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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13

SPONSOR Sanchez, C. LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Asphalt Milling Special Sale Requirements SB 456

ANALYST Soderquist

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	Indeterminate	Indeterminate	Recurring	State Road Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Department of Transportation (NMDOT)

Cultural Affairs Department (DCA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 456 proposes changes to NMSA 1978, Section 13-6-1 (K) (2012), restricting the definition of surplus tangible personal property that the New Mexico Department of Transportation (NMDOT) may donate under the statute to exclude asphalt millings. As a result of SB 456, NMDOT will be authorized to dispose of such surplus material only by means of sale, through any of three means: 1) negotiated sale at fair market value; 2) competitive sealed bid; or 3) public auction with a reserve price set at fair market value. "Asphalt millings" are defined as a recyclable product resulting from the process of grinding up and removing the top layer of aging asphalt on streets, roads and highways.

### FISCAL IMPLICATIONS

As a result of eliminating the ability to donate surplus asphalt millings, the fiscal implications of SB 456 will likely be an indeterminate increase to the State Road Fund from the sale proceeds. However, while the sale of surplus millings may result in a net increase to the State Road Fund from the sale proceeds, the NMDOT states that the Federal Highway Administration (FHWA) will seek reimbursement of the proportionate federal share of the proceeds, based upon the

percentage federal participation on the project from which the millings originated. The percentage usually applied by the FHWA is 70 percent. Further, in their response, the NMDOT expressed concerns that should the millings be sold to private entities at auction, any profit would potentially be encumbered by the FHWA.

## **SIGNIFICANT ISSUES**

As drafted, the change proposed by SB 456 does not recognize Section 67-3-8.3 NMSA1978 (language passed by the Legislature in 2009), which allows NMDOT to dispose of surplus personal property or materials by donation to a local government entity to repair damage to public roads, highways and bridges in New Mexico resulting from sudden or unforeseen natural or man-made causes. The NMDOT provides suggested language changes to address this issue in the Alternatives section.

The NMDOT also states the proposed legislation will also have a negative impact on local entities, as many local roads are paved solely through the receipt of donated millings and the cooperation of the NMDOT.

The response from the Cultural Affairs Department (DCA) states that the proposed legislation will have no impact on the Abandoned Cultural Properties Act, although the Act is specifically mentioned in Section 1(K).

## **PERFORMANCE IMPLICATIONS**

None identified.

## **ADMINISTRATIVE IMPLICATIONS**

None identified.

## **TECHNICAL ISSUES**

None identified.

## **ALTERNATIVES**

The NMDOT response suggests the following alternate language to address the potential conflict the proposed legislation has with the existing statute mentioned in the Significant Issue section (SB 456 originally proposed additions remain underlined, bold double underline reflects suggested additions, strikethrough suggested deletions):

K. Notwithstanding the provisions of Subsection A of this section, the department of transportation may sell through public auction or dispose of surplus tangible personal property used to manage, maintain or build roads that exceeds five thousand dollars (\$5,000) in value; provided that, **unless otherwise authorized by NMSA 1978, Section 67-3-8.3, in the case of asphalt millings,** the department of transportation shall not donate **asphalt millings** but shall sell them only in a negotiated sale at fair market value or by means of a competitive sealed bid or public auction with a reserve

price set at the fair market value of the millings. As used in this subsection, "asphalt millings" means the **recyclable** product of the process of grinding up and removing the top layer of aging asphalt on streets, roads and highways, ~~which product can be recycled.~~ Proceeds from sales shall be credited to the state road fund. The department of transportation shall notify the department of finance and administration regarding the disposition of all property."

RS/blm