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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Tallman</u>	<b>LAST UPDATED</b> <u>2/16/2023</u>
	<b>ORIGINAL DATE</b> <u>1/30/2023</u>
<b>SHORT TITLE</b> <u>Interim Legislative Public Works Committee</u>	<b>BILL NUMBER</b> <u>Senate Bill 186</u>
	<b>ANALYST</b> <u>Carswell/Kehoe</u>

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$210.0	Recurring	General Fund

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

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$274.0	\$484.0	\$758.0	Recurring	General Fund
<b>Total</b>						

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

Relates to Senate Bill 197

### Sources of Information

LFC Files

### Responses Received From

Office of the State Engineer (OSE)  
New Mexico Environment Department (NMED)  
Indian Affairs Department (IAD)  
Aging and Long-Term Services Department (ALTSD)  
New Mexico Finance Authority (NMFA)  
Department of Finance and Administration (DFA)  
General Services Department (GSD)

## SUMMARY

### Synopsis of Senate Bill 186

Senate Bill 186 creates a Permanent Joint Interim Public Works Committee comprising three majority party members and two minority party members of the House of Representatives

appointed by the Speaker of the House and three majority party members and two minority party members from the Senate appointed by the Committees' Committee or by the president pro tem if appointments are made in the interim. Additionally, each biennium, the members of the committee shall appoint five public members with expertise in architecture, engineering, construction, or public finance. The committee will be staffed by the Legislative Council Service (LCS) and the Legislative Finance Committee (LFC).

The bill tasks the Public Works Committee with consulting and coordinating with state agencies charged with capital planning and review of local government infrastructure capital improvement plans (ICIP) to review existing and proposed capital projects. The committee shall develop a set of criteria to rank and prioritize capital projects that include consideration of the project's financial, programmatic, and other public benefits, operational impacts, sufficiency of proposed funding and other available funding sources, readiness, and priority level in state agency or local government ICIPs. The committee shall submit a report of its findings, including specific recommendations, to LCS, LFC, and the Legislature by November 1 of each year.

Senate Bill 186 appropriates \$210 thousand from the general fund to LCS for two full-time equivalent research staff positions and other expenses associated with the work of the Public Works Committee.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

The appropriation of \$210 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund. The appropriation is intended to pay the costs of 2 FTE in the LCS capital outlay office. However, the bill states the committee is to be staffed by LCS and LFC but does not provide additional staffing to LFC for this purpose. This analysis assumes the need for 1 additional LFC FTE at a cost of \$118 thousand, including salary and benefits, and a recurring operating budget impact to LCS equivalent to the \$210 thousand appropriation.

The creation of the new committee would also result in recurring operating expenses to the Legislature for per diem and travel expenses for committee members. Those expenses are likely not covered by the appropriation. This analysis assumes such expenses would, at the high end, be equivalent to annual member-related expenses to the LFC at approximately \$156 thousand. LFC has 16 members and meets once a month during the interim. If the Public Works Committee meets less frequently, its recurring expenses may not reach \$156 thousand.

## **SIGNIFICANT ISSUES**

New Mexico's capital outlay process is inefficient and the practice of earmarking funding for individual lawmakers to allocate is unique among the states. A 2021 report commissioned from the Council of Development Finance Agencies by the New Mexico Finance Authority concludes, "Reforming the capital outlay process is the single most important action that would catalyze economic development finance in New Mexico."

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 the local level, in particular, 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. SB186 appears to be intended to initiate such a process. However, the bill does not require the Legislature to follow the recommendations included in the Public Works Committee’s annual report on existing and proposed capital projects.

As of December 2022, approximately \$3.3 billion from all funding sources for about 4,100 active projects remains outstanding, including projects authorized by the Legislature (\$1.7 billion), earmark projects (\$276.1 million), supplemental severance tax bonds for public schools (\$521.8 million), and special appropriations to capital projects (\$746.1 million). Local capital outlay projects account for 77 percent of the outstanding projects with balances totaling \$892.4 million.

## **PERFORMANCE IMPLICATIONS**

LFC reports on capital outlay have repeatedly identified insufficient vetting of projects prior to funding as a major barrier to successful and timely completion of capital projects. Evaluation of projects according to criteria consistent with best practices for capital budgeting could reduce the risk that projects to which the Legislature appropriates funds are not completed in a timely manner or at all. Such improvements would depend on the extent to which the Legislature incorporated the committee’s recommendations into its funding decisions, which is not a requirement of the bill.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to Senate Bill 197, which creates the Infrastructure Planning and Development Act. The bill appropriates \$2 million from the general fund to the Office of the Governor to establish and operate an infrastructure planning and development office.

## **TECHNICAL ISSUES**

The bill defines a “stale project,” however, the bill does not define “capital projects.”

## **OTHER SUBSTANTIVE ISSUES**

The Indian Affairs Department notes the bill does not stipulate membership on the committee should include a representative from tribes, nations, or pueblos. The political status, structure,

and internal policies and procedures unique to sovereign nations should be considered and incorporated into any new process for evaluating capital projects, according to the department.

Should the bill be enacted, the New Mexico Finance Authority indicates it would follow the work of the proposed committee as a potential partner for funding capital projects requiring additional resources for completion of projects.

Currently, capital projects funded with severance tax bonds (STB) are void if not certified as ready and issued within two years of the authorization. The Department of Finance and Administration proposes consideration be given to a review of such projects after one year to determine if the project will be certified by the following year or if the project should be reauthorized for a “shovel ready” project, or if the funds should be reverted or returned to STB capacity.

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