

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The bill does not contain an appropriation to hire or contract with the appropriate staff to assist the PWC with the implementation of its responsibilities, and it is unknown if the implementation of the PWC can proceed with existing LCS and LFC personnel. Further, costs related to per-diem and mileage for legislative members and public members of the commission to attend no less than six meetings annually are not addressed in the bill.

SIGNIFICANT ISSUES

While infrastructure spending is vital, New Mexico's capital outlay process is inefficient, and the practice of earmarking funding for individual lawmakers to allocate is unique among the states. Efforts to improve the process for selecting and funding local capital outlay projects have been largely unsuccessful. Without changes to the current capital process, state funds for critical needs at both the local level and state-owned assets will continue to be deficient and potentially pose liability and risk to the citizens of New Mexico.

Given the volatility of severance tax revenue and the inability of available capital outlay funding to meet all of the state's infrastructure needs, legislators and the executive branch continue to scrutinize the vast amount of unexpended appropriations and the large number of projects that remain inactive. Poor project selection (including insufficient planning, a piecemeal approach to funding, and unknown construction costs) continues to delay project completion. These problems should compel policymakers to carefully distinguish future project funding by priority, readiness to proceed, need, public purpose, and merit.

As of November 2, 2020, approximately \$1.4 billion from all funding sources for 2,644 projects remains outstanding, including \$128.3 million of earmarked fund balances for water (\$57 million), tribal (\$37.2 million), and colonias (\$34.2 million) infrastructure projects. Of the total outstanding projects, 2,095 are local projects authorized between 2016 and 2020, totaling \$614 million.

OTHER SUBSTANTIVE ISSUES

The bill proposes the PWC be composed of 12 members to include: four members appointed by the Speaker of the House of Representatives with proportional political representation; four members appointed by the Senate Committees' Committee; however, if appointments are made during the interim, the President Pro Tempore shall make the appointments in consultation or agreement by a majority membership of the Committee' Committee. The chair and vice-chair shall be named by the Speaker of the House, Committees' Committee, or President Pro Tempore as appropriate and shall rotate each year. No action may be taken by the PWC unless approved by a majority of the commission.

Members of the commission are required to biennially appoint four public members with expertise in architecture or engineering to serve on the committee, provided that no more than two will be from the same political party.

The PWC is required to meet no less than six times per year to review proposals for capital outlay funding and the status of authorized projects. The bill includes a process for studying the capital outlay process, including engaging entities that request capital outlay funding, holding hearings on proposals for capital projects, requesting entities provide information or data supporting the funding of a capital project, evaluating the proposals, and developing and adopting rules for the PWC to “implement and administer the provisions” of this bill.

Staff from LFC, LCS and DFA have met periodically since 2019 for the purpose of reviewing issues related to the capital outlay request process. The staff revised the capital outlay request and reauthorization process by implementing an online form to easily capture data to assist in determining community priorities listed in the entities’ infrastructure capital improvement plans and the readiness of projects to move forward.

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

ADMINISTRATIVE IMPLICATIONS

Currently, staff from executive and legislative agencies hear agency ICIP presentations in October of each year, and LFC staff uses this information to develop a framework for statewide capital outlay proposals. If SB207 is enacted, it is unclear how the PWC would interact with the hearing.

HED has statutory authority to approve programs, budgets, construction, purchases of real property, and capital funding recommendations for all public post-secondary institutions in the state. The creation of a capital outlay committee and capital projects task force under SB207, do not allow for representation from HED in the development of the criteria for project review and vetting. HED regulations establish criteria specific to higher education institutions as it relates to educational settings, enrollment growth, instructional space, library, administration, and research. These items are important in the evaluation and ranking of higher education institution projects.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 55 requires the Legislative Council Service (LCS) to publish on the legislative website a searchable list of capital projects to include the amount allocated by each legislator or the governor.

Senate Bill 290 creates the Public Works Commission with the same membership, powers and duties as SB207 but includes evaluation criteria for prioritizing capital project funding.

Senate Bill 305, the “Capital Outlay Reform Act,” creates a capital projects task force and Capital Planning and Assistance Division within the Department of Finance and Administration. Senate Bill 305 conflicts with Senate Bill 207.

SO/LMK/sb/al