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

		ORIGINAL DATE	02/08/10		
SPONSOR	SFC	**LAST UPDATED**	02/18/10	**HB**	
SHORT TITLE	Capital Outlay Reversions for Solvency			**SB**	182/SFCS/aSFC/aHTRC/ aHAFC
				ANALYST	Kehoe, Leger, Burns, White

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	**FY11**		
($130,357.5)	NFI	Nonrecurring	General Fund
($83,986.9)	NFI	Nonrecurring	Severance Tax Bond
($2,475.0)	NFI	Nonrecurring	Educational Retirement Fund
$24,392.6	NFI	Nonrecurring	Severance Tax Bond
$17,700.0	NFI	Nonrecurring	Net Short-Term Severance Tax Bond Capacity

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
$130,357.5	NFI	NFI	Nonrecurring	General Fund
$17,700.0	NFI	NFI	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to Senate 237

SOURCES OF INFORMATION
Legislative Finance Committee (LFC)
Legislative Council Service (LCS)
Department of Finance and Administration (DFA)
Public Education Department (PED)
New Mexico Environment Department (NMED)
Department of Transportation (DOT)
Higher Education Department (HED)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment to Senate Finance Committee Substitute for Senate Bill 182 strikes House Taxation and Revenue amendment 8, and inserts the following: "(b) the project owner has submitted documents showing that the matching funds or capital were committed to the project on or before October 30, 2009."

Synopsis of HTRC Amendment

The House Taxation and Revenue amendment to Senate Finance Committee Substitute for Senate Bill 182 does not alter the amount of general fund reversions, but provides the following:

Items 1, 3, 6, and 9 are technical changes to the bill.

Item 2 strikes $3 million funded from severance tax bonds "to plan, design, and construct improvements to the North Belen Interchange."

Item 4 strikes $3 million funded from severance tax bonds "to design and construct a solar equipment economic development project."

Item 5 proposes to continue 17 acequia projects originally appropriated from the general fund totaling $785.0 with severance tax bond capacity.

Items 7 and 10 include "capital" as an eligible matching source to exempt a project from being voided.

Item 8 proposes to exempt projects from being voided if the following conditions are met:

"(b) the project owner has submitted documents showing that the matching funds or capital were committed to the project on or before October 30, 2009;

(c) if there are no federal or state matching funds or capital, then the value of the local matching funds or capital is at least: 1) five percent of the total project cost if the project is located in a county with a population less than twenty-five thousand or in an incorporated municipality with a population less than three thousand; or 2) ten percent of the total project cost if the project is not located in a county or municipality described in Item 1) of this subparagraph;".

Synopsis of SFC Amendment

Senate Finance Committee amendment to Senate Finance Committee Substitute for Senate Bill 182 makes a technical adjustment to the bill changing the word "and" to "or."

Synopsis of Original Bill

Senate Finance Committee Substitute for Senate Bill 182 provides language to support voided projects within the bill that may have legitimate contracts, purchase orders, other matching funds, and those projects originally authorized from a non-reverting fund.

The bill further proposes voiding project balances totaling approximately $42 million. A majority of the proposed projects were funded in previous years from severance tax bond capacity and include such projects as: the equestrian facility, film initiatives, rodeo initiatives, and economic development initiatives. The voids also include $2.5 million from the Educational Retirement Fund authorized by the Legislature in 2009 for a new facility.

The bill voids 2,067 general fund projects totaling approximately $130.4 million and voids 533 severance tax bond projects totaling approximately $90 million. Of the $90 million, 17 projects appropriated from the general fund totaling approximately $23.6 million are reauthorized to severance tax bond capacity to continue projects in progress. The bill further authorizes the state Board of Finance to issue short-term severance tax bonds in an amount not to exceed $17.7 million.

Sections 1 through 18, of the bill include the following: reversion of balances (project by project basis), sweep of balances (not project specific), and authorization of the continuation of certain projects using severance tax bond proceeds.

Section 19, authorizes the State Board of Finance to determine the unexpended or uncommitted balances of severance tax bond proceeds reauthorized within the bill or any other Act of the 2nd Session of the Forty-Ninth Legislature to be allocated to projects specified in Section 18.

Section 20, allows for the issuance of short-term severance tax bonds by June 30, 2010 to restore general fund allotments.

Section 21, provides for exemptions to protect funds from being voided for those projects with binding written obligations or purchase orders that were in place on or before October 30, 2009. The bill further exempts projects with committed matching funds or projects appropriated from a non-reverting fund. Within 30 days of the effective date of the Act, the secretary of the Department of Finance and Administration is required to determine the validity of the exemptions.

Section 22, defines “uncommitted balance” and “unexpended balances.”

Section 23, provides that if a portion of the bill is found invalid, the remaining portions of the bill shall remain.

Section 24, provides for an emergency clause.

Spreadsheets listing the projects “by order of the bill”, “by county”, and the projects changed from general fund to severance tax bond is posted on the legislative website.

FISCAL IMPLICATIONS

Current fiscal year 2010 reserves are effectively less than one percent which is inadequate in any economy, but especially so in these highly uncertain times. If the savings from the governor’s executive order and furlough occur, fiscal year 2010 ending reserves will be $125 million or 2.5 percent. The intent of the capital voids proposed in SFC/CS/182 is necessary to bring general fund reserves over 5 percent.

The net effect of SFC/CS/SB 182 makes available $148.1 million to the general fund. Of the $148.1 million, the Board of Finance is authorized to issue short-term severance tax bonds (sponge bonds) in an amount not to exceed $17.7 million for a term not exceeding beyond the end of fiscal year 2010. The proceeds of the bonds are to be deposited in the general fund for use by the Department of Finance and Administration to restore the allotments made from the general fund for capital projects enacted in prior sessions with an expenditure period ending on or after June 30, 2010.

The Department of Finance and Administration reports the consequences of not passing and implementing SFC/CS/SB 182 may result in the following:

- Inadequate reserves may result in the state not being able to meet its financial obligation in fiscal year 2010 due to low cash balances in the reserve accounts;

- Inadequate reserves may have a negative impact on the state's bond ratings by major rating agencies such as Standard and Poor's, and Moody's and Fitch which could result in a downgrade of bond ratings for the State of New Mexico and further result in higher costs to New Mexico tax payers. In 1999, the last time reserve levels fell significantly, the state was placed on CreditWatch and policy makers created a temporary "risk reserve" to avoid loosing the state's high bond rating.

- Currently, the reserve funds consist of tobacco settlement monies which are restricted for specific purposes and would require legislative action to access and obligate funds;

- Finally, if the bill does not pass, additional cuts to state government and programs would be inevitable. This would result in additional cuts to critical state services, additional furloughs or layoffs of state employees, and additional cuts to public and higher education. This would also necessitate the need for higher taxes in FY11 in order to replenish the reserves.

After enactment of Senate Bill 29 during the 2009 special session the State Board of Finance (BOF) began to survey affected projects regarding their certified project needs which were originally anticipated to be approximately $124.5 million. During this process, projects only submitted certified needs of $118.6 million. The BOF thus concluded that approximately 5.9 million less STB capacity would be needed to complete general fund swaps than originally expected. Therefore net senior STB capacity available for appropriation in FY10 by the legislature increased to approximately $40 million.

The $90 million in severance tax bond reversions in the substitute are mitigated by approximately $23.6 million in general fund for severance tax bond swaps and the use of $17.7 million of senior severance tax sponge bonds for general fund operations. After these two uses, approximately $48.7 million in reversions remain. Section 19 of the proposed legislation permits these leftover reversions to be re-appropriated for authorized but unissued projects, which after the December, 2009 bond sale and incorporating the swaps authorized under Senate Bill 29 during the 2009 special session, equal approximately $17.5 million. After these actions, approximately $31.2 million in reversions are expected to be leftover. Because these reversions come from previous bond issuances related to specific projects, they cannot be added back to FY10 capacity and will thus be swept into the severance tax permanent fund (STPF) at year end.

The proposed bill will therefore result in a net increase of senior severance tax bond capacity of $17.5 million in FY10. These factors, coupled with an upward revision of approximately $3.5 million in senior capacity due to the January consensus revenue estimate, result in net senior STB capacity available for appropriation during the 2010 regular session would be approximately $57.5 million. **Note:** *It should be noted, the additional projects added to the bill to void from severance tax bond capacity may likely be lower because some of the project balances may have third party obligations.*

LFC FORECAST OF CAPITAL OUTLAY AVAILABLE			
Severance Tax Bonding			
	FY10	**FY11**	**FY12**
Senior Long-Term Issuance	149.6	149.5	149.5
Senior Sponge Issuance	146.8	70.4	71.7
Senior STB Capacity - January 2010	**296.5**	**219.9**	**221.2**
Bonds Issued in December			
Spaceport (Laws 2006 Chapter 622)	*(10.0)*		
Miscellaneous Projects	*(49.6)*		
Bonds to be Issued in March			
Spaceport (Laws 2006 Chapter 622)	*(24.0)*		
GRIP (HB10 2008 SS)	*(50.0)*		
Miscellaneous Projects	*(75.8)*		
Remaining Bonds to be Issued			
Authorized Unissued	*(17.5)*		
Water Project Fund (Statutory 10% of STB)	*(29.7)*	*(22.0)*	*(22.1)*
Net Senior STB CAPACITY	**40.0**	**197.9**	**199.1**
Sweep	n/a	32.6	n/a
Supplemental Long-Term Issuance	112.0	-	-
Supplemental Sponge Issuance	81.8	140.5	151.8
Supplemental STB CAPACITY	**193.8**	**140.5**	**151.8**
General Obligation Bonding			
G.O. CAPACITY	**175.3**		**195.4**

SIGNIFICANT ISSUES

Laws 2009, Chapter 5, 1st SS (House Bills 17 and 33) directed Legislative Council, Legislative Finance Committee, and the Department of Finance and Administration to review all unexpended capital outlay projects funded by the general fund and identify "a minimum of $150 million of voidable capital outlay projects by November 12, 2009."

On October 26, 2009, the governor issued a press release directing all state agencies to cancel all grant agreements. On October 30, 2009, DFA distributed a memorandum and instructions to all state and local recipients of capital appropriations explaining the purpose of the freeze of capital funds. The instructions included a method to allow projects to move forward if entities could submit documented evidence of a third-party obligation entered into on or before October 30, 2009, and were given until November 15, 2009, to submit the documentation. While the governor's action created temporary havoc among municipalities, counties, schools, state agencies, and other political subdivisions, the exercise assisted staff of DFA, LFC, and LCS in identifying voidable projects for submittal to the Legislature in 2010 for consideration and in the form of a bill as required by Chapter 5.

The following Criteria were applied toward projects to determine recommended voids and reauthorizations within Senate Bill 182:

- Reversion of balance for completed project.
- Reversion of balance under $10,000.
- Grantee/Agency states balance is voidable.
- Grantee/Agency states project is not viable.
- No certification of third party contract submitted.
- 2004, 2005, or 2006 appropriation with no activity.
- 2007 appropriation with no activity.
- 2008 appropriation with no activity.
- Inadequate funding to move project forward.
- No response or information received from agency/grantee.
- 2009 Reauthorization – no information received.
- 2009 Reauthorization -- no activity.
- General fund identified to swap with severance tax bond capacity.

OTHER SUBSTANTIVE ISSUES

While capital capacity is at its lowest in eight years, approximately $1.4 billion of prior year appropriations remain unexpended. The phrase "budget shortfall" has become synonymous with the words "unexpended capital funding." The missed opportunity to apply the funds toward physical improvements critical to the economy at both the state and local level allows the executive and the Legislature to target and reallocate some of the funds for certain projects to support solvency.

Capital outlay was a crucial element of the plan to address the FY09 and FY10 shortfall. Laws of 2009, Chapter 5 (House Bill 9) eliminated 82 general fund projects totaling approximately $91.6 million, and 42 severance tax bond projects (STB), totaling approximately $24.6 million. The revenue from the canceled STB projects plus $23 million of 2009 STB capacity was authorized to continue $47.6 million for viable general fund projects. Laws 2009, Chapter 7, 1st Special Session, (Senate Bill 29) voids 243 general fund projects totaling $136.1 million. Of the projects, 196 projects totaling approximately $124.5 million are reauthorized to continue with proceeds from senior severance tax bonds. The governor vetoed 47 projects totaling $11.6 million, stating, "It would be imprudent to provide continued severance tax bond funding to capital projects that have made little to no progress using their original general fund appropriations, which in some cases are several years old."

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