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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>SCONC</u>	<b>LAST UPDATED</b> <u>2/8/23</u> <b>ORIGINAL DATE</b> <u>2/2/23</u>
<b>SHORT TITLE</b> <u>Storage of Certain Radioactive Waste</u>	<b>BILL NUMBER</b> <u>CS/Senate Bill 53/ec/SCONCS/aSJC</u>
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### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Up to \$100.0	\$200.0	\$200.0	\$500.0	Recurring	General Fund
<b>Total</b>						

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent version of this legislation.

Duplicates/Companion House Bill 122

Relates to 2022 Senate Bill 54 and House Bill 127 (and several prior Bills)

### Sources of Information

LFC Files

#### Responses Received From

State Land Office (SLO)

Energy Minerals and Natural Resources Department (EMNRD)

Department of Homeland Security and Emergency Management (DHSEM)

New Mexico Environment Department (NMED)

#### No Response Received

Indian Affairs Department (IAD)

## SUMMARY

### Synopsis of SJC Amendment to SCONC Substitute for Senate Bill 53

Section 74-4A-7(F) NMSA 1978 is amended to add: “The authority of the task force and its actions and those of state agencies with respect to federal or privately operated disposal or storage facilities are subject to the limitations contained in federal law and shall be consistent with federal law.”

Section 74-4A-11.1(B) NMSA 1978 is amended to exclude: “To ensure the protection of the state’s economy and natural resources, including water quality, and to advance environmental justice values.”

## Synopsis of SCONC Substitute for Senate Bill 53

The Senate Conservation Committee Substitute for Senate Bill 53, with an emergency clause, amends the Radioactive and Hazardous Materials Act, Section 74-4A-1 NMSA 1978. It expands the membership of the radioactive waste consultation task force to include the secretary of the Department of Homeland Security and Emergency Management, the secretary of the Department of Indian Affairs (or their designees), and the commissioner of public lands (or designee). This task force would identify the impact of new federal facilities, as well as the impacts of new private facilities for storage of radioactive waste. The task force would be required to meet at least once annually with the joint interim Radioactive and Hazardous Materials Committee.

An existing prohibition on storage or disposal of “radioactive materials, radioactive waste or spent fuel” without the state’s consent would be revised to apply to storage or disposal of “radioactive materials, transuranic contaminated waste or low-level waste.” New language prohibits storage or disposal of spent fuel or high-level waste in a disposal facility until (1) the state has consented to or concurred in the creation of the disposal facility and (2) a repository, as defined in 42 U.S.C. Section 10101(18), is in operation. Unless those conditions are met, the state, political subdivisions and “an entity or authority created by a joint powers agreement” would be prohibited from issuing, approving or certifying a permit, contract, lease or license “necessary for the construction or operation of a disposal facility for spent fuel or high-level waste.”

This bill contains an emergency clause and would become effective immediately on signature by the governor.

## FISCAL IMPLICATIONS

There is no appropriation.

DHSEM reports no fiscal impact.

Other newly appointed task force designees, SLO and IAD, may require additional funding to cover the duties imposed by the bill. The proposed bill also increases agency administrative and oversight responsibilities.

SLO states it earned over \$2.4 billion in FY22. According to SLO:

More than 90 percent of that revenue came from oil and gas wells on state trust lands. Much of the oil and gas revenue is attributable to wells located in Southeastern New Mexico. A significant accident or attack on a radioactive waste storage facility could significantly disrupt oil and gas activity in one of the most productive oil and gas producing regions in the world for an unknown amount of time.

NMED states its existing operating budget does not include funding for oversight of a private hazardous waste/radioactive disposal facility and currently does not have adequate staff for this type of work. NMED estimates it would require up to approximately \$200 thousand annually for the implementation of one facility. The department would review applications, participate in public meetings, review technical data, and conduct investigative licensing work. This estimate includes staff, training, and resources related to implementation of the expanded Task Force scope and responsibilities.

## TECHNICAL ISSUES

DHSEM plans to designate, from its current employees, a subject matter properly trained expert in radioactive waste. The agency expects to absorb additional job duties through its Local Preparedness Program.

## OTHER SUBSTANTIVE ISSUES

EMNRD notes the state land commissioner, as an elected official, and the State Land Office (SLO) are not subject to the governor's executive authority.

SLO states several million acres of state trust land could be affected by the establishment of a storage and disposal facility handling radioactive waste: "Expanding the duties of the radioactive waste consultation task force to include identifying the impacts of new private disposal facilities as well as new federal facilities will assist the SLO in evaluating the effects on state trust lands."

### **Federal Preemption.**

The Senate Judiciary amendments appear to address the federal preemption issue. As previously noted, costly and time consuming litigation could occur if this bill were challenged under the New Mexico and U.S. Constitutions. Case precedent recognizes that:

The federal government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the states [citing *Farley*, 115 F.3d at 1502 (stating that under the Atomic Radiation Act, '[h]azards arising from atomic radiation were made a particularly federal concern as to which the states had no authority to regulate'). See *Pacific Gas*, 462 U.S. at 212, 103 S.Ct. 1713, and *Skull Valley Band of Goshute Indians v. Nielson*, 376 F.3d 1223 at 1254 (10th Cir. 2004) [holding that Utah's nuclear waste safety statute was preempted by federal law].

NMED has noted that under the U.S. Constitution's Supremacy Clause, the federal government occupies the field of nuclear safety and state moratoriums on nuclear construction that are grounded in safety concerns fall within that preempted field. State safety regulations that are based on radiation, design, or similar issues are preempted. Some state regulations that have a non-safety rationale have fallen outside that preempted field. The Senate Floor Committee's first amendment now includes the following language: "The authority of the task force and its actions and those of state agencies with respect to federal or privately operated disposal or storage facilities are subject to the limitations contained in federal law and shall be consistent with federal law." Its second amendment deletes the following language proposed by NMED in 2022: "To ensure the protection of the state's economy and natural resources, including water quality, and to advance environmental justice values."

JT/al/hg/mg/ne/al