

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

SPONSOR Campos ORIGINAL DATE 02/08/21
LAST UPDATED _____ HB _____
SHORT TITLE Capital Outlay Reform Act SB 305
ANALYST Olson/Kehoe

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|---------|------------------------------|------------------|
| FY21 | FY22 | | |
| | \$200.0 | Nonrecurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB14, HB 55, SB169
Conflicts with SB207, SB290

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

No Response Received

Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

Senate Bill 305 proposes the Capital Outlay Reform Act (hereinafter referred to as the "Act"), creates a sixteen-member interim legislative Capital Outlay Committee, a nine-member Capital Outlay Task Force, and a new Capital Planning and Assistance Division within the Department of Finance and Administration (DFA). The Act provides for development of an annual state capital improvement plan, the review and prioritization of state and local government capital needs, an annual state capital outlay expenditure proposal, and appropriates funding to implement provisions

of the bill. The effective date of the bill is January 1, 2022.

The Act creates an interim legislative Capital Outlay Committee (COC) consisting of 16 members: eight House members appointed by the Speaker of the House and eight Senate members appointed by the Senate Committees' Committee. If members are appointed during the interim, the President Pro Tempore shall make the appointments in consultation and agreement by the majority of the members of the Committees' Committee. The members shall have proportionated political party representation; the chair and vice-chair are designated by the New Mexico Legislative Council (NMLC), and such positions will alternate between the two chambers for each biennial legislature. The chair may name a subcommittee consisting of at least two members of each the House and the Senate representing the two major political parties; and the Legislative Council Service (LCS) will staff the committee with assistance by staff of the Legislative Finance Committee (LFC) and staff of a newly created division proposed within the Department of Finance and Administration (DFA).

The COC is responsible for monitoring the duties and responsibilities of the proposed Capital Projects Task Force created within the Act. By April 1 of each year the COC shall identify general categories of infrastructure needs, establish objective criteria and a scoring methodology to apply to capital project requests, consult with the task force and the new division on the development and approval of annual updates to the state capital improvement plans, and the capital project expenditure authorization legislation.

The Capital Projects Task Force (CPTF) created within the Act is comprised of nine members: two appointed by the NMLC with expertise in planning, engineering, design, or construction of large commercial or public capital projects; the director of the LCS, director of LFC, the secretary of the General Services Department, the secretary of DFA, two members appointed by the governor with the same expertise as those appointed by the NMLC, and the chief justice of the Supreme Court. The task force may create a subcommittee of the Task Force consisting of at least one member appointed by the NMLC, one cabinet secretary, and an appointee by the chief just of the Supreme Court.

The CPTF is responsible for the following: 1) development of an annual update of a five-year State Capital Improvement Plan (SCIP); 2) a process for evaluating capital project requests; 3) recommending capital projects for funding with state money if the project is included in the SCIP; 3) by May 1 of each year apply criteria and scoring methodology established by the COC for evaluating consideration of capital project requests; and 4) by November 1 of each year, submit the SCIP and priority list of capital projects to the COC.

In addition, the bill creates a new Capital Planning and Assistance Division within DFA and eliminates the department's "Management and Contracts Review" Division. The bill establishes the new divisions' powers and duties, to include the following: provide reports to the Capital Projects Task Force and the Capital Outlay Committee; make recommendations to the task force on the development of the state capital improvements plan; assist government entities in planning, budgeting, and administering capital projects; and maintain a database for capital projects.

The bill establishes an annual process for the submission and review of capital funding requests. The Capital Outlay Committee is required to report an approved state capital improvements plan and an endorsed capital outlay bill for the upcoming legislative session by December 15 each year.

The bill exempts road projects funded by DOT pursuant to the statewide transportation

improvement plan (STIP), from loans or grants from NMFA, Water Trust Board, and Colonias Infrastructure Board.

FISCAL IMPLICATIONS

The appropriation of \$200 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall revert to the general fund.

The analysis reflects the appropriation as nonrecurring, however, additional funding may be necessary moving forward if the expectation is that the program will be continued into the future.

Section 7, subsection D of the bill specifies that the capital outlay bill endorsed by the Capital Outlay Committee shall direct at least 40 percent of available capital outlay capacity to state capital improvement projects. State capital improvement projects are defined as projects on behalf of state agencies or public institutions of higher education for the purchase of or improvements to property owned by a state agency or public institution of higher education. The bill further requires that the endorsed capital outlay bill not utilize more than 70 percent of available capital outlay capacity.

The bill does not include funding for DFA to implement the provisions of the Act. The bill's delayed effective date of January 1, 2022 would allow DFA to assess the need for additional resources and request funding for the first year of the new process during the 2022 Legislative Session.

Additionally, the bill does not provide funding to state agencies to prepare and submit ICIPs which would occur during the legislative session and could require temporary staff to handle the compressed workload.

SIGNIFICANT ISSUES

While infrastructure spending is vital, New Mexico's current 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 level and state-owned assets 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.

ADMINISTRATIVE IMPLICATIONS

Currently, staff from executive and legislative agencies hear agency ICIP presentations in October of each year, and LFC staff uses this information to develop a framework capital outlay recommendation. If SB305 is enacted, these hearings would likely be unnecessary, as the task force and committee would be charged with preparing a capital outlay bill for introduction during the legislative session.

The proposed new division within DFA is required to provide extensive assistance and outcomes related to the proposed capital outlay process in this bill, including compliance and performance audits, evaluations of capital projects, and reporting. It is unclear if current staffing levels are sufficient to meet the assigned duties and the impact of eliminating the Management and Contracts Review Division.

HED has statutory authority to approve programs, budgets, construction, purchases of real property, and capital funding recommendations for all public post-secondary institutions in the state. The creation of a capital outlay committee and capital projects task force under SB305 does not allow for representation from HED in the development of the criteria for project review and vetting. HED regulations establish criteria specific to higher education institutions as it relates to educational settings, enrollment growth, instructional space, library, administration, and research. These items are important in the evaluation and ranking of higher education institution projects.

The bill amends the duties of the New Mexico Finance Authority Oversight Committee. The oversight and monitoring of state and local government capital planning and financing is transferred to the proposed new division at DFA.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 14 enacts the Grants Administration Act to create a grants administration division within the Department of Finance and Administration (DFA). The new division would be charged with reviewing federal grant applications and providing technical and other grant-related assistance to state agencies and local governments. This bill duplicates duties of the newly created division within DFA proposed in Senate Bill 305.

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 and Senate Bill 290 create the Public Works Commission with the same membership, powers and duties. SB207 omits the evaluation criteria for prioritizing capital project funding included in SB290.

OTHER SUBSTANTIVE ISSUES

Currently, Executive Order 2012-023 requires DFA and the Facilities Management Division of the

General Services Department 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.

SO/LMK/sb