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FISCAL IMPACT REPORT

SPONSOR: Altamirano DATE TYPED: 2/11/03 HB _____

SHORT TITLE: Clarify Authority Over State Road Fund SB 246/aSCORC

ANALYST: Reynolds-Forte

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Indeterminate	Recurring	State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation the General Appropriation Act

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	Indeterminate See Narrative		Recurring	Federal Funds

(Parenthesis () Indicate Revenue Decrease)

SOURCES OF INFORMATION

Responses Received From
 Energy Minerals and Natural Resources
 State Highway and Transportation Committee

SUMMARY

Synopsis of SCORC Amendment

The SCORC amendment changes the name of the State Highway Commission to the State Transportation Commission. A constitutional amendment was passed in 2002 to change the name of the Commission to the State Transportation Commission; this changes the statute to be consistent.

Synopsis of Original Bill

SB 246 adds language to current law relating to the state highway commission giving the Legislature exclusive authority to appropriate from the state road fund and to designate the purpose of the appropriation.

SB 246 contains an emergency clause.

Significant Issues

The LFC on June 18 requested State Highway Department Secretary Rahn to provide information regarding the status of appropriations in the General Appropriations Act of 2002 for certain Legislative project priorities in the State Highway and Transportation Department's (SHTD) construction program. The letter stated that the Legislature had included sufficient funding within the Department's construction program for legislative project priorities totaling \$26.8 million.

Mr. Holm Bursum III, Chairman of the State Highway Commission, responded to the LFC stating that "the Commission does not interpret the language regarding the legislative project priorities to be an appropriation but, instead, informational". He further stated in his letter "that the State Highway Commission is the constitutional, executive body responsible for setting all matters of policy for the Department and especially for expenditures of the state road fund. Since at least statehood, the Commission has had as its historic and fundamental power the determination of the nature and extent of the state highway system and how the road fund will pay for that system. These functions cannot be diminished. Moreover, if the General Appropriations Act language were a condition on the appropriation to the Department's construction program, it would impact details of the Commission and Department's work to such a degree as to intrude on their managerial functions."

FISCAL IMPLICATIONS

SB 246 does not contain an appropriation. However, the General Appropriation Act contains approximately \$220 million of funds for road construction projects in the State Highway and Transportation Department budget, which could be impacted by this bill.

The State Highway and Transportation Department argues that if SB246 were to pass, and the Legislature appropriate the road fund by specific projects, it could threaten significant federal funding the state receives for its STIP highway program.

Federal funds are matched by approximately 20% state funds in the state road fund. Title 23 of the United States Code and the regulations promulgated under it set out the requirements for obtaining the Federal Highway Administration's (FHWA) approval of projects to receive federal funding. They require FHWA's Administrator to only deal with state highway agencies that have final decision making authority for highway projects that appear in an approved STIP. 23 U.S.C. Section 302; 23 C.F.R. Sections 1.3 and 1.9. The Department believes that this threshold requirement to receive federal highway funds will not be met if the legislature determines specific projects through the appropriation process rather than the STC/SHTD specifying projects that appear in the STIP.

ADMINISTRATIVE IMPLICATIONS

The State Highway and Transportation Department states that it is concerned that the orderly planning, design and construction of projects will be disrupted if the legislature annually appropriates projects of its choice. It is in the planning phase that priorities are sorted out and actions taken to assure that needs based on use and serviceability of the state's highways are addressed. The planning and design process can often take several years to bring a project to the construction phase.

If the legislature intrudes on the executive management function of bringing projects along based on a critical needs basis and appropriates the state road fund for projects as desired by legislators, each year the STC and the State Highway and Transportation Department (SHTD), which carries out the policy directives of the STC, may be faced with projects that have had no assessment of need, planning, public input or scheduling in relation to SHTD resources or coordination with other governments, which is often necessary.

RELATIONSHIP

SB 246 relates to the General Appropriations Act for FY04 that contains the appropriation for the State Highway and Transportation Department's budget for the construction program.

OTHER SUBSTANTIVE ISSUES

In FY03, the Legislature appropriated sufficient funding in the General Appropriation Act within the Highway and Transportation Department's construction program for legislative project priorities totaling \$26.8 million. As noted above, the Department did not interpret the language in the Appropriation Act to be an appropriation but information language. The Legislature recognized the funding constraints, but believed there should be mutual agreement that the projects were of great importance to the State of New Mexico and should have been included in the Department's construction program.

The Department argues that passage of SB246 could jeopardize federal funds. Federal funds require a 20 percent state fund match. SB 246 only appropriates state funds, not federal funds. An amendment could be included to insert language to appropriate state funds less that needed to match the federal highway funding.

POSSIBLE QUESTIONS

SB246 only appropriates state road fund not federal funds. Would this cause the Department to lose federal funding if the appropriate match were provided?

PRF/yr