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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/07
 LAST UPDATED 03/12/07 HB _____

SPONSOR Altamirano

SHORT TITLE Finance Board Capital Outlay Expenditure Threshold SB 264/aHTRC

ANALYST Williams

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Reduction in agency workload; see text				

(Parenthesis () Indicate Expenditure Decreases)

Duplicate of House Bill 277
 Relates to Senate Bill 555

SOURCES OF INFORMATION

LFC Files
 State Board of Finance (SBOF)
 Department of Finance and Administration (DFA)
 General Services Department (GSD)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment reduces the review threshold from \$5 million to \$1 million, such that projects of \$1 million or less would not be subject to board review and approval.

Synopsis of Original Bill

Endorsed by the Legislative Finance Committee.

Senate Bill 264 provides for an exception from State Board of Finance (SBOF) review and approval of capital outlay projects by higher education institutions specified in Article 12, Section 11 of the state constitution. Projects of \$5 million or less would not be subject to board review and approval. The approval requirement applies to capital expenditures including the purchase of real property, the construction of buildings or other major structures and major remodeling.

FISCAL IMPLICATIONS

The bill does not contain an appropriation.

SIGNIFICANT ISSUES

Public, postsecondary institutions impacted by the legislation include: University of New Mexico, New Mexico State University, New Mexico Highlands University, Western New Mexico University, Eastern New Mexico University, New Mexico Institute of Mining and Technology, New Mexico Military Institute, New Mexico School for the Blind and Visually Impaired, New Mexico School for the Deaf and Northern New Mexico State School (Northern New Mexico College).

All projects must receive review and approval by their respective boards of regents.

HED notes “currently all higher education institutions submit their capital expenditures draw requests to the department for approval of reimbursement. Once approved, HED then sends them to the SBOF for final approval. This bill would shorten the current process by eliminating the last step for...” qualifying projects.

SBOF notes: “Board review of each expenditure is extensive. For example, with each property acquisition approval request, Board staff and Board counsel carefully review each of the ten documents required over a period of two weeks, and provide a policy, financial, and legal analysis of each project to the Board. All required legal documents are closely examined by Board counsel and any issues that arise must be addressed prior to Board action. Lastly, the staff will not present any items to the Board unless all required documents have been submitted. Board staff works closely with the Higher Education Department to obtain missing data or documents.

The importance of the Board of Finance oversight is not only to shed light on these projects, which in many cases expand significantly beyond the scope and or amount appropriated by the Legislature, but by encouraging the institutions to ensure that proper policies and procedures are followed just knowing that the Board of Finance will be reviewing them. Many of these projects are funded by bonds issued by the Board of Finance.”

PERFORMANCE IMPLICATIONS

The HED policy development and institutional financial oversight has performance measures to address the timeliness of funding reimbursements provided to higher education institutions for capital outlay projects. A performance measure that may be indirectly impacted by this bill is:

Percent of properly completed capital infrastructure draws released to the state board of finance within thirty days of receipt from the institutions

ADMINISTRATIVE IMPLICATIONS

There would be significant streamlining and efficiencies gained by the State Board of Finance under the proposed legislation at the \$5 million threshold. According to FY06 data obtained from the SBOF, the \$5 million review threshold would mean that only 21 percent of the higher education projects that currently require Board approval would continue to require SBOF approval.

Further, SBOF notes “Currently, SBOF receives approximately four capital expenditure approval requests from state educational institutions per month. Based on recent data, this number would be reduced to about 1 or 2 items a month.” It is likely that the reduction in workload would allow SBOF staff to reprioritize other work assignments.

As well, GSD notes the legislation could speed up project delivery.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 555, which amends procurement code requirements, includes a provision that would exempt from SBOF approval those construction contracts administered by the General Services Department that are under \$500 thousand. In its fiscal impact report on that bill, Property Control Division (PCD) notes the current practice of requiring contractors to hold their price for 60 to 150 days in order to complete administrative tasks associated with SBOF approval and contract execution. PCD anticipates savings as small construction contracts are executed within 30 days of bidding.

OTHER SUBSTANTIVE ISSUES

In June 2006, the State Board of Finance (SBOF) voted “Do Not Pass” on improvements to the asphalt parking lot at the University of New Mexico (UNM) Championship Golf Course. Paving was intended for 200 thousand square foot, or just over four acres, of parking lot. There were three project funding sources: 1) 2004 general fund appropriation of \$180.0 thousand; 2) 2005 severance tax bond capital appropriation of \$150.0 thousand and 3) UNM minor capital outlay funds of \$250.0 thousand, for a total of \$580.0 thousand. Subsequently, UNM officials resized the project, such that SBOF approval was not necessary and completed the down-sized project. The revised project was \$499.5 thousand, of which \$330.0 thousand was generated by legislative appropriations and \$169.5 was contributed from UNM minor capital outlay funds.

SBOF policy identifies project criteria to determine which projects must go before the board. In December 2006, the SBOF revised the board policy in the area of “major” projects. Specifically, the new policy provides an exemption from review for certain, small projects (**see Attachment**

A). The board’s position is that the rule did not substantively change, but interpretation of the rule was clarified with these changes. The key test for determining whether or not a higher education project would go before the SBOF for review is the total project cost.

As shown in the new rule, board approval is based on full-time-equivalent (FTE) student enrollment of the institution as well as the project cost and funding source. Projects meeting the following criteria must be reviewed and approved by the board:

1. Any project funded, in whole or in part, by capital outlay legislation signed into law which costs over \$500.0 thousand, at institutions with FTE enrollments under 1,500; and
2. Any project funded, in whole or in part, by capital outlay legislation signed into law which costs over \$750.0 thousand, at institutions with FTE enrollments of 1,500 or more.

As an example, at a large institution, if a project utilizes solely state funding of \$400.0 thousand, then it would not be subject to SBOF review and approval. If a project at a large institution consists of a state appropriation of \$600.0 thousand as well as other funds of \$600.0 thousand, for a total project cost of \$1.2 million, then board staff indicates the SBOF review and approval would be needed.

The board policy provides additional criteria to determine if a “major” project would require board review and approval:

1. Any project funded exclusively by sources other than legislative appropriations which costs over \$50,000 at institutions with enrollments of 1,500 FTE or less, or
2. Any project funded exclusively by sources other than legislative appropriations which costs over \$300.0 thousand at institutions with enrollments exceeding 1,500 FTE.

ALTERNATIVES

Based on data obtained from the SBOF, the following are the average number of projects as a percent of total projects which would come before the board for review utilizing various project funding thresholds:

- Over \$5 million: FY 06: 21 percent or 26 percent over the last five years
- Over \$1 million: FY06: 62 percent or 66 percent over the last five years
- Over \$0.5 million: FY06: 85 percent or 82 percent over the last five years

ATTACHMENT

AW/csd

Attachment

TITLE 2 PUBLIC FINANCE
CHAPTER 70 CAPITAL EXPENDITURES
PART 4 POLICY ON CAPITAL EXPENDITURES BY STATE EDUCATIONAL INSTITUTIONS

2.70.4.1 ISSUING AGENCY: State Board of Finance.

[Recompiled 10/01/01]

2.70.4.2 SCOPE: [RESERVED]

[Recompiled 10/01/01]

2.70.4.3 STATUTORY AUTHORITY: [RESERVED]

[Recompiled 10/01/01]

2.70.4.4 DURATION: [Permanent]

[Recompiled 10/01/01]

2.70.4.5 EFFECTIVE DATE: [Filed August 30, 1989]

[Recompiled 10/01/01]

2.70.4.6 OBJECTIVE: [RESERVED]

[Recompiled 10/01/01]

2.70.4.7 DEFINITIONS: [RESERVED]

[Recompiled 10/01/01]

2.70.4.8 [CAPITAL EXPENDITURES:]

A. Section 21-1-21 NMSA 1978 states: "No expenditure shall be made by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or the construction of buildings or other major structures or for major remodeling projects without prior approval of the proposed purchase or construction or remodeling by the board of educational finance and the state board of finance".

B. Involvement of the state board of finance in the approval of capital outlay projects and capital expenditures at New Mexico colleges and universities is specified by this statute. This involvement is substantially different from the involvement with state building projects, where the state board of finance is the final authority for accepting bids and determining whether the project will be constructed. In the case of educational institutions, the authority for the actual construction of the project resides with the board of regents of the institution. However, New Mexico statute requires the higher education department and the state board of finance to provide prior approval to the board of regents before they are allowed to proceed with the project.

C. Since the statute requires the higher education department and the state board of finance to provide "prior" approval of the project, these two bodies should review all major capital projects to determine that the proposed project is in keeping with the overall statewide plan for higher education. The source of funding for the project should also be carefully reviewed to determine that sufficient funds are available for the project and the use of the funds will not have an adverse effect on other portions of the institution's budget. The sufficiency of planning for the project, and the completeness of the review of the project by the board of regents should also be determined.

[Recompiled 10/01/01]

2.70.4.9 PROJECTS REQUIRING REVIEW: All projects which fall under the following categories must be submitted for review by the state board of finance:

- A. any purchase of real property;
- B. any construction of a new building;
- C. any project involving a bond issue which requires state board of finance approval; [and]
- D. any other major project, including construction of facilities such as parking lots or radio towers; site improvements or landscaping; and remodeling or repair of an existing building. For these purposes, "major" is defined as:

(1) any project funded, in whole or in part, by capital outlay legislation signed into law which costs over \$500,000.00, at institutions with FTE enrollments under 1,500;

(2) any project funded, in whole or in part, by capital outlay legislation signed into law which costs over \$750,000.00, at institutions with FTE enrollments of 1,500 or more;

(3) any project funded exclusively by sources other than legislative appropriations which costs over \$50,000.00, at institutions with enrollments of 1,500 FTE or less; or

(4) any project funded exclusively by sources other than legislative appropriations which costs over \$300,000.00, at institutions with enrollments exceeding 1,500 FTE.

E. In-house labor applied to a project must be included as part of the cost of the project. Projects may not be artificially segmented or phased in a manner designed to avoid review by the state board of finance.

[Recompiled 10/01/01]

2.70.4.10 INFORMATION REQUIRED FOR SUBMISSION: To ensure that the state board of finance will have sufficient information to review capital outlay expenditures at New Mexico's educational institutions, the following information will be required to be submitted to the board after the higher education department has approved the request:

A. Purchase of Real Property:

(1) legal description of the property;

(2) a copy of the appraisal and concurrence therewith, if performed by an independent appraiser, by the property tax division of the taxation and revenue department;

(3) a site improvement survey to verify the legal description and to uncover the existence of recorded and unrecorded easements and encroachments;

(4) a description of the use to which the property will be placed;

(5) the source of funds for the purchase to include citation of the relevant section of the law when source of funds is legislative appropriation;

(6) current title binder evidencing clear title with no non-standard exceptions, and agreement by the title company that it will delete general exceptions 1 through 6 and the first two-thirds of 7;

(7) merchantable fee simple title by warranty deed, except if the seller is a public entity;

(8) phase I of an environmental assessment to verify prior use of the land with regard to possible environmental hazards;

(9) a copy of the purchase agreement, which should contain a provision making the acquisition subject to the approval of higher education department and the state board of finance; and

(10) evidence of approval of acquisition by applicable board of regents and higher education department;

Waivers of certain provisions may be granted at the discretion of the board of finance, on a case by case basis, until patterns develop that can be worked into the policy. Additionally, requirements affecting bond approvals are set forth in SBF Rule 94-1 [now 2.61.5 NMAC].

B. Construction of Buildings or Other Facilities; Major Remodeling or Repairs:

(1) a description of the facility to be constructed or repaired, including the types of space to be included, the function of the facility, and the relationship of the project to the institution's five-year master plan;

(2) the total square footage of the facility, both net assignable square feet and gross square feet;

(3) the cost per square foot for the construction or repair of the facility and the cost per square foot for the total project.

(4) a budget for the project, including architects and engineering fees and contingencies;

(5) source of funds to include citation of the relevant section of the law when source of funds is legislative appropriation; and

(6) evidence of approval of expenditure by applicable board of regents and higher education department.

[Recompiled 10/01/01]

2.70.4.11 REVISED PROJECTS: To ensure that the project actually constructed will be substantially the same as that approved by the higher education department and the state board of finance, any change in the project resulting in a change in the budget of more than ten percent will require separate review and approval by the state board of finance. The same information will be required for such changes as is required for the original submission of the project. Any additional information which

can help in evaluating a proposed project can be requested by the state board of finance prior to approval.

[Recompiled 10/01/01]

HISTORY OF NMAC 2.70.4:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives:

Directive 89-4, Policy on Capital Expenditures by State Educational Institutions, 8-30-89.

History of Repealed Material: [RESERVED]