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FISCAL IMPACT REPORT

SPONSOR Snyder DATE TYPED 3/11/05 HB _____
 SHORT TITLE Capital Projects Review Act SB 365/aSFC/aSFI#1
 ANALYST Kehoe

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
\$300.0				Recurring	Legislative Cash Balances

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with Senate Bill 9 and House Bill 499.

Relates to the General Appropriation Act.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- New Mexico Finance Authority (NMFA)
- New Mexico Environment Department (NMED)
- Department of Finance & Administration (DFA)
- New Mexico Public Education Department (NMPED)
- New Mexico Department of Transportation (NMDOT)

SUMMARY

Synopsis of SFI#1 Amendment

The Senate Floor Amendment #1 makes a technical correction to clarify unexpended funds shall revert to legislative cash balances.

Synopsis of SFC Amendment

The Senate Finance Committee amendment changes the appropriating fund from the general fund to legislative cash balances.

Synopsis of Original Bill

Senate Bill 365 creates a Capital Projects Review Act; creates a permanent joint interim Legislative Capital Projects Review Committee; provides duties of the committee; provides standards and guidelines for capital project funding; and appropriates \$300 thousand from the general fund to the Legislative Council Service for the purpose of reimbursing expenses incurred by the committee.

Significant Issues

Senate Bill 365 creates the Capital Projects Review Act to create a joint interim Capital Projects Review Committee to work with architectural, engineering, finance and other experts in the public and private sectors to evaluate and prioritize statewide and local capital outlay projects and to monitor projects proposed to and authorized by the Legislature to ensure appropriations are expended in the most cost-effective manner.

The bill creates a permanent joint interim legislative committee composed of 12 members, six appointed by the Speaker of the House of Representatives and 6 appointed by the Senate President Pro Tempore with equal representative from both political parties for a term of two years. Members appointed to the committee from the minority party shall be made based on recommendations of the minority floor leader of the respective houses, but the Speaker and President Pro Tempore shall retain the right to reject the recommendations. Beginning in 2005, the chair will be a Senate member and the vice chair will be a House member and the appointing authorities will name the chair and vice chair on an alternating basis annually. The bill provides that no action will be taken by the committee if a majority of the total membership from either house on the committee rejects the action of the committee. The bill allows the committee to create subcommittees by a majority vote of all members appointed to the committee as needed with all meetings and expenditures of the subcommittee approved by the full committee in advance.

Duties of the Committee include: 1) directing the work of its staff and contractors; 2) adopting standards and guidelines for evaluating requests for capital project funding; 3) adopting a standard capital project request form that includes the information required by staff and the committee to evaluate requests; 4) prioritizing capital project funding requests based on the standards and guidelines and making recommendations to the legislature for funding the prioritized projects; and 5) requiring periodic reports from state agencies, institutions and instrumentalities that receive funding for state and local capital projects, consistent with the purposes of the Act and appropriation and to ensure projects are proceeding in a timely manner and that money is reverted in a timely manner.

Senate Bill 365 provides that staff to the committee be provided by the Legislative Council Services (LCS) and allows LCS to appoint and employ the professional, technical and clerical assistance, and into contracts as needed to carry out the provisions of the Act. Staff duties shall include research, planning, and coordinating requests for evaluation of projects and make recommendations based upon findings of projects. Other duties will be to review and monitor infrastructure capital improvement plans. While evaluating and prioritizing projects, staff shall assess the critical needs of the state, determine health and safety concerns, evaluate projects based upon the ability to complete the project, useful life of project, and viability of other funding sources. The Committee shall seek interagency assistance and cooperate with state agencies to fulfill duties set forth within the Act.

A provision of the bill requires that certain capital projects be exempt from committee review. Exempted are projects funded pursuant to the Public School Capital Outlay Act, projects funded by loans or grants from the New Mexico Finance Authority, and projects authorized by the legislature that are specifically excluded by law from the provisions of the Capital Projects Review Act. However, for those agencies exempted from the committee's review, the agencies must provide timely reports to the committee describing the projects, including funding amounts and other information as may be requested by the committee. The reports would ensure interagency coordination in evaluation and funding capital projects. The bill requires the committee to report its priority listing of capital projects, other findings and recommendations to the legislature for their consideration by December 1 of each year.

The bill contains an emergency clause.

FISCAL IMPLICATIONS

The appropriation of \$300 thousand for expenditure in fiscal years 2005 and 2006 contained in this bill is a recurring expense to the legislative cash balances. According to a current Cash Balances Summary Report, legislative cash balances are sufficient to cover the expenditures proposed in this bill. According to the bill, any unexpended or unencumbered balances remaining at the end of a fiscal year shall revert to the general fund. However, legislative cash balances do not revert.

TECHNICAL ISSUES

Legislative cash balances do not revert to the general fund. The following technical amendment is recommended: On page 9, line 12, between the words "shall" and "revert" insert the word "not" and strike the remainder of the line except for the ".".

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 365 conflicts with Senate Bill 9 and House Bill 499. Senate Bill 9 creates the Capital Projects Act for the purpose of creating a council of experts to evaluate and prioritize proposed statewide and local capital outlay projects and to monitor and oversee projects authorized by the Legislature to ensure appropriations are expended in the most cost-effective manner.

House Bill 499 permanently creates a Capital Outlay Division in the Department of Finance and Administration (DFA) with similar duties outlined in Senate Bill 365 and Senate Bill 9. The 2004 Legislature appropriated, and the governor approved, a \$700.0 thousand special appropriation for improving administration of the capital outlay program. A Capital Projects Unit (CPU), consisting of a director and seven FTE, was established by DFA commencing in May 2004. The LFC funding recommendation for fiscal year 2006 totals \$636.6 thousand for continuation of the Capital Outlay Unit.

According to NMDOT, the review process may conflict with Section 67-3-14 which gives the State Transportation Commission sole authority over all policy matters pertaining to the expenditure of funds for highway-related capital projects.

ADMINISTRATIVE IMPLICATIONS

To some extent, the proposed duties of the Capital Outlay Review Committee duplicate the activities and duties of the newly created Capital Outlay Unit and Local Government Division of the Department of Finance & Administration, Property Control Division, the New Mexico Finance Authority, the Commission on Higher Education, the Aging & Long-Term Care Department, and other governmental entities with a planning process for prioritizing capital projects.

OTHER SUBSTANTIVE ISSUES

The State of New Mexico has allocated over \$2 billion in the last ten years for special, state and local capital improvements statewide. Traditionally, funding for capital outlay is derived from various sources: severance tax bonds, general obligation bonds, general fund, state road fund and other state funds (Miner's Trust Fund, Irrigation Water Construction Fund, Penalty & Interest Fund, et. al). Capital appropriations have varied from less than \$50 million in 1991 to in excess of \$300 million in 2004. Given the disparity between capacity and needs from year to year, projects should be carefully prioritized and selected based on emergency situations, public health and safety issues, federal mandates, preservation of the state's assets, continuation projects requiring additional funding for completion, and projects with other funding sources to maximize state dollars.

The proposed committee would consolidate capital planning into a comprehensive statewide function. With so many critical capital needs and limited resources, the proposed committee could provide valuable insight into priorities, especially on a local level. With a standardized request, review and reporting process, there could be better utilization of scarce capital funds and more accountability for appropriate and timely expenditures. It is a responsible approach to capital planning, which would be enhanced by encouraging coordination on a local and regional level to surface community priorities and ensure all capital needs are adequately considered.

The Property Control Division of the General Services Department (GSD) is the major recipient of capital project appropriations which support new construction and renovation, and repair and equipment replacement at the state's almost 850 buildings throughout New Mexico. Projects for state-owned public facilities compete with other local projects for capital dollars, but coordination at a local level to surface community priorities is not part of the process. In order to protect the public's real estate assets, a more comprehensive approach to recognizing problems and evaluating priorities is needed. GSD and DFA currently and jointly administer the four-year plan which requires agencies to submit by July 1st each year their projected capital program for the next four years and by mid-September the specifics of requests for the upcoming legislative session. The review and recommendation process each autumn includes DFA/GSD hearings with agencies and results in the Governor's capital budget. It is unclear whether this process would continue or be replaced by the Capital Outlay Review Committee.

The State Board of Finance (BOF) maintains a report by agency reflecting sold, expended and balances for each project authorized for funding from general obligation and severance tax bonds. A separate report provides the amount, in aggregate, of unexpended bond proceeds for each series of bonds. A direct correlation between DFA's and BOF's reports is impractical due to a number of factors. Bond sales are issued in multiple series and may contain partial amounts sold in separate issues. The DFA monitoring system relies on agency reported data that is not audited. Also, bond expenditures are made on a reimbursement basis of actual expenditures, but

expenditures reported in the monitoring system may include payments from other funds that have not been submitted for reimbursement.

The Local Government Division (LGD) currently serves as a clearinghouse for all state and federal grant or loan programs for local community infrastructure development. The LGD administers a Local Infrastructure Capital Improvements Plan (ICIP) to assist local governments in submitting data to support their requests for appropriations. The plan is not statutorily created and requires “volunteer” participation by municipalities, counties, and special districts (Native Americans, water associations, fire districts and soil and water districts). Only a small percent of all planned priorities listed on the ICIP are funded by direct legislative appropriations.

At the governor’s direction at the end of 2004, CPU developed a list of the top three planned and supported project priorities of all municipalities, counties, tribal entities, and several water associations and special districts totaling \$1.8 billion. Of the \$1.8 billion, \$968 million is needed to match “other funds” totaling \$191 million available at the local level for Phase I of the projects. The list is available through the CPU or LFC offices.

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