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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/08  
 SPONSOR HAFC LAST UPDATED 2/8/08 HB 342/HAFC  
 SHORT TITLE Uranium Legacy Cleanup Act SB \_\_\_\_\_  
 ANALYST Wilson

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	Unknown	Unknown	Recurring	Uranium Legacy Cleanup Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	Recurring or Non-Rec	Fund Affected
<b>ED</b>	\$125.0*	\$125.0*	Recurring	Uranium Legacy Cleanup Fund
<b>EMNRD</b>	\$125.0*	\$125.0*	Recurring	Uranium Legacy Cleanup Fund
<b>TRD</b>	Unknown	Unknown	Recurring	Uranium Legacy Cleanup Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*one FTE with benefits, estimate

Relates to SB 273, HJM 2 & HB 22

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From\*

Energy Minerals and Natural Resources Department (EMNRD)

Environment Department (ED)

Department of Finance & Administration (DFA)

Department of Health (DOH)

Indian Affairs Department (IAD)

Taxation & Revenue Department (TRD)

\*responses were received on original bill and as applicable is used in this FIR

## SUMMARY

### Synopsis of Bill

The House Appropriations and Finance Committee Substitute for House Bill 342 creates a new Uranium Legacy Cleanup Act. The purpose of this fund is to clean up sites contaminated by past historical uranium mining and milling activities.

The Secretary of EMNRD shall adopt rules for applying for financial assistance from the UCLF and for establishing priorities for qualified projects.

Priorities for approving qualified projects shall be based upon:

- the protection of public health, safety and welfare;
- the protection of the environment from existing or potential contamination;
- the ability to leverage funds available from other sources to implement qualified projects
- the degree to which a qualified project can be completed with the requested funding;
- the size of the area to be included with the qualified project;
- the number of persons affected or potentially affected by contamination at the site of the qualified project
- the level of actual or potential radiation exposure at the site of the qualified project;
- the potential for an increase of the area contaminated or potential exposure to persons if the site of a qualified project is not cleaned up;
- the lack of any potentially responsible party obligated to conduct a cleanup pursuant to any federal, state or tribal law; and
- the legal authority of the applicant to conduct cleanup activities on the proposed site.
- the potential uses for the site following completion of the qualified project; and

In addition, the Secretary of EMNRD will be required to report to the appropriate interim legislative committee by October 1 of each year for the previous fiscal year regarding total expenditures from the fund for previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action in the subsequent legislative session..

For the privilege of severing, or the related processing of uranium, there is imposed “uranium legacy cleanup surtax on any severer or related processor of uranium in New Mexico. A severer of uranium shall not be subject to the uranium legacy cleanup surtax with respect to severed uranium if the surtax on that severed uranium is paid by a processor. The uranium legacy

cleanup surtax shall be imposed at an amount of \$.50 per pound of the content of U308 contained in uranium severed or processed after such severing, regardless of the form in which the product is actually disposed of.

### **FISCAL IMPLICATIONS**

The Uranium Legacy Cleanup Fund is created as a fund in the state treasury and shall be administered by EMNRD. Any unexpended funds remaining at the end of a fiscal year shall not revert to the general fund.

The ULCF is created and shall be administered by EMNRD. The fund shall consist of money from distributions of the uranium legacy cleanup surtax pursuant to Section 7-1-6.59 NMSA 1978; money that is repaid from loans approved by the EMND secretary; and money that is appropriated or donated or that otherwise accrues to the fund. Money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund.

EMNRD shall establish procedures and adopt rules as required to administer the fund and to originate grants or loans for qualified projects approved by the secretary.

Money in the fund is appropriated to EMNRD to carry out the purposes of the ULCF by providing financial assistance for qualified projects.

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.

Under the Water Quality Act and Water Quality Control Commission (WQCC) regulations, ED is one of the regulatory agencies responsible for assessing and overseeing the cleanup of all sites in New Mexico potentially contaminated by uranium mining. This bill will require that ED review all abandoned uranium site cleanup plans and work products for approval and consistency with existing applicable statutes, rules, and regulations for cleanup of uranium contamination, and to ensure protection of public health, water quality, and the environment. The task will require significant funding and staff resources. At least one additional full time employee will be needed to manage this effort. The appropriation of funds that will allow ED to implement the tasks required related to this bill is not included. Those tasks will be new duties for ED, which does not have existing resources to accomplish unless additional funding is provided.

### **SIGNIFICANT ISSUES**

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 and the environment. Therefore, many of those operations resulted in significant environmental impacts, including water pollution. In 2005, the Navajo Nation banned uranium mining on Tribal lands.

Current state water quality regulations are designed to prevent future water pollution at any new uranium mining and processing facilities that fall under the state's jurisdiction. Since 1978,

pursuant to the Water Quality Act, operators have been required to obtain groundwater discharge permits under WQCC regulations to prevent groundwater contamination. Requirements for financial assurance are also in place to ensure mine sites are adequately closed following the cessation of operations and to abate any soil, groundwater, or surface water contamination that may occur. ED recently evaluated the adequacy of the uranium standard for groundwater to protect public health. ED hired a toxicologist in 1999 to study the effects of uranium in groundwater on public health. As a result of that assessment, the standard for uranium changed from 5.0 mg/l to 0.03 mg/l and the state level of groundwater and public health protection from uranium sites.

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 laws 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 groundwater 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 will 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.

TRD is currently undertaking review of the cumulative tax burden on uranium production and processing from various direct taxes in New Mexico, and comparing with taxes on other natural resource production such as coal, oil and natural gas. They plan to provide comparisons with taxes in selected other states as well.

In this regard, and considering the intent of this bill, TRD has provided the following comments and observations:

- The uranium production and processing industry suffered precipitous decline in New Mexico, starting about 25 years ago, and the industry has been essentially dormant in recent years. Thus, recent actual revenue experience is not a reliable predictor of future activity and industry plans are uncertain.
- When the uranium industry in New Mexico experienced its last boom during the mid- and late 1970s, the states severance related revenues were initially at a low level compared to taxes on coal, oil and natural gas. Laws 1977, Chapter 102, was a major effort “ ... to impose a unified system of severance taxes upon the severance of energy resources in the form of oil, gas, coal and uranium, taking into account the quantity of energy producible, in addition to the value of the product or natural resource, in a manner consistent with a unified system.” In its purpose section, the act states: “The legislature finds that certain interferences with the market and certain existing contracts have from time to time imposed restrictions which require variances from the stated purpose of the act. Until such time as these restrictions are removed, the achievement of its goal is not possible, but this act achieves as much of that goal as is currently possible.”

- The “unified system” goal was not fully achieved, and the various energy resource severance related taxes have undergone numerous revisions over the years reacting to changing domestic and world energy markets.

TRD further provided the following:

- During the 1977 Legislature, a great deal of industry testimony concerned the existence of long term, low priced contracts for U3O8 (yellowcake). As a result, a two part tax system was developed, with certain low priced contracts registered to pay tax at a much lower rate than non-registered contracts.
- For estimating purposes, and based on industry input, anticipated sales were split into old registered contracts, new contracts (non-registered) and spot sales, with average prices estimated for each category. Estimates missed the mark, considerably!
- While the old registered contracts system died long ago, that experience may provide some cautions for the future: First, the ability to shift sales to fill spot vs. new long term vs. old registered contracts in any one year was greater by far than was anticipated. For the future, as production ramps up, we may anticipate the industry’s ability to shift between contract sales and spot sales (at higher prices) will continue to cause risk to revenue estimation. Second, the ability to sell from inventories or to accumulate inventories in a year may again become significant, which adds to the volatility of reported sales and related revenues. Third, issues of pricing decisions within new, long term contracts, compared to spot prices in world markets will once again raise questions as to the value of the depletable uranium resource in New Mexico.
- Considering the preceding discussion, and in view of the intent of this bill to provide for cleanup projects related to historic contamination that may have resulted from uranium mining or milling activities that occurred prior to July 1, 2008, the sponsor may wish to consider pegging the value for uranium legacy cleanup surtax purposes to an index of domestic or world prices (using a monthly or annual average thereof), to generate a more stable revenue flow. Using a benchmark market price (such as that provided in NYMEX pricing publications) will tend to reduce compliance burdens on the industry, and reduce administrative costs for TRD.
- A related issue deserves review as the state prepares for the anticipated renewal of uranium production and processing in New Mexico. **The taxable value of uranium for severance tax purposes** is derived from the sales price per pound of the content of U3O8 (yellowcake) contained in the severed and saved or processed uranium, regardless of the form in which the product is actually disposed of. **The taxable value of uranium for resources excise tax purposes**, prior to specified deductions, is presumed, in the absence of preponderant evidence of another value, to mean the total amount of money or the reasonable value of other consideration received for the severed or processed natural resource (however, no specific mention is made of the value of U3O8 content). It might be useful to clarify that within the resources excise tax definitions.

## **ADMINISTRATIVE IMPLICATIONS**

This bill will create a significant extra burden on EMNRD staff in the especially in the beginning stages of implementation of this act. EMNRD is required to administer the fund, establish procedures and to hold and disburse funds. The bill does not allow the fund to be used for administrative costs.

ED also notes that there is no funding mechanism included in this bill to pay for the addition of staff and other costs necessary to implement tasks that will be required of ED. At least one additional full time employee will be needed to manage that effort to ensure cleanups are conducted in accordance with applicable statutes, rules and regulations to protect public health, water quality, and the environment.

TRD sees impact on changing resource excise tax return form, on manual key entry staff for resource and severance tax forms, and on related programming changes in the GENTAX system for tax processing of the uranium legacy cleanup surtax:

1. The current Resource Excise Tax form contains a significant amount of information, since it covers three different types of taxes, with varying tax rates depending on the mineral type and taxable event.
2. To properly administer the proposed uranium legacy cleanup surtax, it may be best to develop a separate form, specific to the surtax, which will contain a limited number of data entry fields. It will still require manual key entry.
3. With any new form, or significant form revision, GENTAX personnel and programmers will need to be involved in the design and programming of such, and only they can determine the time and effort that will be required to fit within the GENTAX system.
4. In this regard, the current Revenue Accounting project to upgrade GENTAX programming is targeted to be completed by June 30, 2008. With this bill's effective date of January 1, 2009, there should be sufficient time to design, develop, test and properly implement the forms, procedures and systems changes required.

Also, the above considerations will impact the time and personnel requirements for manual key entry for the new uranium legacy cleanup surtax, and related budgetary support.

## **RELATIONSHIP**

This bill is related to and similar to Senate Bill 273 which also creates a new Uranium Legacy Act and a Uranium Legacy Cleanup Fund, all for the purpose of providing funding to clean up sites contaminated by past historical uranium mining and milling activities.

This bill also relates to HJM 2, Superfund For Uranium-Contaminated Sites & HB 22, Uranium Related Health Study

## **TECHNICAL ISSUES**

ED provided the following:

In Section 2.D. on page 2, the definition of “qualified project” should be expanded to clarify that the project is to be cleaned up in accordance with applicable state or federal standards and in accordance with a cleanup work plan approved by the appropriate

regulatory agency responsible for environmental oversight. Those cleanups should be done in a manner that protects public health, surface use, and groundwater and surface water resources, and is consistent with standards applied to other state and federal uranium cleanup sites. The agency with the technical expertise and regulatory authority to approve work plans and actual cleanup actions needs to oversee that work. The ED is the state regulatory authority responsible for those actions related to cleanups at uranium sites pursuant to the Water Quality Act and WQCC regulations. ED is also responsible for technical oversight of federal uranium cleanups, and ensures that state requirements are met at uranium cleanup sites under federal laws such as the CERCLA, and Atomic Energy Act. Therefore, ED will need to review and approve the uranium legacy cleanup actions for consistency with state and federal rules, regulations, standards and requirements applied at other uranium cleanup sites.

This bill should explicitly exempt viable responsible parties from the definition of qualified projects that can receive funding for cleanup. Some former uranium mining sites may be found to have viable responsible parties that are subject to state or federal laws and/or regulations for cleanup actions. This bill should not allow viable responsible parties to receive a financial bail out for cleaning up a contaminated site. Parties responsible for those sites should be required to clean them up at their own cost.

Section 3.E.1&2 on page 3 mandates that two EPA Regions participate on the Uranium Legacy Cleanup Committee. State legislation probably cannot mandate participation on the committee by a federal agency.

TRD notes that on page 8, line 23, the bill adds “and 7-1-6.59;” but it does not add it to similar language on page 9, line 14. It should be confirmed whether the intent was to add it here, as well.

## **OTHER SUBSTANTIVE ISSUES**

From 1944-1986, nearly 4,000,000 tons of uranium ore were mined in and around the Navajo Nation for energy and nuclear weapons production. When these mines ceased operation, many of them were left abandoned and often left poorly contained without reclamation. Today, the abandoned uranium mines are proving to present a variety of health and environmental risks to New Mexico’s citizens and environment.

Over the years, scientists have scientifically linked uranium and other chemicals produced during the process of uranium milling with serious health risks. These chemicals, including radon, radium, and arsenic, have been associated with cancer, kidney disease, birth defects, neurotoxicity, neuropathy, hyper pigmentation and hyperkeratosis of the skin. In animals, exposures to these substances through water contamination have been documented to cause birth and genetic defects.

TRD provided the following additional data:

### **Potential Revenues from Hypothetical Production and Pricing of Uranium:**

*[As discussed previously in the Fiscal Impact section of this bill analysis, the potential revenue increase under the proposed Uranium Legacy Cleanup Surtax is currently indeterminate. TRD staff is not aware of any uranium mining currently occurring within*

*New Mexico; the uranium production and processing industry in New Mexico has been essentially dormant for many years.]*

**Hypothetical Illustration for Calendar Year 2009:**

- Assume price per pound of Uranium yellowcake (U3O8) ----- \$95.00
- Assume production/sales of U3O8 in pounds ----- 1,000,000 >

**(New) Uranium Legacy Cleanup Surtax:**

- Taxable Value = \$95 x 1,000,000 pounds = \$95,000,000
- Revenue @ rate of 2% = .02 x \$95,000,000 = \$1,900,000

**Resources Excise (Processors) Tax:**

- Taxable Value = \$95 x 1,000,000 pounds = \$95,000,000
- Revenue @ rate of 0.75% = .0075 x \$95,000,000 = \$712,500

**Severance Tax:**

- A flat 50% reduction of sales price is provided for: .5 x \$95 = \$47.50 per pound
- Taxable Value = \$47.50 x 1,000,000 pounds = \$47,500,000
- Revenue @ rate of 3.5% = .035 x \$47,500,000 = \$1,662,500

**Revenue Summary for three severance/processing related taxes:**

Uranium Legacy Cleanup Surtax -----	\$1,900,000
Resources Excise (Processors) Tax -----	712,500
Severance Tax -----	<u>1,662,500</u>
Total of three taxes -----	\$4,275,000

**Item:** Three taxes as percent of Resources Excise Taxable Value  
= 4,275,000 / 95,000,000 = 0.045 = 4.5% effective tax rate

During 2006, month-end spot price varied from low of \$37.50 per pound of U3O8 in January with steady increase up to \$72.00 in December. During 2007, month-end spot price varied from \$75.00 in January up to \$135.00 in June back down to \$75.00 in September 2007. Total World Production in thousand pounds of U3O8 was 102,840 in 2006; USA production was 4,122 in 2006; in 2006, calculating USA as percent of World Production = 4.008%. *[None of this product was from New Mexico.]*

**Deductions for Resources Excise Tax Purposes:** Under Section 7-25-3 (I) NMSA 1978, in determining taxable value, deductions will be allowed for: Any royalty or similar interest, whether payable in cash or in kind, paid to: the United States or any agency or instrumentality thereof; the state of New Mexico or any political subdivision thereof; or any Indian tribe, Indian pueblo or Indian that is a ward of the United States. In addition, in computing taxable value, any owner of natural resources may deduct any service charge on which the service tax imposed by 7-25-6 NMSA 1978 is payable.

*For purposes of this Hypothetical Illustration, such deductions are ignored, but they will certainly act to reduce potential revenue under the Uranium Legacy Cleanup Surtax and the Resources Excise (Processors) Tax, depending upon where future production of uranium ore is mined in New Mexico.*



Note on Historical Comparison of Uranium Price and Production in New Mexico:

By way of historic comparison with the boom in uranium production during the mid- to late 1970s, the following information is excerpted from information published (10/2/78) by the Tax Research & Statistics office of the Taxation and Revenue Department.

**Calendar Year 1977:**

- Quantity of U3O8 reported for Resources Excise (Processors) Tax purposes was approximately 13,827,000 n pounds.
- Weighted Average Price was \$25.00 per pound.
- Gross Value was approximately \$345,676,000
- Deductions taken: for Royalties Paid totaled approximately \$1.505 million; and for Service Charge totaled approximately \$1,009,000.
- Taxable Value was approximately \$343,162,000.  
Tax Due totaled approximately \$2,574,000.

DW/bb