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## FISCAL IMPACT REPORT

**SPONSOR** Campos **ORIGINAL DATE** 02/18/09  
**LAST UPDATED** 02/24/09 **HB** \_\_\_\_\_

**SHORT TITLE** Capital Projects Act **SB** 309

**ANALYST** Kehoe

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI	N/A	(See Fiscal Impact Narrative)

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Senate Bill 310 and Senate Bill 547

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public School Facilities Authority (PSFA)

Public Education Department (PED)

General Services Department, Property Control Division (PCD)

Higher Education Department (HED)

Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

Senate Bill 309 enacts the Capital Projects Act, establishes a capital projects council and includes procedures for evaluating and prioritizing proposed capital projects by December 1, 2010 for recommendation to the 2011 Legislature and each year thereafter.

The effective date of the bill is July 1, 2009.

### FISCAL IMPLICATIONS

Senate Bill 309 does not contain an appropriation. However, the bill allows the council, subject to appropriation, to appoint and employ the necessary professional, technical and clerical assistance to support the Council in its duties and further requires the Council to prepare an annual operating budget for submission to the Legislature. In addition, a provision of the bill allows the public members of the proposed Council to receive per diem and mileage pursuant to

the Per Diem and Mileage Act. The bill allows the Council to apply for and receive grants, gifts, donations and bequests.

Available funding for capital outlay in FY09, following the signage of one of the solvency bills (House Bill 9), is approximately \$134 million from severance tax bond capacity.

## **SIGNIFICANT ISSUES**

Senate Bill 309 creates the Capital Projects Act for the purpose of creating a council of experts to evaluate and prioritize proposed statewide and local capital outlay projects and to monitor and to provide oversight for projects authorized by the Legislature to ensure appropriations are expended in the most cost-effective manner.

The Capital Projects Council would consist of twelve members, six appointed by the governor of either cabinet secretaries or public members; one member representative of Indian nations, tribes or pueblos. Public members appointed by the governor are required to have expertise in capital financing, planning or construction. Other members of the council would consist of the state engineer, executive directors of the Commission of Higher Education, New Mexico Municipal League, New Mexico Association of Counties, and the New Mexico Finance Authority, or their designees. The Council may also appoint such committees and subcommittees as necessary to carry out its duties.

The purpose of the Council is to coordinate all planning, oversight, monitoring and reporting functions of state government regarding capital projects authorized by law. Capital projects and capital improvements funded pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act are exempted from the council's authority and those capital projects authorized by legislation enacted after July 1, 2009 that specifically exclude capital projects from the provisions of the Act. The Council would begin to organize, perform its duties and accept proposals for capital projects and prioritize the proposals after July 1, 2009—the effective date of the Act; and by December 1, 2009 and each year thereafter, make recommendations to the Legislature for funding the prioritized projects.

After July 1, 2009, any agency, political subdivision, instrumentality or institution of the state may submit a proposal for a capital project to the Council. Each proposal would be required to contain the following: 1) a detailed description; 2) an explanation of need; 3) a description of the prime beneficiaries; 4) the estimated total cost and an explanation of how the cost was derived; 5) the amount and source of any matching funds; 6) an explanation of how the project will be implemented and maintained, and the amount and source of estimated maintenance costs; and 7) any other information required by the rule of the Council. Upon receipt of the proposal, the Council will conduct site visits and public hearings, as necessary, and then list all proposals in order of priority.

The prioritized projects, methodology, and the Council's recommendations will be submitted to the 2010 Legislature for proposed legislation and consideration.

The bill requires all agencies, institutions, instrumentalities, and political subdivision of the state to assist the council with its duties. In addition, all entities receiving government-funded capital projects would be required to assist the council in carrying out the provisions of the Capital Projects Act. Specific duties of the Council include improving the process used to plan and

prioritize capital projects and the use of available capital funding; establish criteria for evaluating, monitoring and overseeing capital project requests and developing reporting requirements to ensure cost-effective implementation consistent with funding authorizations.

### **OTHER SUBSTANTIVE**

Traditionally, funding for capital outlay is derived from various sources: severance tax bonds, general obligation bonds, general fund, state road fund and other state funds (Miner's Trust Fund, Irrigation Water Construction Fund, Penalty & Interest Fund, et. al). Total capital appropriations have varied from less than \$50 million in 1991 to in excess of \$800 million to \$1 billion in 2006 and 2007. Available funding for capital for FY09, following the signage of the solvency bill (House Bill 9), is approximately \$134 million from severance tax bond capacity. Given the disparity between capacity and needs from year to, projects should be carefully prioritized and selected based on emergency situations, public health and safety issues, federal mandates, preservation of the state's assets, continuation projects requiring additional funds for completion, and projects with other funding sources to maximize state dollars.

The proposed Council would consolidate capital planning into a comprehensive process. With so many critical capital needs and limited resources, the proposed Council could provide valuable insight into priorities, especially on a local level. With a standardized request, review and reporting process, there could be better utilization of scarce capital funds and more accountability for appropriate and timely expenditures. It is a responsible approach to capital planning, which would be enhanced by encouraging coordination on a local and regional level to ensure all capital needs are adequately considered.

The Property Control Division (PCD) is the major recipient of capital project appropriations which support new construction and renovation, and repair and equipment replacement at the state's almost 850 buildings throughout New Mexico. Projects for state-owned public facilities compete with other local projects for capital dollars, but coordination at a local level to surface community priorities is not currently part of the process. In order to protect the public's real estate assets, a more comprehensive approach to recognizing problems and evaluating priorities is needed.

GSD and DFA currently and jointly administer the four-year plan which requires agency submittal by July 1<sup>st</sup> each year their projected capital program for the next four year period, and by September the specific requests for the upcoming legislative session. The review process each autumn includes DFA/GSD hearings with agencies and results in the Governor's capital budget. It is unclear whether this process would continue or be replaced by the Capital Projects Council.

The State Board of Finance (BOF) maintains a report by agency reflecting sold, expended and a balance for each project authorized for funding from general obligation and severance tax bond capacity. A separate report provides the amount, in aggregate, of unexpended bond proceeds for each series of bonds. A direct correlation between the DFA and BOF reports is impractical due to a number of factors. Bond sales are issued in multiple series and may contain partial amounts sold in separate issues. The DFA monitoring system relies on agency reported data that is not audited. Also, bond expenditures are made on a reimbursement basis of actual expenditures, but expenditures reported in the monitoring system may include payments from other funds that have not been submitted for reimbursement.

The Local Government Division (LGD) serves as a clearinghouse for all state and federal grants or loan programs for local community infrastructure development. The LGD administers a Local Infrastructure Capital Improvements Plan (ICIP) to assist local governments in submitting data to support their requests for appropriations. The plan is not statutorily created and requires a “volunteer” participation by municipalities, counties, and special districts (Native Americans, water associations, fire districts and soil and water districts). Only a small percent of all planned priorities listed on the ICIP are funded by direct legislative appropriations. Each year, the LGD develops a list of the top five planned and supported project priorities of all municipalities, counties, tribal entities, and several water associations and special districts and provides a copy of the report to legislators at the beginning of each legislative session.

### **ADMINISTRATIVE IMPLICATIONS**

PED indicates “a major function of the PED, COB is to administer and report to the Legislature on all of the projects allocated to school districts through direct legislative appropriations. Currently 75% of the workload for three FTEs from the PED COB is directed to the administration of the direct appropriations funded through this process. The workload includes the review and approval of project plan requests, review and approval of reimbursement requests, conducting site visits to ensure the projects meet legislative intent and preparing individual and summary reports on the appropriations for review by the executive and legislative body. Work also includes working with school districts and the Department of Finance and Administration to ensure all balances are spent and/or reverted. Vital technical assistance is provided to the school districts so that they have timely access to the funds appropriated to them by their local legislators and for funds that are not used or did not meet the statutory expiration dates to revert. Once again, a reduction in the amount of projects allocated through this process could have a major impact on the workload of the COB.

Currently NMHED is on track to implement an improved project prioritization process, a strategy to get Instructional and General space standardized and updated and the COMET database implemented by the higher education institutions for FY09. All of these efforts would be either delayed or derailed by the Capital Project Act. These critical improvements for the capital project prioritization and process would not be in effect for another three to four years with the passage of the Capital Project Act.

### **RELATIONSHIP**

Senate Bill 310 and Senate Bill 547 both recommend planning and prioritization processes for capital outlay funding.

LMK/svb