

<b>LFC Requester:</b>	<b>Scott Sanchez</b>
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**AGENCY BILL ANALYSIS  
2023 REGULAR SESSION**

**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** 1/24/2023  
**Bill No:** HB 142

**Sponsor:** Reps. Allison, Szczepanski & Mathews  
**Short Title:** Generating Facility and Mine Remediation

**Agency Name and Code** 305–Office of the Attorney General  
**Number:** \_\_\_\_\_  
**Person Writing** AAG Gideon Elliot  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(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 Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.*

### **BILL SUMMARY**

#### Synopsis:

HB 142 applies to a single utility and generating station in the state, PNM's San Juan Generating Station ("SJGS"), which was granted abandonment authority in 2019 and ceased operating in September of 2022, and the San Juan Mine ("SJM") which provided coal to feed SJGS for the 50 years the plant operated. According to the Federal Environmental Protection Agency, Coal Combustion Residue ("Coal Ash"), contains heavy metals including mercury, cadmium and arsenic, which "without proper management, can pollute waterways, ground water, drinking water, and the air." <https://www.epa.gov/coalash/coal-ash-basics/>.

The bill seeks to direct the Energy Minerals and Natural Resources Department (EMNRD) to work with the New Mexico Environment Department to: 1) investigate whether Coal Ash stored at SJGS and the SJM has resulted in "any environmental contamination of the land and waterways," 2) and if contamination is found, prevent further harm by establishing a plan for "full remediation and restoration of the entire generating facility and mine site to protect public health"; 3) ensure "utility compliance through monitoring, audits and reporting requirements"; and 4) to require NMED and EMNRD to provide yearly updates to the legislature, beginning in April 2024, with the results of the investigation. The bill further authorizes the agencies to seek compliance with the plan through administrative complaints and penalties for violations. The bill appropriates \$350,000, each to EMNRD and NMED, to be expended in FY '24 and '25.

### **FISCAL IMPLICATIONS**

N/A

### **SIGNIFICANT ISSUES**

Broadly speaking, HB 142 does not create new authority or responsibilities for NMED or EMNRD, but rather mandates that the agencies take 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 San Juan Generating Station ("SJGS") and San Juan Mine ("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, including which agency has authority to promulgate rules that would be necessary to provide further regulatory framework under the Act. More precise language may avoid duplicative efforts and agency confusion in executing and complying with HB142 and the new Act.

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 or apply a process already existing in statute or rule. This

section suggests administrative rulemaking would be needed to provide further details, including process and requirements, of how a plan is created, reviewed, and approved – no rulemaking authority is provided in HB142. 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 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 achieve. Process, requirements, and further details of the plan would be appropriately proscribed by rule, but no rulemaking authority is provided in the bill.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

Section 5(C) provides jurisdiction to the Office of the Attorney General to pursue civil and criminal actions resulting from investigations conducted by state agencies under the new Act. It is not known at this time whether this referrals to the OAG would result in a notable increase of litigation or prosecution cases that might warrant additional resources for the office.

The Office of the Attorney General serves as legal counsel to the state’s Water Quality Control Commission, where administrative hearings for violations would be heard.

The Office of the Attorney General serves as counsel to the Office of the Natural Resource Trustee, which is administratively attached to NMED and a is charged with carrying out provisions of the Natural Resources Trustee Act.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

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’s 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 in law.

Section 6 addresses the employment of workers for cleanup, 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.

## **ALTERNATIVES**

May be possible that the Natural Resource Trustee could seek remedial action to address

some of the issues raised in HB142.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Potential ground environmental and public health harm from Coal Ash that is not properly contained, stored, monitored and managed.

**AMENDMENTS**

See issues raised above.