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FISCAL IMPACT REPORT

	ORIGINAL DATE	02/07/08	
SPONSOR	LAST UPDATED	02/13/08	HB
			CS/487/aSF#1/aSF#2
SHORT TITLE	Abandoned Uranium Mine Reclamation Fees	SB	/aHTRC
			ANALYST Hanika-Ortiz/Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	\$250.0		Recurring	Uranium Legacy Cleanup Fund
	(\$250.0)		Recurring	Extraction Taxes Suspense Fund/General Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to SB 273, HB 342, SB 487 and HJM 2 (see below)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of HTRC Amendment

The House Tax and Revenue Committee Amendment revises the definition of “qualified project.” The amendment strikes item 2 of the Senate Floor Amendment #1, which deletes the qualifying date of July 1, 2008 inserted to limit the uranium reclamation projects to those resulting from uranium mining in New Mexico occurring prior to July 1, 2008.

This date is reinstated as part of a new definition of “qualified project”, as follows:

D. “qualified project” means a project that is directed at the elimination or reduction of actual or potential exposure of persons to contamination that may have resulted from uranium mining or milling activities that occurred prior to July 1, 2008.

This new definition replaces the original definition, which reads as follows:

D. “qualified project” means a uranium mine reclamation project that is directed at cleaning up contamination resulting from uranium mining in New Mexico [that occurred prior to July 1, 2008] for sites whose reclamation is not covered by the New Mexico Mining Act...”

Synopsis of SF #1 Amendment

The Senate Floor Amendment #1 strikes delayed repeal provisions; provides that any qualified uranium mine reclamation project be one that occurred before 7/1/08; provides that a severer (replaces processor) of uranium shall not be subject to the uranium legacy cleanup surtax if the surtax is paid by a processor (replaces severer); strikes language that allowed for fund balance transfers to the General Fund upon any delayed repeal dates.

Synopsis of SF #2 Amendment

The Senate Floor Amendment #2 strikes the term “beneficiation” from the paragraph relating to certain events by which a uranium legacy cleanup surtax shall not be imposed.

Synopsis of Bill

Senate Bill 487 enacts the uranium legacy cleanup act; provides for the administration and cleanup actions to be taken; creates revenue sources to fund uranium cleanup activities; provides for a delayed repeal; and, makes an appropriation.

Sections 1 and 2 cites the title of the act and provides for definitions to include “department” to mean the EMNRD; and, “qualified project” to mean a uranium mine reclamation project...for sites...not covered by the New Mexico Mining Act.

Sections 3 and 4 establish a non-reverting “uranium legacy cleanup fund” to be administered by EMNRD. The EMNRD shall adopt rules to administer the fund and to establish priorities in granting loans for qualified projects in which any state, federal, tribal government, or other public and private entities are participating.

Section 5 provides for an annual report by October 1 from the Secretary of EMNRD to the Legislature.

Section 6 adds Sections 7-1-6.59 and 7-1-6.60 to Section 7-1-6.20 to allow the distribution of net receipts from the “Extraction Taxes Suspense Fund” ultimately to the “uranium legacy cleanup fund”.

Section 7 amends the Tax Administration Act to allow the distribution of net receipts from the uranium legacy cleanup surtax to the “uranium legacy cleanup fund”.

Section 8 further amends the Tax Administration Act to distribute 50% of the net receipts from taxes on uranium pursuant to the Resources Excise Tax Act to the “uranium legacy cleanup fund”.

Section 9 amends the Resources Excise Tax Act and imposes a “uranium legacy cleanup surtax” on the severing of uranium in New Mexico. A processor of uranium shall not be subject to the surtax if paid by the severer. The surtax is 50 cents per pound of severed and saved U308 contained in severed, saved or processed uranium regardless of form. The surtax shall not be imposed upon the “purification, beneficiation, UF6 conversion, enrichment, deconversion, reprocessing or disposal of uranium”.

Section 10 provides for a delayed repeal on January 1 or July 1 following the date that a certification is made by the Department that provisions within the Uranium Legacy Cleanup Act have been satisfied.

Section 11 and 12 provide for severability; and, an effective date for January 1, 2009.

FISCAL IMPLICATIONS

Senate Bill 487 creates in the State Treasury the non-reverting “uranium legacy cleanup fund” consisting of distributions of the uranium legacy cleanup surtax; money repaid from approved loans; and, money that is appropriated, donated or otherwise accrues in the fund to provide financial assistance for “qualified projects”.

The Legislature will be charged with appropriating money in the fund to EMNRD.

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.

The bill imposes a surtax assessment of fifty cents per pound of the U308 contained in uranium severed or processed. Fifty percent of the net receipts of the surtax is distributed to the uranium legacy cleanup fund under a new section of the Tax Administration Act.

Under estimates provided by TRD, revenue of \$250.0 can be expected into the new uranium legacy cleanup fund, while \$250.0 will remain in the Tax Administration Suspense Fund. It should be noted that diverting these funds from the Extraction Taxes Suspense Fund will reduce General Fund revenue; as current law provides that after all necessary distributions and transfers occur, remaining balances are to be transferred to the General Fund.

Money in the fund will be invested by the State Investment Officer in the manner that land grant permanent funds are currently invested.

Under the Statewide Human Resource, Accounting, and Management Reporting System (SHARE), such funds are established by DFA in SHARE. Prior to SHARE, interest-bearing funds were created in the state treasury under the TRACS system. Currently, DFA notifies the State Treasurer’s Office when a fund created by statute is established in SHARE. Although the SHARE system has modified the manner in which funds are “created in the treasury”, the State Treasurer has the same statutory responsibilities and duties of oversight and monthly interest allocations. Unless the creation of the “uranium legacy cleanup fund” creates an undue administrative burden (i.e.: cost) in the State Treasurer’s Office Investment Division, there will be no fiscal impact to the Cash Management Division.

SIGNIFICANT ISSUES

With the significant increase in uranium prices over the past 4 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 uranium “boom” from the 1950s to the early 1980s, there was over 330 million pounds of uranium produced in New Mexico. 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 potential hazards to the public. 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. The remaining sites (about 140) will need to be assessed to determine what level, if any, of reclamation is necessary. EMNRD has estimated 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 these sites.

ADMINISTRATIVE IMPLICATIONS

The uranium legacy cleanup act and uranium legacy cleanup fund will be administered by the NM EMNRD.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to: HJM 2, which proposes EMNRD, NMED, and the DOH to (1) inventory locations of uranium contaminated sites; and, (2) report on extent of contamination and make recommendations regarding establishing a state “superfund” program to accelerate cleanup.

SB 273 creates a new Uranium Legacy Act, an associated Uranium Legacy Cleanup Board and a Uranium Legacy Cleanup Fund, to clean up sites contaminated by past historical uranium mining and milling activities. The funding mechanism will be through 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. These surtaxes would be placed in a non-reverting “Uranium Legacy Cleanup Fund” to be administered by EMNRD.

HB 342 is similar to, but differs from SB 273 in that it:

- creates a Uranium Legacy Cleanup Committee instead of a Uranium Legacy Cleanup Board;
- removes the Secretary of EMNRD as a member of the committee and replaces it with the Secretary of Indian Affairs;
- removes the rulemaking powers of the committee and makes it an advisory body that makes recommendations;
- gives rulemaking powers under the Uranium Legacy Cleanup Act to the Secretary of EMNRD;
- removes the requirements in SB273 for new rules related to the Uranium Legacy

- Cleanup Act to be reviewed by the legislature prior to approval;
- changes the party responsible for making reports to the Legislature on expenditures from the Uranium Legacy Cleanup Fund, the progress of funded projects and proposals for legislative action from the Uranium Legacy Cleanup Committee to the Secretary of EMNRD; and
- removes the option for imposing a surtax of one dollar per pound of the content of U308 contained in the severed and saved or processed uranium such that funds in the Uranium Legacy Cleanup Fund are solely derived from a two percent surtax on the taxable value of uranium severed or processed.

Neither SB 273 nor HB 342 contains a sunset provision which would repeal the funding mechanism for the cleanup of abandoned uranium sites.

OTHER SUBSTANTIVE ISSUES

Under the Water Quality Act and Water Quality Control Commission (WQCC) regulations, the NMED is also one of the regulatory agencies responsible for assessing and overseeing the cleanup of all sites in New Mexico potentially contaminated by uranium mining.

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 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. NMED recently evaluated the adequacy of the uranium standard for groundwater to protect public health. NMED 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.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Inability to maximize revenue sources for uranium mine reclamation projects to help mitigate public health hazards associated with them.

AHO/MA/bb