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FISCAL IMPACT REPORT

SPONSOR Cisneros **ORIGINAL DATE** 02/08/16
LAST UPDATED _____ **HB** _____

SHORT TITLE Capital Outlay Planning & Monitoring Act **SB** 33

ANALYST Amacher

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
	(\$1,200.0)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	\$1,000.00		Recurring	Legislative Finance Committee (See Fiscal Impacts)
	\$200.00		Recurring	Office of the State Auditor (See Fiscal Impacts)

(Parenthesis () Indicate Revenue Decreases)

Relates to HB307 and SB 293

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Children, Youth & Families Department (CYFD)
- Department of Cultural Affairs (DCA)
- Department of Finance and Administration (DFA)
- Department of Information Technology (DoIT)
- Energy, Minerals, and Natural Resources Department (EMNRD)
- General Services Department (GSD)
- New Mexico Corrections Department (NMCD)
- New Mexico Finance Authority (NMFA)
- Office of the State Auditor (OSA)
- Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 33 enacts the Capital Outlay Planning and Monitoring Act (Act) for the purpose of increasing fiscal and programmatic scrutiny of capital outlay expenditures. The Act creates the Capital Outlay Planning Council staffed by the legislative finance committee (LFC) to oversee the development of the state capital improvements plan. SB 33 requires the LFC to assist the council, prepare and annually update a five-year “state capital improvements plan” and proposes new material that outlines guidelines for capital project requests and infrastructure capital improvements plans. SB 33 appropriates \$1.2 million from the general fund in fiscal year 2017. Sections 1 and 2, define the terms used within the Capital Outlay Planning and Monitoring Act.

Section 3, creates the Capital Outlay Planning Council with LFC director as chair and defines the powers and duties of the new council. The council is comprised of the LFC director as chair with members including the New Mexico Finance Authority and the New Mexico Association of Regional Council of Governments.

Sections 4 and 5 require the Capital Outlay Planning Council to develop and update yearly a five-year state capital improvements plan, define the requirements of capital improvement plans and guidelines for state agencies, local governments, other eligible entities and tribes. Further, a local government is only eligible for state capital dollars if the entity is current on its annual audit or has a plan approved by the state auditor for compliance with the Audit Act; and the entity must be current on its budget and quarterly reporting to the local government division of the department of finance and administration. Beginning in 2018, the LFC will report annually to the legislature, including the revenue stabilization and tax policy committee, on the status of the state capital improvements plan and any modifications made to the plan.

Section 6, requires all state agencies responsible for capital outlay oversight to file quarterly electronic reports on the status of projects, including appropriations and expenditures, with the LFC.

Sections 7 makes an appropriation of \$1.2 million from the general fund in fiscal year 2017 of which \$1 million to the LFC to establish, organize, staff and fund the council and carry out the purposes of the Act; \$200,000 to the office of the state auditor to cover costs associated with financial audits or fiscal reviews of local governments that are unable to comply, due to circumstances beyond the control of the local government, in securing a contract for an independent audit or fiscal review.

Section 8 is the effective date of July 1, 2016.

FISCAL IMPLICATIONS

SB 33 tasks the LFC to establish, organize, staff and fund the council with a recurring appropriation of \$1 million from the general fund. The office of the state auditor is appropriated \$200,000 of recurring general funds to cover costs associated with the financial audits or fiscal reviews of local governments unable to comply with the state audit requirements due to circumstances beyond their control. Any unexpended or unencumbered balance remaining at the end of fiscal year 2017 shall revert to the general fund.

SIGNIFICANT ISSUES

Infrastructure needs for both state and local projects continue to grow and require more resources than the state can afford. Over the years, the executive and legislators have discussed the need to fund projects with adequate planning, a method for establishing project priorities and overall management of state funds for state and local projects. Concerns have centered on the ineffective uses of state resources: unspent proceeds, incomplete projects, waste, and misuse.

While proposed legislation to establish the process has failed, the governor issued executive orders intended to provide accountability of state funds for local capital outlay.

In accordance with Section 6-4-1 NMSA 1978 and Executive Order 2012-023, DFA and the General Services Department, Facilities Management Division, were directed to jointly prepare a process to identify and prioritize all state-owned capital improvement projects. The process requires all state agencies to maintain a five-year facilities master plan consistent with the Capital Buildings Planning Commission master plans and comprehensive principles. Each agency's master plan is required to include a preventive and deferred maintenance plan, space and energy efficiency standards, justification for new construction, and a criteria-based weighted ranking system to determine priorities. According to the order, an updated prioritized five-year program for all capital improvement projects must be submitted to the governor and Legislature by November 1 of each year.

On May 5, 2013, the governor issued Executive Order 2013-006 directing the Department of Finance and Administration to establish uniform funding criteria for a grantee to be eligible for a state capital appropriation. The criteria required grantees to be in compliance with updated audit and financial reporting as required in grant agreements.

PERFORMANCE IMPLICATIONS

SB 33 creates a new council whose work duplicates, and to some extent conflicts with, the current planning activities of the department of finance and administration local government division which oversees the infrastructure capital improvements plan for local communities. Other agencies and/or boards with an existing process for prioritizing capital projects include, but not limited to, the following: property control divisions of the general services department; the New Mexico finance authority; the water trust board; the colonias infrastructure board; the higher education department; New Mexico aging and long-term services department; the public education departments' capital outlay bureau; and the public school facilities authority.

ADMINISTRATIVE IMPLICATIONS

SB 33 limits the number of other state agencies represented on the council. There are a few state agencies SB 33 does not expressly mention as council members, such as the New Mexico corrections department (NMCD), that either oversees infrastructure capital improvement plans or funding of capital improvements. Instead, SB 33 requires a greater collaboration between those other state agencies not expressly mentioned and the facilities management division (FMD) of the general services department.

NMCD notes that FMD is in essence the landlord of approximately 700 state buildings; it is the NMCD which operates or utilizes approximately 300 of those buildings. Since 43% of FMD's buildings are utilized by NMCD, it would be very reasonable for the NMCD to be a member of the council along with FMD. NMCD indicates it often needs capital improvements to its state prisons, which are typically over 40 years old and indeed of substantial ongoing repair and maintenance.

The department of cultural affairs (DCA) notes the Capital Building Planning Commission (CBPC) is responsible for statewide facilities master planning for state-owned facilities. The CBPC includes members of the executive, judiciary, and legislative leadership; and is currently staffed by the legislative council service. It is not clear how the new council proposed in SB 33 will interface with the CBPC, or how the LFC capital improvements plan will interface with the facilities master plan developed by CBPC.

TECHNICAL ISSUES

SB 33 does not repeal existing law related to capital programs; preparation; duties NMSA 6-4-1. This section of law defines the responsibility for capital outlay requests with the department of finance and administration. Established deadlines for submittal of capital infrastructure plans, qualifications for application and the review process are further outlined in the State Funds and Capital Programs Act from 2006. In the event SB 33 was enacted, agencies and local governments would be required to duplicate their efforts in seeking capital infrastructure funding, oversight and monitoring.

OTHER SUBSTANTIVE ISSUES

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 of 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
- Maintaining a centralized oversight for capital projects

In addition, components for a good capital management system include:

- Capital planning and budgeting (an analysis of immediate and future needs)
- Project Management (monitoring and evaluating projects through implementation)
- Asset Management (appropriate maintenance of capital assets)

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