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FISCAL IMPACT REPORT

SPONSOR Fidel DATE TYPED 2/21/05 HB _____

SHORT TITLE Belen Mesa Road Asbestos Abatement SB 858

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
\$451.1				Non-Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB558, SB514

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Department of Environment (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 858 appropriates \$451,112 from the general fund to the Department of Finance and Administration (DFA) in FY05 and FY06 to assist the City of Belen in the abatement of asbestos contamination on Mesa Road. The bill contains an emergency clause.

Significant Issues

According to DFA, in October 2004, Albuquerque Asphalt hit an abandoned cement water line while performing contract work on Mesa Road located in the City of Belen. In such an event, a project typically would be halted for environmental assessment. In this case, the contractor crushed the material and spread the shards in a 2,400-foot trench. A construction employee noted that the pipe contained asbestos and reported it to the Environmental Protection Agency. The project immediately was halted and clean-up of the crushed material was performed at a total cost of \$420,000. Clean-up was completed on December 28, 2004. The City of Belen is seeking funding to pay the environmental consultants and remediation contractor for the work.

Albuquerque Asphalt and other contractors involved in the road project have performance bonds that may pay for the remediation work, but the City of Belen advises that a settlement could take twelve months or longer to finalize.

FISCAL IMPLICATIONS

The appropriation of \$451,112 contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY06 would revert to the general fund.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB558, SB514.

TECHNICAL ISSUES

DFA identified two technical questions:

1. The appropriation covers remediation expenditures in FY06 whereas the actual remediation expenditures took place in FY05. It may be advisable to amend the bill to include FY05 and FY06.
2. If a settlement is reached to cover part or all of the remediation work, the residual balance of the appropriation could be used for hazardous cleanup on other areas of Mesa Road in FY06.

OTHER SUBSTANTIVE ISSUES

Both NMED and DFA were concerned that SB858 might set a precedent for state reimbursement of local costs for asbestos or other hazardous waste remediation. NMED was further concerned that, if the appropriation passes, municipalities, even as the generator of such asbestos wastes, will not suffer enforcement action, penalties, or even the routine expense of abatement, but contractors may be subject to such penalties.

ALTERNATIVES

NMED noted that the City of Belen should utilize provisions in its construction contract, bonding, other insurance-related options, and/or litigation with its contractor(s) to recoup funding for the emergency asbestos abatement. The City can apply for a Rural Infrastructure Program (RIP) loan from NMED to meet their immediate needs until the conflict is resolved with the contractor(s).

The Board of Finance approved a \$145,000 loan to Belen in December for this purpose, to be repaid from a settlement with the contractor. If additional funds are required until the settlement is complete, it might be possible to seek additional funds from that source as other Board of Finance loans are repaid.

POSSIBLE QUESTIONS

1. What is the status of the settlement with Albuquerque Asphalt?

2. Would this appropriation be reimbursed to the state if the settlement with the contractor assumes all of the costs of this remediation?
3. Will a state appropriation encourage a settlement with the contractor that places more or all of the responsibility for remediation upon Belen and the State of New Mexico?

DH/lg