uranium production occurred. Of these mines, slightly less than half have been, or are being, reclaimed under state or federal regulatory controls. In addition, EMNRD estimates there are another 400 to 500 sites with uranium mining activity with 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 estimates that there are approximately 400 abandoned uranium mines that may have varying degrees of contamination. EMNRD has just begun to conduct fieldwork to assess the amount of work necessary to reclaim these sites.

The amount of funds generated by the proposed surtax is unknown. Currently, no new mine has applied for a permit from EMNRD. However, with the significant increase in uranium prices over the past four years, there have been a number of mining companies obtaining mineral rights, leases or claims and conducting exploration for uranium in New Mexico. During the past uranium boom, over 330 million pounds of uranium were produced in New Mexico with a peak of 17 million pounds in one year. Uranium prices have ranged from \$10 to \$138 a pound over the past five years with a current spot price of \$90 a pound.

It is unknown when the first surtax will be paid, but it is likely to be at least 4 years from now. Industry officials estimate that the need to obtain financing and permits and construct a new mill and a mine could take at least 4 years.

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

Uranium mining and processing was extensive in New Mexico from the 1950s to the 1970s. Those operations were conducted primarily prior to the enactment of state and federal regulations that protect human health and the environment. Therefore, many of those operations resulted in significant environmental impacts, including water pollution.

Current state water quality regulations are designed to prevent future water pollution at any new uranium mining and processing facilities that fall under the state's jurisdiction. Since 1978, pursuant to the Water Quality Act, operators have been required to obtain groundwater discharge permits under New Mexico Water Quality Control Commission (WQCC) Regulations to prevent groundwater contamination. Requirements for financial assurance are also in place to ensure mine sites are adequately closed following the cessation of operations and to abate any soil, groundwater, or surface water contamination that may occur. ED recently evaluated the adequacy of the uranium standard for groundwater to protect public health. ED hired a toxicologist in 1999 to study the effects of uranium in groundwater on public health. As a result of that assessment, the standard for uranium changed from 5.0 mg/l to 0.03 mg/l and the state now has a much higher level of groundwater and public health protection from uranium sites.

Since the late 1970s, a number of large sites with water pollution and human health impacts have been cleaned up or are currently being remediated under WQCC regulations or federal regulations such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). However, there are abandoned uranium mines or so-called uranium legacy mines without viable responsible parties in the northwestern portion of the state that could pose a variety of health concerns including threats to public health from public exposure to windblown uranium soils onto neighboring residential properties, and threats to ground water quality from leaching of uranium contaminated soils into underlying underground sources of drinking water. Abandoned uranium mines have caused soil and groundwater contamination at a number of sites

in New Mexico. Funding the cleanup of those sites will help eliminate impacts to public health from past uranium mining and milling activities, enhance overall environmental conditions in those areas and protect water quality and prevent future threats to public health. However, the Legislature should be aware that in 2005 the Navajo Nation banned uranium mining on Tribal lands.

ADMINISTRATIVE IMPLICATIONS

SB 273 states that staff for the board shall be provided by the Mining and Minerals Division (MMD). This bill will create a significant extra burden on staff in the especially in the beginning stages of implementation of this act. EMNRD is also required to administer the fund, establish procedures and to hold and disburse funds. The bill does not allow the fund to be used for administrative costs.

ED also notes that there is no funding mechanism is included in SB 273 to pay for the addition of staff and other costs necessary to implement tasks that will be required of ED. At least one additional full time employee will be needed to manage that effort to ensure cleanups are conducted in accordance with applicable statutes, rules and regulations to protect public health, water quality, and the environment.

TECHNICAL ISSUES

ED provided the following:

In Section 2.D. on page 2, the definition of “qualified project” should be expanded to clarify that the project is to be cleaned up in accordance with applicable state or federal standards and in accordance with a cleanup work plan approved by the appropriate regulatory agency responsible for environmental oversight. Those cleanups should be done in a manner that protects public health, surface use, and groundwater and surface water resources, etc. An agency with the technical expertise and regulatory authority to approve work plans and actual cleanup actions should oversee that work. The ED is the state regulatory authority responsible for those actions related to cleanups at uranium sites pursuant to the Water Quality Act and WQCC regulations. ED is also responsible for technical oversight of federal uranium cleanups. ED must ensure state requirements are met at uranium cleanup sites under federal regulations such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Nuclear Regulatory Commission.

SB 273 should exempt viable responsible parties from defining projects that should receive funding for cleanup. Some former uranium mining sites may be found to have viable responsible parties that are subject to state or federal laws and/or regulations for cleanup actions. SB 273 should not allow viable responsible parties to receive a financial bail out for cleaning up a contaminated site. Parties responsible for those sites should be required to clean them up at their own cost.

EMNRD provided the following:

SB 273 has a broad, and somewhat vague, definition of how the funds can be expended. Qualified project is defined in Section 2 to mean a project selected by the Board and,

under Section 7, must have a principal objective of eliminating or reducing actual or potential exposure of persons to contamination that may have resulted from uranium mining or milling. Nothing in the Act limits the funding to traditional mine reclamation projects. The Board could authorize community health projects, residential relocation projects, etc.

Qualified projects are not limited to the reclamation of abandoned uranium mines, and therefore funds could be used on mine sites where either a private party or the government is already obligated to conduct the cleanup.

SB 273 creates several levels of bureaucracy which may slow the process of funding projects. EMNRD is designated as the administrator of the fund and money is appropriated to EMNRD which disburses funds. The Board must authorize all funding for qualified projects. However, an interim legislative committee must also be briefed on all proposals and provide review and advice on funding. Other existing laws on abandoned mine funding provide for the funds to be appropriated to EMNRD which makes the decisions on funding. See NMSA 1978, Sections 69-36-19.B and 69-25B-4.

The role of interim committees in the rulemaking and project funding process raises several issues. Interim committees “shall review” both proposed rules and proposed grants and loans. Since interim committees generally only meet during the summer and fall, rulemaking or financial assistance may be delayed for significant if it doesn’t coincide with the interim committee’s schedule. Also, if an interim committee fails to review or rejects submitted proposals, the Board may be unable to act and there may be a Constitutional separation of powers issue. One alternative will be to give the interim committee a timeframe (e.g., 30 or 60 days) in which to submit comments. If no comments are submitted, then the board may proceed.

POSSIBLE QUESTIONS

A number of the abandoned uranium sites are on Indian lands in the checkerboard area in McKinley and Cibola Counties. Can state funds be used for projects on Indian lands that are not subject to state regulatory authority for approval of cleanup actions?

The bill mandates that two EPA Regions participate on the Uranium Legacy Cleanup. Can state legislation mandate participation on the board by a federal agency?

DW/nt