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FISCAL IMPACT REPORT

ORIGINAL DATE 2-19-09

SPONSOR Chavez< EH LAST UPDATED _____ HB 565

SHORT TITLE Corrective Action Money To State Road Fund SB _____

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
DOT	\$5,675.0	\$5,700.0	Recurring	State Road Fund
NMED	(\$5,675.0)	(\$5,700.0)	Recurring	CAF

(Parenthesis () Indicate Revenue Decreases)

Duplicates Appropriation in the General Appropriation Act
Relates to Appropriation in the General Appropriation Act

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
NMED		\$5,675.0	\$5,700	\$11,375	Recurring	General Fund and Special Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)
Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 565 amends the Ground Water Protection Act relating to the authorization of expending the Corrective Action Fund (CAF), Section 74-6B-7. The amendment proposes to allow the Legislature to appropriate up to 30 percent of the annual distribution to the corrective action fund to the state road fund. Currently, the appropriation is made to the Environment Department “to match federal funds, for underground contamination cleanup, and to address water needs.”

The effective date is July 1, 2009.

FISCAL IMPLICATIONS

Gasoline and special fuels are assessed a petroleum products loading (PPL) fee, which varies from \$40 to \$150 per load (8,000 gallons) depending on the unobligated balance of the CAF (Section 7-13A-3 NMSA 1978). Under current statute, the balance of the revenue, after \$40 per load distribution to the local government's road fund, is deposited to the corrective action fund (Section 7-1-6.25 NMSA 1978).

In recent years, the PPL fee has generated about \$26 million annually. After deducting the local government's road fund distribution of about \$7 million, the balance of \$19 million has been distributed into the CAF. Pursuant to Section 74-6B-7 NMSA 1978, the Legislature may appropriate up to 30 percent of the annual CAF distribution to NMED "to match federal funds, for underground contamination cleanup, and to address water needs." To accommodate the budget cycle, the CAF revenue normally used to calculate the 30 percent has been the distribution two years prior to the next fiscal year. For example, the 2007 revenues of \$19,199.4 thousand were used to develop the 30 percent for the current FY09 budget of \$5,759.8 thousand.

Appendix A details the NMED FY09 operating budget using this 30 percent distribution, which includes both operating expenses and state matches for federal grants. NMED specifies that the estimated FY10 amounts for these expenses are \$5,830 thousand and \$366.4 thousand, respectively, although NMED also indicates that the agency is beginning to see a slight reduction in the CAF revenues that is likely due to the economic slowdown.

HB 565 would divert this 30 percent, or approximately \$5.7 million, to the state road fund to cover increased costs. NMED maintains that this transfer conflicts with the operating budget currently under review by the House Appropriations and Finance Committee and would affect several programs, including the following:

- Environmental Health Program for water protection (\$973.4 thousand),
- Water Quality Program for water protection (\$1.9 million),
- Environmental Protection Program for water protection and grant state match (approximately \$1 million); and
- Water and Wastewater Infrastructure Development Program for oversight of water and wastewater projects (about \$1.3 million) and drinking water protection (about \$600 thousand).

NMED raises the concern that the remaining special funds would not be able to fill in for this loss of a funding source that has become built into the budget over the last few years, suggesting that to maintain operations the state would need to increase its general fund transfer. However, at the same time, the agency recognizes the fiscal condition of state revenues, doubting the ability for any general fund increase. Therefore, the agency concludes that HB 565 likely holds a significant negative fiscal impact to the agency.

SIGNIFICANT ISSUES

DOT provides the following background information:

House Memorial 35, from the 2007 session, took a comprehensive look at revenues for the Department of Transportation and developed a menu of revenue enhancement possibilities. This bill addresses one of those remedies. Fundamental to the department is that revenues do not grow very fast (about the level of the CPI). To match expanding cost and program increases, it has been necessary to periodically increase taxes and fees. Needs and costs have again reached the level that some adjustment is necessary.

The Corrective Action Fund was created to provide funding to clean up pollution from leaking petroleum storage tank systems – like those at retail gas stations. The fund also provides federally-required financial assurance coverage for tank owners and operators so that they do not have to secure private insurance to cover the liability created by their businesses. Statute was amended to include above-ground tanks in 2001.

In 2004, the statute was significantly amended to allow the Legislature to appropriate up to 30 percent of the annual CAF distribution to NMED “to match federal funds, for underground contamination cleanup, and to address water needs” (HB 19). According to the agency’s 2004 Fiscal Impact Report, the legislation would “allow the department to distribute these funds in multiple bureaus for the purpose of protecting the state’s limited water resources. It would eliminate the need for additional general fund appropriations for water quality programs beyond the department’s FY04 operating budget.”

The primary policy issue is whether the Legislature supports NMED’s use of the CAF as implemented or whether the funds should help restore roads in the state.

PERFORMANCE IMPLICATIONS

NMED maintains that HB 565 would have “significant negative impact on the department’s performance. NMED would not be able to meet the water quality performance measures and the Governor’s Performance and Accountability Contract measures. Water quality is a large portion of the department’s overall mission.”

ADMINISTRATIVE IMPLICATIONS

Taxation and Revenue Department would continue to make the monthly disbursements into the corrective action fund and then presumably NMED would transfer the 30 percent portion to the state road fund.

ALTERNATIVES

The fee schedule established in Section 7-13A-3 NMSA 1978 apparently has not been changed since 1996. One option would be to increase the fees to match petroleum product prices.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMED will continue to use the 30 percent allocation of the CAF for protecting water sources, matching federal grants, and providing overhead for legal counsel covering water issues. DOT will not be able to act on one of the recommendations from HM 35 and be required to seek additional funding elsewhere.

POSSIBLE QUESTIONS

1. Since the enactment of HB 19 in 2004, has the department allocated CAF funding as the Legislature intended?
2. Do the programs that use the CAF money have any other source of funding?
3. How will the loss of CAF affect NEMD operations?
4. How will the ability to protect New Mexico natural resources be affected?
5. What would be the impact of raising the PPL to provide additional funding to the state road fund while preserving the distribution to the CAF for NMED to use?

MA/mc