FISCAL IMPACT REPORT

SPONSOR Morales **ORIGINAL DATE** 3/9/15
LAST UPDATED **HB**

SHORT TITLE No State Agency Funds Without Audits **SB** 641

ANALYST Malone

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown/ Possibly significant	Unknown/ Possibly Significant	Unknown/ Possibly Significant	Recurring	Various State Agencies/Capital Outlay Recipients

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of the State Auditor (OSA)
Attorney General’s Office (AGO)
Department of Transportation (DOT)
Public Education Department (PED)

No Response Received From
Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 641 provides that the State Budget Division (SBD) at DFA shall not approve a budget for a state agency for the succeeding fiscal year is the agency has an outstanding annual audit or an annual or special audit with material weaknesses or significant deficiencies that have not been successfully resolved. The bill also requires that the state Board of Finance (BOF) will not release bonds and DFA will not release general fund or any other appropriation for capital outlay for agencies without an audit or with unaddressed findings. Additionally, the bill tasks the State Auditor with submitting to DFA a “release for budget” form certifying that an agency is eligible for funding pursuant to the above limitations.

FISCAL IMPLICATIONS

The bill poses significant, but unknown, fiscal implications for the state if noncompliant state agency budgets are not approved, capital outlay funds are not released, or bonds are not issued.

SIGNIFICANT ISSUES

Each state agency provides necessary services for the state of New Mexico. Without an approved budget, an agency will be unable to meet its statutory duties, and necessary services will be foregone. For instance, PED is on the State Auditor's "at risk" list for not having an up-to-date audit. Withholding funding from PED would severely disrupt the provision of educational services in the state. Additionally, a number of agencies have findings of significant deficiencies or material weaknesses in their FY14 audits and would also be subject to noncompliance.

State agency audits are due to the State Auditor by December 15th for the previous fiscal year ending on June 30th. Consequently, audit findings of material weaknesses or significant deficiencies from a previous fiscal year's audit will often not be known until about six months into the subsequent fiscal year, at which time corrective action can be initiated. Importantly, the audit to reflect that findings have been corrected will not commence until the beginning of the next fiscal year and will not be due to the State Auditor until six month into the next fiscal year, which means that funding may be withheld even after findings have been addressed. By way of example, the Taxation and Revenue Department (TRD) had FY14 audit findings that would make it subject to this bill's restrictions. Those findings were revealed several months into the subsequent fiscal year, FY15. Although the department may have already taken corrective action, that action will not be documented until several months into FY16 when the FY15 audit is completed. Given that FY16 commences on July 1, before the FY15 audit is completed, the department's FY16 budget would be at risk for not being approved by DFA. It would be difficult to identify an alternative method for determining that findings have been resolved as OSA notes that the agency relies on annual audit reports to both identify findings and determine if those findings are resolved by the following year. As a result, it would be very difficult for OSA to confidently issue the required "release for budget" form certifying that a state agency is current on its annual audit and does not have unresolved material weaknesses or significant deficiencies by the start of a new fiscal year.

Capital outlay funds appropriated to state agencies are typically "pass through" appropriations and are not expended by the agency. DFA has implemented a process where pass through recipients of capital appropriations must meet certain requirements in order to receive funds. However, under the provisions of this bill, if the agency that administers the pass through is ineligible for approval, funding may not get to the intended recipient.

By statute, OSA is required to thoroughly examine and audit the financial affairs of governmental entities that receive public funds and investigates allegations of fraud, waste and abuse throughout the state. Agencies' timely compliance with the Audit Act each year helps ensure that funds are being expended properly. Prompt and adequate implementation of corrective action of identified weaknesses and deficiencies is also critical to safeguarding taxpayer monies.

Currently, OSA maintains an "at risk" list that includes agencies that have not completed required audits in accordance with the deadlines set forth in the Audit Rule (see attachment 1). As of February 19, there are five agencies on the list, including PED. OSA also recently began compiling a summary of annual agency audit opinions and findings in an effort to bring greater transparency and accountability to the use of public funds.[1] The agency notes that for FY14, DFA, TRD, the General Services Department, the Energy, Minerals, and Natural Resources Department, the Department of Public Safety, the Environment Department, and the NM Finance Authority, among others, all had findings of material weaknesses or significant deficiencies.

PERFORMANCE IMPLICATIONS

Withheld funding will almost certainly disrupt the ability of agencies to meet performance measures.

ADMINISTRATIVE IMPLICATIONS

OSA and DFA will have relatively minimal new administrative duties to fulfill the requirements of this bill.

TECHNICAL ISSUES

It would be helpful for SB 641 to define annual audit, special audit, material weaknesses, and significant deficiencies.

OTHER SUBSTANTIVE ISSUES

PED notes that it is important to note that a number of factors come into play with regard to the status of agency audits, including the status of component unit audits which may have an adverse impact on an audit when the primary governmental entity may not have day to day control of the component unit, or other unforeseeable circumstances that may cause material weaknesses or audit delays to occur.

DOT notes that if DFA were to not approve DOT's state budget for a fiscal year, it would result in the absence of budget authority for DOT and the lack of access to resources to pay for personal services, contractual services, and other obligations, such as employee salaries, road construction projects, road maintenance activities, debt service payments, federal match requirements, general operations, and grant programs (traffic safety and transit and rail).

Not releasing budget or capital outlay may also affect the State of New Mexico's Comprehensive Annual Financial Report as having agencies operating without approved budgets is an overall state non-compliance matter.

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[1] The report of FY14 findings is available at
http://www.saonm.org/media/news_pdf/Findings_Summary_021514_With_Report_Links.pdf