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FISCAL IMPACT REPORT

SPONSOR Garcia, MP DATE TYPED 1/26/2005 HB 239

SHORT TITLE Uranium Enrichment Facility Restrictions SB _____

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Commissioner of Public Lands (SLO)

Department of the Environment (ED)

Responses Not Received From

Attorney Generals Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 239 would prohibit the commissioner of public lands from selling, leasing, or otherwise conveying state land for use as the site of a uranium enrichment facility unless the facility is economically feasible as determined by the Environment Department.

HB 239 directs the Environment Department to adopt rules for approval of a uranium enrichment facility which include a requirement for adequate funding of waste storage.

HB 239 declares an emergency.

Significant Issues

The Commissioner of Public Lands is charged by the enabling act with maximizing revenue generated by trust lands for those beneficiary institutions identified. Section 19-1-17 NMSA 1978 specifically identifies these institutions.

Section 19-1-1 NMSA provides the commissioner of public lands shall have jurisdiction over all trust lands owned by the state, except as may be otherwise specifically provided by law, and shall have the management, care, custody, control and disposition of such lands.

At present a number of questions remain as to how waste material produced by uranium enrichment facilities will be disposed of. HB 239 directs Environment Department involvement to ensure that public health and the environment are protected and the appropriate financial assurance is in place to make certain appropriate disposal and reclamation take place.

The Environment Department notes that HB 239 directs the department to adopt rules for approval of a uranium enrichment facility. Although not clearly stated in the legislation, such rules would establish a new state program for permitting this type of facility. These rules could not be inconsistent with the U.S. Nuclear Regulatory Commission's (NRC) licensing and enforcement authority under federal law, but such rules could provide additional assurances as determined necessary to protect the health and environment of the citizens of New Mexico. The Environment Department currently has little say on whether an NRC license to construct, operate, and decommission a uranium enrichment facility is granted or not.

HB239 directs the Environment Department to require financial assurance for waste storage under these rules for the proposed uranium enrichment facility. This financial assurance could be used by the State of New Mexico to ensure that all radioactive waste created by the facility is properly stored, treated and disposed of in a manner that protects human health and the environment. Currently, the NRC, and not the State of New Mexico, will be the licensing and enforcement agency for most issues, including financial assurance at the proposed facility.

The State Land Office refers to Section 10 of the New Mexico Enabling Act, Article XIII Section 2 of the New Mexico Constitution and Sections 19-1-1, 19-1-2 and 19-7-9 NMSA 1978 which provide that the commissioner of public lands shall select, locate, classify and have the direction, control, care and disposition of all public lands. This proposed legislation may be in conflict with the constitutional duties of the Commissioner.

The State Land Office also notes established common law, e.g., *State ex re.l. Otto v. Field*, 31 N.M. 120 (1925) also references the determination of economic feasibility is the particular province of the separately elected, constitutionally created Commissioner as trustee of the Enabling Act trust, not outside state agencies.

PERFORMANCE IMPLICATIONS

Enacting of HB 239 may impact State Land Office measures regarding income received from commercial leasing activities.

FISCAL IMPLICATIONS

This bill has the potential to reduce revenue generated by the State land Office for beneficiary institutions.

ADMINISTRATIVE IMPLICATIONS:

HB 239 tasks the Environment Department with conducting feasibility studies and developing financial assurance requirements. These could be absorbed with current resources. The Department is currently tasked with similar functions at many of the state's mines and hazardous waste treatment, storage, and disposal facilities.

PA/lg