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

SPONSOR SRC	**ORIGINAL DATE** 02/26/13
	LAST UPDATED 03/07/13 **HB**
SHORT TITLE Capital Outlay Review, Plans & Monitoring	**SB** 507/SRCS
	ANALYST Kehoe

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	**FY14**		
	$1,100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

The Senate Rules Committee substitute for Senate Bill 507 creates the Capital Outlay Planning and Monitoring Act for the purpose of increasing fiscal and programmatic scrutiny of capital outlay projects and expenditures. The Act creates a permanent joint interim legislative committee (Capital Outlay Review Committee), creates a Capital Outlay Planning and Monitoring Division in the Department of Finance and Administration, creates an Executive Capital Planning Committee, requires the Property Control Division of the General Services Department and the Local Government Division of the DFA to prepare and annually update a five-year state capital improvement plan, creates a capital project administration fund, and amends the duties of the New Mexico Finance Authority Oversight Committee. The effective date of the bill is July 1, 2013. Provisions of the Act propose the following:

Section 1, creates a permanent joint interim legislative committee (Capital Outlay Review Committee) composed of seven members from the House of Representatives and seven members from the Senate appointed by the New Mexico Legislative Council. Members shall be appointed to give the two political parties having the most members in each house the same total proportional representation on the committee as prevails in that house. The chair of the committee must rotate between the House and the Senate, and in 2013 the chair shall be a Senate member and the vice-chair shall be a House member.

Section 2, provides that subcommittees may be created only by majority vote of all members appointed to the Capital Outlay Review Committee with at least one member from the House and one member from the Senate and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenses of the subcommittee must be approved by the full committee in advance.

Section 3, lists the duties of the Capital Outlay Review Committee to include: 1) overseeing the functions and processes of the Capital Outlay Planning and Monitoring Division; 2) adopting standards and guidelines for evaluating capital funding requests; 3) adopting a standard capital outlay request form for evaluating requests; 4) prioritizing capital project requests proposed by the new division; 5) requiring recipients of state funding to provide report to ensure capital projects are implemented in a cost-effective manner, projects are proceeding in a timely manner, and money is reverted to the proper fund in a timely manner; 6) conduct review of state and local infrastructure capital improvement plans; 7) participate in hearings held by the new division; and 8) perform other duties the committee deems necessary or are assigned by the Legislative Council. Capital projects exempted from review of the committee include capital projects funded under the Public School Capital Outlay Act, Department of Transportation road projects funded in whole or in part with federal highway funds, and capital projects funded by loans or grants from the New Mexico Finance Authority and not from the state general fund.

Section 4, provides that staff of the Legislative Council Service (LCS) and the Legislative Finance Committee (LFC) will staff the Capital Outlay Review Committee and authorizes the LCS and LFC, subject to legislative appropriation, to appoint, employ, or contract technical or clerical assistance, as necessary to carry out the duties of the committee.

Section 5, provides that all agencies overseeing capital projects, including exempt entities, provide timely reports to the Capital Outlay Review Committee describing the funded projects, providing the appropriation amount, and other information requested by the committee.

Section 6, allows the Capital Outlay Review Committee to request the LFC, the state auditor or the Capital Outlay Planning and Monitoring Division to conduct financial, compliance, or performance audits on any capital project.

Sections 7 and 8, define the terms used within the Act.

Section 9, creates the Capital Outlay Planning and Monitoring Division within the Department of Finance and Administration and defines the powers and duties of the Capital Outlay Planning and Monitoring Division.

Section 10, creates an executive capital planning committee to assist the division in performing its duties. The committee is composed of representatives of the Property Control Division of the General Services Department, the Capitol Buildings Planning Commission, the Cultural Affairs Department, the Local Government Division of DFA, the Environment Department, the Aging and Long-Term Services Department, the Higher Education Department, the New Mexico Finance Authority, and the Councils of Governments.

Sections 11 and 12, defines the requirements of the capital improvement plans and guidelines to be developed by the Property Control Division and requires that all capital project recommendations of the executive must be based on the plans. Further, a state agency, local government or other potential recipient of state capital dollars will not be eligible for a capital project if the entity is not current on its annual audit or has a plan approved by the state auditor for completion of its audit.

Section 13, requires all state agencies responsible for capital outlay oversight to file monthly electronic reports on the status of projects, including appropriations and expenditures, with both the new division and the interim committee.

Section 14 and 19, are addressed in the fiscal narrative.

Section 15, eliminates the New Mexico Legislative Oversight Committee requirement to oversee and monitor state and local government capital planning and financing, including taking testimony from state and local officials on state and local capital needs; and the committee no longer would provide assistance to the New Mexico Finance Authority and cooperate with the executive branch of state and local governments on planning, setting priorities for and financing state and local capital projects.

Sections 16 and 17, creates a new Capital Outlay Planning and Monitoring Division within DFA and defines or deletes certain duties of the Secretary of the DFA.

Section 18, provides for the transfer of the functions, money, appropriations and property from the current Capital Outlay Bureau of the DFA to the new division within DFA.

Section 20, repeals statute requiring joint preparation, amendment, maintenance and submission of a four-year program on July 1 of each year of major state capital improvement projects undertaken by the state, including those projects undertaken with state aid or under state regulation.

FISCAL IMPLICATIONS

The appropriation of $1.1 million contained in this bill is a recurring expense to the general fund for expenditure in fiscal year 2014 and subsequent fiscal years to carry out the purposes of the Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Section 14 of the bill creates a non-reverting capital project administration fund within the treasury consisting of appropriations and other money credited to the fund. The Legislature shall appropriate money in the fund to the new division to carry out its duties pursuant to this Act and to the State Auditor's Office and the Legislative Finance Committee to conduct audits using agreed-upon procedures of any capital project. The audits are to ensure compliance with federal laws, internal revenue service rules pertaining to the issuance and use of tax-exempt bonds, or other federal and state rules and regulations.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

Infrastructure needs for both state and local project needs 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.

In a memorandum from the State Board of Finance (SBOF) to all legislators dated June 1, 2012, in part, reference to the current capital process reads as follows:

> *Unfortunately, it has become common practice to ignore critical regional and statewide infrastructure needs, and instead fall victim to a "grab bag" process whereby limited state capital funds are frittered away on hundreds of earmarked projects after little to no vetting. To ensure these funds are used wisely, State policymakers in all branches of government must seriously consider whether an appropriation will fully fund a project, and if not, whether funding for future phases of the project are identifiable. We must consider the expected life of the assets to be financed, and whether it makes good sense to finance them with 10-year bonds. We must communicate well with local public bodies to ensure that projects funded are truly needed and the community has the resources to protect that asset for future generations. We must also target our scarce capital funds to projects that will have a multiplier effect on their regional or statewide economy.*

The memorandum further recommended reforms to the state's capital outlay process. The sponsor of this legislation attempted to address the concerns expressed during the interim by the governor, State Board of Finance, and the Secretary of the Department of the DFA.

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

LMK/svb:blm