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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11

SPONSOR Jeff LAST UPDATED _____ HB 549

SHORT TITLE Priority for Highways on Tribal Land SB _____

ANALYST Soderquist

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|----------|----------|----------|----------------------|-------------------------|--------------------|
| Total | \$45,000 | \$45,000 | \$45,000 | \$135,000.0 | Recurring | State Road Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 549 would require that NMDOT, through the State Transportation Commission, prioritize the maintenance and repair of all state highways that extend into or through tribal lands. The priority would supersede the projects included in the Statewide Transportation Improvement Program (STIP). For the purpose of this bill, tribal lands include reservations, pueblo grant or trust lands of tribes and property held by the United States in trust for the 19 New Mexico Indian pueblos pursuant to Public Law 95-232.

FISCAL IMPLICATIONS

The legislation mandates that NMDOT's work on maintenance and reconstruction be shifted away from its current priorities to those highways that extend into and through tribal lands. According to NMDOT, the financial impact to NMDOT would require a dramatic increase in NMDOT's maintenance and rehabilitation/reconstruction projects budgets. Statewide repairs and routine maintenance of state and federal roadways are paid out of the NMDOT's contract maintenance budget. This budget has reduced from approximately \$45 million in FY10 to \$24 million in FY11, with actual repair needs ranging from \$40 million to \$50 million in the same time period. The Districts have met some of the difference by shifting funds from other District operations such as training and supplies. The result of the budget reduction is that the cost associated with needed maintenance and reconstruction continues to increase annually as needs

go unmet. Estimates of the bill's impact to the NMDOT are based on the annual costs of the estimated maintenance and reconstruction work. The estimate for FY11 is \$45 million in needs with \$25.3 million available, therefore the unmet need is approximately \$20 million, leaving a recurring additional cost of \$45 million.

Current federal laws as contained in the Code of Federal Regulations (CFR) will not allow the preference contained in this bill to apply to the use of federal aid funds. Therefore, federal aid funds could not be used on any project that resulted from a process that applied this preference, and all funding would be derived from a very limited State Road Fund.

NMDOT's current annual contract maintenance budget includes funding for regular maintenance for federal and state highways under NMDOT's jurisdiction. These maintenance operations include, but are not limited to, snow removal; pavement repair including pothole patching and crack sealing; mowing; and other roadside safety operations such as obstacle removal of the clear zone. In addition, the budget also funds pavement rehabilitation and reconstruction and bridge repairs/replacement on state highways that do not qualify for federal aid funding.

The recent years' contract maintenance budget has been at a level that requires NMDOT to address the most critical maintenance operations and pavement rehabilitation needs. NMDOT is required by federal regulations to maintain the federal highway system in good repair or risk losing federal aid funding. If HB 549 is enacted, NMDOT would still be required maintain the federal aid routes at the same levels, which would require additional state funding. NMDOT cannot spend federal aid funds on routine maintenance activities; therefore all the funds associated with maintenance and routine repair of state highways affected by this bill would need to be state funded. Based on the number of routes that extend into or through tribal lands, NMDOT would have to at least double its state funded contract maintenance budget if HB 549 is enacted.

NMDOT's maintenance budget is funded by the state road fund and does not receive funds for maintenance from the legislative appropriations. Severance tax bonds proceeds fund the major rehabilitation and reconstruction projects on state highways. This funding is also limited and is used to address the increasing needs of an aging and deteriorating state roadway network. In recent years NMDOT has had to prioritize the use of these limited funds, often deciding which state routes could no longer retain their paved surfaces. NMDOT's maintenance districts base their priority on the routes that are most traveled and most critical to movement of goods and services. If enacted, HB 549 would supersede those priorities and may result in NMDOT spending its limited funding on highways with lower traffic volumes, leaving the higher priority routes without funding.

SIGNIFICANT ISSUES

HB 549 would require NMDOT to supersede its current project priority procedures established in cooperation with the FHWA and numerous rural and metropolitan planning organizations, which ensure that the collective needs of the state and various local and tribal governments are met in a fair and equitable manner. Advice from state engineers is aggregated to the identification of critical needs across the state. Projects identified through this process result in the preparation of the Statewide Transportation Improvement Program (STIP).

PERFORMANCE IMPLICATIONS

If HB 549 is enacted and additional funding sources are not identified to replace those funds prioritized to highways extending into or through tribal lands, highways and roads critical to movement of people, goods and services in New Mexico may begin to deteriorate and fall into disrepair. Performance measures defined as essential in the General Appropriations Act may not be met.

ADMINISTRATIVE IMPLICATIONS

No significant implications.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Construction and maintenance priorities identified by NMDOT engineers in the STIP would be followed.

RS/svb