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FISCAL IMPACT REPORT

ORIGINAL DATE 2/8/15

SPONSOR T. Salazar LAST UPDATED _____ HB 209

SHORT TITLE Reversion of Special Funds and Review of Funds SB _____

ANALYST Malone

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Higher Education Department (HED)
Office of the State Auditor (OSA)
Office of the Attorney General (AGO)
State Treasurer Office (STO)

Responses Not Received From

Department of Finance and Administration

SUMMARY

Synopsis of Bill

House Bill 209 addresses special funds in the state treasury that do not revert to the general fund. The bill provides that at least one-fifth of all special non-reverting funds shall revert to the general fund each year except for funds that fall under one of the following nine categories specified in the bill:

- Constitutionally created as non-reverting funds or statutory funds created to carry out Enabling Act for New Mexico or constitutional mandates;
- Actuarially obligated;
- Created or made non-reverting pursuant to court order;
- Funded by severance tax bonds or other bonds for active projects under contract that have not been completed;
- Permanent, trust or endowment funds;
- Sinking funds, unless the project for which the fund was created is completed;

- Suspense funds;
- Revolving loan funds; or
- Gifts, grants or donations that are specific to purpose.

The bill provides that the State Auditor shall establish a schedule of review of special non-reverting funds, and develop a list that includes at least one-fifth of special funds that are recommended for reversion to the general fund, repeal or amendment, and include any audit findings pertinent to the funds on the list.

The State Auditor shall annually report its recommendations to the Legislative Finance Committee and other appropriate legislative interim committees by November 1.

The bill provides the State Treasurer, Department of Finance and Administration, other state agencies and legislative interim committees shall cooperate with and assist the State Auditor as requested to carry out the provisions of House Bill 209.

FISCAL IMPLICATIONS

Reversion of currently non-reverting funds would benefit the general fund.

HED points out that while reversion of special fund balances would benefit the general fund, there may be significant impact on the department. The amount of funds that could revert is unknown at this time due to several factors. The schedule of fund review is undetermined and unspecified in the bill; several fund balances are contingent on student enrollment, program demand, and future appropriations; and additional legislation may affect the solvency of the funds administered by HED.

SIGNIFICANT ISSUES

OSA notes that the bill would provide more accountability for reporting on the status of the state's resources as disclosed in agencies' financial audits under the purview of the State Auditor. The bill's provisions provide improved oversight over state resources and would provide better information to legislative committees to enhance their ability to determine the status of accruing fund balances in the state treasury and how those fund balances should be allocated.

HED administers several non-reverting special funds that support program development; grants; scholarships; and other forms of financial aid. These include:

- Financial Aid Special Programs Fund (21600);
- College Goal Sunday New Mexico (29200);
- Postsecondary Education Instructional Fund (34400); and
- Lottery Tuition Fund (63700);

Reversion of funds within the Financial Aid Special Programs Fund (21600) could impact the programs supported by the fund. Several financial aid programs require multi-year commitments to students (e.g., Loan for Service programs), and non-reverting funds are often used to account for shortfalls and changes in individual program budget requirements that may change from year to year.

Moreover, the Lottery Tuition Fund is statutorily required to maintain a \$2 million average annual fund balance; reversion of Lottery Tuition Fund monies would not be exempt under the language proposed in HB 209.

ADMINISTRATIVE IMPLICATIONS

The State Auditor can perform the review and analysis provided for in House Bill 209 using existing resources.

TECHNICAL ISSUES

AGO notes that one of the exceptions to bill’s reversion requirement applies to special non-reverting funds that are “created pursuant to court order or made non-reverting pursuant to court order.” This raises two potential issues: (1) do courts have authority to create non-reverting funds in the state treasury and (2) if so, does that authority unconstitutionally interfere with the legislature’s plenary authority over spending? See N.M Const. art. III, sec. 1 (separation of powers) and Art. IV, Sec. 30 (money shall be paid out of the treasury only by appropriations made by the legislature).

ALTERNATIVES

OSA suggests that the Department of Finance and Administration could review the fund balances and report this information to the appropriate legislative committees to inform the legislative appropriation process.

HED suggests that instead of a blanket review and reversion of all special funds, the Legislature, State Auditor, and other entities could identify funds that have routinely carried balances in excess of their operating requirements, and address the operation of these funds through individual legislative actions.

CEM/bb