

Department of the Interior, with funds provided by the State of New Mexico but without the use of its computer system, would be able to determine who is eligible for payments. If this difficulty exists, the making of a loan might be futile. The department expresses concern that even if payments could be made, a risk exists that the \$100 million could get tied up in the ongoing litigation and not be returned to the State.

FISCAL IMPLICATIONS

The bill appropriates \$100 million from the general fund operating reserve to the NM Office of Indian Affairs for expenditure in fiscal years 2002 and 2003 as a loan to the Department of Interior. The bill contains an emergency clause.

Any unexpended or unencumbered balance remaining at the end of FY 03 shall revert to the general fund.

The \$100 million represents almost 25% of the total general fund operating reserve and would lower the surplus to \$72 million above the 5% reserve level. The acceptance of the loan by the federal government would be contingent on the Office of Indian Affairs successfully negotiating agreement with the federal government. The particular market interest rate used would need to be defined.

TECHNICAL ISSUES

EMNRD raises the following technical issue:

Use of the word "residents" might be considered ambiguous in this context, as persons might reside on the Navajo Nation and the Jicarilla Apache Nation who are not beneficiaries of the oil and natural gas royalties, or indeed who are not even tribal members. More importantly, the use of the word implies that tribal members not "resident" on the reservation would be ineligible to receive loan proceeds despite being beneficiaries of oil and natural gas royalties. The phrase "tribal members" could be substituted for the word "residents." This change would permit loan proceeds to benefit tribal members living in Albuquerque, Santa Fe or elsewhere. However, there may be non-tribal members who receive because the heirs of individual trust allottees do not have to be members of the Navajo or Jicarilla Apache tribes.

BD/ar