FISCAL IMPACT REPORT

		LAST UPDATED	2/22/23
SPONSOR	Munoz/Cervantes	**ORIGINAL DATE**	2/14/23
SHORT TITLE	Prosperity & Economic Resilience Act	**BILL NUMBER**	Senate Bill 241/ec
		ANALYST	Torres

APPROPRIATION*
(dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	**FY24**		
	$800,000.0	Nonrecurring	General fund to Prosperity and Economic Resiliency Permanent Fund
	$200,000.0	Nonrecurring	General fund to Prosperity and Economic Resiliency Program Fund
$1,000.0		Nonrecurring	General fund to Department of Finance and Administration

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

REVENUE* (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**	**FY26**	**FY27**		
		($200,000.0)	($200,000.0)	($200,000.0)	Nonrecurring	Prosperity and Economic Resiliency Permanent Fund
		$200,000.0	$200,000.0	$200,000.0	Nonrecurring	Prosperity and Economic Resiliency Program Fund

Parenthesis ( ) indicate revenue decreases
*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Indeterminate but minimal	More than $2,700.0	More than $2,700.0	More than $5,400.0	Recurring	General Fund

Sources of Information

LFC Files

Responses Received From
New Mexico Attorney General (NMAG)
Department of Finance and Administration (DFA)
Department of Transportation (NMDOT)
Office of the State Engineer (OSE)
New Mexico Environment Department (NMED)
Economic Development Department (EDD)
New Mexico Finance Authority (NMFA)
State Investment Council (SIC)

SUMMARY

Synopsis of Senate Bill 241

Senate Bill 241 (SB241) sections 1 and 2 enact the "Prosperity and Economic Resiliency Act" establishing the "prosperity and economic resiliency permanent fund" and the "prosperity and economic resiliency council." The purpose of the act is to allow the distribution of funds to state agencies, local governments, and other governmental entities who fit the criteria set by the council who fit in one of the following specified categories of "major statewide problems and needs that require significant commitments of effort and funding by the state or by the state in concert with federal and local governments to solve or rectify problems:"

(1) Water conservation and delivery;
(2) Environmental, agricultural and climate resiliency;
(3) Energy, science, technology and innovation;
(4) Higher education and academic research;
(5) Physical, mental and behavioral health access and services;
(6) Rural economic development;
(7) Tribal initiatives;
(8) Cultural and creative economy;
(9) Courts and public safety; and
(10) State assets and capital planning and design.

Section 3 stipulates the members of the prosperity and economic resiliency council shall consist of (1) the secretary of Department of Finance and Administration or designee; (2) the directors of the permanent legislative committees or designees; (3) the director of the Administrative Office of the Courts; (4) the chief executive officer for the New Mexico Finance Authority or the officer's designee; (5) the executive director of the New Mexico Municipal League or the executive director's designee; (6) the executive director of the New Mexico Association of Counties or the executive director's designee; and (7-15) nine ad hoc public members appointed by the legislative council; and (b) three members appointed by the governor. No more than five public members shall be from the same political party and all terms are limited to six years. The prosperity and economic resiliency council is administratively attached to the Department of Finance and Administration.

Section 4 describes the powers and duties of the council, including "adopt rules to implement the

Prosperity and Economic Resiliency Act, which rules shall include terms and conditions for applications for funding and inter-fund transfers" and requires the council to "prioritize projects" and "make recommendations to the legislature for appropriations and transfers."

Section 4 also allows the prosperity and economic resiliency council to distribute the greater of $2 million or 20 percent of the balance pertaining to each identified category of need, for state-declared disasters and projects. Additionally, up to 80 percent of the balance pertaining to capital planning and design may be distributed by the council to the Department of Finance and Administration for planning and design for capital projects. Finally, up to 80 percent of the balance pertaining to tribal initiatives may be distributed to the Tribal Infrastructure Board for federal matching requirements. Approved applications require at least 50 percent participation from entities applying.

Section 5 creates the prosperity and economic resiliency permanent fund and requires quarterly and annual reporting. In addition, the legislature may appropriate up to $1 billion from the prosperity and economic resiliency permanent fund to cover budget shortfalls if general fund revenues are insufficient to meet appropriations.

Section 5 also requires the greater of $200 million or 5 percent of the three-year average balance of the fund to be distributed to the economic resiliency program fund. For fiscal year 2024, the distribution shall be made in equal parts to its ten subaccounts that correspond to the above-listed need categories. Thereafter, the Legislature shall appropriate the amount in each subaccount for the intended subaccount purpose.

Section 6 creates the prosperity and economic resiliency program fund, its 10 subaccounts pertaining to the 10 identified areas of need and details the purpose of each subaccount. Money in each subaccount is subject to appropriation by the Legislature except for those provisions allowed in section 4. Beginning in FY26, if the balance in a subaccount exceeds $100 million, the surplus shall be transferred to the prosperity and economic resiliency permanent fund.

Section 7 appropriates $800 million to the prosperity and economic resiliency permanent fund and $200 million to the program fund. Both appropriations are from the general fund and occur in FY24. Section 7 also appropriates $1 million to DFA in FY23 to cover expenses incurred in fulfillment of its duties related to the act.

Section 8 is an emergency clause and as such, the bill would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

SB241 appropriates from the general fund a total of $1.001 billion in FY23 and FY24. SB241 appropriation details are as follows:

- SB241 appropriates $800 million from the general fund to the prosperity and economic resiliency permanent fund in FY24.
- SB241 appropriates $200 million from the general fund prosperity and economic resiliency program fund in FY24 for expenditure in FY24 and subsequent fiscal years. Funds not spent do not revert back to the general fund.

- SB241 appropriates $1 million from the general fund to DFA for expenditure in FY23 and subsequent fiscal years to cover expenses and contracts to carry out the provisions of the Prosperity and Economic Resiliency Act.

The following table illustrates how distributions would work in FY24:

Distribution from	Distribution to	Amount (in millions)	Amount allowed to be spent without appropriation
General Fund	Prosperity and Economic Resiliency Permanent Fund	$800.0	$0.0
General Fund	Prosperity and Economic Resiliency Program Fund	$200.0	$0.0
Prosperity and Economic Resiliency Program Fund	(1) Water conservation and delivery;	$20.0	$4.0
Prosperity and Economic Resiliency Program Fund	(2) Environmental, agricultural and climate resiliency;	$20.0	$4.0
Prosperity and Economic Resiliency Program Fund	(3) Energy, science, technology and innovation;	$20.0	$4.0
Prosperity and Economic Resiliency Program Fund	(4) Higher education and academic research;	$20.0	$4.0
Prosperity and Economic Resiliency Program Fund	(5) Physical, mental and behavioral health access;	$20.0	$4.0
Prosperity and Economic Resiliency Program Fund	(6) Rural economic development;	$20.0	$4.0
Prosperity and Economic Resiliency Program Fund	(7) Tribal initiatives;	$20.0	$16.0
Prosperity and Economic Resiliency Program Fund	(8) Cultural and creative economy;	$20.0	$4.0
Prosperity and Economic Resiliency Program Fund	(9) Courts and public safety;	$20.0	$4.0
Prosperity and Economic Resiliency Program Fund	(10) State assets and capital planning and design.	$20.0	$16.0
		TOTAL:	**$64.0**

Given the $200 million annual distributions from the permanent fund to the program fund, the balance of the permanent fund is likely to be exhausted by FY29 or sooner. Depending on the investment return achieved by the State Investment Council, the fund is likely to have a balance below $200 million in FY29 or sooner complicating distributions required in section 6 (*see Technical Issues*). The following table reflects the expected distributions of the permanent fund from the State Investment Council (SIC):

Projected Distribution to Program Fund ($MM)	
Fiscal Year	**Amount**
FY23	n/a
FY24	n/a
FY25	$200.0
FY26	$200.0
FY27	$200.0
FY28	$200.0
FY29	$0.0
FY30	$0.0

The Office of the State Engineer notes: "SB241 does not explicitly provide for funding for state agencies whose technical or subject matter expertise may be critical to inform decisions to be made by the proposed Prosperity and Economic Resiliency Council and/or to support necessary participation in the working groups described in Section 4. Multiple FTEs may be needed to support this effort."

The New Mexico Environment Department adds:

> Specifically, the PER act states that the Council may "request the assistance of any state agency... "in carrying out its powers and duties" and "on its own motion, request a state

> agency to submit an application or join another state agency's application for a proposed project." The PER act also allows for the Council to create working groups that may include NMED employees.
>
> NMED's appropriated budget is over 80 percent restricted funds (e.g., federal grants and permit fees). Directing NMED to use restricted funds on ineligible activities would violate federal and state laws. NMED's general fund appropriation is less than 20 percent of our appropriated budget and is not available to implement any new duties.
>
> To implement the requirements of this legislation and support the Council, NMED requires a minimum of $2.7 million in recurring base budget funding as follows: two full-time equivalents (FTE) to coordinate with the Council on its needs and one FTE from each NMED bureau to provide the research, expertise, work products, technical/legal support.

This bill creates a new fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because doing so reduces the ability of the Legislature to establish spending priorities.

SIGNIFICANT ISSUES

The Department of Transportation (NMDOT) notes:

> For purposes of this analysis, NMDOT interprets the intent of SB241 to address priorities and projects currently under the statutory authority and jurisdiction of DFA and the General Services Department (GSD), involving capital outlay funding and the four-year infrastructure capital improvement plan (ICIP). SB241 could be more clearly drafted to express the intent of the Act and the scope of its oversight jurisdiction. *See "Performance Implications" and "Technical Issues" below.*
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> SB241 uses the term "state assets," without definition applicable to the Act and NMDOT notes the term is not defined by statute. NMDOT's analysis of SB241 to have no performance or administrative impact is based on an interpretation that "state assets" as used in the Act is to be limited to those assets under GSD Facility Management Division's oversight jurisdiction, which would not apply to NMDOT multi-modal transportation infrastructure assets. *See "Technical Issues" below.*

The Economic Development Department adds:

> This bill attempts to take existing state boards, the capital outlay process, emergency management, public schools, public safety and other agencies to combine and create another layer of appropriation and oversight, which is a duplication and fragmentation of efforts. It bypasses the traditional process of legislative appropriations to the executive branch to carry out the functions of state government.
>
> The support for this new council is defined as the current staff at the Department of Finance and Administration (DFA) as well as the General Services Department with no additional FTE in the bill appropriation, although there is a nonrecurring $1 million appropriation to DFA to carry out the provisions of the act. However, without FTE and without a recurring appropriation, this would all have to be done with temporary contractors.

PERFORMANCE IMPLICATIONS

If SB241 is intended to apply to all state assets including NMDOT Highway, Aviation, Intelligent Transportation Systems (ITS), Transit and Rail assets, and related program projects NMDOT would be significantly impacted by the bill. Currently, NMDOT is unable to estimate the impact SB241 would have to its project development processes across all its multi-modal programs. If all infrastructure projects are to be vetted by the PERC without limitation to the relevant source of funding or jurisdictional control, NMDOT anticipates the requirement for an additional programmatic, administrative review by PERC to add time to the planning and appropriation process, which may negatively impact NMDOT's ability to develop projects, expend appropriations, or complete necessary transportation infrastructure improvements.

The Environment Department states: "The proposed scope outlined in SB241 would overwhelm current NMED staff who are already overburdened with unfunded and underfunded mandates. Further, NMED cannot use restricted federal funds and permit fees to absorb this workload" and "SB241 is likely to adversely impact NMED's existing funding programs and provide even more competition to the state revolving fund loan programs."

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMDOT finds "SB241 may conflict with the statutory requirements for the Local Transportation Infrastructure Fund administration. *See,* NMSA 1978, Section 6-21-6.8(F). Local government transportation projects must go through the appropriate Metropolitan Planning Organization (MPO) or Regional Transportation Planning Organization (RTPO) planning and prioritization process to be considered for capital outlay funding or included in the STIP."

TECHNICAL ISSUES

Page 13 paragraph E requires distribution of the greater of $200 million or 5 percent of the fund balance. This requirement creates ambiguity or impossibility when the balance of the fund is less than $200 million. LFC expects the balance will approach zero in six years or less. The bill should add language clarifying "if the balance of the fund is less than $200 million, then the remaining balance of the fund should be distributed instead."

Page 13, line 18 should add the word "balance" clarify the distribution is "5 percent of the prior three-year average **balance"** of the fund.

NMDOT suggests: "SB241 uses the phrase "state assets and capital planning and design." *See e.g.*, Section 2, B (10) and Section 6, M. NMDOT suggests that the scope of projects within the PERC review and oversight may be clarified by defining "state assets" as used in the Act to be limited to those assets under GSD Facility Management Division's oversight jurisdiction. NMDOT further suggests a scope clarification that the phrase "capital planning and design," as used in the Act, is limited to projects appropriate for "capital outlay funding," or those projects funded in accord with Section 6, M (2)."

IT/al/ne/mg