

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

SENATE BILL 487

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

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; 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;

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

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

D. "qualified project" means a project that is 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, 2008 and is selected by the secretary for financial assistance; and

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

Section 3. [NEW MATERIAL] URANIUM LEGACY CLEANUP FUND--CREATED--PURPOSE--
APPROPRIATIONS.--

A. The "uranium legacy cleanup fund" is created as a nonreverting fund in the state treasury and shall be administered by the department. 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 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.

B. The department 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.

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

Section 4. [NEW MATERIAL] DUTIES OF THE SECRETARY.--

A. Expenditures from the fund for financial assistance shall be approved by the secretary for qualified projects.

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

- (1) the protection of public health, safety and welfare;
 - (2) the protection of the environment from existing or potential contamination;
 - (3) the ability to leverage funds available from other sources to implement qualified projects;
 - (4) the degree to which a qualified project can be completed with the requested funding;
 - (5) the size of the area to be included with the qualified project;
 - (6) the number of persons affected or potentially affected by contamination at the site of the qualified project;
 - (7) the level of actual or potential radiation exposure at the site of the qualified project;
 - (8) 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;
 - (9) the lack of any potentially responsible party obligated to conduct a cleanup pursuant to any federal, state or tribal law;
 - (10) the potential uses for the site following the completion of the qualified project;
- and
- (11) the legal authority of the applicant to conduct cleanup activities on the

proposed site.

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

Section 5. [NEW MATERIAL] REPORT TO LEGISLATURE.--The secretary shall report to the appropriate interim legislative committee no later than October 1 of each year regarding the total expenditures from the fund for the 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.

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

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

A. Except as provided in Subsection B of this section, after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23, 7-1-6.59 and 7-1-6.60 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittances unidentified as to source or disposition, shall be transferred to the general fund.

B. Payments on assessments issued by the department pursuant to the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Severance Tax Act shall be held in the extraction taxes suspense fund until the secretary determines that there is no substantial risk of protest or other litigation, whereupon after the necessary disbursements have been

made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month attributed to these payments shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through

7-1-6.23 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittance unidentified as to source or disposition, shall be transferred to the general fund."

Section 7. A new section of the Tax Administration Act, Section 7-1-6.59 NMSA 1978, is enacted to read:

"7-1-6.59. [NEW MATERIAL] DISTRIBUTION TO URANIUM LEGACY CLEANUP FUND--URANIUM LEGACY CLEANUP SURTAX.--A distribution pursuant to Section 7-1-6.20 NMSA 1978 of the net receipts attributable to the uranium legacy cleanup surtax shall be made to the uranium legacy cleanup fund."

Section 8. A new section of the Tax Administration Act, Section 7-1-6.60 NMSA 1978, is enacted to read:

"7-1-6.60. [NEW MATERIAL] DISTRIBUTION TO URANIUM LEGACY CLEANUP FUND--RESOURCES EXCISE TAX.--A distribution pursuant to Section 7-1-6.20 NMSA 1978 of fifty percent of the net receipts attributable to taxes on uranium pursuant to the Resources Excise Tax Act shall be made to the uranium legacy cleanup fund."

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

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

A. For the privilege of severing or the related processing of uranium, there is imposed a "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 equal to fifty cents (\$.50) per pound of the content of U308 contained in uranium severed and saved or processed and saved after such severing, regardless of the form in which the product is actually disposed of.

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

C. Notwithstanding the provisions of Subsections A and B of this section, the uranium legacy cleanup surtax shall not be imposed upon the purification, UF6 conversion, enrichment, deconversion, reprocessing or disposal of uranium."

Section 10. SEVERABILITY.--If any part or application of the Uranium Legacy Cleanup Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2009.