

LFC Requester:	Jonas Armstrong
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date February 23, 2015
Bill No: HB 566

Sponsor: Rep. D. Wonda Johnson **Agency Code:** Attorney General's Office - 305
Short Uranium Legacy Cleanup **Person Writing** Tannis L. Fox, AAG
Title: Act **Phone:** 827-6695 **Email** tfox@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

HB 566 creates the "uranium legacy cleanup fund" as a nonreverting fund administered by the New Mexico Energy, Minerals and Natural Resources Department. The fund receives distributions of the uranium legacy cleanup surtax and other taxes on uranium pursuant to NMSA 1978, §§ 7-1-6.61 and 7-1-6.62.

The Department must establish procedures and adopt rules to administer the fund for qualified projects. Projects are directed at the elimination or reduction of actual or potential exposure of persons to contamination that may have resulted from uranium mining or milling activities that occurred prior to July 1, 2015. HB 566 sets forth a list of 11 priority considerations for funding.

HB 566 requires a distribution pursuant to NMSA 1978, § 7-1-6.20 NMSA 1978 of fifty percent of the net receipts attributable to taxes on uranium pursuant to Sections 7-25-4, 7-25-5 and 7-25-6 to the uranium legacy cleanup fund.

HB 566 imposes a "uranium legacy cleanup surtax" on any severer or related processor of uranium in New Mexico to severe or process uranium. The surtax is imposed at a rate of two percent on the taxable value of the uranium severed or processed after such severing.

HB 566 imposes strict liability on owners, operators and others for "costs," which are “all costs of removal or remedial action, including oversight costs, indirect costs, legal costs and interest, incurred by the state of New Mexico because of a release or threatened release [of contaminants] resulting in the incurring of those costs.” HB 566 sets forth exceptions for these individuals and entities having strict liability.

HB 566 gives the Director of the Mining and Minerals Division to issue an administrative compliance order or file suit in state district court based on a “release” and the Secretary of the New Mexico Environment Department to do the same based on a release from uranium mining operations “that has the potential to affect water, public health or the environment.”

Under HB 566, if a responsible party liable for a release does not without “sufficient cause” “undertake removal or remedial action properly upon order of the director or the secretary,” that person is liable for punitive damages at least equal to but not greater than three “the amount of costs incurred as a result of that person's failure to take proper action.” Punitive damages can be recovered through a civil suit.

HB 566 applies to uranium mining operations dating from 1900.

FISCAL IMPLICATIONS N/A

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

1. HB 566 gives the MMD Director the authority to issue an administrative order or file suit in state district court based on a “release” and the NMED Secretary the authority to do the same based on a “release from uranium mining operations that has the potential to affect water, public health or the environment.” (Emphasis added.)

HB 566 defines “release” as “the introduction or allowance of the introduction into the environment, including into water, either directly or indirectly, of one or more contaminants in a quantity and duration that may, with reasonable probability, injure human health, animal or plant life or property or unreasonably interfere with the public welfare or use of the property for a purpose other than a uranium mining operation.” (Emphasis supplied.)

Given the definition of “release,” and the authority given to the NMED Secretary to bring actions based on releases that could affect “water, public health or the environment,” it appears that the MMD Director and NMED Secretary have overlapping jurisdiction to bring administrative orders and lawsuits under HB 566. This could result in duplicative actions by the Director and Secretary in different forums.

2. There is no provision in HB 566 for a procedure for the MMD Director or the NMED Secretary to bring an order based on a release in order to ensure that the respondent receives due process.

3. Similarly, there is no provision for appeal of the administrative order.

4. HB 566 imposes up to treble punitive damages if a responsible party liable for a release does not “without sufficient cause” “undertake removal or remedial action properly upon order of the director or the secretary.” The term “without sufficient cause” is vague and broad, and would likely be the subject of much litigation.

5. Similarly, because HB 566 does not set forth any procedure for bring an administrative order, it is not clear when, how, under what circumstances a removal or remedial action must be undertaken.

PERFORMANCE IMPLICATIONS N/A

ADMINISTRATIVE IMPLICATIONS N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP None identified.

TECHNICAL ISSUES None identified.

OTHER SUBSTANTIVE ISSUES None identified.

ALTERNATIVES None identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo is maintained.

AMENDMENTS *See* Significant Issues above.