

LFC Requester:

E. Hilla

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov*(Analysis must be uploaded as a PDF)***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*Date Prepared: 2.14.25

Check all that apply:

Bill Number: SB 355Original Correction Amendment Substitute Sponsor: Wirth
Short PUBLIC FINANCE
ACCOUNTABILITY ACTAgency Name
and Code OSA 308

Number:

Person Writing David CraigPhone: 5056999911 Email David.Craig@osa.nm.**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Senate Bill 355 (SB355) creates the Public Finance Accountability Act (“the Act”) and establishes definitions. SB355 sets up criteria by which the Department of Finance and Administration (DFA) may make capital outlay grants of award to public entities. For entities required to have an annual audit, one of the two most recent fiscal year audits must be completed, and the most recently concluded fiscal year audit must be a public record. SB355 requires that for audits that reveal material weaknesses or significant deficiencies the entity must complete a plan to address the findings, and either DFA must provide support to prepare and implement the plan to remedy the findings or, if the most recent audits have significant deficiencies for more than two fiscal years from the fiscal year the grant is being considered, the state agency is to identify a fiscal agency for the grant.

For public entities required to reach financial certification under the Audit Act at a threshold less than an annual financial audit, SB355 requires: grantees demonstrate adequate accounting methods and procedures to account for, expend and safeguard grant funds in accordance with applicable law, and the awarding agency to impose via grant conditions any corrective actions necessary to remedy deficiencies identified or determine another entity to act as a fiscal agent for the grant. SB355 requires grantees to follow financial reporting requirements, including those in the Audit Act, and shall have a budget for the current fiscal year approved by any applicable governing body or oversight agency. SB355 requires DFA to certify that these conditions have been met before the Board of Finance (BOF) issues Severance Tax Bonds (STB’s) to an entity for a project or before it makes grants of award.

SB355 also requires DFA implement grant management and oversight requirements for grantees that ensure: sales, leases and licenses of capital assets acquired are approved in accordance with applicable law (or, if no oversight entity is required to approve a sale, lease or license of capital asset - independently confirm that the disposition of capital assets complies with applicable law and that the grantee is receiving adequate consideration), use of the appropriate capital outlay grant agreement template DFA uses, and field audits are completed of capital outlay projects.

SB 355 empowers DFA to promulgate policies and procedures for these activities, develop its grant agreement templates, allow for criteria when deviating from these templates or other monitoring and oversight responsibilities and tasks DFA with monitoring and compliance enforcements for grants under the Act.

FISCAL IMPLICATIONS

SB355 does not carry an appropriation and DFA would need to implement provisions without additional funding.

SIGNIFICANT ISSUES

Elements of SB355 have been in implementation for over a decade as Executive Order 2013-006. The Executive Order was implemented to better safeguard the state's direct, legislative capital outlay appropriations and ensure timely state agency financial reporting in any given year. OSA works, in consultation every year, with DFA and other executive agencies to use the OSA's Audit At-Risk List in holding agencies and local public bodies accountable for late audits and audits that result in modified, adverse, or disclaimed opinions. So far, most of the current process that SB355 formalizes has worked well in acting as a deterrent in public entities submitting late audit reports. It has also ensured capital outlay dollars are spent prudently and in accordance with state law.

However, SB355 makes changes to the current Executive Order access process, decreasing the rigor of financial performance audited entities must achieve to reach compliance. The current Executive Order 2013-006 requires entities seeking grants to have remedied any material weaknesses and significant deficiencies to the satisfaction of DFA, allows DFA to impose grant conditions to remedy the findings or allows DFA to award the grant to a fiscal agent.

In contrast SB355 merely requires the grantee to create a plan to remedy the findings, requires DFA to provide support to the grantee to prepare and implement the plan and only allows the required use of the fiscal agent if the significant deficiencies or material weaknesses are repeat findings for the last two fiscal years. As such, this puts more responsibility and onus on DFA rather than the agency receiving the funding.

OSA believes having this financial government procedure only exist in Executive Order instead of state law presents significant limitations. For example, should a future Executive repeal the Executive Order because of political pressures from non-compliant public entities the state would revert to increased untimely audits and limited safeguards for the expenditure of direct legislative capital outlay appropriations.

PERFORMANCE IMPLICATIONS

Executive Order 2013-006 is one of two policy levers the state has to require timely compliance with financial audits and the Audit Act (the other being NMSA 1978 §12-6-3 F) that has never been operationalized where OSA reports to PED, LFC and DFA untimely audits and other sections of statute require DFA or PED to withhold operating funds from the non-compliant entity). Without this policy in place, OSA would be significantly limited in its ability to enforce timely completion of audits and would need to lean more heavily on the Executive to withhold Operating funds to reach compliance – an action that no Executive has taken to date.

ADMINISTRATIVE IMPLICATIONS

Most of SB355, including the process by which public entities access direct legislative capital outlay appropriations, the policies and procedures for oversight and monitoring at DFA and requiring restrictions to be placed on entities are already in place. SB355 merely takes the existing process, weakens some sections for audited entities and formalizes it into state law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

OSA would recommend that SB 355 be amended to reflect the current Executive Order 2013-006 language for entities to access the grants. OSA does not believe an action plan to address findings is a sufficient safeguard of capital outlay assets or work as a significant enough deterrent of poor financial practices at grantees.

It is also unclear how, for entities required to have an annual audit, how one of the two most recent fiscal year audits could be completed, and still have the most recently concluded fiscal year audit be publicly released. If the most recent fiscal year audit is of record, then it is most likely that the audit from two fiscal years prior is available too as the financial information has to roll over year-to-year to complete audits.

ALTERNATIVES

SB 355 should reflect the current Executive Order 2013-006 language, specifically as it regards mitigating audit findings prior to accessing capital outlay, for entities to access the grants.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

OSA recommends amending SB 355 by removing the language on in Section 3 Subsection A Subsubsection 2 (page 3 lines 4 – 19) and replacing it with language from the Executive Order 2013-006 that reads as follows:

“(2) in the case of a grantee whose most recent annual audit, or special audit released since its most recent annual audit became a public record, documents material weaknesses or significant deficiencies that raise concerns about the grantee's ability to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired with grant funds:

(a) the grantee shall have remedied the material weaknesses and significant deficiencies to the satisfaction of the state agency making the grant;

(b) the state agency making the grant shall have determined that it can impose and has the resources to implement special grant conditions that adequately address the material weaknesses and deficiencies; or

(c) the state agency making the grant shall have determined that another appropriate entity is able and willing to act as fiscal agent for the grant;”

This amendment would help ensure that we are not lowering the standard by which audited municipalities or other governments are accessing capital outlay funds.