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FISCAL IMPACT REPORT

SPONSOR SCONC **ORIGINAL DATE** 3/19/15
LAST UPDATED _____ **HB** _____

SHORT TITLE State Auditor Reports to Legislature **SB** 707/SCONCS

ANALYST Malone

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Unknown	Unknown	Recurring	General Fund/ Other State Funds

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	Various Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 616 and HB 209.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Auditor (OSA)

New Mexico Department of Transportation (NMDOT)

Higher Education Department (HED)

SUMMARY

Synopsis of Bill

The Senate Conservation Committee substitute for Senate Bill 707 requires the State Auditor to report to the legislative finance committee by December 1 of each year unencumbered balances in all state accounts and funds that are available for expenditure by the subsequent regular legislative session. The bill exempts accounts or funds that are:

1. constitutionally created as non-reverting funds or statutory funds created to carry out the Enabling Act for New Mexico or constitutional mandates;
2. actuarially obligated;
3. permanent, endowment or trust funds;
4. created pursuant to court order or made non-reverting pursuant to court order;
5. funded by severance tax bonds or other bonds for active projects under contract that have not been completed;
6. sinking funds, unless the project for which the fund was created is completed;
7. suspense funds;
8. revolving loan funds;
9. gifts, grants or donations that are specific to purpose; or
10. operating accounts or funds that revert on June 30 of the year in which the regular legislative session that is subsequent to the report is held.

FISCAL IMPLICATIONS

Although this bill contains no appropriation, there is a potential negative fiscal impact for agencies with non-exempt, non-reverting fund balances or accounts contingent upon OSA reporting and subsequent action to use or divert balances. Reversion of special funds would benefit the general fund.

According to OSA in a recent report, *Money on the Sidelines*, as of FY14 approximately \$4.5 billion was unspent in many funds across state government.¹ However, the report does not identify which of those funds are unencumbered and available for alternative uses. LFC review of the report found that the funds were largely unavailable. A report identifying unencumbered funds from OSA could be useful for identifying best use for funds.

SIGNIFICANT ISSUES

Routine review of special funds would provide more transparency and accountability for reporting on the status of the state's resources as disclosed in agencies' financial audits under the purview of the State Auditor. Such review would be useful in identifying unencumbered fund balances that may be utilized.

OSA currently only has fund data compiled from the annual financial audits from the previous fiscal year for state agencies. DFA monitors the current financial status and activities of state agencies and would possess the data requested in SB 707.

Both HED and DOT observe that special funds within the departments are important to operations and not good candidates for reversion. Presumably other agencies have similar special funds not explicitly exempt from review in this legislation. DOT notes that the department receives no general fund and is dependent on dedicated revenue sources to fund transportation needs and to ensure cash flow needs.

¹ The report can be found at http://www.saonm.org/media/news_pdf/3-9-15_Auditor_Keller_Identifies_4_5_Billion_in_Unspent_Funds.pdf

ADMINISTRATIVE IMPLICATIONS

DFA and OSA would likely need to work together to accomplish the goals of this legislation (see technical issues below).

RELATIONSHIP

Relates to SB 616 and HB 209.

TECHNICAL ISSUES

OSA does not, per the current audit rule, receive independent financial audits pertaining to state agencies until Dec 15th of each year, and the financial audits are for the previous fiscal year. January 15th would be a more realistic date to receive and compile fund data from the previous fiscal year while still allowing time to present this audited data to the LFC. Also, state agencies' financial audits provide data from the previous fiscal year, so they would technically be a year behind if the intent of the bill is to receive fund balance information for appropriating purposes. Up to date data regarding state agencies' funds is available at DFA as opposed to the independent financial audits, and to meet the requirements of this bill, DFA and OSA would need to collaborate on this matter.

OTHER SUBSTANTIVE ISSUES

On similar legislation, the Attorney General's Office noted that one of the exceptions to the bill's reversion requirement applies to special nonreverting funds that are "created pursuant to court order or made non-reverting pursuant to court order." This raises two potential issues: (1) do courts have authority to create non-reverting funds in the state treasury and (2) if so, does that authority unconstitutionally interfere with the legislature's plenary authority over spending? See N.M Const. art. III, §1 (separation of powers) and Art. IV, Sec. 30 (money shall be paid out of the treasury only by appropriations made by the legislature).

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