

LFC Requester:	
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 01/30/2024

Bill No: HB271

Sponsor: _____
Short Title: PUBLIC FINANCE
 ACCOUNTABILITY ACT

Agency Name and Code OSA – 308
Number: _____
Person Writing D. Craig
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	\$1,000.0	Nonrecurring	Public Finance Accountability Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		1,000.00		1,000.00	Nonrecurring	Public Finance Accountability Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House bill 271 (“HB271” or “the bill”) creates the Public Finance Accountability Act (“the Act”) and establishes definitions. HB271 sets up criteria by which the Department of Finance and Administration (DFA) may make capital outlay grants of award to public entities. For entities required to have an annual audit, the most recently concluded current year audit must be released and for audits that reveal material weaknesses or significant deficiencies requires: the entity to have remedied the situation, DFA incorporate grant requirements to remedy the findings, or the state agency to identify a fiscal agency for the grant. For public entities required to reach financial certification under the Audit Act at a threshold less than an annual financial audit, HB271 requires: grantees demonstrate adequate accounting methods and procedures to account for, expend and safeguard grant funds in accordance with applicable law, and the awarding agency to impose via grant conditions any corrective actions necessary to remedy deficiencies identified or determine another entity to act as a fiscal agent for the grant. HB271 requires grantees to follow financial reporting requirements, including those in the Audit Act, and shall have a budget for the current fiscal year approved by any applicable governing body or oversight agency. HB271 requires DFA certify that these conditions have been met before the Board of Finance (BOF) issues Severance Tax Bonds (STB’s) to an entity for a project or before it makes grants of award under the Act.

HB271 also requires DFA implement grant management and oversight requirements for grantees that ensure: sales, leases and licenses of capital assets acquired are approved in accordance with applicable law (or, if no oversight entity is required to approve a sale, lease or license of capital asset - independently confirm that the disposition of capital assets complies with applicable law and that the grantee is receiving adequate consideration), use of the appropriate capital outlay grant agreement template DFA uses, and field audits are completed of capital outlay projects.

The Act empowers DFA to promulgate policies and procedures for these activities, develop its grant agreement templates, allow for criteria when deviating from these templates or other monitoring and oversight responsibilities and tasks DFA with monitoring and compliance enforcements for grants under the Act.

HB271 also establishes the Public Finance Accountability Fund (“the fund”, allowing the Office

of the State Auditor to assist entities in reaching compliance with the Audit Act. HB271 appropriates \$1 million to the fund.

FISCAL IMPLICATIONS

HB271 contains an appropriation for \$1 million to the fund for disbursement in fiscal year 2025 (FY25) to assist entities with compliance with the Audit Act, namely timely financial compliance certification to allow access to grants under the Act.

In FY24, the Office of the State Auditor (OSA) received a \$500 thousand special appropriation to assist primarily small, local public bodies (such as acequias, land grants, mutual domestic water consumers associations) with getting current with their required financial compliance certifications (annual audit or agreed-upon-procedures tier) necessary to access capital outlay funding and OSA calculates approximately \$2.4 million in capital outlay funding has been released – a nearly three hundred eighty-one percent return on investment.

SIGNIFICANT ISSUES

The provisions of HB271 have been in implementation for over a decade. Executive Order 2013-006 was implemented to better safeguard the state's direct, legislative capital outlay appropriations and ensure timely state agency financial reporting in any given year. OSA works, in consultation every year, with DFA and other executive agencies to use the OSA's Audit At-Risk List in holding agencies and local public bodies accountable for late audits and audits that result in modified, adverse, or disclaimed opinions. So far, the current process that HB271 formalizes has worked well in acting as a deterrent in public entities submitting late audit reports. It has also ensured capital outlay dollars are spent prudently and in accordance with state law.

However, having this good financial government procedure only in exist in Executive Order instead of state law presents significant limitations. For example, should a future Executive repeal the Executive Order because of political pressures from non-compliant public entities the state would revert to increased untimely audits and limited safeguards for the expenditure of direct legislative capital outlay appropriations. Additionally, parties have questioned the legal authority (primarily the financial control statutes at NMSA 1978 §6-5-1 et seq.) for the Executive Order in the past arguing that existing statute may not be sufficient. To date, the Executive Order has survived legal challenges resulting in reasonable and beneficial uses of capital outlay procedures for public entities. However, leaving the policy and procedure in an Executive Order format may result in successful legal challenges to its authority in the future, as we would depend on judicial opinions on Executive authority instead of formal legislative intent that accompanies state statute. Also, this bill, if enacted, could represent the first major component necessary for much needed capital outlay reform.

PERFORMANCE IMPLICATIONS

HB271 is one of two policy levers the OSA has to require timely compliance with financial audits and the Audit Act (the other being NMSA 1978 §12-6-3 F. that has never been operationalized where OSA reports to PED, LFC and DFA untimely audits and other sections of statute require DFA or PED to withhold operating funds from the non-compliant entity). Without this policy in place, OSA would be significantly limited in its ability to enforce timely completion of audits and would need to lean more heavily on the Executive to withhold

Operating funds to reach compliance – an action that no Executive has taken to date.

ADMINISTRATIVE IMPLICATIONS

Administrative implementation requirements are minimal and limited to the creation of a fund at OSA and implementation of reverting to the General Fund from the new fund. The rest of HB271, including the process by which public entities access direct legislative capital outlay appropriations, the policies and procedures for oversight and monitoring at DFA and other requiring restrictions to be placed on entities is already in place. HB271 merely takes the existing process and formalizes it into state law to help protect against potential legal challenges and ensures future Executive branches cannot reduce the standard for financial accountability and stewardship of public capital outlay dollars for short-term political gains.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

The process by which the OSA would revert to for untimely state audits requires the Executive to function as its enforcement arm – which historically has not occurred. When OSA has notified PED or DFA of recalcitrant or non-compliant entities regarding untimely audits, PED or DFA has not withheld operating funds (state equalization guarantee or local government division disbursement). If Executive Order 2013-006 were no longer in effect the OSA would revert to this process.

ALTERNATIVES

The Legislature could empower OSA with the authority to block funding to entities non-compliant with the Audit Act instead of the Executive branch.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will lose an opportunity to formally establish good governance, financial transparency, and fiscal responsibility. State government may not remain responsive and responsible to the public on use of capital outlay or financial best practices to produce timely financial reporting (audit reports).

AMENDMENTS