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FISCAL IMPACT REPORT

ORIGINAL DATE 2/28/17

SPONSOR Campos LAST UPDATED _____ HB _____

SHORT TITLE Capital Outlay Reform Act SB 392

ANALYST Kehoe

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate			Nonrecurring	(See Fiscal Impact)

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 262 and Senate Bill 359.

SOURCES OF INFORMATION

- LFC Files
- Department of Finance & Administration (DFA)
- General Services Department (GSD)
- New Mexico Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

Senate Bill 392 provides for enacting a Capital Outlay Reform Act, creates a Capital Planning and Assistance Division within the Department of Finance and Administration (DFA), creates a Capital Outlay Oversight Task Force, expands the membership of the Capitol Buildings Planning Commission, and requires an Annual Statewide Capital Improvements Plan.

The bill provides for a transparent review and ranking of capital outlay projects for state funding requests, but unlike other capital outlay reform proposals, the final appropriating authority remains with the full Legislature.

Sections 1 and 2 define the terms used within the Capital Outlay Reform Act.

Sections 3 creates a Capital Outlay Oversight Task Force composed of five members appointed by the Speaker of the House and five members appointed by the Senate Committees' Committee and provides for the powers and duties of the task force. If appointments are named during the interim, members may be named by the President Pro Tempore with the consent of the majority of the Committees' Committee. Additional members include the chairs of the House and Senate

standing committees charged with reviewing capital outlay requests, the cabinet secretaries of the Departments of Transportation, General Services, Cultural Affairs, and Finance and Administration; and one member appointed by the Governor with expertise in planning, engineering, architecture, or construction of large commercial or public capital projects.

Section 4 provides for the powers and duties of the Capital Outlay Oversight Task Force.

Section 5 provides for the powers and duties of the new Capital Planning and Assistance Division created in Section 10.

Section 6 requires the Capitol Buildings Planning Commission (CBPC) to prepare, publish, and annually update a Five-Year Statewide Capital Improvements Plan to include best practices for capital budgeting, including details of capital projects recommendations for state funding, prioritizing projects using criteria, and applying a scoring methodology developed by the aforementioned task force.

Section 7 requires that no state funding be released unless a government entity sponsoring the project is in compliance with reporting and other requirements established by the proposed new division.

Section 8 requires government entities to electronically file on a quarterly basis the status of capital appropriations, encumbrances and expenditures.

Section 9 amends the powers and duties of the New Mexico Finance Authority Oversight Committee. The amendment removes the committee's responsibility of overseeing and monitoring state and local government capital planning and financing, including taking testimony from state and local officials on state and local capital needs.

Section 10 creates the Capital Planning and Assistance Division within DFA and merges the functions and duties of other divisions within the new division, including the current functions of the Management and Contracts Review Division.

Section 11 expands the membership of the CBPC to include four members of the House and four members of the Senate appointed by the Legislative Council Service, four members appointed by the governor with expertise in planning, engineering, architecture or construction, removes the Office of the State Treasurer and Commissioner of Public Lands from the commission, adds additional responsibilities to the commission. The provision provides for the payment of per diem and mileage to members and requires that in addition to current staffing by the Legislative Council Service (LCS) that staffing also be provided by the staff of the Legislative Finance Committee (LFC) and the newly created division of DFA.

Section 12 transfers the functions, money, appropriations and property of the current Capital Projects Bureau of the Local Government Division of DFA to the new division.

Section 13 repeals current provisions requiring the DFA and the General Services Department (GSD) to develop and maintain a four-year Capital Improvement Plan.

FISCAL IMPLICATIONS

Section 11 of the bill provides that members of the Capitol Building Planning Commission will be entitled to receive per diem and mileage as non-salaried public officers in accordance with the Per Diem and Mileage Act, unless a different law providing for compensation of attendance at commission meetings applies to the member, in which case that law will be applied. Members shall receive no other compensation, perquisite or allowance for their service on the commission.

However, expanding the membership of the committee to include legislators will have an impact on the budget of the LCS that currently pays the per diem and mileage for legislative members. It is unknown what agency would be responsible for paying the public members appointed by the governor. All other members are salaried employees of the state. The cost of per diem is unknown until which time a work plan and meeting dates are established.

This bill will have a minimal financial impact on the operating budget of the New Mexico LCS and LFC to staff the proposed task force. It's unknown if the transfer of funds from a bureau to a division will be sufficient for the operation of the new division given the increased responsibilities.

SIGNIFICANT ISSUES

Over the years, legislative proposals have taken aim at developing an efficient, objective, and transparent process for planning, prioritizing, and funding capital outlay requests statewide. As reported by the Legislative Finance Committee and numerous legislators, the current process has created a proliferation of projects that are not adequately funded and implemented. This puts an unreasonable strain on state and local government resources. The fractured nature of funding local government capital projects leaves millions of dollars sitting idle, often for many years that could be used for critical infrastructure to protect the health and safety of New Mexico citizens. In addition, due to the difference in the geography of the legislative districts, resources are allocated unevenly between rural and urban districts and construction costs are typically higher in rural New Mexico.

As of January 2017, approximately \$969.6 million from all funding sources for 2,472 projects remains outstanding including \$127 million of earmarked fund balances for water (\$58.2 million), colonias (\$35.5 million), and tribal (\$33.3 million) infrastructure projects; approximately \$302.5 million remains outstanding from supplemental severance tax bonds for public schools. Of the outstanding funds, \$209 million is for 1,566 “local” projects. The current capital process continues to divert funding from the most critical and basic infrastructure needs for both state and local facilities. Without procedures to ensure projects are adequately funded and completed, communities will continue to have deficient road and water systems, and the conditions at state facilities will continue to amplify the risk to patients and the potential liability to the state.

Recognizing the inadequacies in the state's capital outlay process, representatives of the Association of Counties, the New Mexico Municipal League, and staff of the executive and legislative branches joined efforts to review and develop “administrative” changes aimed at improving the process. The “Report of the Legislative Finance Committee, Volume I, Public Infrastructure Section” outlines the group's accomplishments to date and steps to be taken as the group continues their work to streamline the process at both the local and state level. The

anticipated results will provide accountability of state and local funds, reduce the cumbersome paper shuffling, aid in the backlog of uncompleted projects, and lessen the administrative burden for state and local entities.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 262 creates a permanent Public Works Legislative Interim Committee comprised of 18 members for the purpose of evaluating, ranking, and proposing funding for capital outlay projects for submittal to the Legislature, the governor, and the Department of Finance and Administration.

Senate Bill 359 creates the Capital Outlay Planning and Monitoring Act for the purpose of increasing fiscal and programmatic oversight of capital outlay projects and expenditures. The Act creates a Capital Outlay Planning and Monitoring Division within the Department of Finance and Administration (DFA), allows the new division to promulgate rules necessary for the administration of the Act, requires the new division to prepare and annually update a five-year state capital improvement plan, and repeals New Mexico statute that deals with capital programs, preparations and duties.

OTHER SUBSTANTIVE ISSUES

Executive Order 2012-023 requires the DFA and GSD, Facilities Management Division to jointly prepare a process to identify and prioritize all state-owned capital improvement projects. A similar process has not been developed for establishing priorities to provide state aid for local projects. The Legislature has established several revolving loan funds and grants programs to assist local entities with their capital needs by providing zero and low-interest loans or grants that may be accessed rather than continue to develop competitive funding programs.

The DFA analysis states, “New Mexico's process for allocating scarce capital dollars is lacking in rigor and New Mexico continually receives low grades on how it makes infrastructure spending decisions. New Mexico was awarded a D, second worst in the nation on managing capital outlay. This legislation would move the State’s capital outlay planning and funding process in line with the process for adopting the State budget annually and also with the way public school capital outlay is prioritized through the Public School Capital Outlay Council under the monitoring of a task force. New Mexico’s public school capital outlay approach receives national acclaim, and the Facilities Condition Index (FCI) that measures school building conditions has improved by 53 percent since 2002. That system has proven to be effective and efficient and has improved school facilities throughout New Mexico using an equitable system for addressing the most critical needs. This bill will allow scarce capital funding to be better targeted to projects that are of critical importance, ready to expend quickly, and fully funded or appropriately phased. All of this will result in fewer dollars sitting idle.”

LMK/jle