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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/10

SPONSOR Salazar LAST UPDATED _____ HB 101

SHORT TITLE Nuclear Workers Assistance Fund SB _____

ANALYST Aubel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	(\$110.0)	Recurring	General Fund*
	\$110.0	Recurring	Nuclear Workers Assistance Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

*No specific appropriation is made to fund the Office of Nuclear Workers Advocacy. The program is supported through the general appropriation made to the Program Support operating budget of the Department of Environment.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$110.0	\$110.0	Recurring	Nuclear Workers Assistance Fund

(Parenthesis () Indicate Revenue Decreases)

This is a Governor's bill, and is sponsored by the legislative Radioactive and Hazardous Materials Committee.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

Department of Health (DOH)

Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

House Bill 101 establishes the nuclear workers assistance fund, which would be administered by the New Mexico Department of Environment (NMED) to assist nuclear workers seeking claims under the federal Energy Employee Occupational Illness Compensation Act (EEOICA) through the Office of the Nuclear Worker Advocacy established in NMED.

The fund would receive a fee assessed on successful claimants in the amount of ½ of 1 percent of the award for initial claims filed through the Office of Nuclear Worker's Advocacy. A 5 percent fee would be assessed on successful claims awarded after NMED files objections to recommended decisions of denial. Any balance remaining in the fund at the end of the fiscal year shall not revert to the state general fund.

This bill contains an emergency clause.

FISCAL IMPLICATIONS

Revenue estimates are based on reported awards received of about \$12.7 million since inception. According to the agency, the composition of these awards would have produced about \$210 thousand in revenues under the fee schedule proposed by the bill, or an annual average of \$110 thousand over the two-year period the office has been operating.

Using various assumptions of the distribution of awards tests this projection and provides a range of potential revenue estimates. Assuming the \$12.7 million was awarded evenly over two years, or \$6.4 million per year, 100 percent of awards falling into the ½ of 1% category produces the low end of \$32,000. Using an assumption of 100 percent of awards subject to the 5 percent fee yields the high end of possible revenue stream at \$320,000. Assuming a 50:50 split in the two types of awards (initial- ½ of 1% and subsequent to denial – 5%), an annual estimate of revenue for the fund is \$175,800.

According to the department, the fees assessed are allowable under federal guidelines.

Appropriations would be made from this fund to cover the cost of the Office of Nuclear Worker's Advocacy located within NMED. Currently, costs associated with the program run about \$200 thousand and are supported within the operating budget by general fund. Due to general fund reductions made for FY09 and FY10, the bill proposes an alternative funding source to ensure the program's continuation. It is considered a best practice for programs to be self-sustaining as is possible.

Any unexpended or unencumbered balance remaining at the end of FY11 shall revert to the Nuclear Workers Assistance Fund.

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

The Office of Nuclear Worker’s Advocacy (ONWA) was established in the Office of the Governor in FY08, beginning operations on October 27, 2007. According to the agency, ONWA “is the only Governor-appointed advocacy office in the nation, setting precedence in assisting nuclear workers or their eligible survivors in obtaining compensation through the U.S. Department of Labor, Energy Employees Occupational Illness Compensation Program Act” (EEOICA). According to IAD, this Act was enacted in 2001 to create a program to provide medical benefits and compensation to US Department of Energy employees and former employees who have become ill as a result of their work with radioactive and toxic substances.

DOH provides additional background information:

The goal of HB101 is to provide funding to facilitate nuclear workers seeking claims under the EEOICA program. This program currently delivers benefits to eligible employees and former employees of the U.S. Department of Energy (DOE), its contractors and subcontractors and others as defined by the EEOICA. This program also includes benefits for certain beneficiaries of Section Five of the Radiation Exposure Compensation Act. Assistance, compensation and payment of medical expenses are available to aforementioned workers or their survivors who develop an illness due to exposure to toxic substances at certain DOE facilities. Uranium miners, millers, and ore transporters are also eligible for benefits if they develop an illness as a result of toxic exposure (<http://www.dol.gov/compliance/laws/comp-energy.htm>).

NMED further explains that “New Mexico is home to fourteen work sites covered under the EEOICPA, including two major US Department of Energy Facilities, Los Alamos National Laboratory and Sandia National Laboratory. Without the services provided through the Office of Nuclear Workers’ Advocacy, nuclear workers or their eligible survivors might never receive their compensation.”

The office was initially staffed with 1 full-time equivalent (FTE), which was moved to the Department of Environment beginning July 1, 2008, with a general fund appropriation of \$125 thousand. Another FTE was added in February 2008 to help with the workload of processing claims. Current operating budget for the office is estimated at \$200 thousand.

ONWA is providing services to over 330 clients and has been successful in obtaining approximately 105 awards totaling about \$12 million paid to New Mexico workers or their eligible survivors. According to ONWA, many of these claims had been previously denied.

PERFORMANCE IMPLICATIONS

This program does not have any Accountability in Government Act (AGA) performance measures.

ADMINISTRATIVE IMPLICATIONS

The agency points out that due to the FY09 budget reduction in the general fund appropriation of \$847.3 thousand and a proposed reduction of \$800.4 thousand in FY10 to be carried into FY11, the administration of the Nuclear Workers Advocacy program may be significantly curtailed without an alternative or supplemental source of funding.

The department would need to establish a means of tracking the awards and the fees.

OTHER SUBSTANTIVE ISSUES

DOH relates the following issue:

A study of uranium miners in New Mexico found that uranium mining was more strongly associated with obstructive lung disease in Native Americans than in Hispanics and Whites (Mapel, et al., American Journal of Public Health, 1997, V 87: No 5, 833-838. Mapel et al (1997) also found that Native American miners were less likely to receive compensation for mining-related disease.

IAD expands upon this issue:

Uranium mining, milling, and transporting took place in New Mexico and on the Eastern Agency of the Navajo Nation from 1944-1986. As many as 1,300 abandon uranium mines exist today on the Navajo Nation¹, testament to the nearly 4 million tons of uranium ore that were mined for energy and nuclear weapons production.² The risks associated with uranium exposure were well documented as early as the 1930s; however, many miners, millers, transporters as well as employees of the US DoE involved in nuclear research were not well informed of these risks and, at times, little was done to shield people from the severe danger inherent in radiation exposure.³

The Office of Navajo Uranium Workers has identified as many as 1,500 tribal members in New Mexico who may be eligible for compensation under RECA but have yet to apply for benefits.⁴ Some of these tribal members may also be eligible for compensation under the EEOICPA.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without a dedicated funding source, the ONWA may not be fully supported by a general fund appropriation. The ONWA maintains that “nuclear workers of New Mexico would be severely impacted if the Office of Nuclear Workers’ Advocacy did not have the funding needed to sustain the office. Hundreds of potentially eligible claimants would suffer financial hardships, thus placing additional burden on federal and state sponsored benefits programs.”

MA/svb

¹ US House Committee on Oversight and Government Relations. *On The Health and Environmental Impacts on Uranium Mining on Navajo Nation, Testimony of Doug Brugge, PhD, MS.*, 23 October 2007. Washington, Government Printing Office, 2007, 3.

² US House Committee on Oversight and Government Relations. *On The Health and Environmental Impacts on Uranium Mining on Navajo Nation, Testimony of Wayne Nastri.* 23 October 2007. Washington, Government Printing Office, 2007, 1.

³ Ibid.

⁴ Paskus, Laura. “Yellowcake Blues” Santa Fe Reporter, October 11, 2006. Retrieved 1/23/08, <http://www.sfreporter.com/articles/publish/cover-101106-yellowcake-blues.php>.