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FISCAL IMPACT REPORT

ORIGINAL DATE 3/9/15
SPONSOR Rue **LAST UPDATED** _____ **HB** _____

SHORT TITLE State Fund Review & Recommendations **SB** 616

ANALYST Malone

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Unknown	Unknown	Recurring	General Fund/ Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	Various Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 209

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Auditor (OSA)
 Department of Transportation (DOT)
 Attorney General's Office (AGO)
 Higher Education Department (HED)

No Response Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 616 requires DFA to perform an annual review of all special funds in the state treasury that do not revert to the general fund. DFA shall develop a list that includes at least one-fifth of special funds that are recommended for continuance, reversion, repeal or amendment and report the recommendations to LFC and other appropriate legislative interim committees by November 1 of each year. All special funds that do not revert to the General Fund shall be reviewed, except funds that are:

1. constitutionally created as non-reverting funds or statutory funds created to carry out the Enabling Act for New Mexico or constitutional mandates;
2. actuarially obligated;
3. created pursuant to court order or made non-reverting pursuant to court order;
4. funded by severance tax bonds or other bonds for active projects under contract that have not been completed;
5. permanent, trust or endowment funds;
6. sinking funds, unless the project for which the fund was created is completed;
7. suspense funds;
8. revolving loan funds; or
9. gifts, grants or donations that is specific to purpose.

FISCAL IMPLICATIONS

Although this bill contains no appropriation, there is a potential negative fiscal impact for agencies with non-exempt, non-reverting fund balances contingent upon DFA recommendation and subsequent action to use or divert fund balance or alter the fund. Reversion of special funds would benefit the general fund.

According to OSA in a recent report, *Money on the Sidelines*, as of FY14 approximately \$4.5 billion was unspent in many funds across state government.¹ A portion of these identified funds could be subject to the provisions of SB 616. However, it is indeterminate what amounts would actually be impacted by this bill at this time.

SIGNIFICANT ISSUES

Routine review of special funds would provide more transparency and accountability for reporting on the status of the state's resources as disclosed in agencies' financial audits under the purview of the State Auditor. Such review would be useful in identifying unencumbered fund balances that may be utilized.

Both HED and DOT observe that special funds within the departments are important to operations and not good candidates for reversion. Presumably other agencies have similar special funds not explicitly exempt from review in this legislation.

¹ The report can be found at http://www.saonm.org/media/news_pdf/3-9-15_Auditor_Keller_Identifies_4_5_Billion_in_Unspent_Funds.pdf

HED administers several non-reverting special funds that support program development; grants; scholarships; and other forms of financial aid. These include:

- Financial Aid Special Programs Fund (21600);
- College Goal Sunday New Mexico (29200);
- Postsecondary Education Instructional Fund (34400); and
- Lottery Tuition Fund (63700).

Reversion of funds within the Financial Aid Special Programs Fund (21600) could impact the programs supported by the fund. Several financial aid programs require multi-year commitments to students (e.g., Loan for Service programs), and non-reverting funds are often used to account for shortfalls and changes in individual program budget requirements that may change from year to year.

DOT notes that the department receives no general fund and is dependent on dedicated revenue sources to fund transportation needs and to ensure cash flow needs. The department explains that the fiscal implication of reverting State Road Fund balances, Restricted Fund balances, Bond Proceeds funds balances, and Bond Debt Service funds balances to any other fund other than the State Road Fund, Restricted funds, Bond Proceeds funds and Bond Debt Service funds would be devastating to DOT.

ADMINISTRATIVE IMPLICATIONS

DFA would have additional responsibilities associated with review of special funds.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Similar to HB 209, which requires reversion of some special funds.

OTHER SUBSTANTIVE ISSUES

AGO notes that one of the exceptions to the bill's reversion requirement applies to special non-reverting funds that are "created pursuant to court order or made non-reverting pursuant to court order." This raises two potential issues: (1) do courts have authority to create non-reverting funds in the state treasury and (2) if so, does that authority unconstitutionally interfere with the legislature's plenary authority over spending? *See* N.M Const. art. III, §1 (separation of powers) and Art. IV, Sec. 30 (money shall be paid out of the treasury only by appropriations made by the legislature).

ALTERNATIVES

DOT suggests exempting the department's special funds from review.