

HOUSE COMMITTEE ANALYSIS REPORT

Legislation: HB142

Committee: HENRC

Analyst: Athena Christodoulou

Short Title: GENERATING FACILITY AND MINE REMEDIATION

Sponsor: Reps. Allison, Szczepanski, & Matthews

Committee Referrals: HENRC/HAFC

mm/dd/yr of hearing	Committee	Analyst	202#	Action (Vote)	Hearing Notes/Comments
01/26/23	HENRC	Christodoulou	223800.2		

KEY PURPOSE/ SYNOPSIS: HB 142 introduces a new act named the “Generating Facility and Mine Remediation and Restoration for Public Health and the Environment Act”. This act will address mine remediation and restoration of abandoned coal-fired power plants. Important provisions of the bill are:

- applies only to those plants granted abandonment authority after 2018 and abandoned by 2023 and formerly operated by investor owned utilities (IOU)
- does not preclude civil suits by individuals, entities, and the Office of the Attorney General (OAG)
- allows pursuit of criminal charges by the OAG
- directs the IOU to prioritize hiring previous employees and New Mexico residents for the cleanup activities.

HB 142 is about preventing toxic chemicals from hurting people, animals and contaminating the water.

HB 142 appropriates \$700,000 from the general fund to be split equally by NM Environment Dept. (NMED) and Energy, Minerals, and Natural Resources Dept. (EMNRD) and used in 2024 and 2025. Furthermore the bill:

- requires the two agencies to coordinate efforts to inspect, establish a plan, ensure utility company compliance, and provide a copy of their investigation to the legislature by April 31, 2024.
- authorizes them to hire outside consultants to conduct the investigation and create the plan as well as additional staff to compile the report compilation and compliance oversight.
- authorizes them to act on the investigation findings.

IMPACT (FISCAL/ADMINISTRATIVE/PERFORMANCE):

No FIR

New Mexico Office of Natural Resources Trustee (ONRT) states that HB 142 will have no fiscal implications, create significant issues, nor impose any performance or administrative implications. However, they do note that the restoration mandates would complement the work of ONRT. It may provide additional opportunities for the state to identify and require restoration of natural resources injured by existing public utility generating facilities and coal mines.

EMNRD notes the \$350,000 appropriation would allow the agency to conduct the investigation, create the plan, and report on both to the legislature. However, it does not include recurring funds to support ongoing reporting and potential enforcement activities. EMNRD also notes that coal mining and reclamation is regulated by the Surface Mining Control and Reclamation Act of 1977 and hardrock mining in New Mexico is regulated by the New Mexico Mining Act.

AG notes directive to pursue civil and criminal actions but it is unknown whether it would increase the case load. OAG currently serves as legal counsel to the state’s Water Quality Control Commission administrative hearings. AOG also serves as counsel to ONRT (administratively attached to NMED) and is charged with carrying out provisions of the Natural Resources Trustee Act.

NMED notes the \$350,000 for 2024 and 2025, but also notes need for recurring funds to support future reporting and potential enforcement activities. Addressing “coal ash” (Coal Combustion Residuals or CCR) may need some

rulemaking.

AMENDMENTS/SUBSTITUTIONS: none

SUBSTANTIVE ISSUES

EMNRD notes HB 142 addresses only the San Juan Generating Station (SJGS), the San Juan Mine, and their owners. Significant issues include:

- The law purports to give EMNRD and NMED comprehensive enforcement authority without providing any guidance or guidelines on how that authority is to be exercised. As drafted, enforcement cannot be implemented, and are duplicate with respect to the mine site under both state and federal law.
- San Juan Mine ground water is currently sampled.
- Fly ash and bottom ash from the SJGS has been sampled and analyzed annually from 2005 to 2022. Barium and arsenic concentrations in the ash exceed groundwater standards for New Mexico.
- A further study of coal ash was completed by the US Geological Survey in 2012. Results suggest groundwater at Coal Combustion Byproduct (CCB) storage areas will recover to the former steady state or in some locations to a new steady state between 6,600 and 10,600 years after the cessation of dewatering.
- Full Site reclamation at the San Juan Mine is expected in 2030.

OAG notes that Section 6 addresses the special employment criteria of workers for cleanup, yet fails to specify which agency would enforce this requirement.

NMED notes:

- Concern that the time frame to collaboratively and comprehensively inspect and investigate the generating facility and mines and develop a plan is too short.
- Section 8 requires an entity purchasing a generating facility or mine to take full environmental liability for cleanup and restoration. However, if the entity goes bankrupt in the future, cleanup costs may become the responsibility of the taxpayers of New Mexico.
- “Restoration” and “closure” of a generating facility are not currently captured in any regulations for NMED under the Water Quality Act and might need to be develop.
- Failure to pass HB142 means certain remedial activities may not occur and almost all reclamation activities in communities will not occur.

SJGS completely shuttered in September 2022 leaving Public Service of NM (PNM), Tucson Electric Power and the Farmington Electric Utility System as final owners. There were nine original owners, though. Per a 2015 agreement to restructure the ownership of the Plant after units 2 and 3 were to be taken off-line and so as not to financially harm the remaining owners from the restructuring, the leaving owners agreed to provide the remaining owners a demand charge and a restructuring fee. The leaving owners agreed to also absorb a portion of the remaining owners' share of O&M expenses.

The ETA allows PNM to take out “energy transition bonds” to cover costs associated with coal plant abandonment. That includes up to \$30 million for coal mine reclamation, and up to \$40 million to help displaced workers and affected communities.

In 2015, U.S. Environmental Protection Agency imposed the first federal rules requiring the cleanup of coal ash waste (or CCR) dumps. These dumps are a source of toxic contaminants that can leach into groundwater, runoff into streams and rivers, and blow onto agriculture lands. Most U.S. power plants violate the EPA Coal Ash Rule. Being designated a superfund site holds some possibility of receiving Federal funds. - [article](#)

(<https://earthjustice.org/news/press/2022/new-report-most-power-plants-violating-federal-rules-mandating-cleanup-of-toxic-coal-ash-dumps>)

“Poisonous Coverup: The Widespread Failure of the Power Industry to Clean Up Coal Ash Dumps” includes information on the nearby Four Corners Generating Station investigation findings. Link -

https://earthjustice.org/sites/default/files/press/2022/coal-ash-report_poisonous-coverup_earthjustice.pdf#page=54

The role of good government is the protection of all the people they govern. The right to life means an opportunity to thrive, not just survive. Our environment affects our health and wellbeing by the air we breathe, water we drink, and the land upon which our food grows.

TECHNICAL ISSUES:

RELATED LEGISLATION (COMPLEMENT/CONFLICT/DUPLICATE):