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FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/09

SPONSOR Rodefer LAST UPDATED _____ HB 755

SHORT TITLE Uranium Mining Liability SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB749, HB84, SB188, SB223, SB224, HJM6, SJM6, SJM15 and SJM46.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate				Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals, and Natural Resources Department (ENMRD)

New Mexico Environment Department (NMED)

Attorney General's Office

SUMMARY

Synopsis of Bill

House Bill 755 establishes a method for determining liability and the issuing an order for clean up for any release of contaminants (as defined in the bill) that have the potential to injure human health, animal or plant life, effect water, or the environment. The proposed responsible parties for liability arising from any release of contaminants include:

- the owner of a uranium mining operation,
- the operator of a uranium mining operation,
- any person with a uranium operation permitted under the New Mexico Mining Act or the Water Quality Act,
- any person who, at the time of, or after, the uranium operation, qualifies under items #1 – #3 above,
- any person who owned the real property of the uranium operation at the time of or after the operation,
- a successor-in-interest to the uranium operation, and
- a successor-in-interest to any person identified above.

House Bill 755 establishes the authority for the Director of the Mining and Minerals Division (MMD) of the ENMRD or the Secretary of the NMED 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. Punitive damages are established for failure to comply with an order that would be at least, but not more than, three times the amount of costs incurred as a result of the failure to take proper action. The bill exempts acts of God and provides certain exemptions for an owner if, generally, the owner was not associated with the uranium operation.

FISCAL IMPLICATIONS

House Bill 755 makes no appropriations. However, House Bill 755 would affect the operations of the agencies that share responsibility for enforcement.

The ENMRD reports that the MMD may be able to absorb the workload increases in bringing these actions. If operators clean up contamination then the state will not have to do that work.

The NMED comments that under the Water Quality Act and Water Quality Control Commission (WQCC) regulations, NMED is one of the regulatory agencies responsible for assessing and overseeing the cleanup of all sites in New Mexico that are potentially contaminated by uranium mining. As defined in House Bill 755, a responsible party would be liable for the costs incurred by the state of New Mexico because of a release or threatened release. If House Bill 755 were to pass, the department would incur some added duties, and would make an effort to absorb those with current staff. For those cases that end up in litigation, NMED may seek to recover the costs associated with enforcing House Bill 755.

SIGNIFICANT ISSUES

The ENMRD states that there is a need to fund the cleanup of legacy uranium contamination issues and abandoned uranium mine sites in New Mexico. During the uranium “boom” from the 1950s to the early 1980s, New Mexico was the largest producer of uranium in the world. However, much of the uranium mining was largely unregulated by the state and federal government. As a result, there is a ‘legacy’ of health and environmental impacts that are still affecting people who lived near the operations. Native people, particularly the Navajo, were significantly impacted by past uranium mining.

As these activities occurred anywhere from 20 to 50 years ago, many of the companies involved in the actual mining operations no longer exist. However, a significant percentage of those companies can still be traced through various re-organizations, sales transactions, or other events, such that the assets have been passed through to companies which currently exist and are viable today.

House Bill 755 has a broad reach in determining liability to address this issue. Responsible parties include not only current owners and operators, but uses a strategy similar to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) by imposing retroactive liability on a broad basis to include past owners and operators and successors.

PERFORMANCE IMPLICATIONS

The ENMRD notes that if MMD has to go to court to enforce the Director's orders then that will take significant time and effort.

RELATIONSHIP

House Bill 749 proposes a "Uranium Legacy Cleanup Act" that substantially duplicates HB 755, but adds a funding mechanism by creating a fund and requiring the Board of Finance to reserve ten percent of the estimated bonding capacity for severance tax bonds every year for uranium mining cleanup.

House Bill 84 also proposes a "Uranium Legacy Cleanup Act" to be funded by enacting a surtax on uranium extraction of 2 percent of the taxable value and distributes the proceeds and half of the amount collected under the resource excise tax for uranium extraction to a new fund.,

House Joint Memorial 6 creates a Uranium Mining Task Force to study the impact of the resumption of uranium mining in New Mexico.

Senate Bill 188 would appropriate \$650.0 to the New Mexico Institute of Mining and Technology for the New Mexico Bureau Of Geology And Mineral Resources (NMBGMR) to conduct a comprehensive study to characterize aquifers within the San Mateo basin affected by past uranium mining and milling activities in the Grants mineral belt in New Mexico.

Senate Bill 223 "Uranium Mining and Milling Contamination Study" would appropriate \$200.0 thousand from the general fund to DOH for the purpose of for the purpose of conducting a comprehensive study of the adverse effects on the human health resulting from contamination from uranium mining and milling activities in New Mexico.,

Senate Bill 224 "Abandoned Uranium Sites Inventory Completion" proposes to appropriate \$300,000 from the General Fund to the Energy, Minerals and Natural Resources Department in FY10 and FY11 to (1) complete an inventory of abandoned uranium mining sites in New Mexico, (2) characterize the extent of existing contamination at those sites, and (3) estimate the cost of cleaning up contamination at those sites.

SJM 15 “Uranium Mine Cleanup” Senate Joint Memorial 15 resolves that the U.S. Congress be requested to: (i) allocate a significant percentage of the proceeds from the sale of excess uranium inventory to New Mexico for the cleanup of abandoned uranium mines and (ii) amend the federal Surface Mining Control and Reclamation Act to allow federal abandoned mine funds to be available for the cleanup of abandoned uranium mines.

Senate Joint Memorial 46 “Uranium Health-Profile Study and Database” includes a reference to the impact of uranium mining and requests the Department of Health to compile data and develop regional health profiles for three specific vulnerable geographic regions of New Mexico.

TECHNICAL ISSUES

The AGO¹ observes that retroactive civil legislation does not raise Constitutional questions on account of its retroactivity, if the legislative intent of retroactivity is expressly stated. It is unclear whether the language in Section (D) meets the standard. The treble damages provision of the bill in Section (E), denoted as punitive damages, may be found to be impermissible ex post facto legislation. See dicta in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) (“Retroactive imposition of treble damages would raise a serious constitutional question.”)

The ENMRD recommends that the liable parties identified in subsection B could contain a provision including any other person who is responsible for a release. Such a provision would broaden the scope of liability to potentially include haulers, storers, disposers, landfills or any one else who may have contributed to an existing problem. It may also broaden the number of “deep pockets” to assist with remediation costs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The ENMRD states that state agencies will continue to seek funding and resources elsewhere to address abandoned uranium mines and other contamination related to uranium mining that poses a hazard to the public.

CH/mt

¹ AGO disclaimer: This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.