

HOUSE BILL 142

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE GENERATING FACILITY AND MINE REMEDIATION AND RESTORATION FOR PUBLIC HEALTH AND THE ENVIRONMENT ACT; REQUIRING THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT AND THE DEPARTMENT OF ENVIRONMENT TO INVESTIGATE, PLAN, OVERSEE, MONITOR AND ENFORCE THE REMEDIATION AND RESTORATION OF GENERATING FACILITIES AND MINES; PROVIDING FOR A DISPLACED WORKER PRIORITIZATION; PROVIDING REPORTING REQUIREMENTS; AUTHORIZING THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT AND THE DEPARTMENT OF ENVIRONMENT TO HIRE OUTSIDE PROFESSIONALS TO ASSIST IN THE REMEDIATION AND RESTORATION OF GENERATING FACILITIES AND MINES; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be

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1 cited as the "Generating Facility and Mine Remediation and
2 Restoration for Public Health and the Environment Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Generating Facility and Mine Remediation and Restoration for
5 Public Health and the Environment Act:

6 A. "closure" means the process of closing a mine or
7 other industrial facility;

8 B. "generating facility" means a coal-fired
9 generating facility in New Mexico that may be composed of
10 multiple generating units that:

11 (1) was granted a certificate of public
12 convenience and necessity and for which abandonment authority
13 was granted after December 31, 2018;

14 (2) is owned or leased, in whole or in part,
15 by a public utility; and

16 (3) was operated by a public utility and was
17 abandoned prior to January 1, 2023;

18 C. "public utility" means an investor-owned
19 electric public utility as defined in the Public Utility Act;

20 D. "reclamation" means the rehabilitation of
21 mining-affected land to make it acceptable for designated
22 purposes with protection of the natural resources and aesthetic
23 value of adjoining areas;

24 E. "remediation" means the process of reversing or
25 stopping environmental damage;

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1 F. "resilience" means the capability to anticipate,
2 prepare for, respond to and recover from impacts and minimize
3 damage to social well-being, including damage to the economy,
4 health and the environment;

5 G. "restoration" means the process of restoring
6 site conditions as they were before a land disturbance; and

7 H. "toxic metal contaminants" means the federal
8 environmental protection agency's twenty-one identified
9 constituents of concern in coal ash residue leachate, for which
10 the federal environmental protection agency requires ground
11 water monitoring. These constituents include boron, calcium,
12 chloride, pH, sulfate, total dissolved solids, antimony,
13 arsenic, barium, beryllium, cadmium, chromium, cobalt,
14 fluoride, lead, lithium, mercury, molybdenum, selenium,
15 thallium and radium 226 and 228.

16 SECTION 3. [NEW MATERIAL] INSPECTION, INVESTIGATION AND
17 DOCUMENTATION.--

18 A. The energy, minerals and natural resources
19 department and the department of environment shall coordinate
20 efforts to:

21 (1) perform a comprehensive inspection and
22 investigation of a generating facility and mine to determine if
23 there has been any environmental contamination of the land and
24 waterways and prevent off-site pollution;

25 (2) establish a plan for a public utility that

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1 involves community input and requires timely cleanup, full
2 remediation and restoration of the entire generating facility
3 and mine site to protect public health and welfare;

4 (3) ensure public utility compliance through
5 monitoring, recordkeeping and reporting requirements; the use
6 of audits; investigations; or other measures; and

7 (4) provide yearly updates to the legislature.

8 B. No later than April 31, 2024, the energy,
9 minerals and natural resources department and the department of
10 environment shall provide a copy of the investigation to the
11 legislature.

12 SECTION 4. [NEW MATERIAL] FULL REMEDIATION AND
13 RESTORATION PLAN--CONTENTS.--Measurable steps contained in the
14 cleanup, full remediation and restoration plan shall:

15 A. be informed by input from impacted community
16 members;

17 B. ensure that toxic metal contaminants do not
18 leach into the ground and leak into waterways or otherwise harm
19 the public, animals or agriculture and cause negative public
20 health consequences;

21 C. create necessary closure provisions and
22 corrective actions that include safe and appropriate disposal
23 of waste, regular ground water monitoring and regular reporting
24 available to the public on accessible internet websites. In
25 order to make the data easier for the public to understand and

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1 evaluate, any and all regulatory reports from the energy,
2 minerals and natural resources department and the department of
3 environment should summarize results of the inspection,
4 monitoring and enforcement in an executive summary; and

5 D. create benefits for long-term resiliency by
6 protecting the environment from contamination for human and
7 animal health, ensuring clean water and property values and
8 creating local community resilience.

9 SECTION 5. [NEW MATERIAL] CIVIL AND CRIMINAL ACTIONS.--

10 A. The Generating Facility and Mine Remediation and
11 Restoration for Public Health and the Environment Act does not
12 prevent a person or entity that has been affected by pollution
13 or contamination from a generating facility or mine from filing
14 a civil action in a court of competent jurisdiction.

15 B. The energy, minerals and natural resources
16 department and the department of environment may institute an
17 administrative complaint or pursue violations against a public
18 utility pursuant to a comprehensive investigation as provided
19 in Section 3 of the Generating Facility and Mine Remediation
20 and Restoration for Public Health and the Environment Act.

21 C. The office of the attorney general may bring a
22 civil action or pursue criminal charges pursuant to the
23 energy, minerals and natural resources department's and the
24 department of environment's comprehensive investigation as
25 provided in Section 3 of the Generating Facility and Mine

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1 Remediation and Restoration for Public Health and the
2 Environment Act.

3 D. The Generating Facility and Mine Remediation and
4 Restoration for Public Health and the Environment Act shall not
5 be construed to preempt, limit or otherwise affect the
6 applicability of any other law, regulation, requirement, policy
7 or standard.

8 SECTION 6. [NEW MATERIAL] EMPLOYMENT OF WORKERS.--In
9 considering employment applications for hiring to effectuate
10 cleanup at a generating facility or a mine, a public utility
11 shall prioritize the use of workers who previously were
12 employed there and workers residing in New Mexico to the
13 greatest extent practicable and shall take that use into
14 consideration in evaluating applicants.

15 SECTION 7. [NEW MATERIAL] AUTHORIZATION TO HIRE
16 ADDITIONAL PROFESSIONALS TO ASSIST IN MINE REMEDIATION AND
17 RESTORATION.--

18 A. The energy, minerals and natural resources
19 department and the department of environment are authorized to
20 hire environmental engineers, hydrogeologists, geochemists and
21 other professionals, including outside consultants, as needed
22 to perform a rigorous inspection of a generating facility and
23 mine to:

24 (1) detect, assess, investigate and determine
25 the extent of contamination; and

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1 (2) create a thorough plan for a generating
2 facility's co-owners to remediate and prevent deleterious
3 impacts on ground water with steady long-term measurable
4 cleanup and performance standards.

5 B. The energy, minerals and natural resources
6 department and the department of environment are authorized to
7 hire additional office support staff to assist in:

8 (1) completing and submitting a comprehensive
9 final report intended to ensure that there will be no
10 reasonable probability of adverse effects to human health or
11 the environment, particularly resulting from ground water
12 contamination, by April 31, 2024; and

13 (2) monitoring, overseeing and enforcing via
14 recordkeeping and reporting requirements to ensure compliance.

15 SECTION 8. [NEW MATERIAL] LIABILITY.--If any entity
16 acquires a generating facility or mine, then it shall assume
17 all liability for full remediation, reclamation and
18 restoration. That entity shall provide evidence consistent
19 with law of its solvency to cover the costs of full
20 remediation, reclamation and restoration.

21 SECTION 9. APPROPRIATION.--Three hundred fifty thousand
22 dollars (\$350,000) is appropriated from the general fund to the
23 department of environment for expenditure in fiscal years 2024
24 and 2025 to carry out the purposes of the Generating Facility
25 and Mine Remediation and Restoration for Public Health and the
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1 Environment Act. Any unexpended or unencumbered balance
2 remaining at the end of fiscal year 2025 shall revert to the
3 general fund.

4 SECTION 10. APPROPRIATION.--Three hundred fifty thousand
5 dollars (\$350,000) is appropriated from the general fund to the
6 energy, minerals and natural resources department for
7 expenditure in fiscal years 2024 and 2025 to carry out the
8 purposes of the Generating Facility and Mine Remediation and
9 Restoration for Public Health and the Environment Act. Any
10 unexpended or unencumbered balance remaining at the end of
11 fiscal year 2025 shall revert to the general fund.

12 SECTION 11. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2023.