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FISCAL IMPACT REPORT

SPONSOR Altamirano DATE TYPED 1/31/04 HB _____

SHORT TITLE Corrective Action Fund Expenditures SB 55

ANALYST Koplik

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$2,139.7			Recurring	OSF

Duplicates HB 19

Relates to General Appropriation Act. See Narrative.

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	(\$2,139.7)		Recurring	Corrective Action Fund
	\$1,500.0		Recurring	Federal Funds

SOURCES OF INFORMATION

LFC Files

Response Received From
Environment Department

SUMMARY

Synopsis of Bill

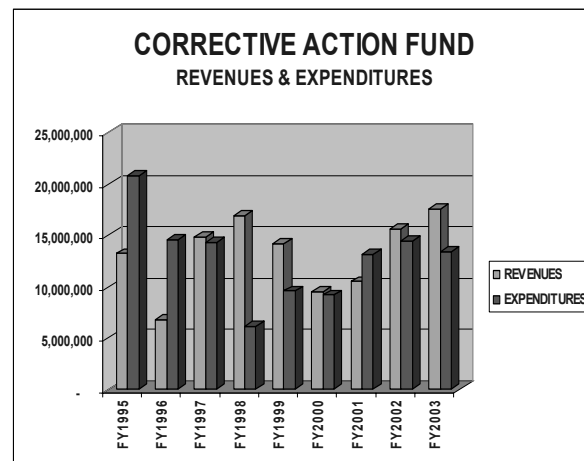
Senate Bill 55 amends the Groundwater Protection Act to appropriate up to 30% of the annual distributions to the Corrective Action Fund to the Environment Department for the administration of programs focusing on water quality.

Significant Issues

The Corrective Action Fund (Fund) was created to provide funding to clean up pollution from leaking petroleum storage tank systems, particularly at retail gasoline stations. The Fund also provides federally-required financial assurance coverage for tank owners and operators so they do not have to secure private insurance to cover the liability created by their business practices. Financial assurance coverage for owners and operators will continue under this bill and leaks from underground and aboveground petroleum storage tanks will continue to be cleaned up. The chart below shows the trends in revenues and expenditures, and describes how this bill will support ongoing program efforts.

*CORRECTIVE ACTION FUND
NINE YEAR ANALYSIS OF REVENUES & EXPENDITURES*

- The CAF was created to fund clean up of pollution from leaking petroleum storage tank systems.
- The fund also provides financial assurance coverage for operators so they don't have to secure private insurance to cover liabilities created by their business practices.
- The proposed change allows the department use of up to 30% of the annual collections to cover the costs of administering the fund and to fully fund other environmental programs within the Department.
- These programs are directly related to the "Ground Water Protection Act" for which the fund was created.
- Clean up of contaminated sites will continue at current levels without interruption.
- This change gives the legislature appropriation authority via the annual budget request process.



FISCAL IMPLICATIONS

The appropriation of up to 30% of the annual distributions to the Corrective Action Fund is recurring. Any unexpended or unencumbered balance remaining at the end of each fiscal year shall not revert. At the 30% level, this increase will generate an additional \$2,139.7 for the Department, for a total of \$5,383.4, from the Fund.

If this bill is enacted, the general fund appropriation in the proposed General Appropriation Act for the Environment Department would decrease by \$497.9 thousand for FY05. Further, the Department would not request an increase in general fund dollars in the immediate future. With these dollars, approximately 70 vacant positions in the department will be filled, and program clean up efforts substantially enhanced. Further, as discussed below, the additional \$2.13 million from the Fund will generate approximately \$1.5 million in federal funds on a recurring basis.

This bill would allow the department to distribute corrective action funds in multiple bureaus for the purpose of protecting the state's limited water resources. Currently about \$18 million is distributed to the Corrective Action Fund annually.

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Under this proposal, at least 70% (\$12.6 million) would continue to be used for cleaning up petroleum leaks and up to \$5.4 million would be used for other Environment Department programs with a focus on water quality.

Under the proposed General Appropriation Act, \$3.24 million from the Corrective Action Fund has been appropriated to the Environment Department for FY05 operating costs. The additional \$2,139.7 of the new funding proposed by this bill would be distributed throughout the department in the following manner:

Ground Water Bureau <i>(funds inspectors and enforcement)</i>	\$386.3
Surface Water Bureau <i>(funds the Operators Certification Program)</i>	\$161.9
Drinking Water Bureau <i>(match for \$1.2m federal grant, Public Water Supply Supervision)</i>	\$370.4
Field Operations Division <i>(funds multiple vacant inspector positions for the New Mexico Liquid Waste Program)</i>	\$793.8
Hazardous Waste Bureau <i>(match for multiple federal grants)</i>	\$121.0
Environmental Protection Division <i>(funds vacant positions in OSHA & Solid Waste Bureaus)</i>	\$306.3
TOTAL	\$2,139.7

The proposed amendment requests up to 30% in increased distributions from the Fund to attain a consistent level of funding from the Legislature every year regardless of the amount collected into the Fund. The Department will still need budget adjustment request language in order to access this revenue.

FEDERAL FUNDS MATCH

The appropriation of \$2.13 million will leverage approximately \$1.5 million of federal dollars as outlined below:

HAZARDOUS WASTE BUREAU

The proposed \$121 thousand increase requested for the department's FY05 budget is sought to leverage greater federal funds received through the Resource Conservation and Recovery Act (RCRA). A 25% state match is required and the \$121 thousand will leverage more than \$360 thousand of federal monies, which will nearly double the 56 annual inspections at non-permitted

facilities to 100 annual inspections. This increase will promote better handling of hazardous waste and enhance the program of pollution prevention through outreach activities. The proposed additional funds will be for compliance, inspections and administrative costs at hazardous waste generator facilities.

FIELD OPERATIONS DIVISION

The Public Water Supervision Grant (PWSS) is a federal grant provided under the Safe Drinking Water Act to ensure that drinking water systems in New Mexico adequately protect the health of consumers. The PWSS requires a 25% state match or \$375 thousand. This amount leverages \$1.1 million in federal funds for the Department. The PWSS grant funds 19 employees to support primacy requirements. The Drinking Water Bureau has not received general fund money for a number of years. Previously, the PWSS match was appropriated out the Water Conservation Fee revenues. Because of the implementation of seven new rules by EPA, including an exigent arsenic standard, sampling costs have increased to the point that the department can no longer fund sampling activities as well as the federal match from Water Conservation Fee revenues.

ADMINISTRATIVE IMPLICATIONS

The Environment Department has the resources to effectively administer this increase in dollars and program functions.

The Environment Department states that it will be better able to meet its mandates to protect the environment by enactment of this bill, which would make Corrective Action Fund monies available to fund other, chronically under-funded programs. Approximately 70 vacancies in the Department will be filled if the bill passes, increasing water quality protection and allowing it to better meet its performance measures with respect to all water quality programs. Clean up of contamination from leaking storage tanks will continue under the proposed legislation, and the Department will continue to meet its performance targets.

OTHER SUBSTANTIVE ISSUES

Petroleum Products Loading Fee

The costs associated with cleaning up petroleum spills can be high, and a conservative leak rate is 35%. Approximately 800 remediation projects are underway, and most last several years. The fee currently levied is 1.875 cents per gallon. Gas tankers usually carry 8,000 gallons per load, and hence pay \$150 per load. The Environment Department receives 73.33% of this fee, or \$110 per load. The remaining 26.67% or \$40 goes to the Local Government Road Fund.

The petroleum products loading fee is graduated, according to the amount of *unobligated* funds certified by the cabinet secretary every year. In November 2003, there was \$4.28 million of unobligated revenue in the Fund. The following table shows information related to the Fund.

Unobligated cash in Corrective Action Fund	Fee/tank of 8000 gallons
\$0-\$6 million	\$150 (\$110 to NMED)
\$6-12 million	\$120 (\$80 to NMED)
\$12-18 million	\$80 (\$40 to NMED)
Over \$18 million	\$40 (\$0 to NMED)

Site Prioritization

The Petroleum Storage Tank Bureau prioritizes leaking storage tank sites based on the effect or potential effect on public health, safety and welfare or the environment, and approves corrective action based on priority.

A site is considered first, or the highest, priority when a water supply has been contaminated or is at imminent risk of becoming contaminated, or when toxic or explosive vapors are present. These sites require immediate and aggressive attention.

Second priority sites have non-aqueous phase liquid (gasoline or diesel in most cases, also called product) or contaminant-saturated soil on site. Product and contaminant-saturated soil are an on-going source for groundwater contamination and toxic and explosive vapors. Aggressive remediation of these sites is required.

Third priority sites have soil and/or groundwater contamination that does not pose an imminent threat to human health, safety and welfare or the environment, but require some level of corrective action in order to mitigate all potential risk.

The department also ranks sites within the priority groups based on the size and severity of the contaminant plume and the potential impact on receptors such as drinking water supply wells

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