F I S C A L   I M P A C T   R E P O R T

SPONSOR Campos **ORIGINAL DATE** 2/21/09 **LAST UPDATED** 2/27/09 **HB**

SHORT TITLE Capital Outlay Oversight & Project Review **SB** 547/aSPAC

ANALYST Kehoe

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	($365.8)	Recurring	Severance Tax Bond Capacity (See Fiscal Impact Narrative)
	(Indeterminate)	Recurring	General Fund (see Fiscal Impact Narrative)

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 309 and Senate Bill 310

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	$365.8	$373.0	Recurring	Proposed Capital Project Audit Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)
General Services Department (GSD)
Aging and Long-Term Services Department (ALTSD)
Department of Health (DOH)
Energy, Minerals, and Natural Resources Department (EMNRD)
Higher Education Department (HED)
Indian Affairs Department (IAD)
New Mexico Corrections Department (NMCD)

New Mexico Environment Department (NMED)
Public Education Department (PED)
Public School Facilities Authority (PSFA)
Office of the State Engineer (OSE)

Responses Not Received From
Department of Cultural Affairs (DCA)
Department of Transportation (DOT)
New Mexico Association of Counties (NMAC)
New Mexico Council of Governments
New Mexico Municipal League

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment provides the following changes:

Items 1, 2, 4, 6, 7, and 8 make technical changes to re-letter and renumber subparagraphs and subsections accordingly within the bill;

Item 3 requires state museums and state monuments to submit their Infrastructure Capital Improvement Plan (ICIP) to the Cultural Affairs Department (CAD) by May 1 of each year; and

Item 5 provides for CAD to submit their ICIP to the Local Government Division for review by August 1 of each year.

Synopsis of Original Bill

Senate Bill 547, for the Legislative Finance Committee, proposes the following:

- Creates the Capital Outlay Planning and Monitoring Act;
- Creates a permanent legislative interim capital outlay committee composed of 18 members, nine from the House and nine from the Senate appointed by the New Mexico Legislative Council;
- Creates a Capital Outlay Planning and Monitoring Division within the Department of Finance and Administration (DFA);
- Creates an Executive Capital Planning Committee;
- Defines the powers and duties of the interim committee, proposed new division, and the planning committee;
- Requires an annual update of a five-year state capital improvements plan;
- Provides guidelines and timelines for capital outlay requests;
- Creates a capital project audit fund within the state treasury;
- Amends the powers and duties of the Secretary of Finance and Administration;
- Directs all functions, money, appropriations, records, furniture, equipment, and other property of the Capital Projects Unit of the Local Government Division (LGD) be transferred to the proposed Capital Outlay Planning and Monitoring Division of DFA; and
- Repeals 6-4-1 NMSA.

The effective date of the bill is July 1, 2009.

FISCAL IMPLICATIONS

Senate Bill 547 creates the capital project audit fund as a non-reverting fund in the state treasury. The fund would consist of appropriations, an audit fee, and any other money credited to the fund. The audit fee would be derived from no more than two-tenths of one percent of the total of each year's capital project appropriations and bond authorizations, including general obligation bond authorizations.

According to the DFA and LFC economic forecast, severance tax bond "net" capacity in FY10 will be approximately $182.9 million and "net" capacity in FY11 will be approximately $186.5 million. The reduction of each appropriation or bond authorization authorized in this bill would be set aside to fund capital project audits. The Legislature shall appropriate money in the fund to the state auditor's office and the LFC to conduct agreed-upon procedures by both entities for audits on any capital project to ensure compliance with federal laws, internal revenue service rules pertaining to the issuance and use of tax-exempt bonds, and with state laws and rules adopted by the state treasurer, Board of Finance, state auditor, or other state agencies.

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is $575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context. Revenue forecasters indicate there is no general fund available in FY09 for major capital outlay infrastructure. If general funds are available for capital outlay in 2010, the two-tenths of one percent of the total available would also be deducted for the purpose of conducting audits.

A provision in the bill specifies the deduction for the audit fee shall not apply to severance tax bonds authorized for Interstate Stream Commission water revenue bonds and supplemental severance tax bonds authorized pursuant to the Public School Capital Outlay Act, the Public School Capital Improvements Act, and the Public School Capital Outlay Council.

According to a recent LFC program evaluation report dated January 16, 2009, "Review of Selected Capital Outlay Projects," administered by DFA and GSD, 'The legislative and executive branches of government have improved accountability for capital outlay appropriations but much more needs to be done from the initial planning, prioritization of projects, funding, and management to the actual execution of many projects." The program evaluation team recommended that the Legislature consider including requirements in the Capital Appropriation Act for the State Auditor and LFC to conduct special agreed-upon procedure audits of major capital outlay project appropriations in consultation with DFA.

The recent review by the LFC audit staff for nine individual projects entailed approximately 1,000 hours to plan, gather background information, prepare audit tools, conduct field work, conduct site visits, develop the report, and hold meetings to discuss the findings with agencies. Based on four evaluators at $38 per hour, including time and benefits, the average cost of the audit was approximately $4,200 per project.

SIGNIFICANT ISSUES

The Legislature appropriated $3.7 billion for 19,140 projects between 2002 and 2008. As of December 5, 2008, $1.7 billion for 7,004 projects is outstanding (including nearly $600 million appropriated in 2008 for nearly 2,000 projects). Excluding 2008 appropriations, 2,957 projects with appropriations of nearly $670 million are showing little or no progress. Of the nearly $1.5 billion appropriated to projects with funding of $1 million or more, unexpended balances total over $947 million for 400 projects. The funds for these larger projects account for 55 percent of all unexpended balances.

Several obstacles continue to hinder the progress of small and large capital projects at both the state and local level. The LGD and DFA legal staff is inundated with the large number of projects under their management. Funding for maintenance of state-owned facilities, including higher education facilities, is inadequate. Projects continue to be under-funded. Finally, the absence of audits for large projects hinders accountability for state funds.

Senate Bill 547 requires the legislative interim capital outlay review committee to adopt standards, guidelines, and a prioritization system for evaluating capital projects; collect project information from various agencies, institutions, and political subdivisions; provide oversight of both state and local projects; and report its findings to the Legislature. Staff for the capital outlay review committee would be provided by the Legislative Council Service (LCS) and LFC. Subject to appropriation, the capital outlay review committee may appoint and employ professional and technical support and enter into contracts as needed to carry out its responsibilities.

Senate Bill 547 requires the proposed new division be responsible for the following:

- Directing capital outlay project planning for the executive branch, state institutions, and political subdivisions seeking state funds for capital projects;
- Developing priorities for projects to be funded through the Legislature's capital outlay process;
- Overseeing all state funded projects for timely completion, proper expenditures, and timely reversions;
- Maintaining a central database of capital projects that includes the up-to-date fiscal and programmatic status of each capital project;
- Providing training and assistance to state agencies and political subdivisions on planning, budgeting, and administration of capital projects;
- Identifying stagnant capital projects that should be voided;
- Working with the Board of Finance to ensure capital projects authorized by the Legislature are properly certified for the issuance of bonds and to ensure that capital projects proceed in a timely manner and meet federal and state requirements; and
- Coordinating with the New Mexico Finance Authority, the New Mexico Mortgage Finance Authority, and federal agencies that provide capital project funding for local governments, other eligible entities, and rural areas.

Senate Bill 547 creates an "executive capital planning committee" to assist the Capital Outlay Planning and Monitoring Division in capital planning and the development of a State Capital Improvements Plan. The proposed committee brings together experienced personnel from different fields and government entities to share their expertise in planning, financing, and other capital outlay processes and management. Membership of the committee includes the following agencies:

a) the Property Control Division of the General Services Department;
b) the Capitol Buildings Planning Commission;
c) the Cultural Affairs Department;
d) the Department of Transportation;
e) the Local Government Division of the Department of Finance and Administration;
f) the Department of Environment;
g) the Aging and Long-Term Services Department;
h) the Higher Education Department;
i) the Public School Facilities Authority;
j) the New Mexico Finance Authority;
k) the New Mexico Mortgage Finance Authority; and
l) the directors of the Councils of Governments

The bill provides that the division invite representatives of federal agencies that provide loans and grants to New Mexico communities for infrastructure and other capital projects to participate in meetings of the committee and may invite other participants as it deems necessary.

PERFORMANCE IMPLICATIONS

The Pew Center on the States, *Governing Magazine*, and a group of academic experts collaborate and annually assess the quality of management in state government and report their findings in a publication called “Grading the States.” The study includes reporting on capital infrastructure management and recommended the following:

1. Compile agency capital plans into a statewide capital plan and ensure transparent project prioritization informed by a needs assessment and the current condition of the state’s infrastructure;
2. Increase the amount of capital outlays allocated under a standardized, needs-based process; and
3. Increase funding of maintenance, particularly for infrastructure not related to transportation.

The Report notes that during the 2007 legislative session, the governor and the Legislature set aside funds for strategic purposes but, “Despite these improvements, the statewide capital plan remains a collection of agency and local government plans, and the Department of Finance and Administration does not seem to prioritize projects on a statewide level.”

According to PSFA, Senate Bill 547 appears to address all three of the report’s infrastructure related recommendations, setting the stage for continued improved management of state capital outlay process. PSFA, as a proposed member of the Executive Capital Planning Committee, indicates they would welcome the opportunity to assist in developing and overseeing a comprehensive statewide planning effort.

ADMINISTRATIVE IMPLICATIONS

The Property Control Division, New Mexico Environment Department, Cultural Affairs Department, Department of Health, New Mexico Corrections Department, Department of Public Safety, higher education institutions are the major recipients of capital project appropriations for major construction and renovations. The aforementioned have their own internal planning mechanisms for requesting capital funds from both the executive and the Legislature. However, capital funding requests for state-owned public facilities compete with other local projects for capital dollars, but coordination at a local level to identify community priorities is not part of the state agency process. In order to protect the public's real estate assets, a more comprehensive approach to recognizing problems and evaluating priorities is needed.

Agencies such as the Local Government Division, Aging and Long-Term Services Department, New Mexico Environment Department, Public Education Department, and Indian Affairs Department currently administer the majority of all outstanding local capital projects. According to LFC quarterly reports, the agencies do not have sufficient staff to provide the necessary oversight and accountability for projects at the local level.

RELATIONSHIP

Senate Bill 309 enacts the Capital Projects Act, establishes a capital projects council and includes procedures for evaluating and prioritizing proposed capital projects by December 1, 2009, for recommendation to the 2010 Legislature and each year thereafter.

Senate Bill 310 enacts the Higher Education Capital Outlay Act, creates the higher education capital outlay council and higher education capital outlay fund, provides a process for correcting outstanding deficiencies at state institutions, and provides for a process for prioritizing future critical capital outlay projects.

TECHNICAL ISSUES

On page 14, line 21, the subsection "B." should be "D." and re-letter succeeding subsections accordingly.

OTHER SUBSTANTIVE ISSUES

Recognizing New Mexico's capital spending has not been effectively managed, both the Legislature and the executive have dedicated much time and effort toward developing a comprehensive capital outlay management system. In 2003, as a result of a joint evaluation of the capital outlay process by the State Auditor and LFC staff, the Legislature in 2004 appropriated $700.0 and authorized seven full-time equivalent (FTE) positions to DFA to provide the necessary administrative support for improvement of the capital outlay program.

During the same session in 2004, the governor proposed the following targeted levels for improving the capital outlay process:

- Planning for projects;
- Assuring projects meet the anti-donation provisions of the state constitution;
- Assuring grantees will accept responsibility for operating and maintaining projects;

- Providing legislators and the executive with tools to evaluate and prioritize projects;
- Developing appropriate and politically reasonable capital outlay standards; and
- Providing for centralized administration for tracking, accountability, and timely reversions of the funds.

In April 2004, the Capital Project Unit (CPU) was created within DFA. Within a short time, the unit developed a strategic plan, worked with agencies to submit a four-year infrastructure plan to assist in identifying state assets and priorities, worked to improve capital tracking, monitoring and reporting, and attempted to streamline the internal process for capital budgets; and worked to with local entities to identify capital priorities.

In 2005, the staff of CPU was integrated with the Local Government Division (LGD), an already understaffed division. Given the abundant dollars available for capital projects between 2005 and 2008, the division soon became inundated with administering an unprecedented number of capital projects, reauthorizations, legal issues, and paperwork. Separating the staff into a new division as originally intended in 2004 will allow greater oversight and accountability for outstanding and new authorized funding for capital outlay projects.
The proposed Capital Outlay Planning and Monitoring Division would consolidate capital planning into a comprehensive statewide function. With so many critical capital needs and limited resources, the proposed division 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 identify community priorities and ensure all capital needs are adequately considered.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The State of New Mexico will continue to appropriate funds without a comprehensive capital outlay plan, guidelines, oversight and accountability for use of the state’s limited capital outlay funding.

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