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FISCAL IMPACT REPORT

SPONSOR Trujillo, CA **ORIGINAL DATE** 2/25/15
LAST UPDATED 3/10/15 **HB** 518/aHWMC
SHORT TITLE Safe Transport of Hazardous Materials Fund **SB** _____
ANALYST Armstrong/Jorgensen

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|-------------------|-------------------|---------------------------------|--|
| FY15 | FY16 | FY17 | | |
| Unknown | (\$0-\$158,300.0) | (\$0-\$158,300.0) | Nonrecurring | Hazardous Waste Emergency Fund |
| Unknown | \$0-\$158,300.0 | \$0-\$158,300.0 | Nonrecurring | Safe Transport of Hazardous Materials Fund |

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|--------|--------|----------------------|------------------------------|----------------------------|
| Total | | \$86.1 | \$86.1 | \$172.2 | Recurring | DFA Operating Budget |

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 594
 Duplicates Senate Bill 632
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From
 New Mexico Department of Transportation (NMDOT)
 Department of Finance & Administration (DFA)

SUMMARY

Synopsis of HWMC Amendment

The House Ways and Means Committee amended Subsection B of Section 1 to refer to existing statute regarding the distribution of administrative penalties levied by the New Mexico Environment to clarify that such penalties assessed after November 30, 2014, and before January 1, 2016, are appropriated to the safe transport of hazardous materials fund rather than the hazardous waste emergency fund as provided by existing statute.

Synopsis of Bill

House Bill 518 creates the “safe transport of hazardous materials fund” (“fund”) to be administered by DFA in consultation with the New Mexico Environment Department (NMED). The fund is for the purpose of improving the design and structural safety of infrastructure used to transport hazardous materials throughout the state. The bill provides that any civil penalties assessed after November 30, 2014, and prior to January 1, 2016, are “appropriated” to the fund. These penalties are currently credited to the hazardous waste emergency fund for cleanup of hazardous substance incidents, disposal of hazardous substances and necessary repairs to or replacement of state property, and may be used for the state's share of any response action taken under the federal Comprehensive Environmental Response, Compensation, and Liability Act. Funds may be disbursed to any state agency for the design, construction and maintenance of projects for this purpose pursuant to vouchers signed by the head of the agency and approved by the DFA secretary.

FISCAL IMPLICATIONS

This bill creates a new fund and provides for continuing appropriations which could be significant due to the penalties assessed by NMED against both Los Alamos National Laboratory (LANL) and the Waste Isolation Pilot Plant (WIPP) in December 2014. These fines totaled \$54.3 million and NMED is considering assessing another \$104 million in fines for “violations for which there is no dispute of fact” according to the agency’s secretary. While these fines were assessed after November 30, 2014, and the additional fines may be assessed before January 1, 2016, it is unknown when they would be paid. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

NMDOT analysis suggested a positive fiscal impact as the new funds available for maintenance of the WIPP transportation route would reduce draws from the state road fund to perform work related to WIPP transportation routes. However, the agency did not provide a list of specific projects and costs, so the direct fiscal impact of HB 518 is unknown. Currently, NMDOT maintains 2,595 lane-miles of interstate, National Highway System and New Mexico highways classified as WIPP routes (see map below).

DFA will need additional FTE and appropriations to manage the fund and to coordinate with NMED as the DFA does not already have personnel to serve this purpose. The average cost of one FTE at DFA is \$86.1 thousand.

SIGNIFICANT ISSUES

HB 518 provides that fines like those levied against LANL and WIPP are appropriated to the safe transport of hazardous materials fund. It is unclear if this continuing appropriation conflicts with Article 12, Section 4 of the New Mexico Constitution which provides that “all fines collected under general laws...shall constitute the current school fund of the state.”

Currently, NMDOT maintains 2,595 lane-miles of interstate, National Highway System and New Mexico highways classified as WIPP routes (see map). NMDOT states that the average annual cost to implement a maintenance schedule that would to keep all of these roads in good condition is \$49 million. Currently, the NMDOT has sufficient operating budget to meet 56 percent of its maintenance needs statewide. Based on this assumption, it is likely that NMDOT needs an additional \$23.3 million to maintain all of the designated WIPP routes.

Although the fines against LANL and WIPP have not been paid, they were assessed within the bill’s timeframe to be “appropriated” to the safe transport of hazardous materials fund. The bill removes the Legislature from appropriating the newly created fund and rather allows disbursements to any state agency upon approval by the DFA secretary.

As noted above, HB 518 allows the Fund to be used to perform safety related design and structural improvements to all hazardous materials transportation routes maintained by NMDOT. Currently, NMDOT maintains 2,595 lane-miles of interstate, National Highway System and New Mexico highways classified as WIPP routes, a subset of hazardous materials routes. (See attached map.)



OTHER SUBSTANTIVE ISSUES

New Mexico Transportation Needs. DOT recently completed the first-of-its-kind assessment of all system-wide lane miles. The assessment used state-of-the-art imaging equipment to determine roadway conditions throughout the state. The results show New Mexico roadways are in significantly worse condition than previously thought: In FY12, 84.5 percent of non-interstate lane miles were reported in good or fair condition; in FY13, the assessment showed only 70 percent were in good or fair condition. Based on this assessment, DOT estimates FY15 highway construction and maintenance needs total \$866.1 million. The combined maintenance and construction budgets for FY15 total \$407.5 million resulting in an unfunded need, or gap, of \$458.6 million.

Maintenance Needs. DOT estimates total system wide maintenance needs to be \$266 million in FY15. The current \$150.2 million maintenance budget for FY15 leaves a maintenance gap of \$115.8 million. The maintenance gap estimate represents the per year cost of implementing a regular maintenance schedule for roads statewide based on current road conditions.

Because DOT is unable to provide maintenance consistently, roadways continue to deteriorate to the point of needing to be reconstructed at a significantly increased cost. DOT estimates the annual cost of maintaining a good condition road to be \$15 thousand per lane mile, a fair condition road costs an average \$180 thousand per lane mile, and a poor condition road may cost \$500 thousand to \$1.2 million per lane mile to rehabilitate or reconstruct.

Construction Needs. DOT estimates the FY16 need for construction to be \$600.1 million. The largest need is for roadway reconstruction and rehabilitation, which DOT estimated to be \$452.6 million. In addition to roadway construction, another \$147.5 million is needed to replace and repair bridges across the state. The current funding available for new construction is \$257.3 million, leaving a gap of \$342.8 million in FY15.

DUPLICATION, RELATIONSHIP

There are currently multiple bills which address the shortfall in funding for road projects statewide. HB 92, HB 262 HB 559, and SB 113 all authorize the sale of severance tax bonds to fund road construction projects statewide. In addition, there are proposals to increase motor vehicle excise tax revenue to the road fund to supplement the construction budget of NMDOT.

Senate Bill 594 expands the purposes for which the hazardous waste emergency fund may be used.

Senate Bill 632 duplicates HB 518.

JA/CJ/bb/aml/je