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HOUSE BILL 111

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Patricia A. Lundstrom

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE URANIUM LEGACY  
CLEANUP ACT; PROVIDING FOR THE ADMINISTRATION OF THAT ACT AND  
CLEANUP ACTIONS TO BE TAKEN PURSUANT TO IT; CREATING REVENUE  
SOURCES TO FUND URANIUM LEGACY CLEANUP ACTIVITIES; AMENDING AND  
ENACTING CERTAIN SECTIONS OF THE NMSA 1978; IMPOSING STRICT  
LIABILITY ON URANIUM MINING OPERATIONS; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 5 of this act may be cited as the "Uranium Legacy  
Cleanup Act".

**SECTION 2.** [NEW MATERIAL] DEFINITIONS.--As used in the  
Uranium Legacy Cleanup Act:

A. "department" means the energy, minerals and  
natural resources department;

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1           B. "financial assistance" means providing grants or  
2 loans on terms and conditions approved by the secretary for  
3 qualified projects;

4           C. "fund" means the uranium legacy cleanup fund;

5           D. "qualified project" means a project selected by  
6 the secretary for financial assistance; and

7           E. "secretary" means the secretary of energy,  
8 minerals and natural resources.

9           SECTION 3. [NEW MATERIAL] URANIUM LEGACY CLEANUP FUND--  
10 CREATED--PURPOSE--APPROPRIATIONS.--

11           A. The "uranium legacy cleanup fund" is created as  
12 a nonreverting fund in the state treasury and shall be  
13 administered by the department. The fund shall consist of  
14 money from distributions of the uranium legacy cleanup surtax  
15 and other taxes on uranium pursuant to Sections 7-1-6.61 and  
16 7-1-6.62 NMSA 1978; money that is repaid from loans approved by  
17 the secretary; and money that is appropriated or donated or  
18 that otherwise accrues to the fund. Money in the fund shall be  
19 invested by the state investment officer in the manner that  
20 land grant permanent funds are invested pursuant to Chapter 6,  
21 Article 8 NMSA 1978. Income from investment of the fund shall  
22 be credited to the fund.

23           B. The department shall establish procedures and  
24 adopt rules as required to administer the fund and to originate  
25 grants or loans for qualified projects approved by the

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1 secretary.

2 C. Money in the fund shall be appropriated by the  
3 legislature to the department to carry out the purposes of the  
4 Uranium Legacy Cleanup Act by providing financial assistance  
5 for qualified projects. Money shall be disbursed from the fund  
6 only on warrant of the secretary of finance and administration  
7 upon vouchers signed by the secretary of energy, minerals and  
8 natural resources or the secretary's authorized representative.  
9 Any unexpended or unencumbered balance remaining at the end of  
10 a fiscal year shall not revert to the general fund.

11 SECTION 4. [NEW MATERIAL] DUTIES OF THE SECRETARY.--

12 A. Expenditures from the fund for financial  
13 assistance shall be approved by the secretary for qualified  
14 projects directed at the elimination or reduction of actual or  
15 potential exposure of persons to contamination that may have  
16 resulted from uranium mining or milling activities that  
17 occurred prior to July 1, 2011.

18 B. The secretary shall adopt rules for applying for  
19 financial assistance from the fund and for establishing  
20 priorities for qualified projects. The priorities for  
21 approving qualified projects shall be based upon:

22 (1) the protection of public health, safety  
23 and welfare;

24 (2) the protection of the environment from  
25 existing or potential contamination;

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1 (3) the ability to leverage funds available  
2 from other sources to implement qualified projects;

3 (4) the degree to which a qualified project  
4 can be completed with the requested funding;

5 (5) the size of the area to be included with  
6 the qualified project;

7 (6) the number of persons affected or  
8 potentially affected by contamination at the site of the  
9 qualified project;

10 (7) the level of actual or potential radiation  
11 exposure at the site of the qualified project;

12 (8) the potential for an increase of the area  
13 contaminated or potential exposure to persons if the site of a  
14 qualified project is not cleaned up;

15 (9) the lack of any potentially responsible  
16 party obligated to conduct a cleanup pursuant to any federal,  
17 state or tribal law;

18 (10) the potential uses for the site following  
19 the completion of the qualified project; and

20 (11) the legal authority of the applicant to  
21 conduct cleanup activities on the proposed site.

22 C. Financial assistance may be provided to  
23 qualified projects in which the state of New Mexico, other  
24 state governments, the federal government, tribal governments  
25 and other public and private entities are participating.

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1           SECTION 5.   [NEW MATERIAL] REPORT TO LEGISLATURE.--The  
2 secretary shall report to the appropriate interim legislative  
3 committee no later than October 1 of each year regarding the  
4 total expenditures from the fund for the previous fiscal year,  
5 the purposes for which expenditures were made, an analysis of  
6 the progress of the projects funded and proposals for  
7 legislative action in the subsequent legislative session.

8           SECTION 6.   Section 7-1-6.20 NMSA 1978 (being Laws 1985,  
9 Chapter 65, Section 6, as amended) is amended to read:

10           "7-1-6.20.   IDENTIFICATION OF MONEY IN EXTRACTION TAXES  
11 SUSPENSE FUND--DISTRIBUTION.--

12           A.   Except as provided in Subsection B of this  
13 section, after the necessary disbursements have been made from  
14 the extraction taxes suspense fund, the money remaining in the  
15 suspense fund as of the last day of the month shall be  
16 identified by tax source and distributed or transferred in  
17 accordance with the provisions of Sections 7-1-6.21 through  
18 7-1-6.23, 7-1-6.61 and 7-1-6.62 NMSA 1978. After the necessary  
19 distributions and transfers, any balance, except for  
20 remittances unidentified as to source or disposition, shall be  
21 transferred to the general fund.

22           B.   Payments on assessments issued by the department  
23 pursuant to the Oil and Gas Conservation Tax Act, the Oil and  
24 Gas Emergency School Tax Act, the Oil and Gas Ad Valorem  
25 Production Tax Act and the Oil and Gas Severance Tax Act shall

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1 be held in the extraction taxes suspense fund until the  
2 secretary determines that there is no substantial risk of  
3 protest or other litigation, whereupon after the necessary  
4 disbursements have been made from the extraction taxes suspense  
5 fund, the money remaining in the suspense fund as of the last  
6 day of the month attributed to these payments shall be  
7 identified by tax source and distributed or transferred in  
8 accordance with the provisions of Sections 7-1-6.21 through  
9 7-1-6.23 NMSA 1978. After the necessary distributions and  
10 transfers, any balance, except for remittance unidentified as  
11 to source or disposition, shall be transferred to the general  
12 fund."

13 SECTION 7. A new section of the Tax Administration Act,  
14 Section 7-1-6.61 NMSA 1978, is enacted to read:

15 "7-1-6.61. [NEW MATERIAL] DISTRIBUTION TO URANIUM LEGACY  
16 CLEANUP FUND--URANIUM LEGACY CLEANUP SURTAX.--A distribution  
17 pursuant to Section 7-1-6.20 NMSA 1978 of the net receipts  
18 attributable to the uranium legacy cleanup surtax shall be made  
19 to the uranium legacy cleanup fund."

20 SECTION 8. A new section of the Tax Administration Act,  
21 Section 7-1-6.62 NMSA 1978, is enacted to read:

22 "7-1-6.62. [NEW MATERIAL] DISTRIBUTION TO URANIUM LEGACY  
23 CLEANUP FUND--RESOURCES EXCISE TAX ACT.--A distribution  
24 pursuant to Section 7-1-6.20 NMSA 1978 of fifty percent of the  
25 net receipts attributable to taxes on uranium pursuant to

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1 Sections 7-25-4, 7-25-5 and 7-25-6 NMSA 1978 shall be made to  
2 the uranium legacy cleanup fund."

3 SECTION 9. A new section of the Resources Excise Tax Act  
4 is enacted to read:

5 "[NEW MATERIAL] RATE AND MEASURE OF SURTAX--DENOMINATION  
6 AS "URANIUM LEGACY CLEANUP SURTAX".--

7 A. For the privilege of severing or the related  
8 processing of uranium, there is imposed a "uranium legacy  
9 cleanup surtax" on any severer or related processor of uranium  
10 in New Mexico. A severer of uranium shall not be subject to  
11 the uranium legacy cleanup surtax with respect to severed  
12 uranium if the surtax on that severed uranium is paid by a  
13 processor. The uranium legacy cleanup surtax shall be imposed  
14 at a rate of two percent on the taxable value of the uranium  
15 severed or processed.

16 B. For the privilege of severing or the related  
17 processing in New Mexico of uranium that is severed in New  
18 Mexico and is owned by another person and not otherwise taxed  
19 by Subsection A of this section, there is imposed on the  
20 service charge of any person severing or processing after the  
21 severing of uranium owned by another person a uranium legacy  
22 cleanup surtax at the same rate that would be imposed on an  
23 owner of uranium for performing the same function.

24 C. Notwithstanding the provisions of Subsections A  
25 and B of this section, the uranium legacy cleanup surtax shall

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1 not be imposed upon the purification, UF6 conversion,  
2 enrichment, deconversion, reprocessing or disposal of uranium."

3 SECTION 10. [NEW MATERIAL] URANIUM MINING OPERATIONS--  
4 STRICT LIABILITY--DEFENSES--INDEMNIFICATION.--

5 A. As used in this section:

6 (1) "contaminant" means any substance from a  
7 uranium mining operation that could alter, if discharged or  
8 spilled, the physical, chemical, biological or radiological  
9 qualities of any part of the environment, including water.

10 "Contaminant" does not mean source, special nuclear or  
11 byproduct material as those terms are defined in the federal  
12 Atomic Energy Act of 1954;

13 (2) "costs" means all costs of removal or  
14 remedial action, including oversight costs, indirect costs,  
15 legal costs and interest, incurred by the state of New Mexico  
16 because of a release or threatened release resulting in the  
17 incurring of those costs;

18 (3) "director" means the director of the  
19 mining and minerals division of the energy, minerals and  
20 natural resources department;

21 (4) "release" means the introduction or  
22 allowance of the introduction into the environment, including  
23 into water, either directly or indirectly, of one or more  
24 contaminants in a quantity and duration that may, with  
25 reasonable probability, injure human health, animal or plant

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1 life or property or unreasonably interfere with the public  
2 welfare or use of the property for a purpose other than a  
3 uranium mining operation;

4 (5) "responsible party" means any person upon  
5 whom liability is imposed pursuant to Subsection B of this  
6 section;

7 (6) "secretary" means the secretary of  
8 environment; and

9 (7) "uranium mining operation" means a  
10 facility or a location where mining, milling or exploration  
11 activities were conducted during or after 1900 for the purpose  
12 of extracting, processing or exploring for radium, thorium or  
13 uranium ore.

14 B. The following persons shall be strictly liable  
15 for costs:

16 (1) the owner of a uranium mining operation;

17 (2) the operator of a uranium mining  
18 operation;

19 (3) any person having a permit issued pursuant  
20 to the New Mexico Mining Act or Water Quality Act that covers a  
21 uranium mining operation;

22 (4) any person who, at the time of  
23 construction or operation of a uranium mining operation, or  
24 thereafter, owned, operated or had a permit to operate a  
25 uranium mining operation;

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1 (5) subject to Paragraph (2) of Subsection C  
2 of this section, any person who owned the real property upon  
3 which a uranium mining operation was conducted at the time of,  
4 or after the conduct of, a uranium mining operation;

5 (6) a successor-in-interest to the uranium  
6 mining operation or the real property upon which it is or was  
7 situate; and

8 (7) a successor-in-interest to any of the  
9 persons identified in Paragraphs (1) through (6) of this  
10 subsection, whether as a result of merger, assets purchase,  
11 stock transfer or any other transfer whatsoever or any series  
12 or combination of such transactions. In order for a  
13 successor-in-interest to be liable pursuant to this section, it  
14 is not necessary that it own, operate or be permitted to  
15 operate a uranium mining operation or the real property upon  
16 which the operation is or was situate.

17 C. A person otherwise liable pursuant to Subsection  
18 B of this section shall not be liable if that person can  
19 establish by a preponderance of the evidence that:

20 (1) the release of contaminants and the  
21 damages resulting therefrom were caused solely by an act of  
22 God; or

23 (2) that person is an owner who:

24 (a) at the time that person acquired the  
25 property, after making reasonable inquiry, did not know and had

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1 no reason to know that the property had been used for a uranium  
2 mining operation;

3 (b) is a governmental entity that  
4 acquired the property by escheat, or through any other  
5 involuntary transfer or acquisition, or through the exercise of  
6 eminent domain authority;

7 (c) acquired the property by inheritance  
8 or devise;

9 (d) is a surface estate owner who did  
10 not participate in the management of the uranium mining  
11 operation; or

12 (e) did not participate in the  
13 management of the uranium mining operation and: 1) whose only  
14 interest in the uranium mining operation is as a royalty  
15 interest holder by virtue of ownership and a duly executed  
16 lease; 2) holds indicia of ownership primarily to protect a  
17 security interest in the uranium mining operation; or 3)  
18 foreclosed such a security interest after the occurrence of the  
19 release.

20 D. Whenever, on the basis of any information, the  
21 director determines that there has been any release or the  
22 secretary determines that there has been a release from a  
23 uranium mining operation that has the potential to affect  
24 water, public health or the environment, the director or the  
25 secretary may:

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1 (1) issue an order to any responsible party  
2 requiring removal or remedial action, including removal or  
3 remedial action beyond a uranium mining operation's boundaries,  
4 or such other response measure as the director or the secretary  
5 deems necessary to protect human health or the environment; or

6 (2) commence an action in district court for  
7 appropriate relief, including a temporary or permanent  
8 injunction.

9 E. If any responsible party liable for a release or  
10 threatened release fails without sufficient cause to undertake  
11 removal or remedial action properly upon order of the director  
12 or the secretary, that person shall be liable to the state for  
13 punitive damages in an amount at least equal to but not more  
14 than three times the amount of costs incurred as a result of  
15 that person's failure to take proper action. The director or  
16 the secretary is authorized to commence a civil action against  
17 any person that fails without sufficient cause to undertake  
18 removal or remedial action properly to recover punitive  
19 damages, which damages shall be in addition to any costs  
20 imposed against that person.

21 F. The court, in accordance with joint and several  
22 liability, may award costs or damages, or both.

23 G. No state agency shall be liable pursuant to this  
24 section for costs or damages as a result of actions taken in  
25 response to an emergency created by the release or threatened

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1 release by or from a uranium mining operation.

2 H. No indemnification or similar agreement shall be  
3 effective to transfer, from a responsible party pursuant to  
4 this section to any other person, the liability imposed  
5 pursuant to this section. Nothing in this subsection bars any  
6 agreement to insure, hold harmless or indemnify a party to that  
7 agreement for any liability pursuant to this section.

8 I. Nothing in this section bars or replaces any  
9 cause of action available to any person that existed before the  
10 enactment of this section. The causes of action established  
11 pursuant to this section are in addition to other causes of  
12 action.

13 SECTION 11. SEVERABILITY.--If any part or application of  
14 this act is held invalid, the remainder or its application to  
15 other situations or persons shall not be affected.

16 SECTION 12. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is January 1, 2012.