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FISCAL IMPACT REPORT

SPONSOR Leavell ORIGINAL DATE 1/24/18
 LAST UPDATED _____ HB _____

SHORT TITLE Corrective Fund to Carlsbad Brine Well Fund SB 62

ANALYST Jorgensen

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
	(\$3,000.0)	(\$3,000.0)	Recurring 4 Years	Corrective Action Fund
	\$3,000.0	\$3,000.0	Recurring 4 Years	Carlsbad Brine Well Remediation Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates HB125 and Relates to SB63, SB64, SB65, SB66

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 62 appropriates \$3 million from the corrective action fund (CAF) of the NMED to the Carlsbad brine well remediation fund for the purpose of remediation of the Carlsbad brine well.

FISCAL IMPLICATIONS

The CAF is supported by the petroleum products loading fee imposed on motor vehicle fuel. The loading fee is \$150 per 8 thousand gallons of gasoline or special fuels. NMED anticipates FY19 revenue generated by the fund to be \$19.6 million. SB62 would transfer \$3 million from the CAF to the brine well remediation fund. This transfer would reduce revenue available to NMED for salaries and remediation work.

Additionally, NMED uses CAF revenue to provide a state match for federal funds for multiple bureaus that address water quality needs. The department stated that in FY18, the CAF provided \$2.1 million to provide matching funds for \$4.8 million of federal funds. See Attachment 2.

This bill creates a new fund and provides for continuing appropriations. 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.

SIGNIFICANT ISSUES

The purpose of the CAF is to provide financial assurance coverage for fuel tank owners and is used to take corrective action in response to release of petroleum products from fuel tanks and to match federal funds. NMED stated that “a reduction of CAF funds would also limit the Department’s ability to fulfill the Fund’s statutory purpose to investigate and characterize existing and new releases and ensure that all owners and operators contain and clean up releases as required by both state and federal law.”

NMED did not provide an estimate of how many remediation projects would be delayed or any potential adverse impacts to staffing such as furloughs.

Attachment 1 shows a CAF revenue forecast provided by NMED which shows a \$22.9 million deficit in the fund at the end of FY22 and attributes \$12 million of the deficit to the transfers resulting from enactment of SB62.

PERFORMANCE IMPLICATIONS

NMED notes the corrective action fund pays staff salaries 42 FTE in the petroleum storage tank bureau (PSTB) as well as for an additional 116 FTE not related to petroleum storage tank remediation. While NMED stated that the reduction of CAF funding “will negatively impact operations throughout the department”, the department did not estimate the impact on remediation projects or staff. However, NMED did report that a \$5 million sweep from the fund in FY17 led to a 50 percent reduction in remediation efforts, but did not cause furloughs or other adverse impacts on existing employees.

ADMINISTRATIVE IMPLICATIONS

NMED stated “the proposed diversion will jeopardize the state’s compliance with federal underground storage tank regulations, including Corrective Action Fund and financial responsibility requirements.” In January 2015, the Environmental Protection Agency (EPA) advised NMED that a \$500 thousand diversion could compromise New Mexico’s compliance with the Underground Storage Tank Act, but took no further action.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB62 is related to SB63, SB64, SB65, and SB66 in that all bills provide appropriations to the Carlsbad brine well remediation fund.

HB125 duplicates SB62.

OTHER SUBSTANTIVE ISSUES

According to EMNRD:

The “Carlsbad brine well” refers to an underground cavern located in the southern portion of the City of Carlsbad that was created by the historic operation of a brine well. A “brine well” is a solution mining operation where fresh water is injected into salt formations to produce saturated brine which is extracted for use in oil and gas drilling operations. Brine wells result in underground caverns, with the stability of the caverns depending on their depth, width, and the strength of the overlying formations. Following the collapse of two brine wells in 2008, OCD examined the causes of the collapses and identified the Carlsbad brine well as having similar features to the wells that collapsed.

Unlike the brine wells that collapsed, the Carlsbad brine well is located in a developed urban area and the nearby infrastructure and facilities that could be impacted by a collapse include a mobile home park, a place of worship, a feed store, two highways (US 285 and US 180/62), a BNSF Railway facility, and Carlsbad Irrigation District’s Southern Main canal. Both highways are designated Waste Isolation Pilot Plant (WIPP) transportation routes. A collapse of the brine well will also adversely impact groundwater, surface habitat, and a vital aquifer.

The Carlsbad Brine Well Remediation Fund (Fund) was established by the Legislature in 2017. NMSA 1978, §75-11-2. The Fund is administered by EMNRD and is to be used by the EMNRD Oil Conservation Division (OCD) “to remediate the Carlsbad brine well”. The Legislature also established the Carlsbad Brine Well Remediation Advisory Authority (Advisory Authority) to advise the OCD on the remediation of the brine well. NMSA 1978, §75-11-1(B). No funds have been appropriated to the Fund so far by the Legislature.

CJ/sb