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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/22

SPONSOR Munoz LAST UPDATED _____ HB _____

SHORT TITLE Treasurer Approval for Certain Payments SB 193

ANALYST Faubion

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY22	FY23		
--	\$1,000.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
--	--	Up to \$500.0	Up to \$500.0	Nonrecurring	DFA – SHARE changes – General Fund
--	--	\$1,000.0	\$1,000.0	Nonrecurring	DFA – voucher load process – General Fund <i>(same as appropriation above)</i>
--	--	Up to \$500.0	Up to \$500.0	Nonrecurring	DFA – risk assessment – General Fund
--	--	Up to \$500.0	Up to \$500.0	Nonrecurring	DFA – changes to policies and manuals – General Fund
--	--	\$274.0	\$274.0	Recurring	STO – 3 FTE - General Fund

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Treasurer’s Office (STO)

Attorney General’s Office (NMAG)

Department of Finance and Administration (DFA)

Office of the State Auditor (OSA)

SUMMARY

Synopsis of Bill

This bill dictates that the State Treasurer's Office (STO) shall review all payments and disbursements of public funds that are greater than \$150 thousand prior to disbursement to confirm that each has been properly appropriated by the legislature for the purpose that the payment or disbursement is to be made. It also provides funding for system modifications.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The fiscal implication of the proposed legislation is primarily related to the costs associated with planning for and modification of SHARE and other systems and business processes to accommodate STO's review given the significant volume of disbursements. Disbursements are issued by DFA and other state agencies and various payment types, such as paper warrants, automated clearing house payments, and wire transfers, are utilized.

Additional staff will be needed to ensure that STO's validation process is performed in a timely manner so that disbursements are not delayed pending STO review. Given prior year's activities, STO estimates volumes to be about 575 items per month requiring three additional fulltime staff members would be needed.

DFA notes that the cost to implement this bill must include a risk strategy and assessment to identify the impacts and risks identified including a review of the accounting system workflow risk; DFA estimates this will cost \$500 thousand. The new risk acceptance level must be acknowledged and approved, and the existing process and policy manuals would need to be updated. DFA estimates the total operational costs of this bill to be \$2.5 million.

SIGNIFICANT ISSUES

In November 2021, there was a dispute over whether the governor had the right to spend \$1.7 billion in federal stimulus funds (American Rescue Plan Act funds or "ARPA funds") or if such expenditures required legislative appropriation. A group of legislators filed a lawsuit against the governor and named STO as a real party-in-interest as STO funded the disbursements that were authorized by the governor's administration. The question to the New Mexico Supreme Court was whether these non-designated stimulus funds needed to be appropriated by the New Mexico Legislature prior to the funds being disbursed. The Supreme Court issued a Writ of Mandamus ordering that neither the governor nor the State Treasurer could transfer, encumber, commit, expend, or transfer any additional ARPA funds without Legislative appropriation.

It is STO's opinion that the proposed legislation would enact the Supreme Court ruling into statute by requiring STO to reevaluate exactly how each payment is reviewed to confirm that it has been lawfully drawn and evaluate how non-compliant payments could be identified and suspended prior to issuance.

The Department of Finance and Administration notes the following:

The bill significantly increases statewide fiscal risk and adversely impacts the state's existing internal control structure. The primary purpose of internal controls is to safeguard an entity's operations and further its objectives. Internal controls function to minimize risks and protect assets, ensure accuracy of records, promote operational efficiency, and encourage adherence to policies, rules, regulations, and laws.

Segregation of duties is a key internal control intended to minimize the occurrence of errors or fraud by ensuring that no agency has the ability to both perpetrate and conceal errors or fraud in the normal course of their duties. The general concept of segregation of duties is to prevent one agency or department from having access to assets as well as responsibility for maintaining the accountability of those assets. The concept also promotes shared responsibilities of a key process that disperses critical functions to more than one department.

In this case, duties that should be segregated are 1) Authorization/Approval, 2) Custody, 3) Recordkeeping, and 4) Reconciliation.

Currently, the State Treasurer's Office maintains **Custody** of bank accounts and investments, **Recordkeeping** of cash activity, and **Reconciliation**. Expanding STO's authority to include **Authorization/Approval** would place all the functions of cash operations within one state office, negating the existing internal control framework for the State of New Mexico.

ADMINISTRATIVE IMPLICATIONS

It is unknown how complicated it will be for STO to implement the required review process. The universe of payments is extensive, and currently STO does not participate actively in SHARE's Commitment Control and Accounts Payable modules' configuration. The effective date of July 1, 2023 should provide time for assessment of systems and business processes followed by design and implementation.

DFA notes that the proposal would increase turnaround time for payment, increase risk, and increase budget and system needs.

The Office of the State Auditor (OSA) notes that the threshold may introduce delays in process given the quantity of vouchers and purchase orders greater than set threshold in the proposed legislation could be substantial. Set thresholds can result in multiple amounts just below the set threshold that in aggregate could be substantial and would not be subject to the proposed process.

TECHNICAL ISSUES

In relation to Section 1(B), the OSA recommends the Legislature consider causing the proposed review by the State Treasurer to occur during the obligation process. During the obligation process would be more appropriate and efficient if it is determined the intended disbursement of public funds do not meet the appropriated purpose. Consider replacing Section 1(B) with the following:

“For any proposed obligation in an amount greater than one hundred fifty thousand dollars (\$150,000), the state treasurer shall confirm, prior to approving the obligation, that the public funds are properly appropriated by the legislature for the purpose that the payment or disbursement is to be made. If the state treasurer determines that the public funds are not properly appropriated for the purpose that the payment or disbursement is to be made, the treasurer shall invalidate that obligation.”

OTHER SUBSTANTIVE ISSUES

Below are statutory citations that detail STO’s statutory responsibilities relative to disbursements that are related to the proposed legislation:

New Mexico Constitution, Article IV, § 30

Sec. 30. [Payments from treasury to be upon appropriations and warrant.]

Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied.

NMSA 8-6-3. Duties of treasurer; receipts.

The state treasurer shall receive and keep all money of the state except when otherwise specially provided; disburse the public money upon warrants drawn according to law and not otherwise; keep a just, true and comprehensive account of all money received and disbursed; render the state treasurer's accounts to the financial control division of the department of finance and administration annually, or more often if required; and report to the legislature, at the commencement of each regular session, a detailed statement of the condition of the treasury. The state treasury shall grant duplicate receipts for all money paid into the treasury, and the person receiving the duplicate receipts shall record the entry in the centralized accounting system administered by the department of finance and administration.

NMSA 6-4-2. [General fund created.]

There is created a fund to be known as the "general fund" to which the state treasurer shall credit all revenues not otherwise allocated by law. Expenditures from this fund shall be made only in accordance with appropriations authorized by the legislature.

The Office of the Attorney General notes that as written, SB193 appears to place upon the State Treasurer the obligation to determine the legality of legislative appropriations. This would require the state treasurer to form legal opinions on issues such as constitutionality (*e.g.*, Anti Donation Clause issues) and statutory construction and compliance (*e.g.*, purposes for which money in various funds can be used).