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

		ORIGINAL DATE	2/09/15		
SPONSOR	Cisneros	**LAST UPDATED**	2/24/15	**HB**	
SHORT TITLE	Audits of Capital Outlay Projects			**SB**	290/aSPAC
				ANALYST	Kehoe

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	**FY16**		
	Undetermined	Recurring	See Fiscal Impact Narrative

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
General Services Department (GSD)
Department of Finance & Administration (DFA)
New Mexico Department of Transportation (NMDOT)
New Mexico Finance Authority (NMFA)
Office of State Auditor (OSA)
Public School Facilities Authority (PSFA)
State Treasurer's Office (STO)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 290 provides that the proposed special audit for projects costing greater than $5 million shall be for those projects funded wholly with state resources.

Synopsis of Original Bill

Senate Bill 290 proposes a new provision of the State Audit Act requiring a special audit be performed at the end of the project for every capital outlay project costing more than $5 million funded in whole or in part with state money.

FISCAL IMPLICATIONS

Senate Bill 290 requires a special audit separate from the fiscal agent's annual audit or any other special audit that may be required by the state auditor to ensure all funds for the capital outlay project were used properly and in accordance with state law and any other local ordinances. The bill does not contain an appropriation, but requires the fiscal agent responsible for oversight of funds and project to pay for a special audit conducted by independent auditors approved by the state auditor. State agencies and other political subdivisions of the state may not have the financial capacity to cover the costs of a special audit.

As demonstrated by the attached spreadsheet, currently there are 46 outstanding projects totaling $516.6 million with state appropriations ranging between $5 million and $100 million. State agencies are the fiscal agents for the majority of the current outstanding capital funding of projects funded for greater than $5 million. According to OSA estimates, special audits could cost political subdivisions approximately $10 thousand to $20 thousand to audit projects with a value greater than $5 million. The cost of the capital outlay audit could also depend on the scope of work to be performed.

NMDOT states this bill poses a significant impact to NMDOT, and the cost of the proposed special audits could range between $100,000 and $250,000 depending on the size and complexity of the construction projects under the control of the department. NMDOT would be financially responsible for the cost of independent audits, which is not currently a budgeted expenditure. NMDOT currently conducts internal fiscal and structural audits on all infrastructure projects regardless of funding.

PSFA currently has four projects totaling more than $55.7 million. According to PSFA, each project is estimated to require 100 audit hours with an estimated hourly rate of $90 per hour to $130 per hour. Applying an average hourly rate of $110 per hour, the cost of the four audits, including 7 percent gross receipts tax, would cost approximately $47 thousand to contract independent auditors to perform special audits for the four projects. PSFA would pay for the special audits out of their operational fund. The PSFA is authorized to use budget adjustment request (BAR) authority in excess of 5 percent of their appropriated budget and may have to request a BAR to meet the fiscal requirements of this bill.

The New Mexico Finance Authority (NMFA) states the bill is ambiguous in two respects. "State money" is not defined and the term could be interpreted as meaning a portion of the governmental gross receipts tax deposited in the public project revolving loan fund could be defined as state money. In addition, an argument could be made that since NMFA is an instrumentality of the state, any monies under its administration and control could constitute "state money".

NMFA also expresses concerns of the vague term "capital outlay project" inasmuch as "capital" may have somewhat different meanings in different contexts, i.e., the definition of a "capital" project is different under accounting rules than it is under the Internal Revenue Code. NMFA also notes, as have other entities, that the legislation imposes an unfunded mandate on local governments and other engaged in large –scale capital outlay projects.

TECHNICAL ISSUES

NMFA proposes more clearly defining "state money" by identifying the state sources, and clearly defining the scope of a "capital outlay project." Also clarify if the proposed legislation is intended to require a special audit on each phase of the project if greater than $5 million or if the special audit would be required on the total cost of the project. Perhaps the sponsor could consider allowing the cost of a special audit to be paid from the source of funds financing the project.

OTHER SUBSTANTIVE ISSUES

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. The governor issued Executive Order 2013-006 intended to provide accountability of state funds for local capital outlay. The order directs the Department of Finance and Administration (DFA) to establish uniform funding criteria for a grantee to be eligible for a state capital outlay appropriation. To be eligible for state funds, entities must be current with an FY12 audit or agreed upon procedures report, have a duly adopted budget for the current fiscal year, and be compliant with applicable financial reporting requirements. The order includes compliance by the New Mexico Finance Authority for grants or loans made to local entities and requires compliance by tribal entities. However, the order does not extend to state agencies overseeing capital outlay funds for state-owned and –operated facilities.

LMK/bb