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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/06/16  
**LAST UPDATED** 2/15.16      **HB** 307/aHGEIC

**SPONSOR** Cook/Cisneros

**SHORT TITLE** Capital Outlay Reform Act      **SB** \_\_\_\_\_

**ANALYST** Kehoe

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate		Recurring	General Fund (See Fiscal Impact Narrative)

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to or Conflicts with Senate Bill 33 and Senate Bill 293

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of HGEIC Amendment

The House Government, Elections & Indian Affairs Committee amendments provide as follows:

1. Strikes the power of the Capital Outlay Oversight Committee to determine whether there will be a minimum dollar amount for capital projects included in the statewide capital improvements plan and to set that minimum;
2. Requires the the Capital Projects Planning Council shall consider requests that are not part of the Capital Improvements Plan for inclusion in the plan;
3. Strikes the power of the committee to remove a proposed capital project from the list provided by the council and cannot add a capital project, and if the council wishes to endorse a capital expenditure not on the council’s list, the committee may do so by a separate bill;
4. Requires capital projects that are planned and prioritized for funding through a separate statutory process are exempt from committee review, but shall be included in the Statewide Capital Improvement Plan;
5. The amendment provides for defining a “Statewide Capital Improvement Plan”.
6. Expands the members of the Capital Projects Planning Council from thirteen to seventeen members, and increases the number of public members from four to six and specifies no more than three will be from the same political party; and requires one member shall

- represent organized labor and one member from the business community;
7. The amendment inserts a temporary provision requiring that the council and the division of the Department of the Finance and Administration begin developing the statewide capital improvements plan on the effective date of the bill, and shall be presented to the committee by November 1, 2017; and
  8. Provides that the effective date of the provisions of the act is July 1, 2016.

### Synopsis of Bill

House Bill 307, cited as the “Capital Outlay Reform Act”, proposes to create a permanent joint interim legislative committee, a capital projects planning council and a capital planning and assistance division within the DFA (and provide the powers and duties of each). It also requires an updated multiyear capital improvements plan. The effective date of the provisions of this bill is May 18, 2016.

While under the bill, the Legislature maintains the authority to appropriate funding for capital projects, the authority to select projects, in particular local projects, would be determined by a planning council with oversight by the legislative committee. Major provisions of the bill include:

Section 1 creates a permanent joint interim legislative committee consisting of nine members each from the House and the Senate appointed by the New Mexico Legislative Council for the purpose of overseeing the proposed capital outlay process. The Council will also name knowledgeable public non-voting advisory members to the committee, including the executive directors of the New Mexico Municipal League and the New Mexico Association of Counties.

The legislative committee will oversee and monitor the work of the Capital Projects Planning Council created in Section 5 of the bill. The planning council consists of 13 members including legislative office directors, executive cabinet secretaries, the chair of the New Mexico Finance Authority (NMFA), the staff architect of the Facilities Management Division of GSD and public members appointed by legislative leadership who shall have experience in architecture, engineering, construction management, commercial planning and financing.

Exempted from the capital projects review, but not from development of a Statewide Capital Improvements Plan, are projects funded under the Public School Capital Outlay Act, projects funded by loans or grants from the NMFA, Water Trust Board, Tribal Infrastructure Board, and Department of Transportation projects.

Section 2 establishes the powers and duties of the legislative oversight committee, including: 1) oversight and monitoring of the work of the capital project planning council; 2) consultation with the council and DFA in the development and adoption of a multiyear statewide capital improvements plan; 3) development of objective criteria for the council to use to prioritize capital projects in the Statewide Capital Improvements Plan (SCIP); 4) the determination of the minimum amount needed for capital projects, including matching funds required; and 5) recommendations to the Legislature of funding sources for prioritized capital projects and introduction of required capital bills; 6) direction to staff to research capital project requests that are not part of the SCIP; and 7) removal of proposed capital projects from the list provided by the council, the committee cannot add a capital project.

Section 6 creates a new “Capital Planning and Assistance Division” within DFA with similar but expanded duties currently performed by the Budget and Local Government Divisions of the department and the Board of Finance. The duties require conducting compliance and performance audits and evaluations and extensive coordination with other funding entities.

### **FISCAL IMPLICATIONS**

House Bill 307 does not contain an appropriation. The service of legislators, public non-voting members of the proposed permanent joint interim legislative committee and other advisory and subcommittees may require per diem and mileage and other unknown expenses. Only public members cited in Section 5 E are entitled to receive per diem and mileage, but cannot be compensated for their services. Expenditures of a subcommittee require approval by the committee in advance of expenditure, with approval recorded in the minutes.

Staff for the committee shall be provided by the Legislative Council Service (LCS) and the Legislative Finance Committee (LFC). It is unknown if current LCS and LFC staffing levels and expertise are sufficient to meet the necessary support requirements or if contracted consultants will be necessary.

The proposed new division within the DFA is required to provide extensive assistance and outcomes related to the proposed capital outlay process, including compliance and performance audits, evaluations of capital projects, and reporting. It is unknown if the current staffing levels are sufficient to meet these assigned duties, although Section 11 of the bill transfers the functions, money, appropriations, and property of the Capital Projects Bureau of the Local Government Division to the proposed new division within DFA.

The additional powers and duties assigned to the legislative oversight committee may require additional meetings and additional staff support currently provided by LCS.

Without the input of state agencies, the additional operating budget impact and assumptions could not be determined. Any increased costs associated with this bill may be a recurring expense to the general fund.

### **SIGNIFICANT ISSUES**

Policymakers recognize infrastructure funding is critical to public health and safety and the economic vitality within New Mexico’s communities. The major challenge is how to address the state's responsibility for state-owned and operated facilities while at the same time meeting expectations to fund local needs with limited resources. Over the years and several administrations, executive and legislative agencies supported by governors and the Legislature have made substantial improvements to the process for funding state-owned facilities. However, the challenge is the need to create a process that is transparent, fair, and equitable and provides for the efficient and cost-effective capital outlay need at the local level.

New Mexico has been fortunate to capitalize from its natural resources to fund both state and local infrastructure projects for many years. However, as oil and natural gas revenues continue to fluctuate, they provide an unreliable funding stream, especially for local projects. These

circumstances highlight the need to ensure capital projects are adequately planned, prioritized, supported by local governments, leveraged with other funds, and completed in a reasonable timeframe. The state’s effective use of its limited resources is paramount to achieve outcomes for the public health and safety of its citizens.

In general, this bill includes many of the procedures the National Association of State Budget Officers identifies as good practices for quality capital budgeting that have been lacking in New Mexico’s capital outlay process, causing the state to be ranked poorly in national rankings in the area of planning and the distribution of capital funding.

As of December 2015, nearly \$1 billion for 2,845 projects from all funding sources remains outstanding. The total includes \$165.4 million earmarked fund balances. Outstanding earmarked dollars are for water (\$87.4 million), colonias (\$41.8 million), and tribal (\$36.2 million) infrastructure projects. The balances do not include approximately \$460.7 million from supplemental severance tax bonds for public schools.

**2009-2015 Capital Outlay All Fund Sources  
"Outstanding" Projects Only  
(in millions)**

Year	Number of Projects	Amount Appropriated	Amount Expended	Amount Unexpended	Percent Expended for Year
2009	1	\$10.0	\$8.8	\$1.2	88%
2010	0	\$0.0	\$0.0	\$0.0	100%
2011	31	\$26.6	\$19.1	\$7.4	69%
2012	232	\$171.5	\$123.7	\$47.9	66%
2013	491	\$208.4	\$84.6	\$123.8	34%
2014	934	\$446.3	\$59.6	\$386.7	10%
2015	1,156	\$376.4	\$2.0	\$374.4	0%
<b>Total</b>	<b>2,845</b>	<b>\$1,239.2</b>	<b>\$297.8</b>	<b>\$941.4</b>	

Note: Data includes projects for water, colonias and tribal earmarked funds.

Source: Capital Projects Monitoring System

Based on a study by the National Association of State Budget Officers, *Capital Budgeting in the States*, good practices for quality capital budgeting require:

- Defining capital expenditures;
- Defining maintenance expenditures and identifying funding for maintenance;
- Developing a system to prioritize projects and identify criteria used for selection;
- Identifying operating costs of each project over a multi-year period;
- Effective communication between the legislature and the executive during the capital budget process;
- Strengthened review of long-range capital plans;
- Integrated planning with debt affordability;
- Review of cost-benefit comparisons for private sector participation in capital projects;
- Review of long-term leases;
- Defining outcomes for capital investments;
- Validating cost estimating methods;
- Establishing a tracking system to keep projects on schedule and within budget;
- Maintaining an updated inventory system of capital assets, and
- Maintaining a centralized oversight for capital projects.

## **CONFLICT, RELATIONSHIP**

Senate Bill 33 creates a council of experts to evaluate and prioritize statewide and local capital outlay projects and monitor and oversee projects authorized by the Legislature to ensure that appropriations are expended in the most cost-effective and timely manner. The council is charged with preparing and annually updating a five-year state capital improvements plan.

Senate Bill 293 proposes changes to the capital outlay process for the purpose of increasing fiscal and programmatic scrutiny of capital outlay projects and expenditures. The bill creates a Capital Outlay Planning and Monitoring Division (within DFA), and requires the division to prepare and annually update a five-year state capital improvement plan.

## **OTHER SUBSTANTIVE ISSUES**

Over the years several improvements have been made to address the planning, prioritizing, funding, and reporting for state-owned facilities, including:

The Facility Management Division (FMD) has developed a Comprehensive Facility Management Program using a software application (AssetWorks, Inc., AiM software) and has centralized all maintenance and repairs to state buildings under their jurisdiction of FMD. The staff is trained and tracks state assets and maintains a history of building maintenance for state-owned facilities throughout the state.

Executive Order 2012-023 requires all state agencies to submit five-year facilities master plans to the DFA by July 1<sup>st</sup> of each year. The FMD prescribes the form and content of the plans and require agencies to include lease planning as a component.

The Capitol Buildings Planning Commission (CBPC) in partnership with the Facilities Management Division (FMD) of GSD, review the *Capital Master Plan* to determine the best use of state properties owned and leased in Santa Fe, Albuquerque, Los Lunas, and Las Cruces. The Legislature has established several revolving loan funds and grant programs to assist local entities with their capital needs by providing zero and low-interest loans or grants.

Under Executive Order 2012-023, the DFA and FMD, jointly prepare a process to identify and prioritize all state-owned capital improvement projects. (A similar process has not been developed for establishing priorities to provide state aid for local projects.) The executive encourages legislators to fund local projects prioritized in the Infrastructure Capital Improvement Plan (ICIP). However, participation in ICIP process, administered by the Local Government Division (LGD,) is not statutorily required.

## **OTHER COMMENTS**

According to *Think New Mexico*, Nineteen states have established independent commissions designed to put the infrastructure funding process at arm's length from politics. These commissions have memberships appointed by the governor and the legislative leadership, or in some cases positions designated for specific officials. The neighboring states include Utah, Oklahoma, and Arizona.