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

		ORIGINAL DATE	02/04/11		
SPONSOR	Campos	**LAST UPDATED**		**HB**	
SHORT TITLE	Capital Outlay Review			**SB**	131
				ANALYST	Kehoe

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	**FY12**		
NFI	$495.6	Recurring	Severance Tax Bond Capacity (See Fiscal Impact Narrative)

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to
Duplicates Appropriation in the General Appropriation Act
Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	**FY12**	**FY13**		
	$495.6	$487.4	Recurring	Proposed Capital Project Audit Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Aging and Long-Term Care Services Department (ALTSD)
Department of Finance & Administration (DFA)
Department of Cultural Affairs (DCA)
Department of Game & Fish (DGF)
Department of Indian Affairs (DIA)
Department of Health (DOH)
General Services Department (GSD)
New Mexico Corrections Department (NMCD)
New Mexico Environment Department (NMED)

Public Education Department (PED)
Public School Facilities Authority (PSFA)
Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Senate Bill 131 proposes the Capital Outlay Planning and Monitoring Act for the purpose of creating a capital outlay review process for capital outlay projects much like the operating budget review. Major provisions in the bill include the following:

- Creates a permanent legislative interim capital outlay committee composed of 18 members, nine from the House and nine from the Senate appointed by the New Mexico Legislative Council;
- Creates a Capital Outlay Planning and Monitoring Division within the Department of Finance and Administration (DFA);
- Creates an Executive Capital Planning Committee;
- Defines the powers and duties of the interim committee, proposed new division, and the planning committee;
- Requires an annual update of a five-year state capital improvements plan;
- Provides guidelines and timelines for capital outlay requests;
- Creates a capital project audit fund within the state treasury;
- Amends the powers and duties of the Secretary of Finance and Administration; and
- Repeals 6-4-1 NMSA.
- The effective date of the bill is July 1, 2011.

FISCAL IMPLICATIONS

Senate Bill 131 creates the capital project audit fund as a non-reverting fund in the state treasury. The fund would consist of appropriations, an audit fee, and any other money credited to the fund. The audit fee would be derived from no more than two-tenths of one percent of the total of each year’s net capital project appropriations and bond authorizations, including general obligation bond authorizations.

According to the current economic forecast, severance tax bond “net” capacity in FY12 will be approximately $247.8 million and “net” capacity in FY13 will be approximately $487.4 million. The reduction of each appropriation or bond authorization authorized in this bill would be set aside to fund capital project audits. The Legislature shall appropriate money in the fund to the state auditor’s office and the LFC to conduct agreed-upon procedures by both entities for audits on any capital project to ensure compliance with federal laws, internal revenue service rules pertaining to the issuance and use of tax-exempt bonds, and with state laws and rules adopted by the state treasurer, Board of Finance, state auditor, or other state agencies.

Revenue forecasters indicate there is no general fund available in FY11 for major capital outlay infrastructure. If general funds and general obligation bond capacity are available for capital outlay in 2012, the two-tenths of one percent of the total available would also be deducted for the purpose of conducting audits.

A provision in the bill specifies the deduction for the audit fee shall not apply to severance tax bonds authorized for Interstate Stream Commission water revenue bonds and supplemental severance tax bonds authorized pursuant to the Public School Capital Outlay Act, the Public School Capital Improvements Act, and the Public School Capital Outlay Council.

An LFC audit staff review in 2009 for nine individual projects entailed approximately 1,000 hours to plan, gather background information, prepare audit tools, conduct field work and site visits, develop the report, and hold meetings to discuss the findings with agencies. Based on four evaluators at $38 per hour, including time and benefits, the average cost of the audit was approximately $4,200 per project.

To provide the costs for the new division within DFA, a provision in the bill directs all functions, money, appropriations, records, furniture, equipment, and other property of the Capital Projects Unit of the Local Government Division (LGD) be transferred to the proposed Capital Outlay Planning and Monitoring Division of DFA. The Legislature in 2004 appropriated $700.0 and authorized seven full-time equivalent (FTE) positions to DFA to provide the necessary administrative support, oversight, and accountability for improvement of the capital outlay program. In 2005, the staff of CPU was integrated within LGD, an already understaffed division. Given the abundant dollars available for capital projects between 2005 and 2008, the division soon became inundated with administering an unprecedented number of capital projects, reauthorizations, legal issues, and paperwork. Separating the staff into a new division as originally intended in 2004 will allow greater oversight and accountability for outstanding and new authorized funding for capital outlay projects.

A Legislative Finance Committee program evaluation report dated January 16, 2009, “Review of Selected Capital Outlay Projects,” administered by DFA and GSD, states, ‘The legislative and executive branches of government have improved accountability for capital outlay appropriations but much more needs to be done from the initial planning, prioritization of projects, funding, and management to the actual execution of many projects.” The program evaluation team recommended that the Legislature consider including requirements in the Capital Appropriation Act for the State Auditor and LFC to conduct special agreed-upon procedure audits of major capital outlay project appropriations in consultation with DFA.

SIGNIFICANT ISSUES

Several obstacles continue to hinder the progress of small and large capital projects at both the state and local level. State agencies continue to manage and oversee a large number of projects under their management. Funding for maintenance of state-owned facilities, including higher education facilities and preservation of roads statewide, is inadequate, and projects continue to be under-funded. Finally, the absence of audits for large projects hinders accountability for state funds.

- As of January 18, 2011, approximately $677.6 million for 1,523 projects remains outstanding (excludes $19.7 million GOB issues ratified in November); over $11 million expended since November 2010.

- Percentage of outstanding funding sources: GF (5 percent), STB (60 percent), GOB (34 percent), and OSF (1 percent).

- Of $677.6 million outstanding, approximately $43.4 million for 576 projects is appropriated from the general fund.

2007-2010 Capital Outlay Funding
"Outstanding" Projects Only
(in millions)

Year	Number of Projects	Amount Appropriated	Amount Expended	Amount Unexpended	Percent Expended by Year
2007	435	$ 248.4	$ 138.6	$ 92.8	56%
2008	539	$ 373.4	$ 110.7	$ 249.4	30%
2009	471	$ 324.5	$ 76.2	$ 238.3	23%
2010	78	$ 106.2	$ 9.0	$ 97.1	8%
Total	**1,523**	**$ 1,052.5**	**$ 334.5**	**$ 677.6**	

Source: capital projects monitoring system

Senate Bill 131 requires the legislative interim capital outlay review committee to adopt standards, guidelines, and a prioritization system for evaluating capital projects; collect project information from various agencies, institutions, and political subdivisions; provide oversight of both state and local projects; and report its findings to the Legislature. Staff for the capital outlay review committee would be provided by the Legislative Council Service (LCS) and LFC. Subject to appropriation, the capital outlay review committee may appoint and employ professional and technical support and enter into contracts as needed to carry out its responsibilities.

Senate Bill 131 requires the proposed new division be responsible for the following:

- Directing capital outlay project planning for the executive branch, state institutions, and political subdivisions seeking state funds for capital projects;
- Developing priorities for projects to be funded through the Legislature's capital outlay process;
- Overseeing all state funded projects for timely completion, proper expenditures, and timely reversions;
- Maintaining a central database of capital projects that includes the up-to-date fiscal and programmatic status of each capital project;
- Providing training and assistance to state agencies and political subdivisions on planning, budgeting, and administration of capital projects;
- Identifying stagnant capital projects that should be voided;
- Working with the Board of Finance to ensure capital projects authorized by the Legislature are properly certified for the issuance of bonds and to ensure that capital projects proceed in a timely manner and meet federal and state requirements; and
- Coordinating with the New Mexico Finance Authority, the New Mexico Mortgage Finance Authority, and federal agencies that provide capital project funding for local governments, other eligible entities, and rural areas.

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The bill provides that the division invite representatives of federal agencies that provide loans and grants to New Mexico communities for infrastructure and other capital projects to participate in meetings of the committee and may invite other participants as it deems necessary.

PERFORMANCE IMPLICATIONS

The Pew Center on the States, *Governing Magazine*, and a group of academic experts collaborate and annually assess the quality of management in state government and report their findings in a publication called "Grading the States." The study includes reporting on capital infrastructure management and recommended the following:

1. Compile agency capital plans into a statewide capital plan and ensure transparent project prioritization informed by a needs assessment and the current condition of the state's infrastructure;
2. Increase the amount of capital outlays allocated under a standardized, needs-based process; and
3. Increase funding of maintenance, particularly for infrastructure not related to transportation.

The Report notes that during the 2007 legislative session, the governor and the Legislature set aside funds for strategic purposes but, "Despite these improvements, the statewide capital plan remains a collection of agency and local government plans, and the Department of Finance and Administration does not seem to prioritize projects on a statewide level."

ADMINISTRATIVE IMPLICATIONS

The Property Control Division, New Mexico Environment Department, Cultural Affairs Department, Department of Health, New Mexico Corrections Department, Department of Public Safety, higher education institutions are the major recipients of capital project appropriations for major construction and renovations. The aforementioned have their own internal planning mechanisms for requesting capital funds from both the executive and the Legislature. However, capital funding requests for state-owned public facilities, except in 2009 and 2010 due to solvency issues, compete with other local projects for capital dollars.

Coordination at a local level to identify community priorities is not part of the state agency process. In order to protect the public's real estate assets, a more comprehensive approach to recognizing problems and evaluating priorities is needed. Agencies such as the Local Government Division, Aging and Long-Term Services Department, New Mexico Environment Department, Public Education Department, and Indian Affairs Department currently administer the majority of all outstanding local capital projects. According to LFC quarterly reports, the agencies do not have sufficient staff to provide the necessary oversight and accountability for projects at the local level.

While many state agencies indicate Senate Bill 131 appears to duplicate the planning process currently used by "some" state agencies, all seemed to agree there is no "centralized" processes for oversight, prioritization, or accountability for infrastructure projects statewide.

OTHER SUBSTANTIVE ISSUES

The proposed Capital Outlay Planning and Monitoring Division would consolidate capital planning into a comprehensive statewide function. With so many critical capital needs and limited resources, the proposed division could provide valuable insight into priorities, especially on a local level. With a standardized request, review, and reporting process, there could be better utilization of scarce capital funds and more accountability for appropriate and timely expenditures. It is a responsible approach to capital planning, which would be enhanced by encouraging coordination on a local and regional level to identify community priorities and ensure all capital needs are adequately considered.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The State of New Mexico will continue to appropriate funds without a comprehensive capital outlay plan, guidelines, oversight and accountability for use of the state's limited capital outlay funds for infrastructure needs statewide.

LMK/mew