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FISCAL IMPACT REPORT

SPONSOR Jeff **ORIGINAL DATE** 03/08/11
LAST UPDATED 03/16/11 **HJM** 48/aHTRC
SHORT TITLE Capital Outlay Approp Process Task Force **SB** _____
ANALYST Hanika-Ortiz
/Baca

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	*See fiscal impact		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

NM Department of Transportation (NMDOT)
 Indian Affairs Department (IAD)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee Amendment to House Joint Memorial 48 makes an editorial change and adds language requiring that one member of the task force represent a chapter that meets the following requirement:

“ a chapter of the Navajo Nation located wholly or partly in New Mexico that is certified pursuant to the Navajo Nation Local Governance Act and a chapter of the Navajo Nation located wholly or partly in New Mexico that is not certified pursuant to the Navajo Nation Local Governance Act.”

Synopsis of Original Bill

House Joint Memorial 48 (HJM 48) requests the New Mexico Legislative Council to create a task force to study the capital outlay appropriations process for the Navajo Nation.

HJM 48 provides for the following:

- the New Mexico legislature finds that members of the Navajo Nation and its chapters in New Mexico should benefit from capital improvements funded in part by the state of New Mexico;

- from FY03 through FY10, the New Mexico legislature appropriated sixty-eight million two hundred ninety-five thousand seven hundred sixty-seven dollars (\$68,295,767) for six hundred fifty-four capital projects on the Navajo Nation;
- of the funds appropriated for capital projects on the Navajo Nation for FY03 through FY10, only fifty-four percent have actually been expended;
- of the funds appropriated for capital projects on the Navajo Nation for FY03 through FY10, more than nine percent have reverted and more than fourteen percent have been reauthorized for other projects;
- of the funds appropriated for capital projects on the Navajo Nation for FY03 through FY10, more than twenty-one percent remain unexpended and unencumbered;
- in 1998, the Navajo Nation passed the Navajo Local Governance Act (LGA), which permits chapters of the Navajo Nation to be certified as their own fiscal agents;
- in 2006, the legislature passed Senate Bill 579, which includes the Tribal Infrastructure Act and revisions in the manner in which the state administers capital outlay appropriations to the Navajo Nation and its chapters in New Mexico;
- in 2008, the Navajo Nation and the Indian Affairs Department (IAD) entered into an intertribal master agreement regarding the administrative review and approval of capital outlay projects for the Navajo Nation and its chapters in New Mexico; and
- despite past efforts of the state of New Mexico and the Navajo Nation, it is apparent that further progress is needed to ensure that capital outlay appropriations for projects on the Navajo Nation are utilized in a timely manner.

FISCAL IMPLICATIONS

NMDOT asserts that the department can provide information to facilitate the timely expenditure of capital outlay funds appropriated to the Navajo Nation and its chapters.

HJM 48 provides that the task force consider steps that the state of New Mexico and the Navajo Nation might take to facilitate the timely expenditure of capital outlay funds appropriated to the Navajo Nation and its chapters. Costs to agencies for participation in the task force will be dependent upon how often the task force meets and what steps recommended by the task force are taken by the state and the Navajo Nation to further streamline the process.

Participation in the task force may require travel and per-diem depending on the location and frequency of the meetings. Out-of-state travel may be required if meetings are held at the Navajo Nation offices in Arizona. Participants may be able to reduce costs by using web-based or teleconferencing services (assuming they have access to the net) as opposed to meeting in person.

In 2006, Senate Bill 579 attempted to streamline the procurement process by 1) allowing state agencies to contract with the chapters, the Navajo Nation or other state agencies, 2) by permitting the state to contract with other fiscal agents, and 3) by permitting the state to make payments directly to third party contractors for services rendered or goods supplied relative to the projects.

SIGNIFICANT ISSUES

HJM 48 determines the need to further enhance the process for ensuring that capital outlay appropriations for projects on the Navajo Nation are utilized in a timely manner.

The task force will have three months to fulfill the requirements of HJM 48 before a final report with recommendations is due.

The Legislative Finance Committee has suggested that the IAD use its expertise to help tribal entities and governments access the health, education, and economic development programs funded elsewhere in state government. In addition, oversight of state capital outlay spending on tribal projects should remain a key function of the agency.

PERFORMANCE IMPLICATIONS

Under Navajo Nation law non-LGA chapters do not have explicit authority to implement capital improvement projects. The only entities under Navajo Nation law that have explicit authority to do procurement for public facilities are Design and Engineering Services and LGA-certified chapters, and they have their own procurement policies.

ADMINISTRATIVE IMPLICATIONS

The task force will include members of the interim Legislative Indian Affairs Committee and representatives from the Aging and Long-Term Services Department, the Department of Finance and Administration, the Indian Affairs Department, NMDOT, the Division of Community Development of the Navajo Nation and the Capital Improvement Program of the Navajo Nation.

The task force will be required to report its findings and recommendations to the interim Legislative Indian Affairs Committee, the President of the Navajo Nation and the speaker of the Navajo Nation Council by October 1, 2011.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HJM48 relates to HB403s, which amends Section 6-28-2 NMSA 1978 of the Public Finance Act by authorizing the State to recognize Chapters of the Navajo Nations that have been certified pursuant to the Navajo Nation Local Governance Act (LGA) as local tribal entities having the capability and capacity to apply for and implement capital improvement projects.

HJM48 relates to SB510, which creates a new section under the Public Finance Act by determining that tribal organizations, which may also be New Mexico non-profit entities, are not precluded from applying for and implementing capital improvement project funds from the State, and acting as fiscal agents for the New Mexico capital outlay improvement funding.

HJM48 relates to SB224 (Local Governments as Navajo Fiscal Agents), which establishes a new section under Section 6-28-2 NMSA 1978 by recognizing that local county governments are permitted to act as fiscal agents for chapters certified by the Navajo Nation pursuant to the Navajo Nation LGA and located within the exterior boundaries of the Navajo Nation.

HJM48 relates to SB238 (Fiscal Agents for Navajo Nation Projects), which amends Section 6-28-2 NMSA 1978 by clarifying that Chapters of the Navajo Nation and certain non-profit entities are eligible to apply for and implement capital improvement projects through a fiscal agent other than the Navajo Nation.

TECHNICAL ISSUES

Small tribal capital projects that are underfunded may be harder to complete on time.

It may also be more difficult to find contractors or suppliers for tribal capital projects in more rural areas of the state.

OTHER SUBSTANTIVE ISSUES

The purpose of the LGA is to recognize governance at the local level. Through adoption of the Act, the Navajo Nation Council delegates to Chapters governmental authority with respect to local matters consistent with Navajo law, including custom and tradition. Through adoption of the Act, Chapters are compelled to govern with responsibility and accountability to the local citizens.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

IAD asserts that the consequences of not enacting HJM 48 would preclude the solvency of the continued issues causing capital outlay funds to be reauthorized and reverted, which delays the availability of funding as a result of the elongated approval process for capital outlay appropriations.

AHO:LB/mew