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

SPONSOR Campos **ORIGINAL DATE** 02/05/14 **LAST UPDATED** **HB**

SHORT TITLE Capital Outlay Changes & Committee **SB** 20

ANALYST Kehoe/Snyder

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	($1,100.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
	$1,100.0	$1,100.0	Recurring	Capital Project Administration Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to Senate Bill 162

SOURCES OF INFORMATION
LFC Files

Responses Received From
General Services Department (GSD)
Department of Cultural Affairs (DCA)
Aging and Long Term Services (ALTSD)
New Mexico Environment Department (NMED)
New Mexico Finance Authority (NMFA)

SUMMARY

Synopsis of Bill

Senate Bill 20 creates the Capital Outlay Planning and Monitoring Act for the purpose of increasing fiscal and programmatic scrutiny of capital outlay projects and expenditures. The Act creates a joint interim legislative committee (Capital Outlay Review Committee), creates a Capital Outlay Planning and Monitoring Division in the Department of Finance and

Administration (DFA), creates an Executive Capital Planning Committee, requires the new division, the Facilities Management Division (FMD) of the General Services Department and the Local Government Division of the DFA to prepare and annually update a five-year state capital improvement plan, creates a capital project administration fund, amends the duties of the New Mexico Finance Authority Oversight Committee and repeals New Mexico statute that deals with capital programs, preparations and duties. The effective date of the bill is July 1, 2014. Provisions of the Act propose the following:

Section 1, creates a joint interim legislative committee (Capital Outlay Review Committee) composed of seven members from the House of Representatives and seven members from the Senate appointed by the New Mexico Legislative Council. Members shall be appointed to give the two political parties having the most members in each house the same total proportional representation on the committee as prevails in that house. The terms of members shall be two years except for initial members whose term shall be for three years. The chair of the committee must rotate between the House and the Senate, starting in 2014 the chair shall be a Senate member and the vice-chair shall be a House member.

Section 2, provides that subcommittees may be created and be composed of at least one member from the House of Representatives and one member from the Senate and at least one member of the minority party shall be a member of the subcommittee. All expenditures of the subcommittee must be approved by the committee in advance.

Section 3, lists the duties of the Capital Outlay Review Committee to include: 1) overseeing the functions and processes of the Capital Outlay Planning and Monitoring Division; 2) adopting standards and guidelines for evaluating capital funding requests, to include state capital improvement plans, best practices, and national standards related to capital budgeting; 3) adopting a standard capital outlay request form; 4) prioritizing capital project requests proposed by the new division and from legislators, and make recommendations to Legislature; 5) requiring periodic reports from recipients of state funding to ensure capital projects are implemented in a cost-effective manner, projects are proceeding in a timely manner, and money is reverted to the proper fund in a timely manner; 6) conduct review of state and local infrastructure capital improvement plans; 7) participate in hearings held by the new division and the executive capital planning committee; and 8) perform other duties the committee deems necessary or are assigned by the Legislative Council. Capital projects exempted from review of the committee include capital projects funded under the Public School Capital Outlay Act, Department of Transportation road projects funded in whole or in part with federal highway funds, and capital projects funded only by loans or grants from the New Mexico Finance Authority.

Section 4, provides that staff of the Legislative Council Service (LCS) and the Legislative Finance Committee (LFC) will staff the Capital Outlay Review Committee and authorizes the LCS and LFC, subject to legislative appropriation, to appoint, employ, or contract technical or clerical assistance, as necessary to carry out the duties of the committee.

Section 5, provides that all agencies, institutions or instrumentalities of the state agencies overseeing capital projects, including exempt entities, provide timely reports to the Capital Outlay Review Committee describing the funded projects, providing the appropriation amount, and other information requested by the committee.

Section 6, allows the Capital Outlay Review Committee to request the LFC, the state auditor or the Capital Outlay Planning and Monitoring Division to conduct financial, compliance, or performance audits on any capital project.

Sections 7 and 8, define the terms used within the Capital Outlay Planning and Monitoring Act.

Section 9, creates the Capital Outlay Planning and Monitoring Division within the DFA and defines the powers and duties of the new division.

Section 10, creates an executive capital planning committee to assist the division in performing its duties. The committee is composed of representatives of the FMD of the General Services Department, the Cultural Affairs Department, the Local Government Division of DFA, the Environment Department, the Aging and Long-Term Services Department, the Higher Education Department, the New Mexico Finance Authority, and the Councils of Governments. The division may also invite members and representatives from the Capitol Buildings Planning Commission and federal agencies to participate in meetings.

Sections 11 and 12, defines the requirements of capital improvement plans and guidelines for executive agencies and local governments. The Capital Outlay Planning and Monitoring Division, with the assistance of the executive capital planning committee shall develop and update yearly a five-year state capital improvement plan and requires that all capital project recommendations of the executive be based on the plan. Further, an executive agency, local government or other potential recipient of state capital dollars will not be eligible for a capital project if the entity is not current on its annual audit or has a plan approved by the state auditor for completion of its audit.

Section 13, requires all executive agencies responsible for capital outlay oversight to file monthly electronic reports on the status of projects, including appropriations and expenditures, with both the new division and the interim committee.

Section 14 and 19, are addressed in the fiscal narrative.

Section 15, eliminates the New Mexico Legislative Oversight Committee requirement to oversee and monitor state and local government capital planning and financing, including taking testimony from state and local officials on state and local capital needs; and eliminates language requiring the committee to provide assistance to the New Mexico Finance Authority and cooperate with the executive branch of state and local governments on planning, setting priorities for and financing state and local capital projects.

Sections 16 and 17, creates a new Capital Outlay Planning and Monitoring Division within DFA and defines or deletes certain duties of the Secretary of the DFA.

Section 18, provides for the transfer of the functions, money, appropriations and property from the current Capital Projects Bureau of the State Budget Division of the DFA to the new division within DFA.

Section 20, repeals statute requiring joint preparation, amendment, maintenance and submission of a four-year program on July 1 of each year of major state capital improvement projects undertaken by the state, including those projects undertaken with state aid or under state regulation.

FISCAL IMPLICATIONS

The appropriation of $1.1 million contained in this bill is a recurring expense from the general fund to the capital project administration fund for expenditure in fiscal year 2015 and subsequent fiscal years to establish the Capital Outlay Planning and Monitoring Division and to carry out the purposes of the Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Section 14 of the bill creates a non-reverting capital project administration fund within the treasury consisting of appropriations, income on investment of the fund and other money credited to the fund. The Legislature shall appropriate money in the fund to the new division to carry out its duties pursuant to this Act and to the State Auditor's Office and the Legislative Finance Committee to conduct audits of any capital project. The audits are to ensure compliance with federal laws, internal revenue service rules pertaining to the issuance and use of tax-exempt bonds, or other federal and state rules and regulations.

SIGNIFICANT ISSUES

Infrastructure needs for both state and local project needs continue to grow and require more resources than the state can afford. Over the years, the executive and legislators have discussed the need to fund projects with adequate planning, a method for establishing project priorities and overall management of state funds for state and local projects. Concerns have centered on the ineffective uses of state resources: unspent proceeds, incomplete projects, waste, and misuse.

Over the years, the executive and legislators discussed the need to fund projects with adequate planning, a method for establishing project priorities, and improved overall management of state funds for both state and local projects. While proposed legislation to establish the process has failed to pass the Legislature, the governor issued executive orders intended to provide accountability of state funds for local capital outlay.

In accordance with Section 6-4-1 NMSA 1978 and Executive Order 2012-023, DFA and the General Services Department, Facilities Management Division, were directed to jointly prepare a process to identify and prioritize all state-owned capital improvement projects. The process requires all state agencies to maintain a five-year facilities master plan consistent with the Capital Buildings Planning Commission master plans and comprehensive principles. Each agency's master plan is required to include a preventive and deferred maintenance plan, space and energy efficiency standards, justification for new construction, and a criteria-based weighted ranking system to determine priorities. According to the order, an updated prioritized five-year program for all capital improvement projects must be submitted to the governor and Legislature by November 1 of each year.

On May 5, 2013, the governor issued Executive Order 2013-006 directing the Department of Finance and Administration to establish uniform funding criteria for a grantee to be eligible for a state capital appropriation. The criteria required grantees to be in compliance with updated audit and financial reporting as required in grant agreements.

RELATIONSHIP

Senate Bill 162 proposes a similar Act with similar requirements.

TECHNICAL ISSUES

The term "state monuments" has been changed in statute to "state historic sites and monuments", page 16 line 5 should reflect the change, "monuments' should be replaced with "historic sites".

The NMFA analysis states the Act, in part as it pertains to the Authority, is unclear in that terms are not defined and has the "potential to conflict with existing procedures for capital project funding, and create overlapping and potentially contradictory regimes for capital project review, funding, oversight and monitoring.

The GSD states it does not support this bill and indicates the bill dilutes the role of the Capital Buildings Planning Commission.

OTHER SUBSTANTIVE ISSUES

Based on a study by the National Association of State Budget Officers, *Capital Budgeting in the States*, good practices for quality capital budgeting require:

- Defining capital expenditures
- Defining maintenance expenditures and identifying funding for maintenance
- Developing a system to prioritize projects and identify criteria used for selection
- Identifying operating costs of each project over a multi-year period
- Effective communication between the legislature and the executive during the capital budget process
- Strengthened review of long-range capital plans
- Integrated planning with debt affordability
- Review of cost-benefit comparisons for private sector participation in capital projects
- Review of long-term leases
- Defining of outcomes for capital investments
- Validating cost estimating methods
- Establishing a tracking system to keep projects on schedule and within budget
- Maintaining an updated inventory system of capital assets
- Maintaining a centralized oversight for capital projects

In addition, components for a good capital management system include:

- Capital planning and budgeting (an analysis of immediate and future needs)
- Project Management (monitoring and evaluating projects through implementation)
- Asset Management (appropriate maintenance of capital assets)

LMK/SGS/jl