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FISCAL IMPACT REPORT

SPONSOR Tallman **ORIGINAL DATE** 02/05/21
LAST UPDATED 03/03/21 **HB** _____
SHORT TITLE Public Works Commission **SB** 290
ANALYST Olson/Kehoe

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB55, SB169 and SB207
 Conflicts with SB305

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (NMAG)
 Office of the State Auditor (OSA)
 Department of Finance and Administration (DFA)
 Higher Education Department (HED)
 Aging and Long-Term Services Department (ALTSD)
 Department of Transportation (DOT)
 General Services Department (GSD)
 New Mexico Finance Authority (NMFA)

No Response Received

Legislative Council Service (LCS)

SUMMARY

Synopsis of Bill

Senate Bill 290 proposes the creation of a 12-member Public Works Commission (PWC) for the purpose of studying, reviewing, evaluating, and prioritizing proposed capital outlay projects. The bill further provides for the powers and duties of the commission, allows for hiring or contracting appropriate staff, and specifies the commission may request assistance from the Legislative Council Service (LCS) and the Legislative Finance Committee (LFC).

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The bill does not contain an appropriation to hire or contract with the appropriate staff to assist PWC with the implementation of its responsibilities, and it is unknown if the implementation of PWC can proceed with existing LCS and LFC personnel. Further, costs related to per diem and mileage for legislative members and public members of the commission to attend no less than six meetings annually are not addressed in the bill.

SIGNIFICANT ISSUES

While infrastructure spending is vital, 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. Without changes to the current capital process, state funds for critical needs at both the local and state level will continue to be deficient and potentially pose liability and risk to the citizens of 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 large number of projects that remain inactive. Poor project selection (including insufficient planning, a piecemeal approach to funding, and unknown construction costs) continues to delay project completion. These problems should compel policymakers to carefully distinguish future project funding by priority, readiness to proceed, need, public purpose, and merit.

As of November 2, 2020, approximately \$1.4 billion from all funding sources for 2,644 projects remains outstanding, including \$128.3 million of earmarked fund balances for water (\$57 million), tribal (\$37.2 million), and colonias (\$34.2 million) infrastructure projects. Of the total outstanding projects, 2,095 are local projects authorized between 2016 and 2020, totaling \$614 million.

OTHER SUBSTANTIVE ISSUES

The bill proposes PWC be composed of 12 members, including four members appointed by the Speaker of the House of Representatives with proportional political representation and four members appointed by the Senate Committees' Committee; however, if appointments are made during the interim, the president pro tem shall make the appointments in consultation or agreement by a majority membership of the Committee' Committee. The chair and vice chair shall be named by the Speaker of the House, Committees' Committee, or president pro tem as appropriate and shall rotate each year. No action may be taken by PWC unless approved by a majority of the commission.

Members of the commission are required to biennially appoint four public members with expertise in architecture or engineering to serve on the committee, provided that no more than two will be from the same political party.

PWC is required to meet no less than six times per year to review proposals for capital outlay funding and the status of authorized projects. The bill includes a process for studying the capital outlay process, including engaging entities that request capital outlay funding, holding hearings on proposals for capital projects, requesting entities provide information or data supporting the funding of a capital project, evaluating the proposals, and developing and adopting rules for PWC to “implement and administer the provisions” of this bill.

Staff from LFC, LCS and DFA have met periodically since 2019 for the purpose of reviewing issues related to the capital outlay request process. The staff have revised the capital outlay request and reauthorization process by implementing an online form to easily capture data to assist in determining community priorities listed in the entities’ infrastructure capital improvement plans and the readiness of projects to move forward.

Based on a study by the National Association of State Budget Officers, *Capital Budgeting in the States*, good practices for quality capital budgeting require

- Defining capital expenditures,
- Defining maintenance expenditures and identifying funding for maintenance,
- Developing a system to prioritize projects and identify criteria used for selection,
- Identifying operating costs of each project over a multi-year period,
- Effectively⁷ communicating between the legislature and the executive during the capital budget process,
- Strong reviewing of long-range capital plans,
- Integrating planning with debt affordability,
- Reviewing cost-benefit comparisons for private sector participation in capital projects,
- Reviewing long-term leases,
- Defining outcomes for capital investments,
- Validating cost estimating methods,
- Establishing a tracking system to keep projects on schedule and within budget,
- Maintaining an updated inventory system of capital assets,
- Maintaining a centralized oversight for capital projects.

ADMINISTRATIVE IMPLICATIONS

Currently, staff from executive and legislative agencies hear agency presentations on infrastructure capital improvement plans in October of each year, and LFC staff uses this information to develop a framework for statewide capital outlay proposals. If SB290 is enacted, it is unclear how PWC would interact with the hearing.

HED has statutory authority to approve programs, budgets, construction, purchases of real property, and capital funding recommendations for all public postsecondary institutions in the state. The creation of a PWC under SB290 does not allow for representation from HED in the development of the criteria for project review and vetting. Current HED regulations establish criteria specific to higher education institutions as it relates to educational settings, enrollment growth, retention, degree production, instructional space, library, administration, and research. In 2020, this process incorporated expanded criteria and a formal scoring matrix, which highlights project rationale and need, energy and sustainability, and stewardship. These items are important in the evaluation and ranking of higher education institution projects.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 55 requires the Legislative Council Service (LCS) to publish on the legislative website a searchable list of capital projects to include the amount allocated by each legislator or the governor.

Senate Bill 169 creates a Higher Education Coordinating Council (HECC) to assist HED with the development and publishing of a statement of statewide educational needs and guidelines to assist higher education institutions to develop or modify their strategic plans.

Senate Bill 207 creates the Public Works Commission with the same membership, powers, and duties as SB207 but omits the evaluation criteria for prioritizing capital project funding included in SB290.

Senate Bill 305, the Capital Outlay Reform Act, creates a capital projects task force and Capital Planning and Assistance Division within the Department of Finance and Administration. Senate Bill 305 conflicts with Senate Bill 290.

SO/LMK/al