

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Lundstrom ORIGINAL DATE 02/06/11
LAST UPDATED _____ HB 111
SHORT TITLE Uranium Legacy Cleanup Act SB _____
ANALYST Hoffmann

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Energy, Minerals and Natural Resources Department (EMNRD)

State Land Office (SLO)

Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Bill 111 would enact the "Uranium Legacy Cleanup Act" (Act) which proposes new material and would amend Sections 7-1-6.20, 7-1-6.61, and 7-1-6.62 NMSA 1978 for the purposes of creating revenue sources to fund uranium legacy cleanup activities and establishing clear liability on uranium mining operations.

The Act would create the Uranium Legacy Cleanup Fund, which would be administered by the EMNRD. The qualifications for eligible projects include protection of public health, safety and welfare, protection of the environment from existing or potential contamination, and other factors related to expected costs and benefits. The EMNRD would promulgate rules for the use of the 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.

The Act would amend Chapter 7 NMSA 1978 “the Tax Administration Act” to distribute the surtax receipts to the Fund, along with 50% of current taxes on uranium under the Resource Excise Tax Act to the Fund.

A new section would be added to the Tax Administration Act to impose the “uranium legacy cleanup surtax” on the severing or processing of uranium in New Mexico. The surtax, which is under the Resources Excise Tax Act, is 2% of taxable value.

The Director of the Mining and Minerals Division (MMD) or Secretary of the Environment Department (ED) would be granted the authority to issue an order to any responsible party to require removal or remedial action deemed necessary to protect human health or the environment or to commence an action in district court. If a party fails without sufficient cause to comply with a cleanup order, the party could be liable for punitive damages up to three times the amount of costs incurred as a result of its failure to take proper action.

The Secretary of the EMNRD would be required to report to the appropriate interim legislative committee by October 1 of each year on expenditures from the fund and the progress of the projects receiving funding.

FISCAL IMPLICATIONS

House Bill 111 would create the “uranium legacy cleanup fund” as a nonreverting fund in the state treasury. The fund would consist of money from distributions of the uranium legacy cleanup surtax, other taxes, loans repaid to the fund and money that is appropriated or donated to the fund. Money in the fund would be invested by the State Investment Officer in the manner in which the Land Grant Permanent funds are invested. Money in the fund would be appropriated by the legislature to the EMNRD to carry out the purposes of the act by providing financial assistance on qualified projects.

The EMNRD notes that the potential revenue impact of the proposal is indeterminate, as there is presently no uranium mining in New Mexico. Rio Grande Resources (Mount Taylor Mine) and Rio Algom (Old Stope Mine) have mining permits, but they are not presently producing. The Mining and Minerals Division received 19 exploration permits between 2006 and 2008. Eight have been approved, one is pending, and 10 have been withdrawn or denied. In the event that uranium mining is resumed in the state, the proposal would shift a portion of the general fund revenue from the resources excise tax to the new Legacy Fund.

The EMNRD also reports that if uranium production resumes, the new surtax will produce additional revenue for the state. However, the earliest any revenue could be produced is probably 2 years from now and significant revenue is several years further out. The new revenue would be earmarked for uranium legacy reclamation projects. Having the surtax revenue would reduce the pressure to use general fund money to pay for uranium legacy cleanups.

The SLO adds that the surtax of 2% on the taxable value of uranium severed or processed does not provide for a stable source of funding. The price of uranium has fluctuated greatly over time so it is difficult to estimate the revenue that would be generated under House Bill 111. More stable funding may be provided through a different funding mechanism, such as a flat price per pound of uranium produced. The current severance tax on severed and saved uranium-bearing material is 3.5% of the taxable value of each pound of uranium. In addition, because there is no limitation on land ownership for funded projects, lands under private ownership would qualify for projects funded by a surtax on uranium severed from state and federal lands.

The TRD comments that under present law, the resources excise tax rate on potential uranium production would be 0.75% of taxable value. Taxable value is the sales price less any royalties paid to the state, federal or tribal governments. The severance tax rate on potential uranium production is 3.5% of taxable value. Taxable value is the sales price less 50%. Thus, the severance tax rate as a percent of sales price is 1.75%.

The NMED estimates the cost of cleanup for these types of sites is in the multiple millions of dollars so significant stable funding would be required to conduct these activities. NMED estimates that a \$2.00/pound surtax on the uranium severed or processed would generate a maximum of approximately \$20 million per year over the industry projected 30 year life of uranium mining that could occur in New Mexico. This level of funding would be necessary to attempt to address these types of issues.

SIGNIFICANT ISSUES

The SLO shared the following concerns.

Strict liability for remediation of waste piles from past uranium exploration, mining, and milling activities could prevent cleaning up these sites since remediation at large mines and mills can cost in the tens of millions of dollars.

This legislation creates a new excise tax program. This will have an impact on producers, and, to the extent SLO has uranium mining mineral leases, on those lessees. The tax provisions are not sufficiently clear in the draft, and will probably require TRD-adopted rules to further specify and implement. Moreover, the fact that the tax is both a severance and a processor tax makes for unusual complexity.

More to the point for SLO is the liability provision. The government exceptions noted above are almost – but not quite – well enough tailored to encompass SLO and, thus, exempt SLO from liability; further detail may be needed to accomplish that. Moreover, the strict liability aspect will no doubt be resisted by those private interests to whom the provisions will apply.

The NMED adds the following comments.

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, water quality and the environment. Therefore, many of those operations resulted in significant environmental impacts, including water pollution.

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 would 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.

In addition, threats to public health from past uranium mining and milling and the need to protect public health through the abatement of existing sources of soil and water pollution is a significant issue facing New Mexico. This is becoming an increasingly significant concern as the price of uranium has greatly increased in recent years and mining companies are interested in starting new uranium mining operations that have the potential for future public health impacts. Past environmental impacts and threats to public health and water quality from uranium mining and milling operations, especially from abandoned sites, need to be determined and cleaned up in order to ensure that those areas are viable for future use for all New Mexicans.

House Bill 111 proposes to hold responsible parties strictly liable for the costs associated with the release of contaminants from uranium mining operations conducted during or after 1900. Strict liability is the imposition of liability without the finding of fault on the part of a responsible party. That is, a responsible party is liable for the release of contaminants without a showing that the responsible party intended the release or was negligent in causing the release.

The bill defines a responsible party as the owner, operator or permittee of a uranium mining operation and subsequent owners of the property. However, the bill exempts from liability: any person who can show that the contamination resulted from an act of God; an innocent land purchaser or inheritor; an innocent surface estate owner; any royalty interest holder or forecloser; security interest holder who did not participate in the management of the uranium mining; or any governmental entity acquired the property by escheat.

ADMINISTRATIVE IMPLICATIONS

The Taxation and Revenue Department reports the proposal would require it to make significant modifications to forms for processing the resources excise tax. Assuming there are not a large number of taxpayers, the recurring administrative impacts are likely to be limited.

Other concerns were stated.

EMNRD will need to devote resources to the administration of the fund and the review of funding proposals. HB 111 does not provide any specific authority to cover EMNRD's costs from the fund.

If EMNRD and NMED pursue potentially responsible parties for cleanup costs under Section 10 of House Bill 111, there will be costs for the investigation and prosecution of these cases. The agencies will need to reallocate limited resources to bring actions and will likely be limited in the number of actions it could bring during any year. If parties contest their liability, additional resources will be needed to pursue the actions.

The SLO claims that mineral lease forms may need to be reviewed and, perhaps, revised to take account of the strict liability of lessees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the EMNRD, state agencies will continue to seek funding and resources elsewhere in order to address abandoned uranium mines and other contamination related to uranium mining that poses a hazard to the public.

JCH/svb