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FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Campos/Woods/Romero, A	**ORIGINAL DATE**	2/13/2023
SHORT TITLE	Infrastructure Planning & Development Office	**BILL NUMBER**	Senate Bill 197
		ANALYST	Carswell

APPROPRIATION*
(dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	$2,000.0	Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	$2,000.0	$2,000.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to SB1, SB186, SB241, SB27, SB337
Relates to appropriations in the General Appropriation Act

Sources of Information

LFC Files

Responses Received From
Department of Finance and Administration (DFA)
General Services Department (GSD)
New Mexico Environment Department (NMED)
Office of the State Engineer (OSE)
Department of Transportation (NMDOT)
New Mexico Finance Authority (NMFA)
Energy, Minerals & Natural Resources Department (EMNRD)
Higher Education Department (HED)
New Mexico Counties (NMC)

SUMMARY

Synopsis of Senate Bill 197

Senate Bill 197 (SB197) appropriates $2 million from the general fund to the Office of the Governor to establish and operate the Infrastructure Planning and Development Office. The bill creates and assigns duties to the office and its director, who is to be appointed by the governor. The duties include completing a statewide needs assessment for key infrastructure types; developing and implementing a system of capital planning, navigation, and coordination for state agencies and local governments; developing a cooperative relationship with federal agencies that provide infrastructure loans and grants to the state and local governments; serving as the state's single point of contact for state agencies and local governments seeking assistance in navigating funding options for capital projects; and to support planning for high-impact regional and local projects that meet statewide economic and community development goals. Additionally, the bill directs the office to establish a team specifically focused on community water and wastewater systems and to provide project development and funding navigation assistance to communities seeking to improve those systems.

By January 1, 2025, the bill requires the office to deliver to the Legislature and the governor a report that includes a plan for improving and simplifying existing infrastructure planning and administration functions within state agencies; recommendations on the scope of the office's duties; and an analysis of staffing needs to carry out its duties.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

The appropriation of $2 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund.

This analysis assumes a similar level of recurring funding will be required to support operating the office in the future. However, the exact level of recurring funding needed will depend on the conclusions of the report the office would be required to deliver in 2025 and subsequent action by the Legislature, which could include the creation of a new cabinet-level department. The report would propose appropriate staffing for the office and provide recommendations on improved alignment and simplification of existing infrastructure planning and capital project administration functions in state agencies. The extent to which such improvements include reorganizing existing staff in other agencies to support the functions of the new entity would influence how many new FTE require funding. For comparison, the Office of Broadband Access and Expansion, created in 2021, has a FY23 operating budget of roughly $800 thousand covering five FTE, contractual services, and other expenses.

SIGNIFICANT ISSUES

SB197 preserves lawmakers' discretion to direct capital outlay funding to projects in their districts. It does not impose any new requirements on how lawmakers allocate those funds.

Rather, it seeks to improve the outcomes of that spending through the creation of a streamlined system for coordinating funding sources, for administering state capital outlay funds, and for providing increased support to communities with limited capacity to develop projects, seek funding from various state and federal sources, and manage projects to completion.

New Mexico's capital outlay process is inefficient and the practice of earmarking funding for individual lawmakers to allocate is unique among the states. Efforts to improve the process for selecting and funding local capital outlay projects have been largely unsuccessful. Additionally, state agencies are charged with administering capital appropriations and ensuring spending is consistent with the law and legislative intent but they are not responsible for ensuring projects are completed and produce their intended benefits. Without changes to the current capital process, state funds for critical needs – particularly those at the local level – will continue to be deficient and potentially pose liability and risk to the citizens of New Mexico. A 2021 report commissioned by the New Mexico Finance Authority concluded that "reforming the capital outlay process is the single most important action that would catalyze economic development finance in New Mexico."

Given the volatility of severance tax revenue and the inability of available capital outlay funding to meet all of the state's infrastructure needs, legislators and the executive branch continue to scrutinize the vast amount of unexpended appropriations and the number of stalled projects. At the end of the second quarter of FY23, unspent capital funds totaled approximately $3.3 billion across 4,100 projects. Approximately 77 percent of the outstanding projects were "local" capital outlay projects. Local projects are sponsored by individual legislators and the executive, who receive requests for funding from municipal and county governments, political subdivisions, and other entities.

Local capital appropriations benefit the state and its communities by providing direct support for local priorities at no cost to municipalities, county governments, and other public entities. When completed, projects improve New Mexicans' economic prospects and quality of life. However, numerous obstacles prevent completion of projects in a timely manner, or at all. Those obstacles include piecemeal funding, lack of financial, technical and administrative capacity at the state and local level, and insufficient planning prior to funding.

Many of the duties assigned to the proposed infrastructure office – including project development and funding navigation assistance, coordination of funding sources, and regular consultation with the Legislature on project funding needs – could help address these issues and improve project outcomes while preserving lawmakers' discretion to direct capital outlay funding to projects in their districts.

PERFORMANCE IMPLICATIONS

Analysis submitted by New Mexico Counties states: "SB197 is designed to provide much needed resources to state and local governments to coordinate and complete infrastructure projects. Many county governments have limited ability to apply for and manage state and federal funding for capital projects and special initiatives. Often projects are not fully funded, not developed in a manner to ensure a phased completion, or face workforce delays and price increases. Providing a centralized location at the state level to assist with coordinating local, regional, and statewide priorities would create efficiencies."

ADMINISTRATIVE IMPLICATIONS

SB197 requires the proposed infrastructure office to deliver a report to the Legislature and the governor by January 1, 2025 that includes identification of strategies to improve and simplify existing infrastructure planning and administration functions within state agencies, recommendations on the scope of the office's duties, and analysis of staffing needs to carry out those duties. Improving and simplifying these functions and preventing duplication may require reorganization of existing staff within other agencies. SB197 is not prescriptive on the issue of which existing functions in agencies should – or should not – be reorganized. At the end of the planning and study phase initiated by SB197, the Legislature may determine it is appropriate to create a new agency or an office administratively attached to an existing state agency. If so, the office created in the Office of the Governor could be dissolved.

Agency analyses submitted from GSD, HED, and NMDOT expressed concern that the proposed office would duplicate their existing duties. NMED expressed concern about the implications of new funding criteria the office might set for its federally-backed loan programs. However, the planning and study period initiated by the bill is intended to identify such issues and produce recommendations to the Legislature and the governor for the long-term structure and duties of the new entity that improves the efficiency and coordination of the administrative and finance systems.

NMED cautions that compiling the information necessary to comply with SB197 will require significant staff time in its Water Protection Division, who are already strained by heavy workloads. NMED states the agency is supportive of the intent of SB197 but it not positioned to provide full assistance without sufficient appropriations to provide additional staffing. NMED states the reporting deadline of January 1, 2025 is not achievable.

OSE and ISC estimate the need for two additional FTE to support the water projects team in the new office because existing staff who manage capital outlay and other infrastructure funding are already overstretched.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB197 relates to a $2 million special appropriation in the General Appropriation Act to support operating costs of the infrastructure planning and development office.

SB197 relates to SB1, which allows for the consolidation of two or more public utilities providing water or wastewater services to create a regional water utility authority.

SB197 relates to SB27, which amends the Severance Tax Bonding Act to earmark 2.25 percent of the annual severance tax bond capacity for the rural infrastructure crisis response fund and creates the Bureau of Rural Infrastructure Crisis Response within DFA.

SB197 relates to SB186, which creates a Permanent Joint Interim Public Works Committee.

SB197 relates to SB241, which creates 10 categories of need for funding with severance tax bonds, general obligation bonds, or other sources by a newly created Prosperity and Economic Resiliency Council, including state assets and capital planning and design and water

conservation and delivery.
SB197 relates to SB337, which would require ISC to makes rules and guidelines for regional water planning and authorize ISC to make loans and grants for regional water planning.

TECHNICAL ISSUES

NMFA is concerned with language in SB197 that tasks the proposed office with serving as the state's "single point of entry" for advice and assistance regarding infrastructure financing. According to NMFA, such a directive conflicts with Section 6-21-4 of the NMFA Act, which states NMFA shall not be subject to supervision or control by any other state agency. However, the language is not intended to subject NMFA programs to control by the new office but rather to task the office with providing navigation services that are not otherwise formally available within state government. NMFA's concern could likely be addressed by changing the word "entry" to "contact." Alternatively, NMFA suggests "single point of entry" on page 5, line 5 could be stricken and replaced with "centralized information and assistance center."

NMFA is also concerned that the establishment of a water projects team tasked with reviewing currently eligibility criteria across funding sources for water projects, proposing approaches to streamline program procedures, and proposing standards-based criteria for vetting and prioritizing projects across funding sources will duplicate or conflict with its current programs, specifically the Water Trust Board, colonias infrastructure fund, and drinking water state revolving fund, which unlike the state programs must follow federal rules not subject to change by the state. However, SB197 does not require changes to any of these programs. It merely requires work be undertaken to increase consistency and coordination. It should also be noted that the specific duties outlined for the water projects team in SB197 are drawn from the recommendations of the Water Infrastructure Policy and Task Force, which the primary affected agencies themselves developed.

OSE suggests the project types the water projects team is assigned with providing project development and funding navigation assistance for could be expanded to include stormwater, dams, natural infrastructure, and acequias.

OTHER SUBSTANTIVE ISSUES

OSE and ISC note that unprecedented federal funding is available to New Mexico for water-related infrastructure projects in the next two to four years. According to the agencies, the executive and legislative branches need to both work to improve the state's approach to financing infrastructure to fully capitalize on this opportunity.

OSE and ISC further state there may be a need to more explicitly relate the new office to ISC's water planning efforts, which are intended to assist communities in making recommendations related to funding priorities.

ALTERNATIVES

Capital Outlay Division within DFA. DFA submitted the following alternative to the office proposed by SB197:

An alternative to creating a new office under the Office of the Governor, would be to create a new capital outlay division within DFA. This new division could utilize the administrative and technical support already established within DFA. This new division could expand on the existing services DFA already provides to state agencies and local governing bodies. This division would be required to work closely with all state agencies and the legislative branch to ensure all capital projects are successfully completed from inception to completion. The mission would be for this division to successfully manage the planning, development, budgeting, grants administration, project management, fiscal management and reporting of all capital outlay projects appropriated through federal bills, the capital appropriation bill, the reauthorization bill, the GOB bill, and any junior bill.

A capital outlay division would be responsible for completing a statewide needs assessment for key infrastructure types, including the development and implementation of a system of capital planning, to assist with the navigation and coordination for state agencies and local governments.

The division would develop a cooperative relationship with federal agencies that provide infrastructure loans and grants to the state and local governments and to serve as the state's single point of entry for state agencies and local governments seeking assistance in accessing funding for infrastructure development and capital projects. The division could facilitate and support planning for high-impact regional and local projects that meet statewide economic and community development goals and to consult regularly with the Legislature on infrastructure projects that are most in need of funding to assist with completion of stalled projects. Additionally, the new division could establish a team specifically focused on community water and wastewater systems to provide project development and funding navigation assistance to communities seeking to improve those systems.

A capital outlay division could also be responsible for conducting financial, compliance and performance audits of agencies' capital outlay programs, provide oversight and direction for "at-risk" agencies and entities that have had historical problems with administering capital outlay funds, provide oversight as well as fiscal and technical assistance to state agencies, local governments, higher education institutions, special schools, Native American pueblos and tribes, the governor, legislators, public and external entities relating to funding, procedures and rules pertaining to capital outlay, provide training on state statutes and policies related to capital outlay, oversee state-funded capital projects to ensure timely execution and timely reversions, maintain a central database of capital projects to include up-to-date fiscal and programmatic status, ensure compliance with 5 percent and 85 percent expenditure rules, and identify stagnant capital projects for reauthorization or reversion.

Water Infrastructure Projects Authority. In 2022, the State Engineer convened a 29-member water policy and infrastructure task force to identify and recommend solutions to the state's major water-related challenges. Community drinking water, wastewater, and stormwater infrastructure capacity and finance was one of three major areas the task force addressed. The task force's final report recommended creation of a quasi-governmental water infrastructure projects authority with a dedicated funding stream to vet, prioritize, fund, plan, design, and construct drinking water, wastewater and other water projects. The infrastructure office proposed in this bill – and the water-focused team within it the bill would create – would accomplish many of the same goals through a different organizational structure and without creating a new earmark on annual severance tax bond capacity.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Unspent capital appropriations are likely to continue to accumulate and incomplete project backlogs are likely to grow.

The state will continue to spend billions of dollars on capital projects with little assurance the appropriations will produce the intended public benefits in a timely manner or at all.

The state and local entities may miss out on competitive federal infrastructure dollars available for a limited time.

The capital finance system will continue to be difficult to navigate and uncoordinated and communities will continue to lack the support many require to complete projects.

CC/rl/ne/mg