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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>HENRC</u>	<b>LAST UPDATED</b> <u>2/25/23</u>
	<b>ORIGINAL DATE</b> <u>01/26/23</u>
<b>SHORT TITLE</b> <u>Generating Facility and Mine Remediation</u>	<b>BILL NUMBER</b> <u>CS/House Bill 142/HENRC/aHAFC</u>
	<b>ANALYST</b> <u>Sanchez</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$275.6	\$286.6	\$562.2	Recurring	NMED Operating Budget
<b>Total</b>	<b>No fiscal impact</b>	<b>\$275.6</b>	<b>\$286.6</b>	<b>\$562.2</b>	<b>Recurring</b>	

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Department of Environment (NMED)  
Energy, Minerals and Natural Resources Department (EMNRD)  
Office of the Natural Resources Trustee (ONRT)  
New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to the House Energy, Environment and Natural Resources Committee substitute for House Bill 142 removes language making an appropriation and the sections that specified the sources and uses of the appropriation contained in the HENRC substitute for House Bill 142.

### Synopsis of Original Bill

The House Energy, Environment and Natural Resources Committee substitute for House Bill 142 (CS/HB142/HENRC) would enact the San Juan Generating Station Facility and Mine Remediation and Restoration Study Act, which would require the Environment Department (NMED) and the Energy, Minerals and Natural Resources Department (EMNRD) to:

1. Contract for a comprehensive study of the San Juan Generating Station (SJGS) facility and mine to determine the extent of environmental contamination of the lands and waters adjacent to the generating facility and mine.

2. Develop a restoration and reclamation plan that protects the environment from contamination for human and ecosystem health, preserves surface water quality, and prevents the migration of toxic metal contaminants and off-site pollution.

The bill would require NMED and EMNRD to publish the plan (including inspections and data analysis presented in an executive summary) and make it available to the public for online viewing.

The bill would further require EMNRD and NMED to provide a copy of the restoration and remediation study to the Legislature no later than July 1, 2025. The restoration plan would need to include specific measurable steps, informed by public comment, to oversee and enforce the remediation and restoration plans and “to the fullest extent possible” prioritize the employment of displaced SJGS workers, former mine workers, and New Mexico residents in the remediation and restoration project.

Additionally, the bill dictates that a presentation of the study take place at an interim meeting of the legislative committee responsible for water and natural resources. The presentation is to include details of how compliance is being ensured and how owners of the SJGS and mine are working to cooperate with the cleanup efforts.

Finally, the bill includes language authorizing EMNRD and NMED to contract with outside experts to perform the study and assess both the short and long-term environmental and health impacts of the SJGS.

CS/HB142/HENRC appropriates \$500 thousand from the general fund to the Department of Environment to carry out the purposes of the San Juan Generating Station Facility and Mine Remediation and Restoration Study Act.

CS/HB142/HENRC appropriates \$500 thousand from the general fund to the Energy, Minerals and Natural Resources Department to carry out the purposes of the San Juan Generating Station Facility and Mine Remediation and Restoration Study Act.

The effective date of this bill is July 1, 2023.

## **FISCAL IMPLICATIONS**

Although the House Energy, Environment and Natural Resources Committee substitute for House Bill 142 does not specify future appropriations, establishing a new monitoring program with reporting requirements could create an expectation the program will continue in future fiscal years.

Analysis from the Department of Environment stated:

Performance of the study described in the bill will require one additional FTE at NMED, at a cost of \$143,752 to conduct procurement, coordinate and collaborate with EMNRD, oversee contractor(s), review work products including the contamination study, reclamation and restoration plan, and internet website with site/study information, conduct outreach and communications with impacted communities, manage finances and expenditures, and report to the legislature annually. An agreement between the agencies may also be necessary to define duties, responsibilities, and regulatory authorities for the study.

Due to ambiguity in the execution of the remediation and restoration plan, NMED may require an additional Attorney III FTE, at a cost of \$131,822, to resolve any litigation or administrative proceedings arising from development and execution of the remediation and restoration plan.

Analysis from the Energy, Minerals and Natural Resources Department also included concerns about the amount of staff time and other resources that would be necessary to coordinate and execute the investigation and planning study but did not estimate the number of hours of FTE that would be needed to fulfill these requirements, stating only that “existing staff time and resources will have to be utilized to manage this project.”

## **SIGNIFICANT ISSUES**

Analysis from both EMNRD and NMED express concerns that if the project requires ongoing reporting or potential enforcement activities extending beyond FY27, the funding provided in this bill would be inadequate. NMED specifically cites that the timeframe during which the funding is appropriated would be insufficient given “the scope and scale of work” required by this bill.

CS/HB142/HENRC does not cite specific federal or state statutes to guide the design or execution of the study. It also does not cite any specific federal or state statutes to guide the development of the reclamation and restoration plan. The Water Quality Act and the Clean Water Act do provide NMED with statutory authorities which govern the closure of all components of a facility that previously operated under a discharge permit. NMED’s analysis also stated:

Sections 3(F) and 3(G) state that the independent restoration and remediation plan shall not be considered a rule or standard for purposes of the Water Quality Act but shall be considered a planning document and identifies that they are not rules or standards. G further defines a planning document. The inclusion of this explanation and definition provides flexibility and nimbleness to NMED in the implementation of changes to the closure plans already in place.

Analysis from the Energy, Minerals and Natural Resources Department stated:

The San Juan Mine falls under the jurisdiction of the New Mexico Coal Mining Reclamation Program within the Mining and Minerals Division (MMD) of EMNRD. MMD has primacy from the federal Office of Surface Mining and Reclamation Enforcement (OSMRE) to oversee the reclamation of coal mines in New Mexico. As a result, mine reclamation at the San Juan Mine is already governed by federal law and subject to EMNRD’s jurisdiction.

The site reclamation at the San Juan Mine currently conforms to the standards of the Surface Mining Control and Reclamation Act. The San Juan Mine groundwater is currently sampled every quarter and analyzed by an independent laboratory. The reclamation at the San Juan Mine is mostly complete, but work continues to reclaim the final open pit. MMD inspects the San Juan Mine each month, reporting on current progress and ensuring that all current regulations under the Surface Mining Control and Reclamation Act for mine reclamation are being followed. The mine is expected to be fully reclaimed by 2030.

The independent study and reclamation and restoration plan required by HB 142/cs may

conflict with the current and past closure plan under existing law. However, as written, MMD is only required to incorporate the results of that independent study to the extent permitted by law.

Analysis from the Office of the Attorney General relayed several concerns the agency had regarding language that would govern the planning, restoration, and remediation processes. Because of the legal implications, they are included in their entirety below:

Broadly speaking, HB 142 does not create new authority or responsibilities for NMED or EMNRD, but rather mandates that the agencies take specific actions to address a specific risk to the environment and public health stemming from the significant amount of Coal Ash that has accumulated at the SJGS and SJM during the 50 years SJGS was in operation.

Section 3. directs the EMNRD and NMED to “coordinate efforts” in performing the investigation and determining if contamination has occurred. This language is vague in so far as it does not specify the exact duties to be assigned to each agency. More precise language may avoid duplicative efforts and agency confusion in establishing a work plan.

Section 3.A(2) directs the agencies to “establish a plan for the public utility that involves community input to and requires timely cleanup, full remediation and restoration of the entire generating facility and mine site to protect public health and welfare.” The term “public input” could be replaced with specific notice and comment procedures, consistent with existing agency practices. In addition, “full remediation” may require further definition consistent with NMED’s existing rules and statutes such that a specific level decontamination is achieved.

Section 4 of the identifies specific objectives for the plan to achieve. The introductory language here could be clarified to specify the required contents of the plan, instead of the current phrasing as objectives to be achieved.

Section 5. A. states that the Act does not prevent a person or entity affected by pollution or contamination from filing a civil action. It is not known whether such action would be prevented absent this language.

Section 5. C. authorizes the NMAG to bring civil or criminal charges based on findings of the agencies’ investigation. This language is not necessary as the NMAG already has such authority.”

Section 6 addresses the employment of workers for cleaning up the SJGS and SJM, directing the utility to prioritize the use of workers previously employed at the sites. The bill does not specify which agency is responsible for enforcement of this requirement. In addition, because the language is vague, it would likely require the agencies to engage in a rulemaking that establishes a clearer standard for determining the utility’s compliance.