F I S C A L I M P A C T R E P O R T

SPONSOR Tsosie **DATE TYPED** 02/28/05 **HB**

SHORT TITLE Extending and Changing Capital Outlay Purposes **SB** 1026

ANALYST

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
(See Fiscal Impact Narrative)				N/A	Severance Tax Bond Capacity

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From

Department of Finance and Administration (DFA)
Department of Indian Affairs (DIA)

SUMMARY

Synopsis of Bill

Senate Bill 1026 reauthorizes capital outlay balances; changes the purpose of certain severance tax bond appropriations with conditions; proposes conditions for projects within the Navajo Nation; provides for direct payments to vendors; and defines indigency.

Significant Issues

Senate Bill 1026 reauthorizes all unexpended balances appropriated prior to 2001 to the Department of Indian Affairs for capital outlay projects located within Indian country. The bill changes the purpose of the balances unexpended as of September 1, 2005, as follows: 1) fifty percent of unexpended balances are reauthorized for renovations and improvements to Dine College in San Juan County; and 2) fifty percent is reauthorized for planning, design and construction of the center for lifelong education, research and cultural exchange for indigenous persons at the Institute for American Indian Arts in Santa Fe County. The bill requires DIA to certify to the Board of Finance by September 1, 2005 if the project is active, has valid encumbrances, or if the period of time for expenditure for the projects were extended beyond July 1, 2005.

Senate Bill 1026 further authorizes the state to contract through a fiscal agent other than the Navajo Nation for a capital outlay project located on lands within the jurisdiction of the Nation, if permissible by tribal law. The bill also authorizes the state to expend or encumber funds at the request and approval of chapters of the Navajo Nation, if allowed by tribal law, and authorizes the Department of Finance and Administration to make direct payments to third-party contractors for expenses related to capital projects. It should be noted that except for appropriations to the capital program fund, current law prohibits severance tax proceeds to be used to pay indirect project costs.

A provision of the bill allows funds appropriated from the general fund to multiple chapters of the Navajo Nation for same or similar purposes to be pooled in order to create a regional or centralized project, upon review of DIA and approval by the Board of Finance. Lastly, for the purposes of capital outlay projects located within Indian country, persons who are not served by electric service, water service, telecommunications or indoor plumbing shall be presumed indigent as defined in Article 9, Section 14 of the constitution of New Mexico.

FISCAL IMPLICATIONS

A change of purpose or extension of time by which severance tax bond proceeds may be expended is not considered a new appropriation and does not impact current severance tax bond capacity. Any unexpended or unencumbered balances reauthorized in this bill shall revert to the severance tax bond fund by July 1, 2010.

ADMINISTRATIVE IMPLICATIONS

According to DIA, the provision allowing direct payments to third party vendors would facilitate completion of projects for tribes with limited resources. The department attributes much of its current backlog of capital outlay projects to this issue. DFA and DIA are currently developing a process to make direct payments to third party vendors for all Indian capital outlay projects. Direct payments to third-party vendors would streamline the capital outlay process and allow the projects to be completed and closed out more efficiently. The DIA indicates it would assist the tribal entity in completing the project in a timely manner. The tribal entity would provide documentation to IAD certifying that the tribe's procurement process had been adhered to. The tribe would also provide an invoice from the vendor to DIA for the exact cost of the goods or services provided for the capital outlay project. The DIA would then wire the funds to the vendor through the New Mexico State Treasurer's office (similar to the process already utilized by the DIA for projects financed with STB proceeds).

OTHER SUBSTANTIVE ISSUES

According to the Board of Finance, there are currently 47 projects prior to2001 with severance tax bond proceed balances totaling approximately $1.5 million. However, due to existing contractual agreements and the corresponding encumbrances, not all the proceeds may be eligible for reauthorization.

There has been a long-standing "gentleman's agreement" in the House and Senate that no member of either House will reauthorize projects unless he or she was the original sponsor of the capital outlay request. An initial review of the projects proposed to be reauthorized in this bill indicates the original sponsors are currently serving either in the House of Representatives or the New Mexico State Senate.

LMK/rs